

Board Meeting Agenda Book



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

September 1, 2016

Full Board Meeting, 8:00 a. m.



**AGENDA
BOARD MEETING
TEXAS DEPARTMENT OF MOTOR VEHICLES
4000 JACKSON AVE., BUILDING 1, LONE STAR ROOM
AUSTIN, TEXAS 78731
THURSDAY, SEPTEMBER 1, 2016
8:00 A.M.**

All agenda items are subject to possible discussion, questions, consideration, and action by the Board of the Texas Department of Motor Vehicles (Board). Agenda item numbers are assigned for ease of reference only and do not necessarily reflect the order of their consideration by the Board. The Board reserves the right to discuss any items in executive session where authorized by the Open Meetings Act.

1. CALL TO ORDER

A. Roll Call and Establishment of Quorum

B. Comments and Announcements from Chair, Board Members, and Executive Director

1. Chair's Report – Chairman Palacios
 - a. Introduction of New Board Members
 - b. Recognition of Service - Chair Laura Ryan
2. Executive Director Whitney Brewster
 - a. Introduction of New Internal Auditor, Sandra Menjivar-Suddeath
 - b. Agency Awards

C. Public Comment

2. ACTION AND BRIEFING ITEMS

A. Finance & Audit Committee Update - Committee Chair Palacios

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1. Consideration of Committee Recommendation Regarding the:

4 a. **FY 2017 Interagency Agreement between TxDOT and TxDMV**

25 b. **FY 2017 Internal Audit Plan**

33 c. **FY 2017 Recommended Operating Budget**

2. Briefing Items

60 a. **FY 2018- 2019 Legislative Appropriation Request, Baseline and Exceptional Items**

83 b. **FY 2016 Quarterly Financial Report**

90 c. **Internal Audit Division Status Report**

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- B. Projects & Operations**
- 91 1. **Enterprise Projects Quarterly Report** - Judy Sandberg
2. Facilities Update - Linda M. Flores
- C. Legislative & Public Affairs** - Caroline Love
- 102 1. **84th Legislative Implementation**
2. 85th Legislature
- D. Contested Cases**
- 106 **Franchised Dealer's Complaint against Distributor under Occupations Code, §§2301.475(b) and 2301.479(b)** - Daniel Avitia and Kenneth Herring
MVD Docket No. 14-0016.LIC; SOAH Docket No. 608-14-4960.LIC;
Autobahn Imports, L.P. d/b/a Land Rover of Fort Worth, Complainant
v. Jaguar Land Rover North America, LLC, Respondent
- E. Rules**
- Proposal of Rules under Title 43, Texas Administrative Code**
- 204 1. **Chapter 215, Motor Vehicle Distribution** - David D. Duncan,
Daniel Avitia, and Bill Harbeson
- 527 a. Rule Review, Government Code, §2001.039
(Notice of Intent Published June 19, 2015 - 40 Tex. Reg. 4012)
- 538 b. Amendments and Repeals
- 546 c. New §215.160, Duty to Identify Motor Vehicles Offered for Sale as a Rebuilt
2. **Chapter 217, Vehicle Titles and Registration** - Jeremiah Kuntz
- a. **Amendments, §217.9, Bonded Titles**
- b. **New, §217.57, Report of Alternative Fuel Vehicles**
- c. **Corrections (Non-Substantive Amendments)**, §§217.3, 217.28,
217.40, 217.42, 217.45, 217.47, 217.52, 217.54, 217.56, 217.82,
217.84, 217.86, 217.103, and 217.163
3. **Chapter 218, Motor Carriers**
- a. **Household Goods Rules Advisory Committee (HGRAC)**
Recommendation - Committee Chair Jim French and Committee
Member Bill Harbeson
- b. Amendments, §§218.2, 218.13, 218.31, 218.32, 218.52, 218.53,
218.56, 218.59, 218.60, and 218.61 - Bill Harbeson and Jimmy Archer

3. EXECUTIVE SESSION

A. Section 551.071 - Consultation with and advice from legal counsel regarding:

1. pending or contemplated litigation, or a settlement offer;
2. a matter in which the duty of the attorney to the government body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Government Code, Chapter 551; or
3. any item on this agenda.

B. Section 551.074 - Personnel matters.

Discussion relating to the appointment, employment, evaluation, reassignment, duties, discipline, and dismissal of personnel.

4. ACTION ITEMS FROM EXECUTIVE SESSION

5. ADJOURNMENT

The Board will allow an open comment period to receive public comment on any agenda item or other matter that is under the jurisdiction of the Board. No action will be taken on matters that are not part of the agenda for the meeting. For subjects that are not otherwise part of the agenda for the meeting, Board members may respond in accordance with Government Code, Section 551.042 and consider the feasibility of placing the matter on the agenda for a future meeting.

Agenda items may be presented by the named presenters or other TxDMV staff.

Pursuant to Sections 30.06 and 30.07, Penal Code (trespass by license holder with a concealed or openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun or a handgun that is carried openly.

Any individual with a disability who plans to attend this meeting and requires auxiliary aids or services should notify the department as far in advance as possible, but no less than two days in advance, so that appropriate arrangements can be made. Contact Stacy Steenken by telephone at (512) 302-2380.

I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements.

CERTIFYING OFFICIAL: David D. Duncan, General Counsel, (512) 465-5665.

Governor Abbott Names Chair And Appoints Three To Board Of Department Of Motor Vehicles

Tuesday, August 23, 2016 • Austin, Texas • Appointment

Governor Greg Abbott has appointed Brett Graham to the Board of Department of Motor Vehicles for a term set to expire February 1, 2017 and appointed Kate Hardy and Gary Painter for terms set to expire February 1, 2021. Additionally, Governor Abbott has named Raymond Palacios, Jr. chair of the board. The board oversees and coordinates the development of the Texas Department of Motor Vehicles and ensures that all components of the motor vehicle industry function as a system.

Brett Graham of Denison is owner and CEO of Graham International. He is a board member of the Texas Association of Business and a member of the Texas Automobile Dealers Association and the Texas Tire Dealers Association. He is a trustee of Pottsboro Independent School District School Board, board secretary of Grayson Central Appraisal District, board chair of Texoma Health Foundation and Denison Development Foundation and a board member of Ameristate Bank. Graham received a Bachelor of Business Administration in marketing and real estate from Baylor University.

Kate Hardy of Trophy Club is director of General Motors (GM) Financial and has held various positions in the sales and marketing group with GM for over 30 years. Hardy received a Bachelor of Science in industrial management from Georgia Tech.

Gary Painter of Midland is Sheriff of Midland County and has over 45 years of law enforcement service. He is a lifetime member of the Sheriffs' Association of Texas and a member of the National Sheriffs' Association, Western States Sheriffs' Association, Southwest Border Sheriffs' Coalition and the Texas Police Association. He is a gubernatorial appointee on the Commission on Jail Standards, president of the Midland County Bail Bond Board, board member of the Attorney General's Human Trafficking Task Force, and a member of the Interoperable Communications Board and Law Enforcement Academy Board for the Permian Basin Planning Commission. Painter received a Bachelor of Science in police administration.

Raymond Palacios, Jr. of El Paso is president of Bravo Cadillac in El Paso and Bravo Chevrolet Cadillac in Las Cruces, New Mexico. He is a member of the Community en Acion (CEA) Board, Council on Regional Economic Expansion and Educational Development Board and the Borderplex Alliance and the Board of Capital Bank Executive Board. He is a member and past district director of the Texas Automotive Dealers Association, past vice chair of General Motors' Minority Dealer Advisory Council and past member of the National Chevrolet Dealer Advisory Council and Hummer Dealer Advisory Council. Additionally, he is founder and past president of the University of Houston Hispanic Alumni Association, past president of the Association for the Advancement of Mexican Americans and a past board member of Leadership Houston, University of Houston Alumni Association, Yucca Council of the Boy Scouts of America and the El Paso Better Business Bureau. Palacios received a Bachelor of Business Administration in accounting from the University of Houston.



DATE: September 1, 2016
Action Requested: Approve Execution of Contract

To: Raymond Palacios, Chairman
From: David Duncan, General Counsel
Agenda Item: 2.A.1.a - FY 2017 Interagency Agreement between TxDOT and TxDMV
Subject: Annual Interagency Contract with Texas Department of Transportation

RECOMMENDATION

Staff seeks the Board's approval for the Executive Director to execute the annual Interagency Contract between TxDMV and TxDOT.

PURPOSE AND EXECUTIVE SUMMARY

Due to shared facilities, services and equipment, TxDMV has signed an "Interagency Contract" (IAC) with the Texas Department of Transportation (TxDOT) every year since the agency's inception. This IAC specifies the duties and obligations of the two agencies regarding IT functions, facilities operations and maintenance, and the division of costs for shared services between the two agencies. Changes have been negotiated with TxDOT staff to reflect operational changes that have occurred over the past fiscal year.

FINANCIAL IMPACT

The not-to-exceed amount of the IAC has been reduced to \$2 million this year, reflecting continued reduction in TxDMV's need for TxDOT support.

THE STATE OF TEXAS §

THE COUNTY OF TRAVIS §

INTERAGENCY CONTRACT FOR FISCAL YEAR 2017

THIS AGREEMENT is entered into by and between the State agencies shown below under the authority granted and in compliance with the provisions of Chapter 771 of the Government Code.

I. PARTIES

TxDMV Texas Department of Motor Vehicles
TxDOT Texas Department of Transportation

II. LEGAL AUTHORITY

TxDMV and TxDOT are authorized to enter into this contract by Chapter 771, Government Code; HB 3097, 81st Leg., Regular Session, 2009 (hereafter HB 3097); and SB 1420, 82nd Leg., Regular Session, 2011 (hereafter SB 1420).

III. TERM

This contract begins September 1, 2016, and terminates at the end of August 31, 2017.

IV. MAXIMUM AMOUNT PAYABLE

The maximum amount payable by TxDMV to TxDOT under this contract shall not exceed \$2.00 million, unless this amount is amended as provided by Section XIV of this contract.

The maximum amount payable by TxDOT to TxDMV under this contract shall not exceed \$1 million, unless this amount is amended as provided by Section XIV of this contract.

V. SCOPE AND INTENT

It is the intent of the parties that this contract shall govern the provision of services and the reimbursement of actual costs.

VI. NOTICES

Official notices under this contract shall be sent by first-class mail. Advance copies may be sent by facsimile transmission or email. Official notices shall be directed as follows.

Notices to TxDMV:
Executive Director
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, TX 78731
(512) 465-3001 Phone
(512) 465-3004 Fax

Notices to TxDOT:
Director of Contract Services
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701
(512) 416-4620 Phone
(512) 416-4621 Fax

VII. FUNDING

The agency that provides deliverables (performing agency) to the other agency (receiving agency) shall provide an itemized invoice to the receiving agency, except as otherwise stated in this contract.

The receiving agency shall pay the actual costs of all deliverables provided by or through the performing agency under this contract, except as stated otherwise in this contract.

The basis for calculating actual costs is set forth in Attachment A, which is incorporated by reference in this contract. Actual costs shall be invoiced no more frequently than monthly and within 90 days of the date those costs are incurred.

Neither agency shall make a profit from its participation in this contract.

VIII. FACILITIES, EQUIPMENT, AND PERSONNEL

- A. TxDMV personnel may occupy assigned TxDOT facilities and use TxDOT equipment on the same terms as TxDOT employees. For facilities where TxDOT controls access to buildings, TxDOT shall issue security badges to TxDMV employees, board members, and contractors. The badges shall associate the recipients with TxDMV and enable access to TxDOT facilities as required by TxDMV business operations. Neither agency shall have any right of access to buildings occupied exclusively by the other agency except to perform functions authorized by the contract. Either party may mutually agree on an ad hoc basis

to permit the other party access for the purpose of a particular function. TxDMV shall make no alterations or additions to TxDOT facilities without prior written approval from TxDOT.

- B. TxDMV shall give TxDOT one year written notice of its intent to vacate a TxDOT facility (whether owned by or leased to TxDOT) unless agreed otherwise by the parties. TxDOT shall give TxDMV one year written notice to vacate prior to the date TxDMV is required to vacate a TxDOT facility, regardless of whether TxDOT owns or leases the facility, provided, however, that TxDOT shall not serve TxDMV with a notice to vacate prior to August 31, 2016.
- C. TxDMV employees shall have access to TxDOT resources (such as Crossroads) as agreed to by both parties. Domain Admin and Supervisor Access will no longer be provided without agreement in advance by TxDMV and TxDOT. Use of TxDOT computer equipment by any TxDMV employee shall be conditioned on that employee's execution of and adherence to an agreement stating the employee shall adhere to all TxDOT policies governing the use of TxDOT computer equipment. TxDMV shall take appropriate action to protect TxDOT's network and computer system from misuse. In the case of contradiction between TxDOT and TxDMV policies or procedures governing equipment, network or systems, TxDOT policies and procedures take precedence as it relates to TxDOT equipment, network, or systems, and TxDMV policies and procedures take precedence as it relates to TxDMV equipment, networks or systems.
- D. Because TxDOT has outsourced most of its information technology functions and has no way of capturing the labor or incremental cost of those functions, TxDOT shall have no responsibility for providing TxDMV with services that TxDOT obtains through a contractor.
- E. TxDMV shall obtain prior approval (both via TxDMV Change Advisory Board (TxDMV CAB) and the TxDOT Change Advisory Board (TxDOT CAB)) from TxDOT before installing or maintaining hardware or software not included in the TxDOTNow Service Catalog on devices that are connected to TxDOT's network. If agreement cannot be reached between the TxDMV Chief Information Officer and the TxDOT Information Management Division Director, then the hardware or software shall not be used on TxDOT's network or other technical infrastructure. TxDOT may remove hardware or software placed into service that is not approved in advance via TxDMV CAB and TxDOT CAB, or cause such hardware or software to cease to function. Every effort should be made by TxDMV to add new software and hardware to the TxDMV network and not to the TxDOT network. For all software installed on the TxDOT network, TxDMV will abide by the TxDOT Software Asset Management Policy; however TxDOT must provide a copy of the Software Asset Management Policy to TxDMV within 15 days after the entry of this agreement, and must provide any amendments within 15 days after those amendments become effective..

- F. Wherever and whenever TxDMV employees occupy space owned or leased by TxDOT, TxDMV and its employees shall follow facility management, building maintenance, parking, and security policies, procedures, and standards established by TxDOT. Requests for deviation from these policies, procedures, and standards shall be reviewed as needed by a committee consisting of two persons appointed by TxDOT and two persons appointed by TxDMV. No deviation is permitted without TxDOT's advance written approval.
- G. In the event of a disaster affecting TxDMV headquarters, TxDOT agrees to provide additional office space to TxDMV as specified in Appendix I.
- H. During separation activities, TxDMV shall notify TxDOT of the separation of shared services and any costs anticipated as a result of the separation via TxDMV and TxDOT CAB. If TxDOT discontinues use of a shared service billed through DCS before TxDMV discontinues use of the same service, TxDMV shall pay for all DCS charges directly related to that service until DCS decommissions the service and discontinues associated billing. If TxDMV discontinues use of a shared service billed through DCS before TxDOT discontinues use of the same service, TxDOT shall pay for all DCS charges directly related to that service until DCS decommissions the service and discontinues associated billing.

IX. SHARING OF INFORMATION

The parties shall share information as necessary to fulfill the terms of this contract.

Each party shall promptly notify the other party of any changes that may reasonably affect the operations of the other party, and both parties shall cooperate fully in managing those changes. TxDMV shall promptly notify TxDOT of any significant changes in operations and shall promptly provide TxDOT with copies of any required documentation. Each party shall keep the other party informed of any significant issues relating to contemplated or pending litigation or requests for information that may affect the responsibilities of the other party.

Neither party is authorized to accept a public information request, service of a subpoena, or any other formal notice on behalf of the other party.

The parties shall cooperate fully in preparing any reports required by state or federal law.

To the extent permitted by law, each party shall treat the other party's information as confidential. As provided in HB 3097, SB 1420 and the Texas Public Information Act (Tex. Government Code Ch. 552), confidential information of one party shall remain confidential despite its disclosure to the other party, and disclosure between the parties shall not act as a waiver of confidentiality.

TxDMV shall continue to provide TxDOT batch inquiry title and registration information from the Texas Motor Vehicle Title and Registration database and remote electronic

access through Motor Vehicle Inquiry to the Motor Vehicle Title and Registration database without charge, as further outlined in Section XI, Services to be Provided by TxDMV.

TxDOT must use its best efforts to timely provide TxDMV with current information TxDMV needs to issue and to complete permits under Chapters 621 through 623, Transportation Code. TxDOT must use its best efforts to timely provide TxDMV with such information through direct lines of communication to enable TxDMV to timely serve the motor carrier industry. TxDOT shall continue to provide access to Crossroads resources necessary for TxDMV to map restrictions and route oversize/overweight loads (as specified further in subsection X.J., below).

TxDMV shall provide access to TxDOT to all records and reports necessary to enable TxDOT to determine that accurate road and maintenance information is being used by TxDMV to issue permits under Chapters 621 through 623, Transportation Code.

Both parties must use best efforts to ensure that they do not introduce into the other party's electronic systems any malware, including, but not limited to viruses, spyware, computer worms, Trojan horses, rootkits, dishonest adware, and other malicious or unwanted software.

Each party understands and acknowledges that it uses the other party's systems at its own risk. Neither party shall be responsible to the other for any injury, damage, liability, claims or suits resulting from the party's use of the other party's systems.

X. SERVICES TO BE PROVIDED BY TxDOT

At the request of TxDMV, TxDOT shall provide the following support services to TxDMV:

- A. Validation tests for license plates and other related registration and titling insignia per TxDMV specifications.
- B. Facility maintenance support to include building maintenance, parking, and security.
- C. Facility support and access to shop services for the TxDMV regional office employees in the same manner as TxDOT employees.
- D. Contact information for two employees per district assigned to coordinate with TxDMV on permit issues during regular TxDOT office hours and emergency contact information for after hour and weekend emergency situations.

- E. Information regarding road restrictions, maintenance schedules, and any other relevant information that will affect the issuance of oversize and overweight permits.
- F. Auditing of TxDMV records to determine that all road information provided by TxDOT is being used in the issuance of oversize and overweight permits.
- G. If TxDOT discovers that it has provided incorrect road information to TxDMV which has been or will be used in the issuance of an oversize or overweight permit, TxDOT shall take all actions available to correct the information to limit damage to the roadway or other hazards.
- H. TxDOT shall cooperate with TxDMV and provide access to shared servers as TxDMV implements the Application Migration and Server Infrastructure Transformation project. TxDMV agrees to pay for any contractor cost incurred by TxDOT and not explicitly contracted for by TxDMV.
- I. TxDOT shall provide continued access to TxDOT Intranet (Crossroads) resources used to map restrictions needed to route oversize/overweight loads, including:
 - 1. TxDOT Permanent Structure Numbers: <http://crossroads/apps/psn/>
 - 2. Mapping and Reporting: <http://crossroads/org/tpp/Mapping/BranchPage.html>
 - 3. TxDOT's TARHE Geodatabase
 - 4. GIS Coordinators: <http://txspapp1/tsd/esdss/sggs/gis/Lists/GIS%20Coordinators/GIS%20Coordinators.aspx>
 - 5. Bridge database: <http://txspapp1/brg/bu/default.aspx>
 - 6. TxDOT LZ bridges: <http://apps.dot.state.tx.us/apps/gis/lrbm/>
 - 7. TxDOT Crossroads: <http://crossroads/>
 - 8. TxDOT statewide mapping: <http://crossroads/org/tpp/StatewideMapping/>
 - 9. TPP: <http://crossroads/org/tpp/>
 - 10. TxDOT Roadway portal: http://iapps/apps/txdot_gis_portal/Map.aspx
 - 11. PonTex: <https://citrix.txdot.gov/Citrix/XenApp/auth/login.aspx>
 - 12. UCDB: <http://iapps/apps/ucdb/>
 - 13. LIDAR data and updates: received from Bridge Division
 - 14. Daily posting of Structure.Pontis_Brinsap_Mst_Pnt feature class data (Pontis data) from TxDOT GIS GDB to PSDC FTP site for use by TxPROS.

- J. TxDMV shall send a representative to the weekly TxDOT CAB in order to receive notification of changes to shared infrastructure. In addition, TxDOT will distribute TxDOT CAB meeting minutes via the CAB distribution list, which includes key TxDMV IT personnel.
- K. TxDOT shall ensure that TxDOT district offices and coordinate with TxDMV the handling of oversize or overweight (OS/OW) traffic in emergency/disaster events. TxDOT will maintain TxDMV on TxDOT's statewide Emergency Operations Center (EOC) notification list. TxDOT District Permit Coordinators and/or Maintenance Supervisors/Area Engineers shall provide TxDMV with timely emergency road closure notifications, including contra flow locations through the TxDMV's Emergency Operations Center email address MCD-EOC@txdmv.gov. TxDOT District Permit Coordinators and/or Maintenance Supervisors/Area Engineers shall provide TxDMV with alternate contact information, including contacts for local law enforcement and/or other emergency personnel, for the purposes of assisting with OS/OW loads in emergency/disaster events.
- L. TxDOT shall provide TxDMV access to crash records information (CRIS) without charge.

XI. SERVICES TO BE PROVIDED BY TXDMV

- A. TxDMV shall scan any bonds filed with TxDMV (that are payable to TxDOT) and provide TxDOT with an electronic copy of any bond, upon TxDOT's request. TxDOT authorizes TxDMV to destroy the original bond once TxDMV creates an electronic copy.
- B. TxDMV shall provide contract management services for any enhancements or modifications TxDOT requests regarding the Texas Permitting & Routing Optimization System (TxPROS). TxDMV shall bill TxDOT for any time and materials associated with such contract management services.
- C. TxDMV shall not alter or disregard road information provided by TxDOT for the purposes of oversize or overweight permits. To the extent TxDOT provides TxDMV with a notification of a route or road restriction, TxDMV shall not issue an oversize or overweight permit that does not apply the new route or road information. TxDMV shall also not alter a route designated or approved by TxDOT in the issuance of an oversize or overweight permit. If TxDMV needs to vary a route to complete a requested permit, TxDMV must work with TxDOT to obtain approval on an alternate route designation.

- D. If TxDOT discovers that TxDMV did not take into account road information provided by TxDOT in the issuance of an oversize or overweight permit, TxDMV shall take all actions available to correct the permit to limit damage to the roadway.
- E. TxDMV shall not take actions that allow permitted loads to be routed onto any TxDOT-operated toll road, as long as TxDOT provides TxDMV with the applicable road restriction information as required by Section X.E. of this contract.
- F. TxDMV shall continue to provide TxDOT batch inquiry title and registration information from the Texas Motor Vehicle Title and Registration database without charge. TxDMV shall continue providing the information to TxDOT or its vendor in a secure manner as it has under prior versions of the Interagency Contract with TxDOT. TxDOT shall ensure its vendors use the Texas Motor Vehicle Title and Registration database and all data retrieved only for TxDOT operations and as requested by TxDMV, will provide signed certifications from vendors verifying compliance. The parties may agree, through their respective Chief Information Officers, to a different delivery method. TxDMV shall also work with TxDOT to ensure the batch inquiry is inclusive of all Texas plates and tags registered with TxDMV, including, but not limited to eTags, temporary permits, commercial fleet plates such as apportioned plates, and dealer license plates. TxDMV shall also continue to provide the files required for processing special license plates. TxDMV and TxDOT shall jointly develop a process for exchanging updated customer address information to ensure the most current information available is maintained between the two agency systems who utilize registration information.
- G. TxDMV shall take the actions required by Texas Transportation Code §502.011 to deny registration of a motor vehicle after TxDOT provides written notice of a final determination that the registered owner of a motor vehicle is a habitual violator (HV) in accordance with Transportation Code, Subchapter C, Chapter 372. TxDOT Toll Operations Division (TOD) shall provide the list of habitual violators, pay required fees for entry of registration blocks, and notify TxDMV when an HV is no longer determined to be a habitual violator or an appeal has been perfected.
- H. TxDMV shall also provide TxDOT with remote electronic access through Motor Vehicle Inquiry to the Motor Vehicle Title and Registration database without charge. Upon request from TxDOT, TxDMV shall provide a written certification

verifying the accuracy of the Motor Vehicle Title and Registration database. Except in connection with a criminal investigation or prosecution, TxDOT shall be assessed the required fee(s) for TxDMV staff to conduct title history research, production of title history documents, and certification of these documents, provided, however, that TxDMV shall provide the first 20 certified title history searches to TxDOT at no charge.

- I. TxDMV and TxDOT will discuss possible interfaces between TxDOT toll operations and TxDMV regional service centers. Any recommendations developed through these discussions may be considered for possible inclusion of additional terms in the FY 2018 Interagency Contract.
- J. TxDMV will provide TxDOT District offices with emergency contact information and instructions necessary to reach TxDMV OS/OW staff in the event of an emergency requiring coordination as required under paragraph X.K, above. The TxDMV will notify the EOC groups via email of procedures and hours of operations for each emergency/disaster situation. In no event shall OS/OW traffic be routed onto TxDOT toll roads without specific written approval from TxDOT's Toll Operations Division.

XII. LITIGATION AND LIABILITY

TxDMV shall be solely responsible for any litigation that was managed before November 1, 2009, by one of the TxDMV divisions that transferred under HB 3097, without regard to when the litigation arose or was filed. TxDMV shall be solely responsible for any litigation that was managed before January 1, 2012, by the TxDOT Motor Carrier Division that transferred under SB 1420, without regard to when the litigation arose or was filed. With respect to any other litigation arising out of events that occurred before the November 1, 2009, transfer under HB 3097 or the January 1, 2012, transfer under SB 1420, TxDOT shall retain responsibility, without regard to whether the litigation relates to activities or employees of TxDMV.

Whenever one party is involved in litigation that relates to activities or employees of the other party or that may reasonably involve payments from appropriation strategies that are allocated to the other party, the party managing the litigation shall provide the other party with timely copies of all pleadings and shall not settle the litigation without the prior consent of the other party. Liability arising from litigation shall be charged to the appropriations strategy of the activity that gave rise to the litigation.

XIII. RESPONSIBILITIES OF THE PARTIES

This contract does not create a partnership, joint venture, or other joint enterprise. It is

an agreement between two independent state agencies governing their mutual rights and obligations. Each party acknowledges that it is not an agent, servant, or employee of the other party. Each party is solely responsible for its own acts and deeds and for those of its agents, servants, or employees.

XIV. AMENDMENTS

This contract may only be amended by a written supplement executed by both parties prior to the expiration of the contract.

XV. TERMINATION

This contract may be terminated by satisfactory completion of all services and obligations contained in this contract, by mutual written agreement, or as provided by Section III of this contract.

XVI. COMPLIANCE WITH LAWS

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this contract.

XVII. RIGHTS AND OBLIGATIONS OF THE PARTIES REGARDING TxPROS

- A. Although all ownership rights in TxPROS transferred to TxDMV on January 1, 2012, TxDMV shall provide TxDOT with reasonable access to and the right to use TxPROS for the purposes of carrying out TxDOT's statutory functions. TxDMV shall provide this access to TxDOT at no cost.
- B. TxDMV shall be responsible for maintaining TxPROS, using money specifically appropriated for this purpose.
- C. Each party is responsible for paying for any modifications or enhancements that it makes or causes to be made to TxPROS. TxDMV is responsible for contracting with a vendor or otherwise providing personnel to make any modifications or enhancements that TxDMV authorizes to be made to TxPROS.
- D. If TxDOT wants to make any modifications or enhancements to TxPROS, the TxDOT Information Management Division Director shall provide to the TxDMV

Chief Information Officer the specifications and scope of work for the proposed modifications or enhancements. If agreement cannot be reached between the TxDMV Chief Information Officer and the TxDOT Information Management Division Director regarding any TxDOT proposed modifications or enhancements, then TxDOT's Executive Director may escalate the issue to the TxDMV Executive Director for consideration.

E. The contact information for the respective Chief Information Officers is as follows:

Eric Obermier
TxDMV Chief Information Officer
E-mail: eric.obermier@txdmv.gov
Phone: (512) 465-4040

Tim Jennings
TxDOT Information Management Division Director
E-mail: tim.jennings@txdot.gov
Phone: (512) 467-3837

F. TxDMV has the final say on any TxDOT requested modifications or enhancements to TxPROS. To the extent TxDMV determines any TxDOT proposed modification or enhancement shall not be made, TxDMV shall supply TxDOT with written justification for the decision.

G. The primary purpose for TxPROS is for the permitting and routing of oversize or overweight motor vehicles. TxDMV shall consider this fact when making any decisions regarding any modifications or enhancements to TxPROS. Also, TxDOT is only authorized to request modifications or enhancements to TxPROS to enable TxPROS to run reports or to provide improvements on the collection of road information provided by TxDOT.

H. To the extent TxDMV wants to make any modifications or enhancements to TxPROS that affect the report, access, or audit capabilities of TxDOT, the TxDMV Chief Information Officer shall coordinate those modifications with the TxDOT Information Management Division Director, including the specifications and scope of work for the proposed modifications or enhancements.

I. The parties shall act in good faith regarding any modifications or enhancements

to TxPROS to minimize the impact to the other agency's operations.

- J. To the extent TxDMV authorizes any TxDOT proposed modifications or enhancements, TxDMV shall serve as the contract manager for the modifications or enhancements.
- K. Regarding any TxDOT proposed enhancements or modifications to TxPROS, TxDOT shall do the following:
 - 1. Jointly participate in any contract negotiations,
 - 2. Approve any contracts prior to signature,
 - 3. Jointly review any deliverables with the TxDMV contract manager,
 - 4. Approve any receiving reports that TxDMV creates,
 - 5. Timely notify TxDMV of any reason to dispute payment under Chapter 2251, Government Code, and
 - 6. Timely transfer money to TxDMV to pay for any deliverables prior to any payment deadlines under Chapter 2251, Government Code. TxDOT is responsible for any interest that results from an overdue payment if the late payment is due to TxDOT's failure to timely transfer money to TxDMV to pay any invoice.
- L. With the exception of the following, TxDOT owns the data it inputs or causes to be input into TxPROS:
 - 1. Data regarding the issuance and completion of any permits; and
 - 2. Any data purchased from a third party under a contract that says otherwise.
- M. TxDMV owns the data regarding the issuance and completion of any permits.

XVIII. SEVERABILITY

If any provision of this contract is held by a final judgment or order of a court of competent jurisdiction to be invalid, unenforceable, or illegal, such provision shall be reformed to the minimum extent necessary to permit enforcement thereof. The validity, enforceability, or legality of the remaining provisions of this contract shall not be affected or impaired, even if such invalid, unenforceable, or illegal provision cannot be reformed.

THE UNDERSIGNED PARTIES bind their respective agency to the faithful performance of this contract.

Texas Department of Transportation

Texas Department of Motor Vehicles

James M. Bass
Executive Director

Whitney Brewster
Executive Director

Date: _____

Date: _____

Attachment A

Cost of Services Provided by TxDOT Generally to State Agencies

TxDOT provides some services to multiple state agencies, including flight services and printing services. These services shall not be included or invoiced under this contract, and TxDMV shall be eligible to use these services in the same way and on the same terms as other state agencies.

Cost of Operating and Maintaining Facilities

TxDOT shall invoice TxDMV for time and materials associated with routine building operations, including utilities, routine building and grounds maintenance, security, and lease payments made by TxDOT on TxDMV's behalf unless the expense was included in TxDOT's appropriations. As of September 1, 2016, this amount is estimated at \$50,000 per month and shall be adjusted to reflect demonstrated changes in the number or quantity of services provided by TxDOT with regard to facilities. TxDMV shall reimburse TxDOT for actual costs associated with requests for the relocation of fixed walls.

All Other Costs

All other costs shall be billed on the basis of actual costs incurred by TxDOT or TxDMV. Time of TxDOT or TxDMV employees shall be invoiced on an hourly basis at their appropriate pay rate. Materials shall be invoiced on a unit basis and shall consist of the actual cost to TxDOT or TxDMV for those materials.

Interagency Contract (IAC) Management

TxDMV and TxDOT agree to appoint a single point-of-contact for information technology (IT) issues, a single point-of-contact for non-IT issues, and back-up personnel to facilitate the process for requesting services and invoicing for those services between the two agencies. The designated points-of-contact in each agency shall act as the TxDMV and TxDOT project manager(s).

The Project Managers are as follows:

TxDMV Project Manager, Non-IT: Sergio Rey, Director of Accounting

TxDMV Back-Up Project Manager, Non-IT: David Chambers, Director of Purchasing

TxDMV Project Manager, IT: Eric Obermier, CIO

TxDMV Back-Up Project Manager, IT: Josh Kuntz, Information Security Officer

TxDOT Project Manager, Non-IT: Casey Rowe, Revenue Accounting Manager

TxDOT Back-Up Project Manager, Non-IT: Crystal Myers, Accounting Specialist

TxDOT Project Manager, IT: Tim Jennings, Information Management Division Director

TxDOT Back-Up Project Manager, IT: Dan Teczar, Operations Excellence Coordinator

“Emergency situation” is defined as any unexpected, non-routine event which damages or affects the utility or safety of any building, system, or portion or component of a building in such a way that it prevents the reasonable business operational use of some or all of the facility. This does not include routine maintenance or normal wear and tear events.

Non-Emergency Services

Except in the event of an emergency situation, all work to be performed under this contract involving the cost of labor for agency employees shall be requested and performed through the use of a "Work Authorization" (WA). A single WA shall be issued on recurring services at the beginning of the fiscal year.

The receiving agency's Project Manager (PM) shall provide the performing agency's PM with a signed WA prior to any non-emergency work being done. If the receiving agency has not issued a WA, the performing agency shall have no obligation to provide the requested services. Any non-emergency work done without a signed WA shall not be billable under this contract. All approvals regarding work to be done under this contract shall occur between the TxDMV and TxDOT PM's.

Performing agency shall respond to all WA requests for non-emergency work within 10 days, unless mutually agreed by both parties.

Emergency Services

In the event of an emergency situation requiring work to be performed before a WA can be issued, the receiving agency's PM must submit a request to the performing agency's PM in writing, outlining the requested work and noting that the work requested is due to an emergency. The receiving agency shall follow up with a written WA within two business days of the event. Upon receipt of an itemized invoice, the receiving agency will reimburse the performing agency for its actual costs in performing the work. The receiving agency can request review of the causation of the emergency situation to determine if acts or omissions of the performing agency contributed to the event, and request that the performing agency pay some or all of the cost. In the event the parties assigned to the task cannot reach an agreement on allocation of costs, the WA may subsequently be subject to the Dispute Resolution Procedure set forth in this Attachment.

Routine Maintenance, Service and Utility Costs

Receiving agency shall pay for routine facility costs as set forth in Appendix II. The designated Non-IT Project Managers for the receiving and performing agency may review and adjust the charges on a periodic basis without the need for amending this contract, so long as any changes would not result in an expenditure in excess of an agency's overall "not to exceed" budget amount in Paragraph IV of the agreement.

Data Center Services

TxDOT shall reimburse TxDMV monthly for the actual cost of data center services (DCS) being billed through TxDOT and not directly to TxDMV. The amount shall be

adjusted based on changes in the number or quantity of services that are billed through TxDOT. TxDOT will be conducting significant consolidation and decommissioning activities this year. If these activities will impact a TxDMV/TxDOT shared service, TxDOT shall provide TxDMV notification in advance and parties shall coordinate as needed. Conversely, any DCS changes initiated by TxDMV that impact TxDOT infrastructure shall be approved in TxDOT CAB prior to the change being implemented by DCS.

Technology Daily Operations

Requests for unusual support or involving the performance of work by TxDOT employees shall be billed by TxDOT to TxDMV at actual cost. Any requests by TxDMV that are implemented by a TxDOT contractor, including NTT DATA, shall be coordinated under a direct agreement between TxDMV and the application contractor. Billings shall be made directly to TxDMV with no TxDOT involvement or action required.

Billing Review for IT Services

On a quarterly basis the IT Project Managers (IT PMs) shall review the receiving agency's use of DCS, software and server components governed by this agreement. The IT PMs may agree to adjust the charges for IT services without the need for amendment to this agreement, so long as any changes would not result in expenditure in excess of an agency's overall "not to exceed" budget amount in Paragraph IV of the agreement.

Work Authorization

Each WA shall include the following information:

- a. the date of the request;
- b. the date range of work authorized to be performed;
- c. the amount of time authorized for delivery of services;
- d. the amount of expenditure authorized;
- e. a description of the deliverables/services authorized;
- f. the physical location where the services are authorized to be performed, including address, complex, and building number;
- g. a WA number;
- h. the receiving agency's division number; and
- i. the receiving agency's index to be charged.

Submitting Invoices

The receiving agency shall pay the performing agency on the basis of itemized invoices submitted to and approved by the receiving agency, showing:

- a. a reference to the WA number by line item;
- b. the performing agency's Agency Number and Recurring Transaction Index (RTI);
- c. the performing agency's non-IT PM's e-mail address and phone number;
- d. the date range of work performed for the associated charge, unless otherwise specified on the WA or supporting documentation;
- e. copies of the original documentation that validates the charges, including third

- party invoices with clear, legible descriptions, and the performing agency's Staff Name/Salary Rate/Hours Worked. ;
- f. the USAS Comptroller Object of Expense used by TxDOT;
 - g. allocation methodology; and
 - h. a certification that the charges shown are reasonable and necessary, and all appropriate and required supporting documentation is attached.

TxDOT must e-mail all invoices and supporting documentation to TxDMV at: DMV_FIN-INVOICES@txdmv.gov

TxDMV must e-mail all invoices and supporting documentation to TxDOT at: FIN_Invoices@txdot.gov.

If the invoices are clear, complete, and include all required supporting documentation, then the receiving agency shall process payment for all performing agency invoices submitted in accordance with this contract and Comptroller Post-Payment Audit guidelines. The receiving agency shall reimburse the performing agency within 30 calendar days of receipt. If the invoices are not clear and complete, then the receiving agency shall notify the performing agency of the need for clarification or documentation within five (5) calendar days of receipt. The receiving agency may also request additional documentation necessary for post-payment audit purposes. In addition, the receiving agency shall inform the performing agency of disputed items in any invoice within five (5) calendar days of receipt. Any items not disputed within this five calendar day period will be deemed acceptable.

Dispute Resolution

Any dispute over billing, payment or other issues arising in this Attachment or the Interagency Contract (IAC) generally shall be first discussed and negotiated by the two parties assigned to the task under the IAC. If they cannot agree on a resolution, the matter shall be summarized by the two parties and submitted to the non-IT Project Managers (PMs) specified under the IAC. If the two PMs cannot agree on a resolution, the matter shall be summarized and submitted to the Chief Financial Officer (CFO) of each agency. The agency CFOs shall be the final arbiter of all disputes.

Appendix I

TxDMV Use of TxDOT Austin Regional Office Space in the Event of Disaster

This Appendix is made part of the Interagency Contract between TxDOT and TxDMV, and is subject to all of the general terms and conditions of that Contract.

TxDMV responsibilities:

- A. TxDMV shall provide written notice (email allowed) to TxDOT upon declaration of a disaster. A disaster for which the TxDMV Continuity of Operations Plan is implemented may be declared only by the TxDMV Executive Director, Deputy Executive Director, Chief Financial Officer, Chief Information Officer or General Counsel. The notice shall reference this Appendix to the Interagency Contract and request use of the Austin Regional Center (ARC) at the TxDOT Austin Parmer Lane Regional Office pursuant to the requirements and limitations of this Appendix.
- B. TxDMV shall directly pay for and oversee any modifications necessary to the ARC, and any temporary installations, temporary facilities such as portable restrooms, generators, air conditioning or heating systems, computer or phone equipment, lighting, utilities or similar items needed to support temporary operations. TxDOT shall not be responsible for making any modifications unless otherwise agreed in writing.
- C. TxDMV shall reimburse TxDOT for any actual costs incurred due to TxDMV's use and occupancy of the ARC space, so long as TxDOT notifies TxDMV as soon as possible when it begins to incur costs (no longer than 48 hours after costs are being incurred) and allows TxDMV to provide alternative resources to offset TxDOT costs if possible.
- D. TxDMV shall be responsible and liable for the safety, injury, and health of all TxDMV employees or contractors in the alternative facility.
- E. During a disaster with a duration of more than 2 weeks, DMV may augment work space by leasing one or more temporary office trailers to be located in the ARC parking areas. TxDMV shall obtain and pay for the trailer(s) and any modifications, utility installation and expense, and all associated costs (including demobilization and removal). TxDMV shall consult with and obtain prior written permission from TxDOT for the location of these temporary trailers and all associated support structures.
- F. TxDMV shall remove and pay the cost of all modifications made to the ARC after cessation of emergency operations, unless TxDOT informs TxDMV in writing to

leave specific modifications in place.

- G. TxDMV shall repair any damage to the ARC caused during TxDMV use of the facility during the emergency.
- H. During the period of use of the ARC, TxDMV and its employees shall follow facility management, building maintenance, parking and security policies, procedures, and standards established by TxDOT. Requests for deviation from these policies, procedures, and standards shall be submitted in writing by TxDMV to TxDOT, who shall reply as soon as possible, but no later than 48 hours after the request.
- I. During the occupancy of space at the ARC, TxDMV shall provide TxDOT weekly status reports regarding the use of the ARC and TxDMV's progress in responding to the disaster and either returning operations to the TxDMV Headquarters site or another location.
- J. Within two weeks of the conclusion of the disaster and moving all equipment and personnel out of the ARC, TxDMV shall provide a final report to TxDOT documenting all modifications performed and any repairs needed or modifications not yet removed along with a schedule for completion of those items.

TxDOT responsibilities:

- A. Upon receipt of notice of a declared disaster as set forth in the TxDMV Responsibilities section, TxDOT shall provide as soon as practical, but in no case later than 24 hours after notice, the following support services to TxDMV for the duration of the disaster:
 - 1. Use of:
 - a. all available, unused office space in the TxDOT-controlled portions of the main building at the ARC, including all in-place utilities and fixtures;
 - b. the main conference room in the main building of the ARC;
 - c. two equipment maintenance bays (non-climate controlled space with overhead door access), preferably the two bays immediately adjacent at the rear of the main ARC office building.
 - 2. For a disaster of a duration of more than two weeks, upon written request from TxDMV, space for placement of one or more temporary office trailers, in a location as near as possible to the main ARC building.
 - 3. 24-hour controlled access to the referenced buildings, facilities and associated parking lots.
 - 4. Cooperation on installation and use of portable or temporary equipment or

facilities such as generators, portable buildings, computer or phone equipment, tables, chairs, desks, air conditioners, fans, cabling and the like.

- B. Within 30 days of notice from TxDMV of the cessation of a disaster, TxDOT shall provide notice to TxDMV of any necessary repairs or expenses incurred due to TxDMV's use of the ARC premises, and shall include in that notice any requests to retain any equipment or modifications which would otherwise be removed or surplus by TxDMV.
- C. TxDOT shall notify TxDMV within 48 hours of incurring any expenses as a result of TxDMV's occupancy of the additional ARC space under this Appendix, and shall allow TxDMV to provide alternative services or personnel to avoid or offset such costs.



DATE: September 1, 2016

Action Requested: APPROVAL

To: Board of the Texas Department of Motor Vehicles (TxDMV)
From: Sandra Menjivar-Suddeath
Agenda Item: 2. A. 1. d. - FY2017 Annual Audit Plan
Subject: Approval of the FY2017 Annual Audit Plan

RECOMMENDATION

Recommendation to the full board for approval of the Fiscal Year 2017 Internal Audit Plan

PURPOSE AND EXECUTIVE SUMMARY

The Texas Internal Auditing Act (Govt Code 2102.008) requires that the annual audit plan be approved by the agency's governing Board. The Finance and Audit Committee recommends to the full board approval of the Fiscal Year 2017 Internal Audit Plan. The audit plan is the work plan for the Internal Audit Division in Fiscal Year 2017.

FINANCIAL IMPACT

None.

BACKGROUND AND DISCUSSION

The Texas Internal Auditing Act (Govt Code 2102.008) requires that the annual audit plan be approved by the agency's governing Board. The audit plan lists the following:

- 7 proposed reports, audits, and advisory services to be done in Fiscal Year 2017,
- Other Internal Audit division duties, and
- 4 contingency audits and advisory services.

Specifically, the proposed audit plan includes 2 required reports, 3 audits, 1 advisory service, and a special request placeholder. The special request placeholder will allow Internal Audit to respond and address any unforeseen risks that may come up throughout the fiscal year. This special request can come from Management, the Board, or both. If there is no special request, Internal Audit will conduct one of the contingency audits (e.g., "Other Possible Projects to consider if Resources are Available" section). A total of 4 contingency audits and advisory services have been developed that include 3 audits and 1 advisory service.

The annual audit plan was developed using a risk based approach and input from the Board members and senior management. The audit plan also considers State Auditor's Office (SAO) guidelines when developing the plan.



Texas Department *of* Motor Vehicles
HELPING TEXANS GO. HELPING TEXAS GROW.

TxDMV Internal Audit Plan for Fiscal Year 2017

Internal Audit Division

September 1, 2016



September 1, 2016

Mr. Raymond Palacios, Jr., Chair
Board of Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, Texas 78731

Subject: *Internal Audit Plan for Fiscal Year 2017*

Dear Chair Palacios:

The Internal Audit Division has finalized the proposed Texas Department of Motor Vehicles (TxDMV) Internal Audit Plan for Fiscal Year 2017 (audit plan) for the TxDMV Board's review and approval.

The Texas Internal Auditing Act requires that internal audit develop an annual audit plan. This proposed audit plan incorporates the TxDMV Board and the agency's senior management comments.

The proposed audit plan includes the following:

- Statutorily required reports
- Risk-based audits and an advisory service project
- One carry-over audits from the Fiscal Year (FY) 2016 audit plan that will be substantially completed by August 31, 2016 but not ready for release until FY2017
- One carry-over audit from the FY2016 audit plan that we will start in FY2017

In addition to the audit plan projects, the Internal Audit Division anticipates other activities, such as coordinating with external auditors and investigating allegations of fraud, waste, and abuse.

If you have any questions or comments, please contact me at (512) 465-4118 or Sandra.Menjivar-Suddeath@txdmv.gov.

Respectfully,

Sandra Menjivar-Suddeath
Internal Audit Director

cc: Ms. Luanne Caraway, Finance and Audit Committee Member
Mr. Guillermo "Memo" Trevino, Finance and Audit Committee Member
Mr. Robert "Barney" Barnwell, Board Member
Mr. Brett Hillman Graham, Board Member
Ms. Catherine "Kate" Wiles Hardy, Board Member
Mr. Blake Ingram, Board Member
Mr. Gary Wayne Painter, Board Member
Mr. John Henry Walker III, Board Member
Ms. Whitney Brewster, TxDMV Executive Director
Ms. Shelly Mellott, TxDMV Deputy Executive Director
TxDMV Division Directors

TxDMV Internal Audit Plan for Fiscal Year 2017

Texas Department of Motor Vehicles Fiscal Year 2017 Internal Audit Plan		
Topic	Division	Background and Preliminary Objectives
Required Reports under the Texas Internal Auditing Act		
<p>1. Fiscal Year 2016 Annual Internal Audit Report 35 hours</p>	<p>Agency-wide</p>	<p><u>Background:</u> A summary of internal audit activities, including the status of the FY 2016 audit plan, non-audit services provided, and external audit services procured; and the FY 2017 audit plan. This report must be submitted before November 1 of each year to the Governor, the Legislative Budget Board, the State Auditor’s Office, the Sunset Advisory Commission, and the TxDMV Board and be posted on the agency’s website (Government Code, Section 2102.009).</p>
<p>2. Fiscal Year 2018 Internal Audit Plan 100 hours</p>	<p>Agency-wide</p>	<p><u>Background:</u> The annual audit plan is prepared using risk assessment techniques to identify individual audits to be conducted during the year. The TxDMV Board must review and approve the annual audit plan (Government Code, Section 2102.005).</p>
Audits and Advisory Services		
<p>1. Oversize/Overweight Permitting 250 hours</p> <p><i>Carry-over from Fiscal Year 2016 Internal Audit Plan</i></p>	<p>Motor Carrier</p>	<p><u>Background:</u> The TxDMV regulates oversize vehicles and loads on highways and bridges. In fiscal year 2014, the Oversize/Overweight Permits Section issued over 836,000 permits; responded to over 198,000 permit-related calls from customers, and collected more than \$178 million in fees. The agency uses the Texas Permitting and Routing Optimization System (TxPROS), an online permitting & mapping system, to allow customers to apply for and self-issue many permits.</p> <p><u>Tentative Objectives:</u></p> <p>(1) Determine whether the TxDMV issues Oversize/Overweight permits and collects the appropriate fees in accordance with laws and regulations</p> <p>(2) Determine whether the TxDMV validates, updates, and communicates route restriction information on a timely basis to ensure routes are safe for permitted Oversize/Overweight loads</p>

Texas Department of Motor Vehicles Fiscal Year 2017 Internal Audit Plan		
Topic	Division	Background and Preliminary Objectives
<p>2. RTS Refactoring and Single Sticker Post-implementation Review 1400 hours</p> <p><i>Carry-over from Fiscal Year 2016 Internal Audit Plan</i></p>	Agency-wide	<p><u>Background:</u> Refactored RTS included COGNOS reports that replaced standard reports from legacy RTS and included updated ad hoc reporting capabilities. Staff and management use information from COGNOS reports to make strategic and operational decisions.</p> <p><u>Tentative Objectives:</u></p> <p>(1) Determine whether COGNOS reports provide management and staff with complete and accurate information from RTS</p> <p>(2) Determine whether COGNOS reports provide <i>at least</i> the same level of information or service as reports from the legacy RTS</p>
<p>3. TxDMV Fund tables and Process & Handling Fees 1150 hours</p>	FAS, ITS, VTR	<p><u>Background:</u> SB 1512 (84th Texas Legislature) re-created and re-directs revenue sources for the TxDMV fund starting September 1, 2016. HB 6 exempts the fund and its revenues from consolidation. The intent of the bill is to separate the fund from the General Revenue and State Highway funds, allowing the TxDMV to fund its operations.</p> <p>The TxDMV Board of Directors used its authority to adopt a P&H fee structure to fund agency operations during its June board meeting. The P&H fees are effective for motor vehicle registrations starting January 2017.</p> <p><u>Tentative Objectives:</u></p> <p>(1) Determine whether appropriate revenues, including registration fees, are deposited to the TxDMV fund appropriately</p> <p>(2) Determine whether appropriate amounts are transferred to counties per agency rule</p>

Texas Department of Motor Vehicles Fiscal Year 2017 Internal Audit Plan		
Topic	Division	Background and Preliminary Objectives
4. Continuous Monitoring of Vehicle Registration and Title Transactions 1000 hours <i>Advisory Project</i>	VTR/ITS	<u>Background:</u> Fiscal year 2016 had a number of suspicious and fraudulent registration and title transaction activities within the agency and through Tax-Assessor Collectors, including high visibility arrests related to alleged fraud. The agency employs 1 investigator to investigate suspected title fraud. Auditors would analyze registration and title transactions from the RTS on a scheduled basis to identify suspicious and possibly fraudulent transactions processed by the agency or Tax-Assessor Collectors. Refer suspicious and possible fraudulent transactions to VTR to investigate.
5. Management or Board Request 350 hours	TBD	Time has been allotted to management and commission for a special request or to review a new and emerging risk for the agency. If no request is received, one of the audits from the other possible project list will be conducted.
Other Internal Audit Division Duties		
<ul style="list-style-type: none"> • Coordinating with external auditors and reviewers (25 hours) • Investigating allegations of fraud, waste, and abuse that Internal Audit receives or that the State Auditor’s Office refers from its fraud hotline and advising on the Anti-Fraud, Waste, and Abuse Workgroup (300 hours) • Conducting an annual Quality Assurance and Improvement Program as required by auditing standards (75 hours) • Tracking and monitoring the status of prior-year audit recommendations (100 hours) • Advising the agency’s Governance Team and Executive Steering Committees (425 hours) 		
Total Budgeted Hours on Required Reports, Audits ,and Advisory Service:		4,285
Total Budgeted Hours on Other Internal Audit Division Duties:		925
Total Budgeted Hours:		5,210

Other Possible Projects to Consider if Resources are Available		
<p>1. Planning and Requirements Analysis Process for Major Projects 1000 hours <i>Advisory Project</i></p>	<p>Agency-wide</p>	<p><u>Background:</u> The TxDMV has experienced changes in scope, budget, and schedule in developing major systems. This project would review major project documentation to evaluate activities conducted during the planning and requirements analysis phases to determine what actions could be changed to facilitate a smoother system development in the future.</p>
<p>2. MyPlates Contract 600 hours</p>	<p>FAS</p>	<p><u>Background:</u> Executive Management Team rated this project for considerations for future audit plans during the FY2015 IAD risk assessment.</p> <p><u>Tentative Objective:</u> Determine whether TxDMV and MyPlates adhere to contract provisions—including requirements related to fee collections and distributions.</p>
<p>3. Motor Vehicle Division Licensing Process and eLicensing 1400 hours</p>	<p>MVD</p>	<p><u>Background:</u> The MVD adjusted its process to license independent, franchise, and salvage dealers starting in 2013, which greatly reduced the time for applicants to receive a license (from as much as 6 months). The eLicensing system is scheduled to go live in October. This project would evaluate MVD's process after go live.</p> <p><u>Tentative Objectives:</u></p> <ul style="list-style-type: none"> (1) Determine if MVD's licensing process complies with statutory and rule requirements (2) Review eLicensing's impact on the licensing process post-implementation.
<p>4. Enforcement Division's Investigations Process 600 hours</p>	<p>ENF</p>	<p><u>Background:</u> The Enforcement Division investigates complaints against licensees regulated by TxDMV, and files administrative charges alleging violation of laws.</p> <p><u>Tentative Objectives:</u></p> <ul style="list-style-type: none"> (1) Determine whether investigations are conducted according to statutes, rules, and policies & procedures (2) Determine how the division's key performance indicators affect investigations

Methodology

Scope

The Internal Audit Plan for Fiscal Year 2017 covers the period of September 1, 2016 to August 31, 2017.

Risk Assessment

The audit plan was developed using a risk-based methodology including input from Board members and senior management. Internal Audit also analyzed agency information to rank potential audit topics by risk, including contracting risk.

The State Auditor's Office (SAO) guidelines for the Internal Audit Plan for Fiscal Year 2016, request that internal audit indicate which projects in the audit plan address expenditure transfers, capital budget controls, contract management, and information technology risks. The proposed audits that address these topics are the following:

- TxDMV Fund tables and Process & Handling Fees and RTS Refactoring and Single Sticker Post-implementation Review will address information technology risks
- TxDMV Fund tables and Process & Handling Fees will address expenditure transfers and capital budget controls
- TxDMV Fund tables and Process & Handling Fees and My Plates Contract—if resources are available—will address contract management

Hour Analysis

Hours were calculated using historical data and auditor's judgement. Hours are an estimate and could be adjusted during the fiscal year.

DATE: September 1, 2016
Action Requested: Approval

To: Board of the Texas Department of Motor Vehicles (TxDMV)
From: Linda M. Flores, CPA, Chief Financial Officer
Agenda Item: 2.A.1.b. REVISED
Subject: FY 2017 Recommended Operating Budget and Contracts for American Association of Motor Vehicle Administrators (AAMVA) and Southwest Research Institute (SwRI)

RECOMMENDATION

The Finance and Audit Committee recommends to the full board approval of the Fiscal Year 2017 Recommended Operating Budget.

Also, the Finance and Audit Committee recommends to the full board approval for the Executive Director to negotiate and execute the routine and required contracts contained in Part II of the document and specific approval of the following two contracts:

- Southwest Research Institute (SwRI) - These funds will be used to increase the current contract with SwRI, a staff-recommended contractor that provides specialized assistance and consulting services, to modify the Texas Commercial Vehicle Information Exchange Window (TxCVIEW).
- American Association of Motor Vehicle Administrators (AAMVA) National Motor Vehicle Title Information System (NMVTIS) - To allow the agency to maintain access to the AAMVA National Motor Vehicle Title Information System (NMVTIS) for September 1, 2016-August 31, 2017.

PURPOSE AND EXECUTIVE SUMMARY

2017 Recommended Operating Budget

The Texas Department of Motor Vehicles (TxDMV) develops annual operating budgets based on approved biennial appropriations. The recommended operating budget implements Year 2 of the biennium. The recommended operating budget reflects the establishment of the TxDMV Fund and is structurally balanced to support recurring expenses. The budget allocates \$192 million through the agency's organization. The budget includes the following major initiatives:

- Implementation of the processing and handling (P&H) fee
- Relocation of three regional service centers and Bull Creek staff
- Establishment of the TxDMV fund
- Implementation of the eLICENSING project and the refresh of county technology equipment

Contracts

The purpose of the contract with SwRI is to make modifications to the TxCVIEW as Federal Motor Carrier Safety Administration (FMCSA) moves their data to a cloud environment, modifies some of their web services, changes databases or requirements for TxCVIEW, and FMCSA's rolling out a new Unified Carrier Registration application.

The purpose of the contract with AAMVA is to provide online access to meet the TxDMV's obligation to receive and report information to the National Motor Vehicle Title Information System (NMVTIS) as required by federal statute. NMVTIS serves as a repository of information related to vehicles that have been in the possession of auto recyclers, junk yards and salvage yards. States and consumers use the information to ensure that junk or salvage vehicles are not later resold and ensures that VINS from destroyed vehicles are never used for stolen vehicles.

FINANCIAL IMPACT

2017 Recommended Operating Budget

TxDMV is a net revenue-generating agency for the state. Effective September 1, 2016, TxDMV will begin depositing revenue into a new agency fund recreated by the 84th Legislature, the TxDMV Fund (0010). The agency's budget request is supported by collections. The staff estimates that TxDMV will collect approximately \$3.86 billion for the State while retaining \$139.2 million for baseline agency operations in the next fiscal year. The remainder of the agency's budget is funded by a combination of General Revenue, the State Highway Fund (for Automation) and Federal reimbursements.

Contracts

SwRI – The Motor Carrier Division (MCD) requests to increase the SwRI contract by \$310,000. Of that amount MCD projects that \$130,000 will be received from the Federal Motor Carrier Safety Administration (FMCSA) 2016 CVISN grant when the grant is awarded (late August/early September) as part of a Memorandum of Understanding with the Texas Department of Public Safety (TxDPS). MCD will use \$180,000 in currently budgeted funds for state match.

AAMVA - States are required to pay user fees approved by the U.S. Department of Justice and assessed by AAMVA as the system operator. AAMVA with state approval, has established a system of user fees for the states that is based on the number of vehicles titled in each state and, using a tier-based system, bills each state. Texas receives a credit from a portion of the fee paid by consumers conducting a vehicle title history inquiry (Title Check), where Texas is the current state of record. The estimated amount of the contract in Part II of the 2017 Operating Budget document reflected \$240,000 (an estimate of the NMVITIS contract less credits). The contract amount requested for approval has now been adjusted to \$268,075 per the invoice received from AAMVA on August 4, 2016.

BACKGROUND AND DISCUSSION

2017 Recommended Budget

The FY 2017 Recommended Operating Budget is \$192 million. This budget includes \$52.5 million for capital projects which will provide funding for TxDMV Automation, AMSIT, Data Center Services (DCS), County Technology Replacement, Agency Growth and Enhancement, and RSC/Bull Creek facility relocations. The budget also reflects an allocation of 763 FTEs approved as part of the 2016/17 state budget passed by the Legislature and signed by the Governor. \$139.2 million of the total budget is funded by the TxDMV Fund, with the remainder of the budget funded by a combination of General Revenue, the State Highway Fund (for Automation) and Federal reimbursements.

Contracts

The agency executes contracts that are statutorily required and also executes contracts that are not required by law but enable it to perform its duties and operations. The Board's approval of the operating budget constitutes approval of contracts listed in the operating budget.

The agency will execute approximately 195 new contracts and renewals of existing contracts that are not statutorily required but assist the agency in performing its operations.

There are two contracts that require Board approval for the award and/or renewal and proposed contract amounts for Fiscal Year 2017.

SwRI for TxCVIEW - The TxDMV provides a one-stop shop for needed permits and registrations through its Motor Carrier Division (MCD). TxDMV is also the lead agency responsible for maintaining the Texas Commercial Vehicle



Information Exchange Window (TxCVIEW), which increases Motor Carrier Safety in the state and aims to reduce fraud.

TxCVIEW currently provides the tools used to share safety and other data between TxDMV, other state agencies as well as all other states. Administration is handled by TxDMV and through a Working Group and a separate Executive Steering Committee. Voting members are TxDMV and the other state partner agencies include: the Texas Department of Transportation (TxDOT), Texas Department of Public Safety (TxDPS), and the Texas Comptroller of Public Accounts (TxCPA). Industry participates in decision making through the Texas Trucking Association (TxTA). Federal funds are available through the Federal Motor Carrier Safety Administration (FMCSA).

AAMVA for NMVTIS - The purpose of NMVTIS is to assist in efforts to prevent the introduction or reintroduction of stolen motor vehicles into interstate commerce, protect states and individual and commercial consumers from fraud, reduce the use of stolen vehicles for illicit purposes, including fundraising for criminal enterprises, and provide consumer protection from unsafe vehicles. State participation as of January 1, 2010, in the NMVTIS is mandatory.

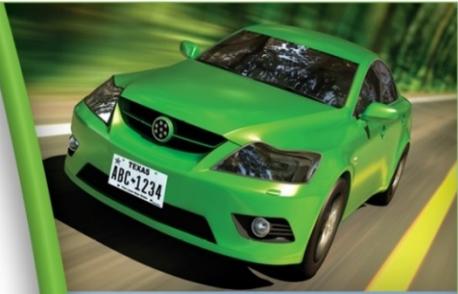
Access allows the TxDMV Vehicle Titles and Registration (VTR) Division to seamlessly query the NMVTIS system to verify the accuracy of titles presented to them and improve the quality and method in which information is provided to the NMVTIS system.



Texas Department of Motor Vehicles
HELPING TEXANS GO. HELPING TEXAS GROW.

Fiscal Year 2017 Operating Budget

Revised
August 2016





Texas Department *of* Motor Vehicles

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Part I: Fiscal Year 2017 Operating Budget

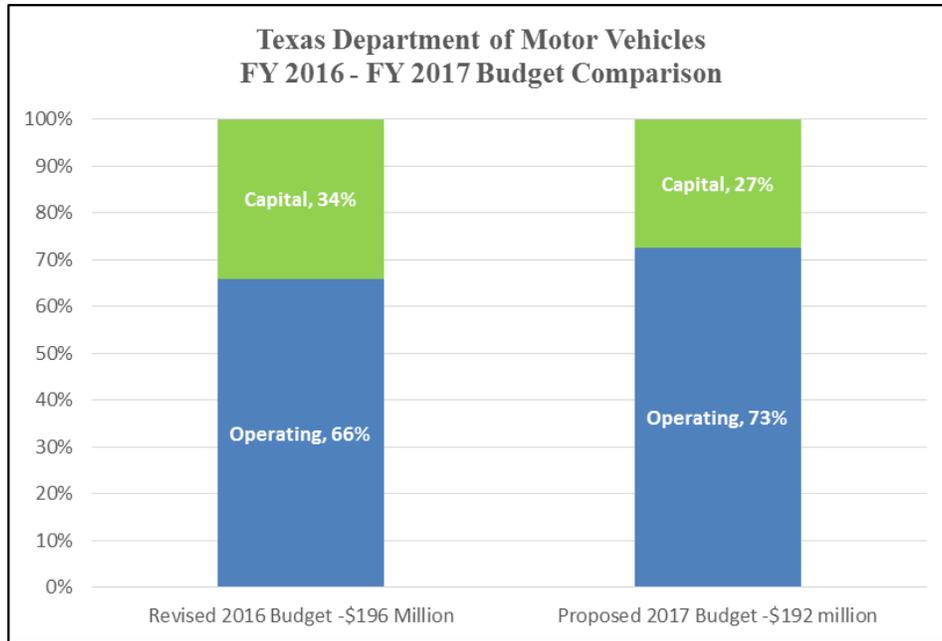


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Agency Summary

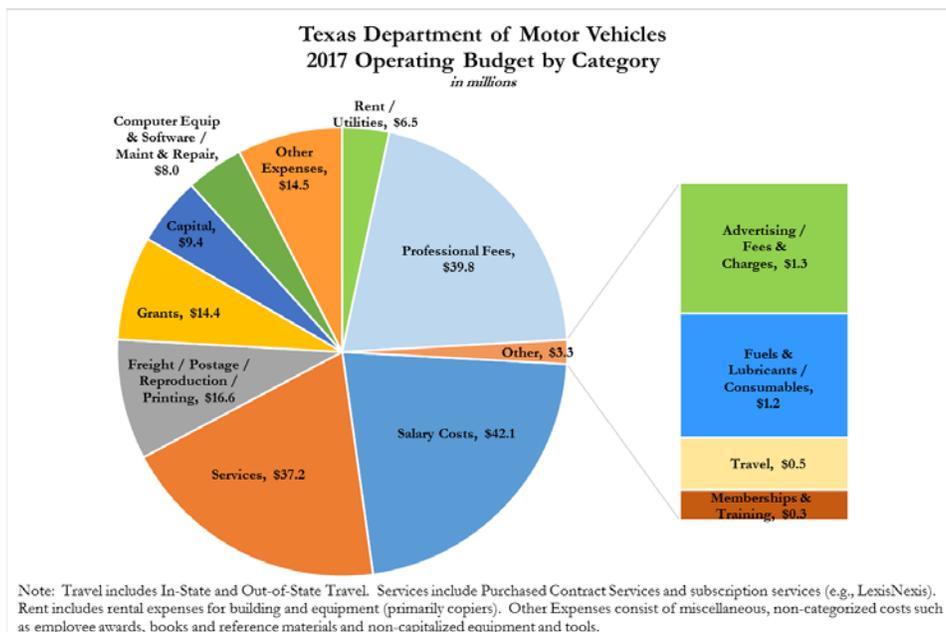
TxDMV is governed by a nine member board appointed by the Governor, with the advice and consent of the Senate, to serve six-year overlapping terms. The agency’s mission is “to serve, protect and advance the citizens and industries in the state with quality motor vehicle related services.”

The Executive Director, Whitney Brewster, and Deputy Executive Director, Shelly Mellott, oversee the agency’s day-to-day operations. The executive director reports to the agency board and directs staff to enact operational changes as a result of enacted legislation and implement policies and rules approved by the board.



The agency’s Fiscal Year 2017 operating budget of approximately \$192 million is a net decrease of \$4 million over the Fiscal Year 2016 revised budget of \$196 million. The decrease is driven by reduced appropriations for technology projects (including Automation and AMSIT, which were front-loaded in 2016), and the Data Center Contract account for a \$25 million decrease. The decrease is offset by additional costs for online fulfillment, credit card fees and a \$10 million increase in the estimated carry-forward from Fiscal Year 2016 to 2017 (compared to the estimated carry-forward from Fiscal Year 2015 to 2016).

The pie chart below reflect the Fiscal Year 2017 operating budgets by category. A description of the budget categories can be found in [Appendix A](#).





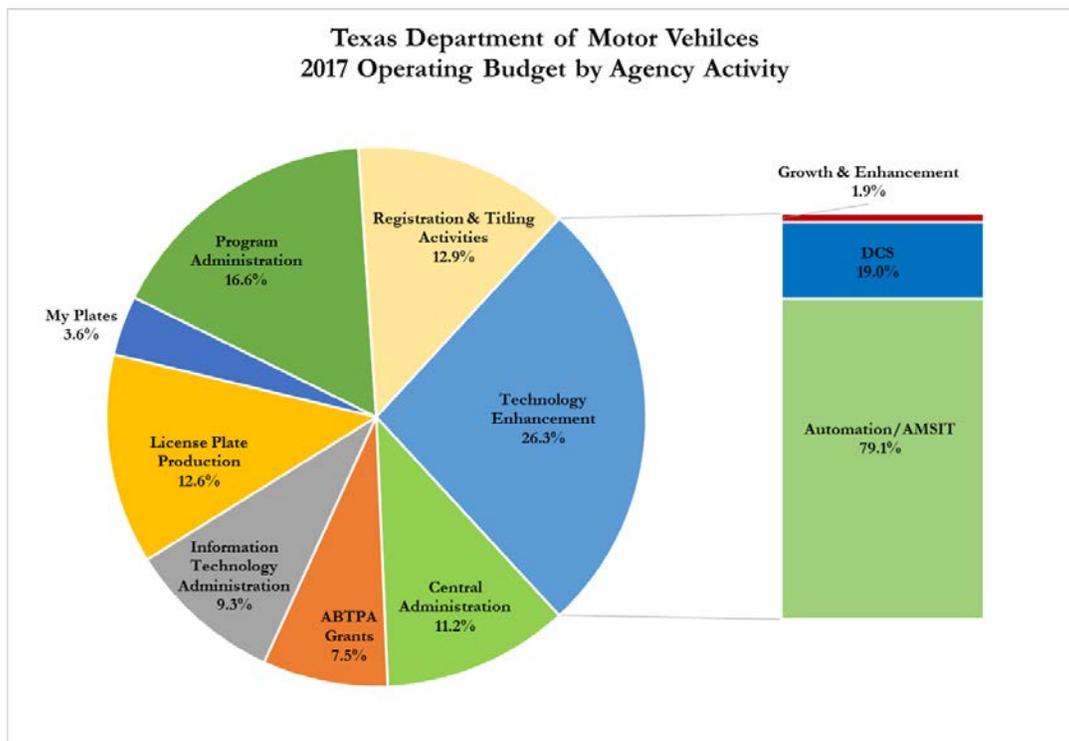
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Beginning Fiscal Year 2017, the agency’s method of financing will change from General Revenue (except for the Automobile Burglary and Theft Prevention Authority), to the TxDMV Fund, which is funded by dedicated revenue streams.

Major agency initiatives in fiscal 2017 include implementation of the processing and handling (P&H) fee, relocation of three regional service centers, establishment of the TxDMV fund and relocation of headquarters staff at Bull Creek. Major capital budget initiatives includes the refresh of county technology equipment and implementation of the eLICENSING project.

The TxDMV budget is primarily allocated to registration, titling, and license plates and upgrading agency technology. The pie chart below shows that 35.6% of the budget is allocated to technology enhancement (26.3%) and technology administration (9.3%). Of the 26.3% budgeted for technology enhancement, more than three-quarters is earmarked for Automation projects. A total of 25.5% of the agency budget is dedicated to license plates (12.6%) and the production of registration and title materials (12.9%).

Program Administration (16.6%) includes budgets for administration of agency programs including ABTPA, Motor Vehicle, Motor Carrier programs (Oversize/Overweight and Texas IRP), Inspections and Enforcement, Lemon Law (including management and administrative hearings), and Registration and Titling activities. The remainder of the budget includes funding for central administration/support services (11.2%), grants for ABTPA (7.5%), and the MyPlates contract (3.6% percent).



Program Administration

ABTPA, Consumer Relations, Enforcement, Motor Carrier, Motor Vehicle, Office of Administrative Hearings, Vehicle Titles and Registration

Central Administration

Executive Office (including Civil Rights), Board Support Office, Finance and Administrative Services (excluding license plate production), Office of General Counsel, Government and Strategic Communications, Office of Innovation and Strategy, Internal Audit

Information Technology:

Enterprise Project Management
Information Technology Division



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Fiscal Year 2017 Strategy Appropriations

The GAA appropriated \$145 million for Fiscal Year 2017. The GAA also includes additional appropriations for legislatively approved salary increases, certain unexpended balances and other allowable costs. The following chart depicts the TxDMV Fiscal Year 2017 budget by Program Goal and Strategy.

A. Goal: Optimize Services and Systems		FY 2017
A.1.1. Strategy: Titles, Registrations, and Plates		\$ 73,600,156
A.1.2. Strategy: Vehicle Dealer Licensing		\$ 4,094,083
A.1.3. Strategy: Motor Carrier Permits & Credentials		\$ 8,793,892
A.1.4. Strategy: Technology Enhancement & Automation		\$ 2,583,993
A.1.5. Strategy: Customer Contact Center		\$ 2,154,621
Total, Goal A: Optimize Services and Systems		\$ 91,226,745
B. Goal: Protect the Public		
B.1.1. Strategy: Enforcement		\$ 5,370,265
B.2.1. Strategy: Automobile Theft Prevention		\$ 14,912,006
Total, Goal B: Protect the Public		\$ 20,282,271
C. Goal: Indirect Administration		
C.1.1. Strategy: Central Administration		\$ 7,770,237
C.1.2. Strategy: Information Resources		\$ 22,135,425
C.1.3. Strategy: Other Support Services		\$ 3,814,023
Total, Goal C: Indirect Administration		\$ 33,719,685
Total TxDMV Appropriation Budget		\$ 145,228,701
Other Adjustments		
Estimated Appropriation Salary Increase for General State Employees Article IX Sec 18.02		\$ 886,987
Estimated Increase for Benefit Replacement Pay		\$ 113,012
Article IX, Sec. 8.15 Cost Recovery of Fees - Online Fulfillment & Credit Card Fees		\$ 7,882,924
Projected Unexpended Balance Carry-forward (\$37,629,162)		
Federal Grants and State Matching Fund (CVISN)		\$ 435,000
Capital - Tx Automation Systems Article VII Rider 5		\$ 23,693,671
Article IX, Sec. 14.03(i) Limitation on Expenditures - Capital Budget		
AMSIT		\$ 6,990,955
Data Center Consoildation		\$ 1,937,826
Technology Replacement & Upgrades - County Support		\$ 3,699,003
Agency Growth & Enhancements & Relocation of RSC		\$ 872,707
Subtotal, Other Adjustments		\$ 46,512,085
Total TxDMV Operating Budget		\$ 191,740,786
Method of Finance		
General Revenue Fund		\$ 38,595,666
DMV Fund		\$ 139,190,775
State Highway Fund (estimated Automation UB)		\$ 13,736,845
Federal Reimbursements		\$ 217,500
Total, Method of Finance		\$ 191,740,786



Texas Department of Motor Vehicles

Fiscal Year 2017 Operating Budget by Division

The General Appropriations Act provides the agency with its total appropriation amount by goal and strategy. In comparison, the purpose of the operating budget is to establish a specific operating budget allocation by division and capital project.

The table below outlines TxDMV’s Fiscal Year 2017 operating budget and the number of FTEs by division/office.

Division/Office	FY 2017 Preliminary	
	Budget	FTE
Automobile Burglary and Theft Prevention Authority	\$ 14,920,849	5.0
Board Support Office	\$ 139,177	1.0
Consumer Relations Division	\$ 2,195,154	45.0
Enforcement Division	\$ 5,375,828	82.0
Enterprise Project Management Office	\$ 1,572,954	17.0
Executive Office*	\$ 637,411	5.0
Finance and Administrative Services Division	\$ 35,805,837	71.0
Office of General Counsel	\$ 1,025,938	11.0
Government and Strategic Communications Division	\$ 1,140,338	10.0
Human Resources Division	\$ 951,564	8.0
Information Technology Services Division	\$ 16,275,300	92.0
Office of Innovation & Strategy	\$ 128,150	1.0
Internal Audit Office	\$ 293,500	3.0
Motor Carrier Division	\$ 7,164,420	119.0
Motor Vehicle Division	\$ 2,423,586	38.0
Office of Administrative Hearings	\$ 413,685	5.0
Vehicle Titles and Registration Division	\$ 36,219,738	250.0
Agency Wide**	\$ 12,542,264	0.0
Subtotal	\$ 139,225,693	763.0
Capital Projects and Projected Carry-forward		
Data Center Consolidation	\$ 7,636,433	
Technology Replacement & Upgrades - County Support	\$ 5,500,000	
Growth & Enhancements - Agency Operations Support	\$ 949,498	
Relocation of Bull Creek Campus Facilities	\$ 800,000	
Projected Unexpended Balance Carry-Forward	\$ 37,629,162	
Subtotal	\$ 52,515,093	
Agency Total	\$ 191,740,786	
Method of Finance		
General Revenue Fund	\$ 38,595,666	
DMV Fund	\$ 139,190,775	
State Highway Fund (estimated Automation UB)	\$ 13,736,845	
Federal Reimbursements	\$ 217,500	
Method of Finance Total	\$ 191,740,786	

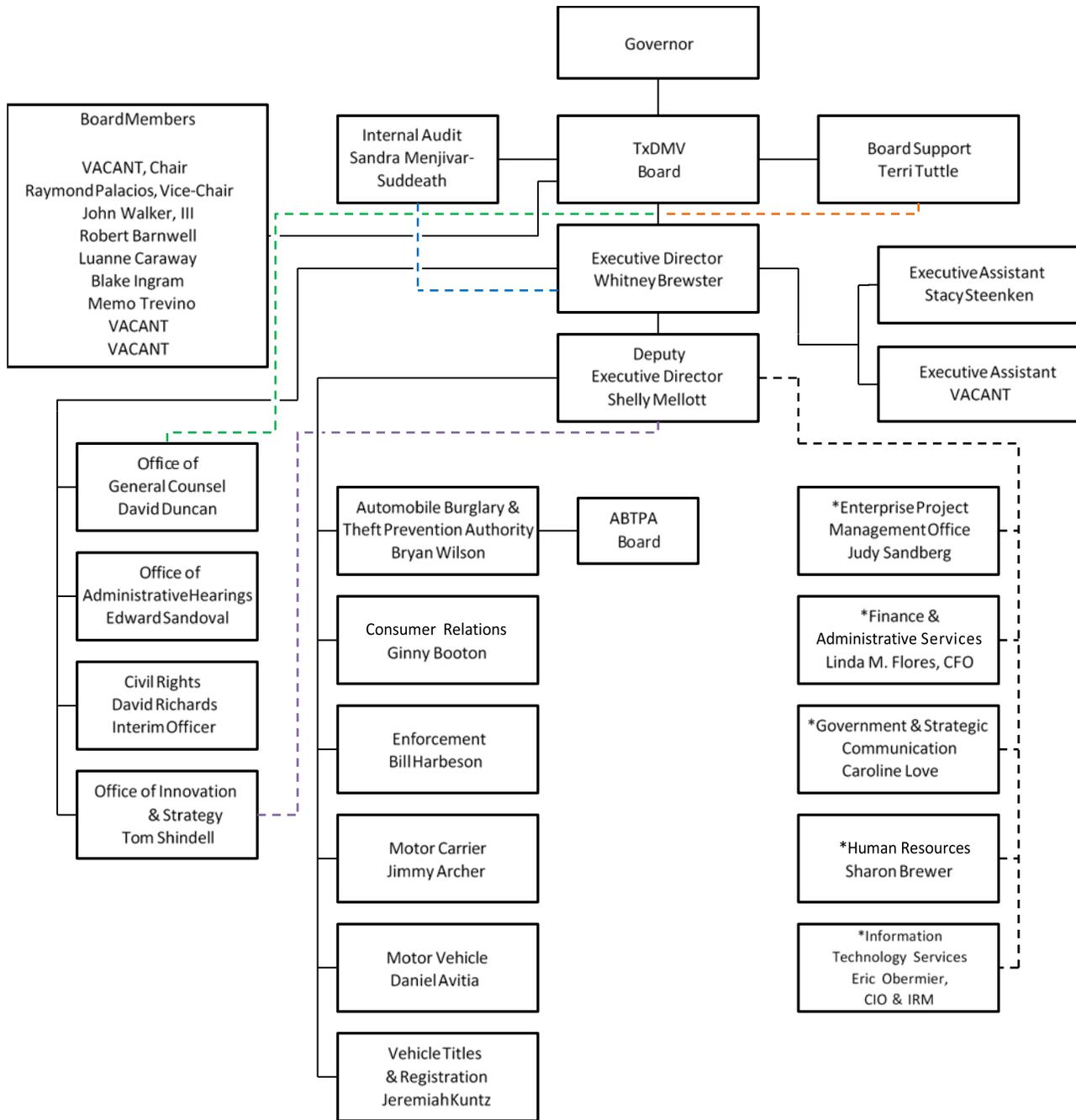
*Executive office includes \$105,330 and 1 FTE for Civil Rights Office.

**Includes costs for online fulfillment, primarily credit card fees to Tx.gov.



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TxDMV Organizational Chart



**Note: Although these positions report directly to the ED, rank is equivalent to the Motoring Services Division Directors. The DED assumes the responsibilities of the ED in absentia.*



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Part II: Fiscal Year 2017 Contracts



Texas Department of Motor Vehicles

Fiscal Year 2017 Contract Summary

The agency executes contracts that are statutorily required and also executes contracts that are not required by law but enable it to perform its duties and operations. The Board's approval of the operating budget constitutes approval of any contracts listed in the operating budget.

The agency will execute approximately 195 new contracts and renewals of existing contracts that are not statutorily required but assist the agency in performing its operations.

The agency anticipates the renewal of 17 statutorily required contracts in Fiscal Year 2017.

The Fiscal Year 2017 budget currently includes:

- 14 contracts of more than \$200,000
 - ✓ 2 of which require board approval
- 9 contracts between \$100,000-\$200,000
- 137 contracts of less than \$100,000
- 18 IT Staff Augmentation contracts
- 17 statutorily required contracts

The following pages detail both statutorily required and optional contracts by division, vendor, purpose, contract period, and amount.

Note:

The contracts listed on the following pages are subject to change based on the final terms and conditions negotiated.



Texas Department of Motor Vehicles

Fiscal Year 2017 Delegated and Statewide Contracts more than \$200,000

Contracts, including Statewide Contracts that have a cumulative cost value of more than \$200,000, (Commodities over \$25,000 and Services over \$100,000 must be reviewed by the Texas Comptroller of Public Accounts; Government Code 2156.121) may be delegated to the agency by the Texas Comptroller of Public Accounts. The executive director must obtain board approval for contracts \$200,000 or more prior to award or renewal unless specifically excluded and ensure that the contract is within budget guidelines in accordance with established procurement contract laws, rules, regulations and policies of oversight agencies.

The contracts listed below require Board approval for the award and/or renewal and proposed contract amounts for Fiscal Year 2017. Additional procurements may be conducted during the fiscal year and will be presented to the Board individually upon occurrence.

Division	Vendor	Purpose	Contract Period		FY 2017 Contract Amount	Total Contract Amount
			Award	Expire		
Motor Carrier	Southwest Research Institute	MCD requests to increase the Southwest Research Institute purchase order by \$310,000. Of that amount we project that \$130,000 will be received from the Federal Motor Carrier Safety Administration (FMCSA) 2016 CVISN grant when the grant is awarded (late August/early September) to DPS. These funds will be used to make modifications to the Texas Commercial Vehicle Information Exchange Window (TxCVIEW) as FMCSA moves their data to a cloud environment, modifies some of their web services, changes databases or requirements for TxCVIEW, and FMCSA's rolling out a new Unified Carrier Registration application.	3/31/2014	1/31/2018	\$ 310,000	\$ 1,960,000
Vehicle Titles and Registration	American Association of Motor Vehicle Administration	Information systems title check through AAMVA	10/1/2016	9/30/2017	\$ 268,075	\$ 268,075 *
					\$ 240,000	\$ 240,000
					Total \$ 578,075	\$ 2,228,075

*The updated contract amount reflects the revised amount including the credits per an invoice received from AAMVA on August 4, 2016.



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Excluded Contracts

The following contracts have a cumulative cost value of more than \$200,000. In accordance with the Board Resolution Adopting Contract Approval Procedures, these contracts are excluded from Board approval procedures. These contracts include (1) routine operations; (2) procured from the Texas Council on Competitive Government (CCG); (3) Texas Department of Information Resources (DIR); and (4) Texas Procurement and Support Services (TPASS).

Division	Vendor	Purpose	Contract Period		FY 2017 Contract Amount	Total Contract Amount
			Award	Expire		
Capital Projects	Deloitte Consulting LLP	e-Licensing	8/31/2015	3/31/2017	\$ 237,193	\$ 4,570,480
Capital Projects	TX Dept. of Transportation	CVISN Advance Bridge Clearance	10/9/2015	3/31/2017	\$ 350,000	\$ 435,000
Capital Projects	Deloitte Consulting LLP	RTS Workstream 4	11/19/2015	11/18/2016	\$ 3,500,000	\$ 10,850,000
Capital Projects	INSIGHT PUBLIC SECTOR INC	County refresh and ongoing maintenance of County equipment	8/7/2016	8/6/2017	\$ 7,507,635	\$ 7,915,635
Capital Projects	Deloitte Consulting LLP	RTS Refactoring	8/1/2013	9/30/2017	\$ 1,183,173	\$ 22,349,791
Finance and Administrative Services	RAGSDALE-BROOK	Houston RSC	6/26/2014	8/31/2024	\$ 288,621	\$ 3,037,604
Information Technology Services	EXPLORE INFORMATION SERVICE LLC	IRP Software Maintenance	7/17/2014	3/31/2017	\$ 322,312	\$ 995,561
Information Technology Services	HP ENTERPRISE SERVICES LLC	eTags Application Maintenance	7/9/2014	7/7/2017	\$ 220,344	\$ 710,505
Motor Carrier	PROMILES SOFTWARE DEVELOPMENT CORP	TxPROS software maintenance	5/12/2016	8/31/2018	\$ 603,180	\$ 1,206,360
Vehicle Titles & Registration	RR DONNELLEY COMPANY	Title Paper	3/6/2016	3/8/2018	\$ 376,228	\$ 1,255,567
Finance and Administrative Services	Pitney Bowes	Postage	6/1/2017	8/31/2017	\$ 250,000	\$ 250,000
Vehicle Titles & Registration	Pitney Bowes	Postage	9/1/2016	8/31/2017	\$ 9,545,112	\$ 9,545,112
Total					\$ 24,383,799	\$ 63,121,613



Texas Department of Motor Vehicles

Fiscal Year 2017 Statutorily Required Contracts and Term Contracts (Informational Only)

Contracts required by statute include but are not limited to the State Office of Administrative Hearings (contested cases), the State Office of Risk Management (SORM), Workers' Compensation, vehicle liability insurance and property insurance, and the Texas Department of Criminal Justice (manufacturing of license plates, registration stickers and placards, etc.).

Anticipated statutorily required contracts for Fiscal Year 2017

Division	Vendor	Purpose	Contract Period		FY 2017 Contract Amount	Total Contract Amount
			Award	Expire		
Agency Wide	State Office of Risk Management	Workers compensation & Risk management service	9/1/2016	8/31/2017	\$ 64,084	\$ 128,168
Capital Projects	INFORMATION RESOURCES	Data Center Services	7/8/2014	8/31/2017	\$ 7,636,433	\$ 23,910,369
Finance and Administrative Services	ALLIANT INSURANCE SERVICES INC	Fleet liability ins premium	5/13/2016	8/31/2017	\$ 13,500	\$ 13,500
Finance and Administrative Services	Arthur J Gallagher Risk Management Services, Inc	Property Liability insurance per State Office of Risk Management	9/1/2016	8/31/2017	\$ 8,500	\$ 10,500
Finance and Administrative Services	Open Text	Digital Imaging services	9/1/2016	8/31/2017	\$ 3,385,295	\$ 6,801,171
Finance and Administrative Services	Texas Dept of Criminal Justice	Manufacturing of License Plates/Stickers	9/1/2016	8/31/2017	\$ 23,271,101	\$ 46,293,946
Finance and Administrative Services	Texas State Library	Records Storage	9/1/2016	8/31/2017	\$ 17,000	\$ 34,000
Finance and Administrative Services	TIBH Industries Inc.	RSC Janitorial Services	6/30/2015	6/30/2017	\$ 261,024	\$ 525,648
Finance and Administrative Services	TIBH Industries Inc.	HQ Janitorial Services	9/1/2016	8/31/2017	\$ 173,238	\$ 564,430
Finance and Administrative Services	TIBH Industries, Inc.	Transportation/freight services for plates provided by SVA Services	9/1/2016	8/31/2017	\$ 715,000	\$ 715,000
Finance and Administrative Services	TX Comptroller of Public Accounts	Fleet mgmt system support fee	5/11/2015	8/31/2020	\$ 407	\$ 2,033
Finance and Administrative Services	Texas Dept of Transportation	Interagency contract between TxDMV & TxDOT	9/1/2016	8/31/2017	\$ 2,000,000	\$ 2,000,000
Information Technology Services	NICUSA	Web Hosting TX.Gov	9/1/2016	8/31/2017	\$ 514,620	\$ 514,620
Motor Vehicle	State Office of Administrative Hearings	Interagency contract for administrative hearings	9/1/2015	8/31/2017	\$ 70,900	\$ 141,800
Vehicle Titles and Registration	Standard Register	Vehicle Registration Decals	4/16/2015	4/15/2017	\$ 4,250,900	\$ 8,738,853
Vehicle Titles and Registration	TIBH Industries, Inc.	Specialty license plates mail preparation & mailing service	9/1/2016	8/31/2017	\$ 146,990	\$ 146,990
Agency Wide	NICUSA	Transaction Fees TX.Gov	9/1/2016	8/31/2017	\$ 6,236,691	\$ 6,236,691
Total					\$ 48,765,683	\$ 96,777,719



Texas Department of Motor Vehicles

Fiscal Year 2017 Delegated and Statewide Contracts \$100,000 - \$200,000 (Informational Only)

Contracts, including Statewide Contracts that have a cumulative cost value from \$100,000 to \$200,000 (Commodities over \$25,000 and Services over \$100,000 must be reviewed by the Texas Comptroller of Public Accounts; Government Code 2156.121) may be delegated to the agency by the Texas Comptroller of Public Accounts. If delegated, these are executed by FAS at the executive director’s discretion within budget guidelines in accordance with established procurement contract laws, rules, regulations and policies of oversight agencies. The executive director will report contract executions to the board.

Division	Vendor	Purpose	Contract Period		FY 2017 Contract Amount	Total Contract Amount
			Award	Expire		
Consumer Relations	TIBH INDUSTRIES INC	Temporary staffing	5/27/2016	11/28/2016	\$ 103,228	\$ 129,412
Human Resources	TIBH INDUSTRIES INC	Temporary staffing	6/10/2016	6/15/2017	\$ 125,142	\$ 158,032
Finance and Administrative Services	SKY INVESTMENT PROPERTY INC	Dallas/Carrollton RSC	6/18/2013	3/31/2020	\$ 121,313	\$ 682,053
Finance and Administrative Services	VOYAGER FLEET SYSTEMS INC	Fleet fuel and maintenance	4/4/2014	4/30/2017	\$ 161,966	\$ 467,902
Agency	AT&T MOBILITY	Cellular usage fees	4/12/2016	4/11/2017	\$ 101,238	\$ 138,301
Information Technology Services	NIT DATA INC	Server Application Software Maintenance	1/29/2014	1/31/2017	\$ 130,498	\$ 529,389
Information Technology Services	AUTO RESEARCH DIVISION	Web Portal subscription	5/1/2014	5/31/2017	\$ 102,375	\$ 314,875
Vehicle Titles and Registrations	TIBH INDUSTRIES INC	Temporary staffing	5/23/2014	5/26/2017	\$ 135,872	\$ 389,574
Vehicle Titles and Registrations	TOSHIBA BUSINESS SOLUTIONS-TX	Copier lease	11/1/2014	9/30/2016	\$ 192,341	\$ 512,281
Total					\$ 1,173,973	\$ 3,321,819



Texas Department of Motor Vehicles

Fiscal Year 2017 Delegated and Statewide Contracts less than \$100,000 (Informational Only)

Contracts, including Statewide Contracts under \$100,000 for services and \$25,000 for commodities are delegated to state agencies by the Texas Comptroller of Public Accounts (Government Code 2155.132). These include but are not limited to competitively bid contracts for goods and services that are executed by FAS at the executive director's discretion within budget guidelines in accordance with established procurement contract laws, rules, regulations and policies of oversight agencies.

Category	Division	Vendor	Purpose	Contract Period		FY 2017 Contract Amount	Total Contract Amount
				Award	Expire		
Contractors	Motor Carrier	TIBH Industries, Inc.	Temporary staffing	3/24/2016	10/6/2016	\$ 46,335	\$ 64,328
	Enforcement	TIBH Industries, Inc.	Temporary staffing	7/6/2016	11/23/2016	\$ 55,384	\$ 63,803
	Motor Vehicle	TIBH Industries, Inc.	Temporary staffing	8/22/2014	10/17/2016	\$ 12,839	\$ 22,311
	Finance and Administrative Services	TIBH Industries, Inc.	Temporary staffing	1/29/2016	1/31/2017	\$ 48,419	\$ 76,560
Building Leases	Finance and Administrative Services	BURNHAM PROPERTIES LTD	El Paso RSC	7/3/2014	10/31/2017	\$ 8,972	\$ 116,559
	Information Technology Services	TEXAS DEPT OF INFORMATION	Data Recovery Center	4/16/2014	4/30/2018	\$ 12,000	\$ 36,000
	Finance and Administrative Services	4015 Limited Partnership	CPA Warehouse	5/1/2015	4/30/2020	\$ 20,337	\$ 101,684
	Finance and Administrative Services	TONY MARTIN TRUSTEE	Waco RSC	4/2/2012	8/31/2020	\$ 40,626	\$ 244,958
	Finance and Administrative Services	RIVERBEND COMPLEX LLC	Ft. Worth RSC	7/1/2015	9/30/2020	\$ 77,625	\$ 401,063
Total						\$ 322,537	\$ 1,127,265

The following table is a summary of the contracts that are less than \$100,000 grouped by category.

Category	Purpose	FY 2017 Average Contract Amount	FY 2017 Combined Contract Amount	Total Combined Contract Amount
Memberships & Licenses 40 Contracts	Bar Dues \$5,831 Memberships \$64,186 Subscriptions \$82,385	\$ 3,810	\$ 152,402	\$ 430,078
Technology, Hardware/Software Maintenance 3 Contracts	Software Maintenance \$114,864	\$ 38,288	\$ 114,864	\$ 301,378
Copier Leases 42 Contracts	42 Copiers \$230,375	\$ 5,119	\$ 230,375	\$ 941,273
Service Contracts 34 Contracts	IT-related \$43,796 Cellular \$8,200 Delivery/Courier \$109,973 Other \$177,844 Mailing Services \$131,268	\$ 13,855	\$ 471,082	\$ 1,841,514
Miscellaneous 9 Contracts	Miscellaneous	\$ 824	\$ 7,420	\$ 35,260
Total			\$ 976,143	\$ 3,549,503



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Fiscal Year 2017 Information Technology Staff Augmentation (Informational Only)

Generally, contracts over \$200,000 must be reviewed and approved by the TxDMV Board; however, the TxDMV Board resolution adopting contract approval procedures excludes from approval those contracts with DIR for routine operations. The list of Information Technology-related staff augmentation contracts for 2017 listed below are for informational purposes only.

Note that contract amounts are subject to change based on agency needs and the final terms and conditions negotiated.

Division	Vendor	Purpose	Contract Period		Primary Project	FY 2016 Estimated Expenditures	FY 2017 Contract Amount	Total Contract Amount
			Award	Expire				
Enterprise Project Management Office	TIBH Industries, Inc.	Technology Services Staff Augmentation	5/11/2015	5/10/2017	WebDealer	\$ 97,237	\$ 108,389	\$ 325,166
Enterprise Project Management Office	Nu Info Systems Inc.	Technology Services Staff Augmentation	10/5/2015	10/4/2016	WebDealer	\$ 185,658	\$ 178,534	\$ 380,294
Enterprise Project Management Office	Abdeladim & Associates	Technology Services Staff Augmentation	12/28/2015	12/27/2016	AMSIT	\$ 136,844	\$ 215,634	\$ 431,268
Information Technology Services	TIBH Industries, Inc.	Technology Services Staff Augmentation	5/8/2015	5/7/2016	RTS Refactoring	\$ 62,845	\$ 108,389	\$ 216,778
Enterprise Project Management Office	Intratek Computer Inc.	Technology Services Staff Augmentation	9/16/2014	5/7/2016	eLicensing	\$ 71,755	\$ 108,389	\$ 216,778
Enterprise Project Management Office	TIBH Industries, Inc.	Technology Services Staff Augmentation	3/14/2016	8/31/2016	Physical Security	\$ 118,940	\$ 185,546	\$ 304,356
Enterprise Project Management Office	Navavuga Infotech	Technology Services Staff Augmentation	4/11/2016	4/10/2017	WebDealer	\$ 72,214	\$ 182,998	\$ 255,212
Enterprise Project Management Office	TIBH Industries, Inc.	Technology Services Staff Augmentation	6/13/2016	12/31/2016	eLicensing	\$ 29,565	\$ 122,013	\$ 189,120
Information Technology Services	TIBH Industries, Inc.	Technology Services Staff Augmentation	6/10/2016	12/8/2016	eLicensing	\$ 26,263	\$ 108,389	\$ 162,583
Enterprise Project Management Office	NF Consulting Services	Technology Services Staff Augmentation	6/29/2016	6/28/2017	WebDealer	\$ 125,321	\$ 195,520	\$ 320,841
Enterprise Project Management Office	NF Consulting Services	Technology Services Staff Augmentation	11/12/2012	11/11/2016	WebDealer	\$ 157,340	\$ 197,600	\$ 1,226,960
Information Technology Services	C & T Information Technology	Technology Services Staff Augmentation	9/1/2011	12/9/2016	IT Operating	\$ 162,690	\$ 176,800	\$ 904,740
Enterprise Project Management Office	National Human Resources Group, Inc.	Technology Services Staff Augmentation	7/14/2014	7/13/2016	RTS Refactoring	\$ 71,820	\$ 131,040	\$ 386,064
Enterprise Project Management Office	NF Consulting Services	Technology Services Staff Augmentation	9/1/2011	7/31/2017	Multiple Projects	\$ 237,978	\$ 235,040	\$ 1,748,477
Enterprise Project Management Office	NF Consulting Services	Technology Services Staff Augmentation	8/5/2014	8/4/2016	RTS Refactoring	\$ 112,140	\$ 145,600	\$ 407,680
Information Technology Services	TIBH Industries, Inc.	Technology Services Staff Augmentation	5/12/2011	8/31/2016	IT Operating	\$ 105,742	\$ 108,389	\$ 413,035
Information Technology Services	TIBH Industries, Inc.	Technology Services Staff Augmentation	9/6/2011	8/31/2016	IT Operating	\$ 90,671	\$ 108,389	\$ 404,761
Enterprise Project Management Office	Allied Consultants Inc.	Technology Services Staff Augmentation	9/2/2014	9/1/2016	Multiple Projects	\$ 162,720	\$ 166,400	\$ 505,500
Total						\$ 2,027,744	\$ 2,783,058	\$ 8,799,612



Texas Department *of* Motor Vehicles

Appendix A: Budget Category Definitions



Texas Department of Motor Vehicles

Budget Category Definitions

In Alphabetical Order

Advertising and Promotion – Includes radio/media ads, posters, signage, brochures, flyer production, and other promotional items.

Benefit Replacement Pay (BRP) – Benefit Replacement Pay (BRP) is compensation authorized by the Texas Legislature to offset the loss of state-paid Social Security contributions.

Capital – Includes items established as “Capital Items” by the agency, or greater than \$5,000, which have capital authority as outlined in Rider 2 of the General Appropriations Act, 84th Legislature, such as Acquisition of Information Resource Technology, land and buildings, relocation of facilities, and aggregate furniture purchases in excess of \$100,000.

Computer Equipment – The purchase and replacement of personal information technology equipment and peripherals such as workstations, monitors, keyboards, and laptops.

Consumables – Standard consumable costs required to run the day-to-day operations of the agency such as paper, pens, pencils, media discs and USB drives, paper clips and staples.

Contract Services – General jobs outsourced to third party companies and organizations for the benefit of the agency such as MyPlates and PrintMailPro.

Fees and Other Charges – Credit card processing fees, employee health insurance fees, State Office of Risk Management insurance charges, and court filing fees.

Freight – Costs to transport license plates to county tax offices.

Fuels and Lubricants – Fleet maintenance and operation costs related to oil changes and refueling fleet vehicles.

Grants – Pass through funds designated for use by city, county, and other state agencies for a specific, contractual requirement.

Maintenance and Repair – Expenditures related to the upkeep of agency facilities, equipment, and software used on agency systems for annual application support such as e-Tags and International Registration Plan (IRP).

Membership and Training – Fees for training courses and conference registrations for agency staff. Also included are expenditures for memberships for agency personnel such as Texas Association of Public Purchasers, American Association of Motor Vehicle Administrators (AAMVA) and the National Board of Motor Vehicle Boards and Commissions.

Other Expenses – Includes office furniture and equipment, and miscellaneous non-categorized costs such as employee awards, publication purchases, parts, promotional items, and non-capitalized tools. Also included in this category is a portion of the funding for TxDMV Automation, and Growth and Enhancement.

Postage – Includes costs of metered mailing for license plates, registration renewal notices, and titles; and includes the cost of the rental of agency post office boxes.

Professional Fees – Work, requiring specific expertise, provided by third party professionals holding specific certifications and qualifications.



Texas Department *of* Motor Vehicles

Rent – Building/Rent – Machine, Other – Costs associated with procurement of project facilities such as office rental, off-site training rooms; and costs associated with the rental of office equipment such as postage meters and copy machines.

Reproduction and Printing – Includes all agency printed materials primarily used in registration renewal notices and titles such as notification inserts, envelopes, and title paper.

Salary – Includes salaried workers and interns, longevity pay, health insurance contributions, and retirement contributions. Does not include contract workers who are not a part of the organization's normal payroll.

Services – Includes costs associated with services provided to TxDMV through subscription such as National Motor Vehicle Information System (NMVTIS) and LexisNexis.

Travel (In-State/Out-of-State) – Planned travel costs provided to participant. Includes transportation, meals and accommodations, and travel per-diems.

Utilities – Costs associated with providing services at facilities such as electricity, telephone, water, and natural gas.



Texas Department *of* Motor Vehicles

Appendix B: Budget Terms and Definitions



Budget Terms and Definitions

Annual Operating Budget – An agency’s approved Annual Operating Budget represents a one-year financial plan supporting the agency’s business operations and addresses base operating requirements and adjustments. The budget covers funding for each division and reflects the most appropriate method of finance and strategy for core activities and continuing programs. The TxDMV Recommended Annual Operating Budget reflects Fiscal Year 2017 appropriations as identified H.B. 1, 84th Legislature, Regular Session, GAA. The agency’s final Annual Operating Budget covers a one-year period from September 1 through August 31.

Appropriated – Refers to the dollars or associated full-time equivalent (FTE) positions authorized for specific fiscal years, and to the provisions for spending authority.

Appropriation Year (AY) – Refers to the specific fiscal year for which an appropriation is made. The appropriation year dictates the year to which the expenditure is authorized/charged.

Base Request – The base request represents the basis for the agency’s biennial budget. The base request cannot exceed the appropriated amount established by the legislature through the prior biennial GAA, adjusted for Article IX appropriation reductions.

Benefit Replacement Pay – Benefit Replacement Pay (BRP) is compensation authorized by the Texas Legislature to offset the loss of state-paid Social Security contributions. S.B.102, 74th Legislature eliminated the state-paid Social Security payment, effective December 31, 1995. After this date, eligible employees began receiving a supplement known as Benefit Replacement Pay (BRP) in place of the state-paid Social Security payment. Eligible employees include those that were employed by the state and subject to FICA taxes on August 31, 1995, and have been continuously employed by the state since that date; employees that left the state but returned within 30 consecutive calendar days and those that retired before June 1, 2005, and returned to work with the state before September 30, 2005.

Biennium – Two-year funding cycle for legislative appropriations.

Capital Budget – The portion of an agency’s appropriation that is restricted to expenditures for designated capital construction projects or capital acquisitions.

Centralized Accounting and Payroll/Personnel System (CAPPS) – CAPPS is the official name of the statewide Enterprise Resource Planning (ERP) system created by the Comptroller’s of Public Accounts (CPA) office ProjectONE team. CAPPS will replace legacy systems with a single software solution for financial and Human Resources (HR)/Payroll Administration for Texas state agencies. The modules for TxDMV’s CAPPS include: Asset Management; General Ledger/Commitment Control (Budget); Payables; Purchasing/eProcurement; HR and Payroll Administration.

Expended – Refers to the actual dollars or positions utilized by an agency or institution during a completed fiscal year; a goal or strategy; an object of expense; or an amount from a particular method of finance.

Federal Funds/Grants – Funds received from the United States government by state agencies and institutions that are appropriated to those agencies for the purposes for which the federal grant, allocation, payment or reimbursement was made.

Fiscal Year (FY) – September 1 through August 31 and specified by the calendar year in which the fiscal year end, e.g. fiscal year 2017 runs from September 1, 2016 through August 31, 2017.



Texas Department of Motor Vehicles

Full-Time Equivalents (FTEs) – Units of measure that represent the monthly average number of state personnel working 40 hours per week.

General Appropriations Act (GAA) – The law that appropriates biennial funding to state agencies for specific fiscal years and sets provisions for spending authority.

General Revenue (GR) Fund – The fund (Fund 001) that receives state tax revenues and fees considered available for general spending purposes and certified as such by the Comptroller of Public Accounts.

Lapsed Funds – The unobligated balance in an item of appropriation that has not been encumbered at the end of a fiscal year or at the end of the biennium. Appropriations expire if they are not 1) obligated by August 31 of the appropriation year in which they were made or 2) expended within two years following the last day of the annual year.

Line-item – An element of spending authority granted to an agency or institution in an appropriations bill. It is literally, a line in the General Appropriations Act specifying an agency's appropriations for a specific designated use. In Texas, the governor may veto a line-item.

Method of Finance – This term usually appears as a heading for a table that lists the sources and amounts authorized for financing certain expenditures or appropriations made in the General Appropriations Act (GAA). A source is either a "fund" or "account" established by the comptroller or a category of revenues or receipts (e.g. federal funds).

Rider – A legislative directive or appropriation inserted in the GAA following appropriation line-items for an agency or in the special or general provisions of the act. A rider provides direction, expansion, restriction, legislative intent or an appropriation. The term also applies to special provisions at the end of each article and general provisions in the GAA. A rider appropriation is distinguished from a regular appropriation (i.e., line-items in the GAA) and a special appropriation (i.e. legislation other than the GAA).

Salary Budget – Fiscal Year 2017 salaries include projected annual costs based on Fiscal Year 2016 actual salaries with adjustments for vacancies, merits and Fiscal Year 2017 longevity costs.

State Highway Fund (Fund 006) – Constitutionally created fund that dedicates net revenues from motor vehicle registration fees and taxes on motor fuels and lubricants. Revenue in the State Highway Fund is used for highway construction and maintenance, acquisition of rights-of-way and law enforcement on public roads.

TxDMV Fund – The TxDMV Fund is a dedicated Texas Department of Motor Vehicles Fund separate from the General Revenue and State Highway Fund. Several statutorily-dedicated revenue streams including certificates of title, motor vehicle registration, oversize/overweight permitting, business dealer licenses and other miscellaneous fees are deposited to the credit of the TxDMV Fund.

Unexpended Balance (UB) or Carry-Forward – The amount left in an item of appropriation at the end of an appropriation period and includes only that part of the appropriation, if any, which has not had an obligation or commitment made by the agency in charge of spending the appropriation. The term also refers to the amount of an appropriation, a fund or a category of revenue which is brought forward (appropriated) to the succeeding fiscal year. Agencies must have legislative authority to move funds from one year to the next and/or from one biennium to the next biennium.



Texas Department *of* Motor Vehicles

Appendix C: Finance and Administrative Services Contacts



Finance and Administrative Services Contacts

Linda Flores, Chief Financial Officer
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Renita Bankhead, Assistant Chief Financial Officer
512-465-1216

David Chambers, Purchasing Manager
512-465-1257

Sergio Rey, Financial Administration Manager
512-465-4203

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Budget Analysts

Tricia Ueckert, Budget Team Lead
512-465-1401

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Diana Thomas, Budget Analyst
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Delores Hubbard, Budget Analyst
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Jack Starnes, Budget Analyst
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Revenue Forecasting

Theo Kosub, Financial Analyst
512-465-1448

Brian Kline, Financial Analyst
512-465-4194

Planning

Lisa Conley, Planner
512-465-4186



DATE: September 1, 2016
Continued From: -
Action Requested: Briefing

To: Finance and Audit Committee
From: Linda M. Flores, CPA, Chief Financial Officer
Agenda Item: 2.A.2.a.
Subject: FY 2018-2019 Legislative Appropriations Request, Baseline and Exceptional Items

RECOMMENDATION

The Legislative Appropriations Request, or LAR, for the upcoming 2018-19 biennium was submitted on August 12, 2016, with approval and input from the Executive Director and the Chairman of Finance and Audit, as required by the Office of the Governor, Budget Division and the Legislative Budget Board (LBB).

PURPOSE AND EXECUTIVE SUMMARY

The Texas Department of Motor Vehicles (TxDMV), Finance and Audit Committee approved a biennial appropriations request of \$328.3 million on August 3, 2016. As per the motion approved at the August Finance and Audit Committee meeting the other board members were briefed on the submission and changes to the LAR were approved by the Board Vice-Chair and Executive Director prior to submission. *The final submitted baseline request for the agency was \$327.8 million. The exceptional items approved by the TxDMV Finance and Audit Committee in August also were adjusted from a biennial total of \$105 million down to \$40 million. (see final adjustments below for more information)*

FINANCIAL IMPACT

TxDmv is a net revenue-generating agency for the state. Effective September 1, 2016, TxDMV will begin depositing revenue into a new agency fund recreated by the 84th Legislature, the TxDMV Fund (0010). The agency's budget request is supported by collections. The staff estimates that TxDMV will collect approximately \$3.86 billion for the State while retaining \$327.8 million for baseline agency operations over the biennium. The majority of the LAR request will be funded from the TxDMV Fund which includes the newly created processing and handling fee (P&H). The LAR request also includes General Revenue (GR) funding for baseline and exceptional items for the Automobile Burglary & Theft Prevention Authority.

FINAL ADJUSTMENTS TO LAR APPROVED BY FINANCE AND AUDIT COMMITTEE:

Baseline

The baseline was adjusted to reduce estimates for ACH fees that were overstated by \$233,389 in FY 2018 and \$278,088 in FY 2019. These fees are associated with increased online registrations anticipated with the implementation of the processing and handling fee (P&H). This change only impacted strategy A.1.1. (Titles, Registration and Plates).

Exceptional Items

The modification to the #1 Priority item from the August approved exceptional items reduced the total TxDMV exceptional item request from \$105 million to \$40 million. The original biennial request of \$74.8 million included funds for the purchase or construction of a new building, including land, three full-time equivalents (FTEs) and estimated ongoing costs. As a result of ongoing discussions with the Governor's Office, Texas Facilities Commission and Texas Department of Transportation (TxDOT), the agency modified its original exceptional item request to remove funds related to the acquisition of land and the purchase or construction of a new building. The modified request now totals \$9.8 million for the biennium and includes estimated costs for maintenance and repairs, janitorial and grounds-keeping, and other costs related to the upkeep of an existing facility. The three FTEs were retained in the request as they will be needed to provide skilled services previously provided by TxDOT.

BACKGROUND AND DISCUSSION

The agency's baseline request includes several initiatives to reduce and refine the budget request to remain within the projected revenue including reducing capital expenditures primarily in automation budget requests which is offset by increased costs due to the implementation of centralized fulfillment of online registration renewals and absorbing credit card fees for online registration renewals.

The capital budget includes funding for Automation (\$11.7 million) primarily for Refactoring of the Registration and Titling System; ongoing costs for the Data Center Services contract (\$16.7 million); replacement of computer equipment in the counties and at TxDMV headquarters (\$11.9 million); funding to relocate one regional service center and to replace aging fleet vehicles (\$1.5 million).

Five exceptional items now totaling \$40 million and sixteen (16) FTEs were included in the LAR submission. The agency exceptional items include:

- TxDMV Headquarters Maintenance
The modified exceptional item retitled TxDMV Headquarters Maintenance now totals \$9.8 million for the biennium.
- Creation of a Special Investigation Unit, a biennial total of \$1.9 million and 13 FTEs.
- Matching dollars for the Commercial Vehicle Information and Systems Networks (CVISN) grant are available from the Federal Motor Carrier Safety Administration (FMCSA) for system and roadside projects that increase safety on the roads and increase the efficiency of moving commerce on the roads. TxDMV is the lead agency for CVISN in Texas. A match of \$262,500 will allow the agency to receive \$1.5 million in federal funds.

The exceptional item list also includes a request from the Auto Burglary and Theft Prevention Authority (ABTPA) for their items to be included in the final TxDMV LAR. The two items are restoration of the four percent GR reduction and an additional \$12.6 million per year (\$25.3 million biennial total) generated by a \$2.00 fee imposed on motor vehicle insurance policies for the express purpose of providing additional grant allocations to local law enforcement.

The submitted LAR also includes one new rider which would allow the agency to carry forward any unexpended balances in appropriations between the first and second year of the biennium (FY 2018 and FY 2019).

Legislative Appropriation Request Process

OVERVIEW

Each year, TxDMV oversees the issuance of more than 24 million vehicle registration insignias and more than seven million vehicle titles. The agency licenses more than 34,000 motor vehicle dealers and a variety of other entities engaged in the motor vehicle sales and distribution industry, as well as salvage vehicle dealers. TxDMV credentials more than 50,000 motor carriers, issues more than 800,000 oversize/overweight permits and investigates approximately 16,000 complaints against dealers and motor carriers. It is estimated that in FY 2018-2019, the agency's deposit to the State Highway Fund will account for approximately 30 percent of that fund's total state revenues.

OVERVIEW OF BUDGET REQUEST

Aligning with the agency's FY 2017-2021 Strategic Plan, the agency's workforce focuses on three broad, strategic goals identified by the Board including: 1) Being Customer Centric, 2) Optimizing Services and Innovation, and 3) Being Performance Driven.

In complying with the directives of the 84th Legislature to become self-funded, the agency took several steps to reduce and refine its baseline budget in order to remain within the projected revenue the agency will generate including:

- Reducing Capital expenditures primarily in automation budget requests;
- Creating a processing and handling fee structure to fund registration and title services; and
- Reducing costs by implementing centralized fulfillment of online registration renewals and passing the cost savings on to customers.

FINAL ADJUSTMENTS TO BUDGET REQUEST APPROVED BY FINANCE & AUDIT COMMITTEE

Baseline – Original Request \$328.3 million adjusted to \$327.8 million.

The baseline was adjusted to reduce estimates for ACH fees that were overstated by \$233,389 in FY 2018 and \$278,088 in FY 2019. These fees are associated with increased online registrations anticipated with the implementation of the processing and handling fee (P&H). This change only impacted strategy A.1.1. (Titles, Registration and Plates). *The capital budget authority of \$41.8 million included in the baseline was not adjusted*

Exceptional Items – Original Request \$105 million adjusted to \$40 million

As a result of ongoing discussions with the Governor's Office, Texas Facilities Commission and Texas Department of Transportation (TxDOT), the agency modified its original exceptional item request to remove funds related to the acquisition of land and the purchase or construction of a new building. The original biennial request of \$74.8 million included funds for the purchase or construction of a new building, including land, three FTEs and estimated ongoing costs. The modified request now total \$9.8 million for the biennium and includes estimated costs for maintenance and repairs, janitorial and grounds-keeping, and other costs related to the upkeep an existing facility. *All other exceptional items remained unchanged.*

MAJOR FUNDING INITIATIVES

Three major initiatives have been identified as critical to TxDMV’s continued success. These items are included in the FY 2018-2019 baseline, capital budget and exceptional item appropriation request and are important steps in establishing TxDMV independence, both physically and systemically as follows:

- Acquisition and relocation of facilities;
- Automation Projects and Technological Innovation Activities; and
- Creating a Special Investigation Unit.

These initiatives are more fully discussed throughout this document.

10% GENERAL REVENUE REDUCTION

As part of the state’s budgeting instructions, state agencies are required to prepare a Legislative Appropriations Request (LAR) schedule reflecting a 10% biennial reduction to any programs funded from General Revenue (GR). The 10% reduction schedule is only implemented should the legislature decide that statewide budget cuts are needed for the upcoming biennium. Beginning in FY 2018, TxDMV will become a self-funded agency that will not be subject to the 10% GR reduction, with the exception of the Automobile Burglary and Theft Prevention Authority (ABTPA) program. The State deposits almost \$46 million annually in GR through the assessment of a \$2.00 fee on motor vehicle insurance policies. Statute states 50% of each fee collected may be appropriated only to the authority. Currently ABTPA is appropriated \$14.9 million annually. The agency is including a 10% reduction schedule in its request for the ABTPA program. The reduction schedules are prepared in 5% increments, and it is anticipated that each of the 5% reductions will impact grant funding.

LAR SUBMISSION TIMELINE



FY 2018-19 Estimated Revenue Collections by Fund

TxDMV is a net revenue-generating agency for the state, collecting revenues from registrations, licenses, titles, permits, and credentials for deposit into the State Highway Fund (Fund 0006), the primary source of funding for the state’s transportation and infrastructure system, and for deposit into the General Revenue Fund (Fund 0001). Effective September 1, 2016, TxDMV will begin depositing revenue into a new agency fund recreated by the 84th Legislature, the TxDMV Fund (0010). The agency collects significantly more revenue than its budget. For every \$1 the agency spends, it collects nearly \$12 in revenue.

TxDMV established a processing and handling fee (P&H) of \$4.75 in FY 2017. The table below reflects the impact to revenues for the five year period beginning in FY 2017, using moderate growth projections and implementation of P&H fee. For the FY 2018-19 biennium, TxDMV estimates it will collect approximately \$3.86 billion in total revenues: \$3.31 billion in the State Highway Fund 0006, \$212 million in General Revenue Fund 0001 and \$338 million in TxDMV Fund 0010. Revenue generated in General Revenue Fund 0001 remains fairly constant while revenue deposits in the State Highway Fund 0006 increase approximately \$47 million annually with the implementation of a P&H fee. In addition, TxDMV Fund 0010 revenue collections are projected to increase annually from natural growth and the P&H fee.

Estimated Revenue Collections					
Fund Type	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
State Highway Fund 0006	\$ 1,588,454,000	\$ 1,638,652,000	\$ 1,672,723,000	\$ 1,708,616,000	\$ 1,744,224,000
TxDMV Fund 0010	\$ 149,793,685	\$ 167,685,385	\$ 170,898,420	\$ 174,240,314	\$ 177,490,658
General Revenue Fund 0001	\$ 105,225,000	\$ 105,866,000	\$ 106,535,000	\$ 107,678,000	\$ 108,368,000
Total	\$ 1,843,472,685	\$ 1,912,203,385	\$ 1,950,156,420	\$ 1,990,534,314	\$ 2,030,082,658

FY 2018-19 Baseline Budget Appropriations Request by Strategy

The following table illustrates the estimated baseline budget appropriations by strategy. The baseline represents the amount of money necessary to maintain existing operations across the agency. TxDMV staff anticipates that the Legislative Budget Board (LBB) will approve the target for FY 2018-19 by late July. The table below reflects the budget request with the P&H fee implemented; decrease in the automation capital; and increases associated with TxOnline credit card processing fees and centralized online fulfillment.

The baseline was adjusted to reduce estimates for ACH fees that were overstated by \$233,389 in FY 2018 and \$278,088 in FY 2019. These fees are associated with increased online registrations anticipated with the implementation of the processing and handling fee (P&H). This change only impacted strategy A.1.1. (Titles, Registrations, and Plates) highlighted in yellow below.

Items of Appropriations	Appropriation			Base Request			Variance
	FY2016	FY2017	Biennial Total	FY 2018	FY 2019	Biennial Total	
Goal A. Optimize Services and Systems							
Strategy A.1.1. – Titles, Registrations, and Plates	\$ 74,020,416	\$ 73,600,156	\$ 147,620,572	\$ 85,258,128	\$ 87,487,905	\$ 172,746,033	\$ 25,125,461
Strategy A.1.2. – Vehicle Dealer Licensing	\$ 4,094,083	\$ 4,094,083	\$ 8,188,166	\$ 4,147,355	\$ 4,147,355	\$ 8,294,710	\$ 106,544
Strategy A.1.3 – Motor Carrier Permits and Credentials	\$ 7,943,892	\$ 8,793,892	\$ 16,737,784	\$ 8,488,145	\$ 8,488,145	\$ 16,976,290	\$ 238,506
Strategy A.1.4 – Technology Enhancement and Automation	\$ 26,016,149	\$ 2,583,993	\$ 28,600,142	\$ 14,435,457	\$ 2,719,379	\$ 17,154,836	\$ (11,445,306)
Strategy A.1.5 – Customer Contact Center	\$ 2,154,621	\$ 2,154,621	\$ 4,309,242	\$ 2,211,234	\$ 2,211,234	\$ 4,422,468	\$ 113,226
Total, Goal A: Optimize Services and Systems	\$ 114,229,161	\$ 91,226,745	\$ 205,455,906	\$ 114,540,319	\$ 105,054,018	\$ 219,594,337	\$ 14,138,431
Goal B. Protect the Public							
Strategy B.1.1. – Enforcement	\$ 5,370,265	\$ 5,370,265	\$ 10,740,530	\$ 5,680,758	\$ 5,630,758	\$ 11,311,516	\$570,986
Strategy B.2.1. – Automobile Theft Prevention	\$ 14,912,006	\$ 14,912,006	\$ 29,824,012	\$ 14,323,029	\$ 14,323,029	\$ 28,646,058	(\$1,177,954)
Total, Goal B: Protect the Public	\$ 20,282,271	\$ 20,282,271	\$ 40,564,542	\$ 20,003,787	\$ 19,953,787	\$ 39,957,574	(\$606,968)
Goal C. Indirect Administration							
Strategy C.1.1. – Central Administration	\$ 7,770,237	\$ 7,770,237	\$ 15,540,474	\$ 7,902,373	\$ 7,902,373	\$ 15,804,746	\$ 264,272
Strategy C.1.2. – Information Resources	\$ 23,579,214	\$ 22,135,425	\$ 45,714,639	\$ 23,002,722	\$ 23,002,721	\$ 46,005,443	\$ 290,804
Strategy C.1.3. – Other Support Services	\$ 2,319,336	\$ 3,814,023	\$ 6,133,359	\$ 3,164,953	\$ 3,264,953	\$ 6,429,906	\$ 296,547
Total, Goal C: Indirect Administration	\$ 33,668,787	\$ 33,719,685	\$ 67,388,472	\$ 34,070,048	\$ 34,170,047	\$ 68,240,095	\$ 851,623
Total Department of Motor Vehicles	\$ 168,180,219	\$ 145,228,701	\$ 313,408,920	\$ 168,614,154	\$ 159,177,852	\$ 327,792,006	\$ 14,383,086
Method of Finance							
General Revenue (GR) Fund 0001	\$ 168,180,219	\$ 14,912,006	\$ 183,092,225	\$ 14,323,029	\$ 14,323,029	\$ 28,646,058	\$ (154,446,167)
Texas Department of Motor Vehicles Fund 0010	-	\$ 130,316,695	\$ 130,316,695	\$ 154,291,125	\$ 144,854,823	\$ 299,145,948	\$ 168,829,253
Total Method of Finance	\$ 168,180,219	\$ 145,228,701	\$ 313,408,920	\$ 168,614,154	\$ 159,177,852	\$ 327,792,006	\$ 14,383,086
Full Time Equivalents (FTE)			763.0			763.0	

FY 2018-19 Baseline Budget Appropriations Request by Strategy**Key Variances from 2016/17 Appropriation****Strategy A.1.1. – Titles, Registrations, and Plates – Net increase \$25,125,461 (adjusted from \$25,636,938)**

- Increase for TxOnline Credit Card Processing Fees - \$25,062,326 (adjusted from \$25,573,803)
- Increase for Centralized Online Fulfillment - \$6,649,189
- Reduction to License Plate Production & Renewal Notices - **(\$6,263,000)**
- Legislative Salary Increase for State Employees - \$482,216
- Other adjustments – Including equalizing MyPlates expenses across the biennium -\$70,260; and transfers out to other strategies for vehicles and projected operating expenses - **(\$875,530)**

Strategy A.1.4. – Technology Enhancement and Automation **(\$11,445,306)**

- Reduction of Automation Projects - **(\$11,716,078)**
- Legislative Salary Increase for State Employees - \$84,992
- Transfer In for projected operating expenses - \$185,780

Strategy B.2.1. – Automobile Theft Prevention **(\$1,177,954)**

- Legislative Salary Increase for State Employees - \$15,632
- 4% Base Reduction – **(\$1,162,322)**

Other Strategy Adjustments (A.1.2., A.1.3., A.1.5., B.1.1., C.1.1., C.1.2. and C.1.3.)

- Legislative Salary Increase for State Employees - \$1,191,134
- Transfer In for projected and vehicles operating expenses - \$689,751

FY 2018-19 Capital Budget Project Summary Baseline

The following table illustrates FY 2018-19 Capital Budget:

Capital Budget	Biennial Appropriation	Baseline Request
	FY 2016-17	FY 2018-19
Technology Replacement and Upgrades - Regional Support for County Tax Assessor Collector Offices	\$ 11,000,000	\$ 10,025,000
Vehicles (33 replacements & 6 new)		\$ 975,000
Regional Service Center Relocation	\$ 871,500	\$ 480,300
TxDMV Automation System	\$ 16,078,201	\$ 11,716,078
Growth and Enhancement – Agency Equipment	\$ 1,898,996	\$ 1,898,996
Bull Creek Relocation	\$ 800,000	
Data Center Consolidation	\$ 16,716,655	\$ 16,716,655
Application Migration & Server Infrastructure Transformation (AMSIT)	\$ 7,353,955	
Total Capital Budget	\$ 54,719,307	\$ 41,812,029
Method of Finance		
General Revenue Fund 0001	\$ 39,833,376	
Texas Department of Motor Vehicles Fund 0010	\$ 14,885,931	\$ 41,812,029
Total Method of Finance	\$ 54,719,307	\$ 41,812,029

2018-19 Capital Budget Descriptions

County Equipment Technology Replacement and Upgrades (\$10 million) – This appropriation provides funding to deploy and maintain printers, computers, monitors, laptops, cash drawers, and printer toner deployed at county Tax Assessor/Collector (TAC) offices throughout the state. These funds also maintain connectivity between the county TAC offices and the TxDMV Registration and Titling (RTS) system, as well as connectivity throughout statewide TxDMV offices.

Vehicles (\$975,000) – The agency is requesting to replace 33 vehicles (17 in FY 2018 and 16 in FY 2019) and procure six new vehicles (3 in FY 2018 and 3 in FY 2019) during the FY 2018-19 biennium. Thirty-one of the vehicles to be replaced will be 10 years and older; two vehicles will be eight years old; and all will exceed 150k miles by August 31, 2018. The six new vehicles will be used to support field operations.

Relocation of Regional Service Centers (\$480,000) – This request provides capital funding to relocate and reconfigure one mid-size Regional Service Centers (RSC) from Texas Department of Transportation (TxDOT) facilities.

TxDMV Automation (\$11.7 million) – The TxDMV Automation develops information technology assets to improve customer services and improve access to agency programs for customers and the public. This initiative is supported by a fee of \$0.50 per registration. The agency continues to enhance and expand its technological infrastructure through multiple ongoing and new projects. TxDMV is requesting approximately \$11.7 million in the FY 2018-19 biennium to fund the following 13 automation initiatives.

Refactoring of Registration and Titling System (RTS) - implement a variety of system enhancements to various RTS components. Improving the RTS system increases the agency's support to county TACs and other business partners who use the system to provide quick, reliable and efficient motor vehicle registration and titling services on behalf of the agency.

Construction of Information Technology Data Center for TxDMV Headquarters – funding for modifications to create a data center room in a TxDMV Headquarters building. Although the plans for the proposed building provides space for a data center room it does not include modifications such as a raised floor, climate controls and other adjustments needed for a data center.

Fraud Dashboard - utilize a Cognos (a specialized software tool) reporting cube to create a dashboard to analyze patterns and trends in transactions in order to identify possible fraud using predetermined thresholds to set possible fraud alerts. The reports will be available to both agency staff and TAC offices.

Cybersecurity - provide increased levels of encryption and authentication.

Mobile Applications - create applications for consumers' personal electronic devices to enable access to TxDMV's services more conveniently.

Online Title Tracking - centralize the printing and mailing of new, replacement, and certified copies of motor vehicle titles using a single vendor providing consumers with the ability to track the status of their request online.

E-Renewal Notices and E-Reminder - reduce paper registration renewal notices by replacing them with an option to receive an electronic registration renewal notice. This results in savings to the agency as well as reducing the agency's reliance on paper based transactions and aligns with customers' increased reliance on digital communication.

Online Certified Records - provide the ability for consumers to obtain certified vehicle records online, 24/7.

Kiosks - provide safe, secure, 24/7 service availability in multiple languages to efficiently deliver various TxDMV products and services. Utilizing kiosks reduces TxDMV's need for dedicated office space and staff. Kiosks can also reduce wait times in TACs and RSCs as customers will be able to complete transactions at alternative locations.

eLICENSING Project - increase self-service capabilities. The new eLICENSING system will allow current dealer and salvage licensees and those seeking licenses for the first time to renew and/or apply online. Online transactions enables dealers to attach and upload supporting documents, track the progress of a license renewal or application online and decreases the processing time needed to approve a license renewal or application. Similar benefits also apply to consumers filing complaints, including those related to Lemon Law and warranty performance

Call Center Upgrades - upgrade agency telephone equipment allowing TxDMV's call centers to incorporate new functionality.

Commercial Vehicle Information Exchange Window (CVIEW) – upgrade the data sharing capabilities and data quality of this information database used by various state agencies to ensure commercial carrier compliance.

Enterprise Reporting – agency initiative to continue enhancements to existing reports and to create new reports to monitor and improve the performance of the agency.

External Website Renovation - update and refresh the agency's public website.

Growth and Enhancement – Agency Equipment (\$1.9 million) – This appropriation provides funding for activities that enhance or expand information resources in TxDMV individual program areas. Items included in this appropriation are computer, printer, laptop, and peripheral device replacement; telephone and communication system replacements and upgrades; and software licenses for enterprise applications.

Data Center Services (\$16.7 million) – This appropriation supports information technology infrastructure assets and functions through statutorily required participation in the State Data Center maintained by the Department of Information Resources (DIR). The Data Center Services (DCS) program enables state agencies to access data center computing as a managed service. DCS fees are based on a consumption based model with costs varying based on statewide usage of DCS services.

FY 2018-19 Preliminary Exceptional Item Requests by Order of Priority

The following table illustrates the exceptional items that will be requested by TxDMV for the FY 2018-19 biennium. Exceptional items are those desired services above the baseline request.

As noted above the exceptional item request was adjusted from the \$105 million approved by the Finance and Audit Committee in August to \$40 million due to an adjustment of \$65 million to the agency's #1 priority, TxDMV Headquarters.

Detailed information on the exceptional item is contained in Appendix A.

Division	Exceptional Items	Description	Full Time Equivalents	FY 2018	FY 2019
Agency	TxDMV HQ Relocation	Consolidated TxDMV campus that includes the Austin Regional Service Center to allow for public "one stop shopping" in Austin.	3.0	\$ -70,347,766	\$ -4,443,555
	TxDMV Headquarters Maintenance	Funding for staffing and maintenance of existing facilities. The original biennial request of \$74.8 million included funds for the purchase or construction of a new building, including land, three FTEs and estimated ongoing costs. The modified exceptional item retitled TxDMV Headquarters Maintenance now totals \$9.8 million for the biennium.	3.0	\$ 5,044,750	\$ 4,783,250
ENF/VTR	Special Investigations Unit	A newly-created group composed of experienced investigators and Field Service Representatives (FSRs) to operate as a Special Investigations Unit to implement an anti-fraud, waste and abuse program to prevent, detect, investigate and report fraud, waste and abuse. The request includes 13 FTEs, all related equipment and office supplies, and 4 vehicles.	13.0	\$ 1,091,571	\$ 831,560
MCD	CVISN	Commercial Vehicle Information and Systems Networks (CVISN) grants are available for system and roadside projects that increase safety on the roads and increase the efficiency of moving commerce on the roads. TxDMV is the lead agency for CVISN in Texas.		State \$131,250 Fed \$743,750	State \$131,250 Fed \$743,750
Total TxDMV Request			16.0	\$ 7,011,321	\$ 6,489,810

Division	Exceptional Items	Description		FY 2018	FY 2019
ABTPA	Reinstatement of 4% Base Reduction	The FY 2018-19 LAR instructions required a 4% base reduction for the FY 2018-19 biennium for all General Revenue appropriations. ABTPA is making an exceptional item request to reinstate this reduction to avoid further reduction to law enforcement agencies.		\$ 596,793	\$ 596,793
ABTPA	Grants	ABTPA will utilize the additional funds to increase the tactical size and strength of regional law enforcement programs by adding 80 law officers, along with prosecutors, and other positions to reduce motor vehicle burglary and theft. ABTPA will also purchase equipment to protect communities and motor vehicle owners against motor vehicle crime.		\$ 12,655,912	\$ 12,655,912
Total ABTPA				\$ 13,252,705	\$ 13,252,705
General Revenue Fund 0001				\$ 13,252,705	\$ 13,252,705
Texas Department of Motor Vehicles Fund 0010				\$ 6,267,571	\$ 5,746,060
Federal Funds				\$ 743,750	\$ 743,750
Total Exceptional Items			16.0	\$ 20,264,026	\$ 19,742,515

Riders

A “rider” is a legislative directive or appropriation inserted in the General Appropriations Act (GAA) following the Items of Appropriation for an agency or in the special or general provisions of the act. A rider provides direction, expansion, restriction, legislative intent, or an appropriation. A rider may be requested by an agency or may be drafted and inserted by the legislature.

For the FY 2018-19 LAR, the agency intends to request four riders to assist in its operations. Three of the riders were previously approved in the FY 2016-17 General Appropriations Act and will be requested again in FY 2018-19. In addition to the previously-approved riders, a new rider will be requested in FY 2018-19.

Riders Previously Approved in FY 2016-17 and Re-requested for FY 2018-19

- ***My Plates*** – this rider provides additional appropriations each year of the biennium for the purpose of making payments to the contract vendor for the marketing and sale of personalized license plates. The rider also allows for unexpended balances to be carried forward into the next fiscal year of the biennium for the same purposes. This rider was included in the FY 2016-17 General Appropriation Act.
- ***Federal Grants and State Matching Funds*** – this rider allows the agency to spend any unexpended balances of state match funds for federal grants from FY 2017 in FY 2018. This rider was included in the FY 2016-17 General Appropriation Act.
- ***Capital Projects—Unexpended Balance Authority*** – this rider will allow the agency to spend money appropriated for capital projects during both years of the biennium. The agency is requesting that any unexpended funds appropriated for capital projects at the end of FY 2017 be carried forward to the new biennium beginning FY 2018 for the agency’s use. This rider was included in the FY 2016-17 General Appropriation Act.

New Rider Requested for FY 2018-19

- ***Unexpended Balance Authority with the Biennium*** – this rider would allow the agency to spend any unexpended balances in appropriations between the fiscal years. This is a newly-requested rider.

Appendix A – Exceptional Item Detail

2018-19 LAR Exceptional Item Request Schedule - Modified			
Division: Finance and Administrative Services (FAS)		Division Director: Linda Flores / Ann Pierce	
Item Name: TxDMV Headquarters Maintenance		Item Priority: 1	
Strategy: C.1.3. Other Support Services		Description: Facilities Operations	
Code	Total Exceptional Item Request	Requested w/building	
		2018	2019
Objects of Expense:			
1001	Salaries	\$ 205,000	\$ 205,000
2004	Utilities	\$ 678,500	\$ 678,500
2009	Other Operating Expense	\$ 3,856,250	\$ 3,899,750
5000	Capital Expenditures	\$ 305,000	
Total, Objects of Expense		\$ 5,044,750	\$ 4,783,250
Method of Financing:			
001	General Revenue		
010	TxDMV Fund	\$ 5,044,750	\$ 4,783,250
Total, Method of Finance		\$ 5,044,750	\$ 4,783,250
Number of Full-time Equivalent Positions (FTE):			3.0
Detail on Object of Expenses and FTEs: (Included above)			
	Program Specialist VI (B23)	85,000	\$ 85,000
	Program Specialist III (B19)	65,000	\$ 65,000
	Program Specialist II (B18)	55,000	\$ 55,000
	Consumable Supplies	\$ 900	\$ 900
	Utilities	\$ 678,500	\$ 678,500
	Building		
	Capital (security and badge system)	\$ 305,000	
	Other Operating cost; training, healthcare, equipment, daily maintenance, groundkeeping, painting, window cleaning, insurance, building contingency, etc.	\$ 3,855,350	\$ 3,898,850
Subtotal, Detail on Object of Expenses and FTEs		\$ 5,044,750	\$ 4,783,250
Detail for Capital Appropriation Items: (included above)			
	Security System	\$ 155,000	
	Badge System	\$ 150,000	
Subtotal, Detail on Object of Expenses and FTEs		\$ 305,000	\$ -
Description/Justification			
<p>TxDMV is requesting \$9.8 million in TxDMV funds for staffing and maintenance of existing facilities. TxDOT currently provides TxDMV with facility, maintenance, grounds keeping, security, and a variety of other services, TxDMV is requesting 3 FTEs to provide facility and maintenance needs for existing office space. The projected employees are as follows but have the potential to be reclassified based on the agency's final needs: a contract administrator (Program Specialist VI), a space planner (Program Specialist II) and a day-to-day operations manager (Program Specialist III). These individuals perform skilled work in the maintenance, servicing, and repair of building, utility systems to include heating, ventilation, and air conditioning (HVAC) and may also involve electrical, plumbing, cabinetry, furniture, and equipment.</p>			

TxDMV Headquarters Relocation Modified

TxDMV headquarters operations are located on two campuses in central Austin – one on Jackson Avenue and one on Bull Creek Road and until recently, were both owned by TxDOT. In February 2015, TxDOT sold the Bull Creek campus which houses TxDMV's Motor Carrier Division (MCD) to Milestone Community Builders. Milestone Community Builders leased back the property to TxDOT for a period of three years, ending in February 2018. The lease back provision allows TxDMV staff to remain in the Bull Creek Campus buildings until the lease expires. In conjunction with the Texas Facilities Commission (TFC), specifications for a new location for TxDMV's MCD were developed and a request for proposal (RFP) was issued in January 2016 to relocate staff who are housed at Bull Creek.

Currently, TxDMV's headquarters staff is located in the same general area of Austin. With the sale of the Bull Creek campus, approximately 15% of the agency's headquarters staff will be geographically displaced from other headquarters operations. The agency believes that having a consolidated headquarters location is the most efficient and effective method for motor vehicle service delivery. TxDMV is aware that several options are available to facilitate headquarters consolidation. These options include purchasing an existing building, leasing an existing building or occupying an existing structure. TxDMV will continue to work with legislative leadership, the Governor's Office, TxDOT and TFC to analyze all possible options to keep the costs to the state at a minimum. Included in the legislative appropriations request is funding for additional personnel responsible for facility maintenance and services.

TxDMV is requesting \$9.8 million for maintenance costs of anticipated space utilized at the Jackson Avenue (Camp Hubbard) location and three FTEs to handle facility and maintenance needs. The ongoing costs include maintenance, grounds keeping, security, and a variety of other services. The proposed staff is subject to change: Contract administrator; space planner and a day-to day operations manager. These individuals perform skilled work in the maintenance, building repairs, utility systems to include heating, ventilation, and air conditioning (HVAC) and may also involve electrical, plumbing, cabinetry, furniture, and equipment.

2018-19 LAR Exceptional Item Request Schedule			
Division: Enforcement		Division Director: Bill Harbeson	
Item Name: Special Investigations Unit (SIU)		Item Priority:	
Strategy:	A.1.1. Titles, Registration & Plates B.1.1. Enforcement	Description: Special Investigations Unit (8 ENF FTEs, 5 VTR FTEs, 4 vehicles)	
Code	Total Exceptional Item Request	Requested	
		2018	2019
Objects of Expense:			
1001	Salaries	\$ 732,270	\$ 732,270
1002	Other Personnel Costs	\$ 1,241	\$ 1,241
2001	Professional Fees & Services	\$ 4,950	\$ 4,950
2002	Fuels and Lubricants	\$ 6,000	\$ 6,000
2003	Consumable Supplies	\$ 1,700	\$ 1,700
2004	Utilities	\$ 8,405	\$ 6,379
2005	Travel	\$ 46,820	\$ 48,070
2009	Other Operating Expense (includes law enforcement supplies for Investigators)	\$ 155,045	\$ 30,950
5000	Capital Expenditures (vehicles and THP radios)	\$ 135,140	
Total, Objects of Expense		\$ 1,091,571	\$ 831,560
Method of Financing:			
010	TxDMV Fund	\$ 1,091,571	\$ 831,560
Total, Method of Finance		\$ 1,091,571	\$ 831,560
Number of Full-time Equivalent Positions (FTE):		13.0	13.0
Detail for Capital Appropriation Items: (included above)			
5005	Acquisition of Information Resources Technologies	\$ 22,100	
5006	Transportation Items (4 vehicles @ \$25,000 each)	\$ 100,000	
5007	Acquisition of Capital Equipment (THP Radios)	\$ 35,140	
Total, Capital Appropriation Items		\$ 157,240	\$ -
Detail on Object of Expenses and FTEs: (Included above)			
	Chief Investigator VI (1 @ \$5,670/month) Austin	\$ 68,047	\$ 68,047
	Investigator V (4 @ \$4,695/month) (one each in Dallas/Fort Worth, San Antonio, El Paso and Houston)	\$ 237,892	\$ 237,892
	Program Spec IV (1 @ \$4,695/ month)	\$ 59,473	\$ 59,473
	Admin Assistant III (1 @ \$2,926/month)	\$ 35,118	\$ 35,118
	Attorney IV (1 @ \$6,970/month)	\$ 83,640	\$ 83,640
	Program Specialists III (5 FTE @ \$4,135/month Field Service Representatives)	\$ 248,100	\$ 248,100

Special Investigations Unit

TxDMV management requested an advisory service through TxDMV's Internal Audit Division who identified examples of industry best practices to combat fraud. In response to the advisory service report, the agency created an Anti- Fraud, Waste and Abuse Working Group. The agency determined that creating a Special Investigations Unit (SIU) would be an effective deterrent to reduce motor vehicle-related fraud. The following categories of criminal activity pose a threat to legitimate Texas businesses and to the public at large:

- Title fraud by dealers, individuals and title services;
- Odometer fraud;
- Theft of sales tax, title, registration and other fees by title services, dealers and individuals by fraud and other means;
- Drivers Privacy Protection Act (DPPA) Violations;
- Unlicensed sale of motor vehicles ("curb stoning");
- Unlicensed operation as motor carrier;
- Unlicensed operation as a household goods movers;
- Household goods moving fraud;
- Counterfeit of plates and temporary tags; and
- Misuse of farm, military, and other plates.

The agency is requesting funds through an exceptional item to create a SIU, including an additional 13 FTEs, four vehicles, travel and related expenses. This unit will include staff in two different divisions, Vehicle Titles and Registrations (VTR) and Enforcement (ENF), to identify, address and reduce fraud. The VTR SIU staff will be comprised of five additional Field Service Representatives (FSRs) who will focus on fraudulent activities in the agency's Regional Service Centers (RSCs) and in 254 Tax Assessor/Collector offices including their authorized deputies. ENF is requesting eight additional staff for the SIU comprised of an attorney, five investigators, a program specialist and an administrative assistant who will focus on fraudulent activities in new and used dealerships, salvage dealers, household goods movers, commercial fleet carriers, oversize/overweight loads, etc. Combined, the SIU will have a staff of 13 FTEs who will focus on combating fraud across the state and across industries in order to ensure compliance with Texas' laws and maximize the collection of state revenue.

2018-19 LAR Exceptional Item Request Schedule			
Division: Motor Carrier		Division Director: Jimmy Archer	
Item Name: CVISN		Item Priority:	
Strategy:	A.1.3.	Description: Motor Carrier Permits and Credentials	
Code	Total Exceptional Item Request	Requested	
		2018	2019
2001	Objects of Expense: Professional Fees & Services	\$ 875,000	\$ 875,000
	Total, Objects of Expense	\$ 875,000	\$ 875,000
010 8082	Method of Financing: TxDMV Fund	\$ 131,250	\$ 131,250
	Federal Reimbursements	\$ 743,750	\$ 743,750
	Total, Method of Finance	\$ 875,000	\$ 875,000

Commercial Vehicle Information and Systems Network (CVISN) Projects

CVISN is a key component of the Federal Motor Carrier Safety Administration’s (FMCSA) drive to improve commercial motor vehicle safety. The CVISN program supports FMCSA’s goals of focusing safety enforcement on high-risk operators; integrating systems to improve the accuracy, integrity and verifiability of credentials; improving efficiency through electronic screening of commercial vehicles; and enabling online application and issuance of credentials. TxDMV is committed to making Texas’ roadways the safest for the motoring public. The agency is requesting funds through an exceptional items for state match to drawn down federal grant dollars to fund safety enhancements to Texas roadways, at a 15% state and 85% federal reimbursement split.

CVISN grants can be used for system and roadside projects that increase safety on the roads and increase the efficiency of moving commerce on the roads. The Texas CVISN Working Group and Steering Committee determine what projects the state will finance with CVISN grants. The TxDMV is the lead agency for CVISN in Texas. CVISN will be renamed to Innovative Technology Deployment (ITD) in 2017. The CVISN or ITD grants will no longer have limits and will only require a 15 percent match by the state. An estimated \$1,750,000 will be needed for the FY 2018-19 biennium. The CVISN Working Group and Steering Committee have worked since late 2015 on the following project list to pursue in the next CVISN (ITD) grant application (2017), with a decision scheduled in July 2016.

Projects include (in order of priority):

1. An automation project to provide permit data from TxDMV's size and weight permitting system in a manner that TxDPS or other law enforcement agencies can use in the electronic screening of vehicles on the roadside. TxDMV's Size and Weight Program also is looking at using TxVIEW web services to identify Out of Service (OOS) carriers that get size and weight permits and then notify enforcement. One year's size and weight data showed 341 permits issued to carriers OOS for safety reasons and 593 OOS for failing to update their data in the federal Motor Carrier Management Information System (MCMIS). TxDMV is considering asking for legislative authority to deny permits to OOS vehicles. No cost estimate at this time.
2. Upgrade TxDPS inspection stations to identify unsafe trucks by adding thermal imaging that checks for bad wheels, hubs, and exhausts. Other states have seen great gains in faster screening and catching brake problems. Estimated cost is \$780,000.
3. An automation project so that CPA can use CVIEW to complete International Registration Plan (IRP) information needed to issue International Fuel Tax Agreement (IFTA) registrations instead of providing more than 60 IRP logins to TxCPA. CPA is considering changing its day trip licenses for carriers leaving the state five or fewer times a year (IFTA not needed in these cases) from cashier checks in the truck cabs to having the carriers order on line. This data would then be pushed to the CVIEW. The current system is subject to fraud. No cost estimate at this time.
4. An automation project to modify TxDMV's Registration and Titling System (RTS) to check for OOS vehicles before issuing trip permits or registration (TxDMV is required to do this by statute). Estimated cost is \$950,000.

2018-19 LAR Exceptional Item Request Schedule			
Division: Automobile Burglary and Theft Prevention Authority		Division Director: Bryan Wilson	
Item Name: Reinstatement of 4% Reduction		Item Priority:	
Strategy: B.2.1. ABTPA		Description: Request to Reinstate 4% Reduction	
Code	Total Exceptional Item Request	Requested	
		2018	2019
4000	Objects of Expense:		
	Grants	\$ 596,793	\$ 596,793
	Total, Objects of Expense	\$ 596,793	\$ 596,793
010	Method of Financing:		
	General Revenue	\$ 596,793	\$ 596,793
	Total, Method of Finance	\$ 596,793	\$ 596,793

Automobile Burglary and Theft Prevention Authority (ABTPA)

ABTPA is requesting that the 4% biennial reduction (required for the FY 2018-19 LAR for all GR-funded programs) be reinstated to prevent additional loss of grant-funded motor vehicle burglary and theft-related law enforcement positions.

2018-19 LAR Exceptional Item Request Schedule			
Division: Automobile Burglary and Theft Prevention Authority		Division Director: Bryan Wilson	
Item Name: Additional ABTPA Funding		Item Priority:	
Strategy:	B.2.1. ABTPA	Description: Grants for enhanced law enforcement and hardened communities	
Code	Total Exceptional Item Request	Requested	
		2018	2019
4000	Objects of Expense:		
	Grants	\$ 12,655,912	\$ 12,655,912
	Total, Objects of Expense	\$ 12,655,912	\$ 12,655,912
001	Method of Financing:		
	General Revenue	\$ 12,655,912	\$ 12,655,912
	Total, Method of Finance	\$ 12,655,912	\$ 12,655,912
Detail on Object of Expenses and FTEs: (Included above)			
	Grants	\$ 12,655,912	\$ 12,655,912

Automobile Burglary and Theft Prevention Authority (ABTPA)

The ABTPA will use the additional funds to increase the tactical size and strength of regional law enforcement programs and to protect communities and motor vehicle owners against motor vehicle crime. More officers will be added to existing programs and increased law enforcement coverage will be expanded to high crime areas not currently served. The plan calls for adding staff for crime analysis and conducting vehicle identification number (VIN) inspections. Currently more than 100 counties do not have reasonable access to trained law enforcement personnel who can conduct VIN inspections. The new crime analysts will use data analysis and other methods to deter criminals and to interrupt criminal economic enterprises.

A portion of the funds will be used to protect communities and motor vehicle owners by providing education on how to avoid becoming a victim. The ABTPA will target specific high crime communities and neighborhoods to reduce motor vehicle burglary and theft. Using various technologies like car data port devices, tracking technology, and web and smart phone applications, the ABTPA will protect these communities and motorists against auto crimes.



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

FY 2016 Financial Summary for the 3rd Quarter ending May 31, 2016

Finance and Administrative Services Division

August 4, 2016

3rd Quarter FY 2016 Financial Status Highlights

Revenues:

Year-to-date revenue collections increased 1.1% or \$14.1 million over the same period last year.

The largest source of this increase is attributed to registration revenue as the number of registered vehicles continues to rise in FY 2016. Revenue increases were offset by decreases in Oversize/Overweight revenue as a result of fewer permits and a slump in the oil market. The remaining revenue categories of title revenue, business dealer license revenue, collections associated with federal interstate or international commerce (Unified Carrier Registration fees), intrastate motor carrier applications and credentialing fees are flat verses year-to-date fiscal year 2015.

Expenditures:

Year-to-date expenditures through May 31, 2016 total \$88,941,061. The significant expenditure categories are detailed below:

Salaries (\$28.4 million) – As of May 31, 2016, there were 714 filled positions and 49 vacancies.

Purchased Contract Services (\$21.0 million) – This line item includes Huntsville license plate production (\$15.1 million); Special License Plate Fees - Rider 3, (\$2.7 million); and registration renewal and specialty plate mailing (\$3.2 million).

Professional Fees (\$13.9 million) – The majority of these expenses are Data Center Services (DCS) (\$5.7 million) and Automation (\$5.5 million), Information Technology staff augmentation & TxDOT DCS (\$1.5 million), and CVISN (\$398,000).

Postage (\$6.7 million) – Print Mail Pro postage permit for registration renewal mailings.

Reproduction & Printing (\$3.4 million) – Printing of titles (\$1.8 million), title paper, envelopes, and registration inserts (\$1.4 million).

Encumbrance Summary:

As of May 31, 2016, encumbrances total \$55.3 million. The majority of the encumbrances (95%) are in Capital, primarily for the refactoring of the Registration and Titling System (RTS), E-Licensing system (formerly replacement of the Licensing, Administration, Consumer Affairs and Enforcement or LACE), and Application Migration and Server Infrastructure Transformation (AMSIT); Vehicle Titles and Registration (VTR) for postage and registration decals; Finance and Administrative Services (FAS) for the production of license plates; and Automobile Burglary and Theft Prevention Authority (ABTPA) for grants.

Details of the larger encumbrances by budget category are as follows:

Professional Fees and Services (\$24.1 million) – Automation (\$17.5 million, primarily RTS Refactoring and E-Licensing), and DCS (\$3.4 million). Also included are encumbrances for project services to implement the AMSIT project (\$1.4 million), which will separate TxDMV applications and related information technology infrastructure components from the TxDOT network. The remainder is attributable to various items including staff augmentation and TxDOT DCS.

Purchased Contract Services (\$10.2 million) – Includes license plates production (\$8.0 million) and imaging of registration and title documents (\$1.7 million).

Maintenance and Repair (\$5.6 million) – Software maintenance related to RTS refactoring.

Reproduction and Printing (\$2.4 million) – Printing of titles, registrations & envelopes.

Grants (\$8.7 million) – ABTPA grants.

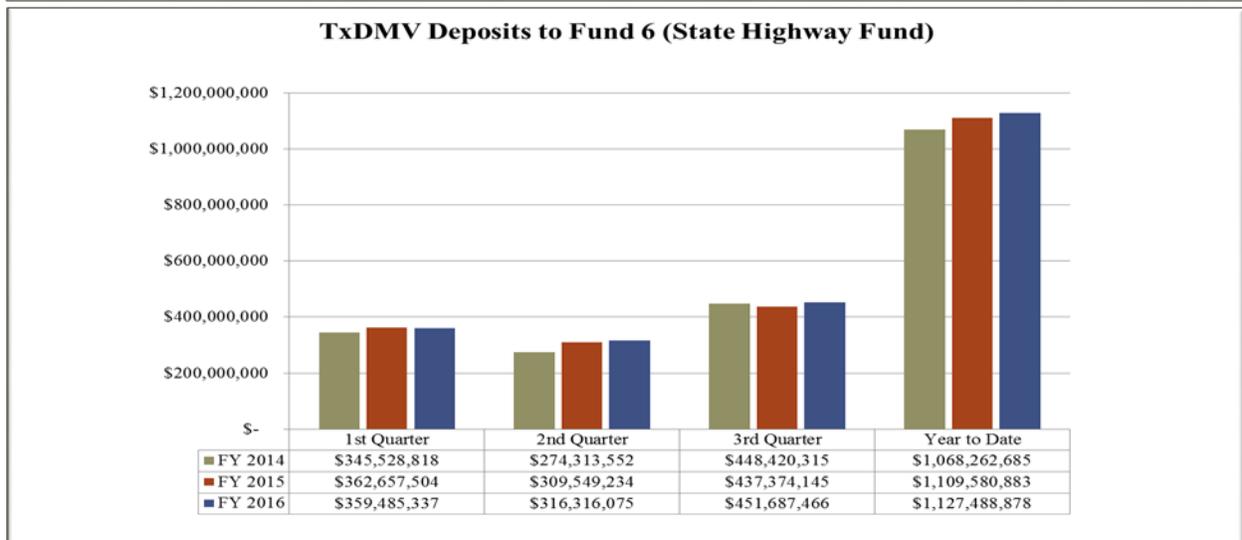
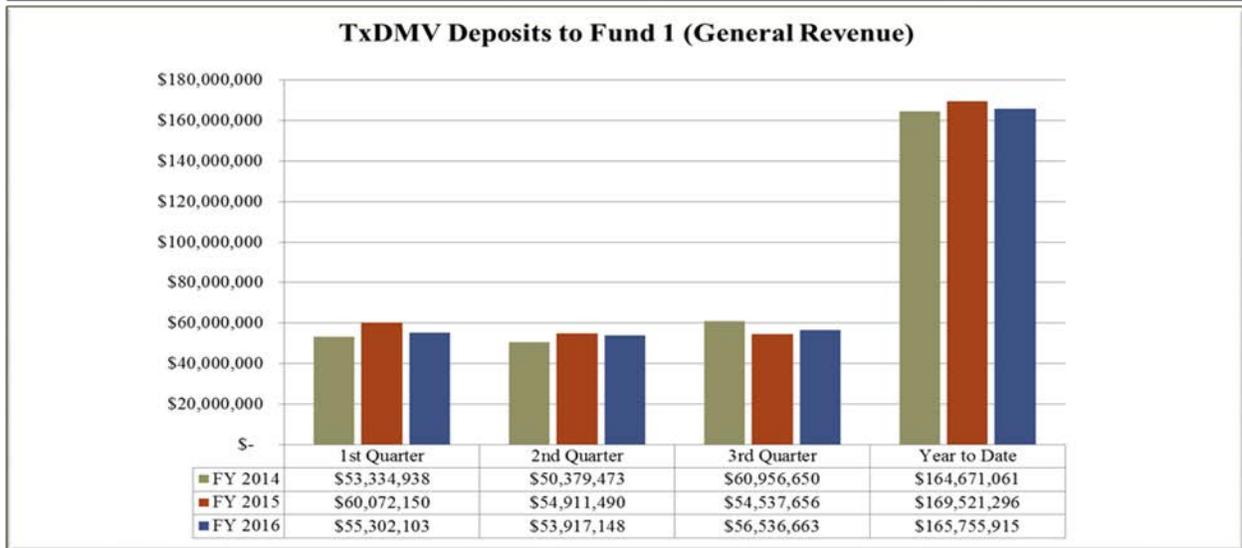
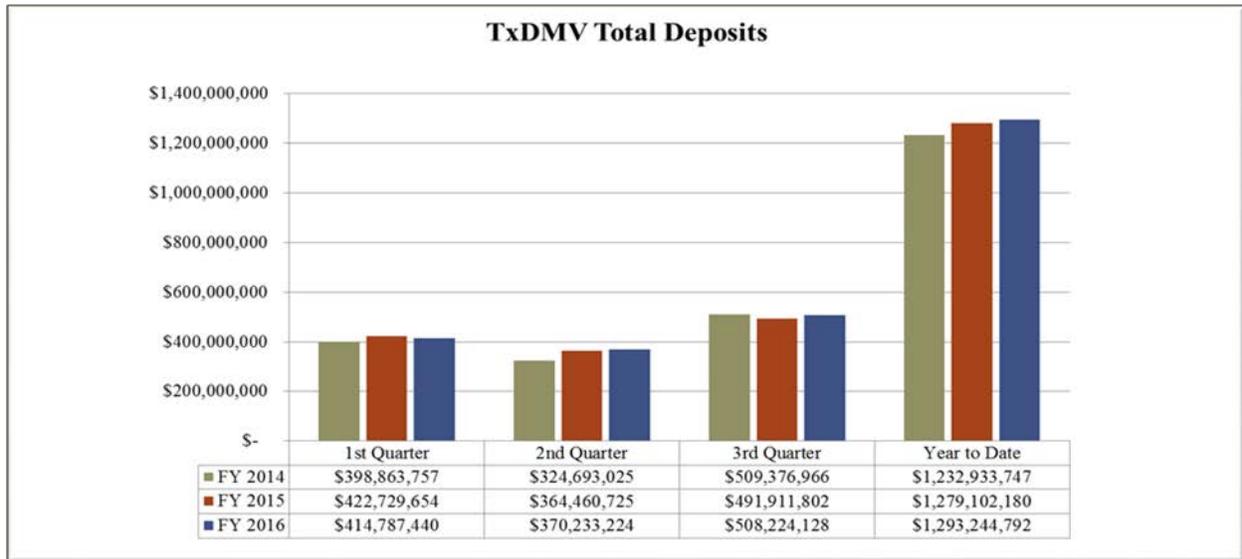
Comparison of Fiscal Year 2016 to Prior Year:

Expenditures for fiscal year 2016 are 3.5% lower than those in the same period last year due to the timing of the purchase of motor vehicle registration sticker decals and ABTPA grant reimbursements.

Encumbrances are 46.1% higher than this time last year primarily due to increased encumbrances for DCS and license plate production.

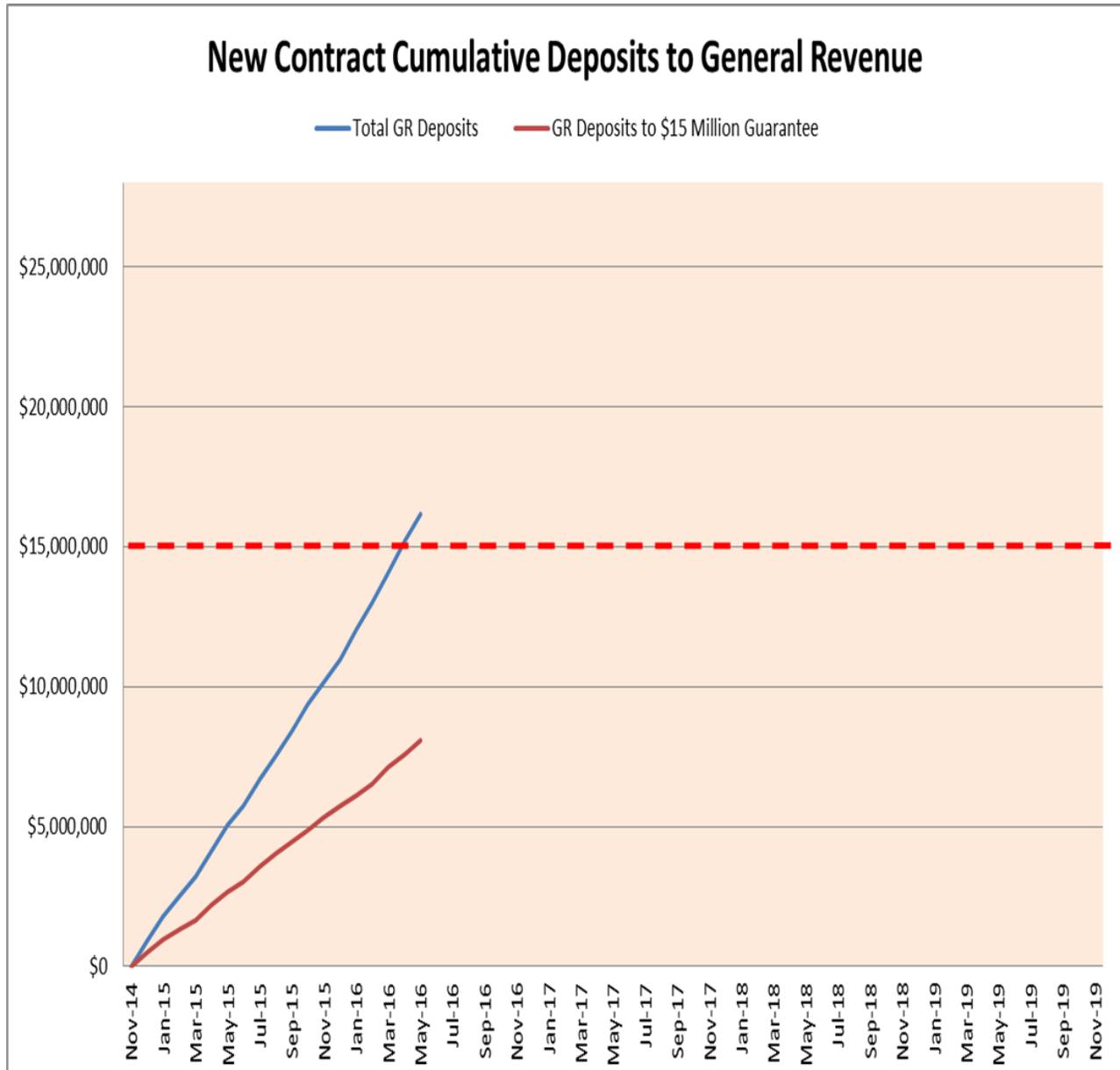
3rd Quarter FY 2016 Financial Status Highlights

TxDMV Deposits to Fund 1 & Fund 6



3rd Quarter FY 2016 Financial Status Highlights

MyPlates Analysis New Contract Revenue and Guarantee Status



Snapshot at 05/31/16	Total
New Contract Cumulative Deposits to General Revenue*	\$16,155,169
New Order Deposits to General Revenue	\$7,639,369
Renewal Deposits to General Revenue	\$8,515,799
General Revenue Deposits Counted Toward \$15 Million Guarantee ¹	\$8,065,159

* Figures exclude refund data and are subject to minimal revision.

¹ – GR revenue from the sale of new plates and 5% of renewal plate revenue shall count toward the guarantee.

3rd Quarter FY 2016 Financial Status Highlights

Statement of Revenues and Expenditures through May 31, 2016

Revenues:	Projected Revenue	1Q Sep - Nov	2Q Dec - Feb	3Q Mar - May	YTD Revenues
Motor Vehicle Certificates	\$ 57,958,864	\$ 19,351,920	\$ 19,020,758	\$ 22,699,733	\$ 61,072,411
Motor Vehicle Registration Fees	\$ 1,078,147,644	\$ 349,507,999	\$ 307,196,429	\$ 445,351,691	\$ 1,102,056,119
Motor Carrier - Oversize / Overweight	\$ 128,705,732	\$ 39,214,121	\$ 38,145,730	\$ 36,700,874	\$ 114,060,725
Commercial Transportation Fees *	\$ 5,054,047	\$ 3,255,514	\$ 2,518,563	\$ (419,719)	\$ 5,354,358
Motor Vehicle Business Licenses	\$ 5,502,757	\$ 1,657,698	\$ 1,803,863	\$ 2,025,209	\$ 5,486,770
Miscellaneous Revenue	\$ 5,280,525	\$ 1,800,188	\$ 1,547,881	\$ 1,866,340	\$ 5,214,409
Total DMV Revenue	\$ 1,280,649,570	\$ 414,787,440	\$ 370,233,224	\$ 508,224,128	\$ 1,293,244,792

Expenditures:	2016 Approved Adjusted Budget	1Q Sep - Nov	2Q Dec - Feb	3Q Mar - May	YTD Expenditures	FY 2016 Available Budget	FY 2016 Encumbrances	FY 2016 Available Budget
Salaries and Wages	\$ 40,714,100	\$ 9,473,469	\$ 9,450,451	\$ 9,445,082	\$ 28,369,002	\$ 12,345,098	\$ -	\$ 12,345,098
Benefit Replacement Pay	\$ 114,563	\$ 11,121	\$ 71,679	\$ 19,273	\$ 102,073	\$ 12,490	\$ -	\$ 12,490
Other Personnel Costs	\$ 1,231,096	\$ 293,556	\$ 324,005	\$ 347,124	\$ 964,685	\$ 266,411	\$ -	\$ 266,411
Professional Fees and Services	\$ 56,382,123	\$ 2,671,678	\$ 5,658,671	\$ 5,551,224	\$ 13,881,573	\$ 42,500,550	\$ 24,060,193	\$ 18,440,357
Fuels & Lubricants	\$ 108,213	\$ 7,090	\$ 8,469	\$ 9,664	\$ 25,223	\$ 82,990	\$ 34,242	\$ 48,748
Consumable Supplies	\$ 1,206,355	\$ 246,901	\$ 161,617	\$ 360,941	\$ 769,459	\$ 436,896	\$ 64,201	\$ 372,695
Utilities	\$ 5,257,103	\$ 725,964	\$ 698,322	\$ 1,150,673	\$ 2,574,959	\$ 2,682,144	\$ 488,875	\$ 2,193,269
Travel In-State	\$ 425,706	\$ 52,883	\$ 54,522	\$ 85,553	\$ 192,958	\$ 232,748	\$ -	\$ 232,748
Travel Out-of-State	\$ 73,876	\$ 8,879	\$ 2,968	\$ 21,734	\$ 33,581	\$ 40,296	\$ -	\$ 40,296
Rent - Building	\$ 913,847	\$ 203,698	\$ 159,724	\$ 166,170	\$ 529,592	\$ 384,255	\$ 124,992	\$ 259,263
Rent - Machine and Other	\$ 337,503	\$ 50,651	\$ 76,646	\$ 67,243	\$ 194,540	\$ 142,963	\$ 119,289	\$ 23,673
Advertising & Promotion	\$ 504,003	\$ 13,881	\$ 9,252	\$ 17,530	\$ 40,663	\$ 463,341	\$ 84,253	\$ 379,088
Purchased Contract Services	\$ 36,216,936	\$ 4,569,375	\$ 7,543,118	\$ 8,929,741	\$ 21,042,234	\$ 15,174,702	\$ 10,244,162	\$ 4,930,541
Computer Equipment Software	\$ 1,065,661	\$ 220,556	\$ 139,093	\$ 326,139	\$ 685,788	\$ 379,873	\$ 266,665	\$ 113,208
Fees & Other Charges	\$ 1,257,004	\$ 241,080	\$ 268,270	\$ 276,046	\$ 785,396	\$ 471,608	\$ 320,794	\$ 150,814
Freight	\$ 1,168,784	\$ 166,990	\$ 160,710	\$ 235,004	\$ 562,704	\$ 606,081	\$ 259,283	\$ 346,798
Maintenance & Repair	\$ 9,458,350	\$ 341,746	\$ 543,239	\$ 1,232,837	\$ 2,117,822	\$ 7,340,528	\$ 5,618,212	\$ 1,722,317
Memberships & Training	\$ 397,198	\$ 81,443	\$ 22,959	\$ 51,309	\$ 155,711	\$ 241,487	\$ 34,324	\$ 207,163
Other Expenses	\$ 3,628,150	\$ 36,239	\$ 91,728	\$ 62,586	\$ 190,553	\$ 3,437,597	\$ 50,764	\$ 3,386,832
Postage	\$ 9,575,565	\$ 2,234,537	\$ 1,944,032	\$ 2,536,573	\$ 6,715,142	\$ 2,860,422	\$ 1,915,473	\$ 944,949
Reproduction & Printing	\$ 6,316,268	\$ 1,006,917	\$ 1,209,758	\$ 1,185,337	\$ 3,402,012	\$ 2,914,256	\$ 2,359,175	\$ 555,080
Services	\$ 1,295,663	\$ 140,620	\$ 161,971	\$ 242,526	\$ 545,117	\$ 750,545	\$ 556,934	\$ 193,612
Grants	\$ 13,939,820	\$ -	\$ 1,255,217	\$ 3,694,818	\$ 4,950,035	\$ 8,989,785	\$ 8,698,165	\$ 291,620
Other Capital	\$ 4,575,048	\$ -	\$ 102,880	\$ 7,359	\$ 110,239	\$ 4,464,809	\$ 600	\$ 4,464,209
Total	\$ 196,162,934	\$ 22,799,274	\$ 30,119,301	\$ 36,022,486	\$ 88,941,061	\$ 107,221,873	\$ 55,300,596	\$ 51,921,277

YTD May Net Surplus (Deficit) \$ 1,204,303,731

Budget Adjustments

Adjusted Automation UB	\$ (2,828,000) (1)
Adjustment to 2.5% Salary Increase Estimate	\$ (105,294) (2)
Adjustment to Benefit Replacement Pay (BRP)	\$ (6,623) (2)
Total adjustment to original approved budget of \$198.9 million	\$ (2,939,917)

1) Unexpended balance amount adjusted to reflect payments for the RTS project that were expected to be paid in 2016 funds; however, the payments were processed at the end of 2015.
 (2) The amounts for these items were estimates, adjustments were made to reflect the actual amount budgeted.

Comparison to Prior Year	Adjusted Fiscal Year 2015	Adjusted Fiscal Year 2016	Percent Change
Approved Adjusted Budget	\$ 171,370,297	\$ 196,162,934	14.47%
Year-to-Date Expenditures	\$ 92,143,072	\$ 88,941,061	-3.48%
Available Budget	\$ 79,227,225	\$ 107,221,873	35.33%
Encumbrances	\$ 38,195,764	\$ 55,300,596	44.78%
Available Budget	\$ 41,031,461	\$ 51,921,274	26.54%

* In November of FY 16, a Unified Carrier Registration (UCR) deposit in the amount of \$ 1.4 million was incorrectly coded by the Comptroller's automated lockbox processing. This resulted in an over reporting of commercial transportation fees in the Month of November FY 16. In April FY 16, a manual correction was made and the \$1.4 million was moved into a special fund that is used to pay invoices received from the Indiana National Unified Carrier Registration Depository. The correction, combined with a partial reporting period, makes the commercial transportation category appear negative in this financial summary. Although the reporting period in this summary appears negative, compared to FY 15 commercial transportation fees are up 1.5% YTD in FY 16.

3rd Quarter FY 2016 Financial Status Highlights

Capital Project Status

Technology Replacements and Upgrades - County Support

This project consists of funding to deploy and maintain printers, computers, monitors, laptops, cash drawers, etc. utilized at county Tax Assessor/Collector offices throughout the state. A major initiative in FY 2016 will be a refresh of technology at the county offices; this initiative was formally approved by the Governance Team as a project and a project manager has been appointed for the project. The technology refresh project will begin in FY 2016 and continue into FY 2017.

TxDMV Automation System

The TxDMV capital project provides for the continued development of information technology assets to improve customer services and improve access to agency programs for customers and the public.

The majority of the Automation expenditures are for the Registration and Titling System (RTS) Refactoring Project, which is estimated to be \$27.0 million at year end. The Point of Sale (POS) component has been implemented in all 254 counties and the migration of RTS off the mainframe onto DCS-based servers was completed in November 2016. The overall schedule for the project has been updated and work has begun for the impact of the new Process and Handling (P&H) fee on the RTS.

A purchase order in the amount of \$4.3 million for FY 2016 was issued to Deloitte for the Licensing, Administration, Consumer Affairs, and Enforcement (LACE) System Replacement, which is now known as the E-Licensing Project. Funding in 2016 will also provide for the independent verification & validation (IV&V) contract for the E-Licensing Project.

The Web Dealer Project is continuing with dealer implementation and enhancement testing. The modules implemented to date include New Vehicles, Used Vehicles, and Commercial Fleet. The next phase to be completed is the Salvage module, which is scheduled to be completed in July 2016. Adjustments are also being made for the impact to Web Dealer from the implementation of the TxDMV Fund and the new Process and Handling (P&H) fee.

The second phase of single sticker continues this fiscal year. The Automation funding for this project is \$1.2 million, with the majority of that cost to be utilized for the TxDMV International Registration Plan (IRP) system upgrade, which will implement an automated inspection process to replace the manual verification process for commercial fleet services.

Growth and Enhancement – Agency Operations Support

This budget provides funds to acquire hardware/software to support agency operations. Expenditures and encumbrances to date include costs for miscellaneous computer equipment, computer monitors, and security software. Encumbrances and pre-encumbrances are for miscellaneous computer equipment, laptop and desktop computers, cabling services, and generator installation.

Commercial Vehicle Information Systems and Networks (CVISN) Grant

The Commercial Vehicle Information Systems and Networks (CVISN) is a federal grant that focuses on safety enforcement on high-risk operators; integrating systems to improve the accuracy, integrity, and verifiability of credentials; improving efficiency through electronic screening and enabling online application and issuance of credentials. \$1.1 million was carry forwarded from FY 2015 to FY 2016. The Motor Carrier Division (MCD) works with three other state agencies – Texas Department of Transportation (TxDOT), Texas Department of Public Safety (DPS), and State Comptroller – to implement the grant, with expenditures planned for TxCVIEW maintenance and core augmentation, the ABC Warning Project, and travel. As of the end of May 2016 \$435,000 is encumbered for TxDOT services for the ABC Warning Project and \$2,000 is encumbered for work performed by the Southwest Research Institute (SwRI).

Data Center Services

The Data Center Services (DCS) program enables state agencies to access data center computing as a managed service. State agencies are billed for the amount of services consumed. Expenditures totaled \$5.7 million through the end of May. The year-to-date total reflects charges through April 2016 services. Total projected DCS charges for FY 2016 are projected to come in below the overall total budget. The total DCS budget of \$9.8 million does not include the projected \$1.5 million payment to TxDOT for DCS charges, which will be paid from IT Operating in FY 2016.

Relocation of Regional Service Centers

This project provides funding in FY 2016 for the relocation of Regional Service Centers from TxDOT facilities. There are no expenditures to date; \$30,000 has been encumbered for cabling services related to relocations. TxDMV staff completed work with Texas Facilities Commission (TFC) on stakeholder feedback and preliminary space planning and specifications have been submitted to TFC. The Regional Service Centers at San Antonio, Pharr, and Corpus Christi have been identified as the facilities to be relocated. Requests for Proposal (RFP) deadlines closed in March for all of the facilities, and proposals were received for San Antonio and Corpus Christi; no proposals were submitted for Pharr. A site visit was conducted for the one proposal in San Antonio, but the property was determined to not meet TxDMV needs. TFC engaged the services of a realty company to assist with property searches for Pharr and San Antonio, and the Aquila firm provided property lists for both locations that are under review. The property submitted for Corpus Christi has been determined to be suitable for TxDMV needs and a contract for lease space was submitted to the TxDMV Board at the June 2016 meeting.

Application Migration & Server Infrastructure Transformation (AMSIT)

The Application Migration and Server Infrastructure Transformation project will identify shared assets, applications, and servers to be relocated from their current position to satisfy the goal of establishing a standalone agency environment. Although this project is related to Automation, it is a separate capital project. Funds have been encumbered for project management, software implementation, and a \$1.1 million purchase order was issued in February 2016 for project services, with the remaining balance of \$5.8 million to be used for future project costs.

3rd Quarter FY 2016 Financial Status Highlights

Statement of Capital Project Expenditures through May 31, 2016

Capital Projects	2016 Approved Adjusted Budget	2016			FY 2016 YTD Expenditures	FY 2016 Available Budget	FY 2016 Encumbrances	FY 2016 Available Budget
		1Q Sep - Nov	2Q Dec - Feb	3Q Mar - May				
Application Migration & Server Transformation (AMSIT)	\$ 7,353,955	\$ 18,868	\$ -	\$ 105,510	\$ 124,378	\$ 7,229,577	\$ 1,398,012	\$ 5,831,565
Commerical Vehicle Information Systems & Network (CVISN)	\$ 1,078,944	\$ 65,032	\$ 149,045	\$ 184,906	\$ 398,983	\$ 679,961	\$ 437,208	\$ 242,753
Data Center Consolidations	\$ 9,080,222	\$ 1,483,313	\$ 2,682,555	\$ 1,531,362	\$ 5,697,230	\$ 3,382,992	\$ 3,382,992	\$ -
Growth & Enhancements - Agency Operations Support	\$ 949,498	\$ 92,464	\$ 47,046	\$ 156,610	\$ 296,120	\$ 653,378	\$ 345,682	\$ 307,697
Technology Replacement & Upgrades - County Support	\$ 5,500,000	\$ 410,012	\$ 216,332	\$ 471,001	\$ 1,097,345	\$ 4,402,655	\$ 668,672	\$ 3,733,983
TXDMV Automation System Project	\$ 41,980,422	\$ 686,604	\$ 2,383,417	\$ 3,998,133	\$ 7,068,154	\$ 34,912,268	\$ 22,148,754	\$ 12,763,514
Regional Office Relocation	\$ 871,500	\$ -	\$ -	\$ -	\$ -	\$ 871,500	\$ 30,000	\$ 841,500
Total	\$ 66,814,541	\$ 2,737,425	\$ 5,497,263	\$ 6,447,522	\$ 14,682,210	\$ 52,132,331	\$ 28,411,319	\$ 23,721,011

Statement of TxDMV Automation Project Expenditures through May 31, 2016

<u>TxDMV Automation Project Appropriations:</u>	<u>FY 2016</u>
Original Estimated Unexpended Balance Carry-Forward from FY 2015	\$ 28,730,221
Unexpended Balance Adjustments	\$ (2,828,000)
Fiscal Year 2016 Appropriation	\$ 16,078,201
Total Automation Appropriations	\$ 41,980,422

TxDMV Automation	2016 Approved Adjusted Budget	2016			2016 YTD Expenditures	2016 YTD Encumbrances	Available Budget
		1Q Sep - Nov	2Q Dec - Feb	3Q Mar - May			
813003 HQ Communication Infrastructure	\$ 433,934	\$ 60,355	\$ 258,437	\$ 16,148	\$ 334,940	\$ 12,359	\$ 86,635
813010 RTS Refactoring	\$ 27,012,027	\$ 440,652	\$ 1,587,161	\$ 2,839,920	\$ 4,867,733	\$ 16,133,295	\$ 6,010,999
813013 RTS Data Purification/Name Address	\$ 130,000	\$ 11,560	\$ 4,593	\$ 0	\$ 16,153	\$ -	\$ 113,847
813015 WebDealer E-Titles	\$ 2,652,994	\$ 148,994	\$ 288,074	\$ 397,844	\$ 834,912	\$ 648,634	\$ 1,169,448
813020 E-Licensing	\$ 8,660,994	\$ 85	\$ 225,200	\$ 528,899	\$ 754,184	\$ 4,415,391	\$ 3,491,420
815028 Single Sticker Phase II	\$ 1,200,000	\$ 24,957	\$ 19,953	\$ 215,322	\$ 260,232	\$ 939,075	\$ 693
84BDGT Unallocated	\$ 1,890,472	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,890,472
TxDMV Automation Total	\$ 41,980,422	\$ 686,603	\$ 2,383,418	\$ 3,998,133	\$ 7,068,154	\$ 22,148,754	\$ 12,763,514

* Balances in Automation will be brought forward to FY 2017 for project expenses.



Internal Audit Division Status Update
Finance and Audit Committee and TxDMV Board Meeting

Status of the Fiscal Year 2016

Table with 4 columns: Project, Description, Current Status, Expected Report Release/Presentation Date. Rows include Texas International Registration Plan, Drivers' Privacy Protection Act, Oversize/Over weight Permitting, RTS Refactoring and Single Sticker Post-implementation review, and Fiscal Year 2017 Internal Audit Plan.

Coordinating External Audits

- I. State Office of Risk Management
1. On-site visit of the Waco Regional Service Center was held on August 12th

Attachments

- 1. Audit on the Efficiency of the Texas Internal Registration Plan Compliance Audit Process
2. FY2017 Annual Audit Plan



**Texas Department
of Motor Vehicles**

HELPING TEXANS GO. HELPING TEXAS GROW.

**Audit on the Efficiency of the
Texas International Registration Plan
Compliance Audit Process
TxDMV 16-3**

**Internal Audit Division
August 04, 2016**

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August 04, 2016

Mr. Raymond Palacios, Jr., Vice-Chairman
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, Texas 78731

Subject: *Efficiency of the Texas International Registration Plan Compliance Audit Process (TxDMV 16-3)*

Dear Vice-Chairman Palacios:

The Internal Audit Division has completed the report on the *Efficiency of the Texas International Registration Plan Compliance Audit Process*, which was included in the *Internal Audit Plan for Fiscal Year 2016*. We provided the report to the TxDMV management for their review and comment; management responses are found at the end of Chapter 1 and in Appendix 2 of the report.

The objectives of this project were to:

- evaluate the efficiency of IRP compliance audit procedures, and
- determine whether the TxDMV's IRP audit procedures overlap with audits performed by the Texas Comptroller of Public Accounts.

We thank TxDMV management and staff for their cooperation and assistance throughout this project.

If you have any questions or comments, please contact me at (512) 465-4118 or Sandra.Menjivar-Suddeath@txdmv.gov.

Respectfully,

Sandra T. Menjivar-Suddeath, CISA, CIA, CGAP
Internal Audit Director

cc: Ms. Luanne Caraway, Member, Finance and Audit Committee
Mr. Guillermo "Memo" Treviño, Finance and Audit Committee
Mr. Blake Ingram, Board Member
Mr. Robert "Barney" Barnwell, Board Member
Mr. John H. Walker, III, Board Member
Ms. Whitney Brewster, TxDMV Executive Director
Ms. Shelly Mellott, TxDMV Deputy Executive Director
Mr. Jimmy Archer, Motor Carrier Division Director

EVALUATING ENTITY

The Internal Audit Division, which reports functionally to the Board of Directors, provides the Texas Department of Motor Vehicles (TxDMV) independent and objective assurance and consulting services. Assurance services may include financial audits, compliance audits, economy and efficiency audits, effectiveness audits, and investigations. Also, the Division offers advisory services—which may include advice and counsel, facilitation, and training.

PURPOSE OF THE ENGAGEMENT

The purpose of this audit was to:

- evaluate the efficiency of IRP compliance audit procedures
- determine whether the TxDMV's IRP audit procedures overlap with audits performed by the Texas Comptroller of Public Accounts

SCOPE AND METHODOLOGY

The scope of this audit was the TxDMV Motor Carrier Division's (MCD) IRP compliance audit processes and IRP audits initiated during calendar year 2015.

We used the following methodology to address audit objectives of this engagement:

- Interviewed TxDMV MCD management and staff.
- Reviewed the MCD's procedures for selecting and notifying auditees, reviewing IRP audit work performed by staff, and managing audit file documentation
- Analyzed audit tracking records maintained by the Division to determine the frequency of responses by IRP registrants to the TxDMV's requests for required audit documentation
- reviewed International Fuel Tax Agreement (IFTA) audit requirements and IFTA audit procedures performed by the Texas Comptroller of Public Accounts

Audit on the Efficiency of the Texas International Registration Plan Compliance Audit Process

REPORT SUMMARY

The Texas Department of Motor Vehicles (TxDMV) has opportunities to gain efficiencies in its Texas International Registration Plan (IRP) compliance audit process by

- selecting audits annually rather than monthly, creating an annual audit plan that would allow the agency to forecast audit scheduling and auditee notifications on a longer time frame,
- establishing a two-tier review system to alleviate bottlenecks in the review process created by an increasing number of audits with one available reviewer,
- using an electronic system to document and track IRP audit work papers and eliminate the need to create, convert, store, and destroy physical audit files, and
- reducing staff time spent on manual data entry through further use of formulas in the IRP audit workbook and requiring large registrants to use electronic formats that minimize data entry.

In addition, the TxDMV should

- consider conducting a job audit, including updating job descriptions as needed, to ensure IRP auditors' classification accurately reflects their required duties and skills

The TxDMV should also be open to opportunities to cooperate with the Texas Comptroller of Public Accounts (CPA) on conducting motor carrier compliance audits. The CPA performs these audits in accordance with the International Fuel Tax Agreement (IFTA), a separate program than IRP. However, the International Fuel Tax Association approved a ballot measure designed to more closely align IFTA criteria for acceptable distance records with those required by IRP. In addition, both IRP and IFTA have the same record retention period for documents used as audit support.

MANAGEMENT RESPONSE

The management and staff of the Texas Department of Motor Vehicles are committed to establishing an effective system to ensure Texas International Registration Plan audits are completed in a timely and thorough manner, and we recognize that audits provide us important feedback on areas of improvement.

Management of the TxDMV agrees with the recommendations contained in the Internal Audit Division's (IAD) report on the *Efficiency of the Texas International Registration Plan Compliance Audit Process (TxDMV 16-3)* and has provided within the report a plan for implementation of the recommendations (see page 5).

We appreciate the work performed by the IAD; the team was professional, capable and diligent. The team's assessment will help us to continuously improve the efficiency and effectiveness of our operations.

Chapter 1: The IRP Compliance Audit Process Could Gain Efficiencies by Utilizing Automation and Electronic Documents and Leveraging Opportunities to Cooperate with Other State Agencies.

In November 2015, a peer review was conducted on the International Registration Plan (IRP) operations of the Texas Department of Motor Vehicles (TxDMV) Motor Carrier Division (MCD). The peer review is intended to determine a jurisdiction's compliance with Plan requirements. The peer review team identified the state as out of compliance with its frequency of audits. The Plan requires each member jurisdiction to audit 3 percent per year of the number of fleets that renewed their registration (see textbox). According to the peer review team, Texas completed 1,849 of the 2,121 or 87 percent of the required audits for the registration years 2010 through 2014. During this period, Texas experienced an increase of nearly 14 percent registrations.

Although Texas met the required number of audits for the 2015 reporting period, TxDMV management requested that the Internal Audit Division review the current compliance audit process to identify opportunities for increased efficiency.

Chapter 1-A: The IRP Compliance Audit Processes Should Be Revised

The MCD Commercial Fleet Services Section conducts IRP audits with a staff of nine auditors and one audit supervisor. Currently, auditees are randomly selected and the registrants notified on a monthly basis. Registrants are given 30 days to provide requested audit documents, though some registrants take additional time. IRP auditors enter fleet and mileage information from the registrants' documents and distance logs into various spreadsheets contained in an audit workbook. The audit supervisor reviews and approves all audit work before results are presented to registrants. A hardcopy audit file is maintained throughout the audit and upon completion any electronic documents are printed and placed in the hardcopy file. The file is then scanned for records retention and subsequently shredded.

Audit Selection and Notification

The TxDMV could gain efficiency from selecting audits annually rather than monthly, creating an annual audit plan that would allow the agency to forecast audit scheduling and auditee notifications on a longer time frame.

The IRP requires jurisdictions to give auditees 30 days to provide documentation. On average, 20 to 30 percent of registrants provide audit documentation approximately one month (between 27 and 34 days) after the TxDMV's requested deadline according to our review of MCD's audit records for IRP audits initiated between January 1, 2015 and December 31, 2015. These delays by registrants create potential bottlenecks of audit work when operating on a monthly audit cycle.

International Registration Plan and Definitions

The International Registration Plan (IRP) is an agreement among Member Jurisdictions for registration reciprocity. Under the IRP, apportionable fees are paid to various Jurisdictions in which vehicles of a fleet are operated based on the proportion of total distance operated in all Jurisdictions.

Fleet means one or more apportionable vehicles designated by a registrant for distance reporting under the IRP.

Jurisdiction means a country or a state, province, territory, possession, or federal district of a county.

Registrant means a person in whose name a properly registered vehicle is registered.

Total Distance means all distance operated by a Fleet of apportioned vehicles. Total Distance includes the full distance traveled in all vehicle movements, both interjurisdictional and intrajurisdictional, and including loaded, empty, deadhead, and bobtail distance.

Source: International Registration Plan with Official Commentary, amended Jan. 1, 2016

An annual audit plan would allow the TxDMV to schedule auditee notifications as needed to provide registrants sufficient time to prepare and submit necessary documentation. In addition, IRP auditors could work on audits for registrants that provide timely documentation while awaiting documentation from registrants who request additional time. Registrants' audit eligibility is based on their IRP renewal status during the prior year and therefore does not change month to month. An annual audit selection also has a supplemental benefit of saving staff time each month by eliminating the monthly selection task.

Audit Reviews

Establishing a two-tier review system may help alleviate bottlenecks in the audit process. Currently, the MCD has one supervisor tasked with reviewing all audits, which constrains the volume of audit reviews the division can perform. According to the 2015 IRP peer review, Texas experienced a nearly 14 percent increase in IRP registrations between registration years 2010 and 2014. During that period the TxDMV completed 1,849 of the 2,121 or 87 percent of the required audits. The current audit review process is unlikely to match future audit volume based on the IRP program's growth.

A two-tier review system could include an initial review identifying data or procedural errors for correction and a second review by the supervisor to resolve more complex issues or remaining errors. An auditor not involved with preparing the audit under review could conduct the first-level review. This would spread review capability among more than one person, and shift the supervisor's review away from clerical errors.

Audit Documentation and Retention

The TxDMV could more efficiently utilize resources by using an electronic system to document and track IRP audit work papers and eliminate the need to create, convert, store, and destroy physical audit files.

The TxDMV currently manages IRP audit documentation primarily using hardcopy files. Any electronic working papers are printed out and placed in the file. Once an audit is complete, the physical file is scanned for document retention and then shredded. This consumes unnecessary staff time and resources converting electronic files to physical files which will ultimately be shredded after conversion back into electronic format.

An electronic audit work paper filing and tracking system benefits includes ease of access to files not reliant on the location of a hardcopy folder, and availability and accessibility of individual documents for review as they are completed. The electronic files can be archived according to any retention schedules applicable to IRP audits and working papers. In addition, an electronic system would save physical space currently dedicated to storing a backlog of completed files, and staff time currently spent scanning and shredding the files.

Auditing Tools

Auditors can further utilize formulas in the IRP audit workbook to reduce time spent performing manual data entry. The audit workbook is designed to capture information about fleet size and distances traveled in each IRP member jurisdiction and calculate additional fees or refunds owed to a registrant. Registrants can submit fleet and distance records to IRP auditors in electronic spreadsheets, scanned records, or hardcopy formats. Data received in hardcopy or scanned formats must be manually entered into the workbook. Some calculations use the same mileage total that are keyed into the spreadsheet multiple times. Using formulas to populate data from one initial point of entry can reduce the need for manual data and time spent populating certain fields and spreadsheets within the workbook.

Manual data entry could also be reduced by requiring some registrants to use available online forms that allow staff to import rather than manually enter data. Some registrants already opt to

submit distance logs using the online forms or other electronic format that can be readily copied into the audit workbook. Further efficiencies could be realized by requiring carriers with large fleets, and the technological capability, to utilize these electronic formats in order to facilitate data entry and reduce the overall audit preparation time.

Chapter 1-B: Opportunities to Cooperate with the Texas Comptroller of Public Accounts on Motor Carrier Audits are Growing

The TxDMV and the Texas Comptroller of Public Accounts (CPA) are each responsible for conducting annual motor carrier compliance audits. The TxDMV conducts audits of the IRP and the CPA conducts audits in accordance with the International Fuel Tax Agreement (IFTA)¹.

IRP and IFTA are separate programs with their own audit requirements and methodologies. However, the opportunity and feasibility for the agencies to conduct joint audits is growing as the International Fuel Tax Association passed a ballot measure designed to align IFTA standards more closely to IRP standards effective January 1, 2017. The ballot amends IFTA procedures language to more closely mirror the criteria for acceptable distance records defined by IRP.

In addition, both IRP and IFTA prescribe the same record retention period for documents used as audit support. The TxDMV generally selects IRP auditees with four years of program history, which aligns with the IRP's and IFTA's four year record retention period.² Joint audits may benefit registrants by combining the need for registrants to gather and submit documentation for two separate audits into one joint audit.

¹ Texas implemented the provisions of the International Fuel Tax Agreement (IFTA) on July 1, 1995. The members (jurisdictions) include the 48 contiguous states and 10 Canadian provinces. The purpose of IFTA is to ensure that fuels tax is paid or accrued to jurisdictions where the fuel is used. (Audit and IFTA Software Procedures, January 2012, Texas Comptroller of Public Accounts, Audit Division)

² International Registration Plan, Article X Records and Audits, 1000(a) Retention and Availability of Records; IFTA Procedures Manual (Last Revised January 2013) P510.100 Preservation of Records

Chapter 1-C: IRP Auditor Classification May be Contributing to Turnover

The IRP Auditors have experienced 29 percent turnover between fiscal years 2013 and 2015. MCD managers cited difficulty finding qualified applicants to fill vacant positions. IRP auditors' official classification title may be contributing to difficulty finding qualified candidates.

We reviewed the classification and tenure of the eight IRP auditors on staff at the time fieldwork was conducted, and found all auditors held the same Accountant III classification regardless of role or experience. We found that the Accountant III classification description did not accurately reflect the duties and tasks of IRP auditors as observed during our audit.

For example, we compared the Auditor classification to IRP auditor duties and found the Auditor classification more accurately describes their work performed than the Accountant classification. We used only the Accountant and Auditor classifications in our comparison. We did not perform a comprehensive review of all potential job classifications.

The MCD should evaluate whether IRP auditor job descriptions are current and accurate. Job descriptions document the essential functions of a position and are used for job audits, job requisitions, performance plans, and employee evaluations. Current, accurate job descriptions can assist management in determining whether IRP auditors are appropriately classified.

Job descriptions can also communicate to employees which skills they need to cultivate in order to advance. The descriptions for higher positions within the same series can clearly state the skills and responsibilities expected of employees in more advanced positions, such as supervising a team or conducting quality assurance reviews.

Recommendations

The TxDMV should:

- 1.1 select IRP registrants for audit on an annual basis, creating an annual audit plan.
- 1.2 adjust auditee notification and record request scheduling as needed to provide registrants sufficient time to prepare and submit audit documentation.
- 1.3 establish a two-tier audit review method.
- 1.4 establish an electronic audit documentation system to track and archive audit work papers.
- 1.5 consider establishing thresholds requiring large registrants to submit documentation in formats that minimize data entry by staff.
- 1.6 consider conducting a job audit, including updating job descriptions as needed, to ensure IRP auditors' classification accurately reflects their required duties and skills.

Management's Response

Recommendation 1.1 and 1.2

TxDMV Management agrees with these recommendations. Commercial Fleet Services (CFS) has begun implementing this process of developing an annual audit plan. Specifically, International Registration Plan (IRP) Audits conducted by CFS will be selected by September 30, 2016 and will be due for review by the CFS Audit Review Team no later than October 31, 2017, of the following year. Once motor carriers are selected for audit, the CFS Audit Supervisor will assign them to individual auditors; this will provide each auditor with an inventory of work throughout the year. The due date of October 31 will allow time for the Audit Supervisor to review the audits before they are submitted to IRP. The audit reports are uploaded to the IRP audit exchange and distributed to each affected member jurisdiction. Each affected member jurisdiction has 45 days to protest the audit. The IRP due date is December 31st of each year.

Recommendation 1.3

TxDMV Management agrees with this recommendation. Establishing a two-tier review system will allow for a smoother flow of work during the review phase of the audit process. CFS will evaluate current auditors' abilities to conduct initial reviews of audits by assigning them based on skill level and experience, and monitoring the results. If this does not prove feasible or impacts CFS's ability to meet its annual audit goal, MCD management will review staffing patterns in the division by January 1, 2017, to ascertain whether assigning an FTE to review audits is feasible.

Recommendation 1.4

TxDMV Management agrees with this recommendation. The IRP audit workbook, correspondence and contact log are now maintained on a secure network at TxDMV. CFS will request that each registrant submit documents electronically and CFS will forward those to IT to scan for potential viruses. If a registrant cannot submit documents electronically, the auditor will manually scan the documents and maintain them on the secure network. This

will eliminate the need to send audit folders to administrative services for scanning in to the FileNet system. CFS expects to implement the electronic system by September 30, 2016.

Recommendation 1.5

TxDMV Management agrees with this recommendation. CFS will have formulas created in the IRP audit workbook to eliminate manual data entry. After the formulas have been created, the audit workbook will be sent to Explore for testing in TxIRP before placing the formulas in production. CFS expects to have the updated IRP audit workbook in the TxIRP System by June 1, 2017.

Recommendation 1.6

TxDMV Management agrees with this recommendation. This is also needed so that TxDMV complies with the State Auditor's Office Job Classifications. The Director of the Motor Carrier Division will prepare a Job Audit Request to submit to Executive Management by November 1, 2016.

Appendix 1: Objectives, Scope, and Methodology

Objectives

In accordance with the TxDMV *Internal Audit Plan for Fiscal Year 2016*, the Internal Audit Division has reviewed the IRP peer review completed in November 2015 to determine the objectives of the IRP audit. To complement the work of the peer review team and to assist the Motor Carrier Division complete the required number of compliance audits annually, the audit objectives are:

- To evaluate the efficiency of IRP compliance audit procedures
- To determine whether the TxDMV's IRP audit procedures overlap with audits performed by the Texas Comptroller of Public Accounts

Scope and Methodology

The scope of this audit included the Texas Department of Motor Vehicles (TxDMV) Motor Carrier Division's IRP compliance audit processes and IRP audits initiated during calendar year 2015. To address audit objectives we interviewed TxDMV Motor Carrier Division management and staff, reviewed the Division's procedures for selecting and notifying auditees, reviewing IRP audit work performed by Division staff, and managing audit file documentation. We also analyzed audit tracking records maintained by the Division to determine the frequency of responses by IRP registrants to the TxDMV's requests for required audit documentation.

In addition, we reviewed International Fuel Tax Agreement (IFTA) audit requirements and IFTA audit procedures performed by the Texas Comptroller of Public Accounts (CPA) to identify possible areas for coordination between the CPA and the TxDMV.

Project Information

This audit was included in the *Internal Audit Plan for Fiscal Year 2016*.

We conducted this performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was also conducted in conformance with the International Standards for the Professional Practice of Internal Auditing.

Information and documents that we reviewed included the following:

- International Registration Plan with Official Commentary, amended January 1, 2016
- International Registration Plan Audit Procedures Manual, Effective January 1, 2016
- Texas Department of Motor Vehicles Motor Carrier Division Texas Apportioned Audit Appeal procedures
- Texas Department of Motor Vehicles Motor Carrier Division audit assessment billing procedures
- Texas Department of Motor Vehicles Motor Carrier Division refund processing procedures

- Texas Department of Motor Vehicles Motor Carrier Division audit assessment fee collection procedures
- Texas Department of Motor Vehicles Motor Carrier Division International Registration Plan policy on conducting joint audits
- Texas Administrative Code Title 43, Part 10, Chapter 217, Subchapter B, Rule §217.56 Registration Reciprocity Agreements
- Texas International Registration Plan Audit Workbook v6.3
- Texas Department of Motor Vehicles Motor Carrier Division IRP Audit Tracking spreadsheet
- 2015 Texas IRP Peer Review Final Report
- Texas Response to the 2015 Texas IRP Peer Review Final Report
- Texas Department of Motor Vehicles Motor Carrier Division Accounting Specialist III Job Requisition
- Texas State Auditor’s Office State Classification Team Job Descriptions and Salary Schedule B for the 2016-2017 Biennium
- Texas Department of Motor Vehicles Human Resources employment data for the TxDMV Motor Carrier Division
- Interviews with Texas Department of Motor Vehicles Motor Carrier Division management and staff
- Texas Comptroller of Public Accounts webpage on International Fuel Tax Agreement (<http://comptroller.texas.gov/taxinfo/fuels/ifta.html>)
- Texas Administrative Code Title 34, Part 1, Chapter 3, Subchapter A, Rule §3.9 Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payment by Certain Taxpayers
- Memorandum of Understanding to Exchange Information Between the Texas Comptroller of Public Accounts and the Texas Department of Motor Vehicles
- International Registration Plan, Inc. IRP Audit Training Manual, December 2008
- International Registration Plan, Inc. IRP Audit References and Best Practices Guide, January 2016

The following contributed to this report:

- Sandra H. Vice, CIA, CGAP, CISA, TxDMV Internal Audit Director
- Arby J. Gonzales, CPA, CFE, TxDMV Internal Audit Deputy Director
- Derrick D. Miller, CIA, TxDMV Internal Audit Senior Auditor

Report Distribution

In accordance with the Texas Internal Auditing Act (Texas Government Code, Chapter 2102) this report is distributed to the following entities:

- Board of the Texas Department of Motor Vehicles
- Governor’s Office of Budget, Planning, and Policy
- Legislative Budget Board
- State Auditor’s Office
- Sunset Advisory Commission

Appendix 2: Executive Director's Management Response



Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

July 7, 2016

Mr. Arby Gonzalez
Texas Department of Motor Vehicles
Internal Audit Division
4000 Jackson Ave
Austin, TX 78731

RE: *Efficiency of the Texas International Registration Plan Compliance Audit Process*

Dear Mr. Gonzalez:

The management and staff of the Texas Department of Motor Vehicles (TxDMV) are committed to establishing an effective system to ensure Texas International Registration Plan audits are completed in a timely and thorough manner, and we recognize that audits provide us important feedback on areas of improvement.

Management of the TxDMV agrees with the recommendations contained in the Internal Audit Division's (IAD) report on the *Efficiency of the Texas International Registration Plan Compliance Audit Process (TxDMV 16-3)* and has provided within the report a plan for implementation of the recommendations.

We appreciate the work performed by the IAD; the team was professional, capable, and diligent. The team's assessment will help us to continuously improve the efficiency and effectiveness of our operations.

Please contact me at (512) 465-3001 if there are any questions or if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink that reads "Whitney H Brewster".

Whitney Brewster
Executive Director

cc: Laura Ryan, Chairman, TxDMV Board
Raymond Palacios, Vice-Chairman, Finance and Audit Committee Chairman, TxDMV Board
Shelly Mellott, Deputy Executive Director, TxDMV

Enterprise Projects Quarterly Report

September 1, 2016



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Application Migration and Server Infrastructure Transformation (AMSIT)

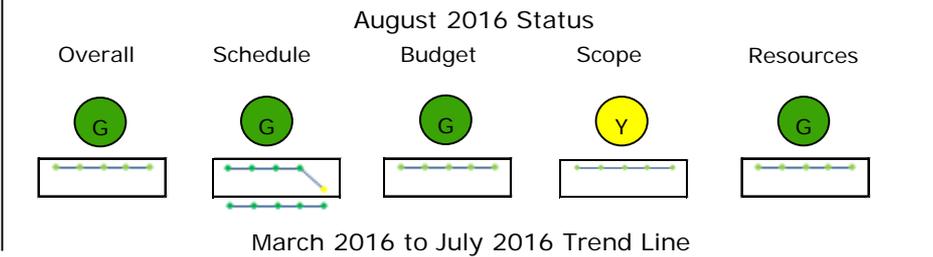


Benefits to Public	Benefits to Agency
<ul style="list-style-type: none"> Improved agility to meet customers' needs with system autonomy Improved service quality with stabilized environment 	<ul style="list-style-type: none"> Streamlined support processes and enhanced automation Improved information security Compliance with state mandates related to Data Center transformation

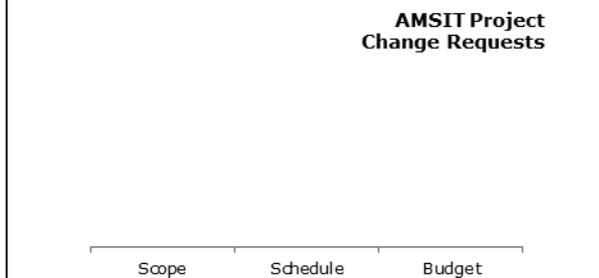
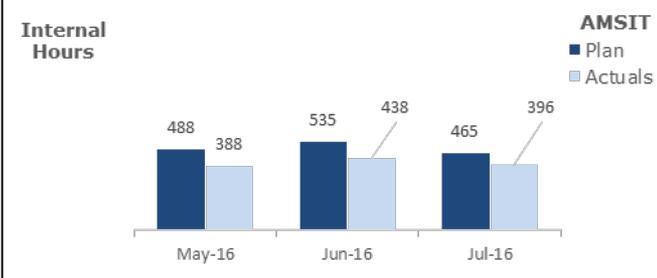
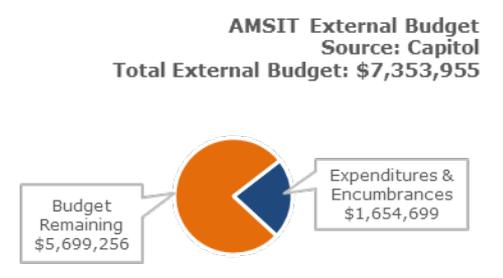
AMSIT plans and implements the separation of TxDMV applications and related IT infrastructure components from the TxDOT network.

Project Manager – R. Abdeladim
 Business Owner – T. Benavides
 Executive Sponsor – E. Obermier

Project End Date: 31 August 17



Initiating	✓
Planning	
Executing	
Closing	



Accomplishments – Last 30 Days
<ul style="list-style-type: none"> Vendor continuing to roll on team members. Vendor Phase 1 deliverables approved. Move Group closeouts approved. Continued in-depth analysis in progress for move groups. Scope clarified with vendor. Archived MIPS front end interface.
<ul style="list-style-type: none"> Obtain estimates from vendor for Novell to Windows migration & FTP to SFTP Complete review of vendor test plan deliverable.

Risk/Issues	Mitigation (M)/Corrective Action (CA)
<p>I₁ Vendor scope did not include migration of file shares from Novell to Windows.</p> <p>I₂ Vendor scope is to migrate FTP as in to TxDMV environment. Vendor scope did not include updates/enhancements to SFTP.</p> <p>R₁ - Vendor has improved resource levels to provide ongoing project progress. (There is the risk the vendor may slip.)</p> <p>R₂ - Migration from Novell to Windows is an extensive effort, project timeline may be at risk if delays in approval of a change request.</p>	<p>I₁ : Develop a high level scope; request vendor estimate.</p> <p>I₂ : Develop a high level scope; request vendor estimate.</p> <p>R₁ – Cure period completed 8/8/16; pending NSOC related items.</p> <p>R₂ - Engage of Executive Sponsor & ESC; dependent on vendor estimate, funds available in AMSIT budget.</p>



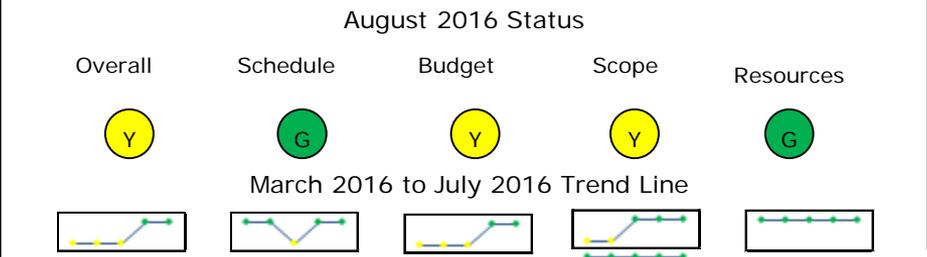
Facility Physical Security

Benefits to Public	Benefits to Agency
<ul style="list-style-type: none"> Customer Safety and Security 	<ul style="list-style-type: none"> Integrated security management system On-site control panels, monitoring and communication consoles. 24-hour security system monitoring

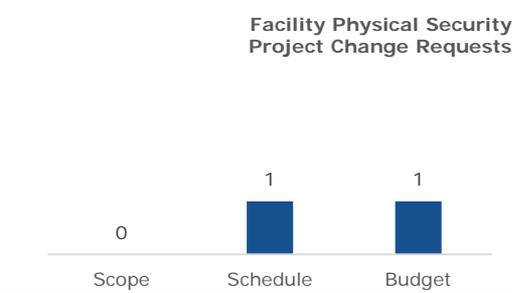
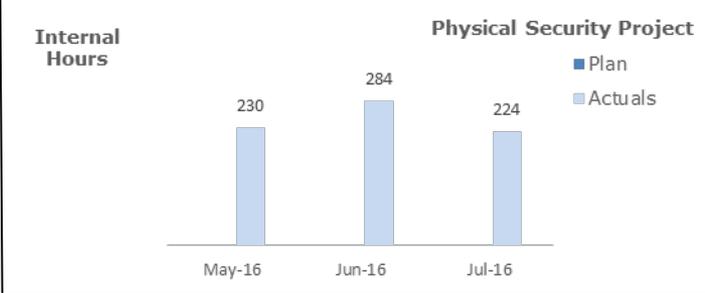
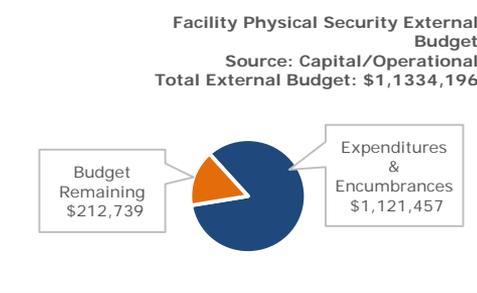
The Facility Physical Security Project will install an integrated security management system (SMS) with 24-hour monitoring for all 16 Regional Service Centers (RSC).

Project Manager – C. Archer
 Business Owners – W. Diggs,
 Executive Sponsor – Eric Obermier

Project End Date: 31 August 2017



Initiating	G
Planning	Y
Executing	Y
Closing	G



Accomplishments – Last 30 Days
<ul style="list-style-type: none"> Approved Project Charter. Completed Houston RSC Installation. Executed Lesson Learned Workshops. Started RSC #3 (Dallas) Installation. Started RSC #4 (Forth Worth) Installation. Executed Wichita Falls Walk Through
Milestones – Next 30 Days
<ul style="list-style-type: none"> Project Change Request (PCR) - Scope Execute Second Batch of RSC Walk Through (Amarillo, El Paso, Lubbock, Midland) Complete Dallas RSC Installation Complete Fort Worth Installation Start RSC #5 – Abilene Installation Start RSC #6 – Wichita Falls Installation

Risk/Issues	Mitigation/Corrective Action
I ₁ - RSC Facility upgrade issues during walkthroughs may impact Project Scope (i.e. Server Room A/C, Electrical Capacity, Fire Compliant Doors etc.)	I ₁ – Work with ESC to identify Solution, Strategy and Funds.

FileNet

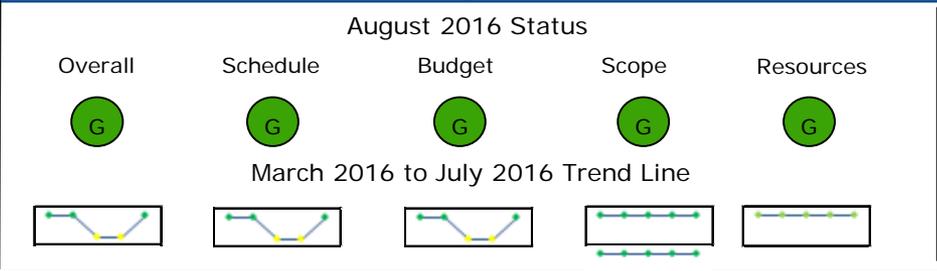


Benefits to Public	Benefits to Agency
<ul style="list-style-type: none"> Improved Customer Service Centralized document management and reporting system 	<ul style="list-style-type: none"> Updated software Reduced support cost Separates from TxDOT infrastructure

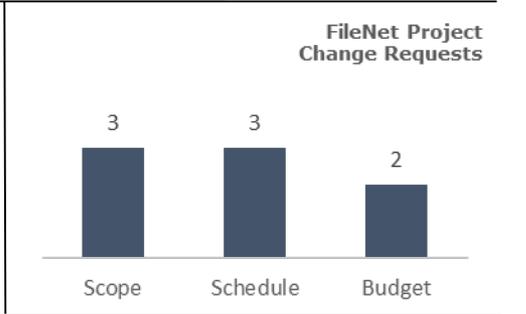
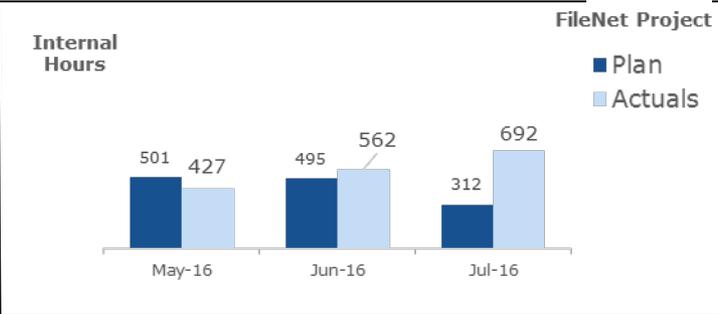
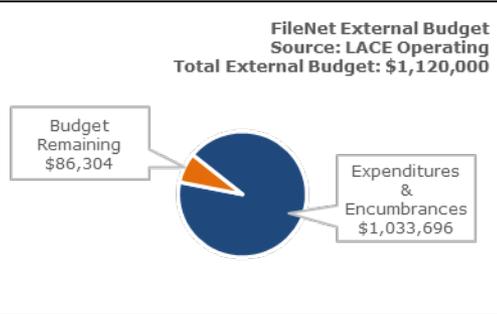
FileNet updates TxDMV's Data MGMT System to IBM's FileNet P8 (v5.2) and Kofax (v10.1) in the TxDMV environment.

Project Manager – J. Das
 Business Owners – L. Dennis, T. Benavides
 Executive Sponsor – E. Obermier

Project End Date: 30 Nov 2016



Requirements	✓
Design	✓
Development	✓
Test	✓
Deploy	G



Accomplishments – Last 30 Days
<ul style="list-style-type: none"> Migration of data completed – June 1, 2016. 300,000 LACE files found missing during testing migrated by the vendor. FileNet load testing completed FileNet GoLive weekend of August 19, 2016.
Accomplishments – Next 30 Days
<ul style="list-style-type: none"> Upgrade web browsers for 439 users. Continue Delta data conversion and import. Complete testing of LACE component.

Risk/Issues
<p>R₁ – Timely completion of delta data transfer to ADC to support GoLive in mid Aug 2016.</p> <p>R₂ – Response time of user operations using new FileNet will need to be better or at least in par with Legacy FileNet system.</p> <p>I₁ – Timely upgrade of browsers of 439 user base needed prior to GoLive</p> <p>I₂ – Timely completion of LACE integration and test effort needed prior to GoLive</p> <p>I₃ – Color file conversion errors found during the initial test efforts warrants backfill of error files by the vendor.</p>

Mitigation/Corrective Action
<p>R₁ – Monitoring vendor plan and progress to complete the effort on time.</p> <p>R₂ – Cycle1 and Cycle2 test completed. End user results favorable.</p> <p>I₁: Solution identified, IT Desktop team is upgrading. ETC 8/15/16</p> <p>I₂: IT Target date for completion is 8/17/16.</p> <p>I₃ – Vendor committed to do the backfill at no cost to TxDMV from Sept 1, 2016 to Oct 31, 2016 (Consider this when developing new MOU with TxDOT).</p>



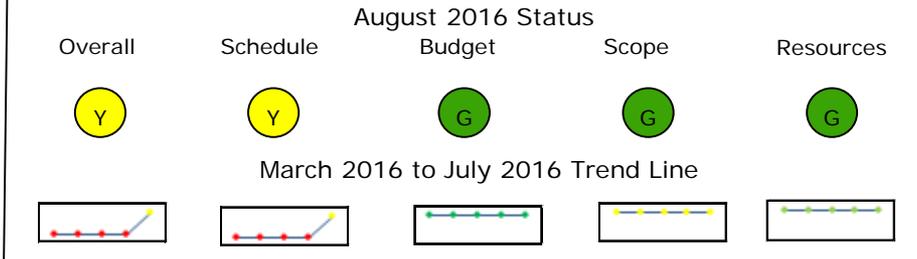
Licensing, Administration, Consumer Relations and Enforcement System (LACE) Replacement

Benefits to Public	Benefits to Agency
<ul style="list-style-type: none"> Improved Customer Service with a Web based, self-service application. Online submittal of protests and complaints Online tracking of licensee applications, protests, and complaints 	<ul style="list-style-type: none"> Reduced support costs and submission errors Improved data sharing and accuracy Integrated case management

LACE will manage the licensing of dealers, motor vehicle converters, manufacturers etc.; track litigation and enforcement cases.

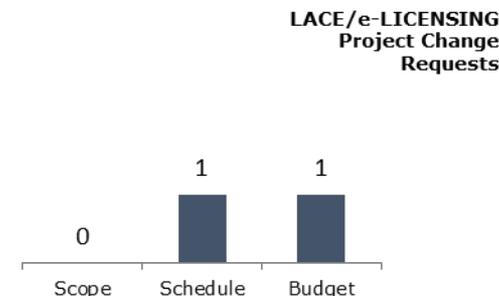
Project Manager – M. Lucas
 Business Owners – D. Avitia, B. Harbeson, E. Sandoval
 Executive Sponsor – S. Mellott

Project End Date: 27 March 2017



Requirements	✓
Design	✓
Development	✓
Test	Y
Deploy	

LACE/eLINCENSING External Budget
 Source: Automation
 Total External Budget: \$10,093,862



Accomplishments – Last 30 Days
<ul style="list-style-type: none"> Development for 4 of 5 cycles complete Integration Testing of 4 of 5 cycles complete Conducted 2nd of 3 LACE Demos
Milestones – Next 30 Days
<ul style="list-style-type: none"> Complete creation of UAT Test Cases Complete Traceability of Design Review Present Demo 3

Risk/Issues	Mitigation/Corrective Action
R ₁ – Project success may be impacted due to abbreviated training schedule and lack of training schedule alignment between teams.	R ₁ – Align TxDMV & Deloitte training schedules and hire contractors to augment Training Team.
R ₂ – Inadequate time to perform required TxDMV testing covering SAT and UAT. Condensed testing may not allow all functions to be fully tested.	R ₂ – Allow end users to review product at end of each cycle before UAT.
R ₃ – Post implementation call volume in CRD will probably increase.	R ₃ – Assign 3 MVD FTEs to assist with calls for 60 - 90 days. Assign ENF FTEs to assist with calls. Work with VTR to assist with R/T Calls temporarily.
R ₄ – Product Configuration is behind schedule.	R ₄ – Divide Design, Development, System Testing into 5 Cycles. Extended Deployment Date from Sept. 27, 2016 to Oct. 28, 2016.
R ₅ – Quantity and Quality of Key Deliverables are impacting overall project schedule	R ₅ – EPMO has accelerated the review time from 5/3/3 to 1/1/2



Single Sticker Phase II

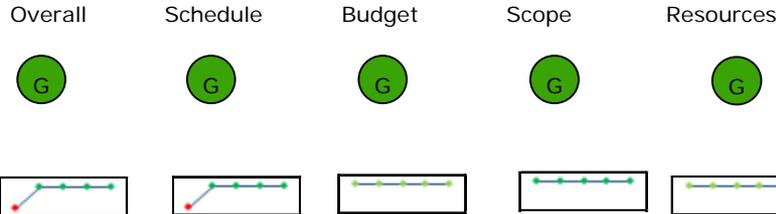
Benefits to Public	Benefits to Agency
<ul style="list-style-type: none"> Provides a single "Registration and Safety Inspection" Sticker process Aligns Safety Inspection and Registration time frames Reduces unsafe and environmentally unfriendly vehicles on Texas roads 	<ul style="list-style-type: none"> Compliance with HB 2305 and HB 188 Automates TxIRP solution for Motor Carrier Division

Single Sticker Phase II has completed implementation of the 90 and 180 day rules in RTS and is now focused on Single Sticker rules within the TxIRP system.

Project Manager – T. Beckley
 Business Owners – J. Kuntz, J. Archer
 Executive Sponsor – W. Brewster

Project End Date: 31 July 2017

August 2016 Status



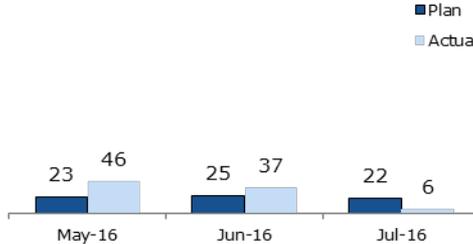
	RTS	TxIRP
Requirements	✓	G
Design	✓	G
Development	✓	G
Test	✓	
Deploy	✓	

Single Sicker PII External Budget
 Source: Automation
 Total External Budget: \$3,304,262

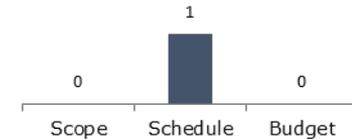


Internal Hours

Single Sticker PII



SS PII Project Change Requests



Accomplishments – Last 30 Days
<ul style="list-style-type: none"> Continue execution phase of project currently on track.
Milestones – Next 30 Days
<ul style="list-style-type: none"> Vendor will continue development and weekly status meetings.

Risk/Issues	Mitigation/Corrective Action
<p>R₁ – The implementation of the Process and Handling (P&H) Fee may negatively impact the TxIRP schedule if the vendor (Explore) needs to pull project resources to work on P&H Fee.</p> <p>R₂ – The TxIRP project has an external dependency on an RTS web service, and delay in the December RTS release will have an impact on the TxIRP project.</p>	<p>R₁ – Explore will provide an estimate and impact statement if this effort will impact the Single Sticker project team.</p> <p>R₂ – RTS development and test team attend weekly technical exchanges with Explore ensuring the teams stay in synch.</p>

Registration and Title System (RTS) Refactoring



Benefits to Public

- Improved Customer Service (system modernization provides opportunities for increased efficiency when implementing improvements)

Benefits to Agency

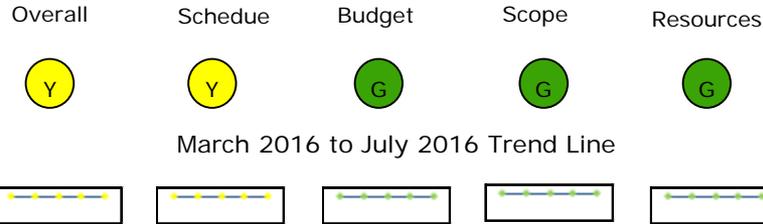
- Modernization of the RTS system
- Business intelligence reporting capabilities
- Transitions RTS from TxDOT to the TxDMV infrastructure

RTS Refactoring will refresh the RTS technology by modernizing the core RTS system and provide business intelligence reporting capabilities.

Project Manager – T. Beckley
 Business Owner – J. Kuntz
 Executive Sponsor – W. Brewster

Project End Date: 31 Dec 2018

Aug 2016 Status



	WS2+	WS4-11	WS4-P&H	WS4-13
Req	✓	✓	✓	G
Design	✓	✓	Y	
Devel	✓	✓	Y	
Test	✓	Y		
Deploy	✓			

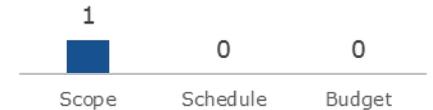
RTS Refactoring External Budget Source: Automation Total External Budget: \$62,020,840



Internal Hours



RTS Project Change Requests



Accomplishments – Last 30 Days

- Deployed ERQ4 on August 8, 2016 which included defect repairs for inventory as well as 9 report enhancements.
- Release 11, 8.6.0 which includes OAG Denial of Registration and TxDMV Fund is on track to complete UAT on August 19.
- Release 12, 8.7.0 completed general design and entered development.
- Performing requirements gathering sessions for Release 13, 8.8.0.

Milestones – Next 30 Days

- Deploy Release 11, 8.6.0 on August 27, 2016.
- Complete development on August 24, 2016 and enter test phase for Release 12, 8.7.0.
- Complete requirements gathering and general design for Release 13.

Risk/Issues

- I₁ – P.O. 804 expired as of August 6, 2016.
- I₂ – Technical writing duties are still being handled by GSC-OCM and EPMO with little budget.
- I₃ – Knowledge transfer/training will not be complete by Year 1, which may affect schedule before key resources leave.

Mitigation/Corrective Action

- I₁ – Deloitte has agreed to a one month no-cost contract extension, enabling business to continue as normal. During this period the team is conducting working group sessions to clarify aspects of the contract prior to renewal.
- I₂ – IT, GSC VTR & EPMO will develop a transition to operations strategy and due date.
- I₃ – Deloitte added an additional resource to create a Knowledge transfer/training plan, which is under review by TxDMV.



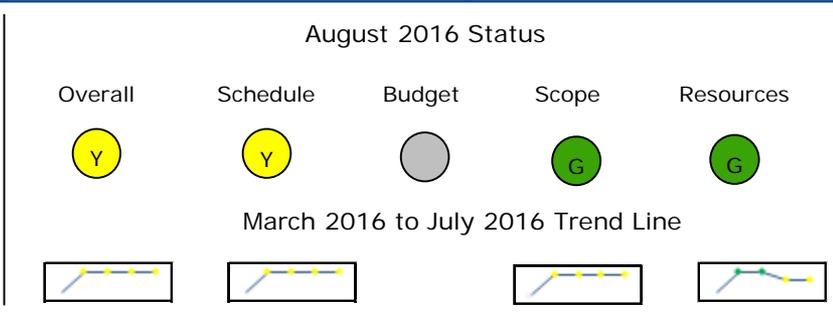
TxDMV Fund and Processing & Handling (P&H) Fee

Benefits to Public	Benefits to Agency
<ul style="list-style-type: none"> Addresses limited and full deputies transaction fees. 	<ul style="list-style-type: none"> Continues separation of TxDMV from TxDOT TxDMV will be self funded, reducing agency's dependency on legislated budgets

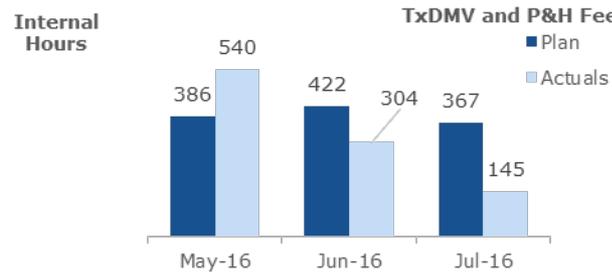
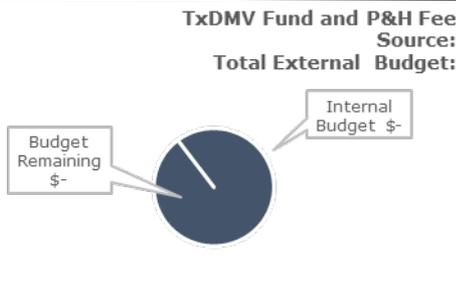
This project establishes the TxDMV Fund, redirecting existing fees from TxDOT Fund 6 to the TxDMV Fund 10. In addition, it will establish the Process and Handling Fees to provide funding for registration services and establish county compensation.

Project Manager – T. Beckley
 Business Owner – J. Kuntz/J. Archer
 Executive Sponsor – W. Brewster

Project End Date:



	DMV	P&H	IRP
Req	✓	✓	✓
Design	✓	● Y	✓
Devel	✓	● Y	✓
Test	● Y		● G
Deploy			



Accomplishments – Last 30 Days
<ul style="list-style-type: none"> TxDMV Fund will complete UAT on August 19, 2016. TxIRP vendor (Explore) delivered their TxDMV Fund and P&H Fee code and is in UAT. P&H Fee development is on-going. HEB confirmation that they can work within our project timeline.
Milestones – Next 30 Days
<ul style="list-style-type: none"> Deploy TxDMV Fund on August 27, 2016. Complete P&H Fee development on August 26, 2016 Start Integration and System Test.

Risk/Issues	Mitigation/Corrective Action
<p>I₁ – TxDMV Fund T-Codes were identified as incorrect during UAT.</p> <p>R₁ – The availability of test environments may impact the availability of having an integration test environment prepared for the P&H Fee release.</p> <p>R₂ – Resource conflicts between production support and P&H Fee implementation may impact development effort.</p>	<p>I₁ – Updating tables and design documentation to reflect the most recent updates.</p> <p>R₁ – The P&H Fee team is working to identify a solution that will mitigate this risk.</p> <p>R₂ – The team is focusing on P&H Fee effort, limiting production support to issues that require immediate responses.</p>



webDEALER

Benefits to Public	Benefits to Agency
<ul style="list-style-type: none"> Reduced costs for titling and registration services from motor vehicle sales. Improved titling and registration time by reducing manual processes 	<ul style="list-style-type: none"> Reduced costs for the county tax office and TxDMV to title and register vehicles Improved system to track and manage registration and title services from Motor Vehicle Sales . Eliminates RSPS-DTA Processes

webDealer allows a vehicle title to be created, stored and transferred in electronic form, improving the speed and accuracy of the titling process.

Project Manager – G. Wessels
 Business Owner – T. Thompson
 Executive Sponsor – J. Kuntz

Project End Date: 30 April 2018

August 2016 Status

	New Car	Used Car	CFB	Adopt	Sal	CP	eTAGs	eTitles	WD DMV P&H
Req	✓	✓	✓	✓	✓	G	✓	G	✓
Design	✓	✓	✓	✓	✓		✓		✓
Devel	✓	✓	✓	✓	✓		G		G
Test	✓	✓	✓	✓	✓				G
Deploy	✓	✓	✓	✓	✓				

Overall

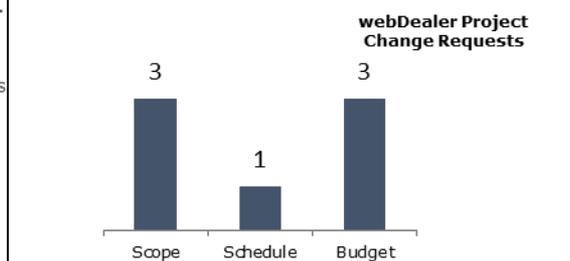
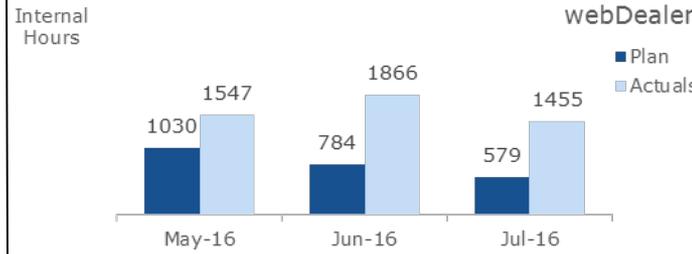
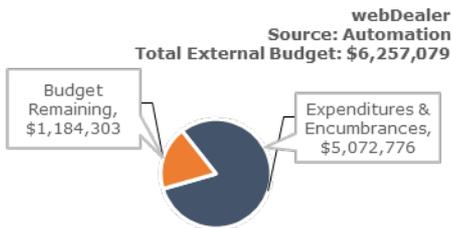
Schedule

Budget

Scope

Resources

March 2016 to July 2016 Trend Line



<p>Accomplishments – Last 30 Days</p> <ul style="list-style-type: none"> GT approved new project plan. Notified QAT has been of new project plan. Deployed webDEALER Salvage Pilot Completed webDEALER TxDMV Fund test. Completed webDEALER P&H Fee design Completed webDEALER P&H Fee development.
<p>Milestones – Next 30 Days</p> <ul style="list-style-type: none"> Complete webDEALER Salvage Pilot Complete webDEALER P&H Fee SIT. Start webDEALER P&H Fee SAT

Risk/Issues	Mitigation/Corrective Action
<p>R₁ – P&H – The required HEB black out dates and release dates that enables the webDealer/WebSub functionality may not match up with the Release 12 schedule.</p>	<p>R₁ –This risk has been mitigated, HEB has informed us that they can meet our schedule. Also tracking at the P&H project level.</p>



Closed Projects

- ❑ Governance Team Meeting January 21, 2016
 - Regional Office Project
- ❑ Governance Team Meeting March 17, 2016
 - RTS Name Parsing Project
- ❑ Governance Team Meeting July 21, 2016
 - Headquarters Communication Project



Glossary

AMSIT – Application Migration Server Infrastructure Transformation	NIM – Nice Information Management
BA – Business Analyst	NSOC - Network Security Operations Center
BAFO – Best and Final Offer	MVD – Motor Carrier Division
BRD - Business Requirements Document	P&H – Process and Handling
C ³ – Consolidated Call Center	PCR – Project Change Request
CA - Corrective Action	PM - Project Manager
CCB - Courtesy Callback	PMLC - Project Management Life Cycle
DCS – Data Center Services	PMP - Project Management Professional
Delta Data – Related to FileNet project. Indicates the volume of images which have accumulated on a TxDOT server since the previous transfer of images from TxDOT to new servers in DCS.	PO – Purchase Order
CIO - Chief Information Officer	POCN - Purchase Order Change Notice
CPO - Chief Projects Officer	QAT - Quality Assurance Team
CPU – Central Processing Unit	R – Red (Status)
CRD – Consumer Relations Division	R – Risk
DEV Development	R/I – Risk/Issue
DIR - Department of Information Resources	RFO – Request For Offer
DPS - Department of Public Safety	RO – Regional Office
DTA – Dealer Title Application	RSPS – Remote Sticker Printing System
ENF - Enforcement	RTS - Refactored RTS
EPMO - Enterprise Project Management Office	RSC – Regional Service Center
ERQ – Enterprise Reporting Quarter	QAT – Quality Assurance Team
ESC – Executive Steering Committee	QTR – Quarter
FAQ – Frequently Asked Questions	SIT – System Integration Test
FTE – Full Time Equivalent	SAT - System Acceptance Testing
G – Green (Status)	SDLC - Systems Development Life Cycle
GT – Governance Team	SDLC – Software Development Life Cycle
HB – House Bill	SMS – Security Management System
HEB - Howard E Butt Grocery Stores	SOP – Standard Operating Procedures
I – issue	SOW – Statement of Work
IAM – Identity and Access Management	SS PII - Single Sticker Phase II
IT – Information Technology	TCEQ - Texas Commission on Environmental Quality
ITSD – Information Technology Services Division	TPDF - Texas Project Delivery Framework
Jama - Product management software developed By Jama S/W Co.	TS - Registration and Titling System
JIRA – Issue Tracking Software developed By Atlassian	TxIRP – Texas International Registration Plan
LACE - Licensing, Administration, Consumer Affairs, and Enforcement	TxDOT – Texas Department of Transportation
LAST - Load and Stress Testing	UAT - User Acceptance Testing
LPAR – Logical Partition	VTR – Vehicle Title and Registration Division
M – Migration	WFM – Work Force Management
MCD – Motor Carrier Division	WS – Work Stream
M/CA – Migration/Corrective Action	WS2+ – Work Stream 2+
MS - Mitigation Strategy	WS4 – Work Stream 4
	Y – Yellow (Status)



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Agenda Item 2.c.

(1) 84th Legislative Implementation

and

(2) 85th Legislature

Prepared by

Government & Strategic Communications

September 1, 2016

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Summary of Implementation Efforts	3
85 th Legislature.....	4
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Introduction

The Texas Department of Motor Vehicles (TxDMV) aims to deliver excellent customer service to the public and stakeholders through providing user-friendly processes. There were several pieces of legislation passed by the 84th Legislature which will provide for additional efficiencies and effective delivery of services. Implementation efforts are substantially complete, with a few highlights as noted below.

Summary of Implementation Efforts

The Government & Strategic Communications Division continues to monitor the implementation of legislation from the 84th Legislative Session that impacts TxDMV. Of the 71 enacted bill identified as having some level of implementation activity by the department, 47 of those have been fully implemented. Of the remaining 24 enacted bills, following is a summary of the implementation status.

- 2 bills are on hold due to prerequisite 3rd party actions:
 - HB 315 creating the “In God We Trust” specialty license plate is awaiting the deposit required for enactment as prescribed by law
 - HB 2424 allows insurance companies to be refunded any amounts overpaid under the Automobile Burglary and Theft Prevention Authority fee charged on all automobile insurance policies – the department is awaiting determination of eligibility and amounts by the Texas Comptroller per the legislation
- Of the 22 remaining bills solely within the purview of the department:
 - Two bills will become effective September 1, 2016:
 - SB 1512 by Hancock recreating the TxDMV Fund
 - HB 735 by Israel relating to annual reporting on alternatively fueled vehicles registered in Texas
 - Of the remaining 20 bills, all are implemented from a practical and functional standpoint. Ten are military SLP related and only require a brochure to be updated to be fully implemented. The others only have items remaining such as manual updates and one more rule adoption, which is part of the Texas Administrative Code Chapter 215 package to be considered today.

In addition, the TxDMV Board will consider rules for proposal today related to implementation efforts for HB 735. This legislation authorized the board to adopt rules related to the production of the report. It is anticipated we will complete the report within the next few months for delivery to the legislature as prescribed by the bill prior to the start of the 85th Legislative Session in January.

85th Legislature

The Texas Transportation Code charges the TxDMV Board with considering opportunities for improvement and to recommend changes to statute to the Legislature. Section 1001.025(a) of the Transportation Code states:

The board shall consider ways in which the department's operations may be improved and may periodically report to the legislature concerning potential statutory changes that would improve the operation of the department.

In addition the statute requires the Chair to send a report highlighting recommendations adopted by the Board relating to the operation of the department to the Governor, Lieutenant Governor, Speaker, and presiding officers of relevant legislative committees.

To that end, the Government and Strategic Communications Division has collected from all divisions their requests for legislative changes. We are finalizing the list of changes this week and will begin the stakeholder outreach meetings to obtain additional feedback. We will also work closely with the Board's Legislative Committee on this effort and anticipate a final report on these recommendations towards the end of this calendar year for your further consideration.

Conclusion

In addition to the many successful implementation efforts of the department, staff is continually researching opportunities to increase efficiencies and provide the best services possible to our customers and stakeholders. In the interim, the Texas Department of Motor Vehicles will continue to serve, protect and advance the citizens and industries in the state with quality motor vehicle related services.



DATE: September 1, 2016
Action Requested: APPROVAL

To: Texas Department of Motor Vehicles Board
From: Daniel Avitia, Director, Motor Vehicle Division
Agenda Item: D. Contested Case
Subject: Franchised Dealer's Complaint against Distributor under Occupations Code, §§2301.475(b) and 2301.479(b) - MVD Docket No. 14-0016.LIC; SOAH Docket No. 608-14-4960.LIC; Autobahn Imports, L.P. d/b/a Land Rover of Fort Worth, Complainant v. Jaguar Land Rover North America, LLC, Respondent

RECOMMENDATION

Staff recommends that the Board approve the issuance of the attached proposed order.

PURPOSE AND EXECUTIVE SUMMARY

The State Office of Administrative Hearings (SOAH) issued the attached Proposal for Decision (PFD) for consideration by the Texas Department of Motor Vehicles Board.

FINANCIAL IMPACT

None

BACKGROUND AND DISCUSSION

Complainant, a franchised dealer, filed a case against the Respondent, a licensed manufacturer, alleging three separate violations of the Texas Occupations Code. As required by law, the matter was referred to SOAH for adjudication. Before a full contested case hearing was held, the Complainant submitted a Motion for Summary Disposition. After prehearing conferences on the motion, the SOAH Administrative Law Judge (ALJ) granted Complainant's motion as to two of the claims and the remaining claim was withdrawn by the Complainant. The ALJ issued the PFD which now comes before the Board. As a result of the combination of the summary dispositions and the dismissal, there are no unresolved claims. The Respondent filed exceptions to the PFD and Complainant filed replies to the exceptions. In response to the exceptions and replies, the ALJ amended the PFD by correcting typographical errors, but declined to change any legal conclusions.

The Board may change a finding of fact or conclusion of law made by the ALJ, or may vacate or modify an order issued by the ALJ, only under the restrictions of Tex. Gov. Code § 2001.058(e).

The Staff finds that Tex. Gov. Code § 2001.058(e) modification justifications are not present in this case.

For the Board's convenience, Staff drafted a proposed order that adopts the amended PFD.

Staff recommends that the Board approve the issuance of the attached proposed order.

The following documents are attached to this Executive Summary for consideration by the Board:

- Proposed Order;
- Attachment A: SOAH ALJ's PFD;
- Attachment B: Respondent's Exceptions to the PFD;
- Attachment C: Complainant's Replies to Exceptions; and
- Attachment D: The ALJ's Response to Exceptions.

MVD Docket No. 14-0016.LIC; SOAH Docket No. 608-14-4960.LIC; *Autobahn Imports, L.P. d/b/a Land Rover of Fort Worth, Complainant, v. Jaguar Land Rover North America, LLC, Respondent*

EXECUTIVE SUMMARY

Background

Complainant, a franchised dealer, filed a case against the Respondent, a licensed manufacturer, alleging three separate violations of the Texas Occupations Code. Before a full contested case hearing was held, the Complainant submitted a Motion for Summary Disposition. After prehearing conferences on the motion, the Administrative Law Judge (ALJ) granted Complainant's motion as to two of the claims and the remaining claim was withdrawn by the Complainant. The ALJ issued the Proposal for Decision (PFD) which now comes before the Board of Texas Department of Motor Vehicles. As a result of the combination of the summary dispositions and the dismissal, there are no unresolved claims.

The Respondent filed exceptions to the PFD and Complainant filed replies to the exceptions.

In response to the exceptions and replies, the ALJ amended the PFD by correcting typographical errors, but declined to change any legal conclusions.

RECOMMENDATION

The Board may change a finding of fact or conclusion of law made by the ALJ, or may vacate or modify an order issued by the ALJ, only under the restrictions of Tex. Gov. Code § 2001.058(e).

The Staff finds that Tex. Gov. Code § 2001.058(e) modification justifications are not present in this case.

The Staff recommends that the ALJ's conclusions be followed and the amended PFD be adopted.

DOCUMENTS

The following documents are attached to this Executive Summary for consideration by the Board:

- Proposed Order;
- Attachment A: SOAH ALJ's PFD;
- Attachment B: Respondent's Exceptions to the PFD;
- Attachment C: Complainant's Replies to Exceptions; and
- Attachment D: The ALJ's Response to Exceptions.

Proposed Order

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

**AUTOBAHN IMPORTS, L.P. D/B/A
LAND ROVER OF FORT WORTH,
Complainant**

v.

**JAGUAR LAND ROVER NORTH
AMERICA, LLC,
Respondent**

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**MVD CAUSE NO. 14-0016 LIC
SOAH DOCKET NO. 608-14-4960.LIC**

FINAL ORDER

The above referenced matter came before the before the Board of Texas Department of Motor Vehicles in the form of a Proposal for Decision (PFD) from the State Office of Administrative Hearings (SOAH).

In the PFD, Administrative Law Judge (ALJ) states that the Complainant filed a Motion for Summary Disposition (Motion) alleging that: (1) Respondent improperly charged back certain incentive payments for sales to leasing companies, (2) Respondent’s Export Policy is invalid under the Texas Occupations Code, and (3) Respondent’s payment schedule for incentive payments violates the schedule provided for by the Texas Occupations Code. Ultimately, the ALJ granted Summary Disposition to Complainant on the first two claims and upon Complainant’s request, the ALJ dismissed the third claim from the docket. As a result of the combination of the summary dispositions and the dismissal, there are no unresolved claims before SOAH or the Board.

As the final order authority for the agency, the Board may change a finding of fact or conclusion of law made by the ALJ, or may vacate or modify an order issued by the ALJ, *only* under the restrictions of Tex. Gov. Code §2001.058(e). The Board finds that Tex. Gov. Code §2001.058(e) factors are not present in this case. The ALJ did not fail to properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions. There is

not a prior administrative decision on which the ALJ relied that is incorrect or should be changed, nor is there a technical error in a finding of fact that should be changed.

Therefore, the Board, after having considered the findings of fact, and conclusions of law presented in the PFD, Respondent's Exceptions, Complainant's Replies, and the ALJ's September 30, 2015, Exceptions letter, enters this Final Order:

IT IS ORDERED

1. That the PFD and the ALJ's September 30, 2015, Exceptions letter filed in this proceeding, including the findings of fact and conclusions of law, be, and hereby are, incorporated herein;
2. That Respondent improperly charged back against the Complainant certain incentive payments for sales to leasing companies and that those chargebacks are invalid and rescinded;
3. That Respondent's Export Policy is invalid under the Texas Occupations Code; and
4. That, as to the claim that Respondent's payment schedule for incentive payments violates the schedule provided for by the Texas Occupations Code, no further action shall be taken by the Department and the matter shall be, and hereby is, dismissed.

Date: _____

Board Chair
Texas Department of Motor Vehicles

ATTESTED:

Daniel Avitia, Director
Motor Vehicle Division
Texas Department of Motor Vehicles

Attachment A: SOAH ALJ's PFD



Cathleen Parsley
Chief Administrative Law Judge

August 20, 2015

Daniel Avitia, Director
Motor Vehicle Division
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, TX 78731

VIA INTERAGENCY MAIL

**RE: Docket No. 608-14-4960.LIC; MVD Docket No. 14-0016.LIC;
Autobahn Imports, L.P. D/B/A Land Rover of Fort Worth v. Jaguar
Land Rover North America, L.L.C.**

Dear Mr. Avitia:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Frazee".

Stephanie Frazee
Administrative Law Judge

SF/mm
Enclosure

cc: Howard V. Rose, Attorney at Law, 111 Congress Avenue, Suite 1400, Austin, Texas 78701 – **VIA REGULAR MAIL**
Richard W. Wiseman, Brown, Dean, Wiseman, Procter, Hart, & Howell, LLP, 306 West 7th Street, Suite 200, Fort Worth, Texas 76102 – **VIA REGULAR MAIL**
Colm A. Moran, Hogan Lovells US LLP, 1999 Avenue of the Stars, Suite 1400, Los Angeles, California 90067 – **VIA REGULAR MAIL**
Aaron R. Crane, Hogan Lovells US LLP, 700 Louisiana Street, Suite 4300, Houston, Texas 77002 – **VIA REGULAR MAIL**
Alice Carmona, Docket Clerk, Texas Department of Motor Vehicle, 4000 Jackson Avenue, Austin, Texas 78731 – **VIA INTERAGENCY MAIL** (with Certified Evidentiary Record and 1 hearing CD)

SOAH DOCKET NO. 608-14-4960.LIC

<p>AUTOBAHN IMPORTS, L.P. D/B/A LAND ROVER OF FORT WORTH, Complainant</p> <p>v.</p> <p>JAGUAR LAND ROVER NORTH AMERICA, L.L.C., Respondent</p>	<p>§ § § § § § § § §</p>	<p>BEFORE THE STATE OFFICE</p> <p>OF</p> <p>ADMINISTRATIVE HEARINGS</p>
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PROPOSAL FOR DECISION

Autobahn Imports, L.P. d/b/a Land Rover of Fort Worth (Autobahn) filed a Motion for Summary Disposition (Motion) alleging that: (1) Jaguar Land Rover North America, L.L.C. (JLRNA) improperly charged back certain incentive payments for sales to leasing companies, (2) JLRNA’s Export Policy is invalid under the Texas Occupations Code, and (3) JLRNA’s payment schedule for incentive payments violates the schedule provided for by the Texas Occupations Code. Summary disposition has been previously granted to Autobahn on the first two claims, and the third claim has been severed and dismissed from the case. This proposal for decision (PFD) incorporates the prior orders granting summary disposition.¹

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Autobahn filed a complaint against JLRNA with the Texas Department of Motor Vehicles on May 7, 2014. The complaint was referred to the State Office of Administrative Hearings (SOAH) on August 19, 2014. Autobahn filed its Motion on October 8, 2014. On October 27, 2014, Administrative Law Judge (ALJ) Howard S. Seitzman convened a prehearing conference with the parties. Following the prehearing conference, on October 28, 2014,

¹ Order No. 6, Ruling on “End-User” Issue Identified in Order No. 5 (January 28, 2015) (Order No. 6); Order No. 10, Resolving End-User Issue (April 9, 2015) (Order No. 10); Order No. 11, Denying Motion to Dismiss, Granting Summary Disposition in Part, Denying Summary Disposition in Part, and Requiring a Status Report (June 22, 2015) (Order No. 11). For ease of reference, the backgrounds and analyses contained in Order Nos. 6 and 11 are included in this PFD. Some non-substantive changes were made for consistency and to avoid repetition.

ALJ Seitzman issued Order No. 4 abating all issues other than “whether a leasing company is an ‘end-user’ under the terms of the 2013 Land Rover Business Builder Program” and setting a deadline for the parties to brief the issue.²

On January 7, 2015, ALJ Paul D. Keeper held a prehearing conference on an issue ancillary to the end-user issue: “what is an approved leasing company under the terms of the 2013 Program Manual (Manual) and the September 1, 2009 Operations Bulletin [Operations Bulletin]. . . .”³ Following the prehearing conference, ALJ Keeper issued an order requiring briefing on the ancillary issue and stating that the parties agreed that the Manual and Operations Bulletin are the sole documents that govern the issues in this proceeding.⁴

On January 28, 2015, ALJ Keeper issued Order No. 6, ruling on the end-user issue by concluding that a leasing company is considered to be an end-user under the terms of the program documents.⁵ On February 23, 2015, ALJ Stephanie Frazee held a prehearing conference during which the parties disagreed as to the effect of Order No. 6. Following the prehearing conference, ALJ Frazee issued Order No. 8, which lifted the abatement of issues.⁶ In response to the order, the parties provided an agreed schedule for briefing their positions on the effect of Order No. 6 as well as the remaining issues in the Motion.

On March 10, 2015, Autobahn supplemented its Complaint and Motion to address JLRNA’s new Export Policy, which had been issued on November 24, 2014. On April 9, 2015, ALJ Frazee issued an order resolving the end-user issue by granting summary disposition in favor of Autobahn on the charge-back/end-user issue based on Order No. 6.⁷ On April 27, 2015,

² Order No. 4, Memorializing Telephone Prehearing Conference (October 28, 2014).

³ Order No. 5, Granting Motion for Admission Pro Hac Vice and Memorializing Prehearing Conference of January 7, 2015 (January 7, 2015) (Order No. 5).

⁴ Order No. 5.

⁵ Order No. 6.

⁶ Order No. 8, Lifting Abatement of Issues and Requesting Procedural Schedule (February 23, 2015).

⁷ Order No. 10.

JLRNA filed, with its response to the Motion, a Motion to Dismiss Autobahn's Export Policy claim due to lack of ripeness.

JLRNA's Motion to Dismiss was denied.⁸ Summary disposition was granted to Autobahn on its claim regarding JLRNA's Export Policy.⁹ Summary disposition was denied on Autobahn's incentive payment schedule claim because questions of fact remained on that issue. On July 9, 2015, Autobahn filed a Motion to Dismiss and Submit, requesting that the incentive payment schedule claim be severed from the case and dismissed and that the ALJ issue a Proposal for Decision. The ALJ granted the motion on July 24, 2015, and closed the record on that date.

II. FACTUAL BACKGROUND

JLRNA is a distributor/manufacturer of vehicles, and Autobahn is a retailer/dealer of JLRNA's vehicles. Business Builder is JLRNA's incentive-based program contingent, among other things, on a dealer's sales. Under Business Builder, JLRNA pays its dealers a percentage of manufacturer's suggested retail price (MSRP) on each Land Rover sold (up to 5%) if certain requirements are met. The Manual explains which transactions are eligible for full payment under Business Builder.

Business Builder consists of five components:

- (1) LEADS, which focuses on converting leads that each retailer receives into sales (a dealer gets an evaluation score each quarter, and a score of 100 translates to a 1% incentive payment for each eligible vehicle);
- (2) Training, which rewards retailers for meeting a minimum level of training for employees (if a certain percentage of sales and service staff receive the required training, the dealer will get a 1% incentive payment on eligible vehicles);

⁸ Order No. 11.

⁹ Order No. 10; Order No. 11.

- (3) Select CPO, which focuses on sales of pre-owned vehicles (a formula based on two calculations determines whether the dealer receives a 1% incentive payment for each eligible vehicle);
- (4) Facility Expense Reserve (FER), which requires that a retailer have an Approved Facility or an Approved Facility Plan and that a vehicle must be sold in the retailer's payment area (a possible 2% incentive payment for each eligible vehicle); and
- (5) Land Rover Way (LRW), which specifies that the amount to be paid is determined by the retailer's score on a quarterly LRW evaluation (a possible 1% incentive payment per eligible vehicle).¹⁰

A vehicle must be a new eligible retail sale and meet the above criteria to receive an incentive payment for each component. The dealer submits information on the five components to JLRNA throughout each calendar quarter. Reports are updated on a daily basis and become final at the end of the quarter. At the end of the quarter, JLRNA reviews the information and sales records to determine the amount of any payment(s) due to the retailer.

Autobahn reports each of its retail sales electronically on a retail delivery report form (RDR form) provided by JLRNA. Autobahn filed completed RDR forms for all the sales transactions concerning the charge-backs at issue in this case. Autobahn did not receive written notice of rejection of any sales for incentive purposes from JLRNA until JLRNA's audit of Autobahn's sales.

In February 2014, JLRNA audited Autobahn's sales from February 1, 2013, through January 31, 2014. Autobahn made 459 retail sales during that period. The auditor selected 134 sales files, all of which involved sales to leasing companies. The auditor made ninety-one charge-backs totaling \$340,469.80 in payments that JLRNA had previously paid to Autobahn under Business Builder. With one exception, the auditor's basis for the charge-backs was "Delivery was not made to the vehicle's end-user by an authorized Land Rover retailer representative. Lease Contract shows [name of leasing company & location] delivered the

¹⁰ Motion for Summary Disposition (Motion), Ex. 6, 2013 Land Rover Business Builder Program Manual (Manual).

vehicle to the end-user [Lessee name and date].”¹¹ Autobahn appealed the charge-backs, and JLRNA rejected the appeal for all but five sales and charged back \$317,204.80 from Autobahn’s account.

The audit list also included twelve Land Rovers sold by Autobahn that were subsequently exported by the purchaser. The audit listed these vehicles as “potential” charge-backs. In a letter, JLRNA stated that it reserved the right to charge back for those transactions if it determined that Autobahn did not perform due diligence.¹² The letter also advised Autobahn that it must take all steps required or recommended by the Export Policy.

JLRNA updated its Export Policy effective November 24, 2014. The new Export Policy provides that all vehicles exported within nine months of sale in excess of a quarterly threshold of 3% of sales volume during the previous quarter for dealers selling over 250 units per year will be subject to charge-back. Therefore, if the total number of vehicles sold by Autobahn and later exported (within a nine-month period) exceeded 3% of Autobahn’s sales volume for a quarter, JLRNA would penalize it in the following quarter. The penalty consists of a charge-back equaling 13.5% of MSRP, a \$3,500 warranty fee, and all variable marketing program and incentive payments, as well as a two-for-one allocation penalty (i.e. the next allocation of new vehicles will be reduced by two for each vehicle exported).

The Export Policy also requires a dealer to perform due diligence to ensure that a vehicle will not be exported after sale. The due diligence requirements in the original Export Policy consist of nearly four pages of “Retailer Best Practices” and “Indicators of Potential Export or Broker Behavior.” Some of the best practices include:

- Searching known exporters;
- Searching the vehicle purchase history;
- Confirming the customer’s financials;
- Verifying title, registration, and tax information after the sale;

¹¹ Motion, Ex. 9, Audit Results.

¹² Motion, Ex. 12, Letter from Michael Stern (April 25, 2014).

- Utilizing No Export Agreements;
- Recognizing employees who may have a pattern of selling vehicles that are later exported;
- Conducting online searches to confirm the customer's personal details;
- Searching the customer's Facebook or LinkedIn pages;
- Running a Carfax report on vehicles listed on the customer's insurance card;
- Confirming the customer's address using Google Maps street view;
- Looking for any connections to businesses the customer may have failed to disclose;
- Validating the customer's IP address and searching the IP address to identify sources that do not match the details provided by the customer; and
- Determining whether the funding of the customer's account was recent or whether the source of funding was from outside the U.S.¹³

The list of "Indicators of Potential Export or Broker Behavior" are "red flags" identified by JLRNA as indicating a high risk of an export transaction. The "red flags" include:

- The buyer doesn't negotiate on price;
- The buyer purchases more than one vehicle over a short period of time;
- The buyer will take any equipment or color;
- The buyer asks for the vehicle to be delivered;
- The buyer does not want to register the vehicle through the retailer;
- The buyer does not have a U.S. driver's license; and
- The buyer states that it will finance the vehicle but switches to pay in full with a check at the last minute.

Based on its 2014 sales, Autobahn's export threshold was four vehicles in Quarter 1 of 2015.¹⁴

¹³ Motion, Ex. 13, Export and Broker Policy; Supplement to Motion for Summary Disposition, Ex. 20, New Export and Broker Policy.

¹⁴ Autobahn's Reply to Land Rover's Response in Opposition to Autobahn's Motion for Summary Disposition and Motion to Dismiss Autobahn's Export Policy Claim, Ex. H, JLRNA's Letter to Autobahn Regarding New Export Policy and Previous Quarter Threshold (March 9, 2015).

III. DISCUSSION

A. Applicable Law

The rules of the State Office of Administrative Hearings (SOAH) provide that an Administrative Law Judge (ALJ) may issue a final decision or proposal for decision on all or part of a contested case without an evidentiary hearing if the pleadings, affidavits, and other admissible evidence show that there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law.¹⁵

The Texas Occupations Code (Code) provides that “[a] manufacturer or distributor may make charge-backs to a dealer if, after an audit, the manufacturer or distributor has reasonable grounds to conclude that the dealer committed fraud with respect to the incentive program.”¹⁶

The Code also provides for adverse action, under specific circumstances, against a dealer that sells a vehicle that is later exported:

Sec. 2301.479. Adverse Action in Connection with Export of Vehicle.

(a) Except as otherwise provided by this section, a manufacturer, distributor, or representative may not take an adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States.

(b) A franchise provision that allows a manufacturer, distributor, or representative to take adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States is enforceable only if, at the time of the original sale or lease, the dealer knew or reasonably should have known that the vehicle would be exported to a location outside the United States.

(c) A franchised dealer is presumed to have no actual knowledge that a vehicle the dealer sells or leases will be exported to a location outside the United States if, under the laws of a state of the United States:

¹⁵ 1 Tex. Admin. Code § 155.505(a).

¹⁶ Tex. Occ. Code § 2301.475(b).

- (1) the vehicle is titled;
 - (2) the vehicle is registered; and
 - (3) applicable state and local taxes are paid for the vehicle.
- (d) The presumption under Subsection (c) may be rebutted by direct, clear, and convincing evidence that the franchised dealer had actual knowledge or reasonably should have known at the time of the original sale or lease that the vehicle would be exported to a location outside the United States.
- (e) Except as otherwise permitted by this section, a franchise provision that allows a manufacturer, distributor, or representative to take adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States is void and unenforceable.¹⁷

In addition to the applicable rules and Code provisions, the Manual and the September 1, 2009 Operations Bulletin, “Contests and Incentives Standard Eligibility Rules for Retail Programs,” (Operations Bulletin) govern the issue of sales to leasing companies.¹⁸ The parties agree that the Manual and Operations Bulletin together constitute a contract.¹⁹

Among the requirements for receiving an incentive payment under Business Builder is the dealership’s obligation to document that it has engaged in an eligible transaction with an “end-user.”²⁰ Although the Manual does not define the term, the Operations Bulletin defines “end-user” as “a purchaser/lessee purchasing or leasing a vehicle from an authorized dealership for retail, commercial or business use, with no intent to resell.”²¹ The Operations Bulletin also states that “[a]n approved leasing company purchasing to lease is considered an end-user.”²² However, neither the Manual nor the Operations Bulletin defines an “approved leasing

¹⁷ *Id.* § 2301.479.

¹⁸ Order No. 5.

¹⁹ Order No. 6.

²⁰ Motion, Ex. 6, Manual at 8.

²¹ Motion, Ex. 16, Operations Bulletin at 12.

²² Motion, Ex. 16, Operations Bulletin at 12.

company.” Finally the Manual provides that, in the event of a conflict between the Manual and “any other [JLRNA] program, incentive, or policy, the terms of the [Manual] shall govern.”²³

A contract consisting of two documents that involve the same parties and relate to the same transaction will be construed by reading their provisions together to ascertain the parties’ intent.²⁴ To discern intent, an ALJ is to “examine and consider *the entire writing* in an effort to harmonize and give effect to *all the provisions* of the contract so that none will be rendered meaningless. No single provision taken alone will be given controlling effect; rather, all the provisions must be considered with reference to the whole instrument.”²⁵

If the wording of a written instrument is “definite” and “certain,” then “it is not ambiguous and the court will construe the contract as a matter of law.”²⁶ Only where a contract is ambiguous may a court “consider the parties’ interpretation and admit extraneous evidence to determine the true meaning of the instrument.”²⁷ A contract is not ambiguous merely because the parties disagree on its meaning.²⁸ Rather, “an ambiguity exists only if the contract language is susceptible to two or more reasonable interpretations.”²⁹

B. Export Policy

1. Arguments

Autobahn argued that the Export Policy automatically penalizes dealers for exports over the designated threshold, without regard to any due diligence performed by Autobahn or the

²³ Motion, Ex. 6, Manual at 11.

²⁴ *Fort Worth Indep. Sch. Dist. v. City of Fort Worth*, 22 S.W.3d 831, 840 (Tex. 2000).

²⁵ *Seagull Energy E&P, Inc. v. Eland Energy, Inc.*, 207 S.W.3d 342, 345 (Tex. 2006) (emphasis in original); see also *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983).

²⁶ *Coker*, 650 S.W.2d at 393.

²⁷ *Nat’l Union Fire Ins. Co. of Pittsburgh, Penn. v. CBI Indus., Inc.*, 907 S.W.2d 517, 520 (Tex. 1995).

²⁸ *Sun Oil Co. (Delaware) v. Madeley*, 626 S.W.2d 726, 727 (Tex. 1981).

²⁹ *Am. Mfrs. Mut. Ins. Co. v. Schaefer*, 124 S.W.3d 154, 157 (Tex. 2003).

statutory presumption contained in the Code. Autobahn claimed that the Export Policy is void and unenforceable and violates Code §§ 2301.479 and 2301.475(b).

JLRNA noted that the Export Policy is national in scope and cannot be specifically tailored to each state. JLRNA further noted that it intends to abide by Texas laws and regulations in its application of the policy and that the Texas Department of Motor Vehicles closed its inquiry into the Export Policy. JLRNA argued that the Export Policy does not violate Texas law. According to JLRNA, showing that a dealer did not perform the due diligence set forth in the Export Policy rebuts the statutory presumption.

2. Analysis

The Export Policy issue in this case hinges on the rebuttable presumption contained in the Code. Under the Code, JLRNA may impose a franchise provision allowing it to take adverse action against Autobahn for selling a vehicle that is later exported “if, at the time of the original sale or lease, the dealer knew or reasonably should have known that the vehicle would be exported to a location outside the United States.”³⁰ JLRNA may rebut that presumption by “direct, clear, and convincing evidence” that Autobahn “had actual knowledge or reasonably should have known at the time of the original sale or lease that the vehicle would be exported to a location outside the United States.”³¹

The new Export Policy, effective November 24, 2014, sets an export threshold for dealers based on their annual vehicle sales. For Autobahn, no more than 3% of its sales volume in a quarter may be exported. The new Export Policy also states that “[a]ll exported vehicle sales exceeding a retailer’s quarterly threshold *will* be subject to . . . penalties and charge-backs.”³²

³⁰ Tex. Occ. Code § 2301.479(b).

³¹ *Id.* § 2301.479(d).

³² Supplement to Motion for Summary Disposition, Ex. 20, New Export and Broker Policy (emphasis added).

The new Export Policy also specifies that “all retailers are still required to perform due diligence on all sales to identify potential exporters and resellers.”³³

The Code includes a presumption that the dealer did not have knowledge that a vehicle would be exported. The terms of the Export Policy place a burden on the dealer by requiring extensive due diligence. Under the Export Policy, only after performing that due diligence can it be presumed that the dealer did not have knowledge. Additionally, the terms of the Export Policy automatically impose a charge-back if the sales threshold is met. Moreover, the Export Policy’s imposition of charge-backs of marketing program and incentive payments is problematic because the Code permits charge-backs of incentive payments only when the dealer has committed fraud regarding the incentive program; however, the Export Policy imposes these charge-backs without requiring a showing of fraud.

Although JLRNA states it will apply the Export Policy in compliance with Texas law, the Code applies to the terms of the policy, not to the application of those terms. Under the Export Policy, the dealer is subject to automatic adverse action after the threshold is met, including charge-backs. Further, the dealer must show that it has performed all due diligence rather than being under a presumption of a lack of knowledge that the vehicle would be exported. These provisions violate Texas law. Therefore, Autobahn is entitled to summary disposition on its claims regarding the Export Policy.

C. Sales to Leasing Companies

1. Failure to Submit RDRs and End-User Status

JLRNA noted that the Manual requires an end-user to be listed as the primary driver of the vehicle during “the RDR process.”³⁴ JLRNA claimed that Autobahn failed to submit to JLRNA any RDR forms in which Autobahn identified a leasing company as the primary driver.

³³ Supplement to Motion for Summary Disposition, Ex. 20, New – Export and Broker Policy.

³⁴ Response in Opposition to Autobahn Imports, LP’s Motion for Summary Disposition (Response) at 2.

JLRNA asserted that Autobahn's alleged failure was proof that only "retail lessee[s], not the leasing companies," could be eligible end-users.³⁵

Autobahn asserted that the term "end-user" is used in a variety of ways throughout the Manual and Operations Bulletin. Autobahn noted that the Manual refers to the end-user in terms of who is the "primary driver" of the vehicle, while the Operations Bulletin relies on the identification of the person who is acquiring the vehicle (the person or entity "purchasing or leasing a vehicle from an authorized dealership").³⁶ Autobahn also noted that the Operations Bulletin anticipates the possibility of multiple end-users.³⁷ Autobahn argued that its alleged failure to submit RDR forms for leasing companies as the primary drivers carried no legal significance since Autobahn could have submitted RDR forms based on other elements of the same transactions.

The ALJ declines to adopt JLRNA's argument that Autobahn's alleged failure to submit RDR forms for leasing companies is proof that a leasing company may not be an end-user. Autobahn's argument reflects a position that is within the limits of reason, particularly in light of the contract documents' failure to conform to a consistent position.

2. Approved Leasing Company

The Operations Bulletin states that "[a]n approved leasing company purchasing to lease is considered an end-user."³⁸ JLRNA argued that the language was "inapplicable to the transactions at issue in the case." JLRNA asserted that an approved leasing company meant a "fleet leasing company." Further, JLRNA argued that because fleet leasing is not a qualified transaction under Business Builder, no transactions involving approved leasing company transactions could generate end-users. The evidence on which JLRNA relied in reaching this

³⁵ Response at 5.

³⁶ Motion, Ex. 6, Manual at 8, 12; Ex. 16, Operations Bulletin at 12.

³⁷ Motion, Ex. 16, Operations Bulletin at 3.

³⁸ Motion, Ex. 16, Operations Bulletin at 3.

conclusion was the affidavit of Michael Stern, JLRNA's retail audit manager.³⁹ Mr. Stern stated that the Operations Bulletin's use of the term "approved leasing company" "refers to fleet leasing companies."⁴⁰ Mr. Stern also asserted that JLRNA has not approved any fleet leasing companies under Business Builder, thereby foreclosing the possibility that a leasing company could be an end-user.⁴¹

Autobahn argued that the ambiguity of the term "approved leasing company" should result in a strict construction of the term against JLRNA's interests and in favor of Autobahn's. The result, argued Autobahn, is that an "approved leasing company" is a leasing company that: (1) was listed by Autobahn on an RDR form; (2) was listed on an RDR form to which JLRNA did not make a timely objection; or (3) has been approved by the State of Texas for operation in Texas. Autobahn argued that Mr. Stern's affidavit does not constitute proof of the meaning of the disputed term.

Mr. Stern's statement is inaccurate in stating that the reference to leasing companies refers to fleet leasing companies. The Operations Bulletin makes no reference to "fleet leasing companies" at the page cited by Mr. Stern or in any other part of the Operations Bulletin's definitions. Although Mr. Stern's statement may be accurate that JLRNA has not approved sales to any fleet leasing companies under Business Builder, JLRNA's alleged non-approval of a fleet leasing company does not prove that "approved leasing company" means "fleet leasing company." Mr. Stern relied on no independent support for his definition, and neither he nor JLRNA cited to any part of the Manual, Operations Bulletin, or any other document that allegedly governs Business Builder.

Whatever may be the intended meaning of the term, the ALJ finds no support for JLRNA's argument that "approved leasing company" refers to fleet leasing companies. The ALJ adopts the essence of Autobahn's argument that JLRNA may not use an undefined term in a

³⁹ Response, Michael Stern Affidavit.

⁴⁰ Response at 3.

⁴¹ Response at 3.

contract, require the other party to agree to its use, and then impose a unique definition (based on its own employee's unsupported affidavit testimony) after a dispute has arisen in which the use of the term has gained legal significance.

3. Purposes of Delivery Requirement

JLRNA argued that Autobahn's delivery of vehicles to a leasing company did not satisfy various purposes of JLRNA's delivery requirement. Those purposes include the creation of a relationship between JLRNA and the end-user.⁴² To satisfy that requirement, JLRNA argued, Autobahn is required to deliver the vehicle to the end-user, give JLRNA the end-user's name and address, and maintain documentation about the end-user's address and about the vehicle's registration.⁴³ JLRNA asserted that the direct relationship requirement could not be satisfied if the end-users were third-party leasing companies that never were intended, as noted in the RDR forms, to be the primary drivers of those vehicles.⁴⁴

JLRNA did not make clear how its interest in maintaining a direct relationship with the end-user conflicts with a sale to a leasing company—particularly in light of the Operations Bulletin's statement that an approved leasing company is considered to be an end-user. The ALJ rejects JLRNA's argument.

4. The Settlement Agreement

In Mr. Stern's affidavit, he relied on a September 21, 2011 settlement agreement (Settlement Agreement) between the parties and an April 23, 2014 letter from the general counsel of Autobahn to JLRNA.⁴⁵ The upshot of his statement and JLRNA's argument is that the parties resolved the issue of defining an "approved leasing company" when they entered into

⁴² Motion, Ex. 16, Operations Bulletin at 3.

⁴³ Motion, Ex. 16, Operations Bulletin at 8.

⁴⁴ Response at 5.

⁴⁵ Response, Michael Stern Affidavit at 4, Exs. B, C.

the Settlement Agreement. In reply, Autobahn asserted that the Settlement Agreement was irrelevant because the document refers to purchasers and not to lessees.

The ALJ's goal is to ascertain the parties' intent based on the contract documents.⁴⁶ The Settlement Agreement does not clearly identify which previous dispute between the parties the document was intended to settle. Additionally, the document makes no reference to "leases," "leasing companies," or "lessees." Accordingly, without any guidance about the underlying dispute that the Settlement Agreement allegedly resolved, the ALJ finds no basis for relying on Mr. Stern's assertion about the document's governing authority.

5. Conclusion

The question is whether a leasing company is an end-user under the terms of the Business Builder documents. The Manual makes no reference to leasing companies as end-users. In contrast, the Operations Bulletin recognizes that "[a]n approved leasing company purchasing to lease is considered an end-user."⁴⁷ The Manual governs in the event of a conflict between the Manual and the Operations Bulletin.⁴⁸

The Operations Bulletin's acknowledgement of sales to leasing companies as qualified transactions and the Manual's absence of references to lease transactions do not create a conflict. An ALJ's obligation is to consider the entire writing "in an effort to harmonize and give effect to all the provisions of the contract so that none will be rendered meaningless."⁴⁹ The ALJ is prohibited from giving controlling effect to any single provision and is obligated to consider "all provisions . . . with reference to the whole instrument."⁵⁰ Accordingly, the ALJ finds no conflict in the Operations Bulletin permitting the use of sales to leasing companies as qualified transactions and the Manual's silence on the subject. The provisions described in the two

⁴⁶ *Fort Worth Indep. Sch. Dist.*, 22 S.W.3d at 842.

⁴⁷ Motion, Ex. 16, Operations Bulletin at 3.

⁴⁸ Motion, Ex. 6, Manual at 11.

⁴⁹ *Seagull Energy*, 207 S.W.3d at 345.

⁵⁰ *Id.*

Business Builder documents may be harmonized by giving effect to all of the terms so that none are rendered meaningless.

In considering whether a leasing company is an end-user under the terms of Business Builder documents, the ALJ must take into account the Operations Bulletin's provision that "[a]n approved leasing company purchasing to lease is considered an end-user."⁵¹ Although "approved leasing company" has not been defined, the documents clearly anticipate that a leasing company is considered an end-user under the terms of documents.

IV. CONCLUSION

Autobahn is entitled to summary disposition on its claims regarding the terms of JLRNA's Export Policy and the charge-backs for sales to leasing companies.

V. FINDINGS OF FACT

Background Findings

1. Jaguar Land Rover North America, L.L.C. (JLRNA) is a distributor/manufacturer of vehicles, and Autobahn Imports, L.P. d/b/a Land Rover of Fort Worth (Autobahn) is a retailer/dealer of JLRNA's vehicles.
2. The Business Builder Program (Business Builder) is JLRNA's incentive-based program based, among other things, on a dealer's sales.
3. Under Business Builder, JLRNA pays its dealers a percentage of manufacturer's suggested retail price (MSRP) on each Land Rover sold (up to 5%) if certain requirements are met.
4. The 2013 Program Manual (Manual) explains which transactions are eligible for full payment under Business Builder.
5. A vehicle must be a new eligible retail sale and meet other criteria to receive an incentive payment for each component of Business Builder. The dealer submits information on the

⁵¹ Motion, Ex. 16, Operations Bulletin at 3.

five components to JLRNA throughout each calendar quarter. Reports are updated on a daily basis and become final at the end of the quarter. At the end of the quarter, JLRNA reviews the information and sales records to determine the amount of any payment(s) due to the retailer.

6. Autobahn reports each of its retail sales electronically on a retail delivery report form (RDR form) provided by JLRNA. Autobahn filed completed RDR forms for all the sales transactions concerning the charge-backs at issue in this case.

End-User Issue

7. Among the requirements for receiving an incentive payment under Business Builder is the dealership's obligation to document that it has engaged in an eligible transaction with an "end-user."
8. In February 2014, JLRNA audited Autobahn's sales from February 1, 2013, through January 31, 2014. Autobahn made 459 retail sales during that period.
9. The auditor selected 134 sales files, all of which involved sales to leasing companies. The auditor made ninety-one charge-backs totaling \$340,469.80 in payments that JLRNA had previously paid to Autobahn under Business Builder. With one exception, the auditor's basis for the charge-backs was "Delivery was not made to the vehicle's end-user by an authorized Land Rover retailer representative. Lease Contract shows [name of leasing company & location] delivered the vehicle to the end-user [Lessee name and date]."
10. Autobahn appealed the charge-backs, and JLRNA rejected the appeal for all but five sales and charged back \$317,204.80 from Autobahn's account.
11. A leasing company is considered to be an end-user under the terms of the program documents.

Export Policy Issue

12. The audit list also included twelve Land Rovers sold by Autobahn that were subsequently exported by the purchaser. The audit listed these vehicles as "potential" charge-backs.
13. In a letter, JLRNA stated that it reserved the right to charge back for those transactions if it determined that Autobahn did not perform due diligence. The letter also advised Autobahn that it must take all steps required or recommended by JLRNA's Export Policy.

14. JLRNA's Export Policy provides that all vehicles exported within nine months of sale in excess of a quarterly threshold of 3% of sales volume during the previous quarter for dealers selling over 250 units per year will be subject to charge-back.
15. Under the Export Policy, if the total vehicles sold by Autobahn and later exported (within a nine-month period) exceed 3% of Autobahn's sales volume for a quarter, JLRNA will penalize it in the following quarter.
16. The Export Policy provides that the penalty for exceeding the export threshold consists of a charge-back equaling 13.5% of MSRP, a \$3,500 warranty fee, and all variable marketing program and incentive payments, as well as a two-for-one allocation penalty (i.e. the next allocation of new vehicles will be reduced by two for each vehicle exported).
17. The Export Policy requires a dealer to perform due diligence to ensure that a vehicle will not be exported after sale. The due diligence requirements in the original Export Policy consist of nearly four pages of "Retailer Best Practices" and "Indicators of Potential Export or Broker Behavior."
18. The Export Policy's Retailer Best Practices include:
 - Searching known exporters;
 - Searching the vehicle purchase history;
 - Confirming the customer's financials;
 - Verifying title, registration, and tax information after the sale;
 - Utilizing No Export Agreements;
 - Recognizing employees who may have a pattern of selling vehicles that are later exported;
 - Conducting online searches to confirm the customer's personal details;
 - Searching the customer's Facebook or LinkedIn pages;
 - Running a Carfax report on vehicles listed on the customer's insurance card;
 - Confirming the customer's address using Google Maps street view;
 - Looking for any connections to businesses the customer may have failed to disclose;
 - Validating the customer's IP address and searching the IP address to identify sources that do not match the details provided by the customer; and
 - Determining whether the funding of the customer's account was recent or whether the source of funding was from outside the U.S.
19. The Export Policy's Indicators of Potential Export or Broker Behavior include:
 - The buyer doesn't negotiate on price;
 - The buyer purchases more than one vehicle over a short period of time;
 - The buyer will take any equipment or color;

- The buyer asks for the vehicle to be delivered;
 - The buyer does not want to register the vehicle through the retailer;
 - The buyer does not have a U.S. driver's license; and
 - The buyer states that it will finance the vehicle but switches to pay in full with a check at the last minute.
20. Based on its 2014 sales, Autobahn's export threshold was four vehicles in Quarter 1 of 2015.
21. The terms of the Export Policy automatically impose a charge-back if the sales threshold is met.
22. The terms of the Export Policy impose charge-backs without requiring a showing of fraud.
23. The terms of the Export Policy provide that a dealer must show that it has performed all required due diligence rather than the dealer being under a presumption of a lack of knowledge that the vehicle would be exported.

Procedural Findings

24. Autobahn filed a complaint against JLRNA with the Texas Department of Motor Vehicles on May 7, 2014.
25. The complaint was referred to the State Office of Administrative Hearings (SOAH) on August 19, 2014.
26. On August 22, 2014, Autobahn sent its Notice of Hearing to JLRNA. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
27. On October 8, 2014, Autobahn filed a Motion for Summary Disposition (Motion) alleging that: (1) JLRNA improperly charged back certain incentive payments for sales to leasing companies, (2) JLRNA's Export Policy is invalid under the Texas Occupations Code (Code), and (3) JLRNA's payment schedule for incentive payments violates the schedule provided for by the Code.
28. The parties agreed that the Manual and the Operations Bulletin rules are the sole documents that govern the issues in this proceeding.
29. On March 10, 2015, Autobahn supplemented its Complaint and Motion to address JLRNA's new Export Policy, which had been issued on November 24, 2014.

30. On April 9, 2015, Administrative Law Judge Stephanie Frazee granted summary disposition in favor of Autobahn on the end-user/charge-back issue.
31. On June 22, 2015, the ALJ granted summary disposition to Autobahn on its claims regarding charge-backs for sales to leasing companies and JLRNA's Export Policy. Summary disposition was denied on Autobahn's incentive payment schedule claim because questions of fact remained on that issue.
32. On July 24, 2015, the ALJ severed the incentive payment schedule claim from this case and dismissed it. The record closed on that date.

VI. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Occ. Code ch. 2301.
2. SOAH has jurisdiction over the contested case hearing and the authority to issue a proposal for decision, including findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Occ. Code § 2301.704; and 43 Tex. Admin. Code ch. 8, subch. D.
3. Notice of Autobahn's complaint was properly provided as required by law. Tex. Gov't Code §§ 2001.051-.052; Tex. Occ. Code § 2301.705; 1 Tex. Admin. Code § 155.401; 43 Tex. Admin. Code §§ 215.105, .307.
4. The ALJ may issue a final decision or proposal for decision on all or part of a contested case without an evidentiary hearing if the pleadings, affidavits, and other admissible evidence show that there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law. 1 Tex. Admin. Code § 155.505(a).
5. A manufacturer or distributor may make charge-backs to a dealer if, after an audit, the manufacturer or distributor has reasonable grounds to conclude that the dealer committed fraud with respect to the incentive program. Tex. Occ. Code § 2301.475(b).
6. Code § 2301.479 provides for adverse action against a dealer that sells a vehicle that is later exported only if, at the time of the original sale or lease, the dealer knew or reasonably should have known that the vehicle would be exported to a location outside the United States. Tex. Occ. Code § 2301.479(a)-(b).
7. Under the Code, a dealer is presumed to have no actual knowledge that a vehicle the dealer sells or leases will be exported if (1) the vehicle is titled; (2) the vehicle is registered; and (3) applicable state and local taxes are paid for the vehicle. Tex. Occ. Code § 2301.479(c). This presumption may be rebutted by "direct, clear, and convincing evidence that the franchised dealer had actual knowledge or reasonably should have known at the time of the original sale or lease that the vehicle would be exported to a location outside the United States." *Id.* at § 2301.479(d).

8. Except as permitted by Code § 2301.479, “a franchise provision that allows a manufacturer, distributor, or representative to take adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States is void and unenforceable.” Tex. Occ. Code § 2301.479(e).
9. The Manual and September 1, 2009 Operations Bulletin, “Contests and Incentives Standard Eligibility Rules for Retail Programs,” (Operations Bulletin) together constitute a contract between JLRNA and Autobahn and govern the issue of sales to leasing companies.
10. Although the Manual does not define the term “end-user,” the Operations Bulletin defines it as “a purchaser/lessee purchasing or leasing a vehicle from an authorized dealership for retail, commercial or business use, with no intent to resell.” The Operations Bulletin also states that “[a]n approved leasing company purchasing to lease is considered an end-user.” However, neither the Manual nor the Operations Bulletin define an “approved leasing company.”
11. The Manual provides that, in the event of a conflict between the Manual and “any other [JLRNA] program, incentive, or policy, the terms of the [Manual] shall govern.”
12. A contract consisting of two documents that involve the same parties and relate to the same transaction will be construed by reading their provisions together in ascertaining the parties’ intent. *Fort Worth Indep. Sch. Dist. v. City of Fort Worth*, 22 S.W.3d 831, 840 (Tex. 2000).
13. To discern intent, an ALJ is to “examine and consider *the entire writing* in an effort to harmonize and give effect to *all the provisions* of the contract so that none will be rendered meaningless. No single provision taken alone will be given controlling effect; rather, all the provisions must be considered with reference to the whole instrument.” *Seagull Energy E&P, Inc. v. Eland Energy, Inc.*, 207 S.W.3d 342, 345 (Tex. 2006) (emphasis in original); *see also Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983).
14. If the wording of a written instrument is “definite” and “certain,” then “it is not ambiguous and the court will construe the contract as a matter of law.” *Coker*, 650 S.W.2d at 393. Only where a contract is ambiguous may a court “consider the parties’ interpretation and admit extraneous evidence to determine the true meaning of the instrument.” *Nat’l Union Fire Ins. Co. of Pittsburgh, Penn. v. CBI Indus., Inc.*, 907 S.W.2d 517, 520 (Tex. 1995).
15. A contract is not ambiguous merely because the parties disagree on its meaning. *Sun Oil Co. (Delaware) v. Madeley*, 626 S.W.2d 726, 727 (Tex. 1981). Rather, “an ambiguity exists only if the contract language is susceptible to two or more reasonable interpretations.” *Am. Mfrs. Mut. Ins. Co. v. Schaefer*, 124 S.W.3d 154, 157 (Tex. 2003).

16. The Operations Bulletin's acknowledgement of sales to leasing companies and the Manual's absence of references to such sales do not create conflict or ambiguity.
17. Read together, the Operations Bulletin and the Manual allow sales to leasing companies to be qualified transactions under Business Builder.
18. The Export Policy violates Texas Occupations Code § 2301.479.
19. Sales to leasing companies are qualified sales under Business Builder according to the program documents.
20. Autobahn is entitled to summary disposition on its claims regarding charge-backs for sales to leasing companies and the terms of the Export Policy.

SIGNED August 20, 2015.



STEPHANIE FRAZEE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

EXHIBIT LIST AND CERTIFICATION

DOCKET NUMBER: 608-14-4960.LIC**STYLE OF CASE: Autobahn Imports, L.P. d/b/a Land Rover of Fort Worth v. Jaguar Land Rover North America, L.L.C.****DATE OF HEARING: Summary Disposition**

Page 1 of 2.

EXH NO.	DESCRIPTION	OBJ Y/N	ADM Y/N	REMARKS
Complainant's Exhibits				
1	Original Complaint	N	Y	
2	Reply to Complaint	N	Y	
3	Mediators' Report	N	Y	
4	Notice of Hearing	N	Y	
5	Order No. 2 Memorializing Preliminary Hearing	N	Y	
6	2013 Land Rover Business Builder Program Manual	N	Y	
7	RDR Form	N	Y	
8	Benny Miller Affidavit	N	Y	
9	Audit Results	N	Y	
10	Lease Receipt Language	N	Y	
11	Copies of 7 Lease Forms	N	Y	
12	Michael Stern 4/25/14 Letter	N	Y	
13	JLRNA Export Policy	N	Y	
14	Code §§ 2301.467 and 2301.468	N	Y	
15	CKB & Assoc. and Americo Life Opinions	N	Y	
16	Standard Eligibility Rules	N	Y	
17	Code § 2301.475	N	Y	
18	Code § 2301.479	N	Y	
19	Code § 2301.4749	N	Y	
20	New JLRNA Export Policy	N	Y	
B	Rick Holder Affidavit	N	Y	

EXHIBIT LIST AND CERTIFICATION

DOCKET NUMBER: 608-14-4960.LIC

STYLE OF CASE: Autobahn Imports, L.P. d/b/a Land Rover of Fort Worth v. Jaguar Land Rover North America, L.L.C.

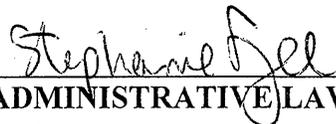
DATE OF HEARING: Summary Disposition

Page 1 of 2.

EXH NO.	DESCRIPTION	OBJ Y/N	ADM Y/N	REMARKS
Complainant's Exhibits				
1	Original Complaint	N	Y	
2	Reply to Complaint	N	Y	
3	Mediators' Report	N	Y	
4	Notice of Hearing	N	Y	
5	Order No. 2 Memorializing Preliminary Hearing	N	Y	
6	2013 Land Rover Business Builder Program Manual	N	Y	
7	RDR Form	N	Y	
8	Benny Miller Affidavit	N	Y	
9	Audit Results	N	Y	
10	Lease Receipt Language	N	Y	
11	Copies of 7 Lease Forms	N	Y	
12	Michael Stern 4/25/14 Letter	N	Y	
13	JLRNA Export Policy	N	Y	
14	Code §§ 2301.467 and 2301.468	N	Y	
15	CKB & Assoc. and Americo Life Opinions	N	Y	
16	Standard Eligibility Rules	N	Y	
17	Code § 2301.475	N	Y	
18	Code § 2301.479	N	Y	
19	Code § 2301.4749	N	Y	
20	New JLRNA Export Policy	N	Y	
B	Rick Holder Affidavit	N	Y	

H	Land Rover Export Threshold Letter to Autobahn	N	Y	
Respondent's Exhibits				
A	RDR Forms	N	Y	
B	Settlement Agreement	N	Y	
C	4/23/14 Letter Regarding Autobahn's Audit Appeal	N	Y	
1	4/28/14 Letter Regarding Export and Broker Policy	N	Y	
2	4/29/2014 Email	N	Y	
3	5/2/2014 Email	N	Y	
4	4/18/14 Letter Regarding Export and Broker Policy	N	Y	
5	1/6/2015 Letter Regarding Export and Broker Policy	N	Y	
6	1/12/2015 Email	N	Y	
7	Michael Stern Affidavit – 4/10/2015	N	Y	
1.1	Michael Stern Affidavit – 5/4/2015	N	Y	

I hereby affirm that the exhibits included on this exhibit list identify all the exhibits admitted in this proceeding. Any exhibits not admitted but included in an offer of proof are also listed and identified as such. The referenced exhibits are being placed under seal and returned to the referring agency in the condition in which they were received into evidence.



 ADMINISTRATIVE LAW JUDGE

Date Signed: August 19, 2015

Attachment B: Respondent's Exceptions to the PFD

SOAH DOCKET NO. 608-14-4960.LIC
MVD DOCKET NO. 14-0016 LIC

AUTOBAHN IMPORTS, LP,
d/b/a Land Rover of Ft Worth,

Complainant,

v.

JAGUAR LAND ROVER NORTH
AMERICA, LLC

Respondent.

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

JAGUAR LAND ROVER NORTH AMERICA, LLC'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S PROPOSAL FOR DECISION

Pursuant to 1 Texas Admin. Code § 155.507(c) and 43 Tex. Admin Code § 215.53, Respondent Jaguar Land Rover North America ("JLRNA") respectfully submits these Exceptions to the August 20, 2015 Proposal for Decision (the "PFD") filed by Administrative Law Judge ("ALJ") Stephanie Frazee. JLRNA's Exceptions are directed to the PFD in its entirety, and to certain statements, analysis, findings of fact, procedural findings, and conclusions of law therein supporting summary disposition in favor of Complainant Autobahn Imports, LP, d/b/a/ Land Rover of Fort Worth ("Autobahn").

I. INTRODUCTION

The PFD incorporates two prior orders (the "Orders") granting Autobahn's Motion for Summary Disposition (the "Motion") with respect to Autobahn's claims alleging violations of the Texas Occupations Code (the "Code"). In particular, Autobahn alleges that JLRNA improperly charged back incentive payments totaling \$317,204.80 and that such chargeback "is an adherence to an unreasonable sales standard in violation of Code Section 2301.467, and enforces guidelines applicable to the sale of motor vehicles that result in a franchised dealer being treated inequitably or unfairly in violation of Code Section 2301.468" (the "Chargeback

Claim”). Autobahn further alleges that JLRNA’s policies on exported vehicles violate Code § 2301.479 (the “**Export Policy Claim**”).

Both Orders were issued prior to discovery and, in the case of the Chargeback Claim, prior to the filing of papers opposing the Motion.

As set forth below, because the Orders were decided improperly, the PFD should be withdrawn, and this case should proceed to discovery and a hearing on the merits on both the Chargeback Claim and the Export Policy Claim.

II. BACKGROUND/PROCEDURAL HISTORY

JLRNA is the distributor of Land Rover vehicles in the United States. (Original Complaint (“**Complaint**”), ¶ 1.3). Autobahn is an authorized Land Rover dealer in Fort Worth. (Complaint, ¶ 1.1).

This case arises from JLRNA’s 2013 Land Rover “Business Builder” incentive program (the “Program”). Under the Program, JLRNA pays its dealers up to 6% of MSRP for each qualifying retail sale. It is undisputed that, to qualify for payment, a dealer must satisfy the following requirements:

- The Land Rover retailer must conduct the delivery of the vehicle to the end-user customer (the “**Delivery Requirement**”). The purpose of this requirement – as Autobahn concedes in its Complaint and Motion – is so a dealer “representative can explain the operation of the vehicle to the customer.” Motion ¶ 4.1(a); Complaint ¶ 3.1.
- The end-user’s name and the address where the vehicle is to be garaged must be submitted as the primary driver of the vehicle during the RDR¹ process.
- The retailer must have and maintain the necessary documentation within its customer files to support the end-user customer address submitted.

¹ “RDR”, an abbreviation for “retail delivery report,” refers to the process by which a dealer reports a retail transaction to JLRNA. So, for example, when Autobahn sells a Land Rover vehicle to a customer it submits an RDR to JLRNA identifying certain key aspects of the transaction (e.g., the identity of the purchaser, the date of sale or lease).

- The retailer must have and maintain the necessary documentation to prove that the vehicle is registered with the state in which the vehicle was reported sold and contracted within 30 days of RDR, unless an extended period is permitted by state law. (Appendix, Ex. 6 at 8) (hereinafter, the “**Business Builder Eligibility Requirements**”).

Autobahn itself has acknowledged that failure to satisfy any of these requirements renders a transaction ineligible for Business Builder payment. (*Id.*; see also Complaint ¶ 2.3).

In February 2014, JLRNA audited Autobahn’s sales records (the “**Audit**”). The Audit concluded that in 86 instances, the Dealership failed to make the delivery of the vehicle to the retail customer that Autobahn listed in the RDR (the “**Disputed Transactions**”). In each of these RDRs, Autobahn listed the retail customer as the primary driver, but did not supply documentation demonstrating that it delivered the vehicle to the retail customer as required by the Program. (Appendix, Ex. 12; JLRNA’s Response in Opposition to Autobahn Imports, LP’s Motion for Summary Disposition (“**Response to Motion**”), Affidavit of Michael Stern (“First Stern Aff.”), ¶¶ 6-8). In fact, documentation obtained during the Audit revealed that various third-party leasing companies made the deliveries. *See Id.*

The Audit led JLRNA to issue chargebacks totaling \$317,204.80. None of the chargebacks was based on JLRNA’s export policy.

The central issue on the Chargeback Claim, therefore, is whether Autobahn did or did not deliver vehicles to the retail customers identified by Autobahn. From the outset, however, Autobahn has steadfastly avoided taking any position on that question. Instead, Autobahn’s Motion argued principally that the Program does not require a dealer to supply documentation evidencing the delivery of the vehicle (an argument that is not addressed in the PFD or any other order). In any event, the filing of the Motion set in motion a chain of events that led to an Order

finding for Autobahn on the Chargeback Claim even though JLRNA had no chance to take discovery and no opportunity to file papers opposing the Motion, as follows:

First, shortly after the Motion was filed, in Order No. 4 Memorializing Telephonic Prehearing Conference (“**Order No. 4**”), ALJ Howard S. Seitzman directed the parties to brief only the issue of “whether a leasing company is an end-user under the terms of the 2013 Land Rover Business Builder Program.”² In so doing, ALJ Seitzman did not permit JLRNA to file an opposition to the Motion on the merits and abated all other proceedings in the case, including discovery. *See* Order No. 4.

Second, after inheriting the case from ALJ Seitzman, ALJ Paul D. Keeper ruled in Order No. 6 Ruling on “End-User” Issue (“**Order No. 6**”), issued on January 28, 2015, that “a leasing company is considered an end-user”. More specifically, Order No. 6 found that the Program Manual permitted a dealer to identify a leasing company as an end-user in the RDR. Order No. 6 did not, however, either (i) make any finding on the question of who *Autobahn* identified as the “end user” in its submissions to JLRNA; (ii) address whether Autobahn or a leasing company delivered the Land Rover vehicles to the retail customers that Autobahn identified in sales reporting submissions to JLRNA; or (iii) answer the central question of whether the Disputed Transactions were eligible for payment under the Manual and Rules.³

Third, after inheriting the case from ALJ Keeper, ALJ Frazee solicited briefing on the effect of Order No. 6. JLRNA’s brief pointed out the limited scope of Order No. 6 and argued,

² At no point did ALJ Seitzman or his successor, ALJ Paul D. Keeper, state in any order (or otherwise advise the parties) that resolution of the “End-User” issue would resolve any part of the Motion. JLRNA submits that neither ALJ ever contemplated that a ruling favorable to Autobahn on this narrow issue would itself entitle Autobahn to summary disposition.

³ “**Manual**” refers to the 2013 Business Builder Program Manual, a copy of which is attached as Exhibit 6 to the Appendix. “**Rules**” refers to the Operations Bulletin - Contests and Incentives Standard Eligibility Rules for Retail Programs,” a copy of which is attached as Exhibit 16 to the Appendix.

among other things, that JLRNA should be permitted to take discovery and to file a full opposition to the Motion. Without expressly addressing these arguments, ALJ Frazee concluded in Order No. 10 Resolving End-User Issue (“**Order No. 10**”) issued on April 9, 2015, that because under Order No. 6 an approved leasing company is an end-user, it must necessarily follow that it was the intent and effect of Order No. 6 that the Disputed Transactions were eligible for payment under the Program, and Autobahn was entitled to summary disposition on the Chargeback Claim. The effect of ALJ Frazee’s order was, therefore, to grant summary disposition prior to discovery and prior to the filing of any opposition papers by JLRNA and without any analysis of the issues.

Finally, in Order No. 11 Denying Motion to Dismiss, Granting Summary Disposition in Part, Denying Summary Disposition in Part, and Requiring a Status Report (“**Order No. 11**”) ALJ Frazee granted summary disposition to Autobahn on the Export Issue. ALJ Frazee made this finding despite the fact that (i) JLRNA has not issued any chargebacks to Autobahn on its export policies; and (ii) the Enforcement Division of the Texas Department of Motor Vehicles has closed its inquiry with respect to JLRNA’s original export policy and stated that JLRNA’s explanation of its second export policy, in place after November 24, 2014, “will suffice for the time being.” *See Id.* In addition, the PFD, much of which is based on Order No. 11 as to the Export Issue, also conflated JLRNA’s two different export policies (“**Export Policy No. 1**” and “**Export Policy No. 2**” (effective November 24, 2014), respectively, even though only Export Policy No. 1 was applicable to the Disputed Transactions.

III. EXCEPTIONS

EXCEPTION NO. 1

JLRNA excepts to the entire PFD as it relates to the Chargeback Claim, including to the ALJ's statements, analysis, findings of fact, procedural findings, and conclusions of law. It was not proper to grant summary disposition to Autobahn on the Chargeback Claim because (i) neither Order No. 6, nor Order No. 10, nor any order that was issued, explains the basis for summary disposition or otherwise satisfies the requirements for an order granting summary disposition; (ii) genuine issues of material fact exist as to whether Autobahn satisfied the Delivery Requirement and the other elements of a valid Business Builder claim; (iii) JLRNA was not permitted to conduct any discovery in this matter or to even file a brief in opposition to Autobahn's motion for summary disposition on the Chargeback Claim; and (iv) JLRNA has been deprived of due process.

(See PFD, including but not limited to pp. 1-9 and 11-16; Findings of Fact Nos. 2-11; Procedural Finding Nos. 30 and 31; and Conclusions of Law Nos. 4-5, 9-17, 19-20).

A. The PFD Does Not State A Valid Basis For Summary Disposition

The PFD does not provide a basis for summary disposition because it does not accurately state the grounds for JLRNA's chargebacks and does not explain why or how those chargebacks violate the Texas Occupations Code. In fact, the PFD does not interpret, apply or even mention either of the statutes that underpin Autobahn's argument in the Complaint (Code §§ 2301.467 and 2301.468), let alone rule that JLRNA has violated those statutes by issuing the chargebacks.

The absence of a basis for summary disposition is evident from a comparison of JLRNA's stated chargeback grounds, the Complaint's challenge to those grounds, and the discussion of the Chargeback Claim in the PFD.

First, as the record reflects, JLRNA imposed chargebacks of Business Builder payments based on the following facts:

- In each of its RDRs submitted to JLRNA, Autobahn identified individual retail customers as the purchasers/lessees and primary drivers.
- During the Audit, Autobahn failed to supply any documentation showing that Autobahn made the deliveries of the vehicles to the retail purchasers/lessees. Instead, the documentation reflected that such deliveries were made by leasing companies.

It is undisputed that the Program requires that the end-user's name and the address where the vehicle is to be garaged be identified in the RDR as the primary driver of the vehicle. (Appendix, Ex. 6). In other words, by the Program's own terms, the end-user is the same person as the primary driver. It is also undisputed that none of the RDRs submitted by Autobahn identified a leasing company as the primary driver. (Appendix, Ex. 7; Motion, Benny Miller Affidavit ("Miller Aff.") ¶4; First Stern Aff., ¶¶2-6, Ex. A).

Second, in the Complaint, Autobahn attacked JLRNA's chargeback grounds without making the argument that is cited in the PFD as the sole basis for summary disposition. Specifically, the Complaint alleged that (i) JLRNA did not properly interpret the documentation it reviewed during the Audit; and (ii) Autobahn was not obliged to demonstrate that it conducted the deliveries of the vehicles. Autobahn did not claim in the Complaint that the chargebacks were unlawful because the leasing companies were themselves the "end-users" for purposes of the Disputed Transactions. In other words, the Complaint does not even make the very claim that is identified in the PFD as the sole basis for the grant of summary disposition on the Chargeback Issue. (Complaint, ¶¶ 3.1-3.5).

The PFD does not, therefore, address either JLRNA's stated chargeback grounds or the Complaint's stated basis for the Chargeback Claim. Instead, the PFD's reasoning in support of summary disposition is contained in Finding of Fact No. 11: "A leasing company is considered to be an end-user under the terms of the program documents." That this finding is the basis for the ALJ's ruling is apparent from Procedural Finding No. 30 ("On April 9, 2015, Administrative Law Judge Stephanie Frazee granted summary disposition in favor of Autobahn on the end-user/charge-back issue.")⁴ and Conclusion of Law No. 20 ("Autobahn is entitled to summary disposition on its claims regarding the charge-backs for sales to leasing companies..."). It is clear that this procedural finding and conclusion of law are based entirely on Order No. 10. In Order No. 10, ALJ Frazee, without explanation or analysis, concluded that the intent and effect of Order No. 6, was to grant summary disposition to Autobahn on the Chargeback Claim:

Having reviewed the briefs as well as Order No. 6, the ALJ determined that Order No. 6 establishes that there are no genuine issues of material fact as to the end-user issue, and the effect and intent of Order No. 6 is to grant summary disposition on the end-user issue and corresponding chargebacks issue in favor of Autobahn Imports, L.P.

In Order No. 6, ALJ Keeper ruled that an approved leasing company is an end user under the Program. The scope of his ruling, however, was limited to that one issue. Order No. 6, moreover, itself did not state that it granted summary disposition to Autobahn, nor did it state that Autobahn was entitled to payment under the Program or that the chargebacks should be

⁴ Procedural Finding No. 31 incorrectly states that, "On June 22, 2015, the ALJ granted summary disposition to Autobahn on its claims regarding charge-backs for sales to leasing companies and JLRNA's Export Policy." Although Order No. 11 granted summary disposition on the Export Policy to Autobahn, it did grant summary disposition to Autobahn on the Chargeback Claim. As set forth below in Exception No. 6, Procedural Finding No. 31 should be withdrawn.

reversed. Order No. 6 also did not address, in any way, Autobahn's claim in the Complaint that the chargebacks violate Code §§ 2301.467 and 2301.468.⁵

While concluding that a leasing company "is considered an end-user," Order No. 6 does not, for example, explain how the conclusion that a leasing company may be an end-user could establish, as a matter of law, that JLRNA's chargeback was unlawful. Moreover, Order No. 6 does not satisfy the basic predicates to the grant of summary disposition under 1 Tex. Admin. Code § 155.505(e)(3). It does not specify "the facts about which there is no genuine issue" or "the issues for which summary disposition has been granted."

JLRNA submits that the mere conclusion that "a leasing company is considered an end-user" cannot justify or explain the grant of summary disposition on the Chargeback Claim, for several related reasons.

First, it is undisputed that Autobahn did not identify the leasing companies as the primary drivers in the RDRs. (*See* Appendix, Ex. 7; Miller Aff. ¶4; First Stern Aff., ¶¶2-6, Ex. A). It is also undisputed that the Program Manual states that the end-user and the primary driver must be the same person, and that the Land Rover retailer must conduct the delivery of the vehicle to the end-user. *See Id.* As a result, even assuming the accuracy of the PFD's premise that a leasing company can be an end-user under the Program, the fact is that Autobahn did not identify the leasing companies as end-users in the RDRs for the Disputed Transactions. There has been no claim by Autobahn that it identified the leasing companies as the primary driver/end-user and no finding in any Order that Autobahn did so. The absence of such a finding precludes the grant of summary disposition on the grounds stated in the PFD.

⁵ Additionally, in the telephonic hearing held on January 7, 2015, Judge Keeper stated that he was not intending to decide the Motion through the End-User Order. Unfortunately, counsel for JLRNA has been informed by the clerk's office that no recording exists of the January 7, 2015 hearing.

Second, none of the Orders issued in this case make any finding on the question of who *Autobahn* identified as the “end user” in its submissions to JLRNA or the question of who made the deliveries of the vehicles that were the subject of the Disputed Transactions. JLRNA’s chargeback is based on the Audit finding that Autobahn did not make the deliveries to the retail customers identified in the RDRs as the end-users. Since even Autobahn concedes that a Land Rover dealer must conduct the delivery of the vehicle to the end-user, there has been no adjudication of the central question at issue in the chargebacks.

Third, neither Order No. 6 nor the PFD address whether the Disputed Transactions were eligible for payment under the Manual and Rules. As both ALJ Keeper and Autobahn have acknowledged, there are numerous eligibility requirements for payment under the Manual and Rules. See Order No. 6 at 2 (“to be eligible to receive payment under the Program, the dealership must satisfy certain *requirements*. *Among those* is the dealership’s obligation to document that it has engaged in an eligible transaction with an ‘end-user.’” (emphasis added)); Complaint ¶¶ 2.2 and 2.4 (listing certain payment eligibility requirements and acknowledging that any “sales transaction in which the retailer does not fulfill all of the criteria listed in [the Manual] will be disqualified from the full Business Builder Payment.”).

Any such “ultimate” and dispositive ruling would have required sufficient evidence and a finding (following discovery, briefing, and a hearing) that *the following conditions precedents to payment under the Program (i.e., “those certain requirements”) were satisfied by Autobahn:*

- That Autobahn delivered the vehicle to the end-user customer;
- That the end-user’s name and the address where the vehicle is to be garaged were submitted as the primary driver of the vehicle during the RDR process;

- That Autobahn possessed and maintained the necessary documentation within its customer files to support the end-user customer address submitted; and
- That Autobahn possessed and maintained the necessary documentation to prove that the vehicle was registered with the state in which the vehicle was reported sold and contracted within 30 days of the RDR, unless an extended period was permitted by state law.

“Any sales transaction [for] which the retailer does not fulfill all of the criteria listed above, will be disqualified from the full Business Builder payment.” (Appendix, Ex. 6 at 8). Further, “[w]here there are multiple end users jointly purchasing/leasing one or more vehicles, only one of them may be reported to [JLRNA] as the ‘end user’, and *all program eligibilities will be based solely on the qualifications of that reported end user.*” (Appendix, Ex. 16 at 3) (emphasis added).

When a party’s obligation under the contract is conditioned upon the happening of a future event, the condition must be performed or fulfilled exactly as set forth in the contract before the promise can be enforced. *See, e.g., Centex Corp. v. Dalton*, 840 S.W.2d 952, 956 (Tex. 1992) (condition precedent is an event that must happen or be performed before a right can accrue to enforce an obligation). Therefore, absent a finding supported by evidence in the record that each of the Disputed Transactions has satisfied all conditions precedent, including the requirement that the vehicle was delivered by Autobahn to the primary driver identified on the RDR, Autobahn cannot prevail on its Chargeback Claim. *See, e.g., Schaffer ex rel Schaffer*, 546 U.S. 49, 57-58 (2005) (party seeking relief bears burden of persuasion); *see also*, C. Mueller & L. Kirkpatrick, *Evidence* §3.1, p.104 (3d ed. 2003); *see also*, McCormick on Evidence §337, at

412 (“The burdens of pleading and proof with regard to most facts have been and should be assigned to the plaintiff who generally seeks to change the present state of affairs[.]”).

JLRNA submits that, because Autobahn listed the retail customer as the primary driver on each of the Disputed Transactions, none of the leasing companies will be able to satisfy all of the conditions precedent (*i.e.*, since no leasing company is listed as the primary driver on any RDR, no leasing company will be able to satisfy the second eligibility requirement that the end-user be listed as the primary driver on the RDR).⁶ In any event, summary disposition on the Chargeback Claim is not proper unless Autobahn establishes that, as a matter of law, that JLRNA’s chargeback grounds were improper and that each of the Disputed Transactions was entitled to payment under the Program. Autobahn has not made such a showing and there are insufficient findings of fact in the PFD to establish such a showing.

B. Genuine Issues Of Material Fact Preclude Summary Disposition

It is well-settled that summary disposition must not be granted where there are genuine issues of material fact. JLRNA submits that there are numerous issues of material fact here that cannot be resolved on summary judgment:

- JLRNA’s chargebacks are based on its conclusion that Autobahn did not make the deliveries of the vehicles to the reported end-user/primary driver in the Disputed Transactions. Autobahn apparently disputes this fact, although it carefully

⁶ JLRNA acknowledges that Judge Keeper ruled that even if a retail customer was listed on all of the RDRs (as is the case for all of the Disputed Transactions) it does not technically mean that the leasing company cannot be an “end-user” under the Rules. Judge Keeper, however, did not rule that a transaction in which the vehicle was delivered to a leasing company can nonetheless be eligible for payment under the Program despite the fact that the leasing company is not listed as the primary driver on the RDR. This is an important distinction. There is a difference between whether a leasing company is an “end-user” and whether the leasing company satisfies all of the Business Builder Eligibility Requirements. If Autobahn were allowed to “mix-and-match” by using different end-users to satisfy different eligibility requirements, that would violate both the requirement that the end-user be listed as the primary driver and the requirement that if there are multiple “end-users,” only one end-user may be used to satisfy the Business Builder Eligibility Requirements.

avoided taking any position on who made the deliveries. At a bare minimum, the identity of the persons who made the deliveries – an indisputably necessary element of a valid Business Builder claim – is a disputed factual issue that cannot be resolved on summary disposition.

- JLRNA contends that the RDRs identified retail customers, rather than leasing companies, as the end-users/primary drivers. It has supplied competent evidence to support that conclusion. (First Stern Aff., ¶¶2-6, Ex. A). Autobahn has not presented any evidence to challenge this point. At a bare minimum, however, the issue of who was identified as the end-user/primary driver is a disputed factual issue that cannot be resolved on summary disposition.
- Autobahn concedes that a dealer has the obligation to satisfy each of the elements of a Business Builder claim listed above in order to be entitled to payment. JLRNA has supplied competent evidence demonstrating that there are inconsistencies between the RDRs submitted by Autobahn in the ordinary course of business, on the one hand, and Autobahn's recent suggestion that leasing companies were the "end-users" in the Disputed Transactions. *Id.* At a bare minimum, the issue of whether Autobahn's attack on the chargeback can be reconciled with the overall content of its prior submissions to JLRNA raises a disputed factual issue that cannot be resolved on summary disposition.

It is well-settled that such disputed factual issues preclude summary disposition. 1 Tex. Admin. Code §155.505(a) (summary disposition is not permitted where there is no evidence of one or more essential elements of a claim or defense on which the opposing party would have the burden of proof at hearing). Furthermore, "In keeping with standards for judicial summary

judgment, all doubts about the existence of a genuine issue of material fact must be resolved against the movant, and all evidence favorable to the non-movant must be accepted as true.” *In the Matter of the Following Application for Initial Regular Permit to Withdraw Groundwater from the Edwards Aquifer: Elm Creek Owners Association*, 2004 WL 5454428, at *3 (SOAH Jan. 26, 2004) (citing *Cate v. Dover Corp.*, 790 SW. 2d 559, 562 (Tex. 1990), and *Montgomery v. Kennedy*, 669 SW. 2d 309, 311 (Tex. 1984)). In addition, “The movant has the burden in a summary judgment proceeding. To decide whether there is a disputed material fact issue precluding summary judgment, ‘evidence favorable to the non-movant must be taken as true.’ Moreover, ‘[e]very reasonable inference must be indulged in favor of the non-movant and any doubts resolved in his favor.”” *Texas Department of Insurance v. Caillouet, Jr.*, 2004 WL 4171864, at *2 (SOAH June 14, 2004) (internal citations omitted).

C. Summary Disposition Was Improperly Adjudicated Prior To Discovery And Without A Proper Opportunity To File Opposition Papers

Throughout these proceedings, JLRNA has requested the opportunity to conduct discovery prior to being required to submit a further response to the Motion. (Response, at 9; Colm Moran’s Letter to ALJ Keeper dated January 14, 2015, at 2; Colm Moran’s March 16, 2015 Letter to ALJ Frazee, at 8-9). Such requests were never formally ruled upon.

Moreover, in administrative proceedings, due process requires that parties be accorded a full and fair hearing on disputed fact issues. JLRNA submits that the failure to grant (or even formally rule upon) its requests for discovery, and the failure to permit it to file a full opposition to the Motion, are inconsistent with the dictates of due process. *City of Arlington v. Centerfolds, Inc.*, 232 S.W.3d 238, 250 (Tex. App.—Fort Worth 2007, pet. denied) (“A fair opportunity for the parties to prove their respective cases is essential to an administrative hearing comporting with due process.”); *see also, J.B. Adver., Inc. v. Sign Bd. of Appeals of City of Carrollton*, 883

S.W.2d 443, 448-49 (Tex. App.—Eastland 1994), writ denied (May 11, 1995) (“Although the rules applicable to courts of law need not be strictly followed, administrative proceedings still must meet the minimum requirements of due process.”).

Accordingly, Exception No. 1 should be sustained and the PFD as to the Chargeback Claim should be withdrawn.

EXCEPTION NO. 2

JLRNA excepts to Conclusion of Law No. 5 regarding the Chargeback Claim.

(See PFD, including pp. 1-9 and 11-16; Conclusion of Law No. 5).

Conclusion of Law No. 5 provides that, “A manufacturer or distributor may make charge-backs to a dealer if, after an audit, the manufacturer or distributor has reasonable grounds to conclude that the dealer committed fraud with respect to the incentive program. Tex. Occ. Code §2301.475(b).”

Conclusion of Law No. 5 incorrectly states the law on chargebacks to the extent that it is intended to mean that JLRNA was required to prove fraud and should thus be withdrawn. Texas Occupations Code Section 2301.475 (a) provides that:

(a) Except as provided by Subsection (b), *after the first anniversary of the date a manufacturer or distributor pays a claim* under Section 2301.4749 (governing payments under incentive programs), the manufacturer or distributor may not:

- (1) charge back to a dealer money paid by the manufacturer or distributor as a result of the incentive program;
- (2) charge back to a dealer the cash value of a prize or other thing of value awarded to the dealer as a result of the incentive program; or
- (3) audit the records of a dealer to determine compliance with the terms of the incentive program, unless the manufacturer or distributor has reasonable grounds to believe the dealer committed fraud with respect to the incentive program.

(b) A manufacturer or distributor may make charge-backs to a dealer if, after an audit, the manufacturer or distributor has reasonable grounds to conclude that the dealer committed fraud with respect to the incentive program.

Tex. Occ. Code §2301.475(a)-(b) (emphasis added). By its own terms, therefore, under Section 2301.475 a manufacturer or distributor can make chargebacks to a dealer with respect to an incentive program prior to the “the first anniversary of the date” an incentive payment is made without the necessity of showing fraud. Here, the chargebacks on the Disputed Transactions were made within twelve months of the payments. (See Appendix, Ex. No. 9). Therefore, fraud is not a prerequisite to the imposition of a charge-back. Conclusion of Law No. 5 should be withdrawn and Exception No. 2 should be sustained.

EXCEPTION NO. 3

JLRNA excepts to Finding of Fact No. 11, Conclusion of Law Nos. 17 and 19 regarding the Chargeback Claim.

(See PFD, including pp. 1-9 and 11-16; Conclusion of Law Nos. 17 and 19).

Finding of Fact No. 11 provides that, “A leasing company is considered to be an end-user under the terms of the program documents.” Conclusion of Law No. 17 states, “Read together, the Operations Bulletin and the Manual allow sales to leasing companies to be qualified transactions under the Business Builder.” Similarly, Conclusion of Law No. 19 provides that, “Sales to leasing companies are qualified sales under Business Builder according to the program documents.” These Conclusions of Law are not correct because, as set forth in Exception No. 1, *supra*, (1) the finding that a leasing company is an end-user⁷ is, alone, insufficient to establish that the Disputed Transactions were eligible for payment under the Program; (2) such finding does not address the fact that Autobahn’s RDRs identified retail customers and not the leasing companies as the end-users; and (3) Autobahn has not otherwise established that the Disputed

⁷ JLRNA, for all of the reasons set forth in its Response (*inter alia*, (i) Autobahn identified the retail customer, not a leasing company, as the end-user in each transaction at issue; (ii) none of the leasing companies at issue were approved leasing companies; and (iii) Autobahn was required to deliver the vehicles to the retail customer), takes exception to the PFD to the extent that it is based on the ruling set forth in Order No. 6 with respect to the End-User Issue.

Transactions were eligible for payment. Exception No. 3 should thus be sustained and Finding of Fact No. 11, Conclusion of Law Nos. 17 and 19 should be withdrawn.

EXCEPTION NO. 4

JLNRA excepts to the entire PFD as it relates to the Export Issue, including to the ALJ's statements, analysis, findings of fact, procedural findings, and conclusions of law, on the ground that the Export Issue was not and is not ripe and ALJ Frazee, in Order No. 11 improperly granted summary disposition to Autobahn on the Export Issue. In addition, the PFD, much of which is based on Order No. 11 as to the Export Issue, also conflated Export Policy No. 1 and Export Policy No. 2, each of which was in place at different times, and only one of which was applicable to the Disputed Transactions. Indeed, Export Policy No. 2 became effective on November 24, 2014, after the occurrence of each of the Disputed Transactions.

(*See* PFD, including but not limited to pp. 1-11; Findings of Fact Nos. 12-23; Procedural Finding No. and 32; and Conclusions of Law Nos. 6-8, 18, 20).

For several reasons, Exception No. 4 should be sustained. First, in Order No. 11, Judge Frazee granted summary disposition to Autobahn on the Export Issue. Order No. 11, however, was not properly decided because the issue has never been ripe for decision.

Autobahn has not alleged any injury arising out of either one of JLRNA's Export Policies in effect at the time Autobahn filed its complaint or out of Export Policy No.2, effective November 24, 2014.⁸ In fact, JLRNA has never issued any chargeback to Autobahn under its

⁸ Texas Occupations Code § 2301.479 provides that a manufacturer may take an "adverse action against a franchised dealer" if the franchised dealer "sells or leases a vehicle that is later exported to a location outside the United States" and "at the time of the original sale or lease, the dealer knew or reasonably should have known that the vehicle would be exported to a location outside the United States." A franchised dealer is presumed to have no actual knowledge that a vehicle will be exported outside the United States if "(1) the vehicle is titled; (2) the vehicle is registered; and (3) the applicable state and local taxes are paid for the vehicle." *Id.* That presumption may be overcome, though, by "direct, clear, and convincing evidence that a franchised dealer had actual knowledge or

export policies. *See* JLRNA's Reply in Support of Motion to Dismiss Autobahn's Export Policy Claim ("Reply MTD Export Claim"), Affidavit of Michael Stern ("Second Stern Aff.") ¶¶ 4-6; Appendix Ex. 12 (JLNRA letter dated April 25, 2014); JLRNA's Response in Opposition to Autobahn's MTD ("**R**esponse"), Colm Moran Affidavit ("**M**oran Aff.") Ex. 1 (letter of April 28, 2014).

What is more, the Enforcement Division of the Texas Department of Motor Vehicles (the "**E**nforcement Division") – the agency charged with enforcing these provisions of the Occupations Code – has advised JLRNA's counsel that, as to Export Policy No. 1, in place prior to November 24, 2014 and thus applicable to all of the Disputed Transactions, it is "satisfied that the company understands the restrictions Texas statutes place on dealing with franchise dealers in vehicle export matters" and, therefore, explained that it was "closing [its] inquiry in this matter." Moran Aff., Exs. 2-4 (emails dated April 29, 2014 and May 2, 2014 and letter dated April 18, 2014). It did so after reviewing JLRNA's letter to its Texas retailers and a letter directly to the Division, setting forth JLRNA's view of the policy and its intent to comply with Texas law in applying that policy. *See id.*

Similarly, with respect to Export Policy No. 2, announced on November 24, 2014, JLRNA has not applied a single chargeback against Autobahn or any other dealership in Texas. Stern Aff., ¶¶ 4-5, Ex. 1. Indeed, Autobahn does not even allege that it has been injured in any way as a result of JLRNA's mere *announcement* of Export Policy No. 2. Furthermore, the Enforcement Division has declined, in the absence of any ripe dispute over a chargeback, to pursue an inquiry into Export Policy No. 2. JLRNA explained in a letter to the Division of January 6, 2015, that as of that date, "JLRNA has not taken any adverse action under the Policy

reasonably should have known at the time of the original sale or lease that the vehicle would be exported to a location outside the United States." *Id.*

with respect to any Texas dealer.” Moran Aff., Ex. 5 (Letter of Jan. 6, 2015). After reviewing the letter, the Enforcement Division explained that JLRNA’s letter of January 6, 2015, “will suffice for the time being” to allay concerns raised by Texas franchise dealers. *Id.* at Ex. 6 (email of Jan. 12, 2015).

Second, the PFD, at pages 5-11, Finding of Facts Nos. 14-23, and Conclusion of Law No. 18, wrongly conflates Export Policy No. 1 and Export Policy No. 2, thereby failing to acknowledge the fact that Export Policy No. 2, which became effective on November 24, 2014, does not apply to any of the Disputed Transactions, all of which pre-dated Export Policy No. 2.

Accordingly, because the PFD is based on Order No. 11 with respect to the Export Issue, and because the ruling set forth in Order No. 11 is without basis, Exception No. 4 should be sustained and the PFD as to the Export Issue should be withdrawn. Exception No. 4 should also be sustained on the ground that Conclusion of Law No. 20 conflates Export Policy No. 1 and Export Policy No. 2.

EXCEPTION NO. 5

JLRNA excepts to Conclusion of Law No. 4 regarding the Chargeback Claim and the Export Issue.

(See PFD, including pp. 1-16; Conclusion of Law No. 4).

Conclusion of Law No. 4 provides that, “The ALJ may issue a final decision or proposal for decision on all or part of a contested case without an evidentiary hearing if the pleadings, affidavits, and other admissible evidence show that there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law. 1 Tex. Admin. Code §155.505(a).”

As set forth above in Exception Nos. 1 and 4, *supra*, none of the pleadings, affidavits, or other evidence presented by Autobahn entitled it to summary disposition on either the Chargeback Claim or the Export Issue. Exception No. 5 should thus be sustained and Conclusion of Law No. 4 withdrawn.

EXCEPTION NO. 6

JLRNA excepts to Procedural Finding No. 31 regarding the Chargeback Claim and the Export Issue.

(*See* PFD, including pp. 1-16; Conclusion of Law No. 31).

Procedural Finding No. 31 incorrectly states that, “On June 22, 2015, the ALJ granted summary disposition to Autobahn on its claims regarding charge-backs for sales to leasing companies and JLRNA’s Export Policy.” Although Order No. 11 granted summary disposition on the Export Policy to Autobahn, it did not grant summary disposition to Autobahn on the Chargeback Claim. Exception No. 6 should be sustained, and Procedural Finding No. 31 should thus be withdrawn.

EXCEPTION NO. 7

JLRNA excepts to Procedural Finding No. 28 regarding the Chargeback Claim.

(*See* PFD, including pp. 1-16; Procedural Finding No. 28).

Procedural Finding No. 28 states that, “The parties agreed that the Manual and the Operations Bulletin rules are the sole documents that govern the issues in this proceeding.” However, as set forth in the Response, JLRNA submits that Autobahn has also agreed to and acknowledged, in a written settlement agreement, the requirement and importance of delivery of a vehicle to the end-user under the Program. (*See* First Stern Aff., ¶ 12, Ex. B at 1-2). Exception No. 7 should be sustained, and Procedural Finding No. 28 should thus be withdrawn.

EXCEPTION NO. 8

JLRNA excepts to Background Finding No. 3.

(See PFD Background Finding No. 3).

Background Finding No. 3 states that the Business Builder program pays dealer up to 5% of MSRP. The program actually pays up to 6%. See Complaint, Ex. A. Exception No. 8 should be sustained.

IV. CONCLUSION

For the reasons set forth above, the PFD should be withdrawn, and this case should proceed to discovery and a hearing on the merits on both the Chargeback Claim and the Export Policy Issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 8, 2015, a true and correct copy of the foregoing has been served on the parties listed below.

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Unpublished Cases

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2004 WL 5454428 (TX.St.Off.Admin.Hgs.)

State of Texas

Office of Administrative Hearings

IN THE MATTER OF the Following Application for Initial Regular Permit to Withdraw Groundwater
Groundwater from the Edwards Aquifer: Elm Creek Owners Association

SOAH Docket No. XXX-XX-XXXX

EAA Application No. BE00307

January 26, 2004

PROPOSAL FOR DECISION

I. INTRODUCTION

*1 Elm Creek Owners Association (“Applicant” or “Elm Creek”) has sought from the Edwards Aquifer Authority (“EAA”) an initial regular permit to withdraw water from the Edwards Aquifer. The EAA referred the matter to the State Office of Administrative Hearings (“SOAH”). The EAA’s General Manager subsequently filed a Motion for Summary Disposition, requesting that Elm Creek’s application for a permit be denied without further hearing, on the basis that it was not timely filed in accordance with the EAA’s rules. In turn, Elm Creek filed a Motion for Summary Disposition seeking to affirm that its application was validly filed.

After considering the pleadings and argument presented, the Administrative Law Judge (“ALJ”) recommends that the EAA’s Board of Directors (“Board”) grant the General Manager’s motion, deny Elm Creek’s motion, and summarily deny Elm Creek’s application for permit.

II. MOTIONS AND STANDARD FOR SUMMARY DISPOSITION

On October 22, 2003, the General Manager (“GM”) filed a motion asking the ALJ to issue an order recommending summary denial of Elm Creek’s Declaration of Historical Use (Application No. BE00307) “because it was untimely filed in contravention of the Edwards Aquifer Act and the ... Authority’s Rules.”

In the Motion for Summary Disposition (and in subsequent pleadings related to the same issues), the GM stresses the position that timely filing of a proper declaration of use and application is an absolute requirement for the issuance of a permit under the Edwards Aquifer Authority Act (“the Act”) and implementing rules. While the disputed filing by Elm Creek itself was clearly untimely, according to the GM, another earlier, putative filing by Elm Creek’s predecessor (in March of 1994) failed to satisfy several other basic prerequisites for validity, in that it was filed with the wrong entity, in the wrong format, and without the required fee.

The GM notes that the EAA was unable to begin operations or to accept filings until after the filing deadline originally established by the Act—*i.e.*, March 1, 1994—because of lawsuits challenging the Act. When the Texas Supreme Court ultimately issued a decision on June 28, 1996, declaring the Act constitutional on its face, the Court stated, in *Barshop v. Medina County Underground Water District*:

[The] March 1, 1994 deadline was intended to provide existing users six months to file their declarations of historical use. In accordance with legislative intent, we interpret the Act as requiring declarations of historical use to be filed six months after the Authority becomes effective.²

*2 Consistent with the Court’s opinion, the EAA formally adopted rules requiring all declarations to be filed with the agency by December 30, 1996, in order to comply with the Act.

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The GM concludes that the EAA—as a political subdivision strictly bound by governing statutes—simply lacks the power to grant an application like Elm Creek's, which failed to satisfy the filing deadline or other terms defined by the Act (as judicially interpreted) and by the implementing rules.

As to the 1994 filing by Elm Creek's predecessor, the GM asserts that an applicant cannot satisfy its statutory obligation to file a proper declaration with the EAA by filing a non-conforming document with institutions that are "wholly separate and distinct" from the EAA. In this case, the predecessor filed its declaration with the Texas Natural Resource Conservation Commission ("TNRCC")—since renamed the Texas Commission on Environmental Quality ("TCEQ")—and with a Federal court. Such filings failed to provide timely notice of historical groundwater use to the EAA, contends the GM, any more than if an applicant had filed such documents with a next-door neighbor.

Moreover, urges the GM, giving effect to such filings (which are, as a practical matter, unavailable to the EAA in the normal course of events) would undermine the policy goals of the Act. The EAA's ability to manage withdrawals from the aquifer and to achieve conservation depends upon a firm deadline for identifying all existing users and the volume of historical water use that must be encompassed within the regulatory system.

Material submitted with the GM's motion (and with subsequent pleadings supplementing the motion) included the following:

1. A "Declaration of Historical Use of Water from Edwards Aquifer," dated March 1, 1994, by H.O.K. Investment, Inc. (Applicant's predecessor in title), along with correspondence indicating efforts to file the document with the TNRCC and with a Federal court;
2. An "Application for Initial Regular Permit and Declaration of Historical Use" filed with the EAA by Applicant on November 16, 1998.
3. Applicant's responses to discovery requests by the GM in this proceeding;
4. A letter from a TCEQ open records coordinator indicating a lack of agency records relating to the H.O.K. Investment document of March 1, 1994 (noted in Item No. 1 above);
5. Affidavits of TCEQ personnel indicating a lack of agency records or policies relating to the declarations of historical groundwater use from the Edwards Aquifer.³

On October 30, 2003, the Applicant, too, filed a Motion for Summary Disposition, seeking a determination that its Application No. BE00307 was "timely filed as a matter of law" and an order recommending that the Board grant that application, "subject only to the resolution of beneficial use and amount."

The Applicant contended that the declaration of historic use filed by its predecessor in title on March 1, 1994, was in "substantial conformance" with the Act, as initially enacted in 1993, and with rules subsequently promulgated by the EAA. Because, as the *Barshop* Court held, the Act was effective from 1993 onward (except for its method of selecting Board members), the Applicant's predecessor acted reasonably and in good faith when it sought to satisfy the Act's original filing deadline of March 1, 1994, even though the EAA—the prescribed recipient of such filings—was not yet in operation at that time. In the absence of a functioning EAA, the Applicant concluded, its predecessor logically turned to the TNRCC, the state agency then holding general responsibility for regulating Texas water. According to the Applicant, the only relevant "enforceable regulations" in existence on the original filing date were those of agencies, like TNRCC, that had regulated the Edwards Aquifer under state constitutional provisions prior to the creation of the EAA. Since the *Barshop* decision confirmed, in Applicant's view, the validity of such prior regulation up to the time that the EAA's own rules formally took effect, the Applicant is entitled to rely on such prior law to support the effectiveness of its predecessor's filing with TNRCC.

*3 The Applicant also noted that the *Barshop* Court found the statutory filing deadline of March 1, 1994, to be directory, not mandatory, and substituted a new deadline to comport with changed circumstances. In this context, the Applicant reasoned, its declaration and application filed in November of 1998 should be treated as a valid amendment to its predecessor's 1994 declaration.

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In any case, asserted the Applicant, the EAA cannot bar a water-rights claim merely for failure to file it by a specific deadline. No explicit authorization to that effect is contained in the Act. Moreover, the *Bar shop* Court's finding that the statutory deadline in this instance is merely directory precludes any implication that such a bar should apply.

Materials submitted with the Applicant's motion (and with subsequent pleadings supplementing the motion) included those in Items Nos. 1 and 4 of the General Manager's submissions, as noted above.

A SOAH ALJ may issue a proposal for decision without an evidentiary hearing "if the pleadings, affidavits, materials obtained by discovery, admissions, matters officially noticed, stipulations, or evidence of record shows there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law."⁴ In keeping with standards for judicial summary judgment, all doubts about the existence of a genuine issue of material fact must be resolved against the movant, and all evidence favorable to the non-movant must be accepted as true.⁵

III. DISCUSSION

Elm Creek tends to blur together arguments about whether it *must* satisfy filing requirements prescribed by EAA rules with arguments about whether it actually *did* satisfy them. However, prior decisions by SOAH and the EAA's Board unequivocally establish that an applicant *must* satisfy such requirements, while the uncontested facts and the applicable law in this particular case establish that Elm Creek *did not* do so.

In October of 2002, the Board adopted a SOAH Proposal for Decision ("PFD") concluding that an application and declaration of historical use from Charles M. Brown must be denied for failure to comply with a mandatory rule provision, because it was filed one day after the deadline prescribed in the EAA's rules (December 30, 1996).⁶ The *Brown* PFD noted that the current rule prescribing that deadline (§ 707.311) employs language with mandatory effect (as did the earlier version of the rule that was operative in 1996); specifically, the rule provides that an application "must have been filed with the Authority ... by December 30, 1996." This use of the word "must," along with a specific date, creates a clear, "bright-line" principle for assessing applications, thus precluding both the EAA and SOAH from acting contrary to such an express provision.⁷

^{*4} In a footnote, the *Brown* PFD also observed that the Texas Supreme Court's opinion in *Barshop* likewise appeared to regard the Act's provision for the filing of historical-use declarations to be mandatory, since the opinion characterized that provision as "requiring" such filings with the EAA within six months of the time that the EAA became operational. Thus, the PFD (and by extension the Board) interpreted *Barshop* as finding the Act's original filing deadline of March 1, 1994, to be directory only to the extent that it ultimately proved to be inconsistent with the Legislature's fundamental intent of giving the EAA a specific period of time to receive filings.⁸

The undersigned ALJ thus considers himself bound by existing authority to conclude that a filing in compliance with the EAA's deadline rule is an absolute prerequisite to a valid application for a groundwater-use permit. The Board clearly has interpreted the rule as having mandatory effect. The express language of the rule certainly supports that interpretation—as indeed do the underlying statute and the *Barshop* decision, taken as a whole. In these circumstances, the EAA—and thus the ALJ—may not ignore a seemingly clear dictate of the agency's own rules. To challenge the fundamental validity of the rule in question, the Applicant would have to bring suit in district court under TEX. WATER CODE § 36.251.

Elm Creek argues in the alternative, though, that it has substantially complied with the EAA's filing requirements, through its predecessor's filings with other entities in March of 1994. However, the ALJ concludes that Elm Creek's position is unsupported, for reasons very similar to those establishing that the filing deadline in the EAA's rules is mandatory. The rules, statute, and decisions governing the effectiveness of filings with the EAA obviously do not prescribe *only* the timing of such filings. They also prescribe the *place* and *manner* of such filings, in terms equally as mandatory as those for the applicable deadline. The presumed filings by Elm Creek's predecessor clearly did not satisfy these other mandatory requirements and thus cannot validate Elm Creek's own efforts to obtain a permit.⁹

In particular, § 1.16(b) of the Act not only states that a declaration of historical use "must" be filed by a specific deadline (which, of course, was later readjusted by the *Barshop* decision), it also provides that such an application "must" be made on a form prescribed by the Board and be accompanied by all application fees required by the Board. To implement these statutory provisions, both EAA's original rules (adopted prior to EAA's December 30, 1996, filing deadline) and its current

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rules (adopted, in pertinent part, on November 3, 2000) provide that an application for an initial regular permit “shall” or “must” be filed with the EAA itself (§ 701.19, original rules; §§ 711.98(a) and 707.302, current rules), be on a form prescribed by the EAA (§ 701.4, original rules; § 707.302, current rules), and be accompanied by the EAA-prescribed application fee (§§ 701.5 and 701.19, original rules; § 707.403, current rules). Obviously, and by Elm Creek’s admission, none of the filings it relies upon satisfied these specific requirements.

*5 Although Elm Creek asserts that the TNRCC had some general authority to protect Texas groundwater in 1994, that agency certainly lacked the authority to quantify and regulate withdrawals of groundwater from the Edwards Aquifer. Nor does the record indicate that the Legislature has ever authorized TNRCC or any other agency to accept any sort of filings on behalf of the EAA. In purportedly relying upon TNRCC to compile or process such filings—or to transmit them to an as-yet non-existent EAA—Elm Creek or its predecessor apparently have expected a state agency to take responsibility exceeding its legislative mandate. This, of course, is not an expectation upon which a party can reasonably base a legal claim. As a practical matter, too, Elm Creek cannot seriously believe that submitting documents to an agency that has no authority for accepting them—and therefore no arrangements for systematically maintaining them—can serve any of the functions (whether public notice, monitoring, or administrative regulation) that were contemplated by the Legislature in imposing a filing requirement pertaining to a wholly separate agency.

Moreover, in seeking recognition that the filings at issue are in “substantial compliance” with the Act and implementing rules, Elm Creek invokes equitable relief, which (as the GM notes) is beyond the normal purview of either SOAH or EAA (doubly so in a summary-disposition proceeding, where determinations must be made “as a matter of law”).

IV. CONCLUSION

For reasons discussed above, the ALJ finds that the GM’s Motion for Summary Disposition should be granted and Elm Creek’s application denied as a matter of law. Elm Creek’s competing Motion for Summary Disposition should also be denied. The EAA’s rules establish mandatory requisites for a permit application, including a firm deadline for filing. Elm Creek clearly failed to satisfy a number of these basis requisites, including the filing deadline, either through documents submitted by itself or by a predecessor in interest. The Board and the ALJ must assume that the rules are valid and apply them as presently interpreted by the Board, which mandates the denial of application in question. The ALJ accordingly recommends that the Board adopt the Findings of Fact and Conclusions of Law presented below.

V. FINDINGS OF FACT

1. On November 16, 1998, Elm Creek Owners Association (“Applicant”) filed a sworn Application for Initial Regular Permit and Declaration of Historical Use (“application”) with the Edwards Aquifer Authority (“EAA”).

2. The application was designated BE00307 by the EAA.

3. The application pertains to a well used for landscaping and grounds maintenance in Bexar County, Texas.

4. After completing a review of the application, the EAA’s General Manager (“GM”) recommended that the application be denied because it was filed after the deadline of December 30, 1996, prescribed in the EAA’s rules

*6 5. The Applicant protested the GM’s recommendation and sought a contested case hearing on the proposed denial.

6. On March 11, 2003, the EAA’s Board of Directors (“Board”) issued an Interim Order that:

a. Found Applicant entitled to a hearing;

b. Found the issues raised to include whether the Applicant had filed a timely application and declaration of historical use;

c. Admitted Applicant, the GM, Living Waters Artesian Springs, Ltd., and the San Antonio Water System (“SAWS”) as parties; and

d. Ordered the Authority’s Docket Clerk to refer this case to the State Office of Administrative Hearings (“SOAH”) for hearing.

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7. On May 12, 2003, the Authority's Docket Clerk referred this dispute to SOAH for a contested case hearing.
8. On July 17, 2003, a properly noticed preliminary hearing was held at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The Applicant, GM, and SAWS appeared, confirming their party status; however, SAWS then withdrew as a party during the preliminary hearing.
9. By Order No. 2, issued August 20, 2003, then-presiding Administrative Law Judge ("ALJ") Tom Walston bifurcated the proceedings to allow the parties to address first the issue of whether Applicant had filed a timely application and declaration of historical use.
10. On October 22, 2003, the GM filed a motion for summary disposition, in compliance with SOAH Rule 1 TEX. ADMIN. CODE ("TAC") § 155.57(a)(1), asking the ALJ to issue a proposal for decision recommending that the Board deny Applicant's application "because it was untimely filed in contravention of the Edwards Aquifer Act and the ... Authority's Rules."
11. On October 30, 2003, the Applicant filed a motion for summary disposition, seeking a determination that its application was "timely filed as a matter of law" and an order recommending that the Board grant that application, "subject only to the resolution of beneficial use and amount."
12. The Applicant and GM each filed a response to the other's Motion for Summary Disposition.
13. A pre-hearing conference was convened by the undersigned ALJ on December 9, 2003, to allow the parties to present oral argument on their respective motions for summary disposition.
14. The record pertaining to the motions for summary disposition closed on December 17, 2003.
15. On March 1, 1994, H.O.K. Investment, Inc.—Applicant's predecessor in title with respect to the well at issue in this proceeding—submitted a "Declaration of Historical Use of Water from Edwards Aquifer," pertaining to that well, to the Texas Natural Resource Conservation Commission ("TNRCC") and a Federal court.
16. The submission noted in Finding of Fact No. 15 was not made with the EAA (or with any related or predecessor entity), was not accompanied by any fee, and was not in a form prescribed by the EAA.

IV. CONCLUSIONS OF LAW

- *7 1. The Edwards Aquifer Authority has jurisdiction over this matter under the Edwards Aquifer Authority Act, Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2353, as amended ("the Act") §§ 1.08 and 1.11.
2. SOAH had the authority to conduct a contested case hearing on behalf of the EAA, pursuant to EAA Rule § 707.608 (a).
3. If the board refers a contested case to SOAH for hearing, then SOAH's rules of procedure, as supplemented by the Authority's rules, govern the hearing. EAA Rule § 707.608 (b).
4. At the time the Applicant filed its application, § 701.19 of the EAA's rules required applications for initial regular permits to be filed by December 30, 1996 (almost two years prior to Applicant's filing). The former § 701.19 has been replaced by current § 703.311, which retains the same filing deadline.
5. In EAA's rules, as initially adopted, an application and declaration of historical use was required to be filed with the EAA itself (§ 701.19), to be on a form prescribed by the EAA (§ 701.4), and to be accompanied by the EAA-prescribed application fee (§§ 701.5). The EAA's current rules retain these same requirements (in §§ 711.98(a), 707.302, and 707.403, respectively).
6. The Applicant did not file its application, as noted in Finding of Fact No. 1, by the deadline of December 30, 1996, as

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required by EAA's rules.

7. The submission noted in Findings of Fact Nos. 15 and 16 did not satisfy any of the filing requirements noted in Conclusion of Law No. 5.

8. The filing requirements noted in Conclusions of Law Nos. 4 and 5 are mandatory.

9. The EAA (and SOAH in conducting contested cases brought before the EAA) must follow that political subdivision's own rules. *Southern Clay Products, Inc., v. Bullock*, 753 S.W. 2d 781 (Tex. App. - Austin 1988, no writ).

10. Summary disposition is appropriate in this case because, as a matter of law, the Applicant cannot show that it is entitled to an initial regular permit to withdraw groundwater. 1 TAC § 155.57(a).

11. A SOAH ALJ may issue a proposal for decision without an evidentiary hearing if the pleadings, affidavits, materials obtained by discovery, admissions, matters officially noticed, stipulations, or evidence of record shows there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law. 1 TAC § 155.57(a).

12. Based on the above Findings of Fact and Conclusions of Law, no genuine issues of material fact remain in controversy. As a matter of law, the GM's motion for summary disposition should be granted and the Applicant's motion for summary disposition should be denied.

13. Elm Creek Owners Association's Application for an Initial Regular Permit and Declaration of Historical Use should be denied.

Mike Rogan
Administrative Law Judge

Footnotes

¹ Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350; as amended by Act of May 29, 1995, 74th Leg., R.S., ch. 261, 1995 Tex. Gen. Laws 2505; Act of May 16, 1995, 74th Leg., R.S., ch. 524, 1995 Tex. Gen. Laws 3280; Act of May 6, 1999, 76th Leg., R.S., ch. 163, 1999 Tex. Gen. Laws 634; Act of May 28, 2001, 77th Leg., R.S., ch. 966, §§§§ 2.60 - 2.62 and 6.01 - 6.05, 2001 Tex. Gen. Laws 1880, 1910 and 1961 - 62; Act of May 23, 2001, 77th Leg., R.S., ch. 1192, 2001 Tex. Gen. Laws 2552; and Act of June 1, 2003, 78th Leg., R.S., ch. 1112, §§ 6.01(4), 2003 Tex. Gen. Laws 3188, 3193.

² 925 S.W. 2d 618 (Tex. 1996), at 630.

³ For the purpose of ruling on the motions for summary disposition, the admission into evidence of all the exhibits appended to the parties' motions is hereby confirmed, to the extent that such exhibits were not individually addressed during the December 9, 2003, hearing upon the motions. In Order No. 7 in this action, issued December 10, 2003, the summary disposition evidence was categorized, designated as Exhibits S-1 through S-7, and formally confirmed as part of the evidentiary record.

⁴ 1 TEX. ADMIN. CODE (TAC) § 155.57(a) (2003).

⁵ *Cate v. Dover Corp.*, 790 SW. 2d 559, 562 (Tex. 1990); *Montgomery v. Kennedy*, 669 SW. 2d 309, 311 (Tex. 1984).

⁶ *In the Matter of the Following Application for Initial Regular Permit to Withdraw Groundwater from the Edwards Aquifer: Charles M. Brown*; SOAH Docket No. XXX-XX-XXXX; EAA Docket No. BE00290 (ALJ Sullivan, issued Aug. 16, 2002).

⁷ The PFD cites *Southern Clay Products, Inc., v. Bullock*, 753 SW. 2d 781 (Tex. App. - Austin 1988, no writ) for the principle that a state agency is bound to follow its own rules and notes that SOAH, too, with its jurisdiction derived from referring agencies, is likewise bound.

⁸ *Id.*, p. 5, note 10.

IN THE MATTER OF the Following Application for Initial..., 2004 WL 5454428...

- ⁹ For purposes of considering the GM's Motion for Summary Disposition, the ALJ assumes that Elm Creek's predecessor did file a relevant declaration with the TNRCC in 1994, resolving any doubts about the establishment of this fact in favor of non-movant Elm Creek. However, in considering Elm Creek's own Motion for Summary Disposition, such an assumption is inappropriate, particularly since, in the ALJ's view, the record evidence on this point shows only that the predecessor's agent attempted to make the filing with TNRCC, not that it actually effected such a filing.

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State of Texas

Office of Administrative Hearings

Texas Department of Insurance, Petitioner

v.

Reginald J. Caillouet, Jr., Respondent

Docket No. 454-03-3452.C

June 14, 2004

PROPOSAL FOR DECISION

*1 Staff of the Texas Department of Insurance (Staff, TDI), represented by Chad V. Seely, Staff Attorney, brought this action against Reginald J. Caillouet, Jr. (Respondent) to revoke his nonresident General Life, Accident, Health, and HMO License. Finding no genuine issue of material fact to resolve in this matter, the Administrative Law Judge (ALJ) has determined Staff is entitled to summary disposition as a matter of law. Accordingly, this proposal for decision recommends that the Commissioner of Insurance issue an order revoking Respondent's license, requiring him to pay restitution for unpaid claims resulting from his sale of unauthorized insurance, and assessing an administrative penalty in the amount of \$100,000, which would represent an amount in excess of Respondent's \$64,964.76 in income from the sale of unauthorized insurance.

I. PROCEDURAL HISTORY

The Notice of Hearing in this matter was issued June 11, 2003. Respondent timely filed an answer with Staff on June 30, 2003. The original hearing on the merits was continued on August 28, 2003, to allow both parties additional time to conduct discovery and to allow Respondent time to retain counsel because his attorney had withdrawn. Staff served a request for admissions on Respondent on November 14, 2003, at which time Respondent was still *pro se*. Respondent failed to answer the Request for Admissions by the December 5, 2003 deadline. A telephone pre-hearing conference was held December 9, 2003, to discuss available dates for the hearing on the merits, deadlines for finishing discovery, and a deadline for Respondent to obtain counsel. The pre-hearing conference was attended by Staff, but Respondent failed to appear. On December 9, 2003, the ALJ issued an order setting the discovery deadline as February 9, 2004, and the date for the hearing on the merits as March 2, 2004.

On January 29, 2004, Staff filed a Motion for Summary Disposition on the basis that Respondent had failed to timely answer the Request for Admissions served on him on November 14, 2003, the admissions were deemed admitted, and the deemed admissions supported summary disposition for TDI. Staff's Motion for Summary Disposition was taken up at a February 23, 2004 pre-hearing conference, at which both Staff, and Respondent's newly-hired counsel, appeared. Respondent was given additional time to respond to the Motion for Summary Disposition, which he did on March 11, 2004, by filing a Motion to Strike Deemed Admissions and Response to TDI's Motion for Summary Disposition. On March 18, 2004, Staff filed a Reply to Respondent's Motion to Strike Deemed Admissions and Response to TDI's Motion for Summary Disposition.

In the February 23, 2004 pre-hearing conference, the parties agreed that the Motion for Summary Disposition and any reply would be considered at a March 23, 2004 pre-hearing conference, at which Staff appeared, but neither Respondent nor his attorney appeared.

*2 Respondent's Motion to Strike Deemed Admissions was granted on April 13, 2004. However, the ALJ has determined that Staff's Motion for Summary Disposition should nonetheless be granted because responses filed with Respondent's Motion to Strike Deemed Admissions, and evidence attached to Staff's Motion for Summary Disposition.

II. APPLICABLE LAW

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A. Standard for Summary Disposition

Pursuant to 1 TEX. ADMIN. CODE (TAC) § 155.57(b)(1), “[a] party may move with or without supporting affidavits for summary disposition upon all or any part of a contested case.” The rule requires a motion for summary disposition to include “a separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence.” 1 TAC § 155.57(b)(2).

Under 1 TAC § 157.57(a), in response to a party’s motion for summary disposition and subsequent responses, ... the judge may issue a proposal for decision, or where authorized by law a final order, resolving a contested case without evidentiary hearing if the pleadings, affidavits, materials obtained by discovery, admissions, matters officially noticed, stipulations, or evidence of record shows there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law.

The movant has the burden in a summary judgment proceeding. Stevens v. State Farm Fire & Casualty Co., 929 SW2d 665, 669 (Tex. App.-Texarkana 1996, writ denied). To decide whether there is a disputed material fact issue precluding summary judgment, “evidence favorable to the non-movant must be taken as true.” Pena v. State Farm Lloyds, 980 SW2d 949, 953 (Tex. App.-Corpus Christi 1998) (citation omitted). Moreover, “[e]very reasonable inference must be indulged in favor of the non-movant and any doubts resolved in his favor.” *Id.*

B. Unauthorized Insurance

Unauthorized insurance is prohibited by law. “A person, including an insurer, may not directly or indirectly do an act that constitutes the business of insurance under this chapter except as authorized by statute.” TEX. INS. CODE ANN. § 101.102.

Chapter 101 of the Texas Insurance Code, entitled “Unauthorized Insurance,” also defines the conduct that constitutes the business of insurance. TEX. INS. CODE ANN. § 101.051 (including e.g. “taking or receiving an insurance application,” “receiving or collecting any consideration for insurance,” “issuing or delivering an insurance contract.”)

C. Insurance Agent

1. Defined

An insurance agent is defined in TEX. INS. CODE ANN. § 21.02(a) as “Any person who solicits insurance on behalf of an insurance company,” and includes a person who takes or transmits other than for himself any application for insurance or any policy of insurance to or from such company, or who advertises or otherwise gives notice that he will receive or deliver a policy of insurance of any such company ... or receive, or collect, or transmit any premium of insurance, ... or do or perform any other act or thing in the making or consummating of any contract of insurance for or with any such insurance company other than himself. ...

2. May not accept consideration from unauthorized insurers

*3 According to the section entitled “Prohibited Activities,” a licensed agent may not accept commissions or other consideration from entities or individuals who are not licensed. TEX. INS. CODE ANN. art. 21.01-2 § 2A(d)(2) and 21.07 § 1(a).

3. Liability to Insureds

Further, persons who perform acts of an agent on behalf of unauthorized entities and individuals are held liable to the insured:

Any person who shall do any of the acts mentioned in this article for or on behalf of any insurance company without such company having first complied with the laws of this State, shall be personally liable to the holder of any policy of insurance in respect of which such act was done for any loss covered by the same. TEX. INS. CODE ANN. art. 21.02(a);

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A person who in any manner assisted directly or indirectly in the procurement of the contract is liable to the insured for the full amount of a claim or loss under the terms of the contract if the unauthorized insurer fails to pay the claim or loss. TEX. INS. CODE ANN. § 101.201.

4. Sale of unauthorized insurance is strict liability offense

Neither TEX. INS. CODE ANN. ch. 101, nor TEX. INS. CODE ANN. art. 21.02, contains a knowledge requirement. The sale of unauthorized insurance is essentially a strict liability offense. It is the responsibility of the agent who sells the insurance and/or accepts the commission or consideration to perform due diligence and ascertain that the entity or product is what it purports to be and covers what it purports to cover.

III. STAFF'S ALLEGATIONS AGAINST RESPONDENT

The Notice of Public Hearing contains the following allegations against Respondent:

Unauthorized Insurance: Employers Mutual

1. On October 4, 2001, the Commissioner of Insurance entered Order No. 01-0960 against Employers Mutual, L.L.C. (EM), American Benefit Society (ABS), Sierra Administration, Inc. (Sierra), 16 purported trade or occupational associations (the Associations), William R. Kokott (Kokott), and Nicholas E. Angelos (Angelos). The Commissioner concluded that these entities and individuals did not hold certificates of authority or licenses in Texas, and therefore were unauthorized insurers. Further, the Commissioner ordered the entities and individuals to cease and desist from, among other things, engaging in the business of insurance in the State of Texas.

2. Since January 2001, EM, ABS, Sierra, the Associations, Kokott and Angelos conducted or engaged in the unauthorized business of insurance in Texas.

3. Since at least January 2001, Reginald J. Caillouet, Jr., (Respondent) marketed, sold and accepted commissions from the sale of EM's health care plans.

4. Since at least January 2001, Respondent was the regional manager, director, supervisor and/or agent who provided instruction to several subagents regarding the marketing and sales of EM plans or products.

5. Respondent received overrides, commissions, "consultant fees" or compensation from the subagents under his direction who sold EM plans or products.

*4 6. Respondent performed the acts of an agent, as defined in TEX. INS. CODE ANN. art. 21.02(a) and TEX. INS. CODE ANN. § 101.051, on behalf of the following unlicensed entities and individuals in the State of Texas:

EM

the 16 Associations

ABS

Sierra

Kokott

Angelos

7. Respondent disseminated, circulated and placed before the public false, deceptive and misleading solicitation materials, applications, and plan description summaries regarding EM's healthcare plans.

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Failure to Respond to TDI Inquiries

8. On February 21, 2002, TDI sent Respondent a letter by certified mail, return receipt requested, regarding the health plans he sold for EM. Pursuant to TEX. INS. CODE ANN. § 38.001, Respondent was required to respond no later than 10 days after receipt of the February 21, 2002 letter.

9. Respondent received the February 21, 2002 letter on February 28, 2002. However, Respondent failed to respond to TDI's letter within 10 days after receipt.

IV. STAFF'S CASE

A. Staff's Evidence

The following exhibits attached to Staff's Motion for Summary Disposition are admitted into evidence:
Official Order No. 01-0960 of the Commissioner of Insurance of the State of Texas, dated October 4, 2001. (Exh. A)

Official Order No. 0192 of the Commissioner dated March 21, 2003: Consent order and Disciplinary Action related to Hector Elizondo, Jr. (Exh. B)

Official Order No. 03-0224 of the Commissioner dated April 1, 2003: Consent Order and disciplinary action related to Jose Feliciano, Jr. (Exh. C)

Official Order No. 03-0284 of the Commissioner dated April 18, 2003: Consent order and disciplinary action related to John Feliciano. (Exh. D)

Request for Admissions served on Respondent on November 14, 2003. (Exh. E).^{b1}[FN1]^{FN:F1}

Respondent's written response to Notice of Public Hearing. (Exh. F).

Affidavit of Respondent dated May 6, 2003. (Exh. G).

Respondent's Answers and Objections to TDI's First Set of Interrogatories and Requests for Production of Documents and Tangible Things, dated July 30, 2003. (Exh. H).

Producer agreements between American Coalition of Consumers and Texas agents. (Exh. I).

Notarized Declaration Regarding Production of Business Records to TDI. (Exh. J).

Form 1099s for Respondent, Hector Elizondo, Jr., and Jose Feliciano, Jr. (Exh. K).

E-mail from Respondent regarding media release. (Exh. L).

B. Staff's Arguments

In its Motion for Summary Disposition, and its Reply to Respondent's Motion to Strike Deemed Admissions, Staff asserted that the following allegations are supported by Respondent's responses contained in his Motion to Strike Deemed Admissions, and by documents attached to its Motion for Summary Disposition, which the ALJ has since admitted into evidence.

I. EM was not an authorized insurer

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On October 4, 2001, TDI issued an Emergency Cease and Desist Order (Official Order 01-0960) finding that EM, among others, did not hold a certificate of authority or a license to engage in the business of insurance in Texas, and therefore was an unauthorized insurer, and ordered EM, its agents, employees and other representatives to immediately cease and desist from engaging in the business of insurance in Texas. (Exhibits A-D).

*5 The Texas Insurance Code gives the Commissioner of Insurance regulatory authority over individuals, corporations, associations, etc. that engage in the business of insurance. TEX. INS. CODE ANN. §§ 82.002 and 83.002; *see also* TEX. INS. CODE ANN. § 82.003 (stating that the Commissioner has the authority under TEX. INS. CODE ANN. ch. 82 “to enforce a sanction, penalty, fine, forfeiture, denial, suspension, or revocation otherwise authorized by law.”) Pursuant to TEX. INS. CODE ANN. § 83.051, the Commissioner has the authority to issue a cease and desist order for unauthorized insurance conduct. *See also* TEX. INS. CODE ANN. § 83.101 (giving the Commissioner enforcement authority concerning the order). The Commissioner has determined that EM and ABS are unauthorized insurers.

2. Respondent engaged in the unauthorized business of insurance in Texas

Staff argues that Respondent has engaged in the unauthorized business of insurance in Texas by recruiting Texas agents to sell an unauthorized insurance plan and by accepting consideration for the sale of these unauthorized insurance plans, and supports its argument with the following evidence:

a. Respondent entered into a written or oral contract with Associated Agents of America (AAA) to be a wholesaler of EM health care plans.^{b2}[FN2]^{FN:F2} (Exh. G).

b. Since at least February 2001, Respondent was the regional manager, director, supervisor and/or agent who provided instruction and/or advice to several Texas agents regarding the marketing and sale of EM health care plans or products in Texas. (Exh. B, Finding of Fact No. 4; Exh. C, Findings of Fact Nos. 4 and 7; Exh. D, Findings of Fact Nos. 4 and 7; Exh. F, page 1, paragraph 2; Exh. G, page 2, No. 5; Exh. I; and Exh. J).

c. Since at least February 2001, Respondent received and/or accepted commissions, overrides, “consultant fees” or compensation from Texas agents who sold the EM health care plans in Texas. (Exh. F, page 2, paragraph 4).

d. Since at least February 2001, Respondent received and/or accepted commissions, overrides, “consultant fees,” or compensation from agents outside Texas who sold the EM health care plans in their respective states. (Exh. F, page 2, paragraph 4).

e. Respondent had a commission sharing arrangement with AAA in which he would receive overrides or compensation from EM health care plans sold by Texas agents John Feliciano, Myrna Grigsby, Edward Sealy, Jimmy Toubin, and Hector Elizondo, Jr. (Exh. G, Nos. 12-22).

f. Respondent received overrides or compensation from EM health care plans sold by Texas agents John Feliciano, Myrna Grigsby, Edward Sealy, Jimmy Toubin, and Hector Elizondo, Jr. (Exh. G, Nos. 12-22).

g. According to Respondent’s Form 1099-MISC from AAA, Respondent made at least \$64,964.76 in compensation from AAA in 2001. (Exh. K).

h. Persons enrolled in EM by Respondent have unpaid claims or losses in the United States. (Exh. J).

*6 i. Persons enrolled in EM by non-Texas agents from whom Respondent earned compensation from AAA for their enrollment in the EM health care plans have unpaid claims or losses in the United States. (Exh. J).

j. Persons enrolled in EM by Texas agents from whom Respondent earned compensation from AAA for their enrollment in the EM health care plans have unpaid claims or losses in Texas. (Exh. J).

k. Respondent has not paid the claims or losses of any person he enrolled in the EM health care plans in the United States. (Exh. J).

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- l. Respondent has not paid the claims or losses of any person enrolled in EM by non-Texas agents from whom Respondent earned compensation from AAA for their enrollment in the EM health care plans in the United States. (Exh. J).
- m. Respondent has not paid the claims or losses of any person enrolled in EM by Texas agents from whom Respondent earned compensation from AAA for their enrollment in the EM health care plans in Texas. (Exh. J).
- n. Respondent, or others acting on his behalf, has conducted or engaged in the unauthorized business of insurance in Texas. (See Exh. B, Conclusions of Law Nos. 4-6; Exh. C, Conclusions of Law Nos. 4-6; Exh. D, Conclusions of Law Nos. 4-6).
- o. Respondent became aware of the Florida Department of Insurance's immediate Final Order in the matter of EM, Case No. 42659-01-CO, on August 14, 2001, by an e-mail communication from John K. Arnold. (Exh. F, page 1, paragraph 2; Exh. G, No. 26; Exh. H, No. 16; Exh. L).

3. Staff's recommendation

Staff seeks revocation of Respondent's nonresident General Life, Accident, Health and HMO License. Because Respondent admitted that persons from whom he earned compensation from AAA have unpaid claims or losses and he has not yet paid those claims or losses, Staff requests that Respondent be ordered to pay restitution, as set out IN TEX. INS. CODE ANN. art. 21.02(a) and TEX. INS. CODE ANN. § 101.201. Finally, while Staff considers restitution to be the most important part of this action, Staff seeks full disgorgement of Respondent's profits from the sale of unauthorized insurance through the assessment of a \$100,000 administrative penalty.^{B3}[FN3]^{FN:F3}

V. RESPONDENT'S CASE

A. Respondent's March 11, 2004 Affidavit

Respondent's March 11, 2004 affidavit^{B4}[FN4]^{FN:F4} states in relevant part: "I did advise agents in Texas of the availability of Employers Mutual plans, however, I never directly sold any such plan in Texas. Before advising agents in Texas of the Employers Mutual plans, I performed due diligence with the Texas Department of Insurance to determine if there were any complaints or problems (administrative or otherwise) with Employers Mutual, their reinsurance carrier (United Wisconsin), their TPA (Sierra Administrators), etc. I was informed by the Texas Department of Insurance that Employers Mutual plans were ERISA plans and therefore outside the jurisdiction of the state. Further, the Texas Department of Insurance had no record of any filed complaints with Employer[s] Mutual. I made all other inquiries possible to determine if Employers Mutual was legitimate in Texas."

*7 "I learned in August 2004^{B5}[FN5]^{FN:F5} [sic] that Florida issued a cease and desist order in that state regarding Employers Mutual, and I immediately contacted all agents with whom I had discussed Employers Mutual plans, and told the agents to immediately stop marketing such plans."

B. Respondent's Admissions Contained in March 11, 2004 Motion to Strike Deemed Admissions

Respondent admits that as of October 4, 2001, EM constituted unauthorized insurance in Texas. Respondent admits that he received compensation or overrides from EM healthcare plans sold in Texas. Respondent admits that he had a commission-sharing arrangement with AAA to receive compensation or overrides from EM healthcare plans sold by agents in 19 states other than Texas. Respondent admits he received overrides or compensation from EM healthcare plans sold by agents in 19 states other than Texas. Respondent admits he has not paid the claims or losses of any person enrolled in EM by non-Texas or Texas agents from whom Respondent earned compensation from AAA for their enrollment in EM healthcare plans in Texas. Respondent admits he became aware of the Florida Department of Insurance's immediate final order in the matter of EM on August 14, 2001.

C. Respondent's June 27, 2003 Response to Notice of Public Hearing

In his June 27, 2003 written response to the Notice of Public Hearing (Exh. C), Respondent stated he did not personally sell any EM plans in Texas. He said that as soon as he found out about the August 2001 Florida order, he advised Texas agents to

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stop selling the plans, stop advising other agents to sell the plans, and to replace the plans. He said he had an EM agent's contract which had to be held by any agent who sold an EM plan, and was never a regional sales manager, director, or supervisor. He said he never provided instructions to any agents as to how to market or sell EM plans or products, except to provide them with forms and applications received from EM, and tell them where to submit the applications. He said he received two-to-five percent of the total payable commission on some of the EM plans. He said he sold two EM plans in Louisiana, and none in Texas or to a Texas person or entity. He said that before he made any agents aware of EM plans, he submitted the EM sales material to TDI, asking if there was any reason why the plans could not be sold in Texas, and if TDI had any information about any problems with EM plans. He said TDI advised him there was no reason why the plans could not be offered in Texas. He said he suggestion to Texas agents was for them to confer with TDI regarding EM plans. He said he was advised by EM that the plans were insured by A. M. Best's A-rated companies, and that the applications EM provided were printed with the logos of the A-rated companies United Wisconsin and American Medical Society, among others. He said he never disseminated any information regarding EM plans that he knew to be false, misleading, or deceptive. Respondent avers that he exercised proper due diligence in advising Texas agents of the EM plans.

D. Respondent's May 6, 2003 Affidavit

*8 In his May 6, 2003 affidavit,⁸⁶[FN6]^{FN:66} Respondent states he never sold an EM plan to any group in Texas, but that in November 2000, he began marketing the EM plans to general agents and agents for groups. He said he has no idea of the number of cases sold by general agents or agents in Texas and to his understanding, this information is entirely in the possession of EM, associated agents of America, and/or the Nevada Federal Court appointed fiduciary. He said he never enrolled any persons, groups, or employers in any EM plans in Texas, and that Claims information was never in his possession or control. He said his compensation overrides never indicated the locale of any groups, and he has not received a copy of any contract. He said he was contracted for a 10 percent commission [for the sale of EM plans] directly under Michael DeBello in Pennsylvania. He said his marketing instructions were received from Mr. DeBello and Jim Graf of EM. He said nobody received overrides, commissions, consultant fees or compensation as a result of his sales of EM plans in Texas, because he made no such sales.

He goes on to state that the general agents or agents with whom he communicated about EM plans in Texas, none of whom were under his direction and control, were as follows: Mike Dwyer, Wayne Morris, Tommy Toubin, and Harry Wilk were assigned to him as general agents at seven percent; Marc Pieroni as a general agent at six percent; and Hector Elizondo, John Feliciano, Myrna Grigsby, Edward Sealy, and Fred Shealy as agents at five percent. He said he has no records of any business they produced in Texas, or any agents they contracted in Texas.

He said he first learned there was a problem with EM plans in August 2001, when a Florida agent sent him a copy of an order of the Florida Commissioner of Insurance directing agents to cease and desist selling EM plans; that immediately upon receiving this information, he stopped marketing these plans, attempted to replace any plans he had sold with other coverage, and advised every agent with whom he had communicated about these plans in any state to do the same.

He said that before he made any Texas agents aware of the plan, he contacted TDI and was informed that there were no complaints filed for EM, and no problem with the plans; that he advised each general agent and agent with whom he communicated in any state, including Texas, to perform his own due diligence before presenting the EM plans; and that no Texas general agent or agent ever received or announced any negative reporting from TDI until long after all marketing, sales, presentations, etc. had ceased, as a result of him becoming aware of a cease and desist order from the Florida Insurance Commission issued in August 2001.

VI. ANALYSIS AND CONCLUSION**A. Analysis**

Texas law imposes a strict burden of proof on a motion for summary disposition because granting the motion denies the non-moving party a hearing on the merits. Before an ALJ can grant a motion for summary disposition, the motion and supporting evidence must show there is no genuine issue as to a material fact and that the movant is entitled to a judgment as a matter of law. *Lear Siegler, Inc. v. Perez*, 819 S.W.2d 470, 471(Tex. 1991). In deciding the motion, the ALJ must accept as true all evidence favoring the non-movant, and must indulge every reasonable inference and resolve all doubts in the non-movant's favor. *Park Place Hosp. v. Estate of Milo*, 909 S.W.2d 508, 510 (Tex. 1995). Applying these standards, as well

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as the fact that Staff's Motion for Summary Disposition meets the requirements of 1 TAC § 155.57 and is supported by the admitted exhibits and Respondent's admissions and affidavits, the ALJ concludes that Staff has established its position as a matter of law. Staff's motion should be granted because no material fact issues remain that must be resolved through an evidentiary hearing on the merits.

*9 Specifically, Respondent admits in Fact Statement Nos. 2 and 14 attached to his Motion to Strike Deemed Admissions filed March 11, 2004, that he received compensation and commissions from the sale of EM plans in Texas, which supports the legal fact and conclusion that he conducted the business of insurance in Texas pursuant to TEX. INS. CODE ANN. § 101.051(b)(4)(A-E).

Additionally, Respondent admitted that EM constituted unauthorized insurance in Texas. Since Respondent has admitted that he received compensation and commissions from the sale of EM plans in Texas and admitted that EM was unauthorized, then it is a legal fact and conclusion that he has conducted or engaged in the unauthorized business of insurance in Texas pursuant to TEX. INS. CODE ANN. § 101.102(a).

Further, the legal conclusion that Respondent engaged in the unauthorized business of insurance in Texas holds him liable under TEX. INS. CODE ANN. § 101.201 "to the insureds for the full amount of a claim or loss under the terms of the contract if the unauthorized insurer fails to pay the claim or loss." Exhibit J, filed with Staff's Motion for Summary Disposition, is a notarized declaration of unpaid claims from the Independent Fiduciary of EM plans. This document shows the liability that is attributable to Respondent, either directly by his own sales or indirectly from sub-agents across the United States, including Texas agents. Respondent admits in Fact Statements Nos. 21, 22, and 23 in his Motion to Strike Deemed Admissions that he has not paid the claims or losses of any person enrolled in EM, by him or his sub-agents, in the United States. As such, Respondent is liable for those unpaid claims according to the Texas Insurance Code.

Although Respondent did not sell any EM plans in Texas, and instructed Texas agents to stop selling the plans once he learned of the August 2001 Florida Department of Insurance Cease and Desist Order against EM, he is strictly liable under the Texas Insurance Code for the resulting harm to Texas insureds.

B. Conclusion

For the reasons set forth above, the ALJ has determined that Staff is entitled to summary disposition as a matter of law. Accordingly, the ALJ recommends that the Commissioner find summary disposition should be granted.

VII. FINDINGS OF FACT

1. Reginald Joseph Caillouet, Jr. (Respondent) holds a non-resident General Life, Accident, Health, and HMO License issued by the Texas Department of Insurance (TDI, Staff).

2. On October 4, 2001, the Commissioner of Insurance entered Order No. 01-0960 against Employers Mutual, L.L.C. (EM), American Benefit Society (ABS), Sierra Administration, Inc. (Sierra), 16 purported trade or occupational associations (the Associations), William R. Kokott, and Nicholas E. Angelos. The Commissioner concluded that these entities and individuals did not hold certificates of authority or licenses in Texas, and therefore were unauthorized insurers. Further, the Commissioner ordered the entities and individuals to cease and desist from, among other things, engaging in the business of insurance in the State of Texas.

*10 3. Since January 2001, EM, ABS, Sierra, the Associations, Mr. Kokott and Mr. Angelos conducted or engaged in the unauthorized business of insurance in Texas.

4. Since at least January 2001, Respondent marketed, sold and accepted commissions from the sale of EM's health care plans in Texas.

5. Since at least January 2001, Respondent was the regional manager, director, supervisor and/or agent who provided instruction to several subagents regarding the marketing and sales of EM plans or products in Texas.

6. Respondent received overrides, commissions, "consultant fees" or compensation from the subagents under his direction

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who sold EM plans or products.

7. Respondent performed the acts of an agent on behalf of EM, an unauthorized insurer, in the State of Texas.
8. Respondent disseminated, circulated and placed before the public false, deceptive and misleading solicitation materials, applications, and plan description summaries regarding EM's healthcare plans.
9. On February 21, 2002, TDI sent Respondent a letter by certified mail, return receipt requested regarding the health plans he sold for EM.
10. Although Respondent received the February 21, 2002 letter on February 28, 2002, he failed to respond to TDI within 10 days of receipt.
11. A Notice of Public Hearing was sent to Respondent on June 11, 2003.
12. The Notice of Public Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
13. On June 27, 2003, Respondent timely filed a written response to the allegations contained in the Notice of Hearing with TDI, within 20 days of the date the notice was received.
14. On January 29, 2004, Staff filed its Motion for Summary Disposition.
15. A pre-hearing on Staff's Motion for Summary Disposition was held March 23, 2004, as agreed upon by the parties. Staff appeared, but neither Respondent nor his attorney appeared or ever submitted any reason for their failure to appear prior to or subsequent to the pre-hearing.
16. The hearing on the merits set for June 3, 2004, was canceled on April 13, 2004.

VIII. CONCLUSIONS OF LAW

1. The Commissioner of the Texas Department of Insurance (Commissioner, TDI) has authority and jurisdiction over this matter pursuant to TEX. INS. CODE ANN. arts. 21.01 § 3, 21.01-2 § 3A, and 21.07-1 § 2; TEX. INS. CODE ANN. §§ 83.101-83.104, and 101.102(a); and TEX. GOV'T CODE ANN. §§ 2001.051-2001.178.
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter, to summarily dispose of the matter without an evidentiary hearing, and to issue a Proposal for Decision containing findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 and 1 TEX. ADMIN. CODE § 155.57.
- *11 3. Reginald Joseph Caillouet, Jr. (Respondent) holds a non-resident General Life, Accident, Health, and HMO License issued by TDI pursuant to TEX. INS. CODE ANN. art. 21.07-1 § 2.
4. Respondent performed the acts of an agent, as defined in TEX. INS. CODE ANN. art 21.02(a) and TEX. INS. CODE ANN. § 101.051, on behalf of unauthorized entities and individuals in the State of Texas.
5. Respondent violated TEX. INS. CODE § 101.102 by acting as an agent on behalf of entities and individuals who do not hold an insurance license or other authorization issued by TDI to directly and/or indirectly do acts which constitute the business of insurance.
6. Respondent paid to, directly or indirectly, and/or accepted commissions from unauthorized entities and individuals, for services as an insurance agent in violation of TEX. INS. CODE ANN. art. 21.01-2 § 2A(b).
7. Respondent solicited a contract of insurance or acted as an agent without having been appointed by an authorized insurance company, as contemplated by TEX. INS. CODE ANN. arts. 21.01-2 § 2A(d)(2) and 21.07 § 1(a).

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8. Respondent assisted entities and individuals who do not hold an insurance license or other authorization issued by TDI to directly and/or indirectly do acts which constitute the business of insurance as the term is defined in TEX. INS. CODE ANN. § 101.051.
9. Respondent violated a provision of the insurance laws of this State, as contemplated in TEX. INS. CODE ANN. art. 21.01-2 § 3A(c)(1), by violating TEX. INS. CODE ANN. art. 21.21 §§ 1, 3, and 4, § 101.102, and 28 TEX. ADMIN. CODE §§ 19.902, 19.906, and 21.3 and 21.112.
10. Respondent engaged in a trade practice defined as unfair method of competition or an unfair or deceptive act or practice in the business of insurance, as contemplated by TEX. INS. CODE ANN. art. 21.21 § 3 and 28 TEX. ADMIN. CODE §§ 21.3 and 21.112 by engaging in those activities specified in TEX. INS. CODE ANN. art. 21.21 § 4(1), (2) and (11).
11. Respondent failed to respond to a TDI inquiry not later than 10 days after receiving said inquiry, in violation of TEX. INS. CODE ANN. § 38.001.
12. The Commissioner of Insurance is authorized to revoke Respondent's non-resident General Life, Accident, Health and HMO License pursuant to TEX. INS. CODE ANN. arts. 21.01-2 § 3A(a) and (c) and 21.07-1 § 2.
13. The Commissioner is authorized under TEX. INS. CODE ANN. § 82.051 to impose sanctions provided by law pursuant to TEX. INS. CODE ANN. Chapters 82, 101, and/or TEX. INS. CODE ANN. art. 21-01-2 § 3A(a).
14. Based on the pleadings, affidavits, stipulations, and other evidence supporting Staff's Motion For Summary Disposition, there is no genuine issue of material fact as to the allegations contained in the June 11, 2003 Notice of Public Hearing, and Staff is entitled to a summary decision in its favor as a matter of law, pursuant to 1 TAC § 155.57(a)-(d).
- *12 15. Respondent should pay any unpaid EM claim or loss in accordance with the terms of the EM contract to any EM insured who held a policy under which Respondent accepted a commission and/or other valuable consideration.
16. Respondent should pay an administrative penalty of \$ 100,000. He shall receive a dollar-for- dollar reduction in said administrative penalty, not to exceed \$75,000, for any restitution paid to an EM insured on or before 180 days from the date of the Commissioner's order, provided that Respondent furnishes the Department with a copy of a canceled check, money order or cashier's check evidencing proof of restitution payment on or before 180 days from the date of the Commissioner's order.

Sharon Cloninger
Administrative Law Judge

Footnotes

- :B1XXa [FN1]^{FN:F1}. The requests themselves are admitted, but no admissions are deemed admitted. Respondent's Motion to Strike Deemed Admissions was granted on April 13, 2004.
- :B2XXa [FN2]^{FN:F2}. AAA is the company that Respondent recruited agents to sign-up with in order to sell the EM plans.
- :B3XXa [FN3]^{FN:F3}. Respondent has earned approximately \$64,964.76 from the sale of unauthorized insurance, the EM Plans. According to Exh. L, the amount of unpaid claims that Respondent is liable for is approximately \$5,632,026.23. TDI has been offering similarly situated agents "setoffs," through Consent Orders whereby an administrative penalty may be offset by restitution paid. See Exhibits B-D, e.g.
- :B4XXa [FN4]^{FN:F4}. The affidavit is attached to Respondent's Motion to Strike Deemed Admissions, as Exh. A.
- :B5XXa [FN5]^{FN:F5}. Evidence elsewhere in the record indicates the correct date to be August 2001.

Texas Department of Insurance, Petitioner v. Reginald J...., 2004 WL 4171864...

:B6XXa [FN6]^{FN:F6}. The affidavit is attached to Respondent's Response to Staff's Motion for Summary Disposition at Exh. D.

2004 WL 4171864 (TX.St.Off.Admin.Hgs.)

End of Document

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Attachment C: Complainant's Replies to Exceptions

**SOAH DOCKET NO. 608-14-4960LIC
MVD DOCKET NO. 14-0016.LIC**

**AUTOBAHN IMPORTS, L.P.
D/B/A LAND ROVER OF FORT WORTH,
Complainant**

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BEFORE THE STATE OFFICE

v.

OF

**JAGUAR LAND ROVER NORTH
AMERICA, L.L.C.
Respondent**

ADMINISTRATIVE HEARINGS

**AUTOBAHN'S REPLY TO JAGUAR LAND ROVER NORTH AMERICA, LLC'S
EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S PROPOSAL FOR DECISION**

Submitted by:

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ATTORNEYS FOR COMPLAINANT,
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D/B/A LAND ROVER OF FORT WORTH

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**SOAH DOCKET NO. 608-14-4960LIC
MVD DOCKET NO. 14-0016.LIC**

**AUTOBAHN IMPORTS, L.P.
D/B/A LAND ROVER OF FORT WORTH,
Complainant**

v.

**JAGUAR LAND ROVER NORTH
AMERICA, L.L.C.
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**AUTOBAHN'S REPLY TO JAGUAR LAND ROVER NORTH AMERICA, LLC'S
EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S PROPOSAL FOR DECISION**

TO THE HONORABLE STEPHANIE FRAZEE, ADMINISTRATIVE LAW JUDGE:

Complainant, Autobahn Imports, L.P. d/b/a Land Rover of Fort Worth ("Autobahn"), files this Autobahn's Reply to Jaguar Land Rover North America, LLC's Exceptions to Administrative Law Judge's Proposal for Decision, filed by Respondent, Jaguar Land Rover North America, LLC ("JLRNA"). JLRNA's Exceptions to the Administrative Law Judge's Proposal for Decision will be referenced "JLRNA's Exceptions" and Autobahn's Reply to JLRNA's Exceptions will be referenced "Autobahn's Reply". The Proposal for Decision shall be referenced "PFD". Texas Occupations Code, Section 2301 et seq. will be referenced "Code".

I. Posture of this Case

1.1 This case involves the legal interpretation of two documents – a contract and a written export policy prepared by JLRNA and issued unilaterally to Autobahn and other Texas dealers. The case was pending at SOAH for 11 months. During this time three different

- Administrative Law Judges called for three rounds of legal briefing on various points involved.
- 1.2 A Motion for Summary Disposition was granted that JLRNA's charge-backs against Autobahn under the contract were invalid under the Code. A Motion for Summary Disposition was granted that the JLRNA's export policy violates the Code. These Motions and the PFD incorporating them are based upon an exhaustive review of the contract and export policy documents, and are buttressed by citations to relevant Texas cases. Neither the contract nor the export policy are ambiguous, so no additional evidence is required.
 - 1.3 The Board is being asked to ignore the work of SOAH in this case and substitute its legal opinion for SOAH based on basically the same JLRNA arguments that SOAH rejected. The decisions made by SOAH are based on the legal effect of the pertinent documents. There is no Code policy involved. The Board will not have the opportunity to either examine the pertinent documents or the cited legal authorities. There is no basis for the Board to determine that SOAH was wrong as a matter of law.
 - 1.4 This case has been appropriately ruled upon by the legal opinions of SOAH and the Board should issue a final order in accordance with the PFD.

II. Charge-back Claims

- 2.1 The charge-backs were made against Autobahn under JLRNA's Business Builder Program ("Program"). This Program paid dealers for each Land Rover sold if certain requirements were met. The requirements of the Program are set out in a Manual & Operations Bulletin prepared by JLRNA. Order No. 5.

- 2.2 The parties agreed and a SOAH judge held that the Manual & Operations Bulletin constitute a contract between JLRNA and Autobahn which provides for the payment of benefits under the Program. Order No. 6.
- 2.3 This contract between JLRNA and Autobahn was determined to be “definite”, “certain”, and “not ambiguous.” Accordingly, extraneous evidence was not required to determine its meaning and it was construed “as a matter of law.” (PFD, page 9)
- 2.4 After an audit, JLRNA charged-back over \$300,000 to Autobahn on the grounds that the vehicles involved were not delivered to an end-user as required by the Program. All vehicles charged-back were sold to leasing companies. (PFD, page 4)
- 2.5 The PFD finds as a fact that a leasing company is considered to be an end-user under the Program documents in Finding of Fact No. 11. The PFD concludes that as a matter of law, the sales to leasing companies are qualified sales under the Program. Conclusion of Law No. 17.
- 2.6 Accordingly, the charge-backs are not authorized under the Program and are unreasonable under Code § 2301.467(a) and inequitable under Code § 2301.468.

III. Export Policy

- 3.1 The Export Policy and the New Export Policy were attacked by Autobahn as violations of Code § 2301.479. This aspect of the case involves a side-by-side comparison of the two Export Policies and the Code section. There is no need for discovery, as there is no fact or Code policy questions involved, simply a legal interpretation of the export policy documents.

- 3.2 Under the Code, adverse action may be taken against a dealer that sells a vehicle that is later exported only if the dealer knew or should have known that it would be exported. Also, the Code presumes a dealer has no knowledge of an exported vehicle if the vehicle is titled, registered and taxes paid. Also, the Code provides that except as permitted by this §2301.479, a franchise provision that allows adverse action against a dealer that sells a vehicle which is later exported, is void and unenforceable.
- 3.3 Both of the Export Policies require that a dealer perform due diligence to ensure that a vehicle will not be exported. The dealer must demonstrate due diligence, rather than being entitled to the Code's presumption of no knowledge. Under the New Export Policy, all vehicles exported over a certain number will be charged back automatically to the dealer. Also, under both Export Policies, JLRNA does not have to show fraud, while the Code requires a finding of fraud before JLRNA can make an export chargeback. PFD, Conclusion of Law No. 5.
- 3.4 SOAH granted a Motion for Summary Disposition that both Export Policies conflict with the Code and are invalid under Code § 2301.479. Order No. 11. The PFD concludes as a matter of law that both Export Policies violate this Code section in Conclusion of Law No. 18.

IV. The Record is Closed for Further Arguments

- 4.1 1 TAC §155.505 Summary Disposition provides in paragraph (e)(2):

If summary disposition is granted on all contested issues in a case, the judge shall **close the record** and prepare a final decision or proposal for decision as appropriate. (Emphasis added).

- 4.2 Pursuant to this SOAH rule, the **record was closed** in this case by Order No. 12 issued July 24, 2015, because Your Honor had previously granted summary disposition in favor of Autobahn on the end-user issue and corresponding chargebacks in Order No. 10 and on the export policy claim in Order No. 11. Accordingly, neither JLRNA nor Autobahn can submit further arguments or evidence in the guise of JLRNA's Exceptions or Autobahn's Reply to the PFD, due to the closed record.
- 4.3 The purpose of paragraph (c) in 1 TAC §157.507 Proposal for Decision allowing parties to file exceptions and replies to exceptions to the PFD, is to clarify text or correct any clerical errors on the **rulings already determined** on the merits in the PFD's granting of a party's motion for summary disposition. The purpose of exceptions and replies is not to reargue the merits of the case, and ruled upon by the ALJs.
- 4.4 JLRNA's Exceptions to the PFD are a regurgitation of previous arguments and even new arguments on the merits in the guise of exceptions. JLRNA's Exceptions should not be considered in this proceeding, except for only those that truly attempt to clarify text or correct clerical errors in the PFD.

V. JLRNA Reargues the Merits on a Closed Record in the Guise of Exceptions

- 5.1 **JLRNA's Background/Procedural History.** A procedural history is nothing more than a summary of the essential procedural filings recorded in this proceeding, which the PFD provides in Section I Jurisdiction, Notice and Procedural History ("Procedural History"). In light of the Procedural History in the PFD, there was no reason for JLRNA to file its Section II Background/Procedural History that begins on page 2 and continues through page 5 of JLRNA's Exceptions. Further, JLRNA makes no exception to any specific text in the PFD's Procedural History.

- 5.2 It is glaringly obvious that JLRNA's only purpose in providing 4 pages of Background/Procedural History was to regurgitate arguments from its perspective that were previously made by the parties and already ruled upon in Autobahn's favor by the ALJs in the now closed record. Therefore, JLRNA's Section II cannot be considered, because the merits have been determined and the record closed for further argument.
- 5.3 JLRNA's Exceptions that argue merits in this closed record, rather than stating an appropriate exception to clarify text or correct clerical errors in the PFD, will be referred to as "Merit Arguments".
- 5.4 Exception No. 1. Exception No. 1 in JLRNA's Exceptions covers 10 pages beginning on page 6 and continuing through page 15. Exception No. 1 cannot be considered, because it consists only of Merit Arguments ending in a request that "the PFD as to the Chargeback Claim should be withdrawn". JLRNA's repeated requests for discovery in Exception No. 1 are meritless. All 3 ALJs determined no discovery was required for ruling on Autobahn's Motion for Summary Disposition, because all the material facts necessary for their summary disposition rulings were undisputed. See Section III Matters of Fact Which are Undisputed, which begins on page 3 of Autobahn's Motion.
- 5.5 The only merit to JLRNA's Exception No. 1 is in Section III. A., page 6, 1st unnumbered paragraph where it states the PFD does not mention the Code provisions that JLRNA violated by issuing the Charge-backs. Accordingly, Autobahn requests a clarification to Conclusion of Law No. 19 as shown below in Sections VI, Autobahn's Requested Clarifications and Clerical Error Corrections ("Autobahn's Requested Changes"), paragraph 6.1.

- 5.6 Exception No. 2. Exception No. 2 appears on pages 15 and 16 of JLRNA's Exceptions. Exception No. 2 cannot be considered, because it consists of Merit Arguments that end in a request to withdraw Conclusion of Law No. 5. JLRNA is attempting to reopen the closed record and reverse findings of fact and conclusions of law in the PFD, rather than clarifying and correcting Conclusion of Law No. 5.
- 5.7 Exception No. 3. Exception No. 3 appears on page 16 and 17 of JLRNA's Exceptions. Exception No. 3 cannot be considered, because it consists only of Merit Arguments – another attempt by JLRNA to reopen the closed record and reverse a finding of fact and conclusions of law, rather than clarifying or correcting the text of the PFD.
- 5.8 Exception No. 4. Exception No. 4 begins on page 17 and continues through page 19 of JLRNA's Exceptions. Exception No. 4 cannot be considered where it makes Merit Arguments, because it is simply another attempt by JLRNA to reopen the closed record and argue merits already determined on the export policy in Autobahn's favor.
- 5.9 However, there are two export policies that Autobahn plead as violating the Code – the Export Policy contained in the Original Complaint, paragraphs 3.6 to 3.8 and identified as "Export Policy"; and the "New Export Policy" contained in the Supplement to Original Complaint, paragraphs 3.6.1 to 3.6.3 and 3.8.1 to 3.8.3. The Findings of Fact in the *Export Policy Issue* on PFD pages 17 to 19 include references to both the Export Policy and the New Export Policy. Additionally, most of the Conclusions of Law apply to both Export Policies, but only list the Export Policy.
- 5.10 Accordingly, Autobahn requests corrections of clerical errors and clarifications of text in Conclusion of Law No. 18 as shown below in Autobahn's Requested Changes, paragraph 6.1, and in the numbered Findings of Fact in paragraph 6.2. .

- 5.11 Exception No. 5. Exception No. 5 on page 19 of JLRNA's Exceptions cannot be considered, because it consists of Merit Arguments. More importantly, JLRNA requests Conclusion of Law No. 4 be withdrawn, when it is a statement taken virtually verbatim from the Texas Administrative Code.
- 5.12 Exception No. 6. Exception No. 6 on page 20 of JLRNA's Exceptions correctly points out a clerical error. However, instead of providing the text to correct the clerical error, JLRNA incorrectly requests that *Procedural Finding* No. 31 be withdrawn. Accordingly, Autobahn requests correction of a clerical error in *Procedural Finding* No. 31 as shown below in Autobahn's Requested Changes, paragraph 6.3.
- 5.13 Exception No. 7. Exception No. 7 on page 20 of JLRNA's Exceptions cannot be considered, because it is solely based on Merit Arguments on the closed record. Its request that *Procedural Finding* No. 28 should be withdrawn is inappropriate.
- 5.14 Exception No. 8. Exception No. 8 on page 21 of JLRNA's Exceptions correctly points out a clerical error. Accordingly, Autobahn requests correction of the clerical error in *Background Finding* No. 31 as shown below in Autobahn's Requested Changes, paragraph 6.4.

VI. Autobahn's Requested Clarifications and Clerical Error Corrections

- 6.1 Autobahn's Requested Changes to Conclusions of Law Nos. 18 & 19. Autobahn requests clarifications of text and/or corrections of clerical errors be made to Conclusions of Law Nos. 18 and No. 19 to read as follows:

18. The Export Policy and the New Export Policy violate Texas Occupations Code §2301.479.

19. Sales to leasing companies are qualified sales under Business Builder according to the Program documents. JLRNA's charge-backs to Autobahn for sales to leasing companies under Business Builder are invalid under Texas Occupations Code §2301.467(a)(1) for requiring adherence to unreasonable sales or service standards, and §2301.468 for treating Autobahn unfairly or inequitably in its sales of JLRNA's vehicles.

6.2 Autobahn's Requested Changes to Findings of Fact Nos. 14-23. Autobahn requests clarifications of text and/or corrections of clerical error be made in the following numbered Findings of Fact:

14. JLRNA issued effective November 24, 2014 a New Export Policy providing. . .

15. Under the New Export Policy, if ...

16. The New Export Policy provides ...

17. The Export Policy and New Export Policy require ...

18. The Export Policy's and New Export Policy's Retailer ...

19. The Export Policy's and New Export Policy's Indicators ...

20. Based on its 2014 sales under the New Export Policy, Autobahn's ...

21. The terms of the New Export Policy automatically ...

22. The terms of the Export Policy and the New Export Policy impose ...

23. The terms of the Export Policy and the New Export Policy provide ...

6.3 Autobahn's Requested Changes to Procedural Finding No. 31. Autobahn requests clarifications of text and/or corrections of clerical errors be made to *Procedural Finding No. 31*, to read as follows:

On June 22, 2015, the ALJ granted summary disposition to Autobahn on its claim regarding JLRNA's Export Policy and New Export Policy. Summary disposition was denied on Autobahn's incentive payment schedule claim because questions of fact remained on that issue.

- 6.4 Autobahn's Requested Changes to Background Finding No. 3. Autobahn requests that *Background Finding No. 3* be changed to correct a clerical error, by replacing "5%" with "6%".

VII. Conclusion

- 7.1 This case involves the legal interpretation of two separate documents, a contract and a JLRNA written policy. SOAH considered the arguments of the parties carefully after calling for three separate briefings of issues. Two motions for summary disposition were entered determining the parties' rights. These rulings were incorporated in a PFD that is now before the Board for a Final Order. The record at SOAH has been closed. There are no fact or policy issues involved for the Board's decision. All that remains of this case is the PFD which the Board should make the subject of a final order.
- 7.2 For all the foregoing reasons, Autobahn requests that JLRNA's Exceptions No. 1 through No. 8 be denied, because they are nothing more than rearguments of the merits on a closed record, in which rulings have been previously made as a matter of law against JLRNA and in favor of Autobahn.
- 7.3 Autobahn respectfully requests Your Honor to make the clarifications in text and corrections to clerical errors shown above in Autobahn's Requested Changes, paragraphs 6.1 through 6.4.

Respectfully submitted,

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By: 

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing has been forwarded to the parties listed below as shown on this 22nd day of September, 2015.

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Howard V. Rose

Attachment D: The ALJ's Response to Exceptions

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

September 30, 2015

Daniel Avitia, Director
Motor Vehicle Division
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, TX 78731

VIA FACSIMILE NO. 512/465-3666

RE: Docket No. 608-14-4960.LIC; Autobahn Imports, L.P., d/b/a Land Rover of Fort Worth v. Jaguar Land Rover North America, LLC

Dear Mr. Avitia:

On September 8, 2015, Jaguar Land Rover North America, LLC (JLRNA) filed exceptions to the Administrative Law Judge's (ALJ's) Proposal for Decision (PFD). On September 22, 2015, Autobahn Imports, L.P. (Autobahn) filed a reply to JLRNA's exceptions.

The ALJ has reviewed JLRNA's exceptions and does not recommend any substantive changes to the PFD. JLRNA presents arguments that have been previously briefed and thoroughly considered by the ALJ. JLRNA also presents new arguments that were not presented before the close of the record. Although filing of exceptions to a PFD is not the proper forum for presenting new arguments, the ALJ reviewed and considered all of the arguments presented in JLRNA's exceptions and finds no basis for substantively amending the PFD.

Autobahn's reply points out several typographical errors, and the ALJ recommends amending the PFD to correct those errors as follows:

- Finding of Fact No. 3 should be amended to replace "5%" with "6%".
- Finding of Fact No. 14 should be amended to state: "JLRNA issued a New Export Policy, effective November 24, 2014, that provides that all vehicles exported within nine months of sale in excess of a quarterly threshold of 3% of sales volume during the previous quarter for dealers selling over 250 units per year will be subject to charge-back."
- Finding of Fact No. 15 should be amended to state: "Under the New Export Policy . . ."
- Finding of Fact No. 16 should be amended to state: "The New Export Policy provides . . ."

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Page 2

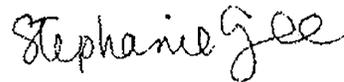
- Finding of Fact No. 17 should be amended to state: “The Export Policy and the New Export Policy require . . .”
- Finding of Fact No. 18 should be amended to state: “The Export Policy’s and the New Export Policy’s Retailer . . .”
- Finding of Fact No. 19 should be amended to state: “The Export Policy’s and the New Export Policy’s Indicators . . .”
- Finding of Fact No. 20 should be amended to state: “Based on its 2014 sales under the New Export Policy, Autobahn’s . . .”
- Finding of Fact No. 21 should be amended to state: “The terms of the New Export Policy automatically . . .”
- Finding of Fact No. 22 should be amended to state: “The terms of the Export Policy and the New Export Policy impose . . .”
- Finding of Fact No. 23 should be amended to state: “The terms of the Export Policy and the New Export Policy provide . . .”
- Finding of Fact No. 31 should be amended to state: “. . . JLRNA’s Export Policy and New Export Policy. . . .”
- Conclusion of Law No. 18 should be amended to state: “The Export Policy and the New Export Policy violate Texas Occupations Code § 2301.479.”
- Conclusion of Law No. 19 should be amended to state: “Sales to leasing companies are qualified sales under Business Builder according to the Program documents. JLRNA’s charge-backs to Autobahn for sales to leasing companies under Business Builder are invalid under Texas Occupations Code § 2301.467(a)(1) for requiring adherence to unreasonable sales or service standards and § 2301.468 for treating Autobahn unfairly or inequitably in its sales of JLRNA’s vehicles.”

SOAH Docket No. 608-14-4960.LIC
Exceptions Letter
Page 3

- Conclusion of Law No. 20 should be amended to state: "Autobahn is entitled to summary disposition on its claims regarding charge-backs for sales to leasing companies and the terms of the Export Policy and New Export Policy."

The ALJ recommends no further amendments to the PFD.

Sincerely,



Stephanie Frazee
Administrative Law Judge

SF/mm

cc: Per attached service list – VIA FACSIMILE
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SOAH DOCKET NUMBER: 608-14-4960.LIC
REFERRING AGENCY CASE: 14-0016 LIC

**STATE OFFICE OF ADMINISTRATIVE
 HEARINGS**

ADMINISTRATIVE LAW JUDGE
ALJ STEPHANIE FRAZEE

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TEXAS DEPARTMENT OF MOTOR VEHICLES

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Michael Martinez

From: XMediusFAX@soah.state.tx.us
Sent: Wednesday, September 30, 2015 9:53 AM
To: Michael Martinez
Subject: Broadcast Completed: EXC LETTER; 608-14-4960

Time Submitted : Wednesday, September 30, 2015 9:44:02 AM Central Daylight Time
 Time Completed : Wednesday, September 30, 2015 9:52:31 AM Central Daylight Time
 Nb of Success Items : 6
 Nb of Failed Items : 0

Status	Time Sent	Pages Sent	Duration	Remote CSID	Destination	Error Code
Success	Wednesday, September 30, 2015 9:45:07 AM Centr 6	60		60	(816) 983-8000	5124791101 0
Success	Wednesday, September 30, 2015 9:45:26 AM Centr 6	82		82	18173352909	0
Success	Wednesday, September 30, 2015 9:46:05 AM Centr 6	120		120	Hogan Lovells	17136321401 0
Success	Wednesday, September 30, 2015 9:46:06 AM Centr 6	120		120	Hogan Lovells	13107854601 0
Success	Wednesday, September 30, 2015 9:47:15 AM Centr 6	189		189	5124653666	5124653666 0
Success	Wednesday, September 30, 2015 9:52:21 AM Centr 6	193		193	5124653666	5124653666 0

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

AUTOBAHN IMPORTS, L.P. D/B/A	§	
LAND ROVER OF FORT WORTH,	§	
Complainant	§	
v.	§	MVD CAUSE NO. 14-0016 LIC
	§	SOAH DOCKET NO. 608-14-4960.LIC
JAGUAR LAND ROVER NORTH	§	
AMERICA, LLC,	§	
Respondent	§	

FINAL ORDER

The above referenced matter came before the before the Board of Texas Department of Motor Vehicles in the form of a Proposal for Decision (PFD) from the State Office of Administrative Hearings (SOAH).

In the PFD, Administrative Law Judge (ALJ) states that the Complainant filed a Motion for Summary Disposition (Motion) alleging that: (1) Respondent improperly charged back certain incentive payments for sales to leasing companies, (2) Respondent’s Export Policy is invalid under the Texas Occupations Code, and (3) Respondent’s payment schedule for incentive payments violates the schedule provided for by the Texas Occupations Code. Ultimately, the ALJ granted Summary Disposition to Complainant on the first two claims and upon Complainant’s request, the ALJ dismissed the third claim from the docket. As a result of the combination of the summary dispositions and the dismissal, there are no unresolved claims before SOAH or the Board.

As the final order authority for the agency, the Board may change a finding of fact or conclusion of law made by the ALJ, or may vacate or modify an order issued by the ALJ, *only* under the restrictions of Tex. Gov. Code §2001.058(e). The Board finds that Tex. Gov. Code §2001.058(e) factors are not present in this case. The ALJ did not fail to properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions. There is

not a prior administrative decision on which the ALJ relied that is incorrect or should be changed, nor is there a technical error in a finding of fact that should be changed.

Therefore, the Board, after having considered the findings of fact, and conclusions of law presented in the PFD, Respondent's Exceptions, Complainant's Replies, and the ALJ's September 30, 2015, Exceptions letter, enters this Final Order:

IT IS ORDERED

1. That the PFD and the ALJ's September 30, 2015, Exceptions letter filed in this proceeding, including the findings of fact and conclusions of law, be, and hereby are, incorporated herein;
2. That Respondent improperly charged back against the Complainant certain incentive payments for sales to leasing companies and that those chargebacks are invalid and rescinded;
3. That Respondent's Export Policy is invalid under the Texas Occupations Code; and
4. That, as to the claim that Respondent's payment schedule for incentive payments violates the schedule provided for by the Texas Occupations Code, no further action shall be taken by the Department and the matter shall be, and hereby is, dismissed.

Date: _____

Board Chair
Texas Department of Motor Vehicles

ATTESTED:

Daniel Avitia, Director
Motor Vehicle Division
Texas Department of Motor Vehicles



DATE: September 1, 2016
Action Requested: BRIEFING

To: Texas Department of Motor Vehicles Board
From: David D. Duncan, General Counsel
Agenda Item: 2.E.1.
Subject: Proposal of Rules - Chapter 215, Motor Vehicle Distribution
Rule Review, Government Code, §2001.039; Amendments and Repeals
New §215.160, Duty to Identify Motor Vehicles Offered for Sale as Rebuilt

RECOMMENDATION

This rule package was previously published for comment on June 19, 2015, and withdrawn as a matter of law on January 15, 2016, as the time to submit for adoption expired. The package was published for comment again on February 26, 2016, and withdrawn effective August 15, 2016, as a quorum of the board could not convene to approve adoption prior to the expiration date. Chairman Palacios authorized submittal, by permission, of Chapter 215, Rule Review, Amendments and Repeals, and new §215.160 to the *Texas Register* for publication for comment. The rule package was submitted on August 26, 2016 and will be published in the September 9, 2016 issue.

PURPOSE AND EXECUTIVE SUMMARY

The purpose of this rule package is conducting the required rule review in compliance with Government Code, §2001.039.

FINANCIAL IMPACT

There are no significant fiscal implications related to the proposed amendments, new section, and repeals.

BACKGROUND AND DISCUSSION

As a result of the rule review of Chapter 215, in accordance with Government Code, §2001.039, the department has determined that the reasons for initially adopting Subchapters A-J continue to exist, but that certain amendments and repeals are necessary.

The proposed amendments:

- correct punctuation, grammar, and capitalization
- replace terminology with defined terms
- delete definitions already defined by statute
- revise existing terminology for consistency with other department rules
- correct referenced citations
- delete language that duplicates statute
- subdivide and restructure various rules to improve formatting and readability
- rename certain subchapter and section titles for consistency and accuracy
- simplify and clarify language by removing statutory repetition
- implement legislative changes

Additional amendments to Subchapter A, *General Provisions*, add and define the term "GDN"; repeal §215.3 because it duplicates statute; and repeal §§215.4-215.6, relating to opinions, because those sections contradict Government Code, §2001.003(6).

Additional amendments to Subchapter B, *Adjudicative Practice and Procedure*, clarify the purpose of the subchapter; add that prohibited communications will be reported to the general counsel; establish the last known address of a license holder for purposes of giving notice; clarify that the costs of transcribing and preparing a record in a contested case hearing will be assessed to the party requesting the record; authorize the director of the division to issue final orders in contested cases that are resolved by summary judgment or summary disposition; and repeal §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50-215.54, and 215.57 because they duplicate language contained in statute.

Additional amendments to Subchapter C, *Licenses, Generally*, replace "division" with "department"; incorporate, with amendments, the rule language under existing §215.86 with §215.83; and repeal §215.86 because it is no longer necessary.

Additional amendments to Subchapter D, *Franchised Dealers, Manufacturers, Distributors, and Converters*, clarify that the provisions of §215.105 apply only to purchases and transfers involving physical relocation, and that the provisions of §215.112 are limited only to motor home shows requiring department approval; replace "division" with "department"; and repeal §215.107 because it duplicates statute.

Additional amendments to Subchapter E, *General Distinguishing Numbers*, add and define the term "VIN"; specify that a dealer may not commence business at any location until the department issues a license authorizing that location; replace existing textual language with graphics; clarify that different requirements apply to retail dealers and wholesale motor vehicle dealers; clarify that license holders are not required to maintain copies of motor vehicle titles submitted electronically; rename §215.137 for consistency with statute; clarify use of metal dealer's license plates; add an additional sanctionable offense; and repeal §§215.136, 215.142, and 215.143 because they are adequately addressed by statute.

An additional amendment to Subchapter F, *Lessors and Lease Facilitators*, repeals §215.172 because the department proposes to delete all existing definitions under that section.

An additional amendment to Subchapter G, *Warranty Performance Obligations*, renames the title of §215.201 for consistency with other department rules.

Additional amendments to Subchapter H, *Advertising*, replace "Board" with "department" and "code" with "Occupations Code, Chapter 2301"; add and define the terms "limited rebate" and "savings claim or discount" and clarify definitions for "Monrone label" and "rebate or cash back"; include Internet and online advertisements; clarify MSRP; incorporate the provisions under existing §215.262 relating to savings claims and discount offers with §215.250; add clarifying language regarding allowable use of trade-in amounts in advertisements; and repeal §215.262 because it is no longer necessary.

Additional amendments to Subchapter I, *Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings*, replace "matter" with "contested case" and "Board" with "department"; establish a license holder's last known address for purposes of giving notice; authorize the director of the division to issue a cease and desist order without notice and opportunity for hearing; clarify that a motion for rehearing and a reply to a motion for rehearing of an order issued by the board delegate must be decided by the board delegate; and repeal §§215.309, 215.312, and 215.313 because they duplicate language contained in statute.

Additional amendments to Subchapter J, *Administrative Sanctions*, clarify that an administrative sanction may include denial of an application for a license; establish the last known address of a license holder for purposes of giving notice; and provide that the department will not refund a fee to a person that is subject to an unpaid civil penalty imposed by a final order.

The department also proposes new §215.160, *Duty to Identify Motor Vehicles Offered for Sale as Rebuilt*, which outlines the requirements for sale of a repaired, rebuilt or reconstructed vehicle.

PROPOSED PUBLICATION OF AMENDMENTS, NEW SECTION, AND REPEALS 43 TAC CHAPTER 215, MOTOR VEHICLE DISTRIBUTION

Description

Publication for comment of amendments, new section, and repeals in Chapter 215, Subchapters A-J, was submitted to the *Texas Register* and will be published in the September 9, 2016 issue.

Background

As a result of the rule review of Chapter 215, in accordance with Government Code, §2001.039, the department has determined that the reasons for initially adopting Subchapters A-J continue to exist, but that certain amendments and repeals are necessary.

The proposed amendments:

- correct punctuation, grammar, and capitalization
- replace terminology with defined terms
- delete definitions already defined by statute
- revise existing terminology for consistency with other department rules
- correct referenced citations
- delete language that duplicates statute
- subdivide and restructure various rules to improve formatting and readability
- rename certain subchapter and section titles for consistency and accuracy
- simplify and clarify language by removing statutory repetition
- implement legislative changes

Additional amendments to Subchapter A, *General Provisions*, add and define the term "GDN"; repeal §215.3 because it duplicates statute; and repeal §§215.4-215.6, relating to opinions, because those sections contradict Government Code, §2001.003(6).

Additional amendments to Subchapter B, *Adjudicative Practice and Procedure*, clarify the purpose of the subchapter; add that prohibited communications will be reported to the general counsel; establish the last known address of a license holder for purposes of giving notice; clarify that the costs of transcribing and preparing a record in a contested case hearing will be assessed to the party requesting the record; authorize the director of the division to issue final orders in contested cases that are resolved by summary judgment or summary disposition; and repeal §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50-215.54, and 215.57 because they duplicate language contained in statute.

Additional amendments to Subchapter C, *Licenses, Generally*, replace "division" with "department"; incorporate, with amendments, the rule language under existing §215.86 with §215.83; and repeal §215.86 because it is no longer necessary.

Additional amendments to Subchapter D, *Franchised Dealers, Manufacturers, Distributors, and Converters*, clarify that the provisions of §215.105 apply only to purchases and transfers involving physical relocation, and that the provisions of §215.112 are limited only to motor home shows requiring department approval; replace "division" with "department"; and repeal §215.107 because it duplicates statute.

Additional amendments to Subchapter E, *General Distinguishing Numbers*, add and define the term

"VIN"; specify that a dealer may not commence business at any location until the department issues a license authorizing that location; replace existing textual language with graphics; clarify that different requirements apply to retail dealers and wholesale motor vehicle dealers; clarify that license holders are not required to maintain copies of motor vehicle titles submitted electronically; rename §215.137 for consistency with statute; clarify use of metal dealer's license plates; add an additional sanctionable offense; and repeal §§215.136, 215.142, and 215.143 because they are adequately addressed by statute.

An additional amendment to Subchapter F, *Lessors and Lease Facilitators*, repeals §215.172 because the department proposes to delete all existing definitions under that section.

An additional amendment to Subchapter G, *Warranty Performance Obligations*, renames the title of §215.201 for consistency with other department rules.

Additional amendments to Subchapter H, *Advertising*, replace "Board" with "department" and "code" with "Occupations Code, Chapter 2301"; add and define the terms "limited rebate" and "savings claim or discount" and clarify definitions for "Monroney label" and "rebate or cash back"; include Internet and online advertisements; clarify MSRP; incorporate the provisions under existing §215.262 relating to savings claims and discount offers with §215.250; add clarifying language regarding allowable use of trade-in amounts in advertisements; and repeal §215.262 because it is no longer necessary.

Additional amendments to Subchapter I, *Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings*, replace "matter" with "contested case" and "Board" with "department"; establish a license holder's last known address for purposes of giving notice; authorize the director of the division to issue a cease and desist order without notice and opportunity for hearing; clarify that a motion for rehearing and a reply to a motion for rehearing of an order issued by the board delegate must be decided by the board delegate; and repeal §§215.309, 215.312, and 215.313 because they duplicate language contained in statute.

Additional amendments to Subchapter J, *Administrative Sanctions*, clarify that an administrative sanction may include denial of an application for a license; establish the last known address of a license holder for purposes of giving notice; and provide that the department will not refund a fee to a person that is subject to an unpaid civil penalty imposed by a final order.

The department also proposes new §215.160, *Duty to Identify Motor Vehicles Offered for Sale as Rebuilt*, which outlines the requirements for sale of a repaired, rebuilt or reconstructed vehicle.

Other Comments

There are no significant fiscal implications related to the proposed amendments, new section, and repeals.

The proposed amendments, new section, and repeals will be published in the *Texas Register* on September 9, 2016. Comments on the proposed amendments, new section, and repeals will be accepted until 5:00 p.m. on October 10, 2016.

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1 Subchapter E, §§215.136, 215.142 and 215.143; Subchapter F,
2 §215.172; Subchapter H, §215.262; and Subchapter I, §§215.309,
3 215.312 and 215.313.

4

5 Additionally, the department proposes new §215.160, Duty to
6 Identify Motor Vehicles Offered for Sale as Rebuilt, which
7 outlines the requirements for sale of a repaired, rebuilt or
8 reconstructed vehicle.

9

10 EXPLANATION OF PROPOSED AMENDMENTS, NEW SECTION, AND REPEALS

11 The department conducted a review of its rules under Chapter 215
12 in compliance with Government Code, §2001.039. Notice of the
13 department's intention to review was published in the June 19,
14 2015, issue of the *Texas Register* (40 TexReg 4012).

15

16 As a result of the review, the department has determined that
17 the reasons for initially adopting Subchapters A-J continue to
18 exist but that certain amendments and repeals, as detailed in
19 the following paragraphs, are necessary.

20

21 Amendments to Subchapter A, §215.1 and §215.2 are proposed to
22 replace terminology with defined terms, delete definitions

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1 already defined by statute, revise existing terminology for
2 consistency with other department rules, correct referenced
3 citations, and to delete language that duplicates statute. The
4 title of §215.1 is amended for consistency with other department
5 rules. Additional amendments to §215.2 are proposed to delete
6 definitions no longer needed and add and define the term "GDN."
7 The department has determined that the reasons for initially
8 adopting §§215.3-215.6 no longer exist and that they should be
9 repealed. Section 215.3 should be repealed because it duplicates
10 language already in statute. Sections 215.4-215.6, relating to
11 opinions, should be repealed because those sections are contrary
12 to Government Code, §2001.003(6) which defines a rule as "a
13 state agency statement of general applicability that (i)
14 implements, interprets, or prescribes law or policy, or (ii)
15 describes the procedure or practice requirements of a state
16 agency."

17

18 Amendments to Subchapter B, §§215.21-215.24, 215.27, 215.29,
19 215.30, 215.32, 215.34-215.49, 215.55, 215.56 and 215.58 are
20 proposed to clarify the purpose of the subchapter, replace
21 terminology with defined terms, correct referenced citations,
22 revise existing terminology for consistency with other

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1 department rules, and to delete language contained in statute.
2 An amendment to §215.22 is proposed to add that a violation of
3 that section will be reported to the general counsel of the
4 department in addition to the hearing officer. An additional
5 amendment to §215.34 establishes the last known address of a
6 license holder for purposes of giving notice as "mailing address
7 provided to the department when the license holder applies or
8 renews its license," or notifies the department of a change in
9 address. The department further proposes to amend §215.37 to
10 clarify that the costs of transcribing and preparing a record in
11 a contested case hearing will be assessed to the party
12 requesting the record. An additional amendment to §215.58 is
13 proposed to authorize the director of the division to issue
14 final orders in contested cases that are resolved by summary
15 judgment or summary disposition. Additional amendments are
16 proposed throughout Subchapter B to simplify and clarify
17 language by removing any unnecessary statutory repetition. In
18 addition, amendments are proposed to rename the titles of
19 certain sections for consistency and accuracy. The department
20 has further determined that §§215.25, 215.26, 215.28, 215.31,
21 215.33, 215.50-215.54 and 215.57 duplicate language already
22 contained in statute and are no longer necessary. Therefore, the

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1 department proposes to repeal those sections.
2
3 Amendments to Subchapter C, §§215.81-215.85 and 215.87-215.89
4 are proposed to replace terminology with defined terms, revise
5 existing terminology for consistency with other department
6 rules, correct referenced citations, and to delete language
7 contained in statute. Additional amendments are proposed
8 throughout Subchapter C to replace "division" with "department"
9 for clarification and consistency with current department
10 practice. An amendment is proposed to §215.83 to implement
11 legislative changes regarding "active duty." In addition, the
12 department proposes to amend §215.83 by including the procedures
13 for processing license applications that are currently set out
14 under existing §215.86 because those procedures are more
15 appropriately located under §215.83. Additional amendments to
16 §215.83 are proposed to subdivide the rule to improve formatting
17 and readability. Because the department proposes to incorporate,
18 with amendments, the rule language under §215.86 with §215.83,
19 the department proposes to repeal §215.86. Additional amendments
20 are proposed throughout Subchapter C to rename certain section
21 titles for consistency and accuracy with the language contained
22 in those rules.

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1
2 Amendments to Subchapter D, §§215.101, 215.103-215.106 and
3 215.108-215.119 are proposed to delete language contained in
4 statute, correct referenced citations, replace terminology with
5 defined terms, revise existing terminology for consistency with
6 other department rules and current department practice. An
7 amendment to §215.105 clarifies that the provisions of that
8 section apply only to purchases and transfers involving physical
9 relocation. Amendments to §215.112 are proposed to clarify that
10 the provisions of that section are limited only to motor home
11 shows that require department approval. Additional amendments
12 are proposed throughout Subchapter D to replace "division" with
13 "department" for clarification and consistency with current
14 department practice. The department also proposes amendments
15 throughout Subchapter D to subdivide and restructure the rules
16 for formatting and improved readability. The department has
17 further determined that §215.107 duplicates language contained
18 in statute and therefore, proposes to repeal that section.

19
20 Amendments to Subchapter E, §§215.131-215.133, 215.135, 215.137-
21 215.141 and 215.144-215.159 are proposed to replace terminology
22 with defined terms, delete definitions already defined by

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1 statute or to add clarifying language to existing definitions,
2 revise existing terminology for consistency with other
3 department rules, correct referenced citations, and to delete
4 language contained in statute. An additional amendment to
5 §215.132 is proposed to add and define the terms "vehicle" and
6 "VIN." An additional amendment to §215.133 includes the
7 acceptance of concealed handgun license (license to carry a
8 handgun) for identification purposes. An amendment to §215.135
9 specifies that a dealer may not commence business at any
10 location until the department issues a license authorizing that
11 location. Amendments were made to §215.137 to change the title
12 to "Surety Bond" for consistency with statute and to clarify
13 requirements. Amendments were made to §215.138 to clarify use of
14 metal dealer's license plates. Additional amendments to §215.139
15 subdivide the rule for improved readability and replace existing
16 textual language with graphics under amended subsections (c),
17 (e) and (f)(1). Additional amendments are proposed throughout
18 §215.140 to clarify that different requirements apply to retail
19 dealers and wholesale motor vehicle dealers. Additional
20 amendments to §215.141 clarify sanctions and add an additional
21 sanctionable offense, effective January 1, 2017, for failure to
22 disclose repaired, rebuilt, or reconstructed motor vehicles. An

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1 additional amendment to §215.144 is proposed to clarify that
2 license holders are not required to maintain copies of motor
3 vehicle titles submitted electronically. Additional amendments
4 to §215.145 clarify the requirements for dealer status changes.
5 An additional amendment was made to §215.147 to include
6 acceptance of concealed handgun license (license to carry a
7 handgun) for identification. Additional amendments are proposed
8 to renumber the appendices under §215.153, consistent with the
9 proposed amendments renumbering that section. The department
10 further proposes to repeal §§215.136, 215.142 and 215.143
11 because those sections are adequately addressed by statute and
12 therefore, are no longer necessary.

13

14 An amendment to Subchapter F is proposed to rename the title of
15 that subchapter for consistency with statutorily defined terms.
16 Additional amendments are proposed throughout §§215.171 and
17 215.173-215.181 to delete definitions already defined by statute
18 or to add clarifying language to existing definitions, revise
19 existing terminology for consistency with other department
20 rules, correct referenced citations, and to delete language
21 contained in statute. Additional amendments are proposed
22 throughout Subchapter F to renumber and subdivide certain

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1 sections for improved readability. Because the department
2 proposes to delete the definitions under §215.172, the reasons
3 for adopting that section no longer exist. Therefore, the
4 department proposes to repeal §215.172.

5

6 Amendments to Subchapter G, §§215.201-215.210 are proposed to
7 replace terminology with defined terms, revise existing
8 terminology for consistency with other department rules, correct
9 the referenced citations, and to delete language that is already
10 contained in statute. In addition, the department proposes an
11 amendment to §215.201 to rename the title of that section for
12 consistency with other department rules.

13

14 Amendments to Subchapter H, §§215.241-215.261 and 215.263-
15 215.271 are proposed to revise existing terminology for
16 consistency with other department rules. Additional amendments
17 are proposed to replace terminology with defined terms and to
18 correct referenced citations. The department also proposes to
19 amend §215.241 to replace "Board" with "department" for
20 consistency with current department practice, and to replace
21 "code" with "Occupations Code, Chapter 2301" for clarification.
22 Amendments to §215.244 are proposed to add and define the terms

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1 "limited rebate" and "savings claim or discount" and clarify
2 definitions for "Monroney label" and "rebate or cash back."
3 Additional amendments to §215.246 clarify accuracy of Internet
4 advertisements. Amendments are proposed to §215.248 to include
5 Internet and online advertisements. An amendment to §215.249
6 provides clarification of Manufacturer's Suggested Retail Price
7 (MSRP). Additional amendments to §215.250 are proposed to
8 incorporate the provisions under existing §215.262 relating to
9 savings claims and discount offers with §215.250 because those
10 provisions are more appropriately located under that section.
11 The department further proposes to amend and add additional
12 graphics under proposed subsections (h)-(m) of §215.250. Because
13 the department determined that the savings claims and discount
14 offer provisions under §215.262 are more appropriately located
15 under §215.250, the department proposes to repeal §215.262. In
16 addition, amendments to §215.253 are proposed to add additional
17 clarifying language regarding allowable use of trade-in amounts
18 in advertisements.

19

20 Amendments to Subchapter I, §§215.301-215.303, 215.305-215.308,
21 215.310, 215.311 and 215.314-215.317 are proposed to replace
22 terminology with defined terms and to correct referenced

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1 citations for consistency. Additional amendments are proposed
2 throughout that subchapter to replace "matter" with "contested
3 case" and "Board" with "department." An amendment to §215.307 is
4 proposed to establish a license holder's last known address for
5 purposes of giving notice as the "mailing address provided to
6 the department when the license holder applies or renews its
7 license," or notifies the department of a change in address. An
8 additional amendment to §215.314 is proposed to authorize the
9 director of the division to issue a cease and desist order prior
10 to the commencement of a proceeding by the State Office of
11 Administrative Hearings (SOAH). The cease and desist order may
12 be issued without notice and opportunity for hearing if the
13 provisions under Occupations Code, §2301.802(b) are met. An
14 Administrative Law Judge shall hold a hearing to determine
15 whether the interlocutory cease and desist order should remain
16 in effect during the pendency of the proceeding. Additional
17 amendments to §215.317 are proposed to clarify that a motion for
18 rehearing and a reply to a motion for rehearing of an order
19 issued by the board delegate must be decided by the board
20 delegate. The department has also determined that §§215.309,
21 215.312 and 215.313 duplicate language contained in statute and
22 that those sections should be repealed.

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1
2 Amendments to Subchapter J, §§215.500-215.503 are proposed to
3 replace terminology with statutorily defined terms and to
4 correct referenced citations. Additional amendments to subdivide
5 certain sections of that subchapter are proposed for improved
6 formatting. An amendment to §215.500 is proposed to clarify that
7 an administrative sanction may include denial of an application
8 for a license. An additional amendment to that section
9 establishes the last known address of a license holder for
10 purposes of giving notice as the "mailing address provided to
11 the department when the license holder applies or renews its
12 license," or notifies the department of a change in address. An
13 amendment to §215.503 provides that the department will not
14 refund a fee to a person that is subject to an unpaid civil
15 penalty imposed by a final order.

16
17 Additional nonsubstantive amendments are proposed throughout
18 Chapter 215 to correct punctuation, grammar, and capitalization.

19
20 The department also proposes new §215.160, Duty to Identify
21 Motor Vehicles Offered for Sale as Rebuilt, which outlines the
22 requirements for sale of a repaired, rebuilt or reconstructed

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1 vehicle.

2

3 FISCAL NOTE

4 Linda M. Flores, Chief Financial Officer, has determined that
5 for each of the first five years the amendments, new section,
6 and repeals as proposed are in effect, there will be no fiscal
7 implications for state or local governments as a result of
8 enforcing or administering the amendments and repeals.

9

10 David D. Duncan, General Counsel, has certified that there will
11 be no significant impact on local economies or overall
12 employment as a result of enforcing or administering the
13 amendments, new section, and repeals.

14

15 PUBLIC BENEFIT AND COST

16 Mr. Duncan has also determined that for each year of the first
17 five years the amendments, new section, and repeals are in
18 effect, the public benefit anticipated as a result of enforcing
19 or administering the amendments, new section, and repeals will
20 be simplification, clarification and streamlining of the
21 agency's rules. There are no anticipated economic costs for
22 persons required to comply with the amendments, new section, and

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1 repeals as proposed. There will be no adverse economic effect on
2 small businesses or micro-businesses.

3

4 TAKINGS IMPACT ASSESSMENT

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

11

12 SUBMITTAL OF COMMENTS

13 Written comments on the proposed amendments, new section, and
14 repeals may be submitted to David D. Duncan, General Counsel,
15 Texas Department of Motor Vehicles, 4000 Jackson Avenue,
16 Building 1, Austin, Texas 78731 or by email to *rules@txdmv.gov*.
17 The deadline for receipt of comments is 5:00 p.m. on October 10,
18 2016.

19

20 STATUTORY AUTHORITY

21 The amendments, new section, and repeals are proposed under
22 Transportation Code, §1002.001, which provides the board of the

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1 Texas Department of Motor Vehicles with the authority to adopt
2 rules that are necessary and appropriate to implement the powers
3 and the duties of the department; Occupations Code, §2301.155,
4 which requires the board of the Texas Department of Motor
5 Vehicles to adopt rules necessary or convenient to administer
6 Occupations Code, Chapter 2301; and more specifically,
7 Occupations Code, §2301.266, which authorizes the board to adopt
8 rules applicable to the issuance of duplicate licenses; and
9 Occupations Code, §2301.602, which requires the board to adopt
10 rules to enforce Chapter 2301, Subchapter M; Transportation
11 Code, §503.002 which authorizes the board to adopt rules to
12 administer Transportation Code, Chapter 503; and more
13 specifically, Transportation Code, §503.009, which authorizes
14 the board to adopt rules for procedures concerning contested
15 cases; Transportation Code, §503.061, which requires the board
16 to adopt rules regulating the issuance of dealer's license
17 plates; and Transportation Code, §503.0626 and §503.0631, which
18 require the board to adopt rules necessary to implement and
19 manage the department's temporary tag databases.

20

21 CROSS REFERENCE TO STATUTE

22 Government Code, §2001.039; Occupations Code, Chapter 2301; and

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- 1 Transportation Code, Chapter 503.

SUBCHAPTER A. GENERAL PROVISIONS

- §215.3. Duties and Powers of Board.
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- §215.25. Affidavits.
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SUBCHAPTER C. LICENSES, GENERALLY

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§215.309. Recording and Transcriptions of Hearing Cost.

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§215.313. Official Notice of Records.

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1 SUBCHAPTER A. GENERAL PROVISIONS

2 §215.1. Purpose and Scope. [~~Scope and Purpose.~~]

3 Occupations Code, Chapter 2301[~~7~~] and Transportation Code,
4 Chapters 503 and 1000 - 1005 [~~1000 through 1005,~~] require the
5 Texas Department of Motor Vehicles to license and regulate motor
6 vehicle dealers, manufacturers, distributors, converters,
7 representatives, vehicle lessors and vehicle lease facilitators,
8 in order to ensure a sound system of distributing and selling
9 motor vehicles; [~~7~~] provide for compliance with manufacturers'
10 warranties; and to [~~manufacturer's warranties,~~] prevent fraud,
11 unfair practices, discrimination, impositions, and other abuses
12 of the people of this state in connection with the distribution
13 and sale of motor vehicles. This [~~The sections under this~~]
14 chapter prescribes [~~prescribe~~] the policies and procedures for
15 the regulation of the motor vehicle industry. [~~regulating motor~~
16 ~~vehicle dealers, manufacturers, distributors, converters,~~
17 ~~representatives, lessors and lease facilitators, by regulating~~
18 ~~licensing, warranty performance obligations, advertising,~~
19 ~~enforcement, and providing for adjudicative proceedings.~~]

20
21 §215.2. Definitions; Conformity with Statutory Requirements.

22 (a) The definitions contained in Occupations Code, Chapter
23 2301[~~7~~] and Transportation Code, Chapters 503 and 1000 - 1005

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1 ~~[1000 through 1005] govern this chapter. [All matters of~~
2 ~~practice and procedure set forth in the Codes shall govern and~~
3 ~~these rules shall be construed to conform with the Codes in~~
4 ~~every relevant particular, it being the intent of these rules~~
5 ~~only to supplement the Codes and to provide procedures to be~~
6 ~~followed in instances not specifically governed by the Codes.]~~
7 In the event of a conflict, the definition or procedure
8 referenced in Occupations Code, Chapter 2301 controls. ~~[shall~~
9 ~~control.]~~

10 (b) The following words and terms, when used in this
11 chapter, shall have the following meanings, unless the context
12 clearly indicates otherwise.

13 (1) ALJ--An Administrative Law Judge of the State
14 Office of Administrative Hearings.

15 ~~[(2) Appropriate department office The office of the~~
16 ~~department that is designated by notice or publication for~~
17 ~~receipt of a specific filing.]~~

18 (2)~~[(3)]~~ Board--The Board of the Texas Department of
19 Motor Vehicles, including any personnel to whom the board
20 ~~[Board]~~ delegates any duty assigned.

21 ~~[(4) Chapter 503 Transportation Code, Chapter 503.]~~

22 ~~[(5) Chapter 1000 through 1005 Transportation Code,~~
23 ~~Chapter 1000 through 1005.]~~

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1 ~~[(6) Code Occupations Code, Chapter 2301.]~~

2 ~~[(7) Codes Occupations Code, Chapter 2301, and~~

3 ~~Transportation Code, Chapters 503 and 1000 through 1005.]~~

4 ~~[(8) Department The Texas Department of Motor~~

5 ~~Vehicles.]~~

6 (3)~~[(9)]~~ Director--The director of the department

7 ~~[division]~~ that regulates the distribution and sale of motor

8 vehicles, including~~[. For purposes of this chapter, the~~

9 ~~definition of "director" also includes]~~ any personnel to whom

10 the director delegates any duty assigned under this chapter.

11 ~~[(10) Division The division that regulates the~~

12 ~~distribution and sale of motor vehicles.]~~

13 (4)~~[(11)]~~ Executive director--The executive director

14 of the Texas Department of Motor Vehicles.

15 (5)~~[(12)]~~ Final order authority--The person(s) with

16 authority under Occupations Code, Chapter 2301; Transportation

17 Code, Chapters 503 and 1000 - 1005; or board ~~[the Codes or~~

18 ~~Board]~~ rules to issue a final order.

19 (6) GDN--General distinguishing number.

20 (7)~~[(13)]~~ Governmental agency--All other state and

21 local governmental agencies and all agencies of the United

22 States government, whether executive, legislative, or judicial.

23 ~~[(14) Hearings examiner A person employed by the~~

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1 ~~department to preside over hearings under Occupations Code,~~
2 ~~Chapter 2301.]~~

3 (8)[~~(15)~~] Hearing officer--An ALJ, [~~or~~] a hearings
4 examiner [~~under this chapter~~], or any other person designated,
5 employed, or appointed by the department[, ~~or employed or~~
6 ~~appointed,~~] to hold hearings, administer oaths, receive
7 pleadings and evidence, issue subpoenas to compel the attendance
8 of witnesses, compel the production of papers and documents,
9 issue interlocutory orders and temporary injunctions, make
10 findings of fact and conclusions of law, issue proposals for
11 decision, and recommend or issue final orders.

12 [~~(16) License purveyor--Any person who for a fee,~~
13 ~~commission, or other valuable consideration, other than a~~
14 ~~certified public accountant or a duly licensed attorney at law,~~
15 ~~assists an applicant in the preparation of a license application~~
16 ~~or represents an applicant during the review of the license~~
17 ~~application.]~~

18 (9)[~~(17)~~] Motion for rehearing authority--The
19 person(s) with authority under Occupations Code, Chapter 2301;
20 Transportation Code, Chapters 503 and 1000 - 1005; or board [~~the~~
21 ~~Codes or Board~~] rules to decide a motion for rehearing.

22 [~~(18) Party in interest--A party against whom a~~
23 ~~binding determination cannot be had in a proceeding before the~~

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1 ~~department without having been afforded notice and opportunity~~
2 ~~for hearing.]~~

3 (10)~~(19)~~] SOAH--The State Office of Administrative
4 Hearings.

1 SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

2 §215.21. Purpose and Scope.~~[Objective.]~~

3 (a) The purpose~~[objective]~~ of this subchapter ~~[these rules]~~
4 is to ensure ~~[fair, just, and impartial]~~ adjudication of the
5 rights of parties in ~~[all]~~ matters within the jurisdiction of
6 Occupations Code, Chapter 2301 and Transportation Code, Chapters
7 503 and 1000 - 1005; and to ensure effective administration of
8 Occupations Code, Chapter 2301 and Transportation Code, Chapters
9 503 and 1000 - 1005 by the department, in accordance with
10 Government Code, Chapter 2001 and Occupations Code, §2301.001
11 and §2301.152. ~~[the Codes, and to ensure fair, just, and~~
12 ~~effective administration of the Codes in accordance with the~~
13 ~~intent of the legislature as declared in Occupations Code,~~
14 ~~§2301.001, and Occupations Code, §2301.152.]~~

15 (b) Practice and procedure in contested cases ~~[filed on or~~
16 ~~after September 1, 2007, and]~~ heard by SOAH are addressed in:

17 (1) 1 TAC Chapter 155;

18 (2)~~[(1)]~~ Subchapter I of this chapter (relating to
19 Practice and Procedure for Hearings Conducted by the State
20 Office of Administrative Hearings); and

21 (3)~~[(2)]~~ this subchapter, where not in conflict with
22 SOAH rules.

23 (c) This subchapter applies to contested cases filed under
24 Occupations Code, Chapter 2301 or Transportation Code, Chapter

1 503; and [shall apply] to complaints filed on or after January
2 1, 2014, under Occupations Code, §2301.204 or §§2301.601 -
3 2301.613, to the extent they do not conflict with state law,
4 rule, or court order.~~[Subchapter M, §§2301.601-2301.613 (the~~
5 ~~Lemon Law) or Occupations Code, §2301.204 (warranty~~
6 ~~performance).]~~

7
8 §215.22. Prohibited ~~[Disclosures and]~~ Communications.

9 (a) No party ~~[in interest]~~, attorney of record, or
10 authorized representative in any contested case~~[proceeding]~~
11 shall make,~~[submit,]~~ directly or indirectly, any ex parte
12 communication, in violation of Government Code, §2001.061,
13 concerning the merits of the contested case~~[such proceeding]~~ to
14 the board or hearing officer~~[Board, or any department employee~~
15 ~~who is]~~ assigned to render a decision or make findings of fact
16 and conclusions of law in a contested case.

17 (b) Violations of this section shall be promptly reported
18 to the hearing officer and the general counsel of the
19 department. The general counsel shall ensure that a copy or
20 summary of the ex parte communication is included with the
21 record of the contested case and that a copy is forwarded to all
22 parties or their authorized representatives. The general counsel
23 may take any other appropriate action otherwise provided by law.
24 ~~[and a copy or summary thereof shall be filed with the record of~~

1 ~~such proceeding and a copy forwarded to all parties of record,~~
2 ~~and/or any other appropriate action otherwise provided by law.]~~

3

4 §215.23. Appearances.

5 (a) General. Any party to a contested case may appear in
6 person or by an authorized representative. An authorized
7 representative may be required to show authority to represent a
8 party. [~~proceeding before the Board may appear to represent,~~
9 ~~prosecute, or defend any rights or interests, either in person,~~
10 ~~by an attorney, or by any other authorized representative. Any~~
11 ~~individual may appear pro se; and any member of a partnership~~
12 ~~which is a party to a proceeding or any bona fide officer of a~~
13 ~~corporation or association may appear for the partnership,~~
14 ~~corporation, or association. An authorized full time employee~~
15 ~~may enter an appearance for his employer.]~~

16 [~~(b) Agreements of representation. The Board may require~~
17 ~~agreements between a party in interest and an attorney or other~~
18 ~~authorized representative concerning any pending proceeding to~~
19 ~~be in writing, signed by the party in interest, and filed as a~~
20 ~~part of the record of the proceeding.]~~

21 [~~(c) Lead counsel. The attorney or other authorized~~
22 ~~representative of a party in interest shall be considered that~~
23 ~~party's lead counsel in any proceeding and, if present, shall~~
24 ~~have control in the management of the cause pending before the~~

1 ~~Board.]~~

2 **(b)**~~[(d)]~~ Intervention. Any public official or other person
3 having an interest in a contested case~~[proceeding]~~ may, upon
4 request to the hearing officer,~~[Board,~~] be permitted to
5 intervene ~~[and present any relevant and proper evidence, data,~~
6 ~~or argument bearing upon the issues involved in the particular~~
7 ~~proceeding]~~. Any person desiring to intervene in a contested
8 case~~[proceeding]~~ may be required to disclose that person's~~[his]~~
9 interest in the contested case~~[proceeding]~~ before permission to
10 appear will be granted.

11 ~~[(e) Limitation on appearances. The Board may limit or~~
12 ~~exclude entirely an attempt by persons to appear in a proceeding~~
13 ~~when such appearance would be irrelevant or would unduly broaden~~
14 ~~the scope of the proceeding.]~~

15

16 §215.24. Petitions.

17 **(a)** Petitions ~~[for relief under the Codes or complaints~~
18 ~~filed alleging violations of the Codes other than those~~
19 ~~specifically provided for in these rules]~~ shall be in writing
20 and shall:~~[, shall]~~

21 **(1)** state ~~[clearly and concisely]~~ the petitioner's
22 ~~[grounds of]~~ interest in the subject matter, the facts relied
23 upon, and the relief sought; and~~[, and shall]~~

24 **(2)** cite the specific code provision(s) or other

1 appropriate law. [~~by appropriate reference the article of the~~
2 ~~Codes or other law relied upon for relief and, where applicable,~~
3 ~~the proceeding to which the petition refers.~~]

4 (b) The original of each petition, pleading, motion, brief,
5 or other document permitted or required to be filed with the
6 department in a contested case shall be signed by the party or
7 the party's authorized representative.

8 (c) All pleadings filed in a contested case shall be
9 printed or typed on 8-1/2 inch by 11 inch paper in no smaller
10 than 11 point type with margins of at least one inch at the top,
11 bottom, and each side. Each page shall be numbered at the
12 bottom. All text, except block quotations and footnotes, shall
13 be double spaced.

14
15 §215.27. Complaints.

16 (a) Complaints [~~All complaints~~] alleging violations of
17 Occupations Code, Chapter 2301 or Transportation Code, Chapters
18 503 and 1000 - 1005 [~~the Codes~~] shall be in writing, addressed
19 to the department, [~~appropriate department office~~] and signed by
20 the complainant. Complaint forms will be supplied [~~and~~
21 ~~assistance may be afforded~~] by the department for the purpose of
22 filing complaints.

23 (b) A complaint shall contain the name and address of the
24 complainant, the name and address of the party against whom the

1 complaint is made, and a brief statement of the facts forming
2 the basis of the complaint.

3 (c) If requested by the department, complaints shall be
4 under oath. Before~~[, and before]~~ initiating an investigation or
5 other proceeding to determine the merits of the complaint, the
6 department may require from the complainant [~~such~~] additional
7 information [~~as may be~~] necessary to evaluate the merits of the
8 complaint.

9

10 §215.29. Computing Time.

11 Any~~[In computing any]~~ period of time prescribed or allowed by
12 this chapter, by order of the board, [~~Board,~~] or by any
13 applicable statute shall be computed in accordance with
14 Government Code, §311.014.~~[, the date of the act or event after~~
15 ~~which the designated period of time begins to run is not to be~~
16 ~~included; but the last day of the period so computed is to be~~
17 ~~included unless it be a Saturday, Sunday, or legal holiday in~~
18 ~~which event the period runs until the end of the next day which~~
19 ~~is not a Saturday, Sunday, or legal holiday.]~~

20

21 §215.30. Filing of Documents.

22 (a) Each [~~Every~~] document required or permitted to be filed
23 with the department under~~[related to]~~ this chapter shall be
24 delivered:

1 (1) [~~filed~~] in person;[~~7~~]

2 (2) by first-class mail to the address of the

3 [~~appropriate~~] department; [~~office~~], or

4 (3) by electronic document transfer to [~~at~~] a

5 destination designated by the department.[~~for receipt of these~~

6 ~~documents.~~]

7 ~~[(b) Except as provided in subsection (e) of this section,~~

8 ~~delivery by mail shall be complete upon deposit of the document,~~

9 ~~enclosed in a postpaid, properly addressed wrapper, in a post~~

10 ~~office or official depository under the care and custody of the~~

11 ~~United States Postal Service.]~~

12 (b)[~~(e)~~] [~~Except as provided in subsection (e) of this~~

13 ~~section, delivery by mail as specified in subsection (b) of this~~

14 ~~section shall be timely if the document is deposited on or~~

15 ~~before the specified date and received by the appropriate~~

16 ~~department office not later than the fifth business day after~~

17 ~~the date of deposit.] Delivery by electronic document transfer~~

18 is considered [~~shall be~~] timely if the document is received by

19 5:00 p.m. Central Standard Time (CST).[~~5 p.m. (Central Standard~~

20 ~~Time).~~] Delivery by electronic document transfer after 5:00 p.m.

21 CST [~~5 p.m. (Central Standard Time)~~] shall be deemed received on

22 the following day.

23 (c)[~~(d)~~] [~~Such document may be delivered by a party to a~~

24 ~~matter, an attorney of record, or by any other person competent~~

1 ~~to testify.~~] A certificate by the party or party's authorized
2 representative~~[an attorney of record or the affidavit of any~~
3 ~~person competent to testify,~~] showing timely delivery of a
4 document in a manner described in this section shall be prima
5 facie evidence ~~[of the fact]~~ of timely delivery. Nothing~~[,~~
6 ~~although nothing]~~ herein shall preclude the department or any
7 party from offering proof that the ~~[subject]~~ document was not
8 timely delivered.

9 (d)~~[e)]~~ To be timely filed, a~~[the]~~ document must be
10 received by the department within~~[in the appropriate department~~
11 ~~office by]~~ the time specified by statute, rule, or department
12 order. A document~~[filing]~~ received after the specified time,
13 notwithstanding the date of mailing or other means of delivery,
14 shall be deemed untimely.~~[not timely filed.]~~

15
16 §215.32. Extension ~~[Enlargement]~~ of Time.

17 (a) Except as provided by subsection (b) of this section,
18 when~~[When by these rules or by a notice given thereunder or by~~
19 ~~order of the Board or the hearing officer having jurisdiction,~~
20 ~~as the case may be,~~] an act is required or allowed to be done at
21 or within a specified time in accordance with this chapter, the
22 board~~[, except as provided in subsection (b) of this section,~~
23 ~~the Board]~~ or the hearing officer, with good cause shown, may:
24 ~~[for cause shown may, at any time in the Board's or the hearing~~

1 ~~officer's discretion;]~~

2 (1) ~~[with or without motion or notice,]~~ order the
3 specific period extended if the extension is requested~~[period~~
4 ~~enlarged if application therefore is made]~~ before the expiration
5 of the period previously specified; ~~[originally prescribed or as~~
6 ~~extended by a previous order;]~~ or

7 (2) ~~[upon motion]~~ permit the act to be done after the
8 expiration of the specified period, provided ~~[where]~~ good cause
9 is shown for the failure to act.

10 (b) Notwithstanding ~~[anything contained in]~~ subsection (a)
11 of this section, the board or~~[neither the Board nor a]~~ hearing
12 officer may not extend~~[enlarge]~~ the time for filing a document
13 when a~~[where, by]~~ statute or rule specifies the time period by
14 which a document~~[, the document, to be timely filed,]~~ must be
15 received by the department.~~[in the appropriate department office~~
16 ~~by a specified time. The requirements of such statute or rule~~
17 ~~shall govern the filing of that document. Any such document~~
18 ~~received after the specified time, notwithstanding the date of~~
19 ~~mailing or other means of delivery, shall be deemed not timely~~
20 ~~filed.]~~

21

22 §215.34. Notice of Hearing in Contested Cases.~~[Adjudicative~~
23 ~~Proceedings.]~~

24 (a) In a contested case, each party is entitled to a

1 hearing, in accordance with Government Code, §2001.051.

2 [~~(a) In any adjudicative proceeding under the Codes, the~~
3 ~~notice of hearing shall state:~~]

4 [~~(1) the name of the party or parties in interest;~~]

5 [~~(2) the time and place of the hearing;~~]

6 [~~(3) the docket number assigned to the hearing;~~]

7 [~~(4) any special rules deemed appropriate for such~~
8 ~~hearing; and]~~

9 [~~(5) a clear and concise factual statement sufficient~~
10 ~~to identify with reasonable definiteness the matters at issue.~~
11 ~~This can be satisfied by attaching and incorporating by~~
12 ~~reference the complaint or amended complaint.]~~

13 (b) A notice of hearing in a contested case shall comply
14 with the requirements of Government Code, §2001.052(a) and
15 [Notice of hearing] shall be served upon the parties [in
16 interest either] in person or by certified mail, return receipt
17 requested to the last known address of the parties or their
18 authorized representatives, in accordance with Occupations Code,
19 §2301.705. [~~addressed to the parties in interest or their~~
20 ~~agents for service of process.]~~

21 (c) The last known address of a license applicant, license
22 holder, or other person is the last mailing address provided to
23 the department when the license applicant applies for its
24 license, when a license holder renews its license, or when the

1 license holder notifies the department of a change in the
2 license holder's mailing address.

3 ~~[(c) Notice of hearing shall be presumed to have been~~
4 ~~received by a person if notice of the hearing was mailed by~~
5 ~~certified mail, return receipt requested, to the last known~~
6 ~~address of any person known to have legal rights, duties, or~~
7 ~~privileges that could be determined at the hearing.]~~

8 (d) A notice of hearing in a contested case may be amended
9 in accordance with Government Code, §2001.052(b).

10 ~~[(d) Notice of hearing may be amended at the hearing or at~~
11 ~~any time prior thereto.]~~

12

13 §215.35. Reply.

14 (a) Within 20 days after service of a notice of hearing in
15 a contested case~~[7]~~ or within 10 days after service of an
16 amended notice of hearing, a ~~[responding]~~ party may file a reply
17 ~~[in which the matters at issue are specifically admitted,~~
18 ~~denied, or otherwise explained].~~

19 (b)~~[(1)]~~ A reply shall include~~[Form and filing of replies.~~
20 ~~All replies shall include a reference to]~~ the docket number of
21 the contested case~~[hearing]~~ and shall be filed~~[sworn to]~~ by the
22 party or party's authorized representative. The original
23 ~~[responding party or the attorney of record. The original of~~
24 ~~the]~~ reply shall be filed with the department and a~~[appropriate~~

1 ~~department office, and one]~~ copy shall be served on any~~[upon]~~
2 other parties to the contested case. ~~[proceeding, if any.]~~

3 (c)[+2] A party may file an amended reply prior to the
4 contested case hearing. In any contested case when ~~[Amendment. A-~~
5 ~~responding party may amend his reply at any time prior to the~~
6 ~~hearing, and in any case where]~~ the notice of hearing has been
7 amended at the contested case hearing, a party, at the
8 discretion of the hearing officer, shall have~~[hearing, a-~~
9 ~~responding party shall be given]~~ an opportunity to file an
10 amended reply~~[amend his reply]~~.

11 (d)[+3] [Extension of time.] Upon the motion of a
12 ~~[responding]~~ party, with good cause shown, the department may
13 extend the time to file a reply.~~[within which the reply may be-~~
14 ~~filed.]~~

15 (e)[+4] [Default.] All allegations shall be deemed
16 admitted by any party not appearing~~[who does not appear]~~ at the
17 contested case hearing on the merits.

18

19 §215.36. Hearings To Be Public.

20 Hearings in contested cases~~[adjudicative proceedings]~~ shall be
21 open to the public.

22

23 §215.37. Recording and Transcriptions of Hearing Cost.

24 (a) Except as provided by~~[in]~~ Subchapter G of this chapter

1 (relating to Warranty Performance Obligations), hearings in
2 contested cases will be transcribed by a court reporter or
3 recorded by the hearing officer. ~~[at the discretion of the~~
4 ~~hearing officer. Any request regarding recording or~~
5 ~~transcription must be made to the hearing officer at least two~~
6 ~~days prior to the hearing.]~~

7 (b) In a contested case ~~[those contested cases]~~ in which
8 the hearing is transcribed by a court reporter, the costs of
9 transcribing the hearing and for the preparation of an original
10 transcript of the record for the department shall be assessed to
11 the requesting party in the contested case, ~~[equally among all~~
12 ~~parties to the proceeding,]~~ unless otherwise directed.

13 (c) Copies of recordings or transcriptions of a contested
14 case hearing will be provided to any party upon written request
15 and upon payment for the cost of the recordings or
16 transcriptions.

17 (d) In the event a final decision in a contested case is
18 appealed and the department is required to transmit to the court
19 the original or a certified copy of the record, or any part
20 thereof, the appealing party shall, unless waived by the
21 department, pay the costs of preparation of the record that is
22 required to be transmitted to the court.

23

24 §215.38. Consolidation of Proceedings. ~~[Joint Record.]~~

1 No contested case proceedings including~~[No adjudicative-~~
2 ~~proceedings embracing]~~ two or more complaints or petitions shall
3 be jointly heard~~[on a joint record]~~ without the consent of all
4 parties, ~~[in interest]~~ unless the hearing officer finds ~~[shall-~~
5 ~~find, prior to the consolidation of the proceedings,]~~ that
6 justice and efficiency are better served by the consolidation.

7
8 §215.39. Waiver of Hearing.

9 After~~[Subsequent to]~~ the issuance of a notice of hearing in a
10 contested case, and in accordance with the deadlines prescribed
11 by~~[as provided in]~~ §215.35 of this title ~~[subchapter]~~ (relating
12 to Reply), a party may waive a~~[responding party may waive such]~~
13 hearing and consent to the entry of an agreed order. Agreed
14 orders proposed by the parties remain subject to the approval of
15 the final order authority.

16

17 §215.40. Continuance~~[Postponement]~~ of Hearing.

18 After a contested case has been called on the date assigned for
19 hearing ~~[in a proceeding,]~~ pursuant to notice, a continuance of
20 the contested case hearing~~[postponement of the case]~~ will be
21 granted only upon a showing of good cause. A motion for
22 continuance of a contested case~~[in exceptional circumstances.]-~~
23 ~~All motions for postponement of a]~~ hearing shall be filed and
24 served on all parties at least five days before the hearing

1 date, except when good cause is shown to consider a motion for
2 continuance filed after the deadline.~~[sufficiently in advance of~~
3 ~~the date of hearing to permit notice to all parties if~~
4 ~~postponement should be granted.]~~

5
6 §215.41. Presiding Officials.

7 (a) Hearing officer. ~~[A hearing officer of a contested case~~
8 ~~shall be assigned in accordance with applicable law, including~~
9 ~~Occupations Code, §2301.704.]~~ The term "hearing officer" as used
10 in this section includes the board~~[Board]~~ when presiding over a
11 hearing.

12 (b)[(+1)] Powers and duties. A hearing officer shall conduct
13 fair hearings and shall~~[Hearing officers shall have the duty to~~
14 ~~conduct fair and impartial hearings, and the power to]~~ take all
15 necessary action to administer~~[avoid delay in]~~ the disposition
16 of contested cases. A hearing officer's powers include, but are
17 not limited to the authority to:~~[proceedings and to maintain~~
18 ~~order. Hearing officers shall have all powers necessary to these~~
19 ~~ends, including the authority to]~~

20 (1) administer oaths; ~~[to]~~

21 (2) examine witnesses; ~~[to]~~

22 (3) rule upon the admissibility of evidence; ~~[to]~~

23 (4) rule upon motions; and ~~[to]~~

24 (5) regulate the course of the contested case hearing

1 and the conduct of the parties and their authorized
2 representatives.~~[counsel.]~~

3 (c) Recusal.

4 (1)~~[+2)]~~ ~~[Disqualification.]~~ If the~~[a]~~ hearing officer
5 determines that he or she~~[the hearing officer]~~ should be recused
6 from a particular contested case hearing, the hearing officer
7 shall withdraw from the contested case~~[proceeding]~~ by giving
8 notice on the record and by notifying the chief hearing officer.
9 ~~[appropriate department office of the withdrawal.]~~

10 (2) A ~~[Whenever a party deems the hearing officer to~~
11 ~~be disqualified to preside in a particular hearing, the]~~ party
12 may file a motion to recuse~~[disqualify and remove]~~ the hearing
13 officer. The motion to recuse~~[disqualify and remove]~~ shall be
14 supported by an affidavit~~[affidavits]~~ setting forth the alleged
15 grounds for disqualification. A copy of the motion shall be
16 served on the hearing officer who shall have 10 days ~~[within~~
17 ~~which]~~ to reply, and a copy shall be served on all parties or
18 their authorized representatives.

19 (3) If the hearing officer contests the alleged
20 grounds for disqualification, the chief hearing officer
21 ~~[department]~~ shall promptly determine the validity of the
22 grounds alleged and render a decision.~~[, such decision being~~
23 ~~determinative of the issue.]~~

24 (d)~~[+3)]~~ Substitution of hearing officer. If the hearing

1 officer is disqualified, dies, becomes disabled, or withdraws
2 during any contested case proceeding, the chief hearing
3 officer[~~department~~] may appoint another hearing officer to
4 preside over the remainder of the contested case proceeding.[~~who~~
5 ~~may perform any function remaining to be performed without the~~
6 ~~necessity of repeating any proceedings in the case.~~]

7

8 §215.42. Conduct of Hearing.

9 Each party in a contested case[~~interest~~] shall have the right
10 to[~~in an adjudicative hearing to due~~] notice, cross examination,
11 presentation of evidence, objection, motion, argument, and all
12 other rights essential to a fair contested case hearing. Except
13 as provided by this chapter[~~Procedures in such hearings, except~~
14 ~~where otherwise provided by these rules~~] or in the notice of
15 hearing, [~~shall be insofar as reasonably practicable in~~
16 ~~accordance with~~] the Texas Rules of Civil Procedure, as applied
17 to non-jury civil cases, shall be applicable to hearings in
18 contested cases, as far as reasonably practical.[~~applicable in~~
19 ~~district and county courts in civil actions heard before the~~
20 ~~court without a jury.~~]

21

22 §215.43. Conduct and Decorum.

23 (a) All parties, witnesses, counsel, and authorized
24 representatives shall conduct themselves in all contested case

1 hearings with proper dignity, courtesy, and respect for the
2 board, the hearing officer, and other parties. [~~Every party,~~
3 ~~witness, attorney, or other representative shall comport himself~~
4 ~~in all proceedings with proper dignity, courtesy, and respect~~
5 ~~for the Board, the hearing officer, and all other parties.~~
6 ~~Disorderly conduct will not be tolerated. Attorneys and other~~
7 ~~representatives of parties shall observe and practice the~~
8 ~~standards of ethical behavior prescribed for attorneys at law by~~
9 ~~the Texas Disciplinary Rules of Professional Conduct and the~~
10 ~~Texas Lawyer's Creed. No party to a pending case, and no~~
11 ~~representative or witness of such a party, shall discuss the~~
12 ~~merits of such case with the hearing officer outside of the~~
13 ~~presence of all other parties, or their representatives.]~~

14 (b) Upon violation of this section, any party, witness,
15 attorney, or authorized[~~other~~] representative may be:

16 (1) excluded from the contested case[~~any~~] hearing for
17 such period and upon such conditions as are just; or [~~may be~~]

18 (2) subject to [~~such~~] other just, reasonable, and
19 lawful disciplinary action as the board, hearing officer, or
20 department may order. [~~prescribe.~~]

21

22 §215.44. Evidence.

23 (a) General. The Texas Rules of Evidence shall apply in all
24 contested cases, in accordance with Government Code, Chapter

1 ~~2001. [be applied in all adjudicative hearings to the end that~~
2 ~~needful and proper evidence shall be conveniently,~~
3 ~~inexpensively, and speedily adduced while preserving the rights~~
4 ~~of the parties to the proceeding.]~~

5 ~~[(b) Admissibility. All relevant, material, and reliable~~
6 ~~evidence shall be admitted. Irrelevant, immaterial, unreliable,~~
7 ~~and unduly repetitious or cumulative evidence shall be excluded.~~
8 ~~Immaterial or irrelevant parts of an otherwise admissible~~
9 ~~document shall be segregated and excluded so far as~~
10 ~~practicable.]~~

11 ~~[(c) Official records. An official document or record, or~~
12 ~~an entry therein, when admissible for any purpose, may be~~
13 ~~evidenced by an official publication thereof or by a copy~~
14 ~~attested by the officer having legal custody of the record, or~~
15 ~~by the officer's deputy, and accompanied by a certificate to~~
16 ~~such effect. This section does not prevent and is not intended~~
17 ~~to prevent proof of any official record, the absence thereof or~~
18 ~~official notice thereof by any method authorized by any~~
19 ~~applicable statute or any rules of evidence in district and~~
20 ~~county courts.]~~

21 ~~[(d) Entries in the regular course of business. Any writing~~
22 ~~or record, whether in the form of an entry in a book or~~
23 ~~otherwise, made as a memorandum or record of any act,~~
24 ~~transaction, occurrence, or event, will be admissible as~~

1 ~~evidence thereof if it appears that it was made in the regular~~
2 ~~course of business. This section does not prevent and is not~~
3 ~~intended to prevent proof of any business writing or record by~~
4 ~~any method authorized by any applicable statute or any rules of~~
5 ~~evidence in district and county courts.]~~

6 (b)[(e)] Documents in department files. The hearing officer
7 may take judicial notice of documents[Documents] or information
8 in the department's files, in accordance with[licensing files
9 may be officially noticed and may be admitted and considered by
10 the hearing officer, as described in] Government Code, Chapter
11 2001.

12 ~~[(f) Abstracts of documents. When documents are numerous,~~
13 ~~the hearing officer may refuse to receive in evidence more than~~
14 ~~a limited number of said documents which are typical and~~
15 ~~representative, but may require the abstraction of the relevant~~
16 ~~information from the documents and the presentation of the~~
17 ~~abstract in the form of an exhibit; provided, however, that~~
18 ~~before admitting such abstract the hearing officer shall afford~~
19 ~~all parties in interest the right to examine the documents from~~
20 ~~which the abstract was made.]~~

21 (c)[(g)] Exhibits. Exhibits shall be limited to facts with
22 respect to the relevant and material issues involved in a
23 particular contested case. Documentary exhibits[proceeding.
24 Exhibits of documentary character] shall not unduly encumber the

1 record. Where practical, ~~[of the proceeding. Where practicable,]~~
2 the sheets of each exhibit shall not be more than 8-1/2~~[8-1/2]~~
3 inches by 11 inches in size, and shall be numbered and labeled.
4 The original and one copy of each exhibit offered shall be
5 tendered to the reporter or hearing officer for identification,
6 and a copy shall be furnished to each party ~~[in interest]~~. In
7 the event an offered exhibit has been excluded after objection
8 and~~[identified, objected to, and excluded, the hearing officer-~~
9 ~~shall determine whether]~~ the party offering the exhibit
10 withdraws the offer, the hearing officer shall~~[and if so,]~~
11 return the exhibit. If the excluded exhibit is not withdrawn, it
12 shall be given an exhibit number for identification and be
13 included in the record only for the purpose of preserving the
14 exception together with the hearing officer's ruling.

15

16 §215.45. Stipulation of Evidence.

17 Evidence may be stipulated by agreement of all parties ~~[in-~~
18 ~~interest]~~.

19

20 §215.46. Objections and Exceptions.

21 Formal exceptions ~~[exception]~~ to the ruling of the hearing
22 officer is not necessary. ~~[It is sufficient that the party in-~~
23 ~~interest at the time the ruling is made, or sought, make known-~~
24 ~~to the hearing officer the action desired.]~~

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§215.47. Motions.

(a) Each [~~Every~~] motion in a contested case [~~relating to a pending proceeding shall~~], unless made during a contested case hearing, shall be in writing and shall state: [~~hearing, be written, and shall set forth~~]

- (1) the relief sought; and
- (2) the specific reasons and grounds.

(b) If the motion is based upon matters which do not appear of record, the motion [~~it~~] must be supported by affidavit.

(c) Any motion not made during a contested case hearing shall be filed with the hearing officer and a copy shall be served on all parties or their authorized representatives.

§215.48. Briefs.

The hearing officer may direct that the parties file briefs [~~Briefs may be filed~~] in any pending contested case. [~~adjudicative proceeding at such time as may be specified by the hearing officer.~~]

§215.49. Service of Pleading, Petitions, Briefs, and Other Documents. [~~the Like.~~]

(a) A copy of each [~~every~~] document filed in any contested case [~~adjudicative proceeding, after appearances have been~~]

1 ~~entered,~~] shall be served upon all parties or their authorized
2 representatives~~[other parties in interest or their lead-~~
3 ~~counsel,~~] and upon the [~~appropriate~~] department [~~office~~] by
4 sending a copy properly addressed to each party by: [~~first-class-~~
5 ~~United States mail, postage prepaid, by actual delivery, or by-~~
6 ~~electronic document transfer to a facsimile number, e-mail-~~
7 ~~address, or website designated for the receipt of those filings.-~~
8 ~~A certificate of such fact shall accompany the document.]~~

9 (1) first-class mail;

10 (2) hand delivery;

11 (3) facsimile; or

12 (4) email.

13 (b) A copy of each document may be served upon the
14 department by electronic document transfer at a destination
15 designated by the department.

16 (c) A certificate of service shall accompany each document.

17
18 §215.55. Final Decision.

19 (a) The board~~[Board]~~ has final order authority in a
20 contested case initiated by a complaint filed before January 1,
21 2014, under Occupations Code, §2301.204 or §§2301.601 - 2301.613
22 [~~,initiated by a complaint filed before January 1, 2014].~~

23 (b) The hearings examiner has final order authority in a
24 contested case filed on or after January 1, 2014, under

1 Occupations Code, §2301.204 or §§2301.601 - 2301.613[~~, filed on-~~
2 ~~or after January 1, 2014~~].

3 (c) Except as provided by subsections (a) and (b) of this
4 section, the board[~~Board~~] has final order authority in a
5 contested case filed under Occupations Code, Chapter 2301 or
6 under Transportation Code, Chapter 503.

7 (d) An order shall be deemed final and binding on all
8 parties and all administrative remedies are deemed to be
9 exhausted as of the effective date, unless a motion for
10 rehearing is filed with the appropriate [~~motion for rehearing~~]
11 authority as provided by law.

12

13 §215.56. Submission of Amicus Briefs.

14 (a) Any interested person may submit[~~wishing to file~~] an
15 amicus brief for consideration in a contested case and should
16 file the brief no later than the deadline for filing exceptions.

17 (b) A party may submit[~~file~~] one written response to the
18 amicus brief[~~brief filed by the amicus curiae~~] no later than the
19 deadline for filing replies to exceptions.

20 (c) Any amicus brief, or response to that brief, not filed
21 within the deadlines prescribed by subsection (b) of this
22 section[~~such time~~] will not be considered, unless good cause
23 is[~~may be~~] shown why the[~~this~~] deadline should be waived or
24 extended.

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§215.58. Delegation of Final Order Authority.

(a) In accordance with~~[Pursuant to]~~ Occupations Code, §2301.154(c), except as provided by~~[in]~~ subsection (b) of this section, the director ~~[of the department division that regulates the distribution and sale of motor vehicles]~~ is authorized to issue, where there has not been a decision on the merits, a final order in a contested case, including, but not limited to a contested case resolved:~~[final orders in cases without a decision on the merits resolved in the following ways:]~~

- (1) by settlement;
- (2) by agreed order;
- (3) by withdrawal of the complaint;
- (4) by withdrawal of a protest;
- (5) by dismissal for want of prosecution;
- (6) by dismissal for want of jurisdiction;
- (7) by summary judgment or summary disposition;
- (8)~~[+7)]~~ by default judgment; or
- (9)~~[+8)]~~ when a party waives opportunity for a

contested case hearing.

(b) In accordance with~~[Pursuant to]~~ Occupations Code, §2301.154(c), the director ~~[of the department division that regulates the distribution and sale of motor vehicles]~~ is authorized to issue a final order in a contested case filed

1 prior to January 1, 2014, [~~final orders in cases,~~ under
2 Occupations Code, §2301.204 or §§2301.601 - 2301.613[~~, filed~~
3 ~~prior to January 1, 2014]~~.

4 (c) In a contested case in which[~~contested cases where~~] the
5 board has delegated final order authority under subsections
6 [~~subsection~~] (a) or (b) of this section, a motion[~~motions~~] for
7 rehearing shall be filed with and decided by the final order
8 authority delegate.

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1 SUBCHAPTER C. LICENSES, GENERALLY

2 §215.81. Purpose and Scope~~[Objective]~~.

3 This subchapter implements ~~[The objective of this subchapter is~~
4 ~~to implement the intent of the legislature as declared in]~~
5 Occupations Code, Chapter 2301~~[7]~~ and Transportation Code,
6 Chapter 503, regarding licenses required ~~[by prescribing rules~~
7 ~~to regulate businesses requiring licenses]~~ under those chapters.

8

9 §215.82. Duplicate Licenses and Plates.~~[Administration of~~
10 ~~Licensing Fees.]~~

11 (a) A request for a duplicate license must:

12 (1) be made on a department-approved form; ~~[division-~~
13 ~~approved form,]~~

14 (2) state ~~[stating]~~ the reason for the duplicate
15 license; and

16 (3) be accompanied by the required duplicate license
17 fee.

18 (b) A license holder may receive ~~[The licensee may request]~~

19 one duplicate license at no charge if the license holder:

20 ~~[licensee]~~

21 (1) did not receive the original license; and

22 (2) makes the request within 45 days of the date

23 ~~[time]~~ the license was mailed to the license holder. ~~[licensee.]~~

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1 ~~[(b) A licensee that fails to renew the license in a timely~~
2 ~~manner because the person was on active duty in the United~~
3 ~~States armed forces and serving outside Texas shall be exempt~~
4 ~~from any increased fee or penalty imposed by the department for~~
5 ~~failing to renew the license in a timely manner.]~~

6 (c) A license holder may receive a replacement metal
7 dealer's license plate, if applicable, at no charge if the
8 license holder:

9 (1) did not receive the metal dealer's license plate;

10 and

11 (2) makes the request within 45 days of the date the
12 metal dealer's license plate was mailed to the license holder
13 and on a department approved form.

14

15 §215.83. License Applications, Amendments, or Renewals.~~[Renewal~~
16 ~~of Licenses.]~~

17 (a) An application for a new license, license amendment, or
18 license renewal filed with the department must be:

19 (1) on a form approved by the department;

20 (2) completed by the applicant, license holder, or
21 authorized representative who is an employee, a licensed
22 attorney, or a certified public accountant;

23 (3) accompanied by the required fee, paid by check,

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1 credit card, or by electronic funds transfer, drawn from an
2 account held by the applicant or license holder, or drawn from a
3 trust account of the applicant's attorney or certified public
4 accountant; and

5 (4) accompanied by proof of a surety bond, if
6 required.

7 (b) An authorized representative of the applicant or
8 license holder who files an application with the department may
9 be required to provide written proof of authority to act on
10 behalf of the applicant or license holder.

11 (c) The department will not provide information regarding
12 the status of an application, application deficiencies, or new
13 license numbers to a person other than a person listed in
14 subsection (a)(2) of this section, unless that person files a
15 written request under Government Code, Chapter 552.

16 (d)[(a)] Prior to the expiration of a [its existing]
17 license, a license holder or authorized representative
18 [licensee] must file with the department a sufficient license
19 renewal application [on a form approved by the department].
20 Failure to receive notice of license expiration from the
21 department does not relieve the license holder [licensee] from
22 the responsibility to timely file a sufficient license renewal
23 application. A license renewal application is timely filed if:

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1 [~~renew.~~]

2 (1) the department receives a sufficient license
3 renewal application on or before the date the license expires;
4 or

5 (2) a legible postmark on the envelope transmitting
6 the sufficient license renewal application clearly indicates
7 that the license holder or authorized representative mailed the
8 license renewal application on or before the date the license
9 expires.

10 (e) An application for a new license or license amendment
11 filed with the department must be sufficient. An application is
12 sufficient if the application:

13 (1) includes all information and documentation
14 required by the department; and

15 (2) is filed in accordance with subsection (a) of this
16 section.

17 (f) [~~(b)~~] A license renewal application received by the
18 department is sufficient if:

19 (1) the renewal application form is completed by the
20 licensee or authorized representative of the licensee who is an
21 employee, an unpaid agent, a licensed attorney, or certified
22 public accountant;

23 (2) accompanied by the required license renewal

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1 application fee payment; and

2 (3) accompanied by proof of a surety bond, if
3 required.

4 (g) If an applicant, license holder, or authorized
5 representative does not provide the information or documentation
6 required by the department, the department will issue a written
7 notice of deficiency. The information or documentation requested
8 in the written notice of deficiency must be received by the
9 department within 20 calendar days of the date of the notice of
10 deficiency, unless the department issues a written extension of
11 time. If an applicant, license holder, or authorized
12 representative fails to respond or fully comply with all
13 deficiencies listed in the written notice of deficiency within
14 the time prescribed by this subsection, the application will be
15 deemed withdrawn and will be administratively closed.

16 (h) The department will evaluate a sufficient application
17 for a new license, license amendment, or license renewal in
18 accordance with applicable rules and statutes to determine
19 whether to approve or deny the application. If the department
20 determines that there are grounds for denial of the application,
21 the department may pursue denial of the application in
22 accordance with Subchapter J of this chapter (relating to
23 Administrative Sanctions).

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1 (i) The department will process an application for a new
2 license, license amendment, or license renewal filed by a
3 military service member, military spouse, or military veteran in
4 accordance with Occupations Code, Chapter 55. A license holder
5 who fails to timely file a sufficient application for a license
6 renewal because that license holder was on active duty is exempt
7 from any increased fee or penalty imposed by the department for
8 failing to renew the license in a timely manner.

9 [~~(c) A license renewal application is timely filed if:~~]

10 [~~(1) the sufficient license renewal application is~~
11 ~~received by the department on or before the license expiration~~
12 ~~date; or]~~

13 [~~(2) a legible postmark on the envelope transmitting~~
14 ~~the license renewal application clearly indicates that the~~
15 ~~renewal application was mailed on or before the license~~
16 ~~expiration date.]~~

17 [~~(d) A timely and sufficient application shall be accepted~~
18 ~~for processing. The department will review the application and~~
19 ~~make a final determination whether to approve or deny the~~
20 ~~application.]~~

21 (j)[(e)] A license holder who timely files a sufficient
22 license renewal application in accordance with subsection (d) of
23 this section [~~A licensee that submits a timely and sufficient~~

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1 ~~license renewal application]~~ may continue to operate under the
2 expired license until the license renewal application is
3 ~~[finally]~~ determined.

4 (k)[(f)] A license holder who fails to timely file a
5 sufficient license renewal application in accordance with
6 subsection (d) of this section [A licensee that fails to file a
7 timely and sufficient license renewal application] is not
8 authorized to continue licensed activities after the date the
9 license expires. A license holder may dispute a decision that a
10 license renewal application was not timely or sufficient by
11 submitting evidence to the department demonstrating that the
12 license renewal application was timely and sufficient. Such
13 evidence must be received by the department within 10 calendar
14 days of the date the department issues notice that a timely or
15 sufficient license renewal application was not received by the
16 department.

17 ~~[(g) License plates issued pursuant to Transportation Code,~~
18 ~~Chapter 503, Subchapter C expire upon the date the associated~~
19 ~~license expires or when a timely and sufficient license renewal~~
20 ~~application is finally determined, whichever is later.]~~

21 ~~[(h) A licensee may rebut a determination that a renewal~~
22 ~~application was not timely or sufficient by submitting evidence~~
23 ~~to the department demonstrating the renewal application was~~

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1 ~~timely and sufficient. Such evidence must be received by the~~
2 ~~department within ten (10) calendar days of the date the~~
3 ~~department issues notice that a timely or sufficient license~~
4 ~~renewal application was not received by the department.]~~

5 (1)(+i) The department shall accept a [A] late license
6 renewal application [may be filed] up to 90 days after the date
7 the license expires. In accordance with subsection (k) of this
8 section, the license holder [license expiration date; however,
9 the applicant] is not authorized to continue licensed activities
10 after the date the license expires [license expiration date]
11 until the department approves the late license renewal
12 application. If the department grants a license renewal under
13 this section [renewal license is granted under this subsection],
14 the licensing period begins on the date the department issues
15 the renewed license. The license holder [license is issued and
16 the licensee] may resume licensed activities upon receipt of the
17 department's written verification or upon receipt of the renewed
18 license. [the license.]

19 (m)(+j) If the department has not received a late license
20 renewal application within 90 days after the date the license
21 expires, [expiration date,] the department will close the
22 license. A person [The entity] must apply for and receive a new
23 license before that person [the entity] is authorized to resume

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1 activities requiring a license.

2 (n) A metal dealer's license plate issued in accordance
3 with Transportation Code, Chapter 503, Subchapter C expires on
4 the date the associated license expires or when a license
5 renewal application is determined, whichever is later.

6

7 §215.84. Brokering, New Motor Vehicles.

8 (a) For purposes of this subchapter, the phrase "arranges
9 or offers to arrange a transaction," as used in Occupations
10 Code, §2301.002, includes the practice of arranging or offering
11 to arrange a transaction involving the sale of a new motor
12 vehicle for a fee, commission, or other valuable consideration.
13 Advertising is not brokering, provided [Under Occupations Code,
14 §§2301.002, 2301.006, 2301.251 and 2301.252, the definition of
15 "arranges or offers to arrange a transaction" is construed as
16 soliciting or referring buyers for new motor vehicles for a fee,
17 commission, or other valuable consideration. Advertising would
18 not be included in this definition as long as] the person's
19 business primarily includes the business of broadcasting,
20 printing, publishing, or advertising for others in their own
21 names.

22 (b) A buyer referral service, program, plan, club, or any
23 other entity that accepts a fee [~~fees~~] for arranging a

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1 transaction involving the sale of a new motor vehicle is a
2 broker. The payment of a fee to such ~~[an]~~ entity is aiding and
3 abetting brokering. However, a ~~[any]~~ referral service, program,
4 plan, club, or other entity that forwards a referral to a
5 dealership ~~[referrals to dealerships]~~ may lawfully operate in a
6 manner that includes all of the following conditions. [+]

7 (1) There is ~~[are]~~ no exclusive market area ~~[areas]~~
8 offered to a dealer ~~[dealers]~~ by the program. All dealers are
9 allowed to participate in the program on equal terms.

10 (2) Participation by a dealer ~~[dealers]~~ in the program
11 is not restricted by conditions, such as limiting the number of
12 line-makes ~~[franchise lines]~~ or discrimination by size of
13 dealership or location. The total ~~[Total]~~ number of participants
14 in the program may be restricted if the program is offered to
15 all dealers at the same time, with no regard to the line-make.
16 ~~[franchise line.]~~

17 (3) All participants pay the same fee for
18 participation in the program. The program fee ~~[that]~~ shall be a
19 weekly, monthly, or annual fee, regardless of the size,
20 location, or line-makes sold by the dealer. ~~[line-make of the~~
21 ~~dealership.]~~

22 (4) A person is not to be charged a fee on a per
23 referral fee basis or any other basis that could be considered a

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1 transaction-related fee.

2 (5) The program does not set or suggest to the dealer
3 any price of a motor vehicle or a trade-in. [~~vehicles or trade-~~
4 ~~ins.~~]

5 (6) The program does not advertise or promote its plan
6 in a manner that implies that the buyer, as a customer of that
7 program, receives a special discounted price that cannot be
8 obtained unless the customer is referred through that program.

9 (c) Subsections [~~The provisions of subsections~~] (a) and (b)
10 of this section do not apply to any person or entity [~~which is~~]
11 exempt from the broker definition in Occupations Code,
12 §2301.002. [~~§2301.002(3).~~]

13 (d) All programs must comply with Subchapter H of this
14 chapter (relating to Advertising).

15
16 §215.85. Brokering, Used Motor Vehicles.

17 (a) Transportation Code, §503.021 prohibits a person[~~-~~
18 ~~prohibits persons~~] from engaging in [~~the~~] business as a dealer,
19 directly or indirectly, including by consignment without a GDN.
20 The phrase "directly or indirectly" [~~general distinguishing~~
21 ~~number. "Directly or Indirectly"~~] includes the practice of
22 arranging or offering to arrange a transaction involving the
23 sale of a used motor vehicle for a fee, commission, or other

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1 valuable consideration. A person who is a bona fide employee of
2 a dealer holding a GDN and acts for the dealer is not a broker
3 for the purposes of this section.

4 (b) A buyer referral service, program, plan, club, or any
5 other entity that accepts a fee [~~fees~~] for arranging a
6 transaction involving the sale of a used motor vehicle is
7 required to meet the requirements for and obtain a GDN, [~~general~~
8 ~~distinguishing number~~] unless the referral service, program,
9 plan, or club is operated in the following manner. [+]

10 (1) There is [~~are~~] no exclusive market area [~~areas~~]
11 offered to a dealer [~~dealers~~] by the program. All dealers are
12 allowed to participate in the program on equal terms.

13 (2) Participation by a dealer [~~dealers~~] in the program
14 is not restricted by conditions, such as limiting the number of
15 line-makes [~~franchise lines~~] or discrimination by size of
16 dealership or location. The total [~~Total~~] number of participants
17 in the program may be restricted if the program is offered to
18 all dealers at the same time, with no regard to the line-make.
19 [~~franchise line.~~]

20 (3) All participants pay the same fee for
21 participation in the program. The program fee [~~that~~] shall be a
22 weekly, monthly, or annual fee, regardless of the size,
23 location, or line-makes sold by the dealer. [~~line make of the~~]

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1 ~~dealership.]~~

2 (4) A person is not to be charged a fee on a per
3 referral fee basis or any other basis that could be considered a
4 transaction-related fee.

5 (5) The program does not set or suggest to the dealer
6 any price of a motor vehicle or a trade-in. [~~vehicles or trade-~~
7 ~~ins.~~]

8 (6) The program does not advertise or promote its plan
9 in a manner that implies that the buyer, as a customer of that
10 program, receives a special discounted price that cannot be
11 obtained unless the customer is referred through that program.

12 (c) All programs must comply with Subchapter H of this
13 chapter (relating to Advertising).

14

15 §215.87. License and Metal Dealer's License Plate Terms and
16 Fees.

17 (a) Except as provided by other law, the term of a license
18 or metal dealer's license plate issued by the department
19 [~~division~~] under Occupations Code, Chapter 2301 or
20 Transportation Code, Chapter 503 is two years.

21 (b) A metal dealer's license plate [~~Metal plates~~] issued by
22 the department expires on the date the associated license
23 expires. [~~division in connection with a license expire on the~~

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1 ~~same date as the license.]~~

2 (c) The fee for a license or metal dealer's license plate
3 is computed by multiplying the applicable annual fee by the
4 number of years of the license term. The entire amount of the
5 fee is due at the time of application for the license or license
6 renewal.

7

8 §215.88. Criminal Offense and Action on License.

9 (a) This section describes board [~~Board~~] or department
10 action on a license application or an existing license issued by
11 the department under Transportation Code, Chapter 503 or
12 Occupations Code, Chapter 2301, including denial, revocation,
13 and suspension, and identifies the types of criminal offenses
14 that directly relate to the duties and responsibilities of the
15 occupations licensed under Transportation Code, Chapter 503 or
16 Occupations Code, Chapter 2301.

17 (b) Except as provided by subsection (e) of this section,
18 the board [~~Board~~] or department will consider denial of an
19 application for a license or revocation or suspension of a
20 license in accordance with the requirements of:

21 (1) Occupations Code, Chapter 53;

22 (2) Occupations Code, Chapter 2301, Subchapter N;

23 (3) Government Code, Chapter 2001 [~~Administrative~~]

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1 ~~Procedure Act~~]; and

2 (4) board [~~Board~~] rules.

3 (c) The terms [~~term~~] "applicant" or "person" as used in
4 this section includes:

5 (1) an applicant for a license or other authorization
6 issued by the department;

7 (2) the holder of a license or other authorization
8 issued by the department;

9 (3) a person's spouse with a community property
10 interest in the entity licensed or to be licensed by the
11 department;

12 (4) a controlling shareholder of a business entity
13 licensed by the department;

14 (5) a person holding 50% or more ownership interest in
15 a business entity licensed by the department;

16 (6) a person acting in a representative capacity for
17 the applicant or license holder, including an owner, president,
18 vice-president, member of the board of directors, chief
19 executive officer, chief financial officer, chief information
20 officer, chief managing officer, treasurer, controller,
21 director, principal, manager of business affairs, or similar
22 position of a business entity; or

23 (7) any person who becomes a person described in this

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1 subsection.

2 (d) An action taken by the board [~~Board~~] or department
3 under this section may be based on an act or omission by an
4 officer, director, partner, trustee, or other person acting in a
5 representative capacity for the applicant or license holder.

6 (e) Upon receipt of an order or notice regarding an
7 applicant or license holder issued under Family Code, Chapter
8 232, the board [~~Board~~] or department will deny [~~refuse to~~
9 ~~approve~~] an application for issuance of a license, will not
10 renew an existing license, or will suspend a license or other
11 authorization issued by the department. The board's [~~Board~~] or
12 department's action, based upon receipt of an order or notice
13 issued under Family Code, Chapter 232, on the application for a
14 license or existing license is not subject to the provisions of
15 Government Code, Chapter 2001, including notice, hearing, or
16 opportunity for hearing. Upon [~~On~~] receipt of an order vacating
17 or staying an order suspending a license issued under Family
18 Code, Chapter 232, the board [~~vacating or staying an order~~
19 ~~suspending a license, the Board~~] or department will issue the
20 affected license to the applicant or license holder if the
21 applicant or license holder is otherwise qualified for the
22 license.

23 (f) No person currently imprisoned for conviction of a

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1 felony under any state or federal law is eligible for or may
2 retain a license or authorization issued by the department.

3 (g) The board [~~Board~~] or department will revoke a license
4 issued by the department upon the license holder's [~~licensee's~~]
5 imprisonment following a felony conviction, felony community
6 supervision revocation, revocation of parole, or revocation of
7 mandatory supervision.

8 (h) The board [~~Board~~] or department may revoke a license
9 issued by the department upon the license holder's imprisonment
10 for a felony conviction, felony community supervision
11 revocation, revocation of parole, or revocation of mandatory
12 supervision, of a person defined by [~~in~~] subsection (c) of this
13 section or identified in subsection (d) of this section.

14 (i) The board [~~Board~~] or department may suspend a license,
15 revoke a license, or disqualify a person from receiving a
16 license issued by the department if:

17 (1) a person has been convicted of an offense that
18 directly relates to the duties and responsibilities of the
19 licensed occupation. Any such action shall be made after
20 consideration of the factors listed in Occupations Code, §53.022
21 and[-] §53.023, and the guidelines issued by the department
22 pursuant to Occupations Code, §53.025;

23 (2) a person has been convicted of an offense that

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1 does not directly relate to the duties and responsibilities of
2 the licensed occupation and that was committed less than five
3 years before the date the person applies for the license;

4 (3) a person has been convicted of an offense listed
5 in Code of Criminal Procedure, Article 42.12, Section 3g;
6 [~~Section 3g, Article 42.12, Code of Criminal Procedure;~~] or

7 (4) a person has been convicted of a sexually violent
8 offense, as defined by Code of Criminal Procedure, Article
9 62.001. [~~Article 62.001, Code of Criminal Procedure.~~]

10 (j) For purposes of Occupations Code, §53.021, the
11 following criminal offenses directly relate to the duties and
12 responsibilities of the occupations licensed by the department:

13 (1) Penal Code, Chapter 15, Preparatory Offenses;

14 (2) Penal Code, Chapter 16, Criminal Instruments,
15 Interception of Wire or Oral Communication, and Installation of
16 Tracking Device;

17 (3) Penal Code, Chapter 19, Criminal Homicide;

18 (4) Penal Code, Chapter 20, Kidnapping, Unlawful
19 Restraint, and Smuggling of Persons;

20 (5) Penal Code, Chapter 20A, Trafficking of Persons;

21 (6) Penal Code, Chapter 21, Sexual Offenses;

22 (7) Penal Code, Chapter 22, Assaultive Offenses;

23 (8) Penal Code, Chapter 25, Offenses Against [~~against~~]

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1 the Family;

2 (9) Penal Code, Chapter 28, Arson, Criminal Mischief,
3 and Other Property Damage or Destruction;

4 (10) Penal Code, Chapter 29, Robbery;

5 (11) Penal Code, Chapter 30, Burglary and Criminal
6 Trespass;

7 (12) Penal Code, Chapter 31, Theft;

8 (13) Penal Code, Chapter 32, Fraud;

9 (14) Penal Code, Chapter 33, Computer Crimes;

10 (15) Penal Code, Chapter 33A, Telecommunications

11 Crimes;

12 (16) Penal Code, Chapter 34, Money Laundering;

13 (17) Penal Code, Chapter 35, Insurance Fraud;

14 (18) Penal Code, Chapter 36, Bribery and Corrupt

15 Influence;

16 (19) Penal Code, Chapter 37, Perjury and Other

17 Falsification;

18 (20) Penal Code, Chapter 38, Obstructing Governmental
19 Operation;

20 (21) Penal Code, Chapter 71, Organized Crime;

21 (22) Code of Criminal Procedure, Chapter 62, Sex

22 Offender Registration Program, involving an offense for which

23 the person has been required to register as a sex offender;

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- 1 (23) Transportation Code, Chapter 501, Certificate of
2 Title Act;
- 3 (24) Transportation Code, Chapter 502, Registration of
4 Vehicles;
- 5 (25) Transportation Code, Chapter 503, Dealer's and
6 Manufacturer's Vehicle License Plates;
- 7 (26) Transportation Code, Chapter 504, License Plates;
- 8 (27) Transportation Code, Chapter 520, Miscellaneous
9 Provisions;
- 10 (28) Transportation Code, Chapter 547, Vehicle
11 Equipment;
- 12 (29) Transportation Code, Chapter 548, Compulsory
13 Inspection of Vehicles;
- 14 (30) Transportation Code, Chapter 727, Modification
15 of, Tampering with, and Equipment of Motor Vehicles;
- 16 (31) Transportation Code, Chapter 728, Subchapter B,
17 Sale of Master Key for Motor Vehicle Ignitions;
- 18 (32) Occupations Code, Chapter 2301, Subchapter R,
19 Regulation of Certain Commercial Uses of Motor Vehicles;
- 20 (33) Tax Code, Chapter 23, Appraisal Methods and
21 Procedures;
- 22 (34) Tax Code, Chapter 152, Taxes on Sale, Rental, and
23 Use of Motor Vehicles;

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1 (35) Business and Commerce Code, Chapter 17, Deceptive
2 Trade Practices;

3 (36) Health and Safety Code, Chapter 365, Litter;

4 (37) Health and Safety Code, Chapter 481, Texas
5 Controlled Substances Act;

6 (38) Health and Safety Code, Chapter 482, Simulated
7 Controlled Substances;

8 (39) Health and Safety Code, Chapter 483, Dangerous
9 Drugs;

10 (40) Water Code, Chapter 7, Enforcement;

11 (41) United States Code, Title 15, Chapter 28,
12 Disclosure of Automobile Information, especially 15 U.S.C.
13 §1233, Violations and Penalties;

14 (42) United States Code, Title 18, Chapter 63, Mail
15 Fraud and Other Fraud Offenses;

16 (43) United States Code, Title 49, Chapter 301, Motor
17 Vehicle Safety, especially 49 U.S.C. §30170, Criminal Penalties;
18 or

19 (44) United States Code, Title 49, Chapter 327,
20 Odometers, especially 49 U.S.C. §32709, Penalties and
21 Enforcement.

22
23 §215.89. Fitness.

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1 (a) In determining a person's fitness for a license issued
2 or to be issued by the department under Transportation Code,
3 Chapter 503 or Occupations Code, Chapter 2301, the board [~~Board~~]
4 or department will consider:

5 (1) the requirements of Occupations Code, Chapter 53;

6 (2) the provisions of Occupations Code, §2301.651;

7 (3) any specific statutory licensing criteria or
8 requirements;

9 (4) mitigating factors; and

10 (5) other evidence of a person's fitness, as allowed
11 by law, including the standards identified in subsection (b) of
12 this section.

13 (b) The board [~~Board~~] or department may determine that a
14 person is unfit to perform the duties and discharge the
15 responsibilities of a license holder and may, following notice
16 and an opportunity for hearing, deny a person's license
17 application or revoke or suspend a license if the person:

18 (1) fails to meet or maintain the qualifications and
19 requirements of licensure;

20 (2) is convicted by any local, state, or federal
21 authority of an offense listed in §215.88(j) of this title
22 (relating to Criminal Offense and Action on License) or is
23 convicted in any jurisdiction of an offense containing elements

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1 that are substantially similar to the elements in the offenses
2 in §215.88(j) [~~of this title~~];

3 (3) omits information or provides false, misleading,
4 or incomplete information regarding a criminal conviction on an
5 initial application, renewal application, or application
6 attachment for a license or other authorization issued by the
7 department or by any local, state, or federal regulatory
8 authority;

9 (4) is found to have violated an administrative or
10 regulatory requirement based on action taken on a license,
11 permit, or other authorization, including disciplinary action,
12 revocation, suspension, denial, corrective action, cease and
13 desist order, or assessment of a civil penalty, administrative
14 fine, fee, or similar assessment, by the board [~~Board~~],
15 department, or any local, state, or federal regulatory
16 authority;

17 (5) is insolvent or fails to obtain or maintain
18 financial resources sufficient to meet the financial obligations
19 of the licensee;

20 (6) is a corporation that fails to maintain its
21 charter, certificate, registration, or other authority to
22 conduct business in Texas;

23 (7) is assessed a civil penalty, administrative fine,

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1 fee, or similar assessment by the board [~~Board~~], department, or
2 a local, state, or federal regulatory authority for violation of
3 a requirement governing or impacting the distribution or sale of
4 a vehicle or a motor vehicle and fails to comply with the terms
5 of a final order or fails to pay the penalty pursuant to the
6 terms of a final order;

7 (8) was or is a person defined by §215.88(c) [~~in~~
8 ~~§215.88(c) of this title~~] or identified in §215.88(d) [~~of this~~
9 ~~title~~], or a manager or affiliate of a sole proprietorship,
10 partnership, corporation, association, trust, estate, or other
11 legal entity whose actions or omissions could be considered
12 unfit, who is ineligible for licensure, or whose current or
13 previous license, permit, or other authorization issued by any
14 local, state, or federal regulatory authority has been subject
15 to disciplinary action including suspension, revocation, denial,
16 corrective action, cease and desist order, or assessment of a
17 civil penalty, administrative fine, fee, or similar assessment;

18 (9) has an ownership interest with a person whose
19 actions or omissions could be considered unfit, who is
20 ineligible for licensure, or whose current or previous license,
21 permit, or other authorization issued by any local, state, or
22 federal regulatory authority has been subject to disciplinary
23 action, including suspension, revocation, denial, corrective

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1 action, cease and desist order, or assessment of a civil
2 penalty, administrative fine, fee, or similar assessment, by the
3 board [~~Board~~], department, or any local, state, or federal
4 regulatory authority;

5 (10) is a business entity that is operated, managed,
6 or otherwise controlled by a relative or family member and that
7 person could be considered unfit, is ineligible for licensure,
8 or whose current or previous license, permit, or other
9 authorization issued by any local, state, or federal regulatory
10 authority has been subject to disciplinary action, including
11 suspension, revocation, denial, corrective action, cease and
12 desist order, or assessment of a civil penalty, administrative
13 fine, fee, or similar assessment; or

14 (11) is found in an order issued through a contested
15 case hearing [~~an administrative proceeding~~] to be unfit or
16 acting in a manner detrimental to the system of distribution or
17 sale of motor vehicles in Texas, the economy of the state, the
18 public interest, or the welfare of Texas citizens.

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1 SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS,
2 AND CONVERTERS

3 §215.101. Purpose and Scope. [~~Objective.~~]

4 This subchapter implements [~~The objective of these rules is to~~
5 ~~implement the intent of the legislature as declared in]~~

6 Occupations Code, Chapter 2301[~~7~~] and Transportation Code,
7 Chapters 503 and 1000 - 1005. [~~1000 through 1005, by prescribing~~
8 ~~rules to regulate businesses requiring licenses under the Code.~~]

9
10 §215.103. Service-only [~~Service-Only~~] Facility.

11 (a) A service-only facility is a location occupied and
12 operated by a franchised dealer that is a completely separate,
13 noncontiguous [~~non-contiguous~~] site, from the franchised
14 dealer's new motor vehicle sales and service or sales only
15 location, where the franchised dealer will only perform warranty
16 and nonwarranty [~~non-warranty~~] repair services. Except as
17 allowed in subsection (d) of this section, warranty repair
18 services may only be performed at either a licensed dealership
19 or a licensed service-only facility.

20 (b) A franchised dealer must obtain a license to operate a
21 service-only facility. A [~~The~~] dealer may not obtain a service-
22 only facility license to service a particular line of new motor

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1 vehicles, unless that ~~[the]~~ dealer is franchised and licensed to
2 sell that line.

3 (c) A service-only facility is ~~[considered]~~ a dealership
4 ~~[under Occupations Code, §2301.002(8), and is therefore]~~ subject
5 to protest under Occupations Code, Chapter 2301. ~~[\$2301.652.]~~

6 (d) Upon the manufacturer's or distributor's prior written
7 approval, which cannot be unreasonably withheld, only a
8 franchised dealer of the manufacturer or distributor may
9 contract with another person as a subcontractor ~~[sub-contractor]~~
10 to perform warranty repair services that the dealer is
11 authorized to perform under a franchise agreement with a
12 manufacturer or distributor. Payment shall be made by the
13 franchised dealer to the subcontractor ~~[sub-contractor]~~ and not
14 by the manufacturer or distributor to the subcontractor. ~~[sub-~~
15 ~~contractor.]~~

16 (e) A person with whom a franchised dealer contracts~~[, as~~
17 ~~described in subsection (d) of this section,]~~ to perform
18 warranty repair services is not eligible to obtain a service-
19 only facility license and may not advertise ~~[to the public]~~ the
20 performance of warranty repair services in any manner to the
21 public.

22

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1 §215.104. Changes to Franchised Dealer's [~~Dealer~~] License.

2 (a) In accordance with Occupations Code, §2301.356, a
3 franchised dealer must file an application to amend the
4 franchised dealer's license in order to request inclusion of an
5 additional line-make at the dealer's currently licensed
6 showroom.

7 (1) In accordance with §215.110 of this title
8 (relating to Evidence of Franchise), the franchised dealer must
9 attach to the amendment application a copy of:

10 (A) the executed franchise agreement;

11 (B) the required excerpt from the executed
12 franchise agreement; or

13 (C) an evidence of franchise form completed by
14 the manufacturer, distributor, or representative.

15 (2) The amendment application for an additional
16 franchise at the showroom is considered an original application
17 and is subject to protest, in accordance with Occupations Code,
18 Chapter 2301.

19 ~~[(a) To effectuate Occupations Code, §2301.356, every~~
20 ~~licensed dealer who proposes to conduct business at a currently~~
21 ~~licensed showroom under a franchise that is additional to or~~
22 ~~that differs from the franchise or franchises on which the~~

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1 ~~license is then based shall file an application to amend the~~
2 ~~license on the form prescribed by the division, attaching a copy~~
3 ~~of the franchise agreement. The amended application will be~~
4 ~~considered as if it were an original application to operate~~
5 ~~under the additional franchise as to all matters except those~~
6 ~~reflected by the license as issued.]~~

7 (b) A franchised dealer may propose to sell or [~~licensed~~
8 ~~dealer who proposes to sell and/or~~] assign to another any
9 interest in the licensed entity, whether a corporation or
10 otherwise, provided [~~so long as~~] the physical location of the
11 licensed entity remains the same. [~~7~~]

12 (1) The franchised dealer shall notify the department
13 [~~division~~] in writing within 10 [~~ten~~] days of the sale or
14 assignment of interest [~~change~~] by filing an application to
15 amend the franchised dealer's license.

16 (2) If the sale or assignment of any portion of the
17 business results in a change of business entity, then the
18 purchasing entity or assignee [~~purchasing/assignee entity~~] must
19 apply for and obtain a new license in the name of the new
20 business entity.

21 (3) A publicly-held corporation needs only to
22 [~~Publicly-held corporations need only~~] inform the department

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1 ~~[division]~~ of a change in ownership if one person or entity
2 acquires 10% or greater interest in the licensed entity.

3 ~~[licensee.]~~

4 (c) A franchised dealer is required to file an amendment
5 application within 10 days of a license change, including:

6 (1) deletion of a line-make from the dealer's license;

7 (2) a change of assumed name on file with the Office
8 of the Secretary of State or county clerk;

9 (3) a change of mailing address;

10 (4) a change of telephone number;

11 (5) a change of facsimile number; or

12 (6) a change of email address.

13 (d) A franchised dealer is required to file a business
14 entity amendment application within 10 days of an entity change,
15 including:

16 (1) a change in management, dealer principal, or
17 change of other person who is in charge of a franchised dealer's
18 business activities, including a managing partner, officer,
19 director of a corporation, or similar person; or

20 (2) a change of legal entity name on file with the
21 Office of the Secretary of State.

22 ~~[(c) In the event of a change in management reflected by a~~

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1 ~~change of the general manager, dealer principal, or other person~~
2 ~~who is in charge of a licensee's business activities, whether a~~
3 ~~managing partner, officer, or director of a corporation, or~~
4 ~~otherwise, the division shall be advised by means of an~~
5 ~~application for an amended license.]~~

6 (e)~~(d)~~ If a licensed new motor vehicle dealer changes or
7 converts from one type of business entity to another type of
8 business entity without changing ownership of the dealership,
9 the submission of a franchise agreement in the name of the new
10 entity is not required in conjunction with an application. The
11 franchise agreement on file with the department ~~[division]~~ prior
12 to the change or conversion of the dealer's business entity type
13 applies to the successor entity until the parties agree to
14 replace the franchise agreement. This subsection does not apply
15 to a sole proprietorship or general partnership.

16 (f)~~(e)~~ If a dealer adopts a plan of conversion under a
17 state or federal law that allows one legal entity to be
18 converted into another legal entity, only an application to
19 amend the license is necessary to be filed with the department
20 ~~[division]~~. The franchise agreement on file with the department
21 ~~[division]~~ continues to apply to the converted entity. If a
22 license holder becomes another legal entity ~~[the entity change~~

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1 ~~is accomplished~~] by any means other than by conversion, a new
2 application is required, subject to subsection (e)~~(d)~~] of this
3 section.

4 (g)~~(f)~~] In addition to obtaining permission from the
5 manufacturer or distributor, a franchised dealer [~~A licensee~~]
6 shall obtain department [~~division~~] approval prior to [~~the~~]
7 opening [~~of~~] a supplemental location or relocating~~[, or the~~
8 ~~relocation of]~~ an existing location. A franchised dealer
9 [~~licensee~~] must notify the department [~~division~~] when closing an
10 existing location.

11

12 §215.105. Notification of License Application; Protest
13 Requirements.

14 (a) The provisions of this section are not applicable to an
15 application filed with the department for a franchised dealer
16 license as a result of the purchase or transfer of an existing
17 entity holding a current franchised dealer's license that does
18 not involve a physical relocation of the purchased or
19 transferred line-makes.

20 (b)~~(a)~~] Upon receipt of an application for a new motor
21 vehicle dealer's license, including an application filed with
22 the department [~~division~~] by reason of the relocation of an

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1 existing dealership, the department [~~division~~] shall give notice
2 of the filing of the application to each franchised dealer [~~all~~
3 ~~dealer licensees~~] that may have standing to protest the
4 application.

5 (c)[~~(b)~~] If it appears to the department that there are no
6 dealers with standing to protest, then no notice shall be given.

7 (d)[~~(e)~~] A person holding a franchised dealer's license
8 [~~Any dealer licensee holding a franchise~~] for the sale of the
9 same line-make of a new motor vehicle as proposed for sale in
10 the subject application and that has [~~with~~] standing to protest
11 the application may file with the department [~~division~~] a notice
12 of protest opposing [~~in opposition to the application and~~] the
13 granting of a license.

14 (e)[~~(d)~~] A franchised [~~The~~] dealer that wishes to protest
15 the application shall give notice in accordance with Occupations
16 Code, Chapter 2301. [~~its notice of protest in the following~~
17 ~~manner.~~]

18 (1) The notice of protest shall be in writing and
19 shall be signed by an authorized officer or other official
20 authorized to sign on behalf of the protesting dealer [~~licensee~~]
21 filing the notice.

22 (2) The notice of protest shall state the statutory

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1 basis upon which the protest is made and assert how the
2 protesting dealer meets the standing requirements under §215.119
3 of this title (relating to Standing to Protest) to protest the
4 application.

5 (3) The notice of protest shall state that the protest
6 is not made for purposes of delay or for any other purpose
7 except for justifiable cause.

8 (4) If a protest is filed against an application for
9 the establishment of a dealership or for addition of a line-make
10 at an existing dealership, the notice of protest shall state
11 under which [the] provision of Occupations Code, Chapter 2301[
12 ~~under which~~] the protest is made.

13 [~~(e) The provisions of this section shall not be applicable~~
14 ~~to any application filed with the division for a dealer license~~
15 ~~as a result of the purchase or transfer of an existing entity~~
16 ~~holding a current franchise license which does not involve any~~
17 ~~physical relocation of the purchased or transferred line makes.]~~

18

19 §215.106. Time for Filing Protest.

20 (a) A notice of protest must be:

21 (1) received by the department [~~in the division~~
22 ~~offices in Austin~~] not later than 5:00 p.m. Central Standard

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1 Time (CST) on the date 15 days from the date of mailing of the
2 department's [~~division's~~] notification to the license holder
3 [~~licensees~~] of the filing of the application;

4 (2) filed with the department by United States mail,
5 facsimile, hand delivery, or through the department's designated
6 electronic filing system when available; however, a notice of
7 protest may not be filed by email; [~~e-mail~~] and

8 (3) accompanied by the [~~statutorily~~] required
9 [~~protest~~] filing fee. If the filing fee does not accompany the
10 notice of protest, the [~~statutorily required protest filing~~] fee
11 must be received by the department [~~in the division offices in~~
12 ~~Austin~~] not later than 5:00 p.m. CST on the date 20 days from
13 the date of mailing of the department's [~~division's~~]
14 notification to the license holder [~~licensees~~] of the filing of
15 the application.

16 (b) The department will reject a notice of protest if:

17 (1) the complete notice of protest is not filed within
18 15 days from the date of mailing of the department's
19 notification to the license holder of the filing of the
20 application; or

21 (2) the required filing fee is not remitted within 20
22 days from the date of mailing of the department's notification

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1 to the license holder of the filing of the application.

2 [~~(b) Failure to file a formal notice of protest within the~~
3 ~~specified time period shall result in the disallowance of the~~
4 ~~protest.~~]

5 [~~(c) Failure to remit the statutorily required protest~~
6 ~~filing fee within the specified time period shall result in the~~
7 ~~disallowance of the protest.~~]

8

9 §215.108. Addition or Relocation of Line-make.[~~Line Make.~~]

10 An application to amend [~~for the amendment of~~] an existing new
11 motor vehicle dealer's license for [~~by~~] the addition of another
12 line-make at the existing dealership or for the relocation of a
13 line-make to the existing dealership shall be deemed [~~to be~~] an
14 "application to establish a dealership" insofar as the line-make
15 to be added is concerned, and shall be subject to the provisions
16 of §215.105 of this title (relating to Notification of License
17 Application; Protest Requirements) and §215.106 of this title
18 (relating to Time for Filing Protest). [~~§§215.105-215.107 of~~
19 ~~this subchapter (relating to Notification of License~~
20 ~~Application; Protest Requirements; Time for Filing Protest; and~~
21 ~~Hearing).~~]

22

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1 §215.109. Replacement Dealership.

2 An application for a new motor vehicle dealer's license for a
3 dealership intended as a replacement for a previously existing
4 dealership shall be deemed ~~[to be]~~ an application for a
5 "replacement dealership" required to be established in
6 accordance with ~~[pursuant to]~~ Occupations Code, §2301.453 and
7 shall not be subject to protest under the provisions of §215.105
8 of this title ~~[subchapter]~~ (relating to Notification of License
9 Application; Protest Requirements), provided that:

10 (1) the application states that the applicant is
11 intended as a replacement dealership and identifies the prior
12 dealership to be replaced;

13 (2) the manufacturer or distributor of the line-make
14 gives notice to the department and to other dealers franchised
15 for the same line-make that meet the provisions of ~~[division and~~
16 ~~to its other like-line dealers pursuant to]~~ Occupations Code,
17 §2301.652(b) ~~[within 60 days following the closing of the prior~~
18 ~~dealership]~~;

19 (3) the notice under paragraph (2) of this subsection
20 is given within 60 days following the closing of the prior
21 dealership;

22 (4)~~[+3]~~ the application is filed with the department

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1 ~~[division]~~ not later than one year following the closing of the
2 prior dealership; and

3 (5)~~(4)~~ the location of the applicant's proposed
4 dealership is not more than two miles ~~[greater than two miles]~~
5 from the location of the prior dealership.

6

7 §215.110. Evidence of Franchise.

8 (a) Upon application for a new motor vehicle dealer's
9 license or an amendment of an ~~[dealer license, or application~~
10 ~~for amendment of]~~ existing new motor vehicle dealer's ~~[dealer]~~
11 license to add a line-make, ~~[in addition to other attachments~~
12 ~~required to be submitted with the application,~~] the applicant
13 must submit a photocopy of the ~~[those]~~ pages of the franchise
14 agreement(s) that ~~[which]~~ reflect the parties to the
15 agreement(s), and ~~[and]~~ the authorized signatures of the parties to
16 the agreement(s), and each line-make ~~[for each line of motor~~
17 ~~vehicle]~~ listed in the application. To meet this requirement
18 temporarily for the purpose of application processing, a [A]
19 form prescribed by the department ~~[division]~~ and completed by
20 the manufacturer or distributor ~~[manufacturer/distributor]~~ may
21 be submitted with the application in lieu of the information
22 described in this subsection ~~[to meet this requirement]~~

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1 ~~temporarily, for purposes of application processing].~~ The
2 applicant must submit the required photocopies of the franchise
3 agreement(s) ~~[, as]~~ described in this subsection ~~[,]~~ immediately
4 upon the applicant's receipt of the franchise agreement(s).
5 ~~[receipt.]~~

6 (b) Upon application to relocate a new motor vehicle
7 dealership, ~~[in addition to other attachments required to be~~
8 ~~submitted with the application,]~~ the applicant must submit a
9 form prescribed by the department ~~[division]~~ and completed by
10 the manufacturer or distributor ~~[manufacturer/distributor]~~ that
11 identifies the license holder ~~[licensee]~~ and the new location.

12
13 §215.111. Notice of Termination or Discontinuance

14 ~~[Noneontinuance]~~ of Franchise and Time for Filing Protest.

15 A notice of termination or discontinuance ~~[noneontinuance]~~ of a
16 dealer's franchise shall be given by a manufacturer or
17 distributor in accordance with ~~[the requirements of]~~ Occupations
18 Code, §2301.453 ~~[,]~~ not less than 60 days prior to the effective
19 date of the franchise termination or discontinuance ~~[thereof]~~. A
20 notice of protest of the franchise termination or discontinuance
21 ~~[noneontinuance]~~ by a dealer pursuant to Occupations Code,
22 §2301.453 ~~[,]~~ shall be in writing and shall be filed with the

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1 department [~~in the Board's office in Austin,~~] prior to the
2 effective date of the franchise termination or discontinuance
3 [~~noncontinuance as~~] stated in the notice from the manufacturer
4 or distributor.

5

6 §215.112. Motor Home Show Limitations and Restrictions.

7 (a) Applicability. This rule implements Occupations Code,
8 §2301.358 and is expressly limited to motor home shows that
9 require department approval in accordance with subsection (b) of
10 this section.

11 (b) Show approval required. Without written approval by the
12 department, a person may not promote or conduct a show involving
13 a new motor home that will be sold or offered for sale.

14 (c) Show requirements. The department may approve a motor
15 home show in accordance with this section if the show:

16 (1) does not exceed six consecutive days;

17 (2) is not conducted within 90 days of a previous show
18 in the same county; and

19 (3) complies with Occupations Code, Chapter 2301;
20 Transportation Code, Chapters 503 and 1000 - 1005; and board
21 rules.

22 (d) Additional motor home shows. The department may

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1 authorize additional motor home shows in any county upon a
2 showing of good cause by the promoter for waiver from the show
3 requirements of subsection (c) of this section.

4 (e) Show approval requirements. For purposes of this
5 section, the promoter or coordinator of a motor home show must
6 submit an application to the department. The application must:

7 (1) be completed and submitted on a form and in the
8 manner prescribed by the department;

9 (2) be accompanied by all required attachments;

10 (3) be submitted no less than 30 days and no more than
11 90 days before the proposed show date;

12 (4) be accompanied by a \$25,000 surety bond if the
13 promoter or coordinator of the show is not a license holder, an
14 association of license holders, or an organization of license
15 holders;

16 (5) affirm that at least three franchised dealers of
17 new motor homes, each participating with at least one different
18 line-make, will participate in the show;

19 (6) affirm that each franchised dealer that
20 participates in the show holds a valid franchised dealer's
21 license issued by the department for each motor home line-make
22 that the franchised dealer will participate with in the show;

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1 and

2 (7) designate either Saturday or Sunday for suspension
3 of the sale of any motor home, in accordance with Transportation
4 Code, Chapter 728, Subchapter A, when the show is conducted over
5 a consecutive Saturday and Sunday.

6 (f) Dealer participation approval required. Without written
7 approval by the department, a motor home dealer may not
8 participate in a show of new motor homes, where a motor home
9 will be sold or offered for sale.

10 (g) Dealer participation requirements. A dealer of new
11 motor homes requesting approval to participate in a show must
12 submit a sufficient application to the department. To be
13 sufficient, the application must be on a form prescribed by the
14 department and accompanied by all required attachments.

15 (h) Located within 70 miles of show site. For the purpose
16 of this section, a franchised dealer located within 70 miles of
17 the site of the proposed show has a right equal to any other
18 franchised dealer that is also located within 70 miles of the
19 show site to participate in the show with a like-line motor
20 home.

21 (i) Located more than 70 miles from show site. For the
22 purpose of this section, a franchised dealer that is located

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1 more than 70 miles from the proposed show site does not have a
2 right to participate in the show; however, the department may
3 approve that franchised dealer to participate in the motor home
4 show, if:

5 (1) there is no franchised dealer of a like-line motor
6 home located within 70 miles of the proposed show site; or

7 (2) the franchised dealer obtains a written waiver
8 from each like-line franchised motor home dealer located within
9 70 miles of the proposed show site.

10 (j) Suspension of sales. For the purpose of this section
11 and pursuant to Transportation Code, Chapter 728, Subchapter A,
12 when a show is conducted over a consecutive Saturday and Sunday,
13 all franchised dealers of motor homes will suspend sales on the
14 same Saturday or Sunday, as designated by the show promoter or
15 coordinator. On the day sales are suspended, a motor home
16 dealer:

17 (1) may quote a price;

18 (2) may open and attend to the motor home product;

19 (3) may not sell, offer to sell, negotiate a price, or
20 enter into a contract or letter of intention to contract for the
21 sale of the motor home; and

22 (4) is not required to remove or cover the suggested

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1 retail price the manufacturer may have affixed to the motor
2 home.

3 ~~[(a) A dealer licensed by the division who is authorized to~~
4 ~~sell new motor homes may attend and sell at any motor home show~~
5 ~~that has been approved by the division.]~~

6 ~~[(b) The scope of this rule is expressly limited to new~~
7 ~~motor home shows and exhibitions. It does not apply to other~~
8 ~~types of motor vehicle distribution activities, static displays,~~
9 ~~or any other provision of Occupations Code, Chapter 2301 other~~
10 ~~than §2301.355 and §2301.358. Other motor vehicle shows,~~
11 ~~exhibitions, or static displays will be reviewed by division~~
12 ~~staff on a case by case basis.]~~

13 ~~[(c) Approval must be sought by the show promoter or~~
14 ~~coordinator no less than 30 days and no more than 90 days prior~~
15 ~~to the proposed show date. All applications for motor home shows~~
16 ~~must be submitted on the forms and in the manner prescribed by~~
17 ~~the division, and must be accompanied by all required~~
18 ~~attachments. If the promoter or coordinator is not a licensee,~~
19 ~~an association of licensees, or organization of licensees, the~~
20 ~~application must be accompanied by a \$25,000 surety bond to~~
21 ~~assure compliance with Occupations Code, Chapter 2301 and~~
22 ~~department rules, as well as other regulations pertaining to the~~

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1 ~~sale of new motor vehicles.]~~

2 ~~[(d) There must be at least three dealers participating in~~
3 ~~the show, representing at least three different line makes at~~
4 ~~the show, for the show to qualify for approval. Each~~
5 ~~participating new motor vehicle dealer must have a current,~~
6 ~~valid, Texas new motor vehicle dealer's license to sell the~~
7 ~~particular line of motor home to be shown.]~~

8 ~~[(e) The duration of any motor home show shall not exceed~~
9 ~~six consecutive days. If a show is conducted over a consecutive~~
10 ~~Saturday and a Sunday, sales will be suspended by all motor~~
11 ~~vehicle dealers on the same Saturday or Sunday to achieve~~
12 ~~uniform compliance with the Blue Law under Transportation Code,~~
13 ~~Chapter 728, Subchapter A. On the day sales are suspended, a~~
14 ~~motor home dealer:]~~

15 ~~[(1) may quote a price and discuss finance options:]~~

16 ~~[(2) may not sell, offer to sell, negotiate a price,~~
17 ~~or enter into a contract or letter of intention to contract for~~
18 ~~the sale of the product:]~~

19 ~~[(3) may open and attend to the motor home product:]~~

20 ~~[(4) is not required to remove or cover the suggested~~
21 ~~retail price the manufacturer may have affixed to the motor~~
22 ~~home.]~~

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1 ~~[(f) No motor home show shall occur in a county within 90~~
2 ~~days of a previous motor home show within that county. Upon a~~
3 ~~showing of good cause, the division may authorize additional~~
4 ~~motor home shows in any county. Any motor home dealer may attend~~
5 ~~a motor home show so long as no like line dealership is located~~
6 ~~within 70 miles of the show site, unless a written waiver is~~
7 ~~obtained from the like line dealer or dealers located within 70~~
8 ~~miles of the show site. Any like line dealer within 70 miles of~~
9 ~~the show site has a superior and exclusive right to represent~~
10 ~~that line at the proposed show. If there are two or more like~~
11 ~~line dealers located within 70 miles of the show site, each has~~
12 ~~equal right to participate in the proposed show.]~~

13

14 §215.113. Manufacturer Ownership of Franchised Dealer; Good
15 Cause Extension; Dealer Development.

16 (a) In the absence of a showing of good cause, an [An]
17 application for a new motor vehicle dealer's license of [in]
18 which a manufacturer or distributor~~[, as those terms are defined~~
19 ~~in Occupations Code, Chapter 2301,]~~ owns any interest in or has
20 control of the dealership entity must be submitted to the
21 department [division] no later than 30 days before:

22 (1) the opening of the dealership;~~[,]~~

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1 (2) close of the buy-sell agreement;[~~7~~] or

2 (3) the expiration of the current license[~~7, whichever~~
3 ~~is the case~~].

4 (b) If a manufacturer or distributor applies for a new
5 motor vehicle dealer's license of [~~in~~] which the manufacturer or
6 distributor holds an ownership interest in or has control of the
7 dealership entity in accordance with [~~under the terms of~~]
8 Occupations Code, §2301.476(d) - (f) [~~§2301.476(d)~~], the license
9 application must contain a sworn statement from the manufacturer
10 or distributor that the dealership was purchased from a
11 franchised dealer and is for sale at a reasonable price and
12 under reasonable terms and conditions, and that the manufacturer
13 or distributor intends to sell the dealership to a person not
14 controlled or owned by the manufacturer or distributor within 12
15 months of acquiring the dealership, except as provided by [~~in~~]
16 subsection (h) of this section.

17 (c) A request for an extension of the initial 12 month
18 period for manufacturer or distributor ownership or control of a
19 new motor vehicle dealership, in accordance with Occupations
20 Code, §2301.476(e), must be submitted to the department in
21 accordance with subsection (a) of this section[~~7~~] along with a
22 sufficient [~~complete~~] application to renew the new motor vehicle

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1 dealer's license. The request must contain a detailed
2 explanation, including appropriate documentary support, to show
3 the manufacturer's or distributor's good cause for failure to
4 sell the dealership within the initial 12 month period. The
5 director will evaluate the request and determine whether the
6 license should be renewed for a period not to exceed 12 months
7 or deny the renewal application. If the renewal application is
8 denied, the manufacturer or distributor may request a hearing on
9 the denial [~~to be conducted~~] in accordance with Occupations
10 Code, §§2301.701 - 2301.713.

11 (d) Requests for extensions after the first extension is
12 granted, as provided by [~~in~~] Occupations Code, §2301.476(e),
13 must be submitted at least 120 days before the expiration of the
14 current license. Upon receipt of a subsequent request, the board
15 [~~Board~~] will initiate a hearing in accordance with Occupations
16 Code, §§2301.701 - 2301.713, at which the manufacturer or
17 distributor will be required to show good cause for the failure
18 to sell the dealership. The manufacturer or distributor has the
19 burden of proof and the burden of going forward on the sole
20 issue of good cause for the failure to sell the dealership.

21 (e) The department [~~division~~] will give notice of the
22 hearing described in subsection (d) of this section to all other

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1 franchised dealers [~~dealer licensees~~] holding franchises for the
2 sale and service or service only of the same line-make of new
3 motor vehicles that [~~who~~] are located in the same county in
4 which the dealership owned or controlled by the manufacturer or
5 distributor is located or in an area within 15 miles of the
6 dealership owned or controlled by the manufacturer or
7 distributor. Such dealers, if any, will be allowed to intervene
8 and protest the granting of the subsequent extension. Notices of
9 intervention by dealers afforded a right to protest under
10 Occupations Code, §2301.476(e)[~~7~~] must be filed with the
11 department [~~division's Docket Clerk~~] within 15 days of the date
12 of mailing of the notice of hearing, and a copy must be [~~with a~~
13 ~~copy~~] provided to the manufacturer or distributor. The
14 department will reject a notice of intervention if the notice is
15 not filed at least 30 days before: [~~Failure to file a formal~~
16 ~~notice of intervention within the specified time period will~~
17 ~~result in the disallowance of the intervention.~~]

18 (1) the opening of the dealership;

19 (2) close of the buy-sell agreement; or

20 (3) the expiration of the current license.

21 (f) A hearing under subsection (d) [~~subsections (d) and~~
22 ~~(e)~~] of this section will be conducted as expeditiously as

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1 possible, but not later than 120 days after receipt of the
2 subsequent request for extension from the manufacturer or
3 distributor. An [~~A SOAH~~] ALJ will prepare a written decision and
4 proposed findings of fact and conclusions of law as soon as
5 possible, but not later than 60 calendar days after the hearing
6 is closed. The new motor vehicle dealer's license that is the
7 subject of the hearing will continue in effect until a final
8 decision on the request for a subsequent extension is rendered
9 by the board. [~~Board on the request for a subsequent extension.~~]

10 (g) The procedures [~~procedure~~] described in subsections (d)
11 - (f) of this section will be followed for all extensions
12 requested by the manufacturer or distributor after the initial
13 extension.

14 (h) An application for a new motor vehicle dealer's license
15 of [~~in~~] which a manufacturer or distributor owns any interest in
16 the dealership entity in accordance with [~~under the terms of~~]
17 Occupations Code, §2301.476(g)[~~7~~] must contain sufficient
18 documentation to show that the applicant meets the requirements
19 of Occupations Code, §2301.476(g). [~~the following:~~]

20 [~~(1) that the dealer development candidate is part of~~
21 ~~a group of persons who have historically been underrepresented~~
22 ~~in the manufacturer's or distributor's dealer body or is an~~

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1 ~~otherwise qualified person who lacks the resources to purchase a~~
2 ~~dealership outright;]~~

3 ~~[(2) that the manufacturer or distributor is in a bona~~
4 ~~fide relationship with the dealer development candidate;]~~

5 ~~[(3) that the dealer development candidate has made a~~
6 ~~significant investment in the dealership, subject to loss;]~~

7 ~~[(4) that the dealer development candidate has an~~
8 ~~ownership interest in the dealership; and]~~

9 ~~[(5) that the dealer development candidate operates~~
10 ~~the dealership under a plan to acquire full ownership of the~~
11 ~~dealership within a reasonable time and under reasonable terms~~
12 ~~and conditions.]~~

13

14 §215.114. Sale of a Vehicle by a Manufacturer or Distributor at
15 a Wholesale Motor Vehicle [~~Vehicles by Manufacturer/Distributor~~
16 ~~at Wholesale~~] Auction.

17 A manufacturer or distributor [~~who is~~] licensed under
18 Occupations Code, Chapter 2301[~~7~~] or a wholly owned [~~wholly-~~
19 ~~owned~~] subsidiary of a manufacturer or distributor, may sell
20 motor vehicles it owns to dealers through a licensed Texas
21 wholesale motor vehicle auction. A GDN issued to a licensed
22 manufacturer, distributor, or wholly owned subsidiary of a

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1 manufacturer or distributor shall be canceled, unless otherwise
2 allowed under Occupations Code, Chapter 2301. [~~General~~
3 ~~distinguishing numbers currently issued to licensed~~
4 ~~manufacturers, distributors, or their wholly owned subsidiaries~~
5 ~~shall be cancelled on the date this rule becomes effective,~~
6 ~~except where otherwise allowed under the Code.]~~

7

8 §215.115. Manufacturer, Distributor, and Converter Records.

9 (a) A manufacturer or distributor must maintain, for a
10 minimum period of 48 months, a record of each vehicle sold to
11 any person in this state. The manufacturer or distributor shall
12 make the record available during business hours for inspection
13 and copying by a representative of the department.

14 (b) A converter must maintain, for a minimum period of 48
15 months, a record of each vehicle converted to any person in this
16 state, including to a Texas franchised dealer. The converter
17 shall make the record available during business hours for
18 inspection and copying by a representative of the department.

19 [~~(a) Manufacturers and distributors must keep records of~~
20 ~~all vehicles they sell to any person in this state for a minimum~~
21 ~~period of 48 months. These records shall be made available for~~
22 ~~inspection and copying by a representative of the department~~

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1 ~~during business hours.]~~

2 ~~[(b) Converters must keep records of all vehicles converted~~
3 ~~and distributed to Texas franchised dealers for a minimum period~~
4 ~~of 48 months. These records shall be made available for~~
5 ~~inspection and copying by a representative of the department~~
6 ~~during business hours.]~~

7 (c) A manufacturer, distributor, or converter is required
8 to maintain at its licensed location a record reflecting each
9 purchase, sale, or conversion for a minimum period of 24 months.
10 ~~[Records reflecting purchases, sales, or conversions for at~~
11 ~~least the preceding 24 months must be maintained at the licensed~~
12 ~~location.]~~ Records for prior time periods may be kept off-site.

13 (d) Within 15 days of ~~[Upon]~~ receipt of a request sent by
14 mail or electronic document transfer from a representative of
15 the department, a manufacturer, distributor, or converter must
16 submit a copy ~~[copies]~~ of specified records to the address
17 listed in the request ~~[within 15 days]~~.

18 (e) Records required to be maintained ~~[kept]~~ and made
19 available to the department must include the following: ~~[shall~~
20 ~~contain the following information:]~~

21 (1) the date of sale or conversion of the motor
22 vehicle;

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- 1 (2) the VIN [~~vehicle identification number~~];
- 2 (3) the name and address of the purchasing dealer or
3 converter;
- 4 (4) a copy of or a record [~~copies of or records~~] with
5 the information contained in the manufacturer's certificate of
6 origin [~~Manufacturer's Certificate of Origin~~] or title;
- 7 (5) information regarding the prior status of the
8 motor vehicle such as the Reacquired Vehicle Disclosure
9 Statement;
- 10 (6) the repair history of any motor vehicle subject to
11 a warranty complaint;
- 12 (7) technical service bulletin [~~bulletins~~] or
13 equivalent advisory; and [~~advisories; and,~~]
- 14 (8) any audit of a dealership. [~~audits of~~
15 ~~dealerships.~~]
- 16 (f) Any record required by the department may be maintained
17 [~~Electronic records. Any records required to be kept may be~~
18 ~~kept~~] in an electronic format, if the electronic record
19 [~~records~~] can be printed at the licensed location upon request
20 for the record by a representative of the department.
- 21
- 22 §215.116. Lease or Sublease Listing.

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1 A dealer that lists its dealership for lease or sublease to
2 mitigate damages in accordance with Occupations Code,
3 §2301.4651(e)[7] is required to list for lease or sublease:

4 (1) the entire real property if the termination or
5 discontinuance effectively terminates all line-makes and all
6 franchises for the entire dealership; or

7 (2) only that portion of the real property associated
8 with the terminated line-make or franchise, if the termination
9 or discontinuance does not affect all line-makes and all
10 franchises of the dealership.

11

12 §215.117. Market Value Property Appraisal.

13 (a) A market value property appraisal assessment made in
14 accordance with Occupations Code, §2301.482(c)[7] requires three
15 general certified real estate appraisers [~~that have been~~]
16 certified by the State of Texas.

17 (b) Necessary real estate and necessary construction are
18 each determined by the applicable property use agreement.

19 (c) To determine market value of property in accordance
20 with Occupations Code, §2301.482(c), an average of the market
21 value property appraisals will be calculated from the
22 independent market value property assessment determinations of

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1 the three general certified real estate appraisers.

2

3 §215.118. Determination of Affected County for Dealership
4 Relocation.

5 The most recent population data reported by the federal
6 decennial census is used to identify an affected county defined
7 by [under] Occupations Code, §2301.6521.

8

9 §215.119. Standing to Protest.

10 (a) A protesting dealer [~~protestant~~] has the burden to
11 demonstrate standing to protest.

12 (b) Standing requirements are established by the type of
13 application.

14 (1) Protest of an application to establish a
15 dealership or to add a new line-make to an existing dealership
16 requires the protesting dealer [~~protestant~~] to meet standing
17 requirements under Occupations Code, §2301.652;

18 (2) Protest of an application to relocate a dealership
19 requires the protesting dealer [~~protestant~~] to meet standing
20 requirements under Occupations Code, §2301.652;

21 (3) Protest of an application to relocate a dealership
22 within an affected county or from an affected county to an

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1 adjacent affected county requires the protesting dealer
2 [~~protestant~~] to meet standing requirements under Occupations
3 Code, §2301.6521;

4 (4) Protest of an application to relocate an
5 economically impaired dealership requires the protesting dealer
6 [~~protestant~~] to meet standing requirements under Occupations
7 Code, §2301.6522; and

8 (5) Protest of an application filed by a manufacturer,
9 distributor, or representative for an extension of time for
10 ownership or control of a dealership requires the protesting
11 dealer [~~protestant~~] to meet standing requirements under
12 Occupations Code, §2301.476.

13 (c) A person has standing to protest an application to
14 establish a dealership or to add a franchised line-make at an
15 existing dealership if:

16 (1) the person is a franchised dealer of the same
17 line-make; and

18 (2) the person's dealership is located either in the
19 same county as, or within 15 miles of, the dealership for which
20 the application was filed.

21 (d) Except as provided in subsections (e) and (f) of this
22 section, a person has standing to protest an application to

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1 relocate a dealership or to relocate a franchised line-make of
2 an existing dealership if:

3 (1) the person is a franchised dealer of the same
4 line-make;

5 (2) the person's dealership is located either in the
6 same county as, or within 15 miles of, the dealership for which
7 the application for relocation is filed;

8 (3) the proposed relocation site is more than two
9 miles from the location where the dealership is currently
10 licensed; and

11 (4) the proposed relocation site is nearer to the
12 protesting franchised dealer than the location from which the
13 relocating dealership is currently licensed.

14 (e) An application may be filed under Occupations Code,
15 §2301.6521 to relocate a dealership from a location in an
16 affected county to a location that is either within the same
17 affected county or in an adjacent affected county.

18 (1) No dealer has standing to protest an application
19 filed in accordance with this subsection if the proposed
20 relocation site is two miles or less from the relocating
21 dealer's existing licensed location.

22 (2) No dealer has standing to protest an application

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1 filed in accordance with this subsection if the proposed
2 relocation site is farther from the protesting dealer's licensed
3 location than the relocating dealer's existing licensed
4 location.

5 (3) If a dealership of the same line-make as the
6 relocating dealership is located within 15 miles of the proposed
7 relocation site, then a person has standing to protest an
8 application to relocate[7] filed in accordance with this
9 subsection, if:

10 (A) the person is a franchised dealer of the same
11 line-make;

12 (B) the person's dealership is located within 15
13 miles of the proposed relocation site;

14 (C) the proposed relocation site is more than two
15 miles from the location where the dealership is currently
16 licensed; and

17 (D) the proposed relocation site is nearer to the
18 protesting franchised dealer than the location from which the
19 relocating dealership is currently licensed.

20 (4) If no dealership of the same line-make as the
21 relocating dealership is located within 15 miles of the proposed
22 relocation site, then a person has standing to protest an

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1 application to relocate[7] filed in accordance with this
2 subsection, if:

3 (A) the person is a franchised dealer of the same
4 line-make;

5 (B) no other dealership of the same line-make is
6 located nearer to the proposed relocation site;

7 (C) the person's dealership is located in the
8 same affected county as the relocating dealership is proposed to
9 be located;

10 (D) the proposed relocation site is more than two
11 miles from the location where the relocating dealership is
12 currently licensed; and

13 (E) the proposed relocation site is nearer to the
14 protesting franchised dealer than the location from which the
15 relocating dealership is currently licensed.

16 (f) If an economically impaired dealer files an application
17 under Occupations Code, §2301.6522[7] to relocate its
18 dealership, then a dealer may have [~~has~~] standing to protest the
19 application if:

20 (1) the dealer is franchised for a line-make that is
21 the same as a line-make proposed to be relocated;

22 (2) the proposed relocation site is more than two

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1 miles closer to the protesting dealer's dealership than the site
2 of the economically impaired dealer's existing licensed
3 location; and

4 (3) there is no other dealer located nearer to the
5 proposed relocation site that is franchised for a line-make that
6 is proposed to be relocated.

7 (g) A dealer has standing to protest an application for an
8 extension of time that was filed by a manufacturer, distributor,
9 or representative under Occupations Code, §2301.476[7] if:

10 (1) the protesting dealer is franchised for a line-
11 make being sold or serviced from the dealership owned or
12 controlled by a manufacturer, distributor, or representative;
13 and

14 (2) the protesting dealer is located either in the
15 same county as, or within 15 miles of, the dealership owned or
16 controlled by the manufacturer, distributor, or representative.

1 SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

2 §215.131. Purpose and Scope. ~~[Objective.]~~

3 This subchapter implements ~~[The objective of this subchapter is~~
4 ~~to implement the intent of the legislature as declared in]~~
5 Transportation Code, Chapter 503[~~7~~] and Occupations Code,
6 Chapter 2301[~~7~~, ~~by prescribing rules to regulate businesses~~
7 ~~requiring general distinguishing numbers].~~

8

9 §215.132. Definitions.

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

13 (1) Barrier--A material object or set of objects that
14 separates or demarcates.

15 (2) Charitable organization--Has the meaning assigned
16 by Transportation Code, §503.062(e). ~~[An organization that is~~
17 ~~established and exists for the purpose of relieving poverty, the~~
18 ~~advancement of education, religion, or science, the promotion of~~
19 ~~health, governmental, or municipal purposes, or other purposes~~
20 ~~beneficial to the community without financial gain.]~~

21 (3) Consignment sale--The owner-authorized sale of a
22 motor vehicle by a person other than the owner[~~7~~, ~~under the terms~~
23 ~~of a written authorization from the owner].~~

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1 ~~[(4) Dealer--Any person who is regularly and actively~~
2 ~~engaged in the business of buying, selling, or exchanging new or~~
3 ~~used motor vehicles, motorcycles, motor homes, mobility motor~~
4 ~~vehicles, house trailers, or trailers or semitrailers as defined~~
5 ~~in Transportation Code, §501.001 et seq., or Transportation~~
6 ~~Code, §502.001 et seq., at either wholesale or retail, either~~
7 ~~directly, indirectly, or by consignment.]~~

8 ~~[(5) Independent mobility motor vehicle dealer--A~~
9 ~~nonfranchised dealer who:]~~

10 ~~[(A) holds a general distinguishing number issued~~
11 ~~by the department under Transportation Code, Chapter 503,]~~

12 ~~[(B) holds a converter's license issued under~~
13 ~~Occupations Code, Chapter 2301,]~~

14 ~~[(C) is engaged in the business of buying,~~
15 ~~selling, or exchanging mobility motor vehicles and servicing or~~
16 ~~repairing the devices installed on mobility motor vehicles at an~~
17 ~~established and permanent place of business in this state; and]~~

18 ~~[(D) is certified by the manufacturer of each~~
19 ~~mobility device that the dealer installs, if the manufacturer~~
20 ~~offers that certification.]~~

21 (4) [(6)] House trailer--A nonmotorized vehicle
22 designed for human habitation and for carrying persons and
23 property on [upon] its own structure and for being drawn by a

1 motor vehicle. A house trailer [~~The term~~] does not include
2 manufactured housing. A towable recreational vehicle, [~~Towable~~
3 ~~recreational vehicles~~] as defined by [~~in~~] Occupations Code,
4 §2301.002, is [~~are~~] included in the terms "house trailer" or
5 "travel trailer."

6 (5) [~~(7)~~] License--A dealer's GDN [~~general~~
7 ~~distinguishing number~~] assigned by the department identifying
8 the type of business for a specified [~~division for the~~] location
9 from which the person engages in business.

10 [~~(8) Mobility motor vehicle--A motor vehicle that is~~
11 ~~designed and equipped to transport a person with a disability~~
12 ~~and that:~~]

13 [(A) ~~has a chassis that contains:~~]

14 [(i) ~~a permanently lowered floor or lowered~~
15 ~~frame; or~~]

16 [(ii) ~~a permanently raised roof and raised~~
17 ~~door;~~]

18 [(B) ~~contains at least one of the following:~~]

19 [(i) ~~an electronic or mechanical wheelchair,~~
20 ~~scooter, or platform lift that enables a person to enter or exit~~
21 ~~the vehicle while occupying a wheelchair or scooter;~~]

22 [(ii) ~~an electronic or mechanical wheelchair~~
23 ~~ramp; or~~]

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1 ~~[(iii) a system to secure a wheelchair or~~
2 ~~scooter to allow for a person to be safely transported while~~
3 ~~occupying the wheelchair or scooter; and]~~

4 ~~[(C) is installed as an integral part or~~
5 ~~permanent attachment to the motor vehicle's chassis.]~~

6 (6) [(9)] Person--Has the meaning assigned by
7 Occupations Code, §2301.002. ~~[Any individual, firm, partnership,~~
8 ~~corporation, or other legal entity.]~~

9 (7) [(10)] Sale--With regard to a specific vehicle, the
10 transfer of possession of that vehicle to a purchaser for
11 consideration.

12 (8) [(11)] Temporary tag--A buyer's temporary tag,
13 converter's temporary tag, or dealer's temporary tag as
14 described under Transportation Code, Chapter 503. ~~[A buyer tag,~~
15 ~~converter tag, or dealer tag.]~~

16 (9) [(12)] Towable recreational vehicle--Has the same
17 meaning as "house trailer" defined by this section. ~~[See~~
18 ~~definition for House Trailer in this section.]~~

19 (10) [(13)] Travel Trailer--Has the same meaning as
20 "house trailer" defined by this section. ~~[See definition for~~
21 ~~House Trailer in this section.]~~

22 (11) Vehicle--Has the meaning assigned by
23 Transportation Code, §503.001.

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1 (12) VIN--Vehicle identification number.

2 ~~[(14) Wholesale dealer--A licensed dealer who only~~
3 ~~sells or exchanges vehicles with other licensed dealers.]~~

4

5 §215.133. General Distinguishing Number.

6 (a) No person may engage in business as a dealer unless
7 that person has a currently valid general distinguishing number
8 assigned by the department [~~division~~] for each location from
9 which the person engages in business. If a dealer consigns more
10 than five vehicles in a calendar year for sale from a location
11 other than the location for which the dealer holds a general
12 distinguishing number, the dealer must also hold a general
13 distinguishing number for the consignment location.

14 (b) The provisions of subsection (a) of this section do not
15 apply to:

16 (1) a person who sells or offers for sale fewer than
17 five vehicles of the same type as herein described in a calendar
18 year and such vehicles are owned by him and registered and
19 titled in his name;

20 (2) a person who sells or offers to sell a vehicle
21 acquired for personal or business use if the person does not
22 sell or offer to sell to a retail buyer and the transaction is
23 not held for the purpose of avoiding the provisions of

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1 Transportation Code, §503.001 et seq., and this subchapter;

2 (3) an agency of the United States, this state, or
3 local government;

4 (4) a financial institution or other secured party
5 selling a vehicle in which it holds a security interest, in the
6 manner provided by law for the forced sale of that vehicle;

7 (5) a receiver, trustee, administrator, executor,
8 guardian, or other person appointed by or acting pursuant to the
9 order of a court;

10 (6) an insurance company selling a vehicle acquired
11 from the owner as the result of paying an insurance claim;

12 (7) a person selling an antique passenger car or truck
13 that is at least 25 years old or a collector selling a special
14 interest motor vehicle as defined in Transportation Code,
15 §683.077, if the special interest vehicle is at least 12 years
16 old;

17 (8) a licensed auctioneer who, as a bid caller, sells
18 or offers to sell property to the highest bidder at a bona fide
19 auction if neither legal nor equitable title passes to the
20 auctioneer and if the auction is not held for the purpose of
21 avoiding another provision of Transportation Code, §503.001 et
22 seq., and this subchapter; and provided that if an auction is
23 conducted of vehicles owned, legally or equitably, by a person

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1 who holds a general distinguishing number, the auction may be
2 conducted only at a location for which a general distinguishing
3 number has been issued to that person or at a location approved
4 by the department [~~division~~] as provided in §215.135 of this
5 subchapter (relating to More than One Location); and

6 (9) a person who is a domiciliary of another state and
7 who holds a valid dealer license and bond, if applicable, issued
8 by an agency of that state, when the person buys a vehicle from,
9 sells a vehicle to, or exchanges vehicles with a person who:

10 (A) holds a current valid general distinguishing
11 number issued by the department, [~~division~~], if the transaction
12 is not intended to avoid the terms of Transportation Code,
13 §503.001 et seq.; or

14 (B) is a domiciliary of another state if the
15 person holds a valid dealer license and bond, if applicable,
16 issued by that state, and if the transaction is not intended to
17 avoid the terms of Transportation Code, §503.001 e t seq.

18 (c) Application for a general distinguishing number shall
19 be on a form prescribed by the department [~~division~~] properly
20 completed by the applicant showing all information requested
21 thereon and shall be submitted to the department [~~division~~]
22 accompanied by the following:

23 (1) proof of a \$25,000 surety bond as provided in

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1 \$215.137 of this title (relating to Surety Bond); [~~Security~~
2 ~~Requirements~~];]

3 (2) the fee for the general distinguishing number as
4 prescribed by law for each type of license requested;

5 (3) the fee as prescribed by law for each metal dealer
6 [~~metal~~] plate requested as prescribed by law;

7 (4) a copy of each assumed name certificate on file
8 with the Office of the Secretary of State or county clerk; and

9 (5) a photocopy of at least one of the following
10 documents for the owner, president, or managing partner of the
11 dealership:

12 (A) current driver's license;

13 (B) current Department of Public Safety
14 identification;

15 (C) current concealed handgun license or license
16 to carry a handgun issued by the Texas Department of Public
17 Safety under Government Code, Chapter 411, Subchapter H;

18 (D) [~~C~~] current passport; or

19 (E) [~~D~~] current United States armed forces
20 identification.

21 (d) A person who applies for a general distinguishing
22 number and will operate as a dealer under a name other than the
23 name of that person shall use the name under which that person

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1 is authorized to do business, as filed with the Office of the
2 Secretary of State or county clerk, and the assumed name of such
3 legal entity shall be recorded on the application using the
4 letters "DBA."

5 (e) If the general distinguishing number is issued to a
6 corporation, the dealer's name and assumed name used by the
7 dealer, as on file with the Office of the Secretary of State,
8 shall be recorded on the application.

9 (f) A wholesale dealer licensee may buy, sell, or exchange
10 vehicles with licensed dealers. A wholesale dealer licensee
11 holder may not sell or exchange vehicles at retail.

12 (g) An independent mobility motor vehicle dealer shall
13 retain and produce for inspection all records relating to the
14 license requirements under Occupations Code, §2301.002(17-a) and
15 all information and records required under Transportation Code,
16 §503.0295.

17 (h) An application for a general distinguishing number may
18 be denied if an applicant for such license has committed any act
19 that could result in license cancellation or revocation under
20 Transportation Code, §503.001 et seq.; Occupations Code,
21 §2301.001 et seq.; or any rule or regulation of the department.

22 (i) Upon request by the department, the applicant shall
23 submit documents demonstrating that the applicant owns the real

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1 property on which the business is situated or has a written
2 lease for the property that has a term of not less than the term
3 of the license.

4
5 §215.135. More than One Location.

6 (a) A dealer that holds a GDN [~~holding a general~~
7 ~~distinguishing number~~] for a particular type of vehicle may
8 operate from more than one location within the limits of a city,
9 provided each [~~such~~] location is operated by the same legal
10 entity and meets the requirements of §215.140 of this title
11 [~~subchapter~~] (relating to Established and Permanent Place of
12 Business).

13 (b) Additional locations [~~which are~~] not located within the
14 limits of the same city of the initial dealership are required
15 to:

16 (1) obtain a new GDN; and [~~separate license and~~
17 ~~security~~]

18 (2) provide a new surety bond reflecting the
19 additional location, unless the licensed location is exempt by
20 statute from the surety requirement. [~~from the security~~
21 ~~requirement by statute.~~]

22 (c) A dealer that relocates from a point outside the limits
23 of a city or relocates to a point not within the limits of the

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1 same city of the initial location is required to:

2 (1) obtain a new GDN; and

3 (2) provide a new surety bond reflecting the new
4 address, unless the licensed location is exempt by statute from
5 the surety requirement.

6 ~~[(e) Dealerships that are relocated from a point outside~~
7 ~~the limits of a city, or relocated to a point not within the~~
8 ~~limits of the same city of the initial location are required to~~
9 ~~obtain a new license and provide new security reflecting the new~~
10 ~~address unless the location is exempt from the security~~
11 ~~requirement by statute.]~~

12 (d) A dealer shall notify the department ~~[division]~~ in
13 writing within 10 days of ~~[the]~~ opening, closing, or relocating
14 any licensed ~~[relocation of any dealership]~~ location. Each ~~[new]~~
15 location must meet and maintain the requirements of §215.140 ~~[of~~
16 ~~this subchapter]~~.

17 (e) A dealer may not commence business at any location
18 until the department issues a license specific to that location.

19
20 §215.137. Surety Bond. ~~[Security Requirements.]~~

21 ~~[(a) Unless exempt pursuant to subsection (d) of this~~
22 ~~section, a dealer shall maintain a \$25,000 bond conditioned on~~
23 ~~the dealer's payment of all valid bank drafts drawn by the~~

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1 ~~dealer for the purchase of motor vehicles and the dealer's~~
2 ~~transfer of good title to each motor vehicle the dealer offers~~
3 ~~for sale. The bond must be valid for the same period of time as~~
4 ~~the dealer's license and is subject to the following:]~~

5 ~~[-(1) The bond shall be on a form which is prescribed~~
6 ~~by the division and approved by the attorney general and issued~~
7 ~~by a company duly authorized to do business in the state of~~
8 ~~Texas.]~~

9 (a) [(2)] The surety bond required by Transportation Code,
10 §503.033 [The bond] shall be in the legal business name in which
11 the dealer's license will be issued and shall contain the
12 complete physical address of each dealership location licensed
13 under the GDN [general distinguishing number] that the surety
14 bond is intended to cover.

15 (b) [(3)] A surety bond executed by an agent representing
16 [who represents] a bonding company or surety must be supported
17 by an original power of attorney from the bonding company or
18 surety.

19 (c) The identity of the obligee on a surety bond or a rider
20 to a surety bond must be approved by the department. A surety
21 bond or rider to a surety bond may be identified as:

22 (1) a person who obtains a court judgment assessing
23 damages and attorney's fees for an act or omission on which the

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1 bond is conditioned; or

2 (2) unknown.

3 (d) A bonding company that pays any claim against a surety
4 bond shall immediately report the payment to the department.

5 (e) A bonding company shall give written notice to the
6 department 30 days prior to canceling any surety bond.

7 ~~[(b) Recovery against the bond may be made by any person~~
8 ~~who obtains a court judgment assessing damages and/or attorneys~~
9 ~~fees for an act or omission on which the bond is conditioned. If~~
10 ~~the person seeking to obtain such a court judgment is a dealer,~~
11 ~~that dealer shall notify the division of the claim immediately~~
12 ~~upon filing suit on the bond.]~~

13 ~~[(c) Payment of any judgment by the bonding company shall~~
14 ~~be immediately reported to the division in writing.]~~

15 (f) [(d)] The surety bond required by this section does [The
16 provisions of subsection (a) of this section do] not apply to a:

17 (1) franchised motor vehicle dealer [~~who is~~] licensed
18 by the department; [~~division~~]

19 (2) franchised motorcycle dealer [~~who is~~] licensed by
20 the department; [~~division~~]

21 (3) franchised house trailer or travel trailer dealer
22 licensed by the department; or

23 (4) trailer or semitrailer [~~trailer/semitrailer~~]

1 dealer licensed by the department.

2

3 §215.138. Use of Metal Dealer's [~~Dealer~~] License Plates.

4 (a) A metal dealer's license plate [~~Metal dealer license~~
 5 ~~plates~~] shall be attached to the rear license plate holder of a
 6 vehicle in accordance with [~~vehicles on which such plates may be~~
 7 ~~displayed pursuant to~~] Transportation Code, §503.061.

8 (b) A [~~Although not a requirement, a~~] copy of the receipt
 9 for the metal dealer's license plate issued by the department
 10 [~~division~~] should be carried in the vehicle so that the receipt
 11 [~~it~~] can be presented to law enforcement personnel upon request.

12 (c) [~~(b)~~] A metal dealer's license plate [~~Metal dealer~~
 13 ~~license plates~~] may not be displayed on:

14 (1) a laden commercial vehicle [~~vehicles~~] being
 15 operated or moved on [~~upon~~] the public streets or highways; or

16 (2) [~~on~~] the dealer's service or work vehicle,
 17 [~~vehicles,~~] except as provided by Transportation Code,
 18 §503.068(b-1).

19 [~~(1) Examples of vehicles considered as service or~~
 20 ~~work vehicles for purposes of this subsection are:~~]

21 [~~(A) a vehicle used for towing or transporting~~
 22 ~~other vehicles;~~]

23 [~~(B) a vehicle, including a light truck, used in~~

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1 ~~connection with the operation of the dealer's shops or parts~~
 2 ~~department;]~~

3 ~~[(C) a courtesy car on which a courtesy car sign~~
 4 ~~is displayed;]~~

5 ~~[(D) a rental or lease vehicle; and]~~

6 ~~[(E) a boat trailer owned by a dealer or~~
 7 ~~manufacturer that is used to transport more than one boat.]~~

8 ~~[(2)] A light truck is not considered to be a laden~~
 9 ~~commercial vehicle when it is:]~~

10 ~~[(A) mounted with a camper unit; or]~~

11 ~~[(B) towing a trailer for recreational purposes.]~~

12 ~~[(3) As used in this subsection, "light truck" has the~~
 13 ~~meaning assigned by Transportation Code, §541.201.]~~

14 (d) For purposes of this section, a dealer's service or
 15 work vehicle includes:

16 (1) a vehicle used for towing or transporting another
 17 vehicle;

18 (2) a vehicle, including a light truck, used in
 19 connection with the operation of the dealer's shops or parts
 20 department;

21 (3) a courtesy car on which a courtesy car sign is
 22 displayed;

23 (4) a rental or lease vehicle; and

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1 (5) a boat trailer owned by a dealer or manufacturer
2 that is used to transport more than one boat.

3 (e) As used in this section, "light truck" has the meaning
4 assigned by Transportation Code, §541.201.

5 (f) For purposes of this section, a light truck is not
6 considered a laden commercial vehicle when it is:

7 (1) mounted with a camper unit; or

8 (2) towing a trailer for recreational purposes.

9 (g) [(e)] A metal dealer's license plate [Metal dealer
10 license plates] may be displayed only on the type of vehicle for
11 which the GDN [general distinguishing number] is issued and for
12 which a dealer is licensed to sell. A nonfranchised dealer may
13 not display a metal dealer's license plate on a new motor
14 vehicle. [Non-franchised dealers may not display metal dealer
15 plates on new motor vehicles.]

16 (h) A metal dealer's license plate may be displayed only on
17 a vehicle that has a valid inspection in accordance with
18 Transportation Code, Chapter 548.

19 (i) [(d)] A dealer shall maintain a record of each metal
20 dealer's license [dealer metal] plate issued to that dealer. The
21 record must contain: [that contains:]

22 (1) the assigned metal dealer's license plate number;

23 (2) the year and make of the vehicle to which the

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1 metal dealer's license plate is affixed;

2 (3) the VIN [~~vehicle identification number (VIN)~~] of
3 the vehicle; and

4 (4) the name of the person in control of the vehicle.

5 (j) If a dealer cannot account for a metal dealer's license
6 plate that the department issued to that dealer, the dealer
7 must:

8 (1) document the metal dealer's license plate as
9 "void" in the metal dealer's license plate record;

10 (2) within three days of discovering that the metal
11 dealer's license plate is missing, report to the department in
12 writing that the metal dealer's license plate is lost or stolen;
13 and

14 (3) if found, cease use of the metal dealer's license
15 plate.

16 (k) A metal dealer's license plate is no longer valid for
17 use after the dealer reports to the department that the metal
18 dealer's license plate is missing.

19 [~~(e) Dealer metal plates that cannot be accounted for shall~~
20 ~~be voided in the dealer's record and reported as missing to the~~
21 ~~department within three days of the date that the discovery is~~
22 ~~made. After a plate is reported as missing, it is no longer~~
23 ~~valid for use.]~~

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1 ~~[(f) The dealer's record required under subsections (d) and~~
2 ~~(e) of this section shall be available at the dealer's location~~
3 ~~during normal working hours for review by a representative of~~
4 ~~the department.]~~

5
6 §215.139. Metal Dealer's License ~~[Dealer]~~ Plate Allocation.

7 (a) The number of metal dealer's license ~~[dealer]~~ plates a
8 dealer may order for business use is ~~[allocated]~~ based on the
9 type of license for which the dealer applied ~~[for]~~ and the
10 number of vehicles the dealer sold during the previous year.

11 ~~[New license applicants are allotted a predetermined number of~~
12 ~~metal dealer plates during the first license term.]~~

13 (b) A new license applicant is allotted a predetermined
14 number of metal dealer's license plates for the duration of the
15 dealer's first license term.

16 ~~[(b) The maximum number of metal dealer plates issued to a~~
17 ~~new license applicant during the first license term is, unless~~
18 ~~otherwise qualified to receive more:]~~

19 ~~[(1) Franchised motor vehicle dealer -- 5;]~~

20 ~~[(2) Franchised motorcycle dealer -- 5;]~~

21 ~~[(3) Independent motor vehicle dealer -- 2;]~~

22 ~~[(4) Independent motorcycle dealer -- 2;]~~

23 ~~[(5) Franchised or independent travel trailer dealer --~~

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1 ~~2.]~~2 [~~(6) Utility trailer or semi-trailer dealer - 2.]~~3 [~~(7) Independent mobility vehicle dealer - 2; and]~~4 [~~(8) Wholesale dealer - 1.]~~

5 (c) Unless otherwise qualified under this section, the
6 maximum number of metal dealer's license plates the department
7 will issue to a new license applicant during the applicant's
8 first license term is indicated in the following table.

9 Figure 43 TAC §215.139(c)

10 [~~(e) A newly licensed dealership with a previous license~~
11 ~~status is not subject to the initial allotment limits described~~
12 ~~in subsection (b) of this section, and may rely on that previous~~
13 ~~license status to obtain dealer plates, if it is:]~~

14 (d) A dealer that submits an application to the department
15 for a license is not subject to the initial allotment limits
16 described in this section and may rely on that dealer's existing
17 allocation of metal dealer's license plates if that dealer is:

18 (1) a franchised dealership [~~that has been~~] subject to
19 a buy-sell agreement, regardless of a change in the entity or
20 ownership; [~~or~~]

21 (2) any type of dealer that is relocating [~~relocates~~]
22 and has been licensed by the department for a period of one year
23 or longer; or [~~or~~]

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1 (3) any type of dealer that is changing its business
2 entity type and has been licensed by the department for a period
3 of one year or longer.

4 (e) The maximum number of metal dealer's license plates the
5 department will issue to a vehicle dealer per license term is
6 indicated in the following table.

7 Figure 43 TAC §215.139(e)

8 ~~[(d) The maximum number of dealer plates issued to a motor~~
9 ~~vehicle dealer per license term is:]~~

10 ~~[(1) Franchised motor vehicle dealer - 30;]~~

11 ~~[(2) Franchised motorcycle dealer - 10;]~~

12 ~~[(3) Independent motor vehicle dealer - 3;]~~

13 ~~[(4) Independent motorcycle dealer - 3;]~~

14 ~~[(5) Franchised or independent travel trailer dealer -~~
15 ~~3;]~~

16 ~~[(6) Utility trailer or semi-trailer dealer - 3;]~~

17 ~~[(7) Independent mobility vehicle dealer - 3; and]~~

18 ~~[(8) Wholesale dealer - 1.]~~

19 (f) [(e)] A dealer may obtain more than the maximum number
20 of metal dealer's license plates provided by [plates set out in
21 subsections (b) or (d) of] this section[7] by submitting to the
22 department proof of sales for the previous 12-month period that
23 justifies additional allocation.

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1 (1) The number of additional metal dealer's license
2 plates the department will issue to a dealer that demonstrates a
3 need through proof of sales is indicated in the following table.

4 Figure 43 TAC §215.139(f)(1)

5 ~~[(1) The dealer may receive the following additional~~
6 ~~plates:]~~

7 ~~[(A) Wholesale dealers — 1;]~~

8 ~~[(B) Dealers selling fewer than 50 vehicles — 1;]~~

9 ~~[(C) Dealers selling 50 to 99 vehicles — 2;]~~

10 ~~[(D) Dealers selling 100 to 200 vehicles — 5; or]~~

11 ~~[(E) Dealers selling more than 200 vehicles may~~
12 ~~receive any number of dealer plates at the dealer's discretion.]~~

13 (2) For purposes of this ~~[subsection and subsection~~
14 ~~(f) of this]~~ section, proof of sales for the previous 12-month
15 period may consist of a copy of the most recent vehicle
16 inventory tax declaration ~~[recently filed Vehicle Inventory Tax~~
17 ~~Declaration]~~ or monthly statements ~~[duly]~~ filed with the
18 ~~[proper]~~ taxing authority in the county of the dealer's licensed
19 dealership's location. Each copy must be stamped as received
20 by the taxing ~~[tax]~~ authority. A A ~~[Any]~~ franchised dealer's
21 ~~[renewal]~~ license renewal application that indicates sales of
22 more than 200 units is considered to be proof of sales of more
23 than 200 units and no additional proof is required.

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1 (3) The department may not issue more than two metal
2 dealer's license plates to a wholesale motor vehicle dealer. For
3 purposes of this section, a wholesale motor vehicle dealer's
4 proof of sales may be demonstrated to the department by
5 submitting:

6 (A) evidence of the wholesale motor vehicle
7 dealer's sales for the previous 12-month period, if the
8 wholesale motor vehicle dealer has been licensed during those 12
9 months; or

10 (B) other documentation approved by the
11 department demonstrating the wholesale motor vehicle dealer's
12 transactions.

13 (g) [~~+~~] The director may waive the metal dealer's license
14 [dealer] plate issuance restrictions [~~in accordance with this~~
15 subsection] if the waiver is essential for the continuation of
16 the business. The director will determine [~~base the~~
17 ~~determination of]~~ the number of metal dealer's license [~~dealer]~~
18 plates the department will issue based [~~dealer will receive]~~ on
19 the dealer's past sales, dealer's inventory, and any other
20 factor [~~factors that~~] the director determines pertinent.

21 (1) A request for a waiver must be submitted to the
22 director in writing and specifically state why the additional
23 plate is [~~plates are~~] necessary for the continuation of the

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1 applicant's business.

2 (2) A request for a waiver must be accompanied by
3 proof of the dealer's sales for the previous 12-month period,
4 [~~year~~] if applicable.

5 (3) A wholesale motor vehicle dealer may not apply for
6 a waiver of the metal dealer's license [~~dealer~~] plate issuance
7 restrictions.

8 (4) A waiver granted by the director under this
9 section [~~subsection~~] for a specific number of metal dealer's
10 license plates is valid for four years.

11 (h) This section does not apply to a personalized prestige
12 dealer's license plate issued in accordance with Transportation
13 Code, §503.0615.

14
15 §215.140. Established and Permanent Place of Business.
16 A dealer must meet the following requirements at each licensed
17 location and [~~must~~] maintain the [~~following~~] requirements during
18 the [~~entire~~] term of the license.

19 (1) Business hours for retail dealers.

20 (A) A retail dealer's office [~~facility~~] shall be
21 open at least four days per week for at least four consecutive
22 hours per day.

23 (B) The retail dealer's business hours for each

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1 day of the week must be posted at the main entrance of the
2 retail dealer's office that is accessible to the public. The
3 owner or a bona fide employee of the retail dealer shall be at
4 the retail dealer's licensed location during the posted business
5 hours for the purposes [~~purpose~~] of buying, selling, exchanging,
6 or leasing vehicles. If the owner or a bona fide employee is not
7 available to conduct business during the retail dealer's posted
8 business hours due to special circumstances or emergencies, a
9 separate sign must be posted indicating the date and time the
10 retail dealer will resume operations. Regardless of the retail
11 dealer's business hours, the retail dealer's telephone must be
12 answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide
13 employee, answering service, or answering machine.

14 (2) Business hours for wholesale motor vehicle
15 dealers. A dealer that [~~who~~] holds only a wholesale motor
16 vehicle dealer's license must post its business hours at the
17 main entrance of the wholesale motor vehicle dealer's office. A
18 wholesale motor vehicle dealer shall be at the wholesale motor
19 vehicle dealer's licensed location [~~for~~] at least two weekdays
20 per week for at least two consecutive hours per day. Regardless
21 of the wholesale motor vehicle dealer's business hours, the
22 wholesale motor vehicle dealer's telephone must be answered from
23 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee,

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1 answering service, or answering machine.

2 (3) Business sign requirements for retail dealers. A
3 retail dealer must display a conspicuous, permanent sign with
4 letters at least six inches in height showing the retail
5 dealer's business name or assumed name substantially similar to
6 the name reflected on the retail dealer's license[7] under which
7 the retail dealer conducts business. The sign must be
8 permanently mounted at the address listed on the application for
9 the retail dealer's [~~dealer~~] license. A retail dealer may use a
10 temporary sign or banner if that retail [~~the~~] dealer can show
11 proof that a sign [~~is on order~~] that meets the requirements of
12 [~~set out in~~] this paragraph has been ordered.

13 (4) Business sign requirements for wholesale motor
14 vehicle dealers. A wholesale motor vehicle dealer must display a
15 conspicuous, permanent sign with letters at least six inches in
16 height showing the wholesale motor vehicle dealer's business
17 name or assumed name substantially similar to the name reflected
18 on the wholesale motor vehicle dealer's license[7] under which
19 the wholesale motor vehicle dealer conducts business. The sign
20 must be permanently mounted on the business property and shall
21 be on the main door to the wholesale motor vehicle dealer's
22 office or on the outside of the building that houses [~~housing~~]
23 the wholesale motor vehicle dealer's office. If the wholesale

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1 motor vehicle dealer's office [~~dealership~~] is located in an
2 office building with one or more other businesses and an outside
3 sign is not permitted by the landlord, a business sign
4 permanently mounted on or beside the main door to the wholesale
5 motor vehicle dealer's office with letters at least two inches
6 in height is acceptable. A wholesale motor vehicle dealer may
7 use a temporary sign or banner if the wholesale motor vehicle
8 dealer can show proof that a sign [~~is on order~~] that meets the
9 requirements of [~~set out in~~] this paragraph has been ordered.

10 (5) Office structure for a retail dealer and a
11 wholesale motor vehicle dealer. [~~retail and wholesale dealers.~~]

12 (A) A dealer's office [~~The office of a retail or~~
13 ~~wholesale dealer~~] must be located in a building[~~7~~] with
14 connecting exterior walls on all sides.

15 (B) A dealer's office must comply with all
16 applicable local zoning ordinances and deed restrictions.

17 (C) A dealer's office may not be located within a
18 residence, apartment [~~house~~], hotel, motel, or rooming house.

19 (D) The physical address of the dealer's office
20 must be recognized by the U.S. Postal Service or capable of
21 receiving U.S. mail. The department will not mail a license or a
22 metal dealer's license plate to an out of state address.

23 [~~Licenses and metal dealer plates will not be mailed to any out-~~

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1 ~~of state address.]~~

2 (E) A portable-type office structure may qualify
3 as an office only if the structure meets the requirements of
4 this section and is not a readily moveable trailer or other
5 vehicle.

6 (6) Required office equipment for a retail dealer and
7 a wholesale motor vehicle dealer ~~[dealers]~~. At a minimum, a
8 dealer's ~~[the]~~ office must be equipped with:

9 (A) a desk;

10 (B) two chairs;

11 (C) Internet access; and

12 (D) a working telephone number listed in the
13 business name or assumed name under which the dealer conducts
14 ~~[does]~~ business.

15 (7) Number of retail dealers in one office. Not more
16 than four retail dealers may be located in the same business
17 structure.

18 (8) Number of wholesale motor vehicle dealers in one
19 office. Not more than eight wholesale motor vehicle dealers may
20 be located in the same business structure.

21 (9) Office sharing prohibition for retail dealers and
22 wholesale motor vehicle dealers. ~~[Wholesale and retail dealers~~
23 ~~office sharing prohibition.]~~ Unless otherwise authorized by the

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1 Transportation Code, a retail [~~motor vehicle~~] dealer and a
2 wholesale motor vehicle dealer[, ~~either of which is~~] licensed
3 after September 1, 1999, may not be located in the same business
4 structure.

5 (10) Dealer housed with other business.

6 (A) If a person conducts business as a dealer in
7 conjunction with another business owned by the same person and
8 under the same name as the other business, the same telephone
9 number may be used for both businesses. If the name of the
10 dealer differs from the name [~~that~~] of the other business, a
11 separate telephone listing and a separate sign for each business
12 is required.

13 (B) A person may conduct business as a dealer in
14 conjunction with another business not owned by that person only
15 if the dealer owns the property on which business is conducted
16 or has a separate lease agreement from the owner of that
17 property that meets [~~meeting~~] the requirements of [~~paragraph~~
18 ~~(13) of~~] this section. The same telephone number may not be used
19 by both businesses. The dealer must have separate business
20 signs, telephone listings, and office equipment required under
21 this section.

22 (11) Display area requirements.

23 (A) A wholesale motor vehicle dealer is not

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1 required to have display space at the wholesale motor vehicle
2 dealer's business premises.

3 (B) A retail dealer must have an area designated
4 as display space for the retail dealer's inventory. A retail
5 dealer's designated display area must comply with the following
6 requirements. [~~in accordance with this subsection.~~]

7 (i) [~~(A)~~] The display area must be located at
8 the retail dealer's business address or contiguous with the
9 retail dealer's address. A noncontiguous [~~non-contiguous~~]
10 storage lot is permissible only if there is no public access and
11 no sales activity occurs at the storage lot. A sign stating the
12 retail dealer's name, telephone number, and the fact the
13 property is a storage lot is permissible.

14 (ii) [~~(B)~~] The [~~A dealer's~~] display area must
15 be of sufficient size to display at least five vehicles of the
16 type for which the GDN [~~general distinguishing number~~] is
17 issued. Those spaces must be reserved exclusively for the retail
18 dealer's inventory and may not be shared or intermingled with
19 another business or a public parking area, a driveway to the
20 office, or another dealer's display area.

21 (iii) [~~(C)~~] The display area may not be on a
22 public easement, right-of-way, or driveway unless the governing
23 body having jurisdiction of the easement, right-of-way, or

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1 driveway expressly consents in writing to use as a display area.
2 If the easement, right-of-way, or driveway is a part of the
3 state highway system, use as a display area may only be
4 authorized by a lease agreement.

5 (iv) [(D)] If the retail dealer shares a
6 display or parking area with another business, including another
7 dealer, the dealer's vehicle inventory [If the display area is
8 in conjunction with another dealership or another business that
9 is not related to the sale or operation of motor vehicles, the
10 display area for the dealer's inventory] must be separated from
11 the other business's display or [any other business's or
12 dealer's] parking area by a material object or barrier
13 [barriade] that cannot be readily removed. [~~moved by an~~
14 ~~individual.~~]

15 (v) [(E)] The display area must be adequately
16 illuminated if the retail dealer is open at night [after
17 sundown] so that a vehicle [vehieles] for sale can be properly
18 inspected by a potential buyer. [any prospective customer.]

19 (vi) [(F)] The display area may be located
20 inside a building.

21 (12) Dealers holding a license issued under
22 Occupations Code, Chapter 2302. [Dealer with salvage dealer
23 license.] If a dealer also holds a license issued under

1 Occupations Code, Chapter 2302, each salvage motor [~~salvage~~
2 ~~dealer license, each salvage~~] vehicle that is offered for sale
3 on the premises of the dealer's display area must be clearly and
4 conspicuously marked with a sign informing a potential buyer
5 [~~that informs the potential buyers~~] that the vehicle is a
6 salvage motor vehicle. This requirement does not apply to a
7 licensed salvage pool operator.

8 (13) Lease requirements. If the premises from which a
9 dealer conducts business, including any display area, is not
10 owned by the dealer, the dealer must maintain a lease that is
11 continuous during the period of time [~~with the period~~] for which
12 the dealer's license will be issued. The [~~That~~] lease agreement
13 must be on a properly executed form containing at a minimum:

14 (A) the name of the landlord as the lessor of the
15 premises and the name of the dealer as the tenant or lessee of
16 the premises; [~~names of the lessor and lessee;~~]

17 (B) the period of time for which the lease is
18 valid; [~~and~~]

19 (C) the street address or legal description of
20 the property, provided that if only a legal description of the
21 property is included, [~~provided,~~] the applicant must attach a
22 statement that the property description in the lease agreement
23 is the street address identified on the application; and[~~,~~]

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1 (D) the signature of the landlord as the lessor
2 and the signature of the dealer as the tenant or lessee.

3 (14) Dealer must display license. A dealer must
4 display the dealer's [~~dealer~~] license issued by the department
5 at all times in a manner that makes the license easily readable
6 by the public and in a conspicuous place at each place of
7 business for which the dealer's license [~~it~~] is issued. If the
8 dealer's license applies to more than one location, a copy of
9 the original license may be displayed in each supplemental
10 location.

11

12 §215.141. Sanctions.

13 (a) The board or department may:

14 (1) deny an application;

15 (2) revoke a license;

16 (3) suspend a license; and

17 (4) assess a civil penalty or other action against a
18 license applicant, a license holder, or a person engaged in
19 business for which a license is required.

20 [~~(a) Revocation/Denial. The Board may deny, revoke, or~~
21 ~~suspend a dealer's license (general distinguishing number) or~~
22 ~~assess civil penalties against any person if that person:]~~

23 (b) The board or department may take action described in

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1 subsection (a) of this section if a license applicant, a license
2 holder, or a person engaged in business for which a license is
3 required:

4 (1) fails to maintain a good and sufficient bond in
5 the amount of \$25,000 if required;

6 (2) fails to maintain records required under this
7 chapter; [an established and permanent place of business
8 conforming to the regulations pertaining to office, sign, and
9 display space requirements;]

10 (3) refuses [~~to permit~~] or fails to comply with a
11 request by a representative of the department to examine and
12 copy during the license holder's business hours at the licensed
13 location: [the]

14 (A) sales records required to be maintained by
15 [~~kept under~~] \$215.144 of this title (relating to Records);
16 [~~subchapter (relating to Record of Sales and Inventory) and]~~

17 (B) ownership papers for a vehicle [vehicles]
18 owned by that dealer or under that dealer's control; [~~7~~] and

19 (C) evidence of ownership or a current lease
20 agreement for the property on which the business is located;
21 [~~lease rights on the property upon which the dealer's business~~
22 ~~is located, during posted working hours or through a request~~
23 ~~made by the department pursuant to these rules;]~~

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1 (4) refuses or fails to timely comply with a request
2 for records made by a representative of the department;

3 (5) [(4)] holds a wholesale motor vehicle dealer's
4 license and: [dealer license and, without notifying the division
5 and meeting the vehicle display space requirements of §215.140
6 of this subchapter, is found to be selling or offering to sell a
7 vehicle to someone other than a licensed dealer, unless
8 authorized by statute;]

9 (A) fails to meet the requirements of §215.140 of
10 this title (relating to Established and Permanent Place of
11 Business); or

12 (B) sells or offers to sell a motor vehicle to a
13 person other than a licensed dealer;

14 (6) [(5)] sells or offers to sell a type of vehicle
15 that the person is not licensed to sell;

16 (7) [(6)] fails to notify the department [division] of
17 a change of the license holder's physical address, [physical or]
18 mailing address, [and/or] telephone number, or email address
19 within 10 days of the [after such] change;

20 (8) [(7)] fails to notify the department [division] of
21 a license holder's [dealer's] name change or ownership change
22 within 10 days of the [after such] change;

23 (9) [(8)] except as provided by law, issues more than

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1 one buyer's temporary tag for the purpose of extending the
2 purchaser's operating privileges for more than 60 days;

3 (10) [(+9)] fails to remove a license plate or
4 registration insignia [~~license plates as required by law~~] from a
5 vehicle that is displayed for sale;

6 (11) [(+10)] misuses a metal dealer's [~~metal dealer~~]
7 license plate or a temporary tag;

8 (12) [(+11)] fails to display a metal dealer's [~~dealer~~]
9 license plate or temporary tag, as required by law; [~~plates or~~
10 ~~tags in a manner conforming to the regulations pertaining to the~~
11 ~~display of such plates and tags;~~]

12 [~~(12) fails to satisfy the notification requirements~~
13 ~~of §215.144 of this subchapter;~~]

14 (13) holds open a title [~~titles~~] or fails to take
15 assignment of a certificate [~~all certificates~~] of title,
16 manufacturer's certificate, [~~certificates,~~] or other basic
17 evidence of ownership for a vehicle [~~vehicles~~] acquired by the
18 dealer, or fails to assign the certificate of title,
19 manufacturer's certificate, or other basic evidence of ownership
20 for a vehicle sold; [~~vehicles sold (All certificates of title,~~
21 ~~manufacturer's certificates, or other basic evidence of~~
22 ~~ownership for vehicles owned by a dealer must be properly~~
23 ~~executed showing transfer of ownership into the name of the~~

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1 dealer.);]

2 (14) fails to remain regularly and actively engaged in
3 the business of buying, selling, or exchanging vehicles of the
4 type for which the GDN [~~general distinguishing number~~] is issued
5 by the department;

6 (15) violates a provision of Occupations Code, Chapter
7 2301; Transportation Code Chapters 503 and 1000 - 1005; a board
8 order or rule; or a [~~any of the provisions the Codes, or any~~
9 ~~rule or~~] regulation of the department relating to the sale,
10 lease, distribution, financing, or insuring of vehicles,
11 including advertising rules under [~~set out in~~] Subchapter H of
12 this chapter (relating to Advertising);

13 (16) is convicted of an offense that directly relates
14 to the duties or responsibilities of the occupation;

15 (17) is determined by the board or department, in
16 accordance with §215.89 of this title (relating to Fitness), to
17 be unfit to hold a license;

18 (18) [~~16~~] has not assigned at least five vehicles in
19 the prior 12 months, provided the dealer has been licensed more
20 than 12 months;

21 (19) [~~17~~] files a false or forged: [~~title or~~]

22 (A) title document, including an affidavit making
23 application for a certified copy of a title; or

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1 (B) tax document, including a sales tax statement
2 or affidavit; ~~[application for certified copy of a title,]~~

3 (20) ~~[+18]~~ uses or allows use of that dealer's license
4 or location for the purpose of avoiding a provision of
5 Occupations Code, Chapter 2301; Transportation Code, Chapters
6 503 and 1000 - 1005; [the provisions of the dealer law] or other
7 laws;

8 (21) ~~[+19]~~ omits information or makes a material
9 misrepresentation in any application or other documentation
10 [information] filed with the department; [division,]

11 (22) ~~[+20]~~ fails to remit payment as ordered for a
12 civil penalty assessed by the board or department; [for civil
13 penalties assessed by the Board,]

14 (23) ~~[+21]~~ sells a new motor vehicle [vehicles]
15 without a franchised dealer's license issued by the department;
16 [division,]

17 (24) ~~[+22]~~ utilizes a temporary tag that fails to meet
18 the requirements of [specifications as cited in] §215.153 of
19 this title [subchapter] (relating to Specifications for All
20 Temporary Tags); [or]

21 (25) ~~[+23]~~ violates any state or federal law or
22 regulation relating to the sale of a motor vehicle; or[-]

23 (26) effective January 1, 2017, knowingly fails to

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1 disclose that a motor vehicle has been repaired, rebuilt, or
2 reconstructed and issued a title under Transportation Code,
3 §501.100.

4 ~~[(b) Civil penalties. The Board may assess a civil penalty~~
5 ~~of not less than \$50 nor more than \$1,000 against a person that~~
6 ~~is found to have engaged in conduct described in subsection (a)~~
7 ~~of this section, and in determining the amount of any such~~
8 ~~penalty may consider the relevant circumstances, including but~~
9 ~~not limited to the factors enumerated in Occupations Code,~~
10 ~~§2301.801(b).]~~

11 ~~[(c) Warning letter. In lieu of imposing sanctions under~~
12 ~~subsection (a) or (b) of this section, the division may issue a~~
13 ~~warning letter to a person notifying that person of the nature~~
14 ~~of the violation, and specifying the date by which corrective~~
15 ~~action is to be completed and full compliance is to be met;~~
16 ~~provided, however, that the Board may not issue a warning letter~~
17 ~~in more than three subsequent violations of the same or similar~~
18 ~~nature by that person in the same calendar year.]~~

19

20 §215.144. Records. [~~Record of Sales and Inventory.~~]

21 (a) Purchases [~~Purchase~~] and sales records. A dealer must
22 maintain [~~keep~~] a complete record of all vehicle purchases and
23 sales for a minimum period of 48 months and make the record

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1 ~~[those records]~~ available for inspection and copying by a
2 representative of the department during business hours.

3 (b) Independent mobility motor vehicle dealers. An
4 independent mobility motor vehicle dealer must keep a complete
5 written record of each ~~[records relating to a]~~ vehicle purchase,
6 vehicle sale, ~~[or sale]~~ and any adaptive work performed on each
7 ~~[the]~~ vehicle for a minimum period of 36 months after the date
8 the adaptive work is performed on the vehicle.

9 (c) Location of records. A dealer's record ~~[Records]~~
10 reflecting purchases and sales for ~~[at least]~~ the preceding 13
11 months must be maintained at the dealer's licensed location.
12 Original titles are not required to be kept at the licensed
13 location, but must be made available to the agency upon
14 reasonable request. A dealer's record ~~[location. Records]~~ for
15 prior time periods may be kept off-site ~~[at a location within~~
16 ~~the same county].~~

17 (d) Request for records. Within 15 days of ~~[Upon]~~ receipt
18 of a request sent by mail or electronic document transfer from a
19 representative of the department, ~~[the division,]~~ a dealer must
20 deliver a copy of the ~~[produce copies of]~~ specified records to
21 the address listed in the request ~~[within 15 days.]~~ If a dealer
22 has a concern about the origin of a records request, the dealer
23 may verify that request with the division prior to submitting

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1 its records.

2 (e) Content of records. A dealer's complete record for each
3 vehicle purchase or vehicle sale must contain: [~~As used in this~~
4 ~~subsection, a complete record of vehicle purchases and sales~~
5 ~~shall contain the following information or documents:~~]

6 (1) the date of the purchase;

7 (2) the date of the sale;

8 (3) the VIN; [~~vehicle identification number;~~]

9 (4) the name and address of the person selling the
10 vehicle to the dealer;

11 (5) the name and address of the person purchasing the
12 vehicle from the dealer;

13 (6) the name and address of the consigner [~~selling~~
14 ~~dealer~~] if the vehicle is offered for sale by consignment;

15 (7) except for [~~in~~] a purchase or sale where the Tax
16 Code does not require payment of motor vehicle sales tax, a [~~by a~~
17 ~~wholesale dealer,~~] copy of the receipt, titled "Tax [~~Tax~~]
18 Collector's Receipt for Texas Title

19 Application/Registration/Motor Vehicle Tax" [~~Tax, Form 31~~];

20 (8) a copy of [~~copies of any and~~] all documents,
21 forms, and agreements applicable to a particular sale, including
22 a copy of: [~~including, but not limited to title applications,~~
23 ~~work-up sheets, Manufacturer's Certificates of Origin, titles or~~

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1 ~~photocopies of the front and back of titles, factory invoices,~~
2 ~~sales contracts, retail installment agreements, buyer's orders,~~
3 ~~bills of sale, waivers, or other agreements between the seller~~
4 ~~and purchaser;]~~

5 (A) the title application;

6 (B) the work-up sheet;

7 (C) the front and back of manufacturer's

8 certificate of origin or manufacturer's statement of origin,

9 unless the title is obtained through the electronic title

10 system;

11 (D) the front and back of the title, unless the

12 title is obtained through the electronic title system;

13 (E) the factory invoice;

14 (F) the sales contract;

15 (G) the retail installment agreement;

16 (H) the buyer's order;

17 (I) the bill of sale;

18 (J) any waiver;

19 (K) any other agreement between the seller and

20 purchaser; and

21 (L) Form VTR-136, relating to County of Title

22 Issuance, completed and signed by the buyer;

23 (9) the original manufacturer's certificate of origin,

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1 original manufacturer's statement of origin, or original title
2 for motor vehicles offered for sale by a dealer, and a properly
3 stamped original manufacturer's certificate of origin, original
4 manufacturer's statement of origin, or original title for motor
5 vehicles sold by a dealer if the title transaction is entered
6 into the electronic system by the dealer;

7 (10) ~~(9)~~ the dealer's monthly Motor Vehicle Seller
8 Financed Sales Returns, if any; and

9 (11) ~~(10)~~ if the vehicle sold is a motor home or a
10 towable recreational vehicle[7] subject to inspection under
11 Transportation Code, Chapter 548, a copy of the written notice
12 provided to the buyer at the time of the sale, [sale] notifying
13 the buyer that the vehicle is subject to inspection
14 requirements.

15 (f) Title assignments. ~~[All certificates of title,~~
16 ~~manufacturer's certificates, or other evidence of ownership for~~
17 ~~vehicles offered for sale or which have been acquired by a~~
18 ~~dealer must be properly assigned into the dealer's name.]~~

19 (1) For each vehicle a dealer acquires or offers for
20 sale, the dealer must properly take assignment in the dealer's
21 name of any:

22 (A) title;

23 (B) manufacturer's statement of origin;

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1 (C) manufacturer's certificate of origin; or

2 (D) other evidence of ownership.

3 (2) A dealer must apply in the name of the purchaser
4 of a ~~[motor]~~ vehicle for the registration of the ~~[motor]~~ vehicle
5 with the appropriate county tax assessor-collector as selected
6 by the purchaser.

7 (3) To comply ~~[To be in compliance]~~ with
8 Transportation Code, §501.0234(f), a registration is [and]
9 considered filed within a reasonable time if the registration is
10 filed within: ~~[, a registration filed in Texas must be filed~~
11 ~~within]~~

12 (A) 20 working days of the date of sale of the
13 vehicle for a vehicle registered in Texas; or ~~[. For a~~
14 ~~transaction that is dealer-financed, a registration filed in~~
15 ~~Texas within]~~

16 (B) 45 days of the date of sale of the vehicle
17 for a dealer-financed transaction involving a vehicle that is
18 registered in Texas. ~~[will be considered filed within a~~
19 ~~reasonable time.]~~

20 (4) The dealer is required to ~~[shall]~~ provide to the
21 purchaser the receipt for the registration application.

22 (5) The dealer is required to ~~[and]~~ maintain a copy of
23 the receipt for the registration application in the dealer's

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1 sales file.

2 (g) Out of state sales. For ~~[Out of state sales. When]~~ a
3 sales transaction involving ~~[involves]~~ a vehicle to be
4 transferred out of state, the dealer must: ~~[7]~~

5 (1) within 20 working days of the date of sale, either
6 file the application for certificate of title on behalf of ~~[for]~~
7 the purchaser or deliver the properly assigned evidence of
8 ownership to the purchaser; and ~~[7]~~

9 (2) maintain in the dealer's record at the dealer's
10 licensed location ~~[In such instance,]~~ a photocopy of the
11 completed sales tax exemption form for out of state ~~[out of-~~
12 ~~state]~~ sales approved by the Texas Comptroller of Public
13 Accounts ~~[shall be maintained on file at the dealer's business~~
14 ~~location]~~.

15 (h) Consignment sales. A dealer offering a vehicle for sale
16 by consignment shall have a written consignment agreement ~~[for~~
17 ~~the vehicle]~~ or a power of attorney for ~~[covering]~~ the vehicle,
18 and shall, after the sale of the vehicle, take assignment of the
19 vehicle in the dealer's name and, pursuant to subsection (f),
20 apply in the name of the purchaser for transfer of title and
21 registration, if the vehicle is to be registered, with the
22 appropriate county tax assessor-collector as selected by the
23 purchaser. The dealer must, for a minimum of 48 months, ~~and~~

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1 ~~shall]~~ maintain a record of each [~~such~~] vehicle offered for sale
2 by consignment, including the VIN and the name of the owner of
3 the vehicle offered for sale by consignment. [~~by vehicle~~
4 ~~identification number and owner of each such vehicle handled on~~
5 ~~consignment for a minimum of 48 months.~~]

6 (i) Public motor vehicle auctions.

7 (1) A GDN holder that [~~general distinguishing number~~
8 ~~holder who~~] acts as a public motor vehicle auction must comply
9 with [~~the requirements relating to consignment sales as set out~~
10 ~~in~~] subsection (h) of this section.

11 (2) A public motor vehicle auction:

12 (A) is not required to take assignment of title
13 of a vehicle [~~vehicles~~] it offers for sale; [~~but~~]

14 (B) must take assignment of title of a vehicle
15 from a consignor prior to making application for title on behalf
16 of the buyer; and [~~+~~]

17 (C) [~~(3) A public motor vehicle auction~~] must make
18 application for title on behalf of the purchaser and remit motor
19 vehicle sales tax within 20 working days of the sale of the
20 [~~motor~~] vehicle.

21 (3) A GDN holder may not sell another GDN holder's
22 vehicle at a public motor vehicle auction.

23 (j) Wholesale motor vehicle auction records. A wholesale

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1 motor vehicle auction license holder must maintain, for a
2 minimum of 48 months, [auction must keep] a complete record of
3 each vehicle purchase and sale [all vehicle purchases and sales]
4 occurring through the wholesale motor vehicle auction. The
5 wholesale motor vehicle auction license holder shall make the
6 record [auction for a minimum period of 48 months and such
7 records shall be made] available for inspection and copying by a
8 representative of the department during business hours.

9 (1) A wholesale motor vehicle auction license holder
10 must maintain at the licensed location a record reflecting each
11 purchase and sale [Records reflecting purchases and sales] for
12 at least the preceding 24 months [must be maintained at the
13 licensed location]. Records for prior time periods may be kept
14 off-site [at a location within the same county].

15 (2) Within 15 days of [Upon] receipt of a request sent
16 by mail[7] or by electronic document transfer from a
17 representative of the department, a wholesale motor vehicle
18 auction license holder must deliver a copy of the [auction must
19 submit copies of] specified records to the address listed in the
20 request [within 15 days].

21 (3) A wholesale motor vehicle auction license holder's
22 complete record of each vehicle purchase and sale shall, at a
23 minimum, contain: [The records required to be kept by a

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1 ~~wholesale auction shall at a minimum provide the following~~
2 ~~information:]~~

3 (A) the date of sale;

4 (B) the VIN; [~~vehicle identification number,~~]

5 (C) the name and address of the person selling
6 the vehicle;

7 (D) the name and address of the person purchasing
8 the vehicle;

9 (E) the dealer license number of both the selling
10 dealer and the purchasing dealer, [~~seller and buyer~~] unless
11 either is exempt from holding a license;

12 (F) all information necessary to comply with the
13 Truth in Mileage Act;

14 (G) auction access documents, including the
15 written authorization and revocation [~~cancellation~~] of
16 authorization for an agent or employee, in accordance with
17 [~~agents, employees, or representatives required by~~] §215.148 of
18 this title [~~subchapter~~] (relating to Dealer Agents);

19 (H) invoices, bills of sale, checks, drafts, or
20 other documents that identify the vehicle, the parties, or the
21 purchase price;

22 (I) any information regarding the prior status of
23 the vehicle such as the Reacquired Vehicle Disclosure Statement

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1 or other lemon law disclosures; and

2 (J) a copy [~~copies~~] of any written authorization
3 [~~authorizations~~] allowing an agent of a dealer to enter the
4 auction.

5 (k) Electronic records. A license holder may maintain a
6 record in an electronic format if the license holder can print
7 the record at the licensed location upon request by a
8 representative of the department. A license holder does not have
9 to maintain a copy of a vehicle title if the title is submitted
10 through the electronic title system. [~~Any records required to be~~
11 ~~kept by a licensee may be kept in an electronic format, if the~~
12 ~~electronic records can be printed at the licensed location upon~~
13 ~~request by a representative of the department. Original hard~~
14 ~~copy titles or photocopies of the front and back of titles of~~
15 ~~vehicles in a dealer's inventory shall be kept in a secure~~
16 ~~location at the licensed location or within the same county as~~
17 ~~the licensed location.]~~

18

19 §215.145. Change of Dealer's Status.

20 (a) A dealer's name change requires [~~shall require~~] a new
21 bond or a rider to the existing bond reflecting the new dealer
22 name, unless the dealer is not otherwise required to purchase a
23 bond. [~~The dealer may retain the same general distinguishing~~

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1 ~~number.]~~

2 (b) A dealer shall notify the department [~~division~~] in
3 writing within 10 days of a [~~if there is any~~] change of
4 ownership. A licensed dealer that [~~who~~] proposes to sell or
5 [~~and/or~~] assign to another any interest in the licensed entity,
6 whether a corporation or otherwise, and provided [~~so long as~~]
7 the physical location of the licensed entity remains the same,
8 shall notify the department [~~division~~] in writing within 10
9 [~~ten~~] days of the change by filing an application to amend the
10 license. If the sale or assignment of any portion of the
11 business results in a change of entity, then the new entity must
12 apply for and obtain a new license. A publicly held corporation
13 [~~Publicly held corporations need~~] only needs to inform the
14 department [~~division~~] of a change in ownership if one person or
15 entity acquires a 10% [~~10 percent~~] or greater interest in the
16 licensed entity. [~~licensee.~~]

17 (c) Upon the death of a dealer of a dealership [~~If a~~
18 ~~dealership is~~] operated as a sole proprietorship [~~and the sole~~
19 ~~proprietor dies~~], either the surviving spouse of the deceased
20 dealer[~~7~~] or other individual deemed qualified by the department
21 [~~division,~~] shall submit to the department [~~division~~] a bond
22 rider adding the name of the surviving spouse or other
23 qualifying person [~~his or her name~~] to the bond for the

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1 remainder of the bond and license term. The surviving spouse or
2 other qualifying person [~~That person~~] may continue dealership
3 operations under the current dealer license until the end of the
4 license term. [~~its expiration. In the event the qualifying~~
5 ~~individual is a surviving spouse, he or she may change the~~
6 ~~ownership of the dealership upon renewal of the license without~~
7 ~~applying for a new general distinguishing number by submitting~~
8 ~~additional information regarding ownership, business background,~~
9 ~~and financial responsibility as required for a new application.]~~

10 (d) For purposes of subsection (c) of this section, if the
11 qualifying person is the sole proprietor's surviving spouse,
12 then the surviving spouse may change the ownership of the
13 dealership at the time the license is renewed without applying
14 for a new GDN. At the time the renewal application is filed, the
15 sole proprietor's surviving spouse is required to submit to the
16 department:

- 17 (1) an application to amend the business entity;
18 (2) a copy of the sole proprietor's certificate of
19 death, naming the surviving spouse;
20 (3) the required ownership information; and
21 (4) a bond in the name of the surviving spouse.

22 (e) For purposes of subsection (c) of this section, if the
23 qualifying person is not the surviving spouse, then the

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1 qualifying person may operate the sole proprietorship business
2 during the term of the license. The qualifying person must file
3 with the department:

4 (1) an application to amend the business entity,
5 identifying the qualifying person as the manager;

6 (2) an ownership information form, indicating that the
7 qualifying person has no ownership interest in the business; and

8 (3) a bond rider adding the individual's name to the
9 existing bond.

10 (f) For purposes of subsection (c) of this section, if the
11 qualifying person is not the surviving spouse, then at the time
12 the license is due to be renewed, the qualifying person must
13 file with the department an application for a new GDN.

14 (g) A determination made under this section does not impact
15 a decision made by the board under Occupations Code, §2301.462,
16 Succession Following Death of Dealer.

17

18 §215.146. Metal Converter's License Plates.

19 (a) A metal [Metal] converter's license plate [plates]
20 shall be attached to the rear license plate holder of a vehicle
21 in accordance with [~~vehicles on which the plates may be~~
22 ~~displayed pursuant to~~] Transportation Code, §503.0618.

23 [~~(b) Metal converter's license plates tags may be displayed~~

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1 ~~only on the type of vehicle that the converter is engaged in the~~
2 ~~business of assembling or modifying.]~~

3 ~~[(e) When an unregistered new motor vehicle is sold to a~~
4 ~~converter, the selling dealer shall remove the dealer's~~
5 ~~temporary tag. The selling dealer may attach a buyer's temporary~~
6 ~~tag to that vehicle or the purchasing converter may display a~~
7 ~~converter's temporary tag or metal converter plate on that~~
8 ~~vehicle.]~~

9 (b) [(d)] A converter shall maintain a record of each metal
10 converter's license plate [~~converter metal plate~~] issued to that
11 converter. The record of each metal converter's license plate
12 issued must contain: [~~that contains:~~]

13 (1) the assigned metal converter's license plate
14 number;

15 (2) the year and make of the vehicle to which the
16 metal converter's license plate is affixed;

17 (3) the VIN [~~vehicle identification number~~] of the
18 vehicle [~~(VIN)~~]; and

19 (4) the name of the person in control of the vehicle.

20 (c) If a converter cannot account for a metal converter's
21 license plate that the department issued to the converter, the
22 converter must:

23 (1) document the metal converter's license plate as

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1 "void" in the converter's metal license plate record;

2 (2) within three days of discovering that the plate is
3 missing, report to the department in writing that the metal
4 converter's license plate is lost or stolen; and

5 (3) if found, cease use of the metal converter's
6 license plate.

7 (d) A metal converter's license plate is no longer valid
8 for use after the converter reports to the department that the
9 plate is missing.

10 (e) A metal converter's license plate record shall be made
11 available for inspection and copying by the department at the
12 converter's licensed location during the converter's posted
13 business hours.

14 ~~[(e) Converter metal plates that cannot be accounted for~~
15 ~~shall be voided in the converter's dealer's record and reported~~
16 ~~as missing to the department within three days of the date that~~
17 ~~the discovery is made. After a plate is reported as missing it~~
18 ~~is no longer valid.]~~

19 ~~[(f) The converter's record, required under subsections (d)~~
20 ~~and (e) of this section, shall be available at the converter's~~
21 ~~location during normal working hours for review by a~~
22 ~~representative of the department.]~~

23

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1 §215.147. Export Sales.

2 (a) Before selling a motor vehicle for export from the
3 United States to another country, a dealer must obtain a legible
4 photocopy of the buyer's government-issued photo identification
5 document. The photo identification document must be issued by
6 the jurisdiction where the buyer resides and be [~~may consist~~
7 ~~of~~]:

8 (1) a passport;

9 (2) a driver's license;

10 (3) a concealed handgun license or license to carry a
11 handgun issued by the Texas Department of Public Safety under
12 Government Code, Chapter 411, Subchapter H;

13 [~~(3) a consular identity document;~~]

14 (4) a national identification certificate or identity
15 document; or

16 (5) other identification document containing the:

17 [~~issued by the jurisdiction where the buyer resides that is able~~
18 ~~to be verified by law enforcement and includes the]~~

19 (A) name of the issuing jurisdiction; [~~the~~]

20 (B) buyer's full name; [~~τ~~]

21 (C) buyer's foreign address; [~~τ~~]

22 (D) buyer's date of birth; [~~τ~~]

23 (E) buyer's photograph; [~~τ~~] and

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1 (F) buyer's signature.

2 (b) A dealer that sells a vehicle for export from the
3 United States shall place a stamp on the title that includes the
4 words "For Export Only" and includes the license holder's GDN.
5 The stamp must be legible, in black ink, at least two inches
6 wide, and placed on the:

7 (1) back of the title in all unused dealer
8 reassignment spaces; and

9 (2) front of the title in a manner that does not
10 obscure any names, dates, mileage statements, or other
11 information printed on the title.

12 ~~[(b) All licensees that sell a vehicle for export from the~~
13 ~~United States shall stamp in black ink on the back of the title~~
14 ~~in all unused dealer reassignment spaces the words "For Export~~
15 ~~Only" and their General Distinguishing Number. The licensee~~
16 ~~shall also place the stamp on the front of the title in a manner~~
17 ~~that does not obscure any names, dates, mileage statements or~~
18 ~~other information printed on the title. The stamp must be at~~
19 ~~least two inches wide, and all text and the license number must~~
20 ~~be clearly legible.]~~

21 (c) In addition to the records required to be maintained by
22 §215.144 of this title (relating to Records), a dealer shall
23 maintain, for each motor vehicle sold for export, a sales file

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1 record. The sales file record shall be made available for
2 inspection and copying upon request by the department. The sales
3 file record of each vehicle sold for export shall contain:
4 ~~[\$215.144(d) and (i) of this subchapter (relating to Record of~~
5 ~~Sales and Inventory), a licensee shall maintain the following~~
6 ~~records in the sales file for each vehicle sold for export and~~
7 ~~shall make those records available upon request by a~~
8 ~~representative of the department.]~~

9 (1) a [A] completed copy of the Texas Motor Vehicle
10 Sales Tax Exemption Certificate for Vehicles Taken Out of State
11 ~~[for each vehicle sold]~~, indicating that the vehicle has been
12 purchased for export to a foreign country;

13 (2) a [A] copy of the front and back of the title of
14 ~~[to]~~ the vehicle, showing the "For Export Only" stamp and the
15 GDN of the dealer; and ~~[General Distinguishing Number of the~~
16 ~~auction or dealer;]~~

17 ~~[(3) A legible copy of each buyer's photo~~
18 ~~identification document; and]~~

19 (3) ~~[(4)]~~ if ~~[(if)]~~ applicable, an Export-only Sales
20 Record Form, listing each motor vehicle sold for export only.

21 (d) A dealer, at the time of sale of a vehicle for export,
22 shall:

23 (1) enter the information required by Transportation

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1 Code, §503.061 in the temporary tag database;
2 (2) designate the sale as "For Export Only"; and
3 (3) issue a buyer's temporary tag, in accordance with
4 Transportation Code, §503.063. [~~temporary buyer's tag as~~
5 ~~required by Transportation Code, §503.063 after entering the~~
6 ~~information in the database as required by Transportation Code,~~
7 ~~§503.061, and report the sale as for export.]~~

8
9 §215.148. Dealer Agents.

10 (a) A dealer must provide written authorization to each
11 person with whom the dealer's agent or employee will conduct
12 business on behalf of the dealer, including to a person that:

13 (1) buys and sells motor vehicles for resale; or
14 (2) operates a licensed auction.

15 (b) If a dealer's agent or employee that conducts business
16 on behalf of the dealer commits an act or omission that would be
17 cause for denial, revocation, or suspension of a license in
18 accordance with Occupations Code, Chapter 2301, the board may:

19 (1) deny an application for a license; or
20 (2) revoke or suspend a license.

21 (c) The board may take action described in subsection (b)
22 of this section after notice and an opportunity for hearing, in
23 accordance with Occupations Code, Chapter 2301.

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1 (d) A dealer's authorization to an agent or employee shall:

2 (1) be in writing;

3 (2) be signed by the dealer principal or person in
4 charge of daily activities of the dealership;

5 (3) include the agent's or employee's name, current
6 mailing address, and telephone number;

7 (4) include the dealer's business name, address, and
8 dealer license number or numbers;

9 (5) expressly authorize buying or selling by the
10 specified agent or employee;

11 (6) state that the dealer is liable for any act or
12 omission regarding a duty or obligation of the dealer that is
13 caused by that agent or employee, including any financial
14 considerations to be paid for the vehicle;

15 (7) state that the dealer's authorization remains in
16 effect until the recipient of the written authorization is
17 notified in writing of the revocation of the authority; and

18 (8) be maintained as a required dealer's record and
19 made available upon request by a representative of the
20 department, in accordance with the requirements of §215.144 of
21 this title (relating to Records).

22 ~~(a) In regard to the duties and obligations of a dealer, a~~
23 ~~dealer is responsible for the acts and omissions of any agent,~~

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1 ~~representative, or employee if that dealer has given authority~~
2 ~~to any person for that agent, representative, or employee to act~~
3 ~~on the behalf of the dealer. This section is not to be construed~~
4 ~~in any manner to allow retail sales by any dealer agent or~~
5 ~~representative. The term "employee" used in this section~~
6 ~~includes only those persons paid by the licensee and reported on~~
7 ~~the federal form W-2, Wage and Tax Statement.]~~

8 ~~[(b) A dealer must provide written authorization to any~~
9 ~~person buying or selling motor vehicles for resale or operating~~
10 ~~a licensed auction for the sale of motor vehicles for resale~~
11 ~~with which an agent, representative, or employee will be~~
12 ~~conducting business or acting on the dealer's behalf.]~~

13 ~~[(1) Once a dealer has given written authorization for~~
14 ~~an agent, representative, or employee to buy and sell motor~~
15 ~~vehicles for resale for that dealer, the dealer shall be liable~~
16 ~~for any acts or omissions regarding duties and obligations of~~
17 ~~dealers caused by that agent, representative, or employee unless~~
18 ~~and until either the earlier of written notification of~~
19 ~~revocation of the agent's, representative's or employee's~~
20 ~~authority or revocation of the dealer's license.]~~

21 ~~[(2) Written authorization shall be a letter on the~~
22 ~~dealership letterhead of the dealer authorizing buying or~~
23 ~~selling, or on a form approved by the director, and stating that~~

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1 ~~the dealer is liable for any acts or omissions regarding duties~~
2 ~~and obligations of dealers, caused by that agent,~~
3 ~~representative, or employee including any financial~~
4 ~~considerations to be paid for the vehicle unless and until the~~
5 ~~recipient is notified in writing of the revocation of the~~
6 ~~authority. The letter or form shall be signed by the dealer~~
7 ~~principal or person in charge of daily activities of the~~
8 ~~dealership.]~~

9 ~~[(3) The written authorization shall include the~~
10 ~~employee, agent or representative's name; current mailing~~
11 ~~address; phone number; the business name, address, and license~~
12 ~~number of the dealer with whom the employee or agent is~~
13 ~~associated. The written authorization is a record that must be~~
14 ~~kept as all other records set out in §215.144 of this subchapter~~
15 ~~(relating to Record of Sales and Inventory) and shall be made~~
16 ~~available to a division representative upon request.]~~

17 (e) [(e)] A license holder, including a wholesale motor
18 vehicle auction license holder that ~~[Any licensee, including~~
19 ~~wholesale auctions who act on behalf of others, who]~~ buys and
20 sells vehicles on a wholesale basis, including by sealed bid, is
21 required to verify the authority of any person claiming to be an
22 agent or employee of a licensed dealer who purports to be buying
23 or selling a motor vehicle: ~~[either an employee, agent or~~

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1 ~~representative who represents they are buying or selling motor~~
2 ~~vehicles]~~

3 (1) on behalf of a licensed dealer; or[-]

4 (2) under the written authority of a licensed dealer.

5 (f) [-(d)] A title to a vehicle bought by an agent or
6 employee [~~Titles to vehicles bought by an employee, agent or~~
7 ~~representative]~~ of a dealer shall be:

8 (1) reassigned to the dealer by the seller or by the
9 auction; and [~~auction and]~~

10 (2) shall not be delivered to the agent or employee,
11 [~~agent or representative]~~ but delivered only to the dealer [-
12 ~~the dealer's employee,~~] or the dealer's financial institution.

13 (g) Notwithstanding the prohibitions in this section, an
14 authorized agent[- representative] or employee may sign a [any]
15 required odometer statement. [~~statements.~~]

16 (h) [-(e)] In a wholesale transaction for the purchase of a
17 motor vehicle, the seller may accept as consideration only:

18 (1) a check or a draft drawn [~~Only checks or drafts~~
19 ~~drawn]~~ on the purchasing dealer's account; [- or]

20 (2) a cashier's check [~~cashiers checks]~~ in the name of
21 the purchasing dealer; [-] or

22 (3) a wire transfer [~~wire transfers]~~ from the
23 purchasing dealer's bank account [~~shall be accepted for motor~~

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1 ~~vehicles purchased in a wholesale transaction].~~

2

3 \$215.149. Independent Mobility Motor Vehicle Dealers.

4 In accordance with Occupations Code, \$2301.361, [~~\$2301.362,~~] a
5 transaction occurs through or by a franchised dealer of the
6 motor vehicle's chassis line-make [~~line-make~~] if the franchised
7 dealer applies for title and registration of the mobility motor
8 vehicle in the name of the purchaser. An independent mobility
9 motor vehicle dealer may prepare the documentation necessary for
10 a franchised dealer to comply with the requirements of
11 Transportation Code, \$501.0234 in connection with the sale of a
12 mobility motor vehicle.

13

14 \$215.150. Authorization to Issue Temporary Tags.

15 (a) A dealer that holds a GDN may issue a dealer's
16 temporary tag, buyer's temporary tag, or a preprinted Internet-
17 down temporary tag [~~Dealers who hold a General Distinguishing~~
18 ~~Number license may issue dealer temporary tags, buyer's~~
19 ~~temporary tags, and Internet-down temporary tags] for each type
20 of vehicle the dealer is licensed to sell. A converter that
21 [~~who~~] holds a converter's license under Occupations Code,
22 Chapter 2301 may issue a converter's temporary tag. [~~converter~~
23 ~~temporary tags.~~]~~

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1 (b) A license holder [Licensees] may issue an applicable
2 dealer's temporary tag, buyer's temporary tag, or converter's
3 temporary tag [temporary dealer, buyer's, or converter tags]
4 until the [a] license is canceled [cancelled], revoked, or
5 suspended [in accordance with law].

6 ~~[(e) A dealer's authorization to obtain numbers in advance~~
7 ~~for use on Internet-down tags may be modified, suspended, or~~
8 ~~revoked after opportunity for hearing in accordance with~~
9 ~~Occupations Code, Chapter 2301 and Government Code, Chapter~~
10 ~~2001, if the dealer has misused the tags or failed to comply~~
11 ~~with the requirements for issuance and recordkeeping in~~
12 ~~Transportation Code, §503.067 or this subchapter.]~~

13

14 §215.151. Temporary Tags, General Use Requirements, and
15 Prohibitions.

16 (a) A dealer shall secure a temporary tag to a vehicle in
17 the license plate display area located at the rear of the
18 vehicle, so that the entire temporary tag is visible and legible
19 at all times, including when the vehicle is being operated.

20 ~~[(a) All temporary tags shall be displayed in the rear~~
21 ~~license plate display area of the vehicle. The tag must be~~
22 ~~secured to the vehicle so that the entire tag is visible and~~
23 ~~legible.]~~

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1 (b) All printed information on a temporary tag must be
2 visible and may not be covered or obstructed by any plate holder
3 or other device or material.

4 [~~(c) Homemade tags or tags that have buyer's tag~~
5 ~~information printed on one side and dealer's tag information~~
6 ~~printed on the other side are not permitted.~~]

7 (c) [~~(d)~~] A [~~Each~~] motor vehicle that is being transported
8 using the full mount method, the saddle mount method, the tow
9 bar method, or any combination of those methods in accordance
10 with Transportation Code, §503.068(d), must have a dealer's
11 temporary tag, a [~~or~~] converter's temporary tag, or a buyer's
12 temporary tag, whichever is applicable, affixed to the motor
13 vehicle being transported. [~~that vehicle.~~]

14
15 §215.152. Obtaining Numbers for Issuance of Temporary Tags.

16 (a) A dealer or a converter is required to [~~Dealers and~~
17 ~~converters must~~] have Internet access to connect to the
18 temporary tag databases maintained by the department.

19 (b) Except as provided by §215.157 of this title
20 [~~subchapter~~] (relating to Advance Numbers, Preprinted Internet-
21 down [~~Buyer's~~] Temporary Tags), before a temporary tag may be
22 issued and displayed on a vehicle, a [~~the~~] dealer or converter
23 must:

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1 (1) enter in the temporary tag [~~into the~~] database
2 information about the vehicle, dealer, converter, or buyer, as
3 appropriate; ~~[7]~~ and

4 (2) obtain a specific number for the temporary tag.
5 [~~tag before a temporary tag may be issued and displayed on a~~
6 ~~vehicle.~~]

7

8 §215.153. Specifications for All Temporary Tags.

9 (a) Information printed or completed on a temporary tag
10 [~~all temporary tags~~] must be in black ink on a white background.

11 Other than for a motorcycle [~~For vehicles, other than~~
12 ~~motorcycles~~], a completed buyer's, dealer's, converter's, or
13 preprinted [~~buyer, dealer, converter, and~~] Internet-down
14 temporary tag shall be six [6] inches high and at least [~~by a~~
15 ~~minimum of~~] 11 inches wide. For a motorcycle [~~motorcycles~~], the
16 completed buyer's, dealer's, converter's, or preprinted [~~buyer,~~
17 ~~dealer, converter, and~~] Internet-down temporary tag shall be
18 four [4] inches high and at least seven [~~by 7~~] inches wide.

19 (b) A temporary tag [~~All temporary tags~~] must be:

20 (1) composed of plastic or other durable, weather-
21 resistant material; ~~or~~ [~~7, or must be~~]

22 (2) sealed in a two [2] mil clear poly bag that
23 encloses the entire temporary tag.

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1 (c) A dealer or converter may manually copy the information
2 [~~provided~~] from the temporary tag database to a preprinted [~~pre-~~
3 ~~printed~~] temporary tag template. A temporary tag completed in
4 this manner must: [~~in accordance with the specifications of the~~
5 ~~appropriate appendix listed in subsection (c) of this section.~~
6 ~~Temporary tags completed by hand must have]~~

7 (1) display the information drawn in letters and
8 numerals with a permanent, thick, black marking pen; and[-]

9 (2) comply with the specifications of the applicable
10 temporary tag identified by the following appendices:

11 [~~(c) If a dealer uses the option provided by subsection (b)~~
12 ~~of this section, the dealer or converter shall use the design of~~
13 ~~the respective temporary tag from the appropriate following~~
14 ~~Appendices:]~~

15 (A) [~~(1)~~] Appendix A-1 - Dealer's Temporary Tag
16 [~~Dealer~~] - Assigned to Specific Vehicle;

17 Figure: 43 TAC §215.153(c)(2)(A) [~~§215.153(e)(1)~~]

18 (B) [~~(2)~~] Appendix A-2 - Dealer's Temporary Tag
19 [~~Dealer~~] - Assigned to Agent;

20 Figure: 43 TAC §215.153(c)(2)(B) [~~§215.153(e)(2)~~]

21 (C) [~~(3)~~] Appendix B-1 - Buyer's Temporary Tag
22 [~~Buyer~~];

23 Figure: 43 TAC §215.153(c)(2)(C) [~~§215.153(e)(3)~~]

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1 (D) ~~[4]~~ Appendix B-2 - Preprinted Internet-down

2 Temporary Tag; and

3 Figure: 43 TAC §215.153(c)(2)(D) ~~[§215.153(e)(4)]~~

4 (E) ~~[5]~~ Appendix C-1 - Converter's Temporary Tag

5 ~~[Converter]~~.

6 Figure: 43 TAC §215.153(c)(2)(E) ~~[§215.153(e)(5)]~~

7

8 §215.154. Dealer's ~~[Dealer]~~ Temporary Tags.

9 (a) A dealer's temporary tag ~~[Dealer temporary tags]~~ may be
10 displayed only on the type of vehicle for which the GDN ~~[general~~
11 ~~distinguishing number]~~ is issued and for which the [a] dealer is
12 licensed by the department to sell.

13 ~~[(b) Dealer temporary tags may be used by the dealer only~~
14 ~~to:]~~

15 ~~[(1) demonstrate the vehicle or cause the vehicle to~~
16 ~~be demonstrated to a prospective buyer for sale purposes only;]~~

17 ~~[(2) convey or cause the vehicle to be conveyed;]~~

18 ~~[(A) from one of the dealer's places of business~~
19 ~~in this state to another of the dealer's places of business in~~
20 ~~this state;]~~

21 ~~[(B) from the dealer's place of business to a~~
22 ~~place where the vehicle is to be repaired, reconditioned, or~~
23 ~~serviced;]~~

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1 ~~[(C) from the state line or a location in this~~
2 ~~state where the vehicle is unloaded to the dealer's place of~~
3 ~~business;]~~

4 ~~[(D) from the dealer's place of business to a~~
5 ~~place of business of another dealer;]~~

6 ~~[(E) from the point of purchase by the dealer to~~
7 ~~the dealer's place of business;]~~

8 ~~[(F) to road test the vehicle;]~~

9 ~~[(3) use the vehicle for or allow its use by a~~
10 ~~charitable organization or use the vehicle or allow its use in~~
11 ~~parades; or]~~

12 ~~[(4) permit a customer to temporarily operate a~~
13 ~~vehicle while the customer's vehicle is being repaired. A~~
14 ~~vehicle-specific type dealer temporary tag shall be used for~~
15 ~~this purpose.]~~

16 ~~[(e) A vehicle being conveyed under this section is exempt~~
17 ~~from the inspection requirements of Transportation Code, Chapter~~
18 ~~548.]~~

19 (b) [(d)] A wholesale motor vehicle auction license holder
20 that also holds a dealer GDN ~~[A dealer who holds a wholesale~~
21 ~~motor vehicle auction general distinguishing number]~~ may display
22 a dealer's temporary tag on a vehicle that is being ~~[its dealer~~
23 ~~temporary tags on any vehicles that are]~~ transported to or from

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1 the licensed auction location [~~by a bona fide employee or agent~~
2 ~~of the auction~~].

3 (c) [~~(e)~~] When an unregistered vehicle is sold to another
4 dealer, the selling dealer shall remove the selling dealer's
5 [~~its dealer~~] temporary tag. The purchasing dealer may display
6 its dealer temporary tag or its metal dealer's license [~~dealer~~]
7 plate on the vehicle. [~~If a vehicle is consigned from one dealer~~
8 ~~to another, the vehicle must display the temporary tag of the~~
9 ~~dealer to which that vehicle was consigned.~~]

10 (d) [~~(f)~~] A dealer's temporary tag [~~Dealer temporary tags~~]
11 may not be displayed on:

12 (1) a laden commercial vehicle [~~vehicles~~] being
13 operated or moved on [~~upon~~] the public streets or highways; or

14 (2) on the dealer's service or work vehicles.

15 (e) [~~(1)~~] For purposes of this section, a dealer's service
16 or work vehicle includes: [~~Examples of vehicles considered as~~
17 ~~service or work vehicles for purposes of this subsection are:~~]

18 (1) [~~(A)~~] a vehicle used for towing or transporting
19 other vehicles;

20 (2) [~~(B)~~] a vehicle, including a light truck, used in
21 connection with the operation of the dealer's shops or parts
22 department;

23 (3) [~~(C)~~] a courtesy car [~~on which a courtesy car sign~~

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1 ~~is displayed~~];

2 (4) ~~(D)~~ a rental or lease vehicle; and

3 (5) ~~(E)~~ any boat trailer owned by a dealer or
4 manufacturer that is used to transport more than one boat.

5 ~~[(2) A light truck is not considered to be a laden
6 commercial vehicle when it is:]~~

7 ~~[(A) mounted with a camper unit; or]~~

8 ~~[(B) towing a trailer for recreational purposes.]~~

9 (f) ~~(3)~~ For purposes of subsection (d) of this section, a
10 [A] vehicle bearing a dealer's temporary tag is not considered
11 ~~[to be]~~ a laden commercial vehicle when the vehicle ~~[it]~~ is:

12 (1) ~~(A)~~ towing another vehicle bearing the same
13 dealer's temporary tags; ~~[7]~~ and

14 (2) ~~(B)~~ both vehicles are being conveyed from the
15 dealer's place of business to a licensed wholesale motor vehicle
16 ~~[auto]~~ auction or from a licensed wholesale motor vehicle ~~[auto]~~
17 auction to the dealer's place of business.

18 (g) ~~(4)~~ As used in this section, "light truck" has the
19 ~~[same]~~ meaning assigned by Transportation Code, §541.201.

20 (h) ~~(g)~~ A dealer's ~~[dealer]~~ temporary tag may not be used
21 to operate a vehicle for the personal use of a dealer or a
22 dealer's employee.

23 (i) ~~(h)~~ A dealer's ~~[dealer]~~ temporary tag must show its

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1 expiration date, which must [~~which may~~] not exceed 60 days after
2 the date the temporary tag was issued. [~~its date of issuance.~~]

3 (j) [(+)] A dealer's [~~dealer~~] temporary tag may be issued by
4 a dealer to a specific motor vehicle in the dealer's inventory
5 or to a dealer's agent who is authorized to operate a motor
6 vehicle owned by the dealer.

7 (k) [(+)] A dealer that [~~who~~] issues a dealer's [~~dealer~~]
8 temporary tag to a specific vehicle must ensure that the
9 following information is placed on the temporary tag:

10 (1) the vehicle-specific number from the temporary tag
11 database;

12 (2) the year and make of the vehicle;

13 (3) the VIN [~~vehicle identification number (VIN)~~] of
14 the vehicle; [~~and~~]

15 (4) the month, day, and year of the temporary tag's
16 expiration; [~~and~~]

17 (5) the name of the dealer.

18 (l) [(+)] A dealer that [~~who~~] issues a dealer's [~~dealer~~]
19 temporary tag to an agent must ensure that the following
20 information is placed on the temporary tag:

21 (1) the specific [~~agent-specific~~] number from the
22 temporary tag database; [~~and~~]

23 (2) the month, day, and year of the temporary tag's

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1 expiration; and[-]

2 (3) the name of the dealer.

3

4 §215.155. Buyer's Temporary Tags.

5 (a) A buyer's temporary [~~buyer's~~] tag may be displayed only
6 on a vehicle that can be legally operated on [~~may be operated~~
7 ~~upon~~] the public streets and highways and for which a sale has
8 been consummated.

9 (b) A buyer's temporary tag may be displayed only a vehicle
10 that has a valid inspection in accordance with Transportation
11 Code, Chapter 548.

12 (c) For a wholesale transaction, the purchasing dealer
13 places on the motor vehicle its own:

14 (1) dealer's temporary tag; or

15 (2) metal dealer's license plate.

16 [~~(b) A dealer must place a temporary buyer's tag on any new~~
17 ~~or used vehicle sold by the dealer, except for a vehicle sold in~~
18 ~~a wholesale transaction in which the purchasing dealer places~~
19 ~~its own dealer temporary tag or the purchasing dealer's metal~~
20 ~~dealer plate on the vehicle.]~~

21 (d) [-(e)] A buyer's temporary tag is [~~Temporary buyer's tags~~
22 ~~are~~] valid until the earlier of:

23 (1) the date on which the vehicle is registered; or

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1 (2) the 60th day after the date of purchase.

2 (e) [~~(d)~~] The dealer must ensure that the following
3 information is placed on a buyer's temporary tag that the dealer
4 issues:

5 (1) the vehicle-specific number obtained from the
6 temporary tag database;

7 (2) the year and make of the vehicle;

8 (3) the VIN [~~vehicle identification number (VIN)~~] of
9 the vehicle; [~~and~~]

10 (4) the month, day, and year of the expiration of the
11 buyer's temporary tag; and [~~tag's expiration.~~]

12 (5) the name of the dealer.

13

14 \$215.156. Buyer's Temporary Tag Receipt.

15 A dealer must provide a buyer's temporary tag receipt to the
16 buyer of each vehicle for [~~to~~] which a buyer's temporary tag is
17 issued, regardless of whether the buyer's temporary tag is
18 issued using the temporary tag database or if the tag is a
19 preprinted [~~in the ordinary course of business or is an~~]
20 Internet-down temporary tag. The dealer may print the image of
21 the buyer's temporary tag receipt issued from the temporary tag
22 database or create [~~construct~~] the form using the same
23 information. The dealer shall instruct the buyer to keep a copy

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1 of the buyer's temporary tag receipt in the vehicle until the
2 vehicle is registered in the buyer's name and until metal plates
3 are affixed to the vehicle. The buyer's temporary tag receipt
4 must include the following information: [-]

5 (1) the issue date of the buyer's temporary tag;

6 (2) the year, make, model, body style, color, and VIN
7 [~~vehicle identification number (VIN)~~] of the vehicle sold;

8 (3) the vehicle-specific temporary tag number;

9 (4) the expiration date of the temporary tag;

10 (5) the date of the sale;

11 (6) the name of the issuing dealer and the dealer's
12 license number; and

13 (7) the buyer's name and mailing address.

14

15 §215.157. Advance Numbers, Preprinted Internet-down [~~Buyer's~~]
16 Temporary Tags.

17 (a) In accordance with Transportation Code, §503.0631(d), a
18 dealer may obtain an advance supply of preprinted Internet-down
19 temporary tags with specific numbers and buyer's temporary tag
20 receipts to issue in lieu of buyer's temporary tags if the
21 dealer is unable to access the Internet.

22 (b) If a dealer is unable to access the Internet at the
23 time of a sale, the dealer must complete the preprinted

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1 Internet-down temporary buyer's tag and buyer's temporary tag
2 receipt by providing details of the sale, signing the buyer's
3 temporary tag receipt, and retaining a copy. The dealer must
4 ~~[and sign the buyer's receipt, retain a copy of the signed~~
5 ~~buyer's receipt, and]~~ enter the required information regarding
6 ~~[on]~~ the sale in the temporary tag ~~[into the]~~ database not later
7 than the close of the next business day that the dealer has
8 access to the Internet. The buyer's temporary tag receipt must
9 include ~~[have]~~ a statement that the dealer has Internet
10 access~~[r]~~ but, at the time of the sale, the dealer was unable to
11 access the Internet or the temporary tag database.

12

13 §215.158. General Requirements and Allocation of Preprinted
14 Internet-down Temporary Tag Numbers.

15 (a) ~~[Preprinted tags with Internet-down numbers shall be~~
16 ~~kept in a secure place.]~~ The dealer is responsible for the
17 safekeeping of preprinted Internet-down temporary tags and shall
18 store them in a secure place. The dealer ~~[those tags and]~~ shall
19 report any loss, theft, or destruction of preprinted Internet-
20 down temporary ~~[those]~~ tags to the department within 24 hours of
21 discovering ~~[the time of]~~ the loss, theft, or destruction.

22 (b) A dealer may use a preprinted Internet-down temporary
23 tag ~~[Tags with Internet-down numbers may be used]~~ up to 12

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1 months after the date the preprinted Internet-down temporary tag
2 is created. [~~of issuance of the tag from the database.~~] A dealer
3 may create replacement preprinted Internet-down temporary tags
4 [~~tags with Internet-down numbers,~~] up to the maximum allowed,
5 when:

6 (1) a dealer uses one or more preprinted Internet-down
7 temporary tags and then enters the required information in the
8 temporary tag database [~~tags with Internet-down numbers and then~~
9 ~~enters the data into the system,~~] after access to the temporary
10 tag database [~~system~~] is again available; or

11 (2) a preprinted Internet-down temporary tag expires.
12 [~~tag with an Internet-down number expires.~~]

13 (c) The number of preprinted Internet-down temporary tags
14 that [~~tags with Internet-down numbers~~] a dealer may create is
15 equal to the greater [~~greatest~~] of:

16 (1) the number of preprinted Internet-down temporary
17 tags previously allotted by the department to the dealer;

18 (2) 30 [~~thirty~~]; or

19 (3) 1/52 of the dealer's total annual sales.

20 (d) For good cause shown, a dealer may obtain more than the
21 number of preprinted Internet-down temporary tags described in
22 subsection (c) of this section. The director of the Vehicle
23 Titles and Registration Division of the department[~~7~~] or that

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1 director's delegate[7] may approve, in accordance with this
2 subsection, an additional allotment of preprinted Internet-down
3 temporary tags [~~with Internet-down numbers~~] for a dealer if the
4 additional allotment is essential for the continuation of the
5 dealer's business. The director of the Vehicle Titles and
6 Registration Division of the department[7] or that director's
7 delegate[7] will base the determination of the additional
8 allotment of preprinted Internet-down temporary tags on the
9 dealer's past sales, inventory, and any other factors that the
10 director of the Vehicle Titles and Registration Division of the
11 department[7] or that director's delegate[7] determines
12 pertinent, such as an emergency. A request for additional
13 preprinted Internet-down temporary tags [~~tags with Internet-down~~
14 ~~numbers~~] must specifically state why the additional preprinted
15 Internet-down temporary tags are necessary for the continuation
16 of the applicant's business.

17

18 §215.159. Converter's Temporary Tags.

19 [~~(a) Converter's temporary tags may be used only by the~~
20 ~~converter or the converter's employees on unregistered vehicles~~
21 ~~to:~~]

22 [~~(1) demonstrate the vehicle, or cause the vehicle to~~
23 ~~be demonstrated, to a prospective buyer who is a franchised~~

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1 ~~motor vehicle dealer or an employee of a franchised motor~~
2 ~~vehicle dealer; or]~~

3 ~~[(2) convey the vehicle or cause the vehicle to be~~
4 ~~conveyed;]~~

5 ~~[(A) from one of the converter's places of~~
6 ~~business in this state to another of the converter's places of~~
7 ~~business in this state;]~~

8 ~~[(B) from the converter's place of business to a~~
9 ~~place where the vehicle is to be assembled, repaired,~~
10 ~~reconditioned, modified, or serviced;]~~

11 ~~[(C) from the state line or a location in this~~
12 ~~state where the vehicle is unloaded to the converter's place of~~
13 ~~business;]~~

14 ~~[(D) from the converter's place of business to a~~
15 ~~place of business of a franchised motor vehicle dealer; or]~~

16 ~~[(E) to road test the vehicle.]~~

17 ~~[(b) Prospective buyers who are employees of a franchised~~
18 ~~dealer or a converter may operate a vehicle displaying~~
19 ~~converter's temporary tags during a demonstration.]~~

20 ~~[(c) A vehicle being conveyed while displaying a~~
21 ~~converter's temporary tag is exempt from the inspection~~
22 ~~requirements of Transportation Code, Chapter 548.]~~

23 ~~[(d) Converter's temporary tags may not be used to operate~~

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1 ~~a vehicle for the converter's or a converter's employee's~~
2 ~~personal use.]~~

3 (a) ~~(e)~~ A converter's temporary tag ~~[Converter's temporary~~
4 ~~tags]~~ may be displayed only on the type of vehicle that the
5 converter is engaged in the business of assembling or modifying.

6 ~~(f) When an unregistered new motor vehicle is sold to a~~
7 ~~converter, the selling dealer shall remove a dealer's temporary~~
8 ~~tag. The selling dealer may attach a buyer's temporary tag to~~
9 ~~the vehicle or the purchasing converter may display a~~
10 ~~converter's temporary tag or metal converter plate on the~~
11 ~~vehicle.]~~

12 (b) ~~(g)~~ A converter's ~~[A converter]~~ temporary tag must
13 show its expiration date, which may not be more than 60 days
14 after the date of its issuance.

15 ~~(h) A converter temporary tag may be issued by a converter~~
16 ~~to a specific vehicle or to a converter's agent who is~~
17 ~~authorized to operate a motor vehicle owned by the converter.]~~

18 (c) ~~(i)~~ A converter that ~~[who]~~ issues a converter's
19 temporary ~~[converter's]~~ tag to a specific vehicle shall ensure
20 that the following information is placed on the converter's
21 temporary tag:

22 (1) the vehicle-specific ~~[vehicle specific]~~ number
23 from the temporary tag database;

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1 (2) the year and make of the vehicle;

2 (3) the VIN [~~vehicle identification number (VIN)~~] of
3 the vehicle; [~~and~~]

4 (4) the month, day, and year of [~~the tag's~~] expiration
5 of the converter's temporary tag; and[-]

6 (5) the name of the converter.

7 [~~(j) A converter who issues a temporary converter's tag to~~
8 ~~an agent shall ensure that the following information is placed~~
9 ~~on the tag:~~]

10 [~~(1) the agent-specific number from the database; and~~]

11 [~~(2) the month, day, and year of the tag's~~
12 ~~expiration.~~]

13

14 215.160. Duty to Identify Motor Vehicles Offered for Sale as
15 Rebuilt.

16 (a) For each motor vehicle a dealer displays or offers for
17 retail sale and which has been a salvage motor vehicle as
18 defined by Transportation Code, §501.091(15) and a regular title
19 subsequently issued under Transportation Code, §501.100, a
20 dealer shall disclose in writing that the motor vehicle has been
21 repaired, rebuilt, or reconstructed and issued a title under
22 Transportation Code, §501.100. The written disclosure must:

23 (1) be visible from outside of the motor vehicle; and

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1 (2) contain lettering that is reasonable in size,
2 stating as follows: *"This motor vehicle has been repaired,*
3 *rebuilt or, reconstructed after formerly being titled as a*
4 *salvage motor vehicle."*

5 (b) Upon the sale of a motor vehicle which has been a
6 salvage motor vehicle as defined by Transportation Code,
7 §501.091(15) and a regular title subsequently issued under
8 Transportation Code, §501.100, a dealer shall obtain the
9 purchaser's signature on the vehicle disclosure form or on an
10 acknowledgement written in eleven point or larger font that
11 states as follows: *"I, (name of purchaser), acknowledge that at*
12 *the time of purchase, I am aware that this vehicle has been*
13 *repaired, rebuilt, or reconstructed and was formerly titled as a*
14 *salvage motor vehicle."*

15 (c) The purchaser's acknowledgement as required in
16 subsection (b) of this section may be incorporated in a Buyer's
17 Order, a Purchase Order, or other disclosure document. This
18 disclosure does not require a separate signature.

19 (d) An original signed acknowledgement required by
20 subsection (b) of this section or a signed vehicle disclosure
21 form shall be given to the purchaser and a copy of the signed
22 acknowledgement or vehicle disclosure form shall be retained by
23 the dealer in the records of motor vehicles sales required by

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1 §215.144 of this title (relating to Records). If the
2 acknowledgement is incorporated in a Buyer's Order, a Purchase
3 Order, or other disclosure document, a copy of that document
4 must be given to the purchaser and a copy retained in the
5 dealer's records in accordance with §215.144.

6 (e) This section does not apply to a wholesale motor
7 vehicle auction.

Figure: 43 TAC §215.139(c)

<u>If a new license applicant is:</u>	<u>Maximum number of metal dealer's license plates issued during the first license term is:</u>
<u>1. a franchised motor vehicle dealer</u>	<u>5</u>
<u>2. a franchised motorcycle dealer</u>	<u>5</u>
<u>3. an independent motor vehicle dealer</u>	<u>2</u>
<u>4. an independent motorcycle dealer</u>	<u>2</u>
<u>5. a franchised or independent travel trailer dealer</u>	<u>2</u>
<u>6. a trailer or semi-trailer dealer</u>	<u>2</u>
<u>7. an independent mobility motor vehicle dealer</u>	<u>2</u>
<u>8. a wholesale motor vehicle dealer</u>	<u>1</u>

Figure: 43 TAC §215.139(e)

<u>If a vehicle dealer is:</u>	<u>Maximum number of metal dealer's license plates issued per license term is:</u>
<u>1. a franchised motor vehicle dealer</u>	<u>30</u>
<u>2. a franchised motorcycle dealer</u>	<u>10</u>
<u>3. an independent motor vehicle dealer</u>	<u>3</u>
<u>4. an independent motorcycle dealer</u>	<u>3</u>
<u>5. a franchised or independent travel trailer dealer</u>	<u>3</u>
<u>6. a trailer or semi-trailer dealer</u>	<u>3</u>
<u>7. an independent mobility motor vehicle dealer</u>	<u>3</u>
<u>8. a wholesale motor vehicle dealer</u>	<u>1</u>

Figure: 43 TAC §215.139(f)(1)

<u>If a vehicle dealer is:</u>	<u>Number of additional metal dealer's license plates issued to a dealer that demonstrates a need through proof of sales is:</u>
<u>1. a wholesale motor vehicle dealer</u>	<u>1</u>
<u>2. a dealer selling fewer than 50 vehicles during the previous 12-month period</u>	<u>1</u>
<u>3. a dealer selling 50 to 99 vehicles during the previous 12-month period</u>	<u>5</u>
<u>4. a dealer selling more than 200 vehicles during the previous 12-month period</u>	<u>any number of metal dealer's license plates the dealer requests.</u>

Figure: 43 TAC §215.153(c)(2)(A) [§215.153(e)(1)]

APPENDIX A-1

TEXAS DEALER											
VEHICLE OWNED BY JOHN DOE AUTO SALES											
<small>THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #</small>											
EXPIRES					-			-			
VIN _____											
FOR INTRANSIT, ROAD TESTING, DEMONSTRATION AND USE BY CHARITABLE ORGANIZATIONS											

DEALER'S TEMPORARY [DEALER] TAG – ASSIGNED TO SPECIFIC VEHICLE



LJENNING
2016-08-08 14:11:59
Accepted set by LJENNING

Figure: 43 TAC §215.153(c)(2)(B) [§215.153(e)(2)]

APPENDIX A-2

●		TEXAS DEALER		●									
		VEHICLE OWNED BY JOHN DOE AUTO SALES											
		<small>THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #</small>											
		<table border="1"><tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr></table>											
		EXPIRES		<table border="1"><tr><td> </td><td> </td><td>-</td><td> </td><td>-</td><td> </td><td> </td><td> </td></tr></table>				-		-			
		-		-									
		Authorized Agent Tag											
		FOR INTRANSIT, ROAD TESTING, DEMONSTRATION AND USE											
●		BY CHARITABLE ORGANIZATIONS		●									

DEALER'S TEMPORARY [DEALER] TAG – ASSIGNED TO AGENT

Figure: 43 TAC §215.153(c)(2)(C) [§215.153(e)(3)]

APPENDIX B-1

TEXAS BUYER									
THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #									
EXPIRES				-		-			
VIN _____				SELLER: ABC FANTASTIC FABULOUS AUTO SALES					

BUYER'S TEMPORARY TAG

Figure: 43 TAC §215.153(c)(2)(D) [§215.153(e)(4)]

APPENDIX B-2

TEXAS BUYER – INTERNET											
THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #											
4587650											
EXPIRES					-				-		
VIN _____											
SELLER: ABC FANTASTIC FABULOUS AUTO SALES											

PREPRINTED INTERNET-DOWN TEMPORARY [INTERNET-DOWN-BUYER'S] TAG

Figure: 43 TAC §215.153(c)(2)(E) [§215.153(e)(5)]

APPENDIX C-1

TEXAS CONVERTER										
VEHICLE OWNED BY JOHN DOE CONVERSIONS										
<small>THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER PERMIT #</small>										
EXPIRES					-			-		
							VIN			
<small>FOR INTRANSIT, ROAD TESTING, DEMONSTRATION</small>										

CONVERTER'S TEMPORARY [CONVERTER] TAG

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1 SUBCHAPTER F. VEHICLE LESSORS AND VEHICLE LEASE FACILITATORS

2 §215.171. Purpose and Scope. [~~Objective.~~]

3 This subchapter implements [~~The objective of this subchapter is~~
4 ~~to implement the intent of the legislature as declared in]~~

5 Occupations Code, Chapter 2301 and more specifically[~~,and in~~
6 ~~particular~~], §§2301.251, 2301.253, 2301.254, 2301.261, 2301.262,
7 2301.357, and 2301.551 - 2301.556[~~, by prescribing rules to~~
8 ~~regulate the business of leasing motor vehicles in this state].~~

9

10 §215.173. License.

11 (a) No person may engage in business as a vehicle lessor or
12 a vehicle lease facilitator unless that person holds a valid
13 license issued by the department [~~has a currently valid license~~
14 ~~assigned by the division~~], or is otherwise exempt by law from
15 obtaining such a license.

16 (b) Any person who facilitates vehicle leases on behalf of
17 a vehicle lease facilitator must:

18 (1) be on the vehicle lease facilitator's payroll and
19 receive compensation from which social security, federal
20 unemployment tax, [~~in which Social Security, Federal~~
21 ~~Unemployment Tax,~~] and all other appropriate taxes are withheld
22 from the representative's paycheck and [~~said taxes are~~] paid to
23 the proper taxing authority; and

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1 (2) have work details such as when, where, and how the
2 final results are achieved, directed, and controlled by the
3 vehicle lease facilitator.

4
5 §215.174. Application for a License.

6 (a) An applicant [~~Application~~] for a vehicle lessor's or
7 vehicle lease facilitator's license must submit a sufficient
8 application to the department. To be sufficient, the application
9 must [~~shall~~] be on a form prescribed by the department and
10 accompanied by all required supporting documentation. [~~division,~~
11 ~~properly completed by the applicant, and shall be submitted with~~
12 ~~supporting documentation showing all information requested.~~]

13 (b) The supporting documentation for a vehicle lessor's
14 license application shall include:

15 [~~(1) a letter of appointment for each lease~~
16 ~~facilitator or acceptable substitute as designated by the~~
17 ~~division;~~]

18 (1)[~~(2)~~] [a] verification of the criminal background
19 of each owner and officer of the applicant, if applicable;

20 (2)[~~(3)~~] the fee required [~~for the license as~~
21 ~~prescribed~~] by law for each type of license required;

22 (3)[~~(4)~~] a copy of each assumed name certificate on
23 file with the appropriate recording entity, such as the Office

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1 of the Secretary of State or the county clerk; ~~[and]~~

2 (4)[+5] a sample copy of the vehicle lease agreement
3 between the vehicle lessor and a lessee;~~[-]~~

4 (5) a sample copy of the required fee disclosure
5 statement regarding fees paid by the vehicle lessor to a vehicle
6 lease facilitator for the facilitation of a vehicle lease or a
7 statement that no such fees were or will be paid;

8 (6) a list including the business name(s), DBA(s), and
9 addresses of lease facilitators with whom the applicant conducts
10 or intends to conduct business; and

11 (7) a list of other satellite offices that conduct
12 business in the State of Texas that includes the address, phone
13 number, and name of the contact person for each location.

14 (c) The supporting documentation for a vehicle lease
15 facilitator's license application shall include:

16 ~~[(1) a letter of appointment from each lessor or~~
17 ~~acceptable substitute as designated by the division;]~~

18 (1)[+2] [a] verification of the criminal background
19 of each owner and officer of the applicant, if applicable;

20 (2)[+3] the fee required ~~[for the license as~~
21 ~~prescribed]~~ by law for each type of license required;

22 (3)[+4] a copy of each assumed name certificate on
23 file with the appropriate recording entity, such as the Office

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1 of the Secretary of State or the county clerk;

2 (4)[(+5)] a sample copy of the vehicle lease agreement
3 between each of the lessors the lease facilitator represents,
4 and the [a] lessee; [and]

5 (5) a sample copy of the required fee disclosure
6 statement regarding fees paid by a vehicle lessor to the vehicle
7 lease facilitator for the facilitation of a vehicle lease or a
8 statement that no such fees were or will be paid;

9 (6) a list of all vehicle lessors, including names and
10 addresses, for [with] whom any vehicle lease facilitator
11 solicits or procures a lessee. The vehicle lease facilitator
12 shall update the list upon renewal of a license and within 10
13 [executes leases. This list must be updated in writing upon
14 renewal of a license, and within ten] days of the addition of
15 any vehicle lessor to this list; and

16 (7) a copy of the representation agreement between the
17 vehicle lease facilitators and each lessor.

18

19 §215.175. Sanctions.

20 (a) The board or department may:

21 (1) deny a vehicle lessor or vehicle lease facilitator
22 application;

23 (2) revoke or suspend a vehicle lessor or vehicle

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1 lease facilitator license; or

2 (3) assess a civil penalty or take other action on a
3 vehicle lessor or vehicle lease facilitator applicant or license
4 holder, or a person engaged in business for which a vehicle
5 lessor or vehicle lease facilitator license is required.

6 ~~[(a) Revocation/Denial. The Board may revoke, deny or~~
7 ~~suspend a lessor or lease facilitator's license, or assess civil~~
8 ~~penalties, if that lessor or lease facilitator:]~~

9 (b) The board or department may take action described in
10 subsection (a) of this section if a vehicle lessor or vehicle
11 lease facilitator applicant or license holder, or a person
12 engaged in business for which a vehicle lessor or vehicle lease
13 facilitator license is required:

14 (1) fails to maintain an established and permanent
15 place of business required by ~~[conforming to]~~ §215.177 of this
16 title ~~[subchapter]~~ (relating to Established and Permanent Place
17 of Business);

18 (2) fails to maintain records required under this
19 subchapter;

20 (3)[(+2)] refuses ~~[to permit]~~ or fails to comply with a
21 request by a representative of the department ~~[division]~~ to
22 examine during the vehicle lessor's or vehicle lease
23 facilitator's posted business hours at the vehicle lessor's or

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1 vehicle lease facilitator's licensed location: [~~the current and~~
2 ~~previous year's leasing records required to be kept under~~
3 ~~§215.178 of this subchapter (relating to Records of Leasing) and~~
4 ~~ownership papers for vehicles owned, leased, or under that~~
5 ~~lessor or lease facilitator's control, and evidence of ownership~~
6 ~~or lease agreement for the property upon which the business is~~
7 ~~located.~~]

8 (A) a vehicle leasing record required to be
9 maintained by §215.178 of this title (relating to Records
10 Required for Vehicle Lessors and Vehicle Lease Facilitators);

11 (B) ownership papers for a vehicle owned, leased,
12 or under that vehicle lessor's or vehicle lease facilitator's
13 control; or

14 (C) evidence of ownership or a current premises
15 lease agreement for the property upon which the business is
16 located;

17 [~~(A) during normal working hours at the lessor's~~
18 ~~or lease facilitator's permanent place of business, or]~~

19 [~~(B) through a request made by the division~~
20 ~~pursuant to these rules;~~]

21 (4) refuses or fails to timely comply with a request
22 for records made by a representative of the department;

23 (5)[(3)] fails to notify the department in writing

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1 within 10 days [~~division~~] of a change of the vehicle lessor or
2 vehicle lease facilitator license holder's: [~~address within ten~~
3 ~~days after such change;~~]

4 (A) mailing address;

5 (B) physical address;

6 (C) telephone number; or

7 (D) email address;

8 (6)[~~4~~] fails to notify the department in writing
9 within 10 days [~~division~~] of a change of the vehicle lessor or
10 vehicle lease facilitator license holder's name or ownership;
11 [~~lessor/lease facilitator's name or ownership within ten days~~
12 ~~after such a change;~~]

13 (7)[~~5~~] fails to comply with [~~observe~~] the fee
14 restrictions or other requirements under [~~as described in~~]
15 Occupations Code, §2301.357 or [~~and~~] §§2301.551 - 2301.556;

16 (8)[~~6~~] fails to maintain [~~leasing and/or~~]
17 advertisement records or otherwise fails to comply with the
18 advertising requirements of: [~~as described in these rules;~~]

19 (A) §215.178; or

20 (B) Subchapter H of this chapter (relating to
21 Advertising);

22 [~~7~~] fails to remain regularly and actively engaged in
23 the business of leasing vehicles or facilitating the leasing of

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1 ~~vehicles for which the license is issued;~~

2 (9)[(+8)] violates any law relating to the sale, lease,
3 distribution, financing, or insuring of motor vehicles;

4 (10) is convicted of an offense that, in accordance
5 with Occupations Code, Chapter 53 and with §215.88 of this title
6 (relating to Criminal Offense and Action on License), directly
7 relates to the duties or responsibilities of the licensed
8 occupation;

9 (11) is determined by the board or department, in
10 accordance with §215.89 of this title (relating to Fitness), to
11 be unfit to hold a vehicle lessor or vehicle lease facilitator
12 license;

13 (12)[(+9)] uses or allows use of a vehicle lessor or
14 vehicle lease facilitator license in violation of any law or for
15 the purpose of avoiding any provision [~~provisions~~] of
16 Occupations Code, Chapter 2301; or

17 (13)[(+10)] wilfully omits material information or
18 makes a material misrepresentation in any application or other
19 documentation [~~information~~] filed with the department.

20 [~~division;~~]

21 [~~(11) fails to update in writing the list of lessors,~~
22 ~~including names and addresses, with which any lease facilitator~~
23 ~~executes leases within ten days of any changes to this list and~~

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1 ~~upon renewal of the license;]~~

2 ~~[(12) violates any state or federal law relating to~~
3 ~~the leasing of new motor vehicles.]~~

4 (c) The board or department may take action on a vehicle
5 lessor's license or assess civil penalties for the vehicle
6 lessor's failure to notify the department in writing within 10
7 days of any change, addition, or deletion to the list of vehicle
8 lease facilitators with whom the vehicle lessor conducts
9 business, including any change to a vehicle lease facilitator's
10 mailing address, physical address, telephone number, or email
11 address.

12 (d) The board or department may take action on a vehicle
13 lease facilitator's license or assess civil penalties for the
14 vehicle lease facilitator's failure to notify the department in
15 writing within 10 days of any change, addition, or deletion to
16 the list of vehicle lessors for whom the vehicle lease
17 facilitator conducts business, including any change to a vehicle
18 lessor's mailing address, physical address, telephone number, or
19 email address.

20 (e) The board or department may take action on a vehicle
21 lessor's or vehicle lease facilitator's license if the vehicle
22 lessor or vehicle lease facilitator accepts a fee from a dealer,
23 directly or indirectly, for referring a customer who purchases

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1 or considers purchasing a motor vehicle.

2 [~~(b) Referral fees prohibited. A lessor or lease~~
3 ~~facilitator may not, directly or indirectly, accept a fee from a~~
4 ~~dealer for referring customers who purchase or consider~~
5 ~~purchasing vehicles.~~]

6

7 §215.176. More Than One Location.

8 (a) A vehicle lease facilitator [~~Lease facilitators~~] must
9 be licensed separately for each business location.

10 (b) A vehicle lessor or vehicle lease facilitator that
11 relocates [~~Lessors or lease facilitators that relocate~~] from a
12 point outside the limits of a city or relocates [~~, or relocate~~]
13 to a point not within the limits of the same city of the initial
14 location is [~~are~~] required to obtain a new license.

15 (c) A vehicle lessor is [~~Lessors are~~] required to obtain a
16 license for the vehicle lessor's primary location. A vehicle
17 lessor [~~their primary locations. Lessors~~] must provide the
18 address, telephone number, and the name of a contact person for
19 all other satellite offices that conduct business in the state
20 of Texas.

21

22 §215.177. Established and Permanent Place of Business.

23 (a) A vehicle lessor or vehicle lease facilitator operating

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1 within the State [~~state~~] of Texas must meet the following
2 requirements at each location where vehicles are leased or
3 offered for lease.

4 (1) Physical location requirements.

5 (A) A vehicle lessor or vehicle lease facilitator
6 operating within the State of [~~within~~] Texas must be open to the
7 public. The vehicle lessor's or vehicle [~~lessor or~~] lease
8 facilitator's business hours for each day of the week must be
9 posted at the main entrance of the office. The [~~, and the~~] owner
10 or an employee of the vehicle lessor or vehicle lease
11 facilitator must be at the location during the posted business
12 hours for the purpose of leasing vehicles. In the event the
13 owner or an employee is not available to conduct business during
14 the posted business hours, a separate sign must be posted
15 indicating the date and time such owner or employee will resume
16 vehicle leasing operations.

17 (B) A vehicle lessor's or vehicle leasing
18 facilitator's office [~~The~~] structure must be of sufficient size
19 to accommodate the following required equipment: [~~and must be~~
20 ~~equipped with~~]

21 (i) a desk and chairs from which the vehicle
22 lessor or vehicle lease facilitator transacts [~~his~~] business;
23 and [~~.The office also must be equipped with~~]

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1 (ii) a working telephone number [~~instrument~~]
2 listed in the business name or assumed name under which the
3 vehicle lessor or vehicle lease facilitator conducts [~~does~~]
4 business.

5 (C)[~~(B)~~] A vehicle lessor or vehicle lease
6 facilitator that files an application for a new license or a
7 vehicle lessor that files an application for a satellite
8 location must comply with [~~supplemental location must conform~~
9 ~~to~~] the following requirements.[~~+~~]

10 (i) The office must be located in a
11 building[~~7~~] with connecting exterior walls on all sides.

12 (ii) The office must comply with all
13 applicable local zoning ordinances and deed restrictions.

14 (iii) The office may not be located within a
15 residence, apartment, hotel, motel, or rooming house.

16 (iv) The physical address of the office must
17 be recognized by the U.S. Postal Service and [~~or~~] capable of
18 receiving U.S. mail.

19 (D)[~~(C)~~] A portable-type office structure may
20 qualify as an office only if the structure meets the[~~7~~,~~provided~~
21 ~~it meets the minimum~~] requirements of this section and is not a
22 readily moveable trailer or other [~~such~~] vehicle.

23 (E) One or more licensed vehicle lessors or

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1 vehicle lease facilitators, or a combination of one or more
2 licensed vehicle lessors and vehicle lease facilitators may
3 occupy the same business structure and conduct vehicle leasing
4 operations in accordance with the license held by the vehicle
5 lessor or licensed vehicle lease facilitator. Each person
6 engaged in business as a vehicle lessor or vehicle lease
7 facilitator must have:

8 ~~[(D) In those instances when two or more lessors~~
9 ~~or lease facilitators occupy the same business locations and~~
10 ~~conduct their respective leasing operations under different~~
11 ~~names, one office structure for all lessors or lease~~
12 ~~facilitators operating from such location will be acceptable;~~
13 ~~provided, however, each lessor or lease facilitator must have:]~~

14 (i) a separate desk from which that vehicle
15 lessor or vehicle lease facilitator transacts business;

16 (ii) a separate working telephone number
17 listed [~~instrument, number, and listing~~] in the vehicle lessor
18 or vehicle lease facilitator's business name or assumed name;

19 (iii) a separate right of occupancy that
20 meets [~~meeting~~] the requirements of this section; and~~[-]~~

21 (iv) a vehicle lessor or vehicle lease
22 facilitator license issued by the department in the name of the
23 vehicle lessor or vehicle lease facilitator.

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1 (F)~~(E)~~ A vehicle lease facilitator's
2 established and permanent place of business~~[, as prescribed in~~
3 ~~this rule,~~] must be physically located within the State [~~state~~]
4 of Texas.

5 (2) Sign requirements. A vehicle lessor or vehicle
6 lease facilitator shall display a conspicuous and permanent sign
7 at the licensed location showing the name under which the
8 vehicle lessor or vehicle lease facilitator conducts business.
9 Outdoor signs must contain letters that are at least [~~no smaller~~
10 ~~than~~] six inches in height.

11 (3) Premises lease [~~Lease~~] requirements. If the
12 premises from which a licensed vehicle lessor or vehicle lease
13 facilitator conducts business is [~~are~~] not owned by the license
14 holder, the license holder must maintain for the licensed
15 location a valid premises lease that is continuous during the
16 period of time for which the vehicle [~~licensee, such licensee~~
17 ~~shall maintain a lease continuous for the same period of time as~~
18 ~~the~~] lessor's or vehicle lease facilitator's license will be
19 issued. The premises [~~, and such~~] lease agreement must [~~shall~~] be
20 on a properly executed form containing at a minimum [~~, but not~~
21 ~~limited to the following information~~]:

22 (A) the name of the landlord of the premises and
23 the name of the vehicle lease facilitator as the tenant of the

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1 premises; [~~names of the lessor and lessee;~~]

2 (B) the street address or legal description of
3 the property, provided that if only a legal description of the
4 property is included, the applicant must attach a statement that
5 the property description in the lease agreement is the street
6 address identified on the application; [~~or street address;~~] and

7 (C) the period of time for which the premises
8 lease is valid.

9 (b) A vehicle lessor that does not deal directly with the
10 public to execute vehicle leases and whose licensed location is
11 in another state [~~and who does not deal directly with the public~~
12 ~~to execute leases~~] must meet the following requirements at each
13 location.

14 (1) Physical location requirements.

15 (A) The vehicle lessor's office structure must be
16 of sufficient size to accommodate the following required
17 equipment: [~~and must be equipped with~~]

18 (i) a desk and chairs from which the vehicle
19 lessor transacts [~~his~~] business; and [~~The office also must be~~
20 ~~equipped with~~]

21 (ii) a working telephone number [~~instrument~~]
22 listed in the business name or assumed name under which the
23 vehicle lessor conducts [~~lessor or lease facilitator does~~]

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1 business.

2 (B) A vehicle lessor that files an application
3 for a new license or a satellite location with a primary
4 ~~[supplemental location whose]~~ licensed location ~~[is]~~ in another
5 state must conform to the following requirements. ~~[+]~~

6 (i) The office must be located in a
7 building~~[,]~~ with connecting exterior walls on all sides.

8 (ii) The office must comply with all
9 applicable local zoning ordinances and deed restrictions.

10 (iii) The office may not be located within a
11 residence, apartment, hotel, motel, or rooming house.

12 (iv) The physical address of the office must
13 be recognized by the U.S. Postal Service and ~~[or]~~ capable of
14 receiving U.S. mail.

15 (C) A portable-type office structure may qualify
16 as an office only if the structure meets the~~[, provided it meets~~
17 ~~the minimum]~~ requirements of this section and is not a readily
18 moveable trailer or other ~~[such]~~ vehicle.

19 (D) More than one licensed vehicle lessor may
20 occupy the same business structure and conduct vehicle leasing
21 operations under different names in accordance with the license
22 held by each vehicle lessor. Each person engaged in business as
23 a vehicle lessor must have:

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1 [~~(D) In those instances when two or more lessors~~
2 ~~occupy the same business locations and conduct their respective~~
3 ~~leasing operations under different names, one office structure~~
4 ~~for all lessors operating from such location will be acceptable;~~
5 ~~provided, however, each lessor must have:~~]

6 (i) a separate desk from which that vehicle
7 lessor transacts business;

8 (ii) a separate working telephone number
9 listed [~~instrument, number, and listing~~] in the vehicle lessor's
10 business name or assumed name;

11 (iii) a separate right of occupancy that
12 meets [~~meeting~~] the requirements of this section; and[-]

13 (iv) a vehicle lessor license issued by the
14 department in the name of the vehicle lessor.

15 (2) Sign requirements. An out of state vehicle lessor
16 shall display a conspicuous and permanent sign at the licensed
17 location showing the name under which the vehicle lessor
18 conducts business. Outdoor signs must contain letters at least
19 [~~no smaller than~~] six inches in height.

20 (3) Premises lease [~~Lease~~] requirements. If the out of
21 state premises from which a licensed vehicle lessor conducts
22 business is [~~are~~] not owned by the license holder, the license
23 holder must maintain a valid premises lease for [~~that person or~~

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1 ~~entity, that person or entity shall maintain a lease on] the~~
2 property of the licensed location. The premises lease must be
3 continuous during the period of time for which the license will
4 be issued. The premises lease agreement must [~~continuous for the~~
5 ~~same period of time as the license, and such agreement shall] be
6 on a properly executed form containing at a minimum: [~~, but not~~
7 ~~limited to the following information:~~]~~

8 (A) the name [~~names~~] of the landlord of the
9 premises and the name of the licensed lessor identified as the
10 tenant of the premises; [~~lessor and lessee:~~]

11 (B) the street address or legal description of
12 the property, provided that if only a legal description of the
13 property is included, the applicant must attach a statement that
14 the property description in the lease agreement is the street
15 address identified on the application; [~~or street address:~~] and

16 (C) the period of time for which the premises
17 lease is valid.

18 (c) [~~Independence.~~] A vehicle lessor or vehicle lease
19 facilitator shall be independent of financial institutions and
20 dealerships in location and in business activities, unless that
21 vehicle lessor or vehicle lease facilitator is an:

22 (1) employee or [~~of, a~~] legal subsidiary of the
23 financial institution or dealership; or [~~, or an~~]

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1 (2) entity wholly owned by the financial institution
2 or dealership.

3 (d) For ~~[the]~~ purposes of this section, ~~[subsection,]~~ an
4 employee is a person who meets the requirements of §215.173(b)
5 of this title ~~[chapter]~~ (relating to License).

6

7 §215.178. Records Required for Vehicle Lessors and Vehicle Lease
8 Facilitators ~~[of Leasing]~~.

9 (a) Purchase and leasing records. A vehicle lessor or
10 vehicle lease facilitator must maintain ~~[keep]~~ a complete record
11 of all vehicle purchases and sales for ~~[a minimum period of]~~ at
12 least one year after the expiration of the vehicle lease.

13 (1) Records reflecting vehicle lease transactions that
14 ~~[have]~~ occurred within the preceding 24 months must be
15 maintained at the licensed location. Records for prior time
16 periods may be kept off-site at a location within the same
17 county or within 25 miles of the licensed location.

18 (2) Within 15 days of ~~[Upon]~~ receipt of a request sent
19 by mail or by electronic document transfer from a representative
20 of the department, a vehicle lessor or vehicle lease facilitator
21 must deliver a copy of the ~~[produce copies of]~~ specified records
22 to the address listed in the request ~~[within 15 days]~~.

23 (b) Content of records. A complete record for a vehicle

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1 lease transaction must contain: [~~As used in this subsection, a~~
2 ~~complete lease file shall contain the following information or~~
3 ~~documents:~~]

4 (1) the name, address [~~names, addresses~~], and
5 telephone number [~~numbers~~] of the lessor of the vehicle subject
6 to [~~in~~] the transaction;

7 (2) the name, mailing address, physical address,
8 [~~names, addresses~~] and telephone number of each [~~numbers of the~~]
9 lessee of the vehicle subject to [~~in~~] the transaction;

10 (3) the name, address, [~~names, addresses~~] telephone
11 number, [~~numbers~~] and license number [~~numbers~~] of the lease
12 facilitator of the vehicle subject to [~~in~~] the transaction;

13 (4) the name, home address, and telephone number of
14 each employee of the vehicle lease facilitator that [~~who~~]
15 handled the transaction;

16 (5) a complete description of the vehicle involved in
17 the transaction, including the VIN; [~~its vehicle identification~~
18 ~~number (VIN);~~]

19 (6) the name, address, telephone number, and GDN
20 [~~general distinguishing number~~] of the dealer selling the
21 vehicle, as well as the franchise license number of the dealer
22 if the vehicle involved in the transaction is a new motor
23 vehicle;

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1 (7) the amount of fee [~~received by or~~] paid to the
2 vehicle lease facilitator or a statement that no fee was paid;

3 (8) a copy [~~copies~~] of the buyer's [~~buyers~~] order and
4 sales contract for the vehicle;

5 (9) a copy of the vehicle lease contract;

6 (10) a copy [~~copies~~] of all other contracts,
7 agreements, or disclosures between the vehicle lease facilitator
8 and the consumer lessee; and

9 (11) a copy [~~copies~~] of the front and back of the
10 manufacturer's statement of origin, manufacturer's certificate
11 of origin, [~~Manufacturer's Statement/Certificate of Origin~~] or
12 the title of the vehicle if the vehicle involved in the
13 transaction is a new motor vehicle.

14 (c) Records of advertising. A vehicle lessor or vehicle
15 lease facilitator must maintain a copy [~~copies~~] of all
16 advertisements, brochures, scripts, or an [~~or~~] electronically
17 reproduced copy [~~copies,~~] in whatever medium appropriate, of
18 promotional materials for a period of at least 18 months. Each
19 copy is[~~]~~ subject to inspection upon request by a
20 representative of the department [~~Board~~] at the business of the
21 license holder during posted [~~licensee during regular~~] business
22 hours.

23 (1) Vehicle Lessors and vehicle lease facilitators

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1 must comply with all federal and state advertising laws and
2 regulations, including [~~All advertisements by lessors or lease~~
3 ~~facilitators must be in accordance with~~] Subchapter H of this
4 chapter (relating to Advertising).

5 (2) A vehicle lessor or vehicle lease facilitator
6 [~~Lessors and lease facilitators~~] may not state or infer in any
7 advertisement, either directly or indirectly, that the [~~in any~~
8 ~~manner such as advertisements, stationery or business cards that~~
9 ~~their~~] business involves the sale of new motor vehicles.

10 (d) Title assignments. Each certificate [~~All certificates~~]
11 of title, manufacturer's certificate [~~certificates~~] of origin,
12 or other evidence of ownership for a vehicle that has [~~vehicles~~
13 ~~which have~~] been acquired by a vehicle lessor for lease must be
14 properly assigned [~~properly~~] from the seller in the vehicle
15 [~~into the~~] lessor's name.

16 (e) Letters of appointment. A letter [~~All letters~~] of
17 appointment between a vehicle lessor and a vehicle [~~each lessor~~
18 ~~or~~] lease facilitator with whom the vehicle lessor conducts [~~the~~
19 ~~licensee does~~] business must be executed by both parties.

20 (f) Electronic records. Any record [~~records~~] required to be
21 maintained [~~kept~~] by a vehicle lessor or vehicle lease
22 facilitator may be maintained [~~kept~~] in an electronic format,
23 provided [~~if~~] the electronic record [~~records~~] can be printed at

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1 the licensed location upon request for the record by a
2 representative of the department.

3

4 §215.179. Change of Vehicle Lessor or Vehicle Lease Facilitator
5 Status.

6 (a) Change of ownership. A vehicle lessor or vehicle lease
7 facilitator that [~~who~~] proposes to sell or [~~and/or~~] assign to
8 another any interest in the licensed entity, whether a
9 corporation or otherwise, provided [~~so long as~~] the physical
10 location of the licensed entity remains the same, shall notify
11 the department [~~division~~] in writing within 10 [~~ten~~] days by
12 filing an application to amend the license. If the sale or
13 assignment of any portion of the business results in a change of
14 entity, then the purchasing or assignee [~~purchasing/assignee~~]
15 entity must apply for and obtain a new license. A publicly held
16 corporation licensed as a vehicle lessor or vehicle lease
17 facilitator needs only inform the department [~~Publicly held~~
18 ~~corporations licensed as lessors or lease facilitators need only~~
19 ~~inform the division~~] of a change in ownership if one person or
20 entity acquires 10% or greater interest in the licensed entity.
21 [~~licensee.~~]

22 (b) Change of operating status of business location. A
23 license holder [~~licensee~~] shall obtain department [~~division~~]

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1 approval prior to opening a satellite location or relocating
2 ~~[the opening of a supplemental location, or the relocation of]~~
3 an existing location, in accordance with §215.176 of this title
4 ~~[subchapter]~~ (relating to More than One Location). A license
5 holder ~~[Also, a licensee]~~ must notify the department ~~[division]~~
6 when closing an existing location or a satellite location.

7

8 §215.180. Required Notices to Lessees.

9 Vehicle lessors and vehicle ~~[Lessors and]~~ lease facilitators
10 shall provide notice of the complaint procedures provided by
11 Occupations Code, §§2301.204 and 2301.601 - 2301.613 to each
12 lessee of a new motor vehicle with whom they enter into a
13 vehicle ~~[transact a]~~ lease.

14

15 §215.181. General Distinguishing Number Exception.

16 A licensed vehicle lessor is not required to hold a GDN ~~[It is~~
17 ~~not necessary for a licensed lessor to hold a general~~
18 ~~distinguishing number (GDN)]~~ in order to sell a motor vehicle
19 that the vehicle lessor owns to ~~[lessor owns, to either]~~ the
20 lessee or to a duly licensed dealer, either directly or through
21 a licensed wholesale motor vehicle auction. A licensed vehicle
22 lessor may not purchase a motor vehicle ~~[lessor is not allowed~~
23 ~~to purchase vehicles]~~ at a wholesale motor vehicle auction. Any

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1 existing GDN held by a vehicle lessor that [~~lessor who~~] does not
2 otherwise qualify for a GDN shall be canceled. A vehicle
3 [~~cancelled. A~~] lessor whose GDN has been canceled [~~cancelled~~]
4 under this section may reapply for a GDN once all the
5 qualifications for a GDN are met.

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1 SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS

2 §215.201. Purpose and Scope. [~~Objective and Definitions.~~]

3 (a) This subchapter implements Occupations Code, §2301.204
4 and §§2301.601 - 2301.613.

5 [~~(a) It is the objective of this subchapter to implement~~
6 ~~the intent of the legislature as declared in Occupations Code,~~
7 ~~Chapter 2301, Subchapter M (§§2301.601-2301.613) and Occupations~~
8 ~~Code, §2301.204. These rules provide a simplified and fair~~
9 ~~procedure for the enforcement of these provisions of the Code,~~
10 ~~including the processing of complaints, the conduct of hearings,~~
11 ~~and the formal or informal disposition of complaints filed by~~
12 ~~owners seeking relief under these provisions of the Code.]~~

13 (b) Practice and procedure in contested cases heard by the
14 department's [State] Office of Administrative Hearings (OAH) are
15 addressed in Subchapter B of this chapter (relating to
16 Adjudicative Practice and Procedure) [~~(SOAH) are provided for in~~
17 ~~Subchapter I of this chapter (relating to Practice and Procedure~~
18 ~~for Hearings Conducted by the State Office of Administrative~~
19 ~~Hearings)] and the provisions of this subchapter to the extent~~

20 that the provisions do not conflict with state law, rule, or
21 court order. [~~SOAH rules.~~]

22 (c) [~~(b)~~] The following words and terms, when used in this
23 subchapter, shall have the following meanings, unless the

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1 context clearly indicates otherwise.

2 (1) Comparable Motor Vehicle--A new motor vehicle,
3 with comparable mileage, from the same manufacturer, converter,
4 or distributor's product line and the same model year or newer
5 as the motor vehicle to be replaced or as reasonably equivalent
6 to the motor vehicle to be replaced.

7 (2) Lemon Law--Refers to Occupations Code, Chapter
8 2301, Subchapter M (§§2301.601-2301.613).

9 [~~(3) Owner--A person as defined by Occupations Code,~~
10 ~~§2301.601(2)-.]~~

11 (3)[~~(4)~~] Warranty Performance--Refers to Occupations
12 Code, §2301.204.

13
14 §215.202. Filing of Complaints.

15 (a) Lemon law complaints. [~~Law Complaints.~~]

16 (1) Complaints seeking [~~for~~] relief under the lemon
17 law must be in writing [~~written~~] and filed with the department.
18 A complaint filed with the department shall be delivered:

19 (A) in person to the department; [~~by hand~~
20 ~~delivery to the department's headquarters building in Austin,~~]

21 (B) by mail to the address of the department; [~~or~~]
22 ~~or~~]

23 (C) by email [~~by e-mail or facsimile~~]

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1 ~~transmission]~~ to a department-designated email address; or [~~e-~~
2 ~~mail address or]~~

3 (D) by facsimile transmission to a department-
4 designated facsimile number.

5 (2) Complaints may be submitted in letter or other
6 written format, or on complaint forms provided by the
7 department.

8 (3)~~(2)~~ Complaints shall [~~should~~] state sufficient
9 facts to enable the department and the party complained against
10 to know the nature of the complaint and the specific problems or
11 circumstances forming [~~which form~~] the basis of the claim for
12 relief under the lemon law.

13 (4)~~(3)~~ Complaints shall, at a minimum, [~~should~~]
14 provide the following information:

15 (A) the name, address, and telephone [~~phone~~]
16 number of the motor vehicle owner;

17 (B) the identification of the motor vehicle,
18 including the [~~vehicle by~~] make, model, [~~and~~] year, and
19 manufacturer's VIN; [~~vehicle identification number;~~]

20 (C) the type of warranty coverage;

21 (D) the name and address of the dealer~~[r]~~ or
22 other person from whom the motor vehicle was purchased or
23 leased, including the name and address of the vehicle lessor, if

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1 applicable;

2 (E) the date of delivery of the motor vehicle to
3 the original owner[+] and in the case of a demonstrator, the
4 date the motor vehicle was placed into demonstrator service;

5 (F) the motor vehicle mileage at the time when:
6 [~~time~~]

7 (i) the motor vehicle was purchased or
8 leased; [~~, mileage when~~]

9 (ii) problems with the motor vehicle were
10 first reported; and[~~]~~

11 (iii) the complaint was filed;

12 (G) the name of the dealer or the name of the
13 manufacturer's, converter's, or distributor's agent to whom the
14 problems were first reported[~~, and current mileage~~];

15 (H)[+(G)] identification of the motor vehicle's
16 existing problems and a brief description of the history of
17 problems and repairs on the motor vehicle, including:

18 (i) the date and mileage of each repair; and

19 (ii) a copy of each repair order[~~, with~~
20 ~~copies of repair orders~~] where possible;

21 (I)[+(H)] the date the motor [~~date on which~~
22 ~~written notification of complaint was given to the~~] vehicle
23 manufacturer, converter, or distributor received written

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1 notification of the complaint;~~[, and]~~

2 (J) the date and results of the motor vehicle
3 inspection, if the motor vehicle was ~~[if the vehicle has been]~~
4 inspected by the manufacturer, converter, or distributor~~[, the~~
5 ~~date and results of such inspection];~~ and

6 (K)~~[+I]~~ any other information ~~[which]~~ the
7 complainant deems relevant ~~[believes to be pertinent]~~ to the
8 complaint.

9 (5)~~[+4]~~ The department's staff will provide
10 information concerning the complaint procedure and complaint
11 forms to any person requesting ~~[information or]~~ assistance.

12 (6)~~[+5]~~ The filing fee required under the lemon law
13 should be remitted with the complaint by any form of payment
14 accepted by the department. The filing fee is nonrefundable, but
15 a complainant that ~~[who]~~ prevails in a case is entitled to
16 reimbursement of the filing fee from the nonprevailing party.
17 Failure to remit the filing fee with the complaint will delay
18 commencement of the 150-day period referenced in paragraph (8)
19 ~~[+7]~~ of this subsection and may result in dismissal of the
20 complaint.

21 (7)~~[+6]~~ The commencement of a lemon law proceeding
22 occurs on the date the filing fee is received ~~[of receipt of the~~
23 ~~filing fee]~~ by the department or its authorized agent.

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1 (8)[(+7)] If the hearings examiner has not issued an
2 order within 150 days after the commencement of the lemon law
3 proceeding in accordance with paragraph (7) [(+6)] of this
4 subsection, department staff shall notify the parties by mail
5 that the complainant may file a civil action in state district
6 court to seek relief under the lemon law. The notice will inform
7 the complainant of the complainant's right to continue the lemon
8 law complaint through the department. The 150-day period shall
9 be extended upon request of the complainant or if a delay in the
10 proceeding is caused by the complainant.

11 (b) Warranty performance complaints (repair-only relief).
12 [~~Performance Complaints (Repair-Only Relief)~~.]

13 (1) Complaints for warranty performance relief filed
14 with the department must comply with the requirements of
15 subsection (a)(1) - (4) [(+a)(1)—(+3)] of this section.

16 (2) A [~~No~~] filing fee is not required for a complaint
17 that is subject to [~~filed for~~] a warranty performance claim.

18 (3) A complaint may be filed with the department in
19 accordance with this section if [~~If~~] the defect in the motor
20 vehicle subject to [~~that is the subject of~~] the warranty
21 performance complaint was reported to the manufacturer,
22 converter, distributor, or to an [~~or distributor or its~~]
23 authorized agent prior to the expiration of the warranty

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1 ~~period[, a complaint may be filed with the department in~~
2 ~~accordance with this section].~~

3 (4) If the defect is not ~~[cannot be]~~ resolved pursuant
4 to §215.205 of this title ~~[subchapter]~~ (relating to Mediation;
5 Settlement), a hearing will be scheduled and conducted in
6 accordance with Government Code, Chapter 2001, subject to [this
7 ~~subchapter and]~~ Occupations Code, Chapter 2301, Subchapter O and
8 this subchapter.

9 (5) The final order authority will issue an order on
10 the warranty performance complaint. A party who disagrees with
11 the order may oppose the order in accordance with ~~[using the~~
12 ~~procedures described in]~~ §215.207 of this title ~~[subchapter]~~
13 (relating to Contested Cases: Final Orders).

14 (6) Department staff will provide information
15 concerning the complaint procedure and complaint forms to any
16 person requesting ~~[information or]~~ assistance.

17

18 §215.203. Review of Complaints.

19 Department staff will promptly review a complaint ~~[All~~
20 ~~complaints will be reviewed promptly by department staff]~~ to
21 determine if the complaint meets ~~[whether they satisfy]~~ the
22 minimum requirements of a lemon law or a warranty performance
23 complaint.

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1 (1) If department staff cannot determine [~~it cannot be~~
2 ~~determined~~] whether a complaint meets [~~satisfies~~] the minimum
3 lemon law or warranty performance requirements, the complainant
4 will be contacted for additional information.

5 (2) If department staff determines [~~it is determined~~]
6 that the complaint meets [~~does meet~~] the minimum lemon law or
7 warranty performance requirements, the complaint will be
8 processed in accordance with [~~the procedures set forth in~~] this
9 subchapter.

10

11 §215.204. Notification to Manufacturer, Converter, or
12 Distributor.

13 (a) Upon receipt of a complaint for lemon law or warranty
14 performance relief, the department will:

15 (1) provide notification of the complaint to, and
16 request a response from, the appropriate manufacturer,
17 converter, or distributor; and [~~, and a response to the complaint~~
18 ~~will be requested. The department will also]~~

19 (2) provide a copy of the complaint to, and may
20 request a response from, the selling dealer and any other dealer
21 [~~dealers that have been~~] involved with the complaint [~~, and a~~
22 ~~response may be requested~~].

23 (b) The manufacturer shall, upon request by the department,

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1 provide a copy of the warranty for the motor vehicle subject to
2 the lemon law or warranty performance complaint.

3

4 §215.205. Mediation; Settlement.

5 (a) Department [~~Before a complaint filed under Occupations~~
6 ~~Code, §§2301.204 or §2301.601 - 2301.613 is scheduled for a~~
7 ~~hearing, department]~~ staff will attempt to settle or resolve a
8 lemon law or warranty performance complaint through nonbinding
9 mediation before a hearing on the complaint is scheduled.
10 [~~effect a settlement or resolution of the complaint through~~
11 ~~mediation.~~]

12 (b) The parties are required [~~While the mediation is not~~
13 ~~binding, all parties are required]~~ to participate in the
14 nonbinding mediation process in good faith.

15 (c) In a case filed under Occupations Code, §2301.204 or
16 §§2301.601 - 2301.613, the mediator shall qualify for
17 appointment as an impartial third party in accordance with Civil
18 Practice and Remedies Code, Chapter 154.

19

20 §215.206. Hearings.

21 Lemon law or warranty performance complaints that satisfy the
22 jurisdictional requirements of the Occupations Code will be set
23 for hearing. Notification [~~, and notification]~~ of the date, time,

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1 and place of the hearing will be given to all parties by
2 certified mail. Additional information contained in the notice
3 of hearing shall be consistent with §215.34 of this title
4 (relating to Notice of Hearing in Contested Cases).

5 (1) When [~~where~~] possible, hearings will be held in
6 the city in which [~~where~~] the complainant resides [~~or at a~~
7 ~~location reasonably convenient to the complainant~~].

8 (2) Hearings will be scheduled at the earliest date
9 possible, provided that a 10-day notice or other notice [~~7-~~
10 ~~such other notice as is~~] required by law[~~7~~] is given to all
11 parties.

12 (3) Hearings will be conducted expeditiously by a
13 hearings examiner in accordance with Government Code, Chapter
14 2001, subject to Occupations Code, Chapter 2301, Subchapter O[~~+~~
15 ~~Occupations Code, §2301.704~~]; and with the provisions of
16 Subchapter B of this chapter (relating to Adjudicative Practice
17 and Procedure) and this subchapter.

18 (4) Hearings will be conducted informally [~~informal~~].
19 The parties have the right to be represented by attorneys at a
20 hearing, although attorneys are not required. Any party who
21 intends to be represented at a hearing by an attorney or an
22 authorized representative [~~at a hearing~~] must notify the
23 hearings examiner, the department, and any [~~the~~] other party in

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1 writing at least five business days prior to the hearing.
2 Failure to provide [~~such~~] notice will result in postponement of
3 the hearing if [~~postponement is~~] requested by any [~~the~~] other
4 party.

5 (5) Subject to a hearings examiner ruling, a party may
6 present that party's case [~~hearings examiner rulings, parties~~
7 ~~may present their cases~~] in full, including testimony from
8 witnesses[~~7~~] and documentary evidence such as repair orders,
9 warranty documents, and the motor vehicle sales contract.

10 (6) By agreement of the parties and with the written
11 approval of the hearings examiner, the hearing may be conducted
12 by written submission [~~submissions~~] only or by telephone.

13 (7) Except for a hearing [~~hearings~~] conducted by
14 written submission [~~only~~], each party may be questioned by the
15 other party[~~7~~] at the discretion of the hearings examiner.

16 (8) Except for a hearing [~~hearings~~] conducted by
17 written submission [~~only~~] or by telephone, the complainant must
18 bring the motor vehicle in question to the hearing so that the
19 motor vehicle may be inspected and test driven, unless otherwise
20 ordered by the hearings examiner upon a showing of good cause by
21 the complainant.

22 (9) The department may have the motor vehicle in
23 question inspected by an expert prior to the hearing, if the

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1 department determines that an expert opinion may assist in
2 arriving at a decision. An inspection under this section [~~Any~~
3 ~~such inspection~~] shall be made only upon prior notice to all
4 parties, who shall have the right to be present at such
5 inspection. A copy [~~Copies~~] of any findings or report from such
6 inspection will be provided to all parties before, or at, the
7 hearing.

8 (10) Except for hearings conducted by written
9 submission [~~only~~], all hearings will be recorded by the hearings
10 examiner. A copy of the recording [~~Copies of the hearing~~
11 ~~recordings~~] will be provided to any party upon request and upon
12 payment for the cost of the copy, as provided by law or board
13 rules.

14

15 §215.207. Contested Cases: Final Orders.

16 (a) A motion for rehearing of a final order issued by the
17 board for a complaint filed [~~Board~~] under Occupations Code,
18 Chapter 2301, Subchapters E or M shall proceed in accordance
19 with Occupations Code, §2301.713. [~~Subchapter E or M, shall~~
20 ~~follow the procedures in Subchapter I of this chapter (relating~~
21 ~~to Practice and Procedure for Hearings Conducted by the State~~
22 ~~Office of Administrative Hearings).~~]

23 [~~(b) A motion for rehearing of a final order issued by a~~

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1 ~~hearings examiner shall follow the procedures in this~~
2 ~~subsection.]~~

3 (b)[(+1)] The hearings examiner shall [~~will~~] prepare a final
4 order as soon as possible, but not later than 60 days after the
5 hearing is closed, or as otherwise provided by law. The final
6 order shall [~~will~~] include the hearings examiner's findings of
7 fact and conclusions of law. The final order shall be sent by
8 the department to all parties by certified mail. [~~of record~~]

9 (c)[(+2)] A party who [~~that~~] disagrees with the final order
10 may file a motion for rehearing in accordance with Government
11 Code, Chapter 2001, subject to Occupations Code, Chapter 2301,
12 Subchapter O. A motion for rehearing of a final order issued by
13 a hearings examiner must: [~~within 20 days from the date of the~~
14 ~~notification of the final order.]~~

15 (1) be filed with and decided by the chief hearings
16 examiner;

17 ~~[(3) A motion for rehearing of a final order issued by~~
18 ~~a hearings examiner must be filed with the appropriate~~
19 ~~department office and decided by the chief hearings examiner.]~~

20 (2)[(+4) A motion for rehearing must] include the
21 specific reasons, exceptions, or grounds [~~that are~~] asserted by
22 a party as the basis of the request for a rehearing; and[~~—A~~
23 ~~motion for rehearing shall~~]

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1 (3) recite, if applicable, the specific findings of
2 fact, conclusions of law, or any other portions of the final
3 order to which the party objects.

4 (d)[(+5)] Replies to a motion for rehearing must be filed
5 with the chief hearings examiner in accordance with Government
6 Code, Chapter 2001, subject to Occupations Code, Chapter 2301,
7 Subchapter O. [motion for rehearing authority under Occupations
8 Code, §2301.713 within 30 days after the date of the
9 notification of the final order.]

10 [(-6) The motion for rehearing authority must act on
11 the motion within 45 days after the date of notification of the
12 final order, or as otherwise provided by law, or the motion is
13 overruled by operation of law. The motion for rehearing
14 authority may, by written order, extend the period for filing,
15 replying to, and taking action on a motion for rehearing, not to
16 exceed 90 days after the date of notification of the final
17 order. In the event of an extension of time, the motion for
18 rehearing is overruled by operation of law on the date fixed by
19 the written order of extension, or in the absence of a fixed
20 date, 90 days after the date of notification of the final
21 order.]

22 (e)[(+7)] If the chief hearings examiner [motion for
23 ~~rehearing authority~~] grants a motion for rehearing, the parties

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1 will be notified by mail and a~~[.A]~~ rehearing will be scheduled
2 promptly ~~[as promptly as possible]~~. After rehearing, a final
3 order shall be issued with any additional findings of fact or
4 conclusions of law, if necessary to support the final order. The
5 chief hearings examiner ~~[motion for rehearing authority also]~~
6 may issue an order granting the relief requested in a motion for
7 rehearing or requested in a reply to a motion for rehearing
8 ~~[replies thereto]~~ without the need for a rehearing. If a motion
9 for rehearing and the relief requested is denied, an order ~~[se~~
10 ~~stating]~~ will be issued.

11 (f)~~[(8)]~~ A party who has exhausted all administrative
12 remedies~~[7]~~ and who is aggrieved by a final order in a contested
13 case from which appeal may be taken is entitled to judicial
14 review pursuant to Government Code, Chapter 2001, subject to
15 Occupations Code, Chapter 2301, Subchapter P~~[[§§2301.751—~~
16 ~~2301.756]~~, under the substantial evidence rule. A petition for
17 judicial review ~~[The petition]~~ shall be filed in a district
18 court of Travis County ~~[or in the Court of Appeals for the Third~~
19 ~~Court of Appeals District]~~ within 30 days after the order is
20 final and appealable. A copy of the petition must be served on
21 the final order authority and any other parties of record. After
22 service of the petition and within the time permitted for filing
23 an answer, the final order authority shall transmit to the

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1 reviewing court the original or a certified copy of the entire
2 record of the proceeding. If the court orders that new evidence
3 [~~to~~] be presented to the final order authority, the final order
4 authority [~~such decision-maker~~] may modify the findings and
5 decision or order by reason of the new evidence, and shall
6 transmit the additional record to the court.

7

8 §215.208. Lemon Law Relief Decisions.

9 (a) Unless otherwise indicated, this section applies to
10 decisions that relate to lemon law complaints. Decisions shall
11 give effect to the presumptions provided in Occupations Code,
12 §2301.605, where applicable.

13 (1) If it is found that the manufacturer, distributor,
14 or converter is not able to conform the motor vehicle to an
15 applicable express warranty by repairing or correcting a defect
16 in the complainant's motor vehicle, creating [~~vehicle which~~
17 ~~creates~~] a serious safety hazard or substantially impairing
18 [~~impairs~~] the use or market value of the motor vehicle after a
19 reasonable number of attempts, and that the affirmative defenses
20 provided under Occupations Code, §2301.606[~~7~~] are not
21 applicable, the final order authority shall issue a final order
22 to the manufacturer, distributor, or converter to:

23 (A) replace the motor vehicle with a comparable

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1 motor vehicle, less a reasonable allowance for the owner's use
2 of the vehicle;~~[_]~~ or

3 (B) accept the return of the motor vehicle from
4 the owner and refund ~~[to the owner]~~ the full purchase price of
5 the motor vehicle to the owner, ~~[vehicle,]~~ less a reasonable
6 allowance for the owner's use of the motor vehicle.

7 (2) In any decision in favor of the complainant, the
8 final order authority will, to the extent possible, accommodate
9 the complainant's request with respect to replacement or
10 repurchase of the motor vehicle~~[, to the extent possible]~~.

11 (b) This subsection applies only to the repurchase of motor
12 vehicles.

13 (1) When ~~[where]~~ a refund of the purchase price of a
14 motor vehicle is ordered, the purchase price shall be the total
15 purchase price of the motor vehicle, excluding ~~[vehicle, but~~
16 ~~shall not include]~~ the amount of any interest, finance charge,
17 or insurance premiums. The award to the motor vehicle owner
18 shall include reimbursement of ~~[for]~~ the amount of the lemon law
19 complaint filing fee paid by, or on behalf of, the motor ~~[the]~~
20 vehicle owner. The refund shall be made payable to the motor
21 vehicle owner and to any lienholder, respective to their
22 ownership interest. ~~[the lienholder, if any, as their interests~~
23 ~~require.]~~

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1 (2) There is a rebuttable presumption that a motor
2 vehicle has a useful life of 120,000 miles. Except in cases
3 where the preponderance of the evidence shows that the motor
4 vehicle has a longer or shorter expected useful life than
5 120,000 miles, the reasonable allowance for the owner's use of
6 the motor vehicle shall be that amount obtained by adding
7 subparagraphs (A) and (B) of this paragraph.

8 (A) The [~~the~~] product obtained by multiplying the
9 purchase price, as defined in paragraph (1) of this subsection,
10 of the motor vehicle[, ~~as defined in paragraph (1) of this~~
11 ~~subsection,~~] by a fraction having as its denominator 120,000 and
12 having as its numerator the number of miles that the motor
13 vehicle traveled from the time of delivery to the owner to the
14 first report of the defect or condition forming the basis of the
15 repurchase order; and

16 (B) 50% [~~50 percent~~] of the product obtained by
17 multiplying the purchase price by a fraction having as its
18 denominator 120,000 and having as its numerator the number of
19 miles that the motor vehicle traveled after the first report of
20 the defect or condition forming the basis of the repurchase
21 order. The number of miles during the period covered in this
22 paragraph shall be determined from the date of the first report
23 of the defect or condition forming the basis of the repurchase

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1 order through the date of the hearing.

2 (3) There is a rebuttable presumption that the useful
3 life of a towable recreational vehicle is 3,650 days or 10
4 years. [~~(10 years)~~]. Except in cases where a preponderance of
5 the evidence shows that the vehicle has a longer or shorter
6 expected useful life than 3,650 days or 10 years, [~~(10 years)~~],
7 the reasonable allowance for the owner's use of the towable
8 recreational vehicle shall be that amount obtained by adding
9 subparagraphs (A) and (B) of this paragraph.

10 (A) The product obtained by multiplying the
11 purchase price, as defined in paragraph (1) of this subsection,
12 of the towable recreational vehicle [~~, as defined in paragraph~~
13 ~~(1) of this subsection,~~] by a fraction having as its denominator
14 3,650 days or 10 years, [~~(10 years)~~], except the denominator
15 shall be 1,825 days or five years, [~~(5 years)~~], if the towable
16 recreational vehicle is occupied on a full time basis, and
17 having as its numerator the number of days from the time of
18 delivery to the owner to the first report of the defect or
19 condition forming the basis of the repurchase order.

20 (B) 50% [~~50 percent~~] of the product obtained by
21 multiplying the purchase price by a fraction having as its
22 denominator 3,650 days or 10 years, [~~(10 years)~~], except the
23 denominator shall be 1,825 days or five years, [~~(5 years)~~], if

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1 the towable recreational vehicle is occupied on a full time
2 basis, and having as its numerator the number of days of
3 ownership after the first report of the defect or condition
4 forming the basis of the repurchase order. The number of days
5 during the period covered in this paragraph shall be determined
6 from the date of the first report of the defect or condition
7 forming the basis of the repurchase order through the date of
8 the hearing.

9 (C) Any day or part of a day that the vehicle is
10 out of service for repair will be deducted from the numerator in
11 determining the reasonable allowance for use of a towable
12 recreational vehicle in this paragraph.

13 (c) This subsection applies only to leased motor vehicle
14 relief.

15 (1) Except in cases involving unusual and extenuating
16 circumstances[~~7~~] supported by a preponderance of the evidence,
17 when a [where] refund of the purchase price of a leased motor
18 vehicle is ordered, the purchase price shall be allocated and
19 paid to the lessee and the vehicle lessor, respectively, in
20 accordance with [~~set out as follows in~~] subparagraphs (A) and
21 (B) of this paragraph.

22 (A) The lessee shall receive the total of:

23 (i) all lease payments previously paid by

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1 the lessee to the vehicle [~~him to the~~] lessor under the terms of
2 the lease; and

3 (ii) all sums previously paid by the lessee
4 to the vehicle [~~him to the~~] lessor in connection with entering
5 into the lease agreement, including, but not limited to[~~7~~] any
6 capitalized cost reduction, down payment, trade-in, or similar
7 cost, plus sales tax, license, [~~and~~] registration fees, and
8 other documentary fees, if applicable.

9 (B) The vehicle lessor shall receive the total
10 of:

11 (i) the actual price paid by the vehicle
12 lessor for the motor vehicle, including tax, title, license, and
13 documentary fees, if paid by the vehicle lessor and [~~lessor, and~~
14 ~~as~~] evidenced in a bill of sale, bank draft demand, tax
15 collector's receipt, or similar instrument; and [~~plus~~]

16 (ii) an additional 5.0% of the [~~5 percent of~~
17 ~~such~~] purchase price plus any amount or fee paid by vehicle
18 lessor to secure the lease or interest in the lease.[~~7~~]

19 (C)[~~(iii)~~] A credit [~~provided, however, that a~~
20 ~~credit,~~] reflecting all of the payments made by the lessee[~~7~~]
21 shall be deducted from the actual purchase price that [~~which~~]
22 the manufacturer, converter, or distributor is required to pay
23 the vehicle lessor, as specified in subparagraph (B)(i) and (ii)

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1 of this paragraph. [~~clauses (i) and (ii) of this subparagraph.~~]

2 (2) When the final order authority orders a
3 manufacturer, converter, or distributor to refund the purchase
4 price in a leased vehicle transaction, the motor vehicle shall
5 be returned to the manufacturer, converter, or distributor with
6 clear title upon payment of the sums indicated in paragraph
7 (1)(A) and (B) of this subsection. The vehicle lessor shall
8 transfer title of the motor vehicle to the manufacturer,
9 converter, or distributor, as necessary to effectuate the
10 lessee's rights. The lease shall be terminated without penalty
11 to the lessee.

12 (3) Refunds shall be made to the lessee, vehicle
13 lessor, and to any lienholder, respective to their ownership
14 interest. [~~any lienholders as their interest may appear.~~] The
15 refund to the lessee under paragraph (1)(A) of this subsection
16 shall be reduced by a reasonable allowance for the lessee's use
17 of the motor vehicle. A reasonable allowance for use shall be
18 computed in accordance with [~~according to the formula in~~]
19 subsection (b)(2) or (3) of this section, using the amount in
20 paragraph (1)(B)(i) of this subsection as the applicable
21 purchase price.

22 (d) This subsection applies only to replacement of motor
23 vehicles.

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1 (1) Upon issuance of an order from the final order
2 authority to a manufacturer, converter, or distributor to
3 replace a motor vehicle, the manufacturer, converter, or
4 distributor shall:

5 (A) promptly [~~Promptly~~] authorize the exchange of
6 the complainant's motor vehicle with the complainant's choice of
7 any comparable motor vehicle; and[~~-~~]

8 (B) instruct [~~Instruct~~] the dealer to contract
9 the sale of the selected comparable motor vehicle with the
10 complainant under the following terms.[+]

11 (i) The sales price of the comparable motor
12 vehicle shall be the vehicle's Manufacturer's Suggested Retail
13 Price (MSRP);

14 (ii) The trade-in value of the complainant's
15 motor vehicle shall be the MSRP at the time of the original
16 transaction, less a reasonable allowance for the complainant's
17 use of the complainant's motor vehicle.~~[vehicle; and]~~

18 (iii) The use allowance for replacement
19 relief shall be calculated in accordance with [~~using the~~
20 ~~formulas outlined in~~] subsection (b)(2) and (3) of this section.

21 (2) Upon any replacement of a complainant's motor
22 vehicle, the complainant shall be responsible for payment or
23 financing of the usage allowance of the complainant's vehicle,

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1 any outstanding liens on the complainant's vehicle, and
2 applicable taxes and fees associated with the new sale,
3 excluding documentary fees.

4 (A) If the comparable motor vehicle has a higher
5 MSRP than the complainant's vehicle, the complainant shall be
6 responsible at the time of sale to pay or finance the difference
7 in the two vehicles' MSRPs to the manufacturer, converter or
8 distributor.

9 (B) If the comparable motor vehicle has a lower
10 MSRP than the complainant's vehicle, the complainant will be
11 credited the difference in the MSRP between the two motor
12 vehicles. The difference credited shall not exceed the amount of
13 the calculated usage allowance for the complainant's vehicle.

14 (3) The complainant is responsible for obtaining [~~to~~
15 ~~obtain~~] financing, if necessary, to complete the transaction.

16 (4) The replacement transaction, as described in
17 paragraphs (2) and (3) of this subsection, shall be completed as
18 specified in the final order. If the replacement transaction
19 cannot be completed [~~this cannot be accomplished~~] within the
20 ordered time period, the manufacturer shall repurchase the
21 complainant's motor vehicle in accordance with [~~pursuant to~~] the
22 repurchase provisions of this section. If repurchase relief
23 occurs, a party may request calculation of the repurchase price

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1 by the final order authority.

2 (e) If the final order authority finds that a complainant's
3 motor vehicle does not qualify for replacement or repurchase, an
4 order may be entered in any proceeding, where appropriate,
5 requiring repair work to be performed or other action taken to
6 obtain compliance with the manufacturer's, converter's, or
7 distributor's warranty obligations.

8 (f) If the motor vehicle is substantially damaged or if
9 there is an adverse change in the motor vehicle's condition [~~its~~
10 ~~condition,~~] beyond ordinary wear and tear, from the date of the
11 hearing to the date of repurchase, and the parties are unable to
12 agree on an amount allowed for such damage or condition, either
13 party may request reconsideration by the final order authority
14 of the repurchase price contained in the final order.

15 (g) In any award in favor of a complainant, the final order
16 authority may require the dealer involved to reimburse the
17 complainant, manufacturer, converter, or distributor for the
18 cost of any items or options added to the motor vehicle if one
19 or more of those [~~such~~] items or options contributed to the
20 defect that is the basis for the order, repurchase, or
21 replacement. This subsection shall not be interpreted to require
22 a manufacturer, converter, or distributor to repurchase a motor
23 vehicle due to a defect or condition that was solely caused by a

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1 dealer add-on item or option.

2

3 §215.209. Incidental Expenses.

4 (a) When a refund of the purchase price or replacement of a
5 motor vehicle is ordered, the complainant shall be reimbursed
6 for certain incidental expenses incurred by the complainant from
7 loss of use of the motor vehicle because of the defect or
8 nonconformity which is the basis of the complaint. The expenses
9 must be reasonable and verifiable. [~~verified through receipts or~~
10 ~~similar written documents.~~] Reimbursable incidental expenses
11 include, but are not limited to the following costs:

12 (1) alternate transportation;

13 (2) towing;

14 (3) telephone calls or mail charges directly
15 attributable to contacting the manufacturer, distributor,
16 converter, or dealer regarding the motor vehicle;

17 (4) meals and lodging necessitated by the motor
18 vehicle's failure during out of town [~~out-of-town~~] trips;

19 (5) loss or damage to personal property;

20 (6) attorney fees if the complainant retains counsel
21 after notification that the respondent is represented by
22 counsel; and

23 (7) items or accessories added to the motor vehicle at

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1 or after purchase, less a reasonable allowance for use.

2 (b) Incidental expenses shall be included in the final
3 repurchase price required to be paid by a manufacturer,
4 converter, or distributor to a prevailing complainant or in the
5 case of a motor vehicle replacement, shall be tendered to the
6 complainant at the time of replacement.

7 (c) When awarding reimbursement for the cost of items or
8 accessories presented under subsection (a)(7) of this section,
9 the hearings examiner shall consider the permanent nature,
10 functionality, and value added by the items or accessories and
11 whether the items or accessories are original equipment
12 manufacturer (OEM) parts or non-OEM parts.

13

14 §215.210. Compliance with Order Granting Relief.

15 (a) Compliance with an order issued by the final order
16 authority will be monitored by the department.

17 (b)[(+1)] A complainant is not bound by a final decision and
18 order [~~and may either accept or reject the decision~~].

19 (c)[(+2)] If a complainant does not accept the final
20 decision, the proceeding before the final order authority will
21 be deemed concluded and the complaint file closed.

22 (d)[(+3)] If the complainant accepts the final decision,
23 then the manufacturer, converter, or distributor, and the dealer

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1 to the extent of the dealer's responsibility, if any, shall
2 immediately take such action as is necessary to implement the
3 final decision and order.

4 (e)~~[(4)]~~ If a manufacturer, converter, or distributor
5 replaces or repurchases a motor vehicle pursuant to an order
6 issued by the final order authority, reacquires a vehicle to
7 settle a complaint filed under Occupations Code, §2301.204 or
8 §§2301.601 - 2301.613, [~~Chapter 2301, Subchapter M or~~
9 ~~Occupations Code, §2301.204,~~] or brings a motor vehicle into the
10 State [~~state~~] of Texas that [~~which~~] has been reacquired to
11 resolve a warranty claim in another jurisdiction, then the
12 manufacturer, converter, or distributor shall, prior to the
13 resale of such motor vehicle, retitle [~~vehicle, re-title~~] the
14 vehicle in Texas and shall:

15 (1) issue a disclosure statement on a form provided by
16 or approved by the department; and [~~. In addition, the~~
17 ~~manufacturer, converter, or distributor reacquiring the vehicle~~
18 ~~shall~~]

19 (2) affix a department-approved disclosure label in a
20 conspicuous [~~disclosure label provided by or approved by the~~
21 ~~department on an approved~~] location in or on the motor vehicle.

22 (f) The [~~Both the~~] disclosure statement and [~~the~~]
23 disclosure label required under subsection (e) of this section

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1 shall accompany the motor vehicle through the first retail
2 purchase. No person or entity holding a license or GDN [~~general~~
3 ~~distinguishing number~~] issued by the department under
4 Occupations Code, Chapter 2301 or Transportation Code, Chapter
5 503 shall remove or cause the removal of the disclosure label
6 until delivery of the motor vehicle to the first retail
7 purchaser.

8 (g) A manufacturer, converter, or distributor shall provide
9 to the department [~~in writing,~~] the name, address, and telephone
10 number of the transferee [~~any transferee, regardless of~~
11 ~~residence,~~] to whom the manufacturer, distributor, or
12 converter[~~, as the case may be,~~] transfers the motor vehicle on
13 the disclosure statement [~~vehicle~~] within 60 days of each
14 transfer. The selling dealer shall return the completed
15 disclosure statement to the department within 60 days of the
16 retail sale of a reacquired motor vehicle.

17 (h) The [~~Any manufacturer, converter, or distributor or~~
18 ~~holder of a general distinguishing number who violates this~~
19 ~~section is liable for a civil penalty or other sanctions~~
20 ~~prescribed by the Occupations Code. In addition, the]~~

21 manufacturer, converter, or distributor must repair the defect
22 or condition in the motor vehicle that resulted in the vehicle
23 being reacquired and issue[~~, at a minimum,~~] a basic warranty

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1 excluding non-OEM items or accessories, for a minimum of 12
2 months or 12,000 miles, whichever comes first. The [~~for (12~~
3 months/12,000 mile, whichever comes first), except for non-
4 original equipment manufacturer items or accessories, which]
5 warranty shall be provided to the first retail purchaser of the
6 motor vehicle.

7 (i)[(+5)] In the event this section conflicts with [~~of any~~
8 ~~conflict between this section and]~~ the terms contained in a
9 cease and desist order, the terms of the cease and desist order
10 shall prevail.

11 (j)[(+6)] The failure of any manufacturer, converter,
12 distributor, or dealer to comply with a final order issued by
13 the final order authority within the time period prescribed in
14 the order may subject the manufacturer, converter, [~~or~~]
15 distributor, or dealer to formal action by the department,
16 including the assessment of civil penalties or other sanctions
17 prescribed by Occupations Code, Chapter 2301, for the failure to
18 comply with an order issued by the final order authority.

1 SUBCHAPTER H. ADVERTISING

2 §215.241. Purpose and Scope. [~~Objective.~~]

3 This subchapter implements [~~The objective of this subchapter is~~
4 ~~to implement the intent of the legislature as declared in~~
5 Occupations Code, Chapter 2301[~~7~~] by regulating the advertising
6 of persons under the jurisdiction of the department [~~Board~~] by
7 requiring truthful and accurate advertising practices for the
8 benefit of the citizens of this state.

9
10 §215.242. General Prohibition.

11 A person advertising motor vehicles shall not use false,
12 deceptive, unfair, or misleading advertising. In addition to a
13 violation of a specific advertising rule, any other advertising
14 or advertising practices found by the department [~~Board~~] to be
15 false, deceptive, or misleading, whether herein described, [~~or~~
16 ~~not enumerated herein~~] shall be deemed a violation of
17 Occupations Code, Chapter 2301 [~~violations of the Code,~~] and
18 shall also be considered a violation [~~violations~~] of this rule.
19 [~~the general prohibition.~~]

20
21 §215.243. Specific Rules.

22 The violation of an advertising rule shall be considered by the
23 department [~~Board~~] as a prima facie violation of Occupations

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1 Code, Chapter 2301.

2

3 §215.244. Definitions.

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

7 (1) Advertisement--

8 (A) An oral, written, graphic, or pictorial
9 statement or representation made in the course of soliciting
10 business, including, but not limited to [~~without limitation,~~] a
11 statement or representation:

12 (i) made in a newspaper, magazine, or other
13 publication; [~~or~~]

14 (ii) contained in a notice, sign, poster,
15 display, circular, pamphlet, or letter; [~~or~~]

16 (iii) aired on the radio; [~~on radio,~~]

17 (iv) broadcast on the Internet or
18 television; or [~~or~~]

19 (v) streamed via an online service. [~~via an~~
20 ~~on-line service, or on television.~~]

21 (B) Advertisement [~~The term~~] does not include
22 direct communication between a person or person's [~~dealer or~~
23 ~~dealer's~~] representative and a prospective purchaser.

1 (2) Advertising provision--

2 (A) A provision of Occupations Code, Chapter
3 2301, [the Code] relating to the regulation of advertising; or

4 (B) A rule relating to the regulation of
5 advertising, adopted pursuant to the authority of Occupations
6 Code, Chapter 2301. [the Code.]

7 (3) Bait advertisement--An alluring but insincere
8 offer to sell or lease a product of which the primary purpose is
9 to obtain a lead to a person [~~leads to persons~~] interested in
10 buying or leasing merchandise of the type advertised and to
11 switch a consumer [~~consumers~~] from buying or leasing the
12 advertised product in order to sell or lease some other product
13 at a higher price or on a basis more advantageous to the dealer.
14 [~~advertiser.~~]

15 (4) Balloon payment--Any scheduled payment made as
16 required by a consumer credit transaction that is more than
17 twice as large as the average of all prior scheduled payments
18 except the down payment.

19 [~~(5) Buyers guide--A form as required by the Federal~~
20 ~~Trade Commission under 16 Code of Federal Regulations, Part 455.~~
21 ~~This form is to be completed and displayed on the side window of~~
22 ~~a vehicle that has been driven more than the limited use~~
23 ~~necessary in moving or road testing a new vehicle prior to~~

1 ~~delivery to a consumer.]~~

2 (5) [~~+6~~] Clear and conspicuous--The statement,
3 representation, or term being disclosed is of such size, color,
4 contrast, and audibility and is presented so as to be readily
5 noticed and understood. All language and terms, including
6 abbreviations, shall be used in accordance with their common or
7 ordinary usage and meaning.

8 (6) [~~+7~~] Dealership addendum--A form that is [~~which is~~
9 ~~to be~~] displayed on a window of a motor vehicle when the
10 dealership installs special features, equipment, parts, or
11 accessories, or charges for services not already compensated by
12 the manufacturer or distributor for work required to prepare a
13 motor vehicle for delivery to a buyer.

14 (A) The purpose of the addendum is to disclose:

15 (i) [~~+A~~] that it is supplemental;

16 (ii) [~~+B~~] any added feature, service,
17 equipment, part, or accessory, including the retail price,
18 charged and added by the dealership [~~and the retail price~~
19 ~~therefore~~];

20 (iii) [~~+C~~] any additional charge to the
21 selling price such as additional dealership markup; and

22 (iv) [~~+D~~] the total dealer selling price.

23 (B) The dealership addendum form shall not be

1 deceptively similar in appearance to the Monroney label, as
2 defined by paragraph (12) of this section. [~~manufacturer's~~
3 ~~label, which is required to be affixed by every manufacturer to~~
4 ~~the windshield or side window of each new motor vehicle under~~
5 ~~the Automobile Information Disclosure Act.]~~

6 (7) [~~+8~~] Demonstrator--A new motor vehicle that is
7 currently in the inventory of the automobile dealership and used
8 [~~or has been used~~] primarily for test drives by customers and
9 for other purposes [~~other dealership purposes and so~~] designated
10 by the dealership.

11 (8) [~~+9~~] Disclosure--Required information that is
12 clear, conspicuous, and accurate.

13 (9) [~~+10~~] Factory executive/official motor vehicle--A
14 new motor vehicle that has been used exclusively by an executive
15 or official of the dealer's franchising manufacturer,
16 distributor, or their subsidiaries.

17 (10) [~~+11~~] Licensee--Any person required to obtain a
18 license from the department.

19 (11) Limited rebate--A rebate that is not available to
20 every consumer purchasing or leasing a motor vehicle because
21 qualification for receipt of the rebate is conditioned or
22 restricted in some manner. A rebate conditioned or restricted to
23 purchasers who are residents of the contiguous United States is

1 not a limited rebate.

2 (12) Monroney~~[Manufacturer's]~~ label--The label
3 required by the Automobile Information Disclosure Act, 15 U.S.C.
4 §§1231 - 1233, to be affixed ~~[by the manufacturer]~~ to the
5 windshield or side window of certain ~~[each]~~ new motor vehicles
6 ~~[automobile]~~ delivered to the dealer and that contains
7 information about the motor vehicle, including, but not limited
8 to: [-]

9 (A) the retail price of the motor vehicle
10 suggested by the manufacturer;

11 (B) the retail delivered price suggested by the
12 manufacturer for each accessory or item of optional equipment,
13 physically attached to the motor vehicle at the time of its
14 delivery to a dealer, which is not included within the price of
15 the motor vehicle as stated in subparagraph (A) of this
16 paragraph;

17 (C) the amount charged, if any, to a dealer for
18 the transportation of the motor vehicle to the location at which
19 it is delivered to the dealer; and

20 (D) the total of the amounts specified pursuant
21 to subparagraphs (A), (B), and (C) of this paragraph.

22 (13) Online ~~[On-line]~~ service--A network that connects
23 computer users.

1 (14) Rebate or cash back--A sum of money applied to
2 the purchase or lease of a motor vehicle or refunded after full
3 payment has been rendered for the benefit of the purchaser.
4 ~~[refunded to a purchaser or for the benefit of the purchaser~~
5 ~~after full payment has been rendered. The purchaser may choose~~
6 ~~to reduce the amount of the purchase price by the sum of money~~
7 ~~or the purchaser may opt for the money to be returned to himself~~
8 ~~or for his benefit subsequent to payment in full.]~~

9 (15) Savings claim or discount--An offer to sell or
10 lease a motor vehicle at a reduced price, including a
11 manufacturer's or distributor's customer rebate, a dealer
12 discount, or a limited rebate.

13 (16) ~~(15)~~ Subsequent violation--Conduct that is the
14 same or substantially the same as conduct the department ~~[Board]~~
15 has previously alleged in an earlier communication to be a
16 violation of an advertising provision.

17
18 §215.245. Availability of Motor Vehicles.

19 (a) A dealer ~~[licensee]~~ may advertise a specific new motor
20 vehicle or line-make of vehicles for sale if the specific motor
21 vehicle or line-make is in the possession of the dealer
22 ~~[licensee]~~ at the time the advertisement is placed. ~~[, or if]~~

23 (b) If the specific motor vehicle or line-make is not in

1 the possession of the dealer [~~licensee~~] at the time the
2 advertisement is placed, the dealer must [~~licensee~~] clearly and
3 conspicuously disclose [~~discloses~~] that fact in the
4 advertisement and state [~~states~~] that the motor vehicle may be
5 obtained from the manufacturer, distributor, or some other
6 source. The advertisement must set [~~and~~]

7 [~~(1)~~] [~~the advertisement sets~~] forth the number of
8 motor vehicles available at the advertised price, if a price is
9 advertised, at the time the advertisement is placed [~~+~~] or

10 [~~(2)~~] the [~~a~~] dealer can show that it has the number
11 of motor vehicles available to meet the [~~he has available a~~]
12 reasonable expectable public demand based on prior experience.

13 (c) [~~(b)~~] If an advertised price pertains to only one
14 specific motor vehicle, then the advertisement must also
15 disclose the motor vehicle's stock number or VIN. [~~vehicle~~
16 ~~identification number.~~]

17 (d) [~~(e)~~] This section does not prohibit general advertising
18 of motor vehicles by a manufacturer, dealer advertising
19 association, or distributor, nor does it prohibit [~~and~~] the
20 inclusion of the names and addresses of the dealers selling such
21 motor vehicles in the particular area.

22 (e) [~~(d)~~] A motor vehicle dealer may advertise a specific
23 used motor vehicle for sale if:

1 (1) the specific used motor vehicle is in the
2 possession of the dealer at the time the advertisement is
3 placed; and

4 (2) the title certificate to the used motor vehicle
5 has been assigned to the dealer.

6
7 §215.246. Accuracy.

8 Advertisements [~~All advertisements~~] shall be accurate, clear,
9 and conspicuous. Advertisements [~~and~~] shall not be false,
10 deceptive, or misleading. For an Internet advertisement, a
11 disclosure may be considered accurate, clear, and conspicuous
12 if:

13 (1) the viewer highlights, hovers a mouse or cursor
14 over, or otherwise selects certain text or images on a screen
15 that results in an immediate and legible visible disclosure; or

16 (2) only one click on select text or image(s) is
17 required to view the disclosure; and

18 (3) the internet advertisement clearly and
19 conspicuously indicates where to hover or click for the
20 disclosure and is in close proximity to the information being
21 disclosed.

22

23 §215.247. Untrue Claims.

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1 The following statements are prohibited.

2 (1) Statements such as "write your own deal," "name
3 your own price," "name your own monthly payments," or statements
4 with similar meaning.

5 (2) Statements such as "everybody financed," "no
6 credit rejected," "we finance anyone," and other similar
7 statements representing or implying that no prospective credit
8 purchaser will be rejected because of his inability to qualify
9 for credit.

10 (3) Statements representing that no other dealer
11 grants greater allowances for trade-ins, however stated, unless
12 the dealer can show such is the case.

13 (4) Statements representing that because of its large
14 sales volume, a dealer is able to purchase motor vehicles for
15 less than another dealer selling the same make of motor
16 vehicles, unless the dealer can show such is the case.

17

18 §215.248. Layout.

19 The layout, headlines, illustrations, or type size of a printed
20 advertisement, an internet advertisement or an advertisement
21 streamed via an online service, and the broadcast words or
22 pictures of radio and television [~~radio/TV~~] advertisements shall
23 not convey or permit an erroneous or misleading impression as to

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1 which motor vehicle or vehicles are offered for sale or lease at
2 featured prices. No advertised offer, expression, or display of
3 price, terms, down payment, trade-in allowance, cash difference,
4 savings, or other such material terms shall be misleading. Any
5 ~~[and any]~~ necessary qualifications shall be clearly,
6 conspicuously, and accurately set forth to prevent
7 misunderstanding.

8

9 §215.249. Manufacturer's Suggested Retail Price.

10 (a) Except as provided by subsection (b) of this section,
11 the suggested retail price ~~[The suggested retail price]~~ of a new
12 motor vehicle ~~[when]~~ advertised by a manufacturer or distributor
13 shall include all costs and charges for the motor vehicle
14 advertised. ~~[, except that]~~

15 (b) The following costs and charges may be excluded if an
16 advertisement described in subsection (a) of this section
17 clearly and conspicuously states the costs and charges are
18 excluded:

19 (1) destination and dealer preparation charges; ~~[, and~~
20 ~~any]~~

21 (2) registration, certificate of title, license fees,
22 or an additional registration fee, if any; ~~[, charged by a full~~
23 ~~service deputy as provided by Transportation Code, §502.114;~~

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1 any]

2 (3) taxes; and [any]

3 (4) other fees or charges that are allowed or
4 prescribed by law [~~may be excluded from such price, provided~~
5 ~~that the advertisement clearly and conspicuously states that~~
6 ~~such costs and charges are excluded~~].

7 (c) Except as provided by this subsection, if the price of
8 a motor vehicle is stated in an advertisement [~~However, with~~
9 ~~respect to advertisements~~] placed with local media in the State
10 of Texas by a manufacturer or distributor and [~~which include~~]
11 the names of the local dealers for the motor vehicles advertised
12 are included in that advertisement, then the [~~, if the price of~~
13 ~~a vehicle is stated in the advertisement, such~~] price must
14 include all costs and charges for the motor vehicle advertised,
15 including destination and dealer preparation charges. The only
16 costs and charges that may be excluded from the price are: [~~and~~
17 ~~may exclude only any~~]

18 (1) registration, certificate of title, license fees,
19 or an additional registration fee, if any; [~~, charged by a full~~
20 ~~service deputy as provided by Transportation Code, §502.114,~~
21 any]

22 (2) taxes; and [any]

23 (3) other fees or charges that are allowed or

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1 prescribed by law.

2

3 §215.250. [~~Dealer~~] Price Advertising; Savings Claims;
4 Discounts. [~~Internet or E-Pricing.~~]

5 (a) When featuring a sales [~~an advertised sale~~] price of a
6 new or used motor vehicle in an advertisement, the dealer must
7 be willing to sell the motor vehicle for that featured sales
8 [~~such advertised~~] price to any retail buyer. The featured sales
9 [~~advertised sale~~] price shall be the price before the addition
10 or subtraction of any other negotiated items. Destination and
11 dealer preparation charges must be included in the featured
12 sales price. [~~The only charges that may be excluded from the~~
13 ~~advertised price are:~~]

14 [~~(1) any registration, certificate of title, or~~
15 ~~license fees;~~]

16 [~~(2) any taxes; and~~]

17 [~~(3) any other fees or charges that are allowed or~~
18 ~~prescribed by law.~~]

19 (b) The only costs and charges that may be excluded from
20 the featured sales price are:

21 (1) registration, certificate of title, or license
22 fees;

23 (2) taxes; and

1 (3) other fees or charges that are allowed or
2 prescribed by law.

3 (c) [~~(b)~~] A qualification may not be used when featuring a
4 sales price for a motor [~~advertising the price of a~~] vehicle
5 such as "with trade," "with acceptable trade," "with dealer-

6 arranged financing," "rebate assigned to dealer," or "with down

7 payment."

8 (d) Advertising an "Internet price," "e-price," or using
9 similar terms that indicate or create the impression that there
10 is a different or unique sales price for an online or Internet
11 consumer or transaction is prohibited.

12 (e) A savings claim or discount offer is prohibited except
13 to advertise a new motor vehicle. No person may advertise a
14 savings claim or discount offer on a used motor vehicle.

15 (f) Statements such as "up to," "as much as," and "from"
16 shall not be used in connection with savings claims or discount
17 offers.

18 (g) The savings claim or discount offer for a new motor
19 vehicle, when advertised, must be the savings claim or discount
20 available to any and all members of the buying public.

21 (h) If an advertisement includes a savings claim or
22 discount offer, the amount and type of each incentive that makes
23 up the total amount of the savings claim or discount offer must

1 be disclosed.

2 ~~[(c) If a price advertisement discloses a rebate, cash~~
3 ~~back, or discount savings claim, the price of the vehicle must~~
4 ~~be disclosed as well as the price of the vehicle after deducting~~
5 ~~the incentive.]~~

6 (1) If a savings claim or discount offer includes only
7 a dealer discount, that ~~[an advertisement discloses a discount~~
8 ~~savings claim, this]~~ incentive must be disclosed as a deduction
9 from the manufacturer's suggested retail price (MSRP). The
10 following are acceptable formats ~~[is an acceptable format]~~ for
11 advertising a dealer discount with and without a sales price.
12 ~~[price with a discount savings claim.]~~

13 Figure: 43 TAC §215.250(h)(1) ~~[Figure: 43 TAC §215.250(e)(1)]~~

14 (2) If a savings claim or discount offer includes only
15 a customer rebate, that ~~[an advertisement discloses a rebate,~~
16 ~~this]~~ incentive must be disclosed as a deduction from the MSRP.
17 ~~[advertised price.]~~ The following are acceptable formats ~~[is an~~
18 ~~acceptable format]~~ for advertising a customer rebate with and
19 without a sales price. ~~[price with a rebate.]~~

20 Figure: 43 TAC §215.250(h)(2) ~~[Figure: 43 TAC §215.250(e)(2)]~~

21 (3) If a savings claim or discount offer includes both
22 a customer rebate and a dealer discount, ~~[an advertisement~~
23 ~~discloses both a rebate and a discount savings claim,]~~ the

1 incentives must be disclosed as deductions [~~a deduction~~] from
2 the MSRP. The following are acceptable formats for advertising
3 both a customer rebate and a dealer discount with and without a
4 sales price. [~~is an acceptable format for advertising a price~~
5 ~~with a rebate and a discount savings claim.~~]

6 Figure: 43 TAC §215.250(h)(3) [~~Figure: 43 TAC §215.250(e)(3)~~]

7 (i) [~~(d)~~] If a savings claim or discount offer includes an
8 option package discount, [~~In the event that the manufacturer~~
9 ~~offers a discount on a package of options, then]~~ that discount
10 should be disclosed above, or prior to, the MSRP with a total
11 sales price of the motor vehicle before option discounts. Any
12 additional savings or discounts should then be disclosed below
13 the MSRP. The following are acceptable formats for advertising
14 an option package discount with and without a sales price. [~~The~~
15 ~~following is an acceptable format.~~]

16 Figure: 43 TAC §215.250(i) [~~Figure: 43 TAC §215.250(d)~~]

17 (j) Except as provided herein, the calculation of the
18 featured sales price or featured savings claim or discount may
19 not include a limited rebate. A limited rebate may be advertised
20 by providing the amount of the limited rebate and explaining the
21 conditions or restrictions on qualification for the limited
22 rebate in a statement below the featured sales price or featured
23 savings claim or discount.

1 Figure: 43 TAC §215.250(j)

2 (k) In an internet advertisement with multiple limited
3 rebates available on an advertised new motor vehicle, a dealer
4 may display each limited rebate separately allowing a potential
5 buyer to "click" on the limited rebate to view the sales price
6 after deducting the applicable limited rebate or applicable
7 multiple rebates.

8 Figure 43 TAC §215.250(k)

9 (l) If a dealer has added an option that was not obtained
10 from the manufacturer or distributor of the motor vehicle, a
11 savings claim may not be advertised for that vehicle. If a
12 dealer has added an option obtained from the manufacturer or
13 distributor and disclosed that option and its suggested retail
14 price on a dealership addendum, the dealer may advertise a
15 savings claim for that motor vehicle if the option is listed,
16 and the difference is shown between the dealer's sales price and
17 the MSRP of the vehicle including the option obtained from the
18 manufacturer or distributor.

19 Figure: 43 TAC §215.250(l)

20 (m) If a distributor physically installs a factory
21 available option on a new motor vehicle, a savings claim may be
22 advertised for that vehicle if the option is disclosed on a
23 vehicle label along with the suggested retail price for the

1 option. A dealer may advertise a savings claim for that motor
2 vehicle if the dealer discloses the total MSRP and the total of
3 the distributor installed options and the difference is shown
4 between the dealer's sales price and the total of the MSRP and
5 distributor installed options for that vehicle.

6 Figure: 43 TAC §215.250(m)

7 ~~[(e)] [If a rebate is only available to a selected portion~~
8 ~~of the public and not the public as a whole, the price should be~~
9 ~~disclosed as in subsection (c) of this section first and then~~
10 ~~the nature of the limitation and the amount of the limited~~
11 ~~rebate may be disclosed. The following is an acceptable format.]~~

12 ~~[Figure 43 TAC §215.250(e)]~~

13 ~~[(f) Advertising an "Internet price," "e-price," or using~~
14 ~~similar terms that indicate or create the impression that there~~
15 ~~is a different or unique sales price for an on-line or Internet~~
16 ~~consumer or transaction is prohibited.]~~

17

18 §215.251. Identification.

19 (a) When the sales price of a motor vehicle is advertised,
20 the following must be disclosed:

21 (1) model year;

22 (2) make;

23 (3) model line and style or model designation; and

1 (4) if applicable, whether the motor vehicle is [a]
2 used, a demonstrator, or a factory executive/official vehicle.

3 (b) Expressions such as "fully equipped," "factory
4 equipped," "loaded," and other such terms shall not be used in
5 any advertisement that contains the sales price of a motor
6 vehicle unless the optional equipment of the motor vehicle is
7 listed in the advertisement.

8 (c) A photograph or other representation [~~An illustration~~]
9 of a motor vehicle used in an advertisement must be of the motor
10 vehicle being advertised or substantially the same as that of
11 the motor vehicle advertised.

12

13 §215.252. Advertising at Cost or Invoice.

14 (a) The term "dealer's cost" or other reference to the cost
15 of the motor vehicle shall not be used.

16 (b) The terms [~~use of the term~~] "invoice" or "invoice
17 price" in advertising shall not be used.

18

19 §215.253. Trade-in Allowances.

20 No guaranteed trade-in amount or range of amounts shall be used
21 in advertising. Additionally, an advertisement shall not state
22 an amount or range of amounts for trade-in assistance or
23 advertise that an offer is any specific amount or range of

1 amounts over blue book value, black book value, or use any other
2 similar language indicating there is an established retail value
3 or starting price point for a used motor vehicle.

4

5 §215.254. Used Motor Vehicles.

6 A used motor vehicle shall not be advertised in any manner that
7 creates the impression that it is new. A used motor vehicle
8 shall be identified as [~~either~~] "used" or "pre-owned." Terms
9 such as "program car," "special purchase," "factory repurchase,"
10 or other similar terms shall not be used to identify a motor
11 vehicle as used. [~~are not sufficient to designate a vehicle as~~
12 ~~used, and these vehicles must be identified as "used" or "pre-~~
13 ~~owned."~~]

14

15 §215.255. Demonstrators and Factory Executive/Official Motor
16 Vehicles. [~~, Factory, Executives/Official Vehicles.~~]

17 If a demonstrator or factory executive/official motor vehicle is
18 advertised, the advertisement must clearly and conspicuously
19 identify the motor vehicle as a demonstrator or factory
20 executive/official motor vehicle. A demonstrator or factory
21 executive/official motor [~~official~~] vehicle may not be
22 advertised or sold except by a dealer franchised and licensed to
23 sell that line-make [~~line make~~] of new motor vehicle.

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1
2 §215.256. Free Offers.
3 (a) No merchandise or enticement may be described as "free"
4 if the:

5 (1) motor vehicle can be purchased or leased for a
6 lesser sales price without the merchandise or enticement; or [~~if~~
7 ~~the~~]

8 (2) sales price of the motor vehicle has been
9 increased to cover the cost or any part of the cost of the
10 merchandise or enticement.

11 (b) The advertisement shall clearly and conspicuously
12 disclose the conditions under which the "free" merchandise or
13 enticement being offered [~~offer~~] may be obtained.

14
15 §215.257. Authorized Dealer.
16 The term "authorized dealer" or a similar term shall not be used
17 unless the advertising dealer holds both a franchise and a
18 dealer license to sell the motor [~~these~~] vehicles the dealer
19 identifies itself [~~is holding itself out~~] as "authorized" to
20 sell.

21
22 §215.258. Manufacturer and Distributor Rebates.
23 It is unlawful for a manufacturer or distributor to advertise

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1 any offer of a rebate, interest or finance charge reduction, or
2 other financial inducement or incentive[7] for the benefit of
3 the purchaser of a motor vehicle if the selling dealer
4 contributes in any manner to that incentive program, unless the
5 advertisement discloses that the dealer's contribution may
6 affect the final negotiated sales price of the motor vehicle.

7

8 §215.259. Rebate and Financing Rate Advertising by Dealers.

9 (a) It is unlawful for a dealer to advertise an offer of a
10 manufacturer's or distributor's rebate, interest or finance
11 charge reduction, or other financial inducement or incentive if
12 the dealer contributes to the incentive program, unless such
13 advertising discloses that the dealer's contribution may affect
14 the final negotiated price of the motor vehicle.

15 (b) An advertisement containing an offer of an interest or
16 finance charge incentive that is paid for or financed by the
17 dealer rather than the manufacturer or distributor[7] shall
18 disclose:

19 (1) that the dealer pays for or finances the interest
20 or finance charge rate reduction;i[7]

21 (2) the amount of the dealer's contribution in either
22 a dollar or percentage amount;i[7] and

23 (3) that such arrangement may affect the final

1 negotiated price of the motor vehicle.

2 (c) An offer or promise to pay or to [~~to pay, promise to~~
3 ~~pay, or~~] tender cash to a buyer of a motor vehicle, as in a
4 rebate or cash back program, may not be advertised[~~7~~] unless the
5 rebate or cash back program [~~it~~] is offered and paid in part by
6 the motor vehicle manufacturer or distributor directly to the
7 retail purchaser or to the assignee of the retail purchaser and
8 unless the advertisement sets forth the contribution disclosures
9 required by this rule.

10
11 §215.260. Vehicle Lease Advertisements.
12 A vehicle lease advertisement [~~Vehicle lease advertisements~~]
13 shall clearly and conspicuously disclose that the advertisement
14 is for the lease of a motor vehicle. Statements such as
15 "alternative financing plan," "drive away for \$ per month," or
16 other terms or phrases that do not use the term "lease"
17 [~~"lease,"~~] do not constitute adequate disclosure of a lease. A
18 vehicle lease advertisement [~~Lease advertisements~~] shall not
19 contain the phrase "no down payment" or similar words or phrases
20 if any payment [~~words of similar import if any outlay of money~~]
21 is required to be paid by the customer to lease the motor
22 vehicle. Vehicle lease [~~Lease~~] terms that are not available to
23 the general public shall not be included in advertisements

1 directed at the general public, or all limitations and
2 qualifications applicable to the vehicle lease terms advertised
3 shall be clearly and conspicuously disclosed.

4

5 §215.261. Manufacturer Sales and[+] Wholesale Prices.

6 A motor vehicle shall not be advertised for sale in any manner
7 that creates the impression that it is being offered for sale by
8 the manufacturer or distributor of the motor vehicle. An
9 advertisement shall not:

10 (1) contain terms such as "factory sale," "fleet
11 prices," "wholesale prices," "factory approved," "factory
12 sponsored," or "manufacturer sale"; [~~"manufacturer sale,"~~]

13 (2) use a manufacturer's name or abbreviation in any
14 manner calculated or likely to create an impression that the
15 motor vehicle is being offered for sale by the manufacturer or
16 distributor; [~~]~~ or

17 (3) use any other similar terms which indicate sales
18 other than retail sales from the dealer.

19

20 §215.263. Sales Payment Disclosures.

21 An advertisement that contains the amount of any payment,
22 including a down payment[~~]~~ in either a percentage or dollar
23 amount, or an advertisement that contains[~~the amount of any~~

1 ~~payment, in either a percentage or dollar amount,~~] the number of
2 payments, ~~[,~~] the period of repayment, ~~[,~~] or the amount of any
3 finance charge~~[,~~] must include the following:

4 (1) the amount or percentage of the down payment;

5 (2) the terms of repayment, from which the number of
6 months to make repayment and the amount per month can be
7 determined, [~~from which the number of months to make repayment~~
8 ~~and the amount per month can be determined~~] including any
9 balloon payment;

10 (3) the annual percentage rate (APR) [~~or APR~~]; and

11 (4) the amount of the APR [~~annual percentage rate~~], if
12 increased, after consummation of the credit transaction.

13

14 §215.264. Payment Disclosure - Vehicle Lease.

15 (a) An advertisement that promotes a consumer lease and
16 contains the amount of any payment or that contains either~~[,~~~~or]~~
17 a statement of any capitalized cost reduction or other payment
18 or a statement [~~or]~~ that no payment is required [~~prior to or~~] at
19 consummation or prior to consummation or [~~by~~] delivery, if
20 delivery occurs after consummation, must clearly and
21 conspicuously include the following:

22 (1) that the transaction advertised is a vehicle
23 lease;

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1 (2) the total amount due [~~prior to or~~] at consummation
2 or prior to consummation or [~~by~~] delivery, if delivery occurs
3 after consummation;

4 (3) the number, amount, and due date or period
5 [~~amounts, and due dates or periods~~] of scheduled payments under
6 the vehicle lease;

7 (4) a statement of whether [~~or not~~] a security deposit
8 is required; and

9 (5) a statement that an extra charge may be imposed at
10 the end of the vehicle lease term where the lessee's liability,
11 if any, is based on the difference between the residual value of
12 the leased property and its realized value at the end of the
13 vehicle lease term.

14 (b) Except for a periodic payment, a reference to a charge
15 [~~as~~] described in subsection (a)(2) of this section [~~, i.e., to~~
16 ~~components of the total due at lease signing or delivery,~~]
17 cannot be more prominently advertised than the disclosure of the
18 total amount due at vehicle lease signing or delivery.

19 (c) Except for disclosures of limitations on rate
20 information, if [~~if~~] a percentage rate is advertised, that rate
21 shall not be more prominently advertised [~~prominent~~] than any of
22 the following disclosures [~~stated~~] in the advertisement [~~, with~~
23 ~~the exception of paragraph (19) of this subsection, the notice~~

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1 ~~required to accompany the rate].~~

2 (1) Description of payments.

3 (2) Amount due at vehicle lease signing or delivery.

4 (3) Payment schedule and total amount of periodic
5 payments.

6 (4) Other itemized charges that are not included in
7 the periodic payment. These charges include the amount of any
8 liability that the vehicle lease imposes upon the lessee at the
9 end of the vehicle lease term.

10 (5) Total number of payments.

11 (6) Payment calculation, including:

12 (A) gross [~~Gross~~] capitalized cost; [+]

13 (B) capitalized [~~Capitalized~~] cost reduction; [+]

14 (C) adjusted [~~Adjusted~~] capitalized cost; [+]

15 (D) residual value; [~~Residual value.~~]

16 (E) depreciation [~~Depreciation~~] and any amortized
17 amounts; [+]

18 (F) rent charge; [~~Rent charge.~~]

19 (G) total [~~Total~~] of base periodic payments; [+]

20 (H) vehicle lease term; [~~Lease term.~~]

21 (I) base [~~Base~~] periodic payment; [+]

22 (J) itemization [~~Itemization~~] of other charges

23 that are a part of the periodic payment; and[+]

- 1 (K) total [~~Total~~] periodic payment.
- 2 (7) Early termination conditions and disclosure of
3 charges.
- 4 (8) Maintenance responsibilities.
- 5 (9) Purchase option.
- 6 (10) Statement referencing nonsegregated disclosures.
- 7 (11) Liability between residual and realized values.
- 8 (12) Right of appraisal.
- 9 (13) Liability at the end of the vehicle lease term
10 based on residual value.
- 11 (14) Fees and taxes.
- 12 (15) Insurance.
- 13 (16) Warranties or guarantees.
- 14 (17) Penalties and other charges for delinquency.
- 15 (18) Security interest.
- 16 [~~(19) Limitations on rate information.~~]
- 17 (d) If a vehicle lessor provides a percentage rate in an
18 advertisement, a notice stating [~~that~~] "this percentage may not
19 measure the overall cost of financing this lease" shall
20 accompany the rate disclosure. The vehicle lessor shall not use
21 the terms [~~term~~] "annual percentage rate," "annual lease rate,"
22 or any equivalent terms in any advertisement containing a
23 percentage rate. [~~term.~~]

1 (e) A multi-page advertisement that provides a table or
2 schedule of the required disclosures is considered a single
3 advertisement, provided that for vehicle lease terms appearing
4 ~~[if, for lease terms that appear]~~ without all of the required
5 disclosures, the advertisement refers to the page or pages on
6 which the table or schedule appears.

7 (f) A merchandise tag stating any item listed in subsection
8 (a) of this section~~[7]~~ must comply with subsection (a)(1) - (5)
9 ~~[the disclosures in subsection (a)]~~ of this section by referring
10 to a sign or to a display prominently posted in the vehicle
11 lessor's place of business. The sign or display must contain
12 ~~[that contains]~~ a table or schedule of the required disclosures
13 under subsection (a)(1) - (5).

14 (g) An advertisement made through television or radio
15 stating any item listed in subsection (a) of this section, must
16 include the following statements: ~~[state in the advertisement:]~~

17 (1) that the transaction advertised is a vehicle
18 lease;

19 (2) the total amount due ~~[prior to or]~~ at consummation
20 or due prior to consummation or [by] delivery, if delivery
21 occurs after consummation; and

22 (3) the number, amount, and due date or period
23 ~~[amounts, and due dates or periods]~~ of scheduled payments under

1 the vehicle lease. [~~lease; and~~]

2 (h) In addition to the requirements of subsection (g)(1) -
3 (3) of this section, an advertisement made through television or
4 radio stating any item listed in subsection (a) of this section,
5 must:

6 [~~(4) Either:~~]

7 (1) [+A] provide a toll-free telephone number along
8 with a statement that the telephone [~~reference that such~~] number
9 may be used by consumers to obtain the information in subsection
10 (a) of this section[~~. The toll-free telephone number shall be~~
11 ~~available for no fewer than ten days, beginning on the date of~~
12 ~~the broadcast and the lesser shall provide the information in~~
13 ~~subsection (a) of this section orally or in writing upon~~
14 ~~request]; or~~

15 (2) [+B] direct the consumer to a written
16 advertisement in a publication of general circulation in the
17 community served by the media station, including the name and
18 the date of the publication, with a statement that the required
19 disclosures in subsection (a) of this section are included in
20 the advertisement. [~~The written advertisement shall be published~~
21 ~~beginning at least three days before and ending at least 10 days~~
22 ~~after the broadcast.]~~

23 (i) The toll-free telephone number required by subsection

1 (h) (1) of this section shall be available for at least 10 days,
2 beginning on the date of the broadcast. Upon request, the
3 vehicle lessor shall provide the information in subsection (a)
4 of this section orally or in writing.

5 (j) The written advertisement required by subsection (h) (2)
6 of this section shall be published beginning at least three days
7 before the broadcast and ending at least 10 days after the
8 broadcast.

9
10 §215.265. Bait Advertisements. [~~Advertisement.~~]

11 Bait advertisements [~~"Bait" advertisement~~] shall not be used by
12 any person.

13

14 §215.266. Lowest Price Claims.

15 (a) Claims that represent a lowest price, best price, best
16 deal, [~~Representing a lowest price claim, best price claim, best~~
17 ~~deal claim,~~] or other similar superlative claims shall not be
18 used in advertising.

19 (b) If a [~~dealer advertises a~~] "meet or beat" guarantee is
20 advertised, then the advertisement must clearly and
21 conspicuously disclose the conditions and requirements necessary
22 in order for a person to receive the offer or guarantee. [~~any~~
23 ~~advertised cash amount.~~]

1

2 §215.267. Fleet Prices.

3 Terms such as "fleet prices," "fleet sales," [~~"fleet prices" or~~
4 ~~"fleet sales"~~] or other terms or phrases implying that
5 individual retail [~~implying that retail individual~~] customers
6 will be afforded the same price or [~~and/or~~] discount as multi
7 purchase commercial businesses shall not be used [~~in~~
8 advertising].

9

10 §215.268. Bankruptcy and Liquidation Sales.11 [~~Bankruptcy/Liquidation Sale.~~]

12 [~~No licensee may willingly misrepresent the ownership of a~~
13 ~~business for the purpose of holding a liquidation sale, auction~~
14 ~~sale, or other sale which represents that the business is going~~
15 ~~out of business.~~] A person who advertises a liquidation sale,
16 auction sale, or going out of business sale shall state the
17 correct name and permanent address of the owner of the business
18 in the advertisement. The phrases [~~A person may not conduct a~~
19 ~~sale advertised with the phrase~~] "going out of business,"
20 "closing out," "shutting doors forever," [~~or~~] "bankruptcy sale,"
21 "foreclosure," [~~or~~] "bankruptcy," or similar phrases or words
22 indicating that an enterprise is ceasing business shall not be
23 used unless the business is closing its operations and follows

1 the procedures required by ~~[the]~~ Business and Commerce Code,
2 Chapter 17, Subchapter F.

3

4 §215.269. Finding of Violation.

5 A person shall not ~~[No person shall]~~ be held in violation of the
6 rules, including the general prohibition, except upon a finding
7 of a violation ~~[thereof]~~ made by the department ~~[Board]~~ after
8 the filing of a Notice of Department Decision and ~~[complaint and~~
9 ~~notice and]~~ an opportunity to request a ~~[for]~~ hearing as
10 provided in Occupations Code, Chapter 2301. ~~[the Code.]~~

11

12 §215.270. Enforcement.

13 (a) The department ~~[Board]~~ may file a Notice of Department
14 Decision ~~[complaint]~~ against a licensee alleging a violation of
15 an advertising provision pursuant to Occupations Code,
16 §2301.203, provided the department ~~[only if the Board]~~ can show:

17 (1) that the licensee who allegedly violated an
18 advertising provision has received from the department ~~[Board]~~ a
19 notice of an opportunity to cure the violation by certified
20 mail, return receipt requested, in compliance with subsection
21 (b) of this section ~~[relating to effectiveness of notice]; and~~

22 (2) that the licensee committed a subsequent violation
23 of the same advertising provision.

1 (b) An effective notice issued under subsection (a)(1) of
2 this section must:

3 (1) state that the department [~~Board~~] has reason to
4 believe that the licensee violated an advertising provision and
5 must identify the provision;

6 (2) set forth the facts upon which the department
7 [~~Board~~] bases its allegation of a violation; and

8 (3) state that if the licensee commits a subsequent
9 violation of the same advertising provision, the department
10 [~~Board~~] will formally file a Notice of Department Decision.
11 [~~complaint.~~]

12 (c) As a part of the cure procedure, the department [~~Board~~]
13 may require a licensee[~~r~~] who allegedly violated an advertising
14 provision[~~r~~] to publish a retraction notice to effect an
15 adequate cure of the alleged violation. A [~~An adequate~~]
16 retraction notice must:

17 (1) appear in a newspaper of general circulation in
18 the area in which the alleged violation occurred;

19 (2) appear in the [~~that~~] portion of the newspaper[~~, if~~
20 ~~any~~~~r~~] devoted to motor vehicle advertising, if any;

21 (3) identify the date and the medium of publication,
22 print, electronic, or other, in which the advertising alleged to
23 be a violation appeared; and

1 (4) identify the alleged violation of the advertising
2 provision and contain a statement of correction.

3 (d) A [~~Performance of a~~] cure is made solely for the
4 purpose of settling an allegation and is not an admission of a
5 violation of these rules; Occupations Code, Chapter 2301; [~~the~~
6 ~~Code,~~] or other law.

7
8 §215.271. Auction.
9 Terms such as "auction," "auction special," or other terms with
10 similar meaning [~~"auction" or "auction special" and other terms~~
11 ~~of similar import~~] shall be used only in connection with a motor
12 vehicle offered or sold at a bona fide auction.

Figure: 43 TAC §215.250(h)(1) [~~§215.250(e)(1)~~]

Dealer Discount with Sales Price:

MSRP	\$20,000
Less Dealer Discount	<u>1,000</u>
<u>Sales [Sale] Price</u>	\$19,000

Dealer Discount without Sales Price:

"\$1,000 Discount Off MSRP"

Figure: 43 TAC §215.250(h)(2) [~~§215.250(e)(2)~~]

Customer Rebate with Sales Price:

<u>MSRP</u> [Advertised Price]	\$18,000
Less Rebate	<u>500</u>
<u>Sales</u> [Sale] Price	\$17,500

Customer Rebate without Sales Price:

"\$500 Rebate Off MSRP"

Figure: 43 TAC §215.250(h)(3) [~~§215.250(e)(3)~~]

Customer Rebate and Dealer Discount with Sales Price:

MSRP	\$20,000
Less Rebate	500
Less Dealer Discount	<u>500</u>
<u>Sales [Sale] Price</u>	\$19,000

Customer Rebate and Dealer Discount without Sales Price:

"1,000 Savings Off MSRP (\$500 Rebate and \$500 Dealer Discount)"

Figure: 43 TAC §215.250(i) [~~§215.250(d)~~]

Option Package Discount with Sales Price:

Total [Motor] Vehicle Plus Options	\$10,995
Option Package Discount	1,000
MSRP	9,995
Less Rebate	500
Less Dealer Discount	<u>500</u>
<u>Sales [Sale] Price</u>	\$8,995

Option Package Discount without Sales Price:

"Total Savings \$2,000 (\$1,000 Option Package Discount; \$500 rebate, and \$500 dealer discount off MSRP)"

Figure: 43 TAC §215.250(j) [~~§215.250(e)~~]

MSRP	<u>\$20,000</u> [\$9,995]
Less Rebate	<u>1,000</u> [500]
Less Dealer Discount	<u>1,000</u> [500]
Sales [Sale] Price	<u>\$18,000</u> [\$8,995]

FIRST TIME BUYERS RECEIVE
 ADDITIONAL \$500 OFF

Figure 43 TAC §215.250(k)

Additional Available Limited Rebates (Click the applicable box or boxes for Sales Price)
See Dealer for Eligibility Terms

- HISD Teachers Receive Additional \$500 Discount
- Active Duty Military Receive Additional \$500 Discount
- Dallas Metro Residents Receive Additional \$500 Discount
- Loyalty Owner Receive Additional \$500 Discount
- “X” Financing Receive Additional \$500 Discount

Sales Price with Selected Discounts \$ _____

Figure: 43 TAC 215.250(l)

<u>MSRP</u>	<u>\$20,000.00</u>
<u>Total Dealer Installed Factory Options</u>	<u>\$1,000.00</u>
<u>Total</u>	<u>\$21,000.00</u>
<u>Less Dealer Discount</u>	<u>\$500.00</u>
<u>Sales Price</u>	<u>\$20,500.00</u>

Figure: 43 TAC 215.250(m)

<u>MSRP</u>	<u>\$20,000.00</u>
<u>Total Distributor Installed Options</u>	<u>\$1,000.00</u>
<u>Total</u>	<u>\$21,000.00</u>
<u>Less Manufacturer Discount</u>	<u>\$500.00</u>
<u>Less Dealer Discount</u>	<u>\$100.00</u>
<u>Sales Price</u>	<u>\$20,400.00</u>

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1 SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY
2 THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

3 §215.301. Purpose and Scope. [~~Scope and Purpose.~~]

4 (a) This subchapter implements the [~~The scope and purpose~~
5 ~~of this subchapter is to provide~~] practice and procedure for
6 contested cases [~~case hearings~~] under the jurisdiction of the
7 department that are conducted by an ALJ under Occupations Code,
8 Chapter 2301 and Transportation Code, Chapters 503 and 1000 -
9 1005. [~~a SOAH ALJ under the Codes.~~]

10 (b) A contested case hearing held by an [~~a SOAH~~] ALJ shall
11 be conducted in accordance with Government Code, Chapter 2001;
12 applicable SOAH rules; and board [~~Board~~] rules.

13 (c) Unless otherwise provided by statute or by this
14 chapter, this subchapter governs practice and procedure relating
15 to contested cases [~~matters~~] filed with the department [~~Board~~]
16 on or after September 1, 2007.

17 (d) Practice and procedure in contested cases filed on or
18 after January 1, 2014, under Occupations Code, Chapter 2301,
19 Subchapters E or M [~~Subchapter E or M,~~] are addressed in
20 Subchapter B of this chapter (relating to Adjudicative Practice
21 and Procedure).

22
23 §215.302. Conformity with Statutory Requirements.

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1 In the event of a conflict between Occupations Code, Chapter
2 2301 and Transportation Code, Chapter 503, the definition or
3 procedure referenced in Occupations Code, Chapter 2301 controls.
4 [~~shall control.~~]

5

6 §215.303. Application of Board and SOAH Rules.

7 [~~(a)~~] Upon referral by the department [~~Board~~] of a
8 contested case [~~matter~~] to SOAH, the rules contained in 1 TAC
9 Chapter 155 [~~(relating to Rules of Procedure)~~] and the
10 provisions of this subchapter, to the extent they are not in
11 conflict with 1 TAC Chapter 155, govern the processing of the
12 contested case [~~matter~~] until the ALJ disposes of the contested
13 case. [~~matter.~~]

14 [~~(b) The ALJ shall consider the rules and policies~~
15 ~~applicable to the Board in the hearing and preparation of the~~
16 ~~proposal for decision.~~]

17

18 §215.305. Filing of Complaints, Protests, and Petitions;
19 Mediation.

20 (a) All complaints, protests, and petitions required or
21 allowed to be filed under Occupations Code, Chapter 2301;
22 Transportation Code, Chapters 503 and 1000 - 1005; [~~the Codes~~]
23 or this chapter must be delivered to the department:

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1 (1) in person;
2 (2) by first-class mail; or ~~[filed with the~~
3 ~~appropriate department office in person, by mail, or]~~
4 (3) by electronic document transfer at a destination
5 designated by the department. ~~[for receipt of those documents.]~~

6 (b) Except as provided by subsections (d), (n), and (o) of
7 this section, parties to a contested case filed under
8 Occupations Code, Chapter 2301 or Transportation Code, Chapters
9 503 and 1000 - 1005 ~~[case under the Codes]~~ are required to
10 participate in mediation, in accordance with this section,
11 before the case is referred for hearing.

12 (c) The term "mediation" as used in this section has the
13 meaning assigned by Occupations Code, §2301.521. ~~[means a~~
14 ~~nonbinding forum in which an impartial mediator facilitates~~
15 ~~communication between parties to promote reconciliation,~~
16 ~~settlement, or resolution among the parties.]~~

17 (d) This section does not limit the parties' ability to
18 settle a case without mediation.

19 (e) The department shall provide mediation services.

20 (f) The mediator shall qualify for appointment as an
21 impartial third party in accordance with Civil Practice and
22 Remedies Code, Chapter 154.

23 (g) The mediation process will conclude within 60 days of

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1 the date a contested case [~~matter~~] is assigned to a mediator
2 unless, at the department's discretion, the mediation deadline
3 is extended.

4 (h) The department will assign [~~appoint~~] a different
5 mediator if:

6 (1) either [~~Either~~] party promptly and with good cause
7 objects to an assigned mediator; or

8 (2) an [~~An~~] assigned mediator is recused.

9 (i) At any time before a contested case is referred for
10 hearing, the parties may file a joint notice of intent to retain
11 an outside [~~a private~~] mediator. The notice must include:

12 (1) the name, address, email address, [~~e-mail,~~]
13 facsimile number, and telephone number of the outside [~~private~~]
14 mediator selected;

15 (2) a statement that the parties have entered into an
16 agreement with the outside [~~private~~] mediator regarding the
17 mediator's rate and method of compensation;

18 (3) an affirmation that the outside mediator qualifies
19 for appointment as an impartial third party in accordance with
20 Civil Practice and Remedies Code, Chapter 154; and

21 (4) a statement that the mediation will conclude
22 within 60 days of the date of the joint notice of retention
23 unless, at the department's discretion, the mediation deadline

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1 is extended.

2 (j) All communications in a mediation are confidential and
3 subject to the provisions of the Governmental Dispute Resolution
4 Act, Government Code, §2009.054.

5 (k) Agreements reached by the parties in mediation shall be
6 reduced to writing by the mediator and signed by the parties
7 before the mediation concludes or as soon as practical.

8 [~~practicable~~]

9 (l) Within 10 days of the conclusion of the mediation
10 period, a mediator shall provide to the department and to the
11 parties a written report stating:

- 12 (1) whether the parties attended the mediation;
13 (2) whether the matter settled in part or in whole;
14 (3) any unresolved issues; and
15 (4) any other stipulations or matters the parties
16 agree to report.

17 (m) Upon receipt of the mediator's report required under
18 this section, the department shall:

- 19 (1) enter an order [~~identifying and~~] disposing of
20 resolved issues; and
21 (2) refer unresolved issues for hearing.

22 (n) Parties to a contested case filed as an enforcement
23 action brought by the department are not required to participate

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1 in mediation.

2 (o) Parties to a contested case filed under Occupations
3 Code, §2301.204 or §§2301.601 - 2301.613, must participate in
4 mediation in accordance with §215.205 of this title [~~chapter~~]
5 (relating to Mediation; Settlement).

6

7 §215.306. Referral to SOAH.

8 Contested cases [~~Matters~~] shall be referred to SOAH upon
9 determination that a hearing is appropriate under Occupations
10 Code, Chapter 2301, Subchapter O; Transportation Code, Chapter
11 503; or this chapter, including contested cases [~~matters~~]
12 relating to:

13 (1) an enforcement complaint on the department's own
14 initiative;

15 (2) a notice of protest[~~7~~] that has been timely filed
16 in accordance with §215.106 of this title [~~chapter~~] (relating to
17 Time for Filing Protest);

18 [~~(3) a complaint under Occupations Code, §2301.204 or~~
19 ~~§§2301.601 - 2301.613, that satisfies the jurisdictional~~
20 ~~requirements of the applicable provisions filed on and after~~
21 ~~September 1, 2007, and before January 1, 2014;~~]

22 (3)[~~(4)~~] a protest filed under Occupations Code,
23 §2301.360 or a complaint or protest filed under Occupations

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1 Code, Chapter 2301, Subchapters I or J; [~~Subchapter I or~~
2 ~~Subchapter J~~];

3 (4)[~~(5)~~] issuance of a cease and desist order, whether
4 the order is issued with or without prior notice at the time the
5 order takes effect; or

6 (5)[~~(6)~~] any other contested matter that meets [~~matter~~
7 ~~meeting~~] the requirements for a hearing at SOAH under
8 Occupations Code, Chapter 2301.

9
10 §215.307. Notice of Hearing.

11 (a) The requirements for a notice of hearing in a contested
12 case are provided by Government Code, §2001.052; [~~are set out~~
13 ~~in~~] Occupations Code, §2301.705; [~~Government Code, §2001.052,~~]
14 and 1 TAC §155.401 [~~(relating to Notice of Hearing)~~], as
15 applicable.

16 (b) For service of parties outside of the United States, in
17 addition to service under Occupations Code, §2301.265, the
18 department may serve a notice of hearing by any method allowed
19 under [~~by~~] Texas Rules of Civil Procedure, Rule 108a(1)[~~7~~] or
20 that provides for confirmation of delivery to the party.

21 (c) The last known address of a license applicant, license
22 holder, or other person is the last mailing address provided to
23 the department when the license applicant applies for its

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1 license, when a license holder renews its license, or when the
2 license holder notifies the department of a change in the
3 license holder's mailing address.

4
5 §215.308. Reply to Notice of Hearing and Default Proceedings.

6 (a) On or before the 20th day after a notice of hearing has
7 been served on a party in a contested case [~~matter~~] referred by
8 the department to SOAH, the party may file a written reply or
9 pleading responding to all allegations. The written reply or
10 responsive pleading must be filed with SOAH in accordance with 1
11 TAC §155.101 [~~(relating to Filing Documents)~~], and must identify
12 the SOAH and department docket numbers [~~docket number~~] as
13 reflected on the notice of hearing.

14 (b) Any party filing a reply or responsive pleading shall
15 serve a copy of the reply or responsive pleading on each party
16 or party's representative [~~provide service of copies of the~~
17 ~~reply or pleadings to other parties~~] in compliance with 1 TAC
18 §155.103 [~~(relating to Service of Documents on Parties)~~]. Any
19 party filing a reply or responsive pleading shall also provide a
20 copy to the department. The presumed time of receipt of served
21 documents is subject to 1 TAC §155.103.

22 (c) A party may file an amended or supplemental [~~amend or~~
23 ~~supplement its~~] reply or responsive pleading [~~pleadings~~] in

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1 accordance with 1 TAC §155.301 [~~relating to Required Form of~~
2 ~~Pleadings~~].

3 (d) If a party properly noticed under this chapter does not
4 appear at the hearing, a a [~~another~~] party may request that the
5 ALJ dismiss the contested case from the SOAH docket. If the
6 contested case is dismissed from the SOAH docket, the case may
7 [~~matter and if dismissed the case can~~] be presented to the board
8 [~~Board~~] for disposition based on the default pursuant to 1 TAC
9 §155.501. The board [~~relating to Default Proceedings~~]. The
10 ~~Board~~] may enter a final order finding [~~with findings~~] that the
11 allegations in the petition are deemed admitted and granting
12 relief in accordance with applicable law. No later than 10 days
13 after the hearing date, if a final order has not been issued, a
14 party may file a motion with the board [~~Board~~] to set aside the
15 [a] default and reopen the record. The board [~~Board~~], for good
16 cause shown, may grant the motion, set aside the default, and
17 refer the case back to SOAH for further proceedings.

18

19 §215.310. Issuance of Proposals for Decision[~~, Recommendations,~~]
20 and Orders.

21 (a) All [~~recommendations or~~] proposals for decision
22 prepared by the ALJ shall [~~will~~] be submitted to the board
23 [~~Board~~] and copies furnished to the parties.

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1 (b) All decisions and orders issued by the board shall
2 [~~Board will~~] be furnished to the parties and to the ALJ.

3

4 §215.311. Amicus Briefs.

5 (a) Any interested person may submit [~~wishing to file~~] an
6 amicus brief for consideration by the board [~~Board regarding~~] in
7 a contested case by [~~must file the brief not later than~~] the
8 deadline for exceptions under 1 TAC §155.301 [~~(relating to~~
9 ~~Required Form of Pleadings)~~]. A party may submit [~~file~~] one
10 written response to the [~~an~~] amicus brief no later than the
11 deadline for replies to exceptions under 1 TAC §155.301.

12 (b) Amicus briefs and responses to amicus briefs must be
13 submitted to the board and the ALJ, and copies must be served on
14 all parties. [~~must be filed with the Board, the ALJ, and all~~
15 ~~parties to the proceeding.~~]

16 (c) Any amicus brief, or response to that brief, not
17 submitted to the board and the ALJ within the deadlines
18 prescribed by subsection (a) of [~~filed with the Board and with~~
19 ~~SOAH within the period prescribed by~~] this section will not be
20 considered by the board [~~Board~~], unless good cause is shown why
21 the [~~this~~] deadline should be waived or extended.

22 (d) The ALJ may amend the proposal for decision in response
23 to any amicus brief or response to an amicus brief.

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1

2 §215.314. Cease and Desist Orders.

3 (a) Whenever it appears [~~to the ALJ~~] that a person is
4 violating any provision of Occupations Code, Chapter 2301; [~~]~~
5 Transportation Code, Chapter 503; or a board rule or order, [~~, or~~
6 ~~a Board rule or order, the ALJ may enter~~] an order requiring the
7 person to cease and desist from the violation may be entered.

8 (b) If it appears from specific facts shown by affidavit or
9 by verified complaint that one or more of the conditions
10 [~~enumerated~~] in Occupations Code, §2301.802(b) will occur before
11 notice can be served and a hearing held, the order may be issued
12 without notice; otherwise, the order must be issued after a
13 hearing has been held to determine the validity of the order and
14 to allow the person who requested the order to show good cause
15 why the order should remain in effect during the pendency of the
16 contested case. [~~, otherwise it must be issued subject to a~~
17 ~~notice of hearing to determine the validity of the order.~~]

18 (c) Each [A] cease and desist order issued without notice
19 must include:

20 (1) the date and hour of issuance;

21 (2) a statement of which of the conditions

22 [~~enumerated~~] in Occupations Code, §2301.802(b) will occur before
23 notice can be served and a hearing held; and

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1 (3) a notice of hearing for the earliest date possible
2 to determine the validity of the order and to allow the person
3 who requested the order to show good cause why the order should
4 remain in effect during the pendency of the contested case.

5 [~~proceedings.~~]

6 (d) Each [A] cease and desist order shall: [~~issued with or~~
7 ~~without notice must:~~]

8 (1) state [~~set out~~] the reasons for its issuance; and

9 (2) describe in reasonable detail[~~, and not by~~
10 ~~reference to the complaint or other document,~~] the act or acts
11 [~~sought~~] to be restrained.

12 (e) A cease and desist order shall not be issued unless the
13 person requesting the order presents a petition or complaint,
14 verified by affidavit, containing a plain [~~and intelligible~~]
15 statement of the grounds for seeking the cease and desist order.

16 [~~relief.~~]

17 (f) A cease and desist order issued without notice expires
18 as provided in the order, but shall not exceed 20 days.

19 (g) A cease and desist order may be extended for a period
20 of time equal to the period of time granted in the original
21 order if, [~~, if~~] prior to the expiration of the previous order,
22 good cause is shown for the extension or the party against whom
23 the order is directed consents to the extension. [~~No more than~~

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1 ~~one extension may be granted unless subsequent extensions are~~
2 ~~unopposed.]~~

3 (h) The person against whom a cease and desist order was
4 issued without notice may request that the scheduled hearing be
5 held earlier than the date set in the order.

6 (i) After the hearing, the ALJ shall prepare a written
7 order, including a [~~reasoned~~] justification[~~7~~] explaining why
8 the cease and desist order should remain in place during the
9 pendency of the contested case. [~~proceeding~~.]

10 (j) A party may appeal to the board [~~Board~~] an order
11 granting or denying a motion for a cease and desist order.

12 (k) An appeal of an order granting or denying a motion for
13 a cease and desist order [~~the interlocutory decision~~] must be
14 made to the board [~~Board~~] before a person may seek judicial
15 review of an order issued under this section. [~~An interlocutory~~
16 ~~decision is sufficient for a complaining party to seek judicial~~
17 ~~review of the matter.~~]

18 (l) Upon appeal to a district court of an order issued
19 under this section [~~to the district court, as provided in the~~
20 ~~Codes~~], the order may be stayed by the board [~~Board~~] upon a
21 showing of good cause by a party [~~of interest~~].

22 (m) Prior to the commencement of a proceeding by SOAH, the
23 director is authorized to issue a cease and desist order under

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1 this section. An ALJ shall hold a hearing to determine whether
2 an interlocutory cease and desist order should remain in effect
3 during the pendency of the proceeding.

4

5 §215.315. Statutory Stay.

6 (a) A A [~~In accordance with Occupations Code, §2301.803(c),~~
7 a] person affected by a statutory stay imposed by Occupations
8 Code, Chapter 2301 may request a hearing before an ALJ to
9 modify, vacate, or clarify the extent and application of the
10 statutory stay.

11 (b) After a hearing on a motion to modify, vacate, or
12 clarify a statutory stay, the ALJ shall expeditiously prepare a
13 written order, including a [~~reasoned~~] justification[~~7~~]
14 explaining why the statutory stay should or should not be
15 modified, vacated, or clarified.

16 (c) A person affected by a statutory stay imposed by
17 Occupations Code, Chapter 2301[~~7~~] may initiate a proceeding
18 before the board to modify, vacate, or clarify the extent and
19 application of the statutory stay.

20

21 §215.316. Informal Disposition.

22 (a) Notwithstanding any other provision in this subchapter,
23 at any time during the contested case, the board [~~adjudication~~

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1 ~~process, the Board~~] may informally dispose of a contested case
2 [~~matter~~] by stipulation, agreed settlement, dismissal, or
3 consent order.

4 (b) If the parties have settled or otherwise determined
5 that a contested case proceeding is not required, the party who
6 brought the protest, complaint, or petition shall file a motion
7 to dismiss the contested case [~~proceeding~~] from SOAH's docket
8 and present a proposed agreed order or dismissal order to the
9 board. [~~Board for consideration.~~]

10 (c) Agreed orders must contain proposed findings of fact
11 and conclusions of law that are signed by all [~~the~~] parties or
12 their authorized [~~designated~~] representatives.

13 (d) Upon receipt of the agreed order, the board [~~Board~~]
14 may:

15 (1) adopt the settlement agreement and issue a final
16 order;

17 (2) reject the settlement agreement and remand the
18 contested case for a hearing before SOAH; or

19 (3) take other action that the board [~~Board~~] finds
20 just.

21

22 §215.317. Motion for Rehearing.

23 (a) A motion for rehearing and any reply to a motion for

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1 rehearing will be processed in accordance with Government Code,
2 Chapter 2001.

3 (b) For an order issued by the board [~~Board~~], a motion for
4 rehearing and reply to a motion for rehearing must be filed with
5 the department and decided by the board [~~Board,~~] unless the
6 board [~~Board~~] specifically delegates motion for rehearing
7 authority.

8 (c) For an order issued by a board delegate [~~director~~
9 ~~authorized directly by law, rather than through delegated~~
10 ~~authority~~], a motion for rehearing and reply to a motion for
11 rehearing must be filed with the department and decided by the
12 board delegate who [~~director that~~] issued the order.

13 (d) The requirements for a motion for rehearing regarding a
14 complaint filed on or after January 1, 2014, under Occupations
15 Code, §2301.204 or §§2301.601 - 2301.613[~~7~~] are governed by
16 §215.207 of this title [~~chapter~~] (relating to Contested Cases:
17 Final Orders).

18 [~~(e) This section in no way precludes delegation by the~~
19 ~~Board or executive director under the Codes.~~]

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1 SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

2 §215.500. Administrative Sanctions and Procedures.

3 (a) An administrative sanction [~~Administrative sanctions~~]
4 may include:

5 (1) denial of an application for a license; [~~license~~
6 ~~denial,~~]

7 (2) suspension of a license;[~~]~~

8 (3) revocation of a license; or[~~, and~~]

9 (4) the imposition of civil penalties.

10 (b) The department shall issue and mail a Notice of
11 Department Decision to a license applicant, license holder, or
12 other person by certified mail, return receipt requested, to the
13 [~~or a licensee by certified mail to its~~] last known address upon
14 a determination [~~that,~~] under Occupations Code, Chapters 2301
15 and 2302 [~~Chapter 2301~~] or Transportation Code, Chapter 503
16 that:

17 (1) an application for a license should be denied; or

18 (2) administrative sanctions should be imposed.

19 (c) The last known address of a license applicant, license
20 holder, or other person is the last mailing address provided to
21 the department when the license applicant applies for its
22 license, when a license holder renews its license, or when the
23 license holder notifies the department of a change in the

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1 license holder's mailing address.

2 (d)~~(e)~~ The Notice of Department Decision shall include:

3 (1) a statement describing the department decision and
4 the ~~its~~ effective date;

5 (2) a description of each alleged violation~~, if~~
6 ~~applicable~~;

7 (3) a description of each administrative sanction
8 being proposed;

9 (4) a statement regarding ~~as to~~ the legal basis for
10 each administrative sanction;

11 (5) a statement regarding ~~as to the right of~~ the
12 license applicant, license holder, or other person's right to
13 request a hearing; ~~[or the licensee to request an administrative~~
14 ~~hearing;]~~

15 (6) the procedure to request a ~~[a statement as to the~~
16 ~~procedure for requesting an administrative]~~ hearing, including
17 the deadline for filing; ~~[period during which a request must be~~
18 ~~received by the department;]~~ and

19 (7) notice to the license applicant, license holder,
20 or other person ~~[a statement]~~ that the proposed decision and
21 administrative sanctions ~~[specified]~~ in the Notice of Department
22 Decision will become final on the date specified if the license
23 applicant, license holder, or other person ~~[or the licensee]~~

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1 fails to timely request a hearing.

2 (e)[(+d)] The license applicant, license holder, or other
3 person must submit, in writing, a request for a [A request for
4 an administrative] hearing under this section. The department
5 must receive a request for a hearing [must be made in writing
6 and received by the department] within 26 days of the date of
7 the Notice of Department Decision [is mailed by the department].

8 (f)[(+e)] If the department receives a timely request for a
9 hearing, [If a request for an administrative hearing is timely
10 received,] the department will [shall] set a hearing date and
11 give notice to the license applicant, license holder, or other
12 person [or the licensee] of the date, time, and location of the
13 hearing. [where it will be held. The hearing shall be conducted
14 under the provisions set forth in this chapter by an
15 administrative law judge of the State Office of Administrative
16 Hearings.]

17 (g)[(+f)] If the license applicant, license holder, or other
18 person [or the licensee] does not make a timely request for a
19 [an administrative] hearing or enter into a settlement agreement
20 within 27 days of the date of [before the 27th day after the
21 date] the Notice of Department Decision, the department [is
22 mailed the department's] decision becomes final.

23

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1 §215.501. Final Decisions and Orders; Motions for Rehearing.

2 (a) If a department decision becomes final under a Notice
3 of Department Decision issued under §215.500 of this title
4 (relating to Administrative Sanctions and Procedures), the
5 matter will be forwarded to the [department or] final order
6 authority for issuance of [shall issue] a final order
7 incorporating the decisions, findings, and administrative
8 sanctions imposed by the Notice of Department Decision. The
9 department will send a copy of the final order to the parties.

10 (b) The provisions of Government Code, Chapter 2001,
11 Subchapter F govern: [~~Administrative Procedure Act~~, Subchapter
12 F (~~Contested Cases: Final Decisions and Orders; Motions for~~
13 Rehearing) govern]

14 (1) the issuance of a final order issued under this
15 subchapter; and

16 (2) motions for rehearing filed in response to a final
17 order. [~~thereto.~~]

18

19 §215.502. Judicial Review of Final Order.

20 The provisions of Government Code, Chapter 2001, Subchapter G
21 [~~Administrative Procedure Act~~, ~~Subchapter G (Contested Cases:~~
22 ~~Judicial Review)~~] govern the appeal of a final order issued
23 under this subchapter.

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1
2 §215.503. Refund of Fees.
3 In the absence of director approval, the [The] department will
4 not refund a fee [fees] paid by a license applicant, license
5 holder, or other person if: [or a licensee if]
6 (1) the application or license is:
7 (A) denied;[]
8 (B) suspended;[] or
9 (C) revoked; or [under this subchapter.]
10 (2) the license applicant, license holder, or other
11 person is subject to an unpaid civil penalty imposed against the
12 license applicant, license holder, or other person by a final
13 order.



DATE: September 1, 2016
Action Requested: APPROVAL

To: Board of the Texas Department of Motor Vehicles (TxDMV)
From: Jeremiah Kuntz, Director, Vehicle Titles and Registration Division
Agenda Item: 2.E.2.a
Subject: Proposal of Rules under Title 43, Texas Administrative Code, Chapter 217, Vehicle Titles and Registration, Amendment §217.9, Bonded Titles

RECOMMENDATION

Approval to publish the proposed rules in the *Texas Register* for public comment.

PURPOSE AND EXECUTIVE SUMMARY

A person who has an interest in a motor vehicle in which the department has refused to issue a title or has suspended or revoked a title under Transportation Code, §501.051, may, under certain conditions, obtain a title to the motor vehicle by filing a bond with the department.

The purpose of this amendment will be accuracy, clarity, and consistency in the department's rules.

FINANCIAL IMPACT

There will be no fiscal implications related to the proposed amendment.

BACKGROUND AND DISCUSSION

The proposed amendment is to clarify the following:

- The value of the bond will be at an established value of \$4,000 if the motor vehicle is 25 years or older and the appraised value is less than \$4,000.
- The vehicle identification number inspection can only be verified by a Texas licensed Safety Inspection Station or, a member of the National Insurance Crime Bureau, the Federal Bureau of Investigation, or law enforcement auto theft unit.
- The documentation required to apply for a bonded title must be on a form specified by the department and include proof of the vehicle identification number inspection.

If the proposed amendment is approved by the board, staff anticipates publication of the proposed amendment in the *Texas Register* on or about September 23, 2016. Comments on the proposed amendment will be accepted until 5:00 p.m. on October 24, 2016

PROPOSED PUBLICATION TO AMEND 43 TAC SECTION 217.9, BONDED TITLES

Description

This order proposes publication for comment of amendments to §217.9, Bonded Titles.

Background

A person who has an interest in a motor vehicle in which the department has refused to issue a title or has suspended or revoked a title under Transportation Code, §501.051, may, under certain conditions, obtain a title to the motor vehicle by filing a bond with the department.

The proposed amendment is to clarify the following:

- The value of the bond will be at an established value of \$4,000 if the motor vehicle is 25 years or older and the appraised value is less than \$4,000.
- The vehicle identification number inspection can only be verified by a Texas licensed Safety Inspection Station or, a member of the National Insurance Crime Bureau, the Federal Bureau of Investigation, or law enforcement auto theft unit.
- The documentation required to apply for a bonded title must be on a form specified by the department and include proof of the vehicle identification number inspection.

Other Comments

There are no fiscal implications related to the proposed amendment.

If the proposed amendment is approved by the board, staff anticipates publication of the proposed amendment in the *Texas Register* on or about September 23, 2016. Comments on the proposed amendment will be accepted until 5:00 p.m. on October 24, 2016.

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING PUBLICATION OF PROPOSED AMENDMENT
43 TAC CHAPTER 217, SECTION 217.9, BONDED TITLES

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to amend Chapter 217, Vehicle Titles and Registration, Subchapter A, §217.9, Bonded Titles.

The preamble and the proposed amendment are attached to this resolution as Exhibits A-B, and are incorporated by reference as though set forth verbatim in this resolution, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the board that the attached rule is authorized for publication in the *Texas Register* for the purpose of receiving public comment.

The department is directed to take the necessary steps to implement the actions authorized in this order pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Raymond Palacios, Jr., Chairman
Board of the Texas Department of Motor Vehicles

Recommended by:

Jeremiah Kuntz, Director
Vehicle Titles and Registration Division

Order Number: _____

Date Passed: September 1, 2016

Texas Department of Motor Vehicles
Chapter 217, Vehicles Titles and Registration

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1 Proposed Preamble

2 The Texas Department of Motor Vehicles (department) proposes
3 amendments to Chapter 217, Subchapter A, §217.9, Bonded Titles.

4

5 EXPLANATION OF PROPOSED AMENDMENTS

6 A person who has an interest in a motor vehicle in which the
7 department has refused to issue a title or has suspended or
8 revoked a title under Transportation Code, §501.051, may, under
9 certain conditions, obtain a title to the motor vehicle by
10 filing a bond with the department.

11

12 Proposed amendment to §217.9(c)(3) is to clarify the value of
13 the bond. If the motor vehicle is 25 years or older and the
14 appraised value is less than \$4000, then the bond amount will be
15 established from a value of \$4000.

16

17 Proposed amendment to §217.9(d) is to clarify that the vehicle
18 identification number inspection can be verified by a Texas
19 licensed Safety Inspection Station or, a member of the National
20 Insurance Crime Bureau, the Federal Bureau of Investigation, or
21 law enforcement auto theft unit.

22

23 Proposed amendment to §217.9(e)(1) is to clarify the

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1 documentation required to apply for a bonded title. The
2 verification of the vehicle identification number must be on a
3 form specified by the department as well as proof of the vehicle
4 identification number inspection as proposed in §217.9(d).

5

6 FISCAL NOTE

7 Linda M. Flores, Chief Financial Officer, has determined that
8 for each of the first five years the amendments as proposed are
9 in effect, there will be no fiscal implications for state or
10 local governments as a result of enforcing or administering the
11 proposed amendments.

12

13 Jeremiah Kuntz, Director of Vehicle Titles and Registration, has
14 certified that there will be no fiscal implications for state or
15 local governments as a result of enforcing or administering the
16 proposed amendments.

17

18 PUBLIC BENEFIT AND COST

19 Mr. Kuntz has also determined that for each year of the first
20 five years the amendments are in effect, the public benefit
21 anticipated as a result of enforcing or administering the
22 amendments will be accuracy, clarity, and consistency in the
23 department's rules. Mr. Kuntz has also determined there are no

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1 anticipated economic costs for persons required to comply with
2 the amendments as proposed. There will be no adverse economic
3 effect on small businesses or micro-businesses.

4

5 TAKINGS IMPACT ASSESSMENT

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

12

13 SUBMITTAL OF COMMENTS

14 Written comments on the proposed amendments may be submitted to
15 David D. Duncan, General Counsel, Texas Department of Motor
16 Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email
17 to *rules@txdmv.gov*. The deadline for receipt of comments is
18 5:00 p.m. on October 24, 2016.

19

20 STATUTORY AUTHORITY

21 The amendments are proposed under Transportation Code,
22 §1002.001, which provides the board of the Texas Department of
23 Motor Vehicles with the authority to adopt rules that are

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1 necessary and appropriate to implement the powers and the duties
2 of the department; and more specifically, Transportation Code,
3 §501.0041, which provides the department may adopt rules to
4 administer Chapter 501, Certificate of Title.

5

6 CROSS REFERENCE TO STATUTE

7 Transportation Code, Chapters 501 and 520, and §§502.041,
8 502.042, and 502.192.

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1 SUBCHAPTER A. MOTOR VEHICLE TITLES

2 §217.9. Bonded Titles.

3 (a) Who may file. A person who has an interest in a motor
4 vehicle to which the department has refused to issue a title or
5 has suspended or revoked a title may request issuance of a title
6 from the department on a prescribed form if the vehicle is in
7 the possession of the applicant; and

8 (1) there is a record that indicates a lien that is
9 less than ten years old and the surety bonding company ensures
10 lien satisfaction or release of lien;

11 (2) there is a record that indicates there is not a
12 lien or the lien is ten or more years old; or

13 (3) the department has no previous motor vehicle
14 record.

15 (b) Administrative fee. The applicant must pay the
16 department a \$15 administrative fee in addition to any other
17 required fees.

18 (c) Value. The amount of the bond must be equal to one and
19 one-half times the value of the vehicle as determined using the
20 Standard Presumptive Value (SPV) from the department's Internet
21 website. If the SPV is not available, then a national reference
22 guide will be used. If the value cannot be determined by either
23 source, then the person may obtain an appraisal.

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1 (1) The appraisal must be on a form specified by the
2 department [~~form~~] from a Texas licensed motor vehicle dealer for
3 the categories of motor vehicles that the dealer is licensed to
4 sell or a Texas licensed insurance adjuster who may appraise any
5 type of motor vehicle.

6 (2) The appraisal must be dated and be submitted to
7 the department within 30 days of the appraisal.

8 (3) If the motor vehicle is 25 years or older and
9 [~~7~~]the appraised value of the vehicle is [~~cannot be~~] less than
10 \$4,000, then the bond amount will be established from a value of
11 \$4,000.

12 (d) Vehicle identification number [~~Out-of-state~~
13 ~~vehicle~~]inspection. If the department has no motor vehicle
14 record for the vehicle, [~~the applicant is a Texas resident, but~~
15 ~~the evidence indicates that the vehicle is an out-of-state~~
16 ~~vehicle,~~] the vehicle identification number must be verified by
17 a Texas licensed Safety Inspection Station or, a member of the
18 National Insurance Crime Bureau, Federal Bureau of
19 Investigation, or law enforcement auto theft unit. The
20 inspection must be documented on a form specified by the
21 department[~~a law enforcement officer who holds an auto theft~~
22 ~~certification~~].

23 (e) Required documentation. An applicant may apply for a

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1 bonded title if the applicant submits:

2 (1) Verification of the vehicle identification number
3 on a form specified by the department [~~a pencil tracing or photo~~
4 ~~of the vehicle identification number, or if unable then a~~
5 ~~Statement of Physical Inspection, Form VTR 270~~];

6 (2) any evidence of ownership;

7 (3) the original bond within 30 days of issuance;

8 (4) the rejection letter within one year of issuance
9 and the receipt for \$15 paid to the department;

10 (5) the documentation determining the value of the
11 vehicle;

12 (6) proof of the [~~an out-of-state~~] vehicle
13 identification number inspection [~~certificate~~], as described in
14 subsection (d) of this section, if the department has no motor
15 vehicle record for the vehicle [~~there is no Texas record~~];

16 (7) a weight certificate if there is no title or the
17 vehicle is an out of state commercial vehicle;

18 (8) a certification of lien satisfaction by the surety
19 bonding company or a release of lien if the rejection letter
20 states that there may be a lien less than ten years old; and

21 (9) any other required documentation and fees.

22 (f) Report of Judgment. The bond must require that the
23 surety report payment of any judgment to the department within

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1 30 days.



DATE: September 1, 2016
Action Requested: APPROVAL

To: Board of the Texas Department of Motor Vehicles (TxDMV)
From: Jeremiah Kuntz, Director, Vehicle Titles and Registration Division
Agenda Item: 2.E.2.b
Subject: Proposal of rules under Title 43, Texas Administrative Code, Chapter 217, Vehicle Titles and Registration
New §217.57, Alternatively Fueled Vehicles

RECOMMENDATION

Approval to publish the proposed rules in the *Texas Register* for public comment.

PURPOSE AND EXECUTIVE SUMMARY

New §217.57 is proposed to implement House Bill 735, 84th Legislature, Regular Session.

FINANCIAL IMPACT

There will be no fiscal implications related to the proposed new section.

BACKGROUND AND DISCUSSION

House Bill 735 added Transportation Code, §502.004, which requires the department to:

- establish by rule a program to collect information about the number of alternatively fueled vehicles in this state, and
- submit an annual report to the legislature that includes the information collected.

If the proposed amendment is approved by the board, staff anticipates publication of the proposed amendment in the *Texas Register* on or about September 23, 2016. Comments on the proposed amendment will be accepted until 5:00 p.m. on October 24, 2016

PROPOSED PUBLICATION OF NEW 43 TAC SECTION 217.57, ALTERNATIVELY FUELED VEHICLES

Description

This order proposes publication for comment of Chapter 217, Vehicle Titles and Registration, new §217.57, Alternately Fueled Vehicles.

Background

New §217.57 is proposed to implement House Bill 735, 84th Legislature, Regular Session.

House Bill 735 added Transportation Code, §502.004, which requires the department to:

- establish by rule a program to collect information about the number of alternately fueled vehicles in this state, and
- submit an annual report to the legislature that includes the information collected.

Other Comments

There are no fiscal implications related to the proposed new section.

If the proposed new section is approved by the board, staff anticipates publication of the proposed amendment in the *Texas Register* on or about September 23, 2016. Comments on the proposed amendment will be accepted until 5:00 p.m. on October 24, 2016.

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING PUBLICATION OF PROPOSED NEW
43 TAC SECTION 217.57, ALTERNATIVELY FUELED VEHICLES

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to propose Chapter 217, Vehicle Titles and Registration, new §217.57, Alternatively Fueled Vehicles.

The preamble and the proposed new section are attached to this resolution as Exhibits A-B, and are incorporated by reference as though set forth verbatim in this resolution, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the board that the attached rule is authorized for publication in the *Texas Register* for the purpose of receiving public comment.

The department is directed to take the necessary steps to implement the actions authorized in this order pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Raymond Palacios, Jr. Chairman
Board of the Texas Department of Motor Vehicles

Recommended by:

Jeremiah Kuntz, Director
Vehicle Titles and Registration Division

Order Number: _____

Date Passed: September 1, 2016

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1 Proposed Preamble

2 The Texas Department of Motor Vehicles (department) proposes new
3 §217.57, Alternatively Fueled Vehicles.

4

5 EXPLANATION OF PROPOSED NEW SECTION

6 New §217.57 is proposed to implement House Bill 735, 84th
7 Legislature, Regular Session, 2015, regarding the collection of
8 information on the number of alternatively fueled vehicles
9 registered in this state. House Bill 735 added Transportation
10 Code, §502.004, Information on Alternatively Fueled Vehicles,
11 which requires the department, by rule, to establish a program
12 to collect information about the number of alternatively fueled
13 vehicles in this state. Section 502.004 also requires the
14 department to submit an annual report to the legislature that
15 includes the information collected, including, at a minimum, the
16 number of vehicles that use electric plug-in drives, hybrid
17 electric drives, compressed natural gas drives, and liquefied
18 natural gas drives.

19

20 FISCAL NOTE

21 Linda M. Flores, Chief Financial Officer, has determined that
22 for each of the first five years the new section as proposed is
23 in effect, there will be no fiscal implications for state or

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1 local governments as a result of enforcing or administering the
2 proposed new section.

3

4 Jeremiah Kuntz, Director of the Vehicle Titles and Registration
5 Division, has certified that there will be no impact on local
6 economies or overall employment as a result of enforcing or
7 administering the proposed new section.

8

9 PUBLIC BENEFIT AND COST

10 Mr. Kuntz has also determined that for each year of the first
11 five years the new section is in effect, the public benefit
12 anticipated as a result of enforcing or administering the new
13 section will be the ability to more adequately plan and estimate
14 funding levels for long-term infrastructure needs involving
15 building and maintaining Texas roadways. The accuracy of fuel
16 tax revenue forecasts will increase. There are no anticipated
17 economic costs for persons required to comply with the new
18 section as proposed. There will be no adverse economic effect on
19 small businesses or micro-businesses.

20

21 TAKINGS IMPACT ASSESSMENT

22 The department has determined that this proposal affects no
23 private real property interests and that this proposal does not

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1 restrict or limit an owner's right to property that would
2 otherwise exist in the absence of government action, and so does
3 not constitute a taking or require a takings impact assessment
4 under the Government Code, §2007.043.

5

6 SUBMITTAL OF COMMENTS

7 Written comments on the proposed new section may be submitted to
8 David D. Duncan, General Counsel, Texas Department of Motor
9 Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email
10 to rules@txdmv.gov. The deadline for receipt of comments is 5:00
11 p.m. on October 24, 2016.

12

13 STATUTORY AUTHORITY

14 The new section is proposed under Transportation Code,
15 §1002.001, which provides the board of the Texas Department of
16 Motor Vehicles with the authority to adopt rules that are
17 necessary and appropriate to implement the powers and the duties
18 of the department; and more specifically, Transportation Code,
19 §502.004, which requires the department to establish a program,
20 by rule, about the number of alternatively fueled vehicles
21 registered in this state.

22

23 CROSS REFERENCE TO STATUTE

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- 1 Transportation Code, §§501.021, 502.040, and 502.043.

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1 SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

2 §217.57. Alternatively Fueled Vehicles.

3 The department shall collect vehicle fuel type
4 information for motor vehicles registered in this state,
5 including alternatively fueled vehicles, as defined by
6 Transportation Code, §502.004, and submit an annual report to
7 the legislature that includes the information collected under
8 this section.



DATE: September 1, 2016
Action Requested: APPROVAL

To: Board of the Texas Department of Motor Vehicles (TxDMV)
From: Jeremiah Kuntz, Director, Vehicle Titles and Registration
Agenda Item: 2.E.2.c
Subject: Proposal of Rules under Title 43 Texas Administrative Code, Chapter 217, Vehicle Titles and Registration, Amendments §§217.3; 217.28, 217.40, 217.42, 217.45, 217.47, 217.52, 217.54, 217.56, 217.82, 217.84, 217.86, 217.103, and 217.163

RECOMMENDATION

Approval to publish the proposed rules in the *Texas Register* for public comment.

PURPOSE AND EXECUTIVE SUMMARY

The proposed non-substantive amendments correct statutory and rule citations, errors, and updates rule language, capitalizations, and style for consistency throughout.

The purpose of this amendment will be accuracy, clarity, and consistency in the department's rules.

FINANCIAL IMPACT

There will be no fiscal implications related to the proposed amendments.

BACKGROUND AND DISCUSSION

Proposed amendments to:

- §217.3(4)(C), changed the word “forty” to the numeral “40.”
- §217.3(4)(C)(i), the word “body” is deleted for consistency with the language in §217.3(4)(C)(ii).
- §217.28(e)(2), changed the word “percent” to the symbol “%.”
- §217.28(e)(3), changed the word “twelve” to the numeral “12.”
- §217.40(b)(1)(C), changed the word “percent” to the symbol “%” in three instances. Also changed the word “semi-trailers” to “semitrailers.”
- §217.42, changed “\$5.00” to “\$5.”
- §217.45, changed “Board” to “board” multiple times.
- §217.47, corrected an incorrect statutory citation in the Health & Safety Code.
- §217.52, changed “Board” to “board” multiple times.
- §217.54, changed the word “semi-trailers” to “semitrailers” and changed the word “twenty five” to the numeral “25.”
- §217.56, changed the word “semi-trailer” to “semitrailer” in three instances.
- §217.82, corrected the citation for the definition of “motor vehicle” in Transportation Code, Chapter 501.
- §217.84, updated incorrect statutory citations to the Transportation Code.
- §217.86, updated an incorrect rule citation.
- §217.103(e), changed “\$5.00” to “\$5.”
- §217.163(a), updated an incorrect reference to subsection (j) due to the addition of a subsection during adoption that resulted in renumbering of the subsections. Also updated the reference to an agreement to an addendum to reflect the rule language as adopted.

If the proposed amendment is approved by the board, staff anticipates publication of the proposed amendment in the *Texas Register* on or about September 23, 2016. Comments on the proposed amendment will be accepted until 5:00 p.m. on October 24, 2016

**PROPOSED PUBLICATION TO AMEND
43 TAC SECTIONS 217.3; 217.28, 217.40, 217.42, 217.45, 217.47, 217.52, 217.54,
217.56, 217.82, 217.84, 217.86, 217.103, and 217.163,
RELATING TO VEHICLE TITLES AND REGISTRATION**

Description

This order proposes publication for comment of amendments to §§217.3; 217.28, 217.40, 217.42, 217.45, 217.47, 217.52, 217.54, 217.56, 217.82, 217.84, 217.86, 217.103, and 217.163.

Background

The proposed non-substantive amendments correct statutory and rule citations, correct one error, and update rule language, capitalizations, and style for consistency throughout.

- In §217.3(4)(C), changed the word “forty” to the numeral “40.”
- In §217.3(4)(C)(i), the word “body” is deleted for consistency with the language in §217.3(4)(C)(ii).
- In §217.28(e)(2), changed the word “percent” to the symbol “%.”
- In §217.28(e)(3), changed the word “twelve” to the numeral “12.”
- In §217.40(b)(1)(C), changed the word “percent” to the symbol “%” in three instances. Also changed the word “semi-trailers” to “semitrailers.”
- In §217.42, changed "\$5.00" to "\$5."
- In §217.45, changed “Board” to “board” multiple times.
- In §217.47, corrected an incorrect statutory citation in the Health & Safety Code.
- In §217.52, changed “Board” to “board” multiple times.
- In §217.54, changed the word “semi-trailers” to “semitrailers” and changed the word “twenty five” to the numeral “25.”
- In §217.56, changed the word “semi-trailer” to “semitrailer” in three instances and changed “Board” to “board” throughout.
- In §217.82, corrected the citation for the definition of “motor vehicle” in Transportation Code, Chapter 501.
- In §217.84, updated incorrect statutory citations to the Transportation Code.
- In §217.86, updated an incorrect rule citation.
- In §217.103(e), changed “\$5.00” to “\$5.”
- In §217.163, updated an incorrect reference to subsection (j) due to the addition of a subsection during adoption that resulted in renumbering of the subsections.
- In §217.163(a), updated the reference to an agreement to an addendum to reflect the rule language as adopted.

Other Comments

There will be no fiscal implications related to the proposed amendments.

If the proposed amendments are approved by the board, staff anticipates publication of the proposed amendments in the *Texas Register* on or about September 23, 2016. Comments on the proposed amendments will be accepted until 5:00 p.m. on October 24, 2016.

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING PUBLICATION OF PROPOSED AMENDMENTS
43 TAC SUBCHAPTERS A, B, D, E, AND H
RELATING TO VEHICLE TITLES AND REGISTRATION

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to amend Subchapter A, §217.3, Motor Vehicle Titles; Subchapter B, §217.28, Vehicle Registration Renewal; §217.40, Special Registrations; §217.42, Construction Machinery Criteria; §217.45, Specialty License Plates, Symbols, Tabs, and Other Devices; §217.47, Vehicle Emissions Enforcement System; §217.52, Marketing of Specialty License Plates Through A Private Vendor; §217.54, Registration of Fleet Vehicles; §217.56, Registration Reciprocity Agreements; Subchapter D, §217.82, Definitions (relating to Non-repairable and Salvage Motor Vehicles); §217.84, Application for Non-repairable or Salvage Vehicle Title; §217.86, Dismantling, Scrapping, or Destruction of Motor Vehicles; Subchapter E, §217.103, Restitution Liens; and Subchapter H, §217.163, Full Service Deputies.

The preamble and the proposed amendments are attached to this resolution as Exhibits A-F, and are incorporated by reference as though set forth verbatim in this resolution, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the board that the attached rules are authorized for publication in the *Texas Register* for the purpose of receiving public comment.

The department is directed to take the necessary steps to implement the actions authorized in this order pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Raymond Palacios, Jr., Chairman
Board of Texas Department of Motor Vehicles

Recommended by:

Jeremiah Kuntz, Director
Vehicle Titles and Registration Division

Order Number: _____

Date Passed: 09/01/2016

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Chapter 217, Vehicle Titles and Registration

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1 Proposed Preamble

2 The Texas Department of Motor Vehicles (department) proposes

3 amendments to Chapter 217, Subchapter A, §217.3, Motor Vehicle

4 Titles; Subchapter B, §217.28, Vehicle Registration Renewal;

5 §217.40, Special Registrations; §217.42, Construction Machinery

6 Criteria; §217.45, Specialty License Plates, Symbols, Tabs, and

7 Other Devices; §217.47, Vehicle Emissions Enforcement System;

8 §217.52, Marketing of Specialty License Plates Through A Private

9 Vendor; §217.54, Registration of Fleet Vehicles; §217.56,

10 Registration Reciprocity Agreements; Subchapter D, §217.82,

11 Definitions (relating to Non-repairable and Salvage Motor

12 Vehicles); §217.84, Application for Non-repairable or Salvage

13 Vehicle Title; §217.86, Dismantling, Scrapping, or Destruction

14 of Motor Vehicles; Subchapter E, §217.103, Restitution Liens;

15 and Subchapter H, §217.163, Full Service Deputies.

16

17 EXPLANATION OF PROPOSED AMENDMENTS

18 In general, these non-substantive amendments are proposed

19 throughout Chapter 217, Subchapters A, B, D, E, and H to correct

20 statutory and rule citations, correct one error, and update rule

21 language, capitalization, and style, for consistency throughout

22 Chapter 217.

23

Texas Department of Motor Vehicles
Chapter 217, Vehicle Titles and Registration

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1 SECTION BY SECTION ANALYSIS

2 The proposed amendment to §217.3(4)(C) changes the word "forty"
3 to the numeral "40." The proposed amendment also deletes the
4 word "body" from §217.3(4)(C)(i) for consistency with the
5 language in §217.3(4)(C)(ii).

6

7 The proposed amendment to §217.28(e)(2) changes the word
8 "percent" to the symbol "%" for consistency with other sections
9 within the chapter. The proposed amendment to §217.28(e)(3)
10 changes the word "twelve" to the numeral "12."

11

12 The proposed amendments to §217.40(b)(1)(C) change the word
13 "percent" to the symbol "%" in three instances. The proposed
14 amendments also change the word "semi-trailers" to
15 "semitrailers" for consistency with statute.

16

17 The proposed amendment to §217.42 change "\$5.00" to "\$5."

18

19 The proposed amendments to §217.45 change "Board" to "board"
20 multiple times for consistency.

21

22 The proposed amendment to section 217.47 updates an incorrect
23 statutory citation to the Health & Safety Code.

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1

2 The proposed amendments to §217.52 change "Board" to "board"
3 multiple times.

4

5 The proposed amendment to §217.54 change "semi-trailers" to
6 "semitrailers" for consistency with statute and change the word
7 "twenty five" to the numeral "25."

8

9 The proposed amendments to §217.56 change the word "semi-
10 trailer" to "semitrailer" in three instances and change "Board"
11 to "board" throughout.

12

13 The proposed amendment to §217.82 corrects the citation for the
14 definition of "motor vehicle" in Transportation Code, Chapter
15 501.

16

17 The proposed amendments in §217.84 update incorrect statutory
18 citations to the Transportation Code.

19

20 The proposed amendment to §217.86 update an incorrect rule
21 citation.

22

23 The proposed amendment to §217.103(e) changes "\$5.00" to "\$5"

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1 for consistency.

2

3 The proposed amendments to §217.163 update an incorrect
4 reference to subsection (j) due to the addition of a subsection
5 during adoption of the rule that resulted in a renumbering of
6 the subsections. The proposed amendment §217.163(a) also
7 updates the reference to an agreement to an addendum to reflect
8 the rule language as adopted.

9

10 FISCAL NOTE

11 Linda M. Flores, Chief Financial Officer, has determined that
12 for each of the first five years the amendments as proposed are
13 in effect, there will be no fiscal implications for state or
14 local governments as a result of enforcing or administering the
15 amendments.

16

17 Jeremiah Kuntz, Director, Vehicle Titles and Registration
18 Division has certified that there will be no significant impact
19 on local economies or overall employment as a result of
20 enforcing or administering the amendments as proposed.

21

22 PUBLIC BENEFIT AND COST

23 Mr. Kuntz has also determined that for each year of the first

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1 five years the amendments are in effect, the public benefit
2 anticipated as a result of enforcing or administering the
3 amendments will be accuracy and clarity of the department's
4 rules. There are no anticipated economic costs for persons
5 required to comply with the amendments as proposed. There will
6 be no adverse economic effect on small businesses or micro-
7 businesses.

8

9 TAKINGS IMPACT ASSESSMENT

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

16

17 SUBMITTAL OF COMMENTS

18 Written comments on the proposed amendments may be submitted to
19 David D. Duncan, General Counsel, Texas Department of Motor
20 Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email
21 to rules@txdmv.gov. The deadline for receipt of comments is
22 5:00 p.m. on September 26, 2016.

23

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1 STATUTORY AUTHORITY

2 The amendments are proposed under Transportation Code,
3 §1002.001, which provides the board of the Texas Department of
4 Motor Vehicles with the authority to establish rules for the
5 conduct of the work of the department; and more specifically,
6 Transportation Code, §501.0041, which provides the department
7 may adopt rules to administer Transportation Code, Chapter 501,
8 Certificate of Title Act; Transportation Code, §502.0021, which
9 provides the department may adopt rules to administer
10 Transportation Code, Chapter 502, Registration of Vehicles; and
11 Transportation Code, §520.0071, which provides the board by rule
12 shall prescribe the classification types of deputies performing
13 titling and registration duties, the duties and obligations of
14 deputies, the type and amount of any bonds that may be required
15 by a county tax assessor-collector for a deputy to perform
16 titling and registration duties, and the fees that may be
17 charged or retained by deputies.

18

19 CROSS REFERENCE TO STATUTE

20 Health and Safety Code, §382.202 and §382.203; and
21 Transportation Code, §§501.002, 501.091, 501.1001, and 501.1002.

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1 SUBCHAPTER A. MOTOR VEHICLE TITLES

2 §217.3 Motor Vehicle Titles.

3 Unless otherwise exempted by law or this chapter, the owner of
4 any motor vehicle that is required to be registered in
5 accordance with Transportation Code, Chapter 502, shall apply
6 for a Texas title in accordance with Transportation Code,
7 Chapter 501.

8 (1) Motorcycles, motor-driven cycles, autocycles, and
9 mopeds.

10 (A) The title requirements of a motorcycle, motor-
11 driven cycle, autocycle, and moped are the same requirements
12 prescribed for any motor vehicle.

13 (B) A vehicle that meets the criteria for a moped and
14 has been certified as a moped by the Department of Public Safety
15 will be registered and titled as a moped. If the vehicle does
16 not appear on the list of certified mopeds published by that
17 agency, the vehicle will be treated as a motorcycle for title
18 and registration purposes.

19 (2) Farm vehicles.

20 (A) The term motor vehicle does not apply to implements
21 of husbandry, which may not be titled.

22 (B) Farm tractors owned by agencies exempt from
23 registration fees in accordance with Transportation Code,

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1 §502.453, are required to be titled and registered with "Exempt"
2 license plates issued in accordance with Transportation Code,
3 §502.451.

4 (C) Farm tractors used as road tractors to mow rights
5 of way or used to move commodities over the highway for hire are
6 required to be registered and titled.

7 (D) Farm semitrailers with a gross weight of more than
8 4,000 pounds that are registered in accordance with
9 Transportation Code, §502.146, may be issued a Texas title.

10 (3) Neighborhood electric vehicles. The title
11 requirements of a neighborhood electric vehicle (NEV) are the
12 same requirements prescribed for any motor vehicle.

13 (4) Trailers, semitrailers, and house trailers. Owners of
14 trailers and semitrailers shall apply for and receive a Texas
15 title for any stand alone (full) trailer, including homemade or
16 shopmade full trailers, or any semitrailer having a gross weight
17 in excess of 4,000 pounds. Owners of trailers having a gross
18 weight of 4,000 pounds or less may apply for and receive a Texas
19 title. House trailer-type vehicles must meet the criteria
20 outlined in subparagraph (C) of this paragraph to be titled.

21 (A) The rated carrying capacity will not be less than
22 one-third of its empty weight.

23 (B) Mobile office trailers, mobile oil field

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1 laboratories, and mobile oil field bunkhouses are not designed
2 as dwellings, but are classified as commercial semitrailers and
3 must be registered and titled as commercial semitrailers if
4 operated on the public streets and highways.

5 (C) House trailer-type vehicles and camper trailers
6 must meet the following criteria in order to be titled.

7 (i) A house trailer-type vehicle designed for living
8 quarters and that is eight body feet or more in width and 40
9 ~~forty body~~ feet or more in length (not including the hitch), is
10 classified as a manufactured home or mobile home and is not
11 eligible for a Texas title under Transportation Code, Chapter
12 501.

13 (ii) A house trailer-type vehicle that is less than
14 eight feet in width or less than 40 ~~forty~~ feet in length is
15 classified as a travel trailer and shall be registered and
16 titled.

17 (iii) A camper trailer shall be titled as a house
18 trailer and shall be registered with travel trailer license
19 plates.

20 (iv) A recreational park model type trailer that is
21 primarily designed as temporary living quarters for
22 recreational, camping or seasonal use, is built on a single
23 chassis, and is 400 square feet or less when measured at the

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1 largest horizontal projection when in the set up mode shall be
2 titled as a house trailer and may be issued travel trailer
3 license plates.

4 (5) Assembled vehicles.

5 (A) An assembled vehicle is a vehicle assembled from
6 the three basic component parts (motor, frame, and body), except
7 that a motorcycle must have a frame and motor, and a trailer or
8 travel trailer will have no motor, and that is:

9 (i) assembled from new or used materials and parts by
10 someone not regulated as a motor vehicle manufacturer;

11 (ii) altered or modified to the extent that it no
12 longer reflects the original manufacturer's configuration; or

13 (iii) assembled from a kit even if a Manufacturer's
14 Certificate of Origin or Manufacturer's Statement of Origin is
15 provided.

16 (B) A newly assembled vehicle, for which a title has
17 never been issued in this jurisdiction or any other, may be
18 titled if:

19 (i) it is assembled and completed with a body, motor,
20 and frame, except that a motorcycle must have a frame and motor,
21 and a trailer or travel trailer will have no motor;

22 (ii) it is not created from different vehicle
23 classes, (as established by the Federal Highway Administration,

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1 except as provided by subparagraph (C) of this paragraph), that
2 were never engineered or manufactured to be combined with one
3 another;

4 (iii) it has all safety components required by
5 federal law during the year of assembly, unless the vehicle
6 qualifies and is registered as a custom vehicle or street rod in
7 accordance with Transportation Code, §504.501;

8 (iv) it is not a vehicle described by paragraph (6)
9 of this section;

10 (v) for a vehicle assembled with a body, motor, and
11 frame, the applicant provides proof, on a form prescribed by the
12 department, of a safety inspection performed by an Automotive
13 Service Excellence (ASE) technician with valid certification as
14 a Certified Master Automobile and Light Truck Technician,
15 certifying that the vehicle:

16 (I) is structurally stable;

17 (II) meets the necessary conditions to be operated
18 safely on the roadway; and

19 (III) is equipped and operational with all
20 equipment required by statute or rule as a condition of sale
21 during the year the vehicle was assembled unless it is being
22 inspected pursuant to Subchapter G of this chapter;

23 (vi) for a vehicle assembled with a body, motor, and

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1 frame, the applicant submits a copy of the Certified Master
2 Automobile and Light Truck Technician's ASE certification;

3 (vii) the applicant submits a Rebuilt Vehicle
4 Statement; and

5 (viii) the applicant submits the following to
6 establish the vehicle's vehicle identification number:

7 (I) an Application for Assigned or Reassigned
8 Number, and Notice of Assigned Number or Installation of
9 Reassigned Vehicle Identification Number, on forms prescribed by
10 the department; or

11 (II) acceptable proof, as established by the
12 department, of a vehicle identification number assigned by the
13 manufacturer of the component part by which the vehicle will be
14 identified.

15 (C) Component parts from the following vehicle classes
16 may be interchanged with one another or used in the creation of
17 an assembled vehicle:

18 (i) 2-axle, 4-tire passenger cars;

19 (ii) 2-axle, 4 tire pickups, panels and vans;

20 (iii) 6-tire dually pickups, of which the rear tires
21 are dual tires.

22 (D) The ASE inspection for a newly assembled vehicle
23 required under subparagraph (B) of this paragraph is in addition

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1 to the inspection required by Transportation Code, Chapter 548,
2 except a vehicle that qualifies and is registered as a custom
3 vehicle or street rod in accordance with Transportation Code,
4 §504.501, is exempt from the inspection required under
5 Transportation Code, Chapter 548, for the duration the vehicle
6 is registered as such.

7 (E) An assembled vehicle which has previously been
8 titled and/or registered in this or any other jurisdiction is
9 subject to subparagraph (B)(i) - (iv) of this paragraph, but is
10 not subject to subparagraph (B)(v) - (viii); however, it is
11 subject to the inspection required by Transportation Code,
12 Chapter 548, except a vehicle that qualifies and is registered
13 as a custom vehicle or street rod in accordance with
14 Transportation Code, §504.501.

15 (F) An assembled vehicle will be titled using the year
16 it was assembled as the model year and "ASSEMBLED" or "ASVE" as
17 the make of the vehicle unless the body of the vehicle is
18 established to the department's satisfaction to be an original
19 body from a particular year and make. An assembled vehicle
20 utilizing an original body may be titled by the year and the
21 make of the original body but must reflect a "RECONSTRUCTED"
22 remark. An assembled vehicle not utilizing an original body may
23 obtain a title with a "REPLICA" remark featuring the year and

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1 make of the replica if the vehicle resembles a prior model year
2 vehicle. This subparagraph applies regardless of how the
3 vehicle's model year or make was previously identified in this
4 or any other jurisdiction.

5 (6) Not Eligible for Title. The following are not
6 eligible for a Texas title regardless of the vehicle's previous
7 title and/or registration in this or any other jurisdiction:

8 (A) vehicles that are missing or are stripped of their
9 motor, frame, or body, to the extent that it materially alters
10 the manufacturer's original design or makes the vehicle unsafe
11 for on-road operation as determined by the department;

12 (B) vehicles designed or determined by the department
13 to be a dune buggy;

14 (C) vehicles designed or determined by the department
15 to be for on-track racing, unless such vehicles meet Federal
16 Motor Vehicle Safety Standards (FMVSS) for on-road use and are
17 reported to the National Highway Traffic Safety Administration;

18 (D) vehicles designed or determined by the department
19 to be for off-road use only, unless specifically defined as a
20 "motor vehicle" in Transportation Code, Chapter 501; or

21 (E) vehicles assembled, built, constructed, rebuilt, or
22 reconstructed in any manner with:

23 (i) a body or frame from a vehicle which is a

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1 "nonrepairable motor vehicle" as that term is defined in
2 Transportation Code, §501.091(9); or
3 (ii) a motor or engine from a vehicle which is flood
4 damaged, water damaged, or any other term which may reasonably
5 establish the vehicle from which the motor or engine was
6 obtained is a loss due to a water related event.

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1 SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

2 §217.28 Vehicle Registration Renewal.

3 (a) To renew vehicle registration, a vehicle owner must
4 apply, prior to the expiration of the vehicle's registration, to
5 the tax assessor-collector of the county in which the owner
6 resides.

7 (b) The department will send a license plate renewal
8 notice, indicating the proper registration fee and the month and
9 year the registration expires, to each vehicle owner prior to
10 the expiration of the vehicle's registration.

11 (c) The license plate renewal notice should be returned by
12 the vehicle owner to the appropriate county tax assessor-
13 collector or to the tax assessor-collector's deputy, either in
14 person or by mail, unless the vehicle owner renews via the
15 Internet. The renewal notice must be accompanied by the
16 following documents and fees:

17 (1) registration renewal fees prescribed by law;

18 (2) any local fees or other fees prescribed by law and
19 collected in conjunction with registration renewal; and

20 (3) evidence of financial responsibility required by
21 Transportation Code, §502.046, unless otherwise exempted by law.

22 (d) If a renewal notice is lost, destroyed, or not received
23 by the vehicle owner, the vehicle may be registered if the owner

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1 presents personal identification acceptable to the county tax
2 assessor-collector. Failure to receive the notice does not
3 relieve the owner of the responsibility to renew the vehicle's
4 registration.

5 (e) Renewal of expired vehicle registrations.

6 (1) In accordance with Transportation Code, §502.407, a
7 vehicle with an expired registration may not be operated on the
8 highways of the state after the fifth working day after the date
9 a vehicle registration expires.

10 (2) If the owner has been arrested or cited for operating
11 the vehicle without valid registration then a 20% ~~percent~~
12 delinquency penalty is due when registration is renewed, the
13 full annual fee will be collected, and the vehicle registration
14 expiration month will remain the same.

15 (3) If the county tax assessor-collector or the
16 department determines that a registrant has a valid reason for
17 being delinquent in registration, the vehicle owner will be
18 required to pay for 12 ~~twelve~~ months' registration. Renewal will
19 establish a new registration expiration month that will end on
20 the last day of the eleventh month following the month of
21 registration renewal.

22 (4) If the county tax assessor-collector or the
23 department determines that a registrant does not have a valid

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1 reason for being delinquent in registration, the full annual fee
2 will be collected and the vehicle registration expiration month
3 will remain the same.

4 (5) If a vehicle is registered in accordance with
5 Transportation Code, §§502.255, 502.431, 502.435, 502.454,
6 504.315, 504.401, 504.405, 504.505, or 504.515 and if the
7 vehicle's registration is renewed more than one month after
8 expiration of the previous registration, the registration fee
9 will be prorated.

10 (6) Evidence of a valid reason may include receipts,
11 passport dates, and military orders. Valid reasons may include:

12 (A) extensive repairs on the vehicle;

13 (B) the person was out of the country;

14 (C) the vehicle is used only for seasonal use;

15 (D) military orders;

16 (E) storage of the vehicle;

17 (F) a medical condition such as an extended hospital
18 stay; and

19 (G) any other reason submitted with evidence that the
20 county tax assessor-collector or the department determines is
21 valid.

22

23 §217.40 Special Registrations.

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1 (a) Purpose and scope. Transportation Code, Chapter 502,
2 Subchapters C and I, charge the department with the
3 responsibility of issuing special registration permits which
4 shall be recognized as legal registration for the movement of
5 motor vehicles not authorized to travel on Texas public highways
6 for lack of registration or for lack of reciprocity with the
7 state or country in which the vehicles are registered. For the
8 department to efficiently and effectively perform these duties,
9 this section prescribes the policies and procedures for the
10 application and the issuance of temporary registration permits.

11 (b) Permit categories. The department will issue the
12 following categories of special registration permits.

13 (1) Additional weight permits. The owner of a truck,
14 truck tractor, trailer, or semitrailer may purchase temporary
15 additional weight permits for the purpose of transporting the
16 owner's own seasonal agricultural products to market or other
17 points for sale or processing in accordance with Transportation
18 Code, §502.434. In addition, such vehicles may be used for the
19 transportation without charge of seasonal laborers from their
20 place of residence, and materials, tools, equipment, and
21 supplies from the place of purchase or storage, to a farm or
22 ranch exclusively for use on such farm or ranch.

23 (A) Additional weight permits are valid for a limited

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1 period of less than one year.

2 (B) An additional weight permit will not be issued for
3 a period of less than one month or extended beyond the
4 expiration of a license plate issued under Transportation Code,
5 Chapter 502.

6 (C) The statutory fee for an additional weight permit
7 is based on a percentage of the difference between the owner's
8 annual registration fee and the annual fee for the desired gross
9 vehicle weight computed as follows:

10 (i) one-month (or 30 consecutive days)--10% ~~percent~~;

11 (ii) one-quarter (three consecutive months)--30%
12 ~~percent~~;

13 (iii) two-quarters (six consecutive months)--60%
14 ~~percent~~; or

15 (iv) three-quarters (nine consecutive months)--90%
16 ~~percent~~.

17 (D) Additional weight permits are issued for calendar
18 quarters with the first quarter to begin on April 1st of each
19 year.

20 (E) A permit will not be issued unless the registration
21 fee for hauling the additional weight has been paid prior to the
22 actual hauling.

23 (F) An applicant must provide proof of the applicant's

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1 Texas Agriculture or Timber Exemption Registration Number issued
2 by the Texas Comptroller of Public Accounts. Proof of the
3 registration number must be:

4 (i) legible;

5 (ii) current;

6 (iii) in the name of the person or dba in which the
7 vehicle is or will be registered; and

8 (iv) verifiable through the online system established
9 by the Comptroller.

10 (2) Annual permits.

11 (A) Transportation Code, §502.093 authorizes the
12 department to issue annual permits to provide for the movement
13 of foreign commercial vehicles that are not authorized to travel
14 on Texas highways for lack of registration or for lack of
15 reciprocity with the state or country in which the vehicles are
16 registered. The department will issue annual permits:

17 (i) for a 12-month period designated by the
18 department which begins on the first day of a calendar month and
19 expires on the last day of the last calendar month in that
20 annual registration period; and

21 (ii) to each vehicle or combination of vehicles for
22 the registration fee prescribed by weight classification in
23 Transportation Code, §502.253 and §502.255.

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1 (B) The department will not issue annual permits for the
2 importation of citrus fruit into Texas from a foreign country
3 except for foreign export or processing for foreign export.

4 (C) The following exemptions apply to vehicles displaying
5 annual permits.

6 (i) Currently registered foreign semitrailers having
7 a gross weight in excess of 6,000 pounds used or to be used in
8 combination with commercial motor vehicles or truck tractors
9 having a gross vehicle weight in excess of 10,000 pounds are
10 exempted from the requirements to pay the token fee and display
11 the associated distinguishing license plate provided for in
12 Transportation Code, §502.255. An annual permit is required for
13 the power unit only. For vehicles registered in combination, the
14 combined gross weight may not be less than 18,000 pounds.

15 (ii) Vehicles registered with annual permits are not
16 subject to the optional county registration fee under
17 Transportation Code, §502.401; the optional county fee for
18 transportation projects under Transportation Code, §502.402; or
19 the optional registration fee for child safety under
20 Transportation Code, §502.403.

21 (3) 72-hour permits and 144-hour permits.

22 (A) In accordance with Transportation Code, §502.094,
23 the department will issue a permit valid for 72 hours or 144

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1 hours for the movement of commercial motor vehicles, trailers,
2 semitrailers, and motor buses owned by residents of the United
3 States, Mexico, or Canada.

4 (B) A 72-hour permit or a 144-hour permit is valid for
5 the period of time stated on the permit beginning with the
6 effective day and time as shown on the permit registration
7 receipt.

8 (C) Vehicles displaying 72-hour permits or 144-hour
9 permits are subject to vehicle safety inspection in accordance
10 with Transportation Code, §548.051, except for:

11 (i) vehicles currently registered in another state of
12 the United States, Mexico, or Canada; and

13 (ii) mobile drilling and servicing equipment used in
14 the production of gas, crude petroleum, or oil, including, but
15 not limited to, mobile cranes and hoisting equipment, mobile
16 lift equipment, forklifts, and tugs.

17 (D) The department will not issue a 72-hour permit or a
18 144-hour permit to a commercial motor vehicle, trailer,
19 semitrailer, or motor bus apprehended for violation of Texas
20 registration laws. Apprehended vehicles must be registered under
21 Transportation Code, Chapter 502.

22 (4) Temporary agricultural permits.

23 (A) Transportation Code, §502.092 authorizes the

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1 department to issue a 30-day temporary nonresident registration
2 permit to a nonresident for any truck, truck tractor, trailer,
3 or semitrailer to be used in the movement of all agriculture
4 products produced in Texas:

5 (i) from the place of production to market, storage, or railhead
6 not more than 75 miles from the place of production; or

7 (ii) to be used in the movement of machinery used to harvest
8 Texas-produced agricultural products.

9 (B) The department will issue a 30-day temporary nonresident
10 registration permit to a nonresident for any truck, truck
11 tractor, trailer, or semitrailer used to move or harvest farm
12 products, produced outside of Texas, but:

13 (i) marketed or processed in Texas; or

14 (ii) moved to points in Texas for shipment from the point of
15 entry into Texas to market, storage, processing plant, railhead
16 or seaport not more than 80 miles from such point of entry into
17 Texas.

18 (C) The statutory fee for temporary agricultural permits is one-
19 twelfth of the annual Texas registration fee prescribed for the
20 vehicle for which the permit is issued.

21 (D) The department will issue a temporary agricultural permit
22 only when the vehicle is legally registered in the nonresident's
23 home state or country for the current registration year.

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1 (E) The number of temporary agricultural permits is limited to
2 three permits per nonresident owner during any one vehicle
3 registration year.

4 (F) Temporary agricultural permits may not be issued to farm
5 licensed trailers or semitrailers ~~semi-trailers~~.

6 (5) One-trip permits. Transportation Code, §502.095 authorizes
7 the department to temporarily register any unladen vehicle upon
8 application to provide for the movement of the vehicle for one
9 trip, when the vehicle is subject to Texas registration and not
10 authorized to travel on the public roadways for lack of
11 registration or lack of registration reciprocity.

12 (A) Upon receipt of the \$5 fee, registration will be valid for
13 one trip only between the points of origin and destination and
14 intermediate points as may be set forth in the application and
15 registration receipt.

16 (B) The department will issue a one-trip permit to a bus which
17 is not covered by a reciprocity agreement with the state or
18 country in which it is registered to allow for the transit of
19 the vehicle only. The vehicle should not be used for the
20 transportation of any passenger or property, for compensation or
21 otherwise, unless such bus is operating under charter from
22 another state or country.

23 (C) A one-trip permit is valid for a period up to 15 days from

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1 the effective date of registration.

2 (D) A one-trip permit may not be issued for a trip which both
3 originates and terminates outside Texas.

4 (E) A laden motor vehicle or a laden commercial vehicle cannot
5 display a one-trip permit. If the vehicle is unregistered, it
6 must operate with a 72-hour or 144-hour permit.

7 (6) 30-day temporary registration permits. Transportation Code,
8 §502.095 authorizes the department to issue a temporary
9 registration permit valid for 30 days for a \$25 fee. A vehicle
10 operated on a 30-day temporary permit is not restricted to a
11 specific route. The permit is available for:

12 (A) passenger vehicles;

13 (B) motorcycles;

14 (C) private buses;

15 (D) trailers and semitrailers with a gross weight not exceeding
16 10,000 pounds;

17 (E) light commercial vehicles not exceeding a gross weight of
18 10,000 pounds; and

19 (F) a commercial vehicle exceeding 10,000 pounds, provided the
20 vehicle is operated unladen.

21 (c) Application process.

22 (1) Procedure. An owner who wishes to apply for a temporary
23 registration permit for a vehicle which is otherwise required to

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1 be registered in accordance with this subchapter, must do so on
2 a form prescribed by the department.

3 (2) Form requirements. The application form will at a minimum
4 require:

5 (A) the signature of the owner;

6 (B) the name and complete address of the applicant; and

7 (C) the vehicle description.

8 (3) Fees and documentation. The application must be accompanied
9 by:

10 (A) statutorily prescribed fees;

11 (B) evidence of financial responsibility:

12 (i) as required by Transportation Code, Chapter 502, Subchapter
13 B, provided that all policies written for the operation of motor
14 vehicles must be issued by an insurance company or surety
15 company authorized to write motor vehicle liability insurance in
16 Texas; or

17 (ii) if the applicant is a motor carrier as defined by §218.2 of
18 this title (relating to Definitions), indicating that the
19 vehicle is registered in compliance with Chapter 218, Subchapter
20 B of this title (relating to Motor Carrier Registration); and

21 (C) any other documents or fees required by law.

22 (4) Place of application.

23 (A) All applications for annual permits must be submitted

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1 directly to the department for processing and issuance.

2 (B) Additional weight permits and temporary agricultural permits
3 may be obtained by making application with the department
4 through the county tax assessor-collectors' offices.

5 (C) 72-hour and 144-hour permits, one-trip permits, and 30-day
6 temporary registration permits may be obtained by making
7 application either with the department or the county tax
8 assessor-collectors' offices.

9 (d) Receipt for permit in lieu of registration. A receipt will
10 be issued for each permit in lieu of registration to be carried
11 in the vehicle during the time the permit is valid. A one-trip
12 or 30-day trip permit must be displayed as required by
13 Transportation Code, §502.095(f). If the receipt is lost or
14 destroyed, the owner must obtain a duplicate from the department
15 or from the county office. The fee for the duplicate receipt is
16 the same as the fee required by Transportation Code, §502.058.

17 (e) Transfer of temporary permits.

18 (1) Temporary permits are non-transferable between vehicles
19 and/or owners.

20 (2) If the owner of a vehicle displaying a temporary permit
21 disposes of the vehicle during the time the permit is valid, the
22 permit must be returned to the county tax assessor-collector
23 office or department immediately.

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1 (f) Replacement permits. Vehicle owners displaying annual
2 permits may obtain replacement permits if an annual permit is
3 lost, stolen, or mutilated.

4 (1) The fee for a replacement annual permit is the same as for a
5 replacement number plate, symbol, tab, or other device as
6 provided by Transportation Code, §502.060.

7 (2) The owner shall apply directly to the department in writing
8 for the issuance of a replacement annual permit. Such request
9 should include a copy of the registration receipt and
10 replacement fee.

11 (g) Agreements with other jurisdictions. In accordance with
12 Transportation Code, §502.091, and Chapter 648, the executive
13 director of the department may enter into a written agreement
14 with an authorized officer of a state, province, territory, or
15 possession of a foreign country to provide for the exemption
16 from payment of registration fees by nonresidents, if residents
17 of this state are granted reciprocal exemptions. The executive
18 director may enter into such agreement only upon:

19 (1) the approval of the governor; and

20 (2) making a determination that the economic benefits to the
21 state outweigh all other factors considered.

22 (h) Border commercial zones.

23 (1) Texas registration required. A vehicle located in a border

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1 commercial zone must display a valid Texas registration if the
2 vehicle is owned by a person who:
3 (A) owns a leasing facility or a leasing terminal located in
4 Texas; and
5 (B) leases the vehicle to a foreign motor carrier.
6 (2) Exemption for trips of short duration. Except as provided by
7 paragraph (1) of this subsection, a foreign commercial vehicle
8 operating in accordance with Transportation Code, Chapter 648 is
9 exempt from the display of a temporary registration permit if:
10 (A) the vehicle is engaged solely in the transportation of cargo
11 across the border into or from a border commercial zone;
12 (B) for each load of cargo transported the vehicle remains in
13 this state for:
14 (i) not more than 24 hours; or
15 (ii) not more than 48 hours, if:
16 (I) the vehicle is unable to leave this state within 24 hours
17 because of circumstances beyond the control of the motor carrier
18 operating the vehicle; and
19 (II) all financial responsibility requirements applying to this
20 vehicle are satisfied;
21 (C) the vehicle is registered and licensed as required by the
22 country in which the person that owns the vehicle is domiciled
23 or is a citizen as evidenced by a valid metal license plate

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1 attached to the front or rear exterior of the vehicle; and

2 (D) the country in which the person who owns the vehicle is

3 domiciled or is a citizen provides a reciprocal exemption for

4 commercial motor vehicles owned by residents of Texas.

5 (3) Exemption due to reciprocity agreement. Except as provided

6 by paragraph (1) of this subsection, a foreign commercial motor

7 vehicle in a border commercial zone in this state is exempt from

8 the requirement of obtaining a Texas registration if the vehicle

9 is currently registered in another state of the United States or

10 a province of Canada with which this state has a reciprocity

11 agreement that exempts a vehicle that is owned by a resident of

12 this state and that is currently registered in this state from

13 registration in the other state or province.

14

15 §217.42 Construction Machinery Criteria.

16 Construction machinery must meet the following criteria in order

17 to qualify for the ~~\$5.00~~ machinery license plate: it must be an

18 unconventional machine, such as those built from the ground up,

19 designed and fabricated to perform a job relating to that type

20 of construction. It is a vehicle that is not designed or used to

21 tow or transport property or persons, other than those persons

22 who may be required to operate such machinery in the function of

23 its design and purpose. Machinery vehicles are vehicles which

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1 are actually designed for special construction purposes.

2

3 §217.45 Specialty License Plates, Symbols, Tabs, and Other
4 Devices.

5 (a) Purpose and Scope. Transportation Code, Chapters 504 and 551
6 charge the department with providing specialty license plates,
7 symbols, tabs, and other devices. For the department to perform
8 these duties efficiently and effectively, this section
9 prescribes the policies and procedures for the application,
10 issuance, and renewal of specialty license plates, symbols,
11 tabs, and other devices, through the county tax assessor-
12 collectors, and establishes application fees, expiration dates,
13 and registration periods for certain specialty license plates.
14 This section does not apply to military license plates except as
15 provided by §217.43 of this title (relating to Military
16 Specialty License Plates).

17 (b) Initial application for specialty license plates, symbols,
18 tabs, or other devices.

19 (1) Application Process.

20 (A) Procedure. An owner of a vehicle registered as specified in
21 this subchapter who wishes to apply for a specialty license
22 plate, symbol, tab, or other device must do so on a form
23 prescribed by the director.

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1 (B) Form requirements. The application form shall at a minimum
2 require the name and complete address of the applicant.

3 (2) Fees and Documentation.

4 (A) The application must be accompanied by the prescribed
5 registration fee, unless exempted by statute.

6 (B) The application must be accompanied by the statutorily
7 prescribed specialty license plate fee. If a registration period
8 is greater than 12 months, the expiration date of a specialty
9 license plate, symbol, tab, or other device will be aligned with
10 the registration period and the specialty plate fee will be
11 adjusted to yield the appropriate fee. If the statutory annual
12 fee for a specialty license plate is \$5 or less, it will not be
13 prorated.

14 (C) Specialty license plate fees will not be refunded after an
15 application is submitted and the department has approved
16 issuance of the license plate.

17 (D) The application must be accompanied by prescribed local fees
18 or other fees that are collected in conjunction with registering
19 a vehicle, with the exception of vehicles bearing license plates
20 that are exempt by statute from these fees.

21 (E) The application must include evidence of eligibility for any
22 specialty license plates. The evidence of eligibility may
23 include, but is not limited to:

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1 (i) an official document issued by a governmental entity; or
2 (ii) a letter issued by a governmental entity on that agency's
3 letterhead.

4 (F) Initial applications for license plates for display on
5 Exhibition Vehicles must include a photograph of the completed
6 vehicle.

7 (3) Place of application. Applications for specialty license
8 plates may be made directly to the county tax assessor-
9 collector, except that applications for the following license
10 plates must be made directly to the department:

11 (A) County Judge;

12 (B) Federal Administrative Law Judge;

13 (C) State Judge;

14 (D) State Official;

15 (E) U.S. Congress--House;

16 (F) U.S. Congress--Senate; and

17 (G) U.S. Judge.

18 (4) Gift plates.

19 (A) A person may purchase general distribution specialty license
20 plates as a gift for another person if the purchaser submits an
21 application for the specialty license plates that provides:

22 (i) the name and address of the person who will receive the
23 plates; and

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1 (ii) the vehicle identification number of the vehicle on which
2 the plates will be displayed.

3 (B) To be valid for use on a motor vehicle, the recipient of the
4 plates must file an application with the county tax assessor-
5 collector and pay the statutorily required registration fees in
6 the amount as provided by Transportation Code, Chapter 502 and
7 this subchapter.

8 (c) Initial issuance of specialty license plates, symbols, tabs,
9 or other devices.

10 (1) Issuance. On receipt of a completed initial application for
11 registration, accompanied by the prescribed documentation and
12 fees, the department will issue specialty license plates,
13 symbols, tabs, or other devices to be displayed on the vehicle
14 for which the license plates, symbols, tabs, or other devices
15 were issued for the current registration period. If the vehicle
16 for which the specialty license plates, symbols, tabs, or other
17 devices are issued is currently registered, the owner must
18 surrender the license plates currently displayed on the vehicle,
19 along with the corresponding license receipt, before the
20 specialty license plates may be issued.

21 (2) Classic Motor Vehicles, Classic Travel Trailers, Custom
22 Vehicles, Street Rods, and Exhibition Vehicles.

23 (A) License plates. Texas license plates that were issued the

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1 same year as the model year of a Classic Motor Vehicle, Travel
2 Trailer, Street Rod, or Exhibition Vehicle may be displayed on
3 that vehicle under Transportation Code, §504.501 and §504.502,
4 unless:

5 (i) the license plate's original use was restricted by statute
6 to another vehicle type;

7 (ii) the license plate is a qualifying plate type that
8 originally required the owner to meet one or more eligibility
9 requirements; or

10 (iii) the alpha numeric pattern is already in use on another
11 vehicle.

12 (B) Validation stickers and tabs. The department will issue
13 validation stickers and tabs for display on license plates that
14 are displayed as provided by subparagraph (A) of this paragraph.

15 (3) Number of plates issued.

16 (A) Two plates. Unless otherwise listed in subparagraph (B) of
17 this paragraph, two specialty license plates, each bearing the
18 same license plate number, will be issued per vehicle.

19 (B) One plate. One license plate will be issued per vehicle for
20 all motorcycles and for the following specialty license plates:

21 (i) Antique Vehicle (includes Antique Auto, Antique Truck,
22 Antique Motorcycle, and Antique Bus);

23 (ii) Classic Travel Trailer;

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1 (iii) Rental Trailer;

2 (iv) Travel Trailer;

3 (v) Cotton Vehicle;

4 (vi) Disaster Relief;

5 (vii) Forestry Vehicle;

6 (viii) Golf Cart;

7 (ix) Log Loader; and

8 (x) Military Vehicle.

9 (C) Registration number. The identification number assigned by
10 the military may be approved as the registration number instead
11 of displaying Military Vehicle license plates on a former
12 military vehicle.

13 (4) Assignment of plates.

14 (A) Title holder. Unless otherwise exempted by law or this
15 section, the vehicle on which specialty license plates, symbols,
16 tabs, or other devices is to be displayed shall be titled in the
17 name of the person to whom the specialty license plates,
18 symbols, tabs, or other devices is assigned, or a title
19 application shall be filed in that person's name at the time the
20 specialty license plates, symbols, tabs, or other devices are
21 issued.

22 (B) Non-owner vehicle. If the vehicle is titled in a name other
23 than that of the applicant, the applicant must provide evidence

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1 of having the legal right of possession and control of the
2 vehicle.

3 (C) Leased vehicle. In the case of a leased vehicle, the
4 applicant must provide a copy of the lease agreement verifying
5 that the applicant currently leases the vehicle.

6 (5) Classification of neighborhood electric vehicles. The
7 registration classification of a neighborhood electric vehicle,
8 as defined by §217.3(3) of this title (relating to Motor Vehicle
9 Titles) will be determined by whether it is designed as a 4-
10 wheeled truck or a 4-wheeled passenger vehicle.

11 (6) Number of vehicles. An owner may obtain specialty license
12 plates, symbols, tabs, or other devices for an unlimited number
13 of vehicles, unless the statute limits the number of vehicles
14 for which the specialty license plate may be issued.

15 (7) Personalized plate numbers.

16 (A) Issuance. The department will issue a personalized license
17 plate number subject to the exceptions set forth in this
18 paragraph.

19 (B) Character limit. A personalized license plate number may
20 contain no more than six alpha or numeric characters or a
21 combination of characters. Depending upon the specialty license
22 plate design and vehicle class, the number of characters may
23 vary. Spaces, hyphens, periods, hearts, stars, the International

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1 Symbol of Access, or silhouettes of the state of Texas may be
2 used in conjunction with the license plate number.

3 (C) Personalized plates not approved. A personalized license
4 plate number will not be approved by the executive director if
5 the alpha-numeric pattern:

6 (i) conflicts with the department's current or proposed regular
7 license plate numbering system;

8 (ii) would violate §217.27 of this title (relating to Vehicle
9 Registration Insignia), as determined by the executive director;

10 or

11 (iii) is currently issued to another owner.

12 (D) Classifications of vehicles eligible for personalized
13 plates. Unless otherwise listed in subparagraph (E) of this
14 paragraph, personalized plates are available for all
15 classifications of vehicles.

16 (E) Categories of plates for which personalized plates are not
17 available. Personalized license plate numbers are not available
18 for display on the following specialty license plates:

19 (i) Amateur Radio (other than the official call letters of the
20 vehicle owner);

21 (ii) Antique Motorcycle;

22 (iii) Antique Vehicle (includes Antique Auto, Antique Truck, and
23 Antique Bus);

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- 1 (iv) Apportioned;
 - 2 (v) Cotton Vehicle;
 - 3 (vi) Disaster Relief;
 - 4 (vii) Farm Trailer (except Go Texan II);
 - 5 (viii) Farm Truck (except Go Texan II);
 - 6 (ix) Farm Truck Tractor (except Go Texan II);
 - 7 (x) Fertilizer;
 - 8 (xi) Forestry Vehicle;
 - 9 (xii) Log Loader;
 - 10 (xiii) Machinery;
 - 11 (xiv) Permit;
 - 12 (xv) Rental Trailer;
 - 13 (xvi) Soil Conservation; and
 - 14 (xvii) Texas Guard.
- 15 (F) Fee. Unless specified by statute, a personalized license
16 plate fee of \$40 will be charged in addition to any prescribed
17 specialty license plate fee.
- 18 (G) Priority. Once a personalized license plate number has been
19 assigned to an applicant, the owner shall have priority to that
20 number for succeeding years if a timely renewal application is
21 submitted to the county tax assessor-collector each year in
22 accordance with subsection (d) of this section.
- 23 (d) Specialty license plate renewal.

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1 (1) Renewal deadline. If a personalized license plate is not
2 renewed within 60 days after its expiration date, a subsequent
3 renewal application will be treated as an application for new
4 personalized license plates.

5 (2) Length of validation. With the following exceptions, all
6 specialty license plates, symbols, tabs, or other devices shall
7 be valid for 12 months from the month of issuance or for a
8 prorated period of at least 12 months coinciding with the
9 expiration of registration.

10 (A) Five-year period. Antique Vehicle (includes Antique Auto,
11 Antique Truck, and Antique Bus) and Antique Motorcycle license
12 plates, Antique tabs, and registration numbers are issued for a
13 five-year period.

14 (B) Seven-year period. Foreign Organization license plates and
15 registration numbers are issued for a seven-year period.

16 (C) March expiration dates. The registration for Cotton Vehicle
17 and Disaster Relief license plates expires each March 31.

18 (D) June expiration dates. The registration for the Honorary
19 Consul license plate expires each June 30.

20 (E) September expiration dates. The registration for the Log
21 Loader license plate expires each September 30.

22 (F) December expiration dates. The registration for the
23 following license plates expires each December 31:

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- 1 (i) County Judge;
- 2 (ii) Federal Administrative Law Judge;
- 3 (iii) State Judge;
- 4 (iv) State Official;
- 5 (v) U.S. Congress--House;
- 6 (vi) U.S. Congress--Senate; and
- 7 (vii) U.S. Judge.

8 (G) Except as otherwise provided in this paragraph, if a
9 vehicle's registration period is other than 12 months, the
10 expiration date of the specialty license plate, symbol, tab, or
11 other device will be set to align it with the expiration of
12 registration.

13 (3) Renewal.

14 (A) Renewal notice. Approximately 60 days before the expiration
15 date of a specialty license plate, symbol, tab, or other device,
16 the department will send each owner a renewal notice that
17 includes the amount of the specialty plate fee and the
18 registration fee.

19 (B) Return of notice. The owner must return the fee and any
20 prescribed documentation to the tax assessor-collector of the
21 county in which the owner resides, except that the owner of a
22 vehicle with one of the following license plates must return the
23 documentation and specialty license plate fee, if applicable,

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1 directly to the department and submit the registration fee to
2 the county tax assessor-collector:

3 (i) County Judge;

4 (ii) Federal Administrative Law Judge;

5 (iii) State Judge;

6 (iv) State Official;

7 (v) U.S. Congress--House;

8 (vi) U.S. Congress--Senate; and

9 (vii) U.S. Judge.

10 (C) Expired plate numbers. The department will retain a
11 specialty license plate number for 60 days after the expiration
12 date of the plates if the plates are not renewed on or before
13 their expiration date. After 60 days the number may be reissued
14 to a new applicant. All specialty license plate renewals
15 received after the expiration of the 60 days will be treated as
16 new applications.

17 (D) Issuance of validation insignia. On receipt of a completed
18 license plate renewal application and prescribed documentation,
19 the department will issue registration validation insignia as
20 specified in §217.27 unless this section or other law requires
21 the issuance of new license plates to the owner.

22 (E) Lost or destroyed renewal notices. If a renewal notice is
23 lost, destroyed, or not received by the vehicle owner, the

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1 specialty license plates, symbol, tab, or other device may be
2 renewed if the owner provides acceptable personal identification
3 along with the appropriate fees and documentation. Failure to
4 receive the notice does not relieve the owner of the
5 responsibility to renew the vehicle's registration.

6 (e) Transfer of specialty license plates.

7 (1) Transfer between vehicles.

8 (A) Transferable between vehicles. The owner of a vehicle with
9 specialty license plates, symbols, tabs, or other devices may
10 transfer the specialty plates between vehicles by filing an
11 application through the county tax assessor-collector if the
12 vehicle to which the plates are transferred:

13 (i) is titled or leased in the owner's name; and

14 (ii) meets the vehicle classification requirements for that
15 particular specialty license plate, symbol, tab, or other
16 device.

17 (B) Non-transferable between vehicles. The following specialty
18 license plates, symbols, tabs, or other devices are non-
19 transferable between vehicles:

20 (i) Antique Vehicle license plates (includes Antique Auto,
21 Antique Truck, and Antique Bus), Antique Motorcycle license
22 plates, and Antique tabs;

23 (ii) Classic Auto, Classic Truck, Classic Motorcycle, Classic

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1 Travel Trailer, Street Rod, and Custom Vehicle license plates;

2 (iii) Forestry Vehicle license plates; and

3 (iv) Log Loader license plates.

4 (C) New specialty license plates. If the department creates a
5 new specialty license plate under Transportation Code, §504.801,
6 the department will specify at the time of creation whether the
7 license plate may be transferred between vehicles.

8 (2) Transfer between owners.

9 (A) Non-transferable between owners. Specialty license plates,
10 symbols, tabs, or other devices issued under Transportation
11 Code, Chapter 504, Subchapters C, E, and F are not transferable
12 from one person to another except as specifically permitted by
13 statute.

14 (B) New specialty license plates. If the department creates a
15 new specialty license plate under Transportation Code, §504.801,
16 the department will specify at the time of creation whether the
17 license plate may be transferred between owners.

18 (3) Simultaneous transfer between owners and vehicles. Specialty
19 license plates, symbols, tabs, or other devices are transferable
20 between owners and vehicles simultaneously only if the owners
21 and vehicles meet all the requirements in both paragraphs (1)
22 and (2) of this subsection.

23 (f) Replacement.

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1 (1) Application. When specialty license plates, symbols, tabs,
2 or other devices are lost, stolen, or mutilated, the owner shall
3 apply directly to the county tax assessor-collector for the
4 issuance of replacements, except that Log Loader license plates
5 must be reapplied for and accompanied by the prescribed fees and
6 documentation.

7 (2) Temporary registration insignia. If the specialty license
8 plate, symbol, tab, or other device is lost, destroyed, or
9 mutilated to such an extent that it is unusable, and if issuance
10 of a replacement license plate would require that it be
11 remanufactured, the owner must pay the statutory replacement
12 fee, and the department will issue a temporary tag for interim
13 use. The owner's new specialty license plate number will be
14 shown on the temporary tag unless it is a personalized license
15 plate, in which case the same personalized license plate number
16 will be shown.

17 (3) Stolen specialty license plates.

18 (A) The department or county tax assessor-collector will not
19 approve the issuance of replacement license plates with the same
20 personalized license plate number if the department's records
21 indicate either the vehicle displaying the personalized license
22 plates or the license plates are reported as stolen to law
23 enforcement. The owner will be directed to contact the

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1 department for another personalized plate choice.

2 (B) The owner may select a different personalized number to be
3 issued at no charge with the same expiration as the stolen
4 specialty plate. On recovery of the stolen vehicle or license
5 plates, the department will issue, at the owner's or applicant's
6 request, replacement license plates, bearing the same
7 personalized number as those that were stolen.

8 (g) License plates created after January 1, 1999. In accordance
9 with Transportation Code, §504.702, the department will begin to
10 issue specialty license plates authorized by a law enacted after
11 January 1, 1999, only if the sponsoring entity for that license
12 plate submits the following items before the fifth anniversary
13 of the effective date of the law.

14 (1) The sponsoring entity must submit a written application. The
15 application must be on a form approved by the director and
16 include, at a minimum:

17 (A) the name of the license plate;

18 (B) the name and address of the sponsoring entity;

19 (C) the name and telephone number of a person authorized to act
20 for the sponsoring entity; and

21 (D) the deposit.

22 (2) A sponsoring entity is not an agent of the department and
23 does not act for the department in any matter, and the

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1 department does not assume any responsibility for fees or
2 applications collected by a sponsoring entity.

3 (h) Assignment procedures for state, federal, and county
4 officials.

5 (1) State Officials. State Official license plates contain the
6 distinguishing prefix "SO." Members of the state legislature may
7 be issued up to three sets of State Official specialty license
8 plates with the distinguishing prefix "SO," or up to three sets
9 of State Official specialty license plates that depict the state
10 capitol, and do not display the distinguishing prefix "SO." An
11 application by a member of the state legislature, for a State
12 Official specialty license plate, must specify the same
13 specialty license plate design for each applicable vehicle.
14 State Official license plates are assigned in the following
15 order:

- 16 (A) Governor;
- 17 (B) Lieutenant Governor;
- 18 (C) Speaker of the House;
- 19 (D) Attorney General;
- 20 (E) Comptroller;
- 21 (F) Land Commissioner;
- 22 (G) Agriculture Commissioner;
- 23 (H) Secretary of State;

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1 (I) Railroad Commission Presiding Officer followed by the
2 remaining members based on their seniority;

3 (J) Supreme Court Chief Justice followed by the remaining
4 justices based on their seniority;

5 (K) Criminal Court of Appeals Presiding Judge followed by the
6 remaining judges based on their seniority;

7 (L) Members of the State Legislature, with Senators assigned in
8 order of district number followed by Representatives assigned in
9 order of district number, except that in the event of
10 redistricting, license plates will be reassigned; and

11 (M) Board of Education Presiding Officer followed by the
12 remaining members assigned in district number order, except that
13 in the event of redistricting, license plates will be
14 reassigned.

15 (2) Members of the U.S. Congress.

16 (A) U.S. Senate license plates contain the prefix "Senate" and
17 are assigned by seniority; and

18 (B) U.S. House license plates contain the prefix "House" and are
19 assigned in order of district number, except that in the event
20 of redistricting, license plates will be reassigned.

21 (3) Federal Judge.

22 (A) Federal Judge license plates contain the prefix "USA" and
23 are assigned on a seniority basis within each court in the

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1 following order:

2 (i) Judges of the Fifth Circuit Court of Appeals;

3 (ii) Judges of the United States District Courts;

4 (iii) United States Bankruptcy Judges; and

5 (iv) United States Magistrates.

6 (B) Federal Administrative Law Judge plates contain the prefix
7 "US" and are assigned in the order in which applications are
8 received.

9 (C) A federal judge who retired on or before August 31, 2003,
10 and who held license plates expiring in March 2004 may continue
11 to receive federal judge plates. A federal judge who retired
12 after August 31, 2003, is not eligible for U.S. Judge license
13 plates.

14 (4) State Judge.

15 (A) State Judge license plates contain the prefix "TX" and are
16 assigned sequentially in the following order:

17 (i) Appellate District Courts;

18 (ii) Presiding Judges of Administrative Regions;

19 (iii) Judicial District Courts;

20 (iv) Criminal District Courts; and

21 (v) Family District Courts and County Statutory Courts.

22 (B) A particular alpha-numeric combination will always be
23 assigned to a judge of the same court to which it was originally

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1 assigned.

2 (C) A state judge who retired on or before August 31, 2003, and
3 who held license plates expiring in March 2004 may continue to
4 receive state judge plates. A state judge who retired after
5 August 31, 2003, is not eligible for State Judge license plates.

6 (5) County Judge license plates contain the prefix "CJ" and are
7 assigned by county number.

8 (6) In the event of redistricting or other plate reallocation,
9 the department may allow a state official to retain that
10 official's plate number if the official has had the number for
11 five or more consecutive years.

12 (i) Development of new specialty license plates.

13 (1) Procedure. The following procedure governs the process of
14 authorizing new specialty license plates under Transportation
15 Code, §504.801, whether the new license plate originated as a
16 result of an application or as a department initiative.

17 (2) Applications for the creation of new specialty license
18 plates. An applicant for the creation of a new specialty license
19 plate, other than a vendor specialty plate under §217.52 of this
20 title (relating to Marketing of Specialty License Plates through
21 a Private Vendor), must submit a written application on a form
22 approved by the executive director. The application must
23 include:

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- 1 (A) the applicant's name, address, telephone number, and other
2 identifying information as directed on the form;
- 3 (B) certification on Internal Revenue Service letterhead stating
4 that the applicant is a not-for-profit entity;
- 5 (C) a draft design of the specialty license plate;
- 6 (D) projected sales of the plate, including an explanation of
7 how the projected figure was established;
- 8 (E) a marketing plan for the plate, including a description of
9 the target market;
- 10 (F) a licensing agreement from the appropriate third party for
11 any intellectual property design or design element;
- 12 (G) a letter from the executive director of the sponsoring state
13 agency stating that the agency agrees to receive and distribute
14 revenue from the sale of the specialty license plate and that
15 the use of the funds will not violate a statute or
16 constitutional provision; and
- 17 (H) other information necessary for the board ~~Board~~ to reach a
18 decision regarding approval of the requested specialty plate.
- 19 (3) Review process. The board ~~Board~~:
- 20 (A) will not consider incomplete applications;
- 21 (B) may request additional information from an applicant if
22 necessary for a decision; and
- 23 (C) will consider specialty license plate applications that are

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1 restricted by law to certain individuals or groups of
2 individuals (qualifying plates) using the same procedures as
3 applications submitted for plates that are available to everyone
4 (non-qualifying plates).

5 (4) Request for additional information. If the board ~~Board~~
6 determines that additional information is needed, the applicant
7 must return the requested information not later than the
8 requested due date. If the additional information is not
9 received by that date, the board ~~Board~~ will return the
10 application as incomplete unless the board ~~Board~~:

11 (A) determines that the additional requested information is not
12 critical for consideration and approval of the application; and

13 (B) approves the application, pending receipt of the additional
14 information by a specified due date.

15 (5) Board decision. The board's ~~Board's~~ decision will be based
16 on:

17 (A) compliance with Transportation Code, §504.801;

18 (B) the proposed license plate design, including:

19 (i) whether the design appears to meet the legibility and
20 reflectivity standards established by the department;

21 (ii) whether the design meets the standards established by the
22 department for uniqueness;

23 (iii) other information provided during the application process;

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1 (iv) the criteria designated in §217.27 as applied to the
2 design; and
3 (v) whether a design is similar enough to an existing plate
4 design that it may compete with the existing plate sales; and
5 (C) the applicant's ability to comply with Transportation Code,
6 §504.702 relating to the required deposit or application that
7 must be provided before the manufacture of a new specialty
8 license plate.
9 (6) Public comment on proposed design. All proposed plate
10 designs will be considered by the board ~~Board~~ as an agenda item
11 at a regularly or specially called open meeting. Notice of
12 consideration of proposed plate designs will be posted in
13 accordance with Office of the Secretary of State meeting notice
14 requirements. Notice of each license plate design will be posted
15 on the department's Internet website to receive public comment
16 at least 25 days in advance of the meeting at which it will be
17 considered. The department will notify all other specialty plate
18 organizations and the sponsoring agencies who administer
19 specialty license plates issued in accordance with
20 Transportation Code, Chapter 504, Subchapter G, of the posting.
21 A comment on the proposed design can be submitted in writing
22 through the mechanism provided on the department's Internet
23 website for submission of comments. Written comments are welcome

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1 and must be received by the department at least 10 days in
2 advance of the meeting. Public comment will be received at the
3 board's Board's meeting.

4 (7) Final approval.

5 (A) Approval. The board ~~Board~~ will approve or disapprove the
6 specialty license plate application based on all of the
7 information provided pursuant to this subchapter at an open
8 meeting.

9 (B) Application not approved. If the application is not approved
10 under subparagraph (A) of this paragraph, the applicant may
11 submit a new application and supporting documentation for the
12 design to be considered again by the board ~~Board~~ if:

- 13 (i) the applicant has additional, required documentation; or
14 (ii) the design has been altered to an acceptable degree.

15 (8) Issuance of specialty plates.

16 (A) If the specialty license plate is approved, the applicant
17 must comply with Transportation Code, §504.702 before any
18 further processing of the license plate.

19 (B) Approval of the plate does not guarantee that the submitted
20 draft plate design will be used. The board ~~Board~~ has final
21 approval authority of all specialty license plate designs and
22 may adjust or reconfigure the submitted draft design to comply
23 with the format or license plate specifications.

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1 (C) If the board ~~Board~~, in consultation with the applicant,
2 adjusts or reconfigures the design, the adjusted or reconfigured
3 design will not be posted on the department's website for
4 additional comments.

5 (9) Redesign of specialty license plate.

6 (A) Upon receipt of a written request from the applicant, the
7 department will allow redesign of a specialty license plate.

8 (B) A request for a redesign must meet all application
9 requirements and proceed through the approval process of a new
10 specialty plate as required by this subsection.

11 (C) An approved license plate redesign does not require the
12 deposit required by Transportation Code, §504.702, but the
13 applicant must pay a redesign cost to cover administrative
14 expenses.

15 (j) Golf carts.

16 (1) A county tax assessor-collector may issue golf cart license
17 plates as long as the requirements under Transportation Code,
18 §551.403 or §551.404 are met.

19 (2) A county tax assessor-collector may only issue golf cart
20 license plates to residents or property owners of the issuing
21 county.

22 (3) A golf cart license plate may not be used as a registration
23 insignia, and a golf cart may not be registered for operation on

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1 a public highway.

2 (4) The license plate fee for a golf cart license plate is \$10.

3

4 §217.47 Vehicle Emissions Enforcement System.

5 (a) Purpose. Transportation Code, §502.047 requires the

6 department to implement a system requiring verification that a

7 vehicle complies with vehicle emissions inspection and

8 maintenance programs as required by the Health and Safety Code,

9 §382.202 and §382.203, and Transportation Code, Chapter 548,

10 Subchapter F. Transportation Code, §501.0276 and §502.047

11 requires a vehicle subject to Transportation Code, §548.3011 to

12 pass an emissions test on resale in an affected or early action

13 compact county before it is titled or registered. This section

14 prescribes the department's policies and procedures if a vehicle

15 does not comply with the emissions standards set by federal and

16 state laws and the provisions of the Texas air quality State

17 Implementation Plan.

18 (b) Definitions. The following words and terms, when used in

19 this section, shall have the following meanings, unless the

20 context clearly indicates otherwise.

21 (1) Affected County--A county with a motor vehicle emissions

22 inspection and maintenance program established under

23 Transportation Code, §548.301.

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- 1 (2) Department--The Texas Department of Motor Vehicles.
- 2 (3) DPS--The Texas Department of Public Safety.
- 3 (4) Early action compact county--A participating county under
4 Health and Safety Code, Chapter 382, Subchapter H.
- 5 (5) TCEQ--The Texas Commission on Environmental Quality.
- 6 (6) Vehicle--A self-propelled vehicle required to be registered
7 in the state, except those vehicles exempted by TCEQ.
- 8 (7) Vehicle inspection report--A vehicle inspection form
9 prescribed by DPS that is printed by the vehicle exhaust gas
10 analyzer immediately following an emissions test.
- 11 (8) Vehicle emissions I/M program--A vehicle emissions
12 inspection and maintenance program meeting all the requirements
13 of the Environmental Protection Agency.
- 14 (9) Waiver--A form and certificate that allows a vehicle to be
15 considered in compliance with the vehicle emissions I/M program
16 for a specified period of time after a vehicle fails an
17 emissions test.
- 18 (c) Notice from DPS or TCEQ.
 - 19 (1) DPS, after notice to the vehicle owner, will notify the
20 department if a motor vehicle owner fails to comply with the
21 requirements of Transportation Code, Chapter 548, Subchapter F.
 - 22 (2) TCEQ, after notice to the vehicle owner, will notify the
23 department if a motor vehicle fails to comply with the

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1 requirements of Health and Safety Code, §382.202 and §382.203
2 ~~§382.037 and §382.0372~~, and Transportation Code, Chapter 548,
3 Subchapter F.

4 (3) The notice will include the vehicle identification number
5 and the license plate number of the affected vehicle.

6 (4) If the department receives a notice of emissions
7 noncompliance from DPS or TCEQ, the department will place a
8 notation on the motor vehicle record that the motor vehicle has
9 failed to comply with the vehicle emissions I/M program.

10 (5) If the department receives a notice of emissions compliance
11 from DPS or TCEQ, the department will remove the non-compliance
12 notation from the motor vehicle record.

13 (6) If a vehicle record contains a notation of failure to comply
14 with the vehicle emissions I/M program, the tax assessor-
15 collector will deny registration unless provided with:

16 (A) proof of compliance with the vehicle emissions I/M program
17 with a "passing" vehicle inspection report; or

18 (B) proof of a waiver issued by DPS that includes the vehicle
19 identification number and the license plate number.

20 (7) DPS and TCEQ will provide the department with the
21 notifications in a format approved by the department.

22 (8) DPS and TCEQ will enter into an agreement with the
23 department regarding the remittance to the department for costs

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1 associated with implementation of the emissions program.

2 (d) Vehicles moved into affected or early action compact
3 counties. If a vehicle was last titled in an unaffected county
4 and is to be titled or registered in an affected or early action
5 compact county, it is not eligible for a title receipt, a title,
6 or registration after a retail sale unless proof is presented to
7 the county tax assessor-collector that the vehicle has passed
8 the emissions test. This subsection does not apply to a vehicle
9 that will be used in the affected or early action compact county
10 for fewer than 60 days during the registration period for which
11 registration is sought or to a vehicle that is a 1996 or newer
12 model and has less than 50,000 miles.

13

14 §217.52 Marketing of Specialty License Plates through a Private
15 Vendor.

16 (a) Purpose and scope. The department will enter into a contract
17 with a private vendor to market department-approved specialty
18 license plates in accordance with Transportation Code, Chapter
19 504, Subchapter J. This section sets out the procedure for
20 approval of the design, purchase, and replacement of vendor
21 specialty license plates. In this section, the license plates
22 marketed by the vendor are referred to as vendor specialty
23 license plates.

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1 (b) Application for approval of vendor specialty license plate
2 designs.

3 (1) Approval required. The vendor shall obtain the approval of
4 the board ~~Board~~ for each license plate design the vendor
5 proposes to market in accordance with this section and the
6 contract entered into between the vendor and the department.

7 (2) Application. The vendor must submit a written application on
8 a form approved by the executive director to the department for
9 approval of each license plate design the vendor proposes to
10 market. The application must include:

11 (A) a draft design of the specialty license plate;

12 (B) projected sales of the plate, including an explanation of
13 how the projected figure was determined;

14 (C) a marketing plan for the plate including a description of
15 the target market;

16 (D) a licensing agreement from the appropriate third party for
17 any design or design element that is intellectual property; and

18 (E) other information necessary for the board ~~Board~~ to reach a
19 decision regarding approval of the requested vendor specialty
20 plate.

21 (c) Review and approval process. The board ~~Board~~ will review
22 vendor specialty license plate applications. The board ~~Board~~:

23 (1) will not consider incomplete applications; and

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- 1 (2) may request additional information from the vendor to reach
2 a decision.
- 3 (d) Board decision.
- 4 (1) Decision. The decision of the board ~~Board~~ will be based on:
- 5 (A) compliance with Transportation Code, Chapter 504, Subchapter
6 J;
- 7 (B) the proposed license plate design, including:
- 8 (i) whether the design meets the legibility and reflectivity
9 standards established by the department;
- 10 (ii) whether the design meets the standards established by the
11 department for uniqueness to ensure that the proposed plate
12 complies with Transportation Code, §504.852(c);
- 13 (iii) whether the license plate design can accommodate the
14 International Symbol of Access (ISA) as required by
15 Transportation Code, §504.201(f);
- 16 (iv) the criteria designated in §217.27 of this title (relating
17 to Vehicle Registration Insignia) as applied to the design;
- 18 (v) whether a design is similar enough to an existing plate
19 design that it may compete with the existing plate sales; and
- 20 (vi) other information provided during the application process.
- 21 (2) Public comment on proposed design. All proposed plate
22 designs will be considered by the board ~~Board~~ as an agenda item
23 at a regularly or specially called open meeting. Notice of

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1 consideration of proposed plate designs will be posted in
2 accordance with Office of the Secretary of State meeting notice
3 requirements. Notice of each license plate design will be posted
4 on the department's Internet web site to receive public comment
5 at least 25 days in advance of the meeting at which it will be
6 considered. The department will notify all specialty plate
7 organizations and the sponsoring agencies who administer
8 specialty license plates issued in accordance with
9 Transportation Code, Chapter 504, Subchapter G, of the posting.
10 A comment on the proposed design can be submitted in writing
11 through the mechanism provided on the department's Internet web
12 site for submission of comments. Written comments are welcome
13 and must be received by the department at least 10 days in
14 advance of the meeting. Public comment will be received at the
15 board's ~~Board's~~ meeting.

16 (e) Final approval and specialty license plate issuance.

17 (1) Approval. The board ~~Board~~ will approve or disapprove the
18 specialty license plate application based on all of the
19 information provided pursuant to this subchapter in an open
20 meeting.

21 (2) Application not approved. If the application is not
22 approved, the applicant may submit a new application and
23 supporting documentation for the design to be considered again

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1 by the board ~~Board~~ if:

2 (A) the applicant has additional, required documentation; or

3 (B) the design has been altered to an acceptable degree.

4 (3) Issuance of approved specialty plates.

5 (A) If the vendor's specialty license plate is approved, the
6 vendor must submit the non-refundable start-up fee before any
7 further design and processing of the license plate.

8 (B) Approval of the plate does not guarantee that the submitted
9 draft plate design will be used. The board ~~Board~~ has final
10 approval of all specialty license plate designs and will provide
11 guidance on the submitted draft design to ensure compliance with
12 the format and license plate specifications.

13 (f) Redesign of vendor specialty license plates.

14 (1) On receipt of a written request from the vendor, the
15 department will allow a redesign of a vendor specialty license
16 plate.

17 (2) The vendor must pay the redesign administrative costs as
18 provided in the contract between the vendor and the department.

19 (g) Multi-year vendor specialty license plates. Purchasers will
20 have the option of purchasing vendor specialty license plates
21 for a one-year, a three-year, or a five-year period.

22 (h) License plate categories and associated fees. The categories
23 and the associated fees for vendor specialty plates are set out

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1 in this subsection.

2 (1) Custom license plates. Custom license plates include license
3 plates with a variety of pre-approved background and character
4 color combinations that may be personalized with either three
5 alpha and two or three numeric characters or two or three
6 numeric and three alpha characters. Generic license plates on
7 standard white sheeting with the word "Texas" that may be
8 personalized with up to six alphanumeric characters are
9 considered custom license plates before December 2, 2010. The
10 fees for issuance of Custom and Generic license plates are \$150
11 for one year, \$400 for three years, and \$450 for five years.

12 (2) T-Plates (Premium) license plates. T-Plates (Premium)
13 license plates may be personalized with up to seven alphanumeric
14 characters, including the "T," on colored backgrounds or designs
15 approved by the department. The fees for issuance of T-Plates
16 (Premium) license plates are \$150 for one year, \$400 for three
17 years, and \$450 for five years.

18 (3) Luxury license plates. Luxury license plates may be
19 personalized with up to six alphanumeric characters on colored
20 backgrounds or designs approved by the department. The fees for
21 issuance of luxury license plates are \$150 for one year, \$400
22 for three years, and \$450 for five years.

23 (4) Freedom license plates. Freedom license plates include

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1 license plates with a variety of pre-approved background and
2 character color combinations that may be personalized with up to
3 seven alphanumeric characters. The fees for issuance of freedom
4 license plates are \$195 for one year, \$445 for three years, and
5 \$495 for five years.

6 (5) Background only license plates. Background only license
7 plates include non-personalized license plates with a variety of
8 pre-approved background and character color combinations. The
9 fees for issuance of background only license plates are \$50 for
10 one year, \$130 for three years, and \$175 for five years.

11 (6) Vendor souvenir license plates. Vendor souvenir license
12 plates are replicas of vendor specialty license plate designs
13 that may be personalized with up to twenty-four alphanumeric
14 characters. Vendor souvenir license plates are not street legal
15 or legitimate insignias of vehicle registration. The fee for
16 issuance of souvenir license plates is \$40.

17 (7) Auction of alphanumeric patterns. The vendor may auction
18 alphanumeric patterns for one, three, or five year terms with
19 options to renew indefinitely at the current price established
20 for a one, three, or five year luxury category license plate.
21 The purchaser of the auction pattern may select from the vendor
22 background designs at no additional charge at the time of
23 initial issuance. The auction pattern may be moved from one

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1 vendor design plate to another vendor design plate as provided
2 in subsection (n)(1) of this section. The auction pattern may be
3 transferred from owner to owner as provided in subsection (1)(2)
4 of this section.

5 (8) Personalization and specialty plate fees.

6 (A) The fee for the personalization of license plates applied
7 for prior to November 19, 2009 is \$40 if the plates are renewed
8 annually.

9 (B) The personalization fee for plates applied for after
10 November 19, 2009 is \$40 if the plates are issued pursuant to
11 Transportation Code, Chapter 504, Subchapters G and I.

12 (C) If the plates are renewed annually, the personalization and
13 specialty plate fees remain the same fee as at the time of
14 issuance if a sponsor of a specialty license plate authorized
15 under Transportation Code, Chapter 504, Subchapters G and I
16 signs a contract with the vendor in accordance with
17 Transportation Code, Chapter 504, Subchapter J.

18 (i) Payment of fees.

19 (1) Payment of specialty license plate fees. The fees for
20 issuance of vendor specialty license plates will be paid
21 directly to the state through vendor and state systems for the
22 license plate category and period selected by the purchaser. A
23 person who purchases a multi-year vendor specialty license plate

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1 must pay upon purchase the full fee which includes the renewal
2 fees.

3 (2) Payment of statutory registration fees. To be valid for use
4 on a motor vehicle, the license plate owner is required to pay,
5 in addition to the vendor specialty license plate fees, any
6 statutorily required registration fees in the amount as provided
7 by Transportation Code, Chapter 502, and this subchapter.

8 (j) Refunds. Fees for vendor specialty license plate fees will
9 not be refunded after an application is submitted to the vendor
10 and the department has approved issuance of the license plate.

11 (k) Replacement.

12 (1) Application. An owner must apply directly to the county tax
13 assessor-collector for the issuance of replacement vendor
14 specialty license plates and must pay the fee described in
15 paragraphs (2) or (3) of this subsection, whichever applies.

16 (2) Lost or mutilated vendor specialty license plates. To
17 replace vendor specialty license plates that are lost or
18 mutilated, the owner must pay the statutory replacement fee
19 provided in Transportation Code, §504.007.

20 (3) Optional replacements. An owner of a vendor specialty
21 license plate may replace vendor specialty license plates by
22 submitting a request to the county tax assessor-collector
23 accompanied by the payment of a \$6 fee.

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1 (4) Interim replacement tags. If the vendor specialty license
2 plates are lost or mutilated to such an extent that they are
3 unusable, replacement license plates will need to be
4 remanufactured. The county tax assessor-collector will issue
5 interim replacement tags for use until the replacements are
6 available. The owner's vendor specialty license plate number
7 will be shown on the interim replacement tags.

8 (5) Stolen vendor specialty license plates. The county tax
9 assessor-collector will not approve the issuance of replacement
10 vendor specialty license plates with the same license plate
11 number if the department's records indicate that the vehicle
12 displaying that license plate number was reported stolen or the
13 license plates themselves were reported stolen.

14 (1) Transfer of vendor specialty license plates.

15 (1) Transfer between vehicles. The owner of a vehicle with
16 vendor specialty license plates may transfer the license plates
17 between vehicles by filing an application through the county tax
18 assessor-collector if the vehicle to which the plates are
19 transferred:

20 (A) is titled or leased in the owner's name; and

21 (B) meets the vehicle classification requirements for that
22 particular specialty license plate.

23 (2) Transfer between owners. Vendor specialty license plates may

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1 not be transferred between persons unless the license plate
2 pattern was initially purchased through auction as provided in
3 subsection (h)(7) of this section. An auctioned alphanumeric
4 pattern may be transferred as a specialty license plate or as a
5 virtual pattern to be manufactured on a new background as
6 provided under the restyle option in subsection (n)(1) of this
7 section. In addition to the fee paid at auction, the new owner
8 of an auctioned alphanumeric pattern or plate will pay the
9 department a fee of \$25 to cover the cost of the transfer, and
10 complete the department's prescribed application at the time of
11 transfer.

12 (m) Gift plates.

13 (1) A person may purchase plates as a gift for another person if
14 the purchaser submits a statement that provides:

15 (A) the purchaser's name and address;

16 (B) the name and address of the person who will receive the
17 plates; and

18 (C) the vehicle identification number of the vehicle on which
19 the plates will be displayed or a statement that the plates will
20 not be displayed on a vehicle.

21 (2) To be valid for use on a motor vehicle, the recipient of the
22 plates must file an application with the county tax assessor-
23 collector and pay the statutorily required registration fees in

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1 the amount as provided by Transportation Code, Chapter 502, and
2 this subchapter.

3 (n) Restyled vendor specialty license plates. A person who has
4 purchased a multi-year vendor specialty license plate may
5 request a restyled license plate at any time during the term of
6 the plate.

7 (1) For the purposes of this subsection, "restyled license
8 plate" is a vendor specialty license plate that has a different
9 style from the originally purchased vendor specialty license
10 plate but:

11 (A) is within the same price category, except if the pattern is
12 an auction pattern; and

13 (B) has the same alpha-numeric characters and expiration date as
14 the previously issued multi-year license plates.

15 (2) The fee for each restyled license plate is \$50.

16

17 §217.54 Registration of Fleet Vehicles.

18 (a) Scope. A registrant may consolidate the registration of
19 multiple motor vehicles, including trailers and semitrailers
20 ~~semi-trailers~~, in a fleet instead of registering each vehicle
21 separately. This section prescribes the policies and procedures
22 for fleet registration.

23 (b) Eligibility. A fleet must meet the following requirements to

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1 be eligible for fleet registration.

2 (1) No fewer than 25 ~~twenty-five~~ vehicles will be registered as
3 a fleet;

4 (2) Vehicles may be registered in annual increments for up to
5 eight years;

6 (3) All vehicles in a fleet must be owned by or leased to the
7 same business entity;

8 (4) All vehicles must be vehicles that are not registered under
9 the International Registration Plan; and

10 (5) Each vehicle must currently be titled in Texas or be issued
11 a registration receipt, or the registrant must submit an
12 application for a title or registration for each vehicle.

13 (c) Application.

14 (1) Application for fleet registration must be in a form
15 prescribed by the department. At a minimum the form will
16 require:

17 (A) the full name and complete address of the registrant;

18 (B) a description of each vehicle in the fleet, which may
19 include the vehicle's model year, make, model, vehicle
20 identification number, document number, body style, gross
21 weight, empty weight, and for a commercial vehicle,
22 manufacturer's rated carrying capacity in tons;

23 (C) the existing license plate number, if any, assigned to each

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- 1 vehicle; and
- 2 (D) any other information that the department may require.
- 3 (2) The application must be accompanied by the following items:
- 4 (A) in the case of a leased vehicle, a certification that the
- 5 vehicle is currently leased to the person to whom the fleet
- 6 registration will be issued;
- 7 (B) registration fees prescribed by law for the entire
- 8 registration period selected by the registrant;
- 9 (C) local fees or other fees prescribed by law and collected in
- 10 conjunction with registering a vehicle for the entire
- 11 registration period selected by the registrant;
- 12 (D) evidence of financial responsibility for each vehicle as
- 13 required by Transportation Code, §502.046, unless otherwise
- 14 exempted by law;
- 15 (E) annual proof of payment of Heavy Vehicle Use Tax;
- 16 (F) the state's portion of the vehicle inspection fee for the
- 17 vehicle inspections conducted in Texas; and
- 18 (G) any other documents or fees required by law.
- 19 (d) Registration period.
- 20 (1) The fleet owner will designate a single registration period
- 21 for a fleet so the registration period for each vehicle will
- 22 expire on the same date.
- 23 (2) The fleet registration period will begin on the first day of

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1 a calendar month and end on the last day of a calendar month.

2 (e) Insignia.

3 (1) As evidence of registration, the department will issue
4 distinguishing insignia for each vehicle in a fleet.

5 (2) The insignia shall be included on the license plate and
6 affixed to the vehicle.

7 (3) The insignia shall be attached to the rear license plate if
8 the vehicle has no windshield.

9 (4) The registration receipt for each vehicle shall at all times
10 be carried in that vehicle and be available to law enforcement
11 personnel.

12 (5) Insignia may not be transferred between vehicles, owners, or
13 registrants.

14 (f) Fleet composition.

15 (1) A registrant may add a vehicle to a fleet at any time during
16 the registration period. An added vehicle will be given the same
17 registration period as the fleet and will be issued fleet
18 registration insignia.

19 (2) A registrant may remove a vehicle from a fleet at any time
20 during the registration period. The fleet registrant shall
21 return the fleet registration insignia for that vehicle to the
22 department at the time the vehicle is removed from the fleet.

23 Credit for any vehicle removed from the fleet for the remaining

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1 full year increments can be applied to any vehicle added to the
2 fleet or at the time of renewal. No refunds will be given if
3 credit is not used or the account is closed.

4 (3) If the number of vehicles in an account falls below twenty-
5 five during the registration period, fleet registration will
6 remain in effect. If the number of vehicles in an account is
7 below twenty-five at the end of the registration period, fleet
8 registration will be canceled. In the event of cancellation,
9 each vehicle shall be registered separately. The registrant
10 shall immediately return all fleet registration insignia to the
11 department.

12 (g) Fees.

13 (1) When a fleet is first established, the department will
14 charge a registration fee for each vehicle for the entire
15 registration period selected. A currently registered vehicle,
16 however, will be given credit for any remaining time on its
17 separate registration.

18 (2) When a vehicle is added to an existing fleet, the department
19 will charge a registration fee that is prorated based on the
20 number of months of fleet registration remaining. If the vehicle
21 is currently registered, this fee will be adjusted to provide
22 credit for the number of months of separate registration
23 remaining.

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1 (3) When a vehicle is removed from fleet registration, it will
2 be considered to be registered separately. The vehicle's
3 separate registration will expire on the date that the fleet
4 registration would have expired. The registrant must pay the
5 statutory replacement fee to obtain regular registration
6 insignia before the vehicle may be operated on a public highway.

7 (h) Payment. Payment will be made in the manner prescribed by
8 the department.

9 (i) Cancellation.

10 (1) The department will cancel registration for non-payment and
11 lack of proof of annual payment of the Heavy Vehicle Use Tax.

12 (2) The department may cancel registration on any fleet vehicle
13 that is not in compliance with the inspection requirements under
14 Transportation Code, Chapter 548 and the Texas Department of
15 Public Safety rules regarding inspection requirements on the
16 anniversary date(s) of the registration.

17 (3) A vehicle with a cancelled registration may not be operated
18 on a public highway.

19 (4) If the department cancels the registration of a vehicle
20 under this subsection, the registrant can request the department
21 to reinstate the registration by doing the following:

22 (A) complying with the requirements for which the department
23 cancelled the registration;

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1 (B) providing the department with notice of compliance on a form
2 prescribed by the department; and

3 (C) for a registration cancelled under paragraph (2) of this
4 subsection, paying an administrative fee in the amount of \$10.

5 (5) A registrant is only eligible for reinstatement of the
6 registration within 90 calendar days of the department's notice
7 of cancellation.

8 (6) If a registrant fails to timely reinstate the registration
9 of a cancelled vehicle registration under this section, the
10 registrant:

11 (A) is not entitled to a credit or refund of any registration
12 fees for the vehicle; and

13 (B) must immediately return the registration insignia to the
14 department.

15 (j) Inspection fee. The registrant must pay the department by
16 the deadline listed in the invoice for the state's portion of
17 the vehicle inspection fee for a vehicle inspection conducted in
18 Texas.

19

20 §217.56 Registration Reciprocity Agreements.

21 (a) Purpose. To promote and encourage the fullest possible use
22 of the highway system and contribute to the economic development
23 and growth of the State of Texas and its residents, the

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1 department is authorized by Transportation Code, §502.091 to
2 enter into agreements with duly authorized officials of other
3 jurisdictions, including any state of the United States, the
4 District of Columbia, a foreign country, a state or province of
5 a foreign country, or a territory or possession of either the
6 United States or of a foreign country, and to provide for the
7 registration of vehicles by Texas residents and nonresidents on
8 an allocation or distance apportionment basis, and to grant
9 exemptions from the payment of registration fees by nonresidents
10 if the grants are reciprocal to Texas residents.

11 (b) Definitions. The following words and terms, when used in
12 this section, shall have the following meanings, unless the
13 context clearly indicates otherwise:

14 (1) Cab card--The apportioned vehicle registration receipt that
15 contains, but is not limited to, the vehicle description and the
16 registered weight at which the vehicle may operate in each
17 jurisdiction.

18 (2) Department--The Texas Department of Motor Vehicles.

19 (3) Director--The director of the Motor Carrier Division, Texas
20 Department of Motor Vehicles.

21 (4) Executive director--The chief executive officer of the
22 department.

23 (5) Regional Service Center--A department office which provides

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1 specific services to the public, including replacement titles,
2 bonded title rejection letters, and apportioned registration
3 under the International Registration Plan (IRP).

4 (6) Temporary cab card--A temporary registration permit
5 authorized by the department that allows the operation of a
6 vehicle for 30 days subject to all rights and privileges
7 afforded to a vehicle displaying apportioned registration.

8 (c) Multilateral agreements.

9 (1) Authority. The executive director may on behalf of the
10 department enter into a multilateral agreement with the duly
11 authorized officials of two or more other jurisdictions to carry
12 out the purpose of this section.

13 (2) International Registration Plan.

14 (A) Applicability. The IRP is a registration reciprocity
15 agreement among states of the United States and other
16 jurisdictions providing for payment of registration fees on the
17 basis of fleet distance operated in various jurisdictions. Its
18 purpose is to promote and encourage the fullest possible use of
19 the highway system by authorizing apportioned registration for
20 commercial motor vehicles and payment of appropriate vehicle
21 registration fees and thus contributing to the economic
22 development and growth of the member jurisdictions.

23 (B) Adoption. The department adopts by reference the January 1,

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1 2015, edition of the IRP. Effective January 1, 2016, the
2 department adopts by reference the amendments to the IRP with an
3 effective date of January 1, 2016. Effective July 1, 2016, the
4 department adopts by reference the amendment to the IRP with an
5 effective date of July 1, 2016. The department further adopts by
6 reference the July 1, 2013, edition of the IRP Audit Procedures
7 Manual. In the event of a conflict between this section and the
8 IRP or the IRP Audit Procedures Manual, the IRP and the IRP
9 Audit Procedures Manual control. Copies of the documents are
10 available for review in the Motor Carrier Division, Texas
11 Department of Motor Vehicles. Copies are also available on
12 request. The following words and terms, when used in the IRP or
13 in paragraph (2) of this subsection, shall have the following
14 meanings, unless the context clearly indicates otherwise.

15 (i) Apportionable vehicle--Any vehicle - except recreational
16 vehicles, vehicles displaying restricted plates, city pickup and
17 delivery vehicles, and government-owned vehicles - used or
18 intended for use in two or more member jurisdictions that
19 allocate or proportionally register vehicles and used either for
20 the transportation of persons for hire or designed, used, or
21 maintained primarily for the transportation of property and:

22 (I) is a power unit having two axles and a gross vehicle weight
23 or registered gross vehicle weight in excess of 26,000 pounds

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- 1 (11,793.401 kilograms);
- 2 (II) is a power unit having three or more axles, regardless of
- 3 weight;
- 4 (III) is used in combination, when the weight of such
- 5 combination exceeds 26,000 pounds (11,793.401 kilograms) gross
- 6 vehicle weight; or
- 7 (IV) at the option of the registrant, a power unit, or the power
- 8 unit in a combination of vehicles having a gross vehicle weight
- 9 of 26,000 pounds (11,793.401 kilograms) or less.
- 10 (ii) Commercial vehicle--A vehicle or combination of vehicles
- 11 designed and used for the transportation of persons or property
- 12 in furtherance of any commercial enterprise, for hire or not for
- 13 hire.
- 14 (iii) Erroneous issuance--Apportioned registration issued based
- 15 on erroneous information provided to the department.
- 16 (iv) Established place of business--A physical structure owned
- 17 or leased within the state of Texas by the applicant or fleet
- 18 registrant and maintained in accordance with the provisions of
- 19 the IRP.
- 20 (v) Fleet distance--All distance operated by an apportionable
- 21 vehicle or vehicles used to calculate registration fees for the
- 22 various jurisdictions.
- 23 (C) Application.

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1 (i) An applicant must submit an application to the department on
2 a form prescribed by the director, along with additional
3 documentation as required by the director.

4 (ii) Upon approval of the application, the department will
5 compute the appropriate registration fees and notify the
6 registrant.

7 (D) Fees. Upon receipt of the applicable fees in the form as
8 provided by §209.23 of this title (relating to Methods of
9 Payment), the department will issue one or two license plates
10 and a cab card for each vehicle registered.

11 (E) Display.

12 (i) The department will issue one license plate for a tractor,
13 truck tractor, trailer, and semitrailer ~~semi-trailer~~. The
14 license plate issued to a tractor or a truck tractor shall be
15 installed on the front of the tractor or truck tractor, and the
16 license plate issued for a trailer or semitrailer ~~semi-trailer~~
17 shall be installed on the rear of the trailer or semitrailer
18 ~~semi-trailer~~.

19 (ii) The department will issue two license plates for all other
20 vehicles that are eligible to receive license plates under the
21 IRP. Once the department issues two license plates for a vehicle
22 listed in this clause, one plate shall be installed on the front
23 of the vehicle, and one plate shall be installed on the rear of

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1 the vehicle.

2 (iii) The cab card shall be carried at all times in the vehicle
3 in accordance with the IRP.

4 (F) Audit. An audit of the registrant's vehicle operational
5 records may be conducted by the department according to the IRP
6 provisions and the IRP Audit Procedures Manual. Upon request,
7 the registrant shall provide the operational records of each
8 vehicle for audit in unit number order, in sequence by date, and
9 including, but not limited to, a summary of distance traveled by
10 each individual vehicle on a monthly, quarterly, and annual
11 basis with distance totaled separately for each jurisdiction in
12 which the vehicle traveled.

13 (G) Assessment. The department may assess additional
14 registration fees of up to 100% of the apportionable fees paid
15 by the registrant for the registration of its fleet in the
16 registration year to which the records pertain, as authorized by
17 the IRP, if an audit conducted under subparagraph (F) of this
18 paragraph reveals that:

19 (i) the operational records indicate that the vehicle did not
20 generate interstate distance in two or more member jurisdictions
21 for the distance reporting period supporting the application
22 being audited, plus the six-month period immediately following
23 that distance reporting period;

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1 (ii) the registrant failed to provide complete operational
2 records; or

3 (iii) the distance must be adjusted, and the adjustment results
4 in a shortage of registration fees due Texas or any other IRP
5 jurisdiction.

6 (H) Refunds. If an audit conducted under subparagraph (F) of
7 this paragraph reveals an overpayment of fees to Texas or any
8 other IRP jurisdiction, the department will refund the
9 overpayment of registration fees in accordance with
10 Transportation Code, §502.195 and the IRP. Any registration fees
11 refunded to a carrier for another jurisdiction will be deducted
12 from registration fees collected and transmitted to that
13 jurisdiction.

14 (I) Cancellation. The director or the director's designee may
15 cancel a registrant's apportioned registration and all
16 privileges provided by the IRP if the registrant:

17 (i) submits payment in the form of a check that is dishonored;

18 (ii) files or provides erroneous information to the department;
19 or

20 (iii) fails to:

21 (I) remit appropriate fees due each jurisdiction in which the
22 registrant is authorized to operate;

23 (II) meet the requirements of the IRP concerning established

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1 place of business;

2 (III) provide operational records in accordance with

3 subparagraph (F) of this paragraph;

4 (IV) provide an acceptable source document as specified in the

5 IRP; or

6 (V) pay an assessment pursuant to subparagraph (G) of this

7 paragraph.

8 (J) Enforcement of cancelled registration.

9 (i) Notice. If a registrant is assessed additional registration
10 fees, as provided in subparagraph (G) of this paragraph, and the
11 additional fees are not paid by the due date provided in the
12 notice or it is determined that a registrant's apportioned
13 license plates and privileges should be canceled, as provided in
14 subparagraph (I) of this paragraph, the director or the
15 director's designee will mail a notice by certified mail to the
16 last known address of the registrant. The notice will state the
17 facts underlying the assessment or cancellation, the effective
18 date of the assessment or cancellation, and the right of the
19 registrant to request a conference as provided in clause (ii) of
20 this subparagraph.

21 (ii) Conference. A registrant may request a conference upon
22 receipt of a notice issued as provided by clause (i) of this
23 subparagraph. The request must be made in writing to the

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1 director or the director's designee within 30 days of the date
2 of the notice. If timely requested, the conference will be
3 scheduled and conducted by the director or the director's
4 designee at division headquarters in Austin and will serve to
5 abate the assessment or cancellation unless and until that
6 assessment or cancellation is affirmed or disaffirmed by the
7 director or the director's designee. In the event matters are
8 resolved in the registrant's favor, the director or the
9 director's designee will mail the registrant a notice of
10 withdrawal, notifying the registrant that the assessment or
11 cancellation is withdrawn, and stating the basis for that
12 action. In the event matters are not resolved in the
13 registrant's favor, the director or the director's designee will
14 issue a ruling reaffirming the department's assessment of
15 additional registration fees or cancellation of apportioned
16 license plates and privileges. The registrant has the right to
17 appeal in accordance with clause (iii) of this subparagraph.
18 (iii) Appeal. If a conference held in accordance with clause
19 (ii) of this subparagraph fails to resolve matters in the
20 registrant's favor, the registrant may request an administrative
21 hearing. The request must be in writing and must be received by
22 the director no later than the 20th day following the date of
23 the ruling issued under clause (ii) of this subparagraph. If

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1 requested within the designated period, the hearing will be
2 initiated by the department and will be conducted in accordance
3 with Chapter 206, Subchapter D of this title (relating to
4 Procedures in Contested Cases). Assessment or cancellation is
5 abated unless and until affirmed or disaffirmed by order of the
6 Board of the Texas Department of Motor Vehicles.

7 (K) Reinstatement.

8 (i) The director or the director's designee will reinstate
9 apportioned registration to a previously canceled registrant if
10 all applicable fees and assessments due on the previously
11 canceled apportioned account have been paid and the applicant
12 provides proof of an acceptable recordkeeping system for a
13 period of no less than 60 days.

14 (ii) The application for the following registration year will be
15 processed in accordance with the provisions of the IRP.

16 (L) Denial of apportioned registration for safety reasons. The
17 department will comply with the requirements of the Performance
18 and Registration Information Systems Management program (PRISM)
19 administered by the Federal Motor Carrier Safety Administration
20 (FMCSA).

21 (i) Denial or suspension of apportioned registration. Upon
22 notification from the FMCSA that a carrier has been placed out
23 of service for safety violations, the department will:

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- 1 (I) deny initial issuance of apportioned registration;
- 2 (II) deny authorization for a temporary cab card, as provided
- 3 for in subparagraph (M) of this paragraph;
- 4 (III) deny renewal of apportioned registration; or
- 5 (IV) suspend current apportioned registration.
- 6 (ii) Issuance after denial of registration or reinstatement of
- 7 suspended registration. The director or the director's designee
- 8 will reinstate or accept an initial or renewal application for
- 9 apportioned registration from a registrant who was suspended or
- 10 denied registration under clause (i) of this subparagraph upon
- 11 presentation of a Certificate of Compliance from FMCSA, in
- 12 addition to all other required documentation and payment of
- 13 fees.
- 14 (M) Temporary cab card.
- 15 (i) Application. The department may authorize issuance of a
- 16 temporary cab card to a motor carrier with an established Texas
- 17 apportioned account for a vehicle upon proper submission of all
- 18 required documentation, a completed application, and all fees
- 19 for either:
- 20 (I) Texas title as prescribed by Transportation Code, Chapter
- 21 501 and Subchapter A of this chapter (relating to Motor Vehicle
- 22 Titles); or
- 23 (II) registration receipt to evidence title for registration

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1 purposes only (Registration Purposes Only) as provided for in
2 Transportation Code, §501.029 and §217.24 of this title
3 (relating to Vehicle Last Registered in Another Jurisdiction).
4 (ii) Title application. A registrant who is applying for a Texas
5 title as provided for in clause (i)(I) of this subparagraph and
6 is requesting authorization for a temporary cab card, must
7 submit to a Regional Service Center by email, fax, overnight
8 mail, or in person a photocopy of the title application receipt
9 issued by the county tax assessor-collector's office.
10 (iii) Registration Purposes Only. A registrant who is applying
11 for Registration Purposes Only under clause (i)(II) of this
12 subparagraph and is requesting authorization for a temporary cab
13 card, must submit an application and all additional original
14 documents or copies of original documents required by the
15 director to a Regional Service Center by email, fax, or
16 overnight mail or in person.
17 (iv) Department approval. On department approval of the
18 submitted documents, the department will send notice to the
19 registrant to finalize the transaction and make payment of
20 applicable registration fees.
21 (v) Finalization and payment of fees. To finalize the
22 transaction and print the temporary cab card, the registrant may
23 compute the registration fees through the department's

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1 apportioned registration software application, TxIRP system,
2 and:
3 (I) make payment of the applicable registration fees to the
4 department as provided by §209.23 of this title (related to
5 Methods of Payment); and
6 (II) afterwards, mail or deliver payment of the title
7 application fee in the form of a check, certified cashier's
8 check, or money order payable to the county tax assessor-
9 collector in the registrant's county of residency and originals
10 of all copied documents previously submitted.
11 (vi) Deadline. The original documents and payment must be
12 received by the Regional Service Center within 72-hours after
13 the time that the office notified the registrant of the approval
14 to print a temporary cab card as provided in clause (iv) of this
15 subparagraph.
16 (vii) Failure to meet deadline. If the registrant fails to
17 submit the original documents and required payment within the
18 time prescribed by clause (vi) of this subparagraph, the
19 registrant's privilege to use this expedited process to obtain a
20 temporary cab card will be denied by the department for a period
21 of six months from the date of approval to print the temporary
22 cab card.

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1 SUBCHAPTER D. NON-REPAIRABLE AND SALVAGE MOTOR VEHICLES

2 §217.82 Definitions.

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

6 (1) Casual sale--The sale by a salvage vehicle dealer,
7 insurance company, or salvage pool operator of not more than
8 five non-repairable or salvage motor vehicles to the same person
9 during a calendar year. The term does not include a sale to a
10 salvage vehicle dealer or the sale of an export-only motor
11 vehicle to a person who is not a resident of the United States.

12 (2) Certificate of title--A written instrument that may
13 be issued solely by and under the authority of the department
14 and that reflects the transferor, transferee, vehicle
15 description, license plate and lien information, and rights of
16 survivorship agreement as specified in Subchapter A of this
17 chapter or as required by the department.

18 (3) Application for Title--A form prescribed by the
19 director of the department's Vehicle Titles and Registration
20 Division that reflects the information required by the
21 department to create a motor vehicle title record.

22 (4) Damage--Sudden damage to a motor vehicle caused by
23 the motor vehicle being wrecked, burned, flooded, or stripped of

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1 major component parts. The term does not include gradual damage
2 from any cause, sudden damage caused by hail, or any damage
3 caused only to the exterior paint of the motor vehicle.

4 (5) Date of sale--The date of the transfer of possession
5 of a specific vehicle from a seller to a purchaser.

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

7 (7) Export-only sale--The sale of a non-repairable or
8 salvage motor vehicle, by a salvage vehicle dealer, including a
9 salvage pool operator acting as agent for an insurance company,
10 or a governmental entity, to a person who resides outside the
11 United States.

12 (8) Flood damage--A title remark that is initially
13 indicated on a non-repairable or salvage vehicle title to denote
14 that the damage to the vehicle was caused exclusively by flood
15 and that is carried forward on subsequent title issuance.

16 (9) Insurance company--A person authorized to write
17 automobile insurance in this state or an out-of-state insurance
18 company that pays a loss claim for a motor vehicle in this
19 state.

20 (10) Manufacturer's certificate of origin--A form
21 prescribed by the department showing the original transfer of a
22 new motor vehicle from the manufacturer to the original
23 purchaser, whether importer, distributor, dealer, or owner, and

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1 when presented with an application for title, showing, on
2 appropriate forms prescribed by the department, each subsequent
3 transfer between distributor and dealer, dealer and dealer, and
4 dealer and owner.

5 (11) Metal recycler--A person who:

6 (A) is predominately engaged in the business of
7 obtaining ferrous or nonferrous metal that has served its
8 original economic purpose to convert the metal, or sell the
9 metal for conversion, into raw material products consisting of
10 prepared grades and having an existing or potential economic
11 value;

12 (B) has a facility to convert ferrous or nonferrous
13 metal into raw material products consisting of prepared grades
14 and having an existing or potential economic value, by a method
15 other than the exclusive use of hand tools, including the
16 processing, sorting, cutting, classifying, cleaning, baling,
17 wrapping, shredding, shearing, or changing the physical form or
18 chemical content of the metal; and

19 (C) sells or purchases the ferrous or nonferrous metal
20 solely for use as raw material in the production of new
21 products.

22 (12) Motor vehicle--A vehicle described by Transportation
23 Code, §501.002(17) ~~§501.002(14)~~.

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1 (13) Non-repairable motor vehicle--A motor vehicle,
2 regardless of the year model, that is wrecked, damaged, or
3 burned to the extent that the only residual value of the motor
4 vehicle is as a source of parts or scrap metal, or that comes
5 into this state under a title or other ownership document that
6 indicates that the motor vehicle is non-repairable, junked, or
7 for parts or dismantling only.

8 (14) Non-repairable vehicle title--A document that
9 evidences ownership of a non-repairable motor vehicle.

10 (15) Out-of-state buyer--A person licensed in an
11 automotive business by another state or jurisdiction if the
12 department has listed the holders of such a license as permitted
13 purchasers of salvage motor vehicles or non-repairable motor
14 vehicles based on substantially similar licensing requirements
15 and on whether salvage vehicle dealers licensed in Texas are
16 permitted to purchase salvage motor vehicles or non-repairable
17 motor vehicles in the other state or jurisdiction.

18 (16) Out-of-state ownership document--A negotiable
19 document issued by another jurisdiction that the department
20 considers sufficient to prove ownership of a non-repairable or
21 salvage motor vehicle and to support issuance of a comparable
22 Texas certificate of title for the motor vehicle. The term does
23 not include a title issued by the department, including a:

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- 1 (A) regular certificate of title;
- 2 (B) non-repairable vehicle title;
- 3 (C) salvage vehicle title;
- 4 (D) salvage certificate;
- 5 (E) Certificate of Authority to Demolish a Motor Vehicle; or
- 6 (F) any other ownership document issued by the department.
- 7 (17) Person--An individual, partnership, corporation, trust,
- 8 association, or other private legal entity.
- 9 (18) Rebuilt salvage certificate of title--A regular certificate
- 10 of title evidencing ownership of a non-repairable motor vehicle
- 11 that was issued a non-repairable vehicle title prior to
- 12 September 1, 2003, or salvage motor vehicle that has been
- 13 rebuilt.
- 14 (19) Salvage motor vehicle--A motor vehicle, regardless of the
- 15 year model:
- 16 (A) that is:
- 17 (i) damaged or is missing a major component part to the extent
- 18 that the cost of repairs exceeds the actual cash value of the
- 19 motor vehicle immediately before the damage; or
- 20 (ii) damaged and comes into this state under an out-of-state
- 21 ownership document that states on its face "accident damage,"
- 22 "flood damage," "inoperable," "rebuildable," "salvageable," or
- 23 similar notation, and is not an out-of-state ownership document

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1 with a "rebuilt," "prior salvage," or similar notation, or a
2 non-repairable motor vehicle; and

3 (B) does not include:

4 (i) a motor vehicle for which an insurance company has paid a
5 claim for repairing hail damage, or theft, unless the motor
6 vehicle was damaged during the theft and before recovery to the
7 extent that the cost of repair exceeds the actual cash value of
8 the motor vehicle immediately before the damage;

9 (ii) the cost of materials or labor for repainting the motor
10 vehicle; or

11 (iii) sales tax on the total cost of repairs.

12 (20) Salvage vehicle dealer--A person engaged in this state in
13 the business of acquiring, selling, dismantling, repairing,
14 rebuilding, reconstructing, or otherwise dealing in non-
15 repairable motor vehicles or salvage motor vehicles or used
16 parts, including a person who is in the business of a salvage
17 vehicle dealer, regardless of whether the person holds a license
18 issued by the department to engage in the business. The term
19 does not include a person who casually repairs, rebuilds, or
20 reconstructs fewer than three salvage motor vehicles in the same
21 calendar year.

22 (21) Salvage vehicle title--A document issued by the department
23 that evidences ownership of a salvage motor vehicle.

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1
2 §217.84 Application for Non-repairable or Salvage Vehicle Title.

3 (a) Place of application. The owner of a non-repairable or
4 salvage motor vehicle who is required to obtain or voluntarily
5 chooses to obtain a non-repairable or salvage vehicle title, as
6 provided by §217.83 of this title (relating to Requirement for
7 Non-repairable or Salvage Vehicle Title), shall apply for a non-
8 repairable or salvage vehicle title by submitting an
9 application, the required accompanying documentation, and the
10 statutory fee to the department.

11 (b) Information on application. An applicant for a non-
12 repairable or salvage vehicle title shall submit an application
13 on a form prescribed by the department. A completed form, in
14 addition to any other information required by the department,
15 must include:

16 (1) the name and current address of the owner;

17 (2) a description of the motor vehicle, including the motor
18 vehicle's model year, make, model, identification number, body
19 style, manufacturer's rated carrying capacity in tons for
20 commercial vehicles, and empty weight;

21 (3) a statement describing whether the motor vehicle is a non-
22 repairable or salvage motor vehicle; and

23 (A) was the subject of a total loss claim paid by an insurance

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- 1 company under Transportation Code, §501.1001 or §501.1002
2 ~~§501.092 or §501.093~~;
- 3 (B) is a self-insured motor vehicle under Transportation Code,
4 §501.091 ~~§501.094~~;
- 5 (C) is an export-only motor vehicle under Transportation Code,
6 §501.099;
- 7 (D) was sold, transferred, or released to the owner or former
8 owner of the motor vehicle; or
- 9 (E) was sold, transferred, or released to a buyer at casual sale
10 by a salvage vehicle dealer, insurance company, or salvage pool
11 operator;
- 12 (4) whether the damage was caused exclusively by flood;
- 13 (5) a description of the damage to the motor vehicle;
- 14 (6) the odometer reading and brand, or the word "exempt" if the
15 motor vehicle is exempt from federal and state odometer
16 disclosure requirements, if the motor vehicle is a salvage motor
17 vehicle;
- 18 (7) the name, address, and city and state of residence of the
19 previous owner;
- 20 (8) the name and mailing address of any lienholder and the date
21 of lien, as provided by subsection (e) of this section; and
- 22 (9) the signature of the applicant or the applicant's authorized
23 agent and the date the certificate of title application was

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- 1 signed.
- 2 (c) Accompanying documentation. A non-repairable or salvage
3 vehicle title application must be supported, at a minimum, by:
4 (1) evidence of ownership, as described by subsection (d)(1) or
5 (3) of this section, if the applicant is an insurance company
6 that is unable to locate one or more of the owners;
7 (2) an odometer disclosure statement properly executed by the
8 seller of the motor vehicle and acknowledged by the purchaser,
9 if the motor vehicle is less than 10 model years old and the
10 motor vehicle is a salvage motor vehicle; and
11 (3) a release of any liens.
- 12 (d) Evidence of non-repairable or salvage motor vehicle
13 ownership.
- 14 (1) Evidence of non-repairable or salvage motor vehicle
15 ownership properly assigned to the applicant must accompany the
16 application for a non-repairable or salvage vehicle title,
17 except as provided by paragraph (2) of this subsection. Evidence
18 must include documentation sufficient to show ownership to the
19 non-repairable or salvage motor vehicle, such as:
- 20 (A) a Texas Certificate of Title;
21 (B) a certified copy of a Texas Certificate of Title;
22 (C) a manufacturer's certificate of origin;
23 (D) a Texas Salvage Certificate;

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- 1 (E) a non-repairable vehicle title;
- 2 (F) a salvage vehicle title;
- 3 (G) a comparable ownership document issued by another
- 4 jurisdiction, except that if the applicant is an insurance
- 5 company, evidence must be provided indicating that the insurance
- 6 company is:
- 7 (i) licensed to do business in Texas; or
- 8 (ii) not licensed to do business in Texas, but has paid a loss
- 9 claim for the motor vehicle in this state; or
- 10 (H) a photocopy of the inventory receipt or a title and
- 11 registration verification evidencing surrender to the department
- 12 of the negotiable evidence of ownership for a motor vehicle as
- 13 provided by §217.86 of this title (relating to Dismantling,
- 14 Scrapping, or Destruction of Motor Vehicles), and if the
- 15 evidence of ownership surrendered was from another jurisdiction,
- 16 a photocopy of the front and back of the surrendered evidence of
- 17 ownership.
- 18 (2) An insurance company that acquires ownership or possession
- 19 of a non-repairable or salvage motor vehicle through payment of
- 20 a claim may apply for a non-repairable or salvage vehicle title
- 21 to be issued in the insurance company's name without obtaining
- 22 an ownership document or if it received an ownership document
- 23 without the proper assignment of the owner if the company is

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1 unable to obtain a title from the owner, in accordance with
2 paragraph (1) of this subsection, and the application is not
3 made earlier than the 30th day after the date of payment of the
4 claim. The application must also include:

5 (A) a statement that the insurance company has provided at least
6 two written notices to the owner and any lienholder attempting
7 to obtain the title or proper assignment of title for the motor
8 vehicle;

9 (B) a copy of a document:

10 (i) indicating that payment has been made, including an
11 electronic check, canceled check, or screen print from the
12 insurance company's database that identifies the type of payment
13 method; and

14 (ii) reflecting the vehicle identification number, vehicle owner
15 names, name of the person to whom payment was made if different
16 from vehicle owners, payment amount, and date payment was
17 issued; and

18 (C) any unassigned or improperly assigned title in the insurance
19 company's possession.

20 (3) An insurance company that acquires, through payment of a
21 claim, ownership or possession of a salvage motor vehicle or
22 non-repairable motor vehicle covered by an out-of-state
23 ownership document may obtain a salvage vehicle title or non-

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- 1 repairable vehicle title in accordance with paragraph (1) or (2)
2 of this subsection if:
- 3 (A) the motor vehicle was damaged, stolen, or recovered in this
4 state; or
- 5 (B) the motor vehicle owner from whom the company acquired
6 ownership resides in this state.
- 7 (4) A salvage pool operator may apply for title in the name of
8 the salvage pool operator by providing to the department:
- 9 (A) documentation from the insurance company that:
- 10 (i) the salvage pool operator, on request of an insurance
11 company, was asked to take possession of the motor vehicle
12 subject to an insurance claim and the insurance company
13 subsequently denied coverage or did not take ownership of the
14 vehicle; and
- 15 (ii) the name and address of the owner of the motor vehicle and
16 the lienholder, if any; and
- 17 (B) proof that the salvage pool operator, before the 31st day
18 after receiving the information from the insurance company, sent
19 a notice to the owner and any lienholder informing them that:
- 20 (i) the motor vehicle must be removed from the location
21 specified in the notice not later than the 30th day after the
22 date the notice is mailed; and
- 23 (ii) if the motor vehicle is not removed within the time

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1 specified in the notice, the salvage pool operator will sell the
2 motor vehicle and retain from the proceeds any costs actually
3 incurred by the operator in obtaining, handling, and disposing
4 of the motor vehicle, except for charges:

5 (I) that have been or are subject to being reimbursed by a third
6 party; and

7 (II) for storage or impoundment of the motor vehicle.

8 (5) Proof of notice under this subsection consists of:

9 (A) the validated receipts for registered or certified mail and
10 return receipt or an electronic certified mail receipt,
11 including signature receipt; and

12 (B) any unopened certified letters returned by the post office
13 as unclaimed, undeliverable, or with no forwarding address.

14 (e) Recordation of lien on non-repairable and salvage vehicle
15 titles. If the motor vehicle is a salvage motor vehicle, a new
16 lien or a currently recorded lien may be recorded on the salvage
17 vehicle title. If the motor vehicle is a non-repairable motor
18 vehicle, only a currently recorded lien may be recorded on the
19 non-repairable vehicle title.

20 (f) Issuance. Upon receipt of a completed non-repairable or
21 salvage vehicle title application, accompanied by the statutory
22 application fee and the required documentation, the department
23 will, before the sixth business day after the date of receipt,

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1 issue a non-repairable or salvage vehicle title, as appropriate.

2 (1) If the condition of salvage is caused exclusively by flood,
3 a "Flood Damage" notation will be reflected on the face of the
4 document and will be carried forward upon subsequent title
5 issuance.

6 (2) If a lien is recorded on a non-repairable or salvage vehicle
7 title, the vehicle title will be mailed to the lienholder. For
8 proof of ownership purposes, the owner will be mailed a receipt
9 or printout of the newly established motor vehicle record,
10 indicating a lien has been recorded.

11 (3) A non-repairable vehicle title will state on its face that
12 the motor vehicle may:

13 (A) not be repaired, rebuilt, or reconstructed;

14 (B) not be issued a regular certificate of title or registered
15 in this state;

16 (C) not be operated on a public highway; and

17 (D) may only be used as a source for used parts or scrap metal.

18

19 §217.86 Dismantling, Scrapping, or Destruction of Motor
20 Vehicles.

21 (a) A person who acquires ownership of a non-repairable or
22 salvage motor vehicle for the purpose of dismantling, scrapping,
23 or destruction shall, not later than the 30th day after the

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1 motor vehicle was acquired:

2 (1) submit to the department a report, on a form prescribed by
3 the department:

4 (A) stating that the motor vehicle will be dismantled, scrapped,
5 or destroyed; and

6 (B) certifying that all unexpired license plates and
7 registration validation stickers have been removed from the
8 motor vehicle, in accordance with Occupations Code, §2302.252;
9 and

10 (2) surrender to the department the properly assigned ownership
11 document.

12 (b) The person shall:

13 (1) maintain records of each motor vehicle that will be
14 dismantled, scrapped, or destroyed, as provided by Chapter 221,
15 Subchapter D ~~§217.191(d)~~ of this title (relating to Records
16 ~~Record of Purchases, Sales, and Inventory~~); and

17 (2) store all unexpired license plates and registration
18 validation stickers removed from those vehicles in a secure
19 location.

20 (c) The department will issue the person a receipt with
21 surrender of the report and ownership documents.

22 (d) License plates and registration validation stickers removed
23 from vehicles reported under subsection (a)(1) of this section

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1 may be destroyed upon receipt of the acknowledged report from
2 the department.

3 (e) The department will place an appropriate notation on motor
4 vehicle records for which ownership documents have been
5 surrendered to the department.

6 (f) Not later than 60 days after the motor vehicle is
7 dismantled, scrapped, or destroyed, the person shall report to
8 the department and provide evidence that the motor vehicle has
9 been dismantled, scrapped, or destroyed.

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1 SUBCHAPTER E. TITLE LIENS AND CLAIMS

2 §217.103 Restitution Liens.

3 (a) Purpose. Pursuant to the Code of Criminal Procedure,
4 Article 42.22, the victim or an attorney for the state may file
5 a lien on any interest in a motor vehicle of a person convicted
6 of a criminal offense to secure payment of restitution or fines
7 or costs. This section establishes the procedures to perfect the
8 filing and the removal of the lien on any interest of the
9 defendant in a motor vehicle whether then owned or after-
10 acquired.

11 (b) Definitions. The following words and terms, when used
12 in this section, shall have the following meanings, unless the
13 context clearly indicates otherwise.

14 (1) Department--The Texas Department of Motor Vehicles.

15 (2) Restitution lien--A lien placed against a defendant's
16 motor vehicle in order to recoup a judgment or fines or costs.

17 (3) State--The State of Texas and all its political
18 subdivisions.

19 (4) Victim--A close relative of a deceased victim,
20 guardian of a victim, or victim, as those terms are defined by
21 the Code of Criminal Procedure, Article 56.01.

22 (c) Persons who may file a restitution lien. The following
23 persons may file a restitution lien:

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1 (1) a victim of a criminal offense to secure the amount
2 of restitution to which the victim is entitled under the order
3 of a court in a criminal case; and

4 (2) an attorney of the state to secure the amount of
5 fines or costs entered against a defendant in a judgment in a
6 felony criminal case.

7 (d) Perfection of a restitution lien. A restitution lien
8 against any interest in a motor vehicle must be perfected in
9 accordance with Transportation Code, Chapter 501, and in the
10 name of the court which established the restitution lien, in
11 care of the court clerk. The victim or the attorney representing
12 the state must file an application for certificate of title with
13 a county tax-assessor collector to perfect the restitution lien.
14 The application must be on a form prescribed by the department
15 as described in §217.4 of this title (relating to Initial
16 Application for Title), and shall be supported by, at a minimum,
17 the following documents:

18 (1) evidence of motor vehicle ownership, as described in
19 §217.5 of this title (relating to Evidence of Motor Vehicle
20 Ownership), which is properly assigned to or issued in the name
21 of the defendant;

22 (2) an original or certified copy of the court order or
23 judgment establishing the restitution lien and requiring the

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1 defendant to pay restitution, fines, or costs; and

2 (3) an affidavit to perfect a restitution lien which must
3 include, at a minimum:

4 (A) the name and birth date of the defendant whose
5 interest in the motor vehicle is subject to the lien;

6 (B) the residence or principal place of business of the
7 person named in the lien, if known;

8 (C) the criminal proceeding giving rise to the lien,
9 including the name of the court, the name of the case, and the
10 court's file number for the case;

11 (D) the name and address of the attorney representing
12 the state and the name and address of the person entitled to
13 restitution;

14 (E) a statement that the notice is being filed pursuant
15 to Code of Criminal Procedure, Article 42.22;

16 (F) the amount of restitution, fines, and costs the
17 defendant has been ordered to pay by the court;

18 (G) a statement that the amount of restitution owed at
19 any one time may be less than the original balance and that the
20 outstanding balance is reflected in the records of the clerk of
21 the court hearing the criminal proceeding giving rise to the
22 lien;

23 (H) the vehicle description (year, make, and vehicle

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1 identification number) of the motor vehicle for which the
2 restitution lien is to be perfected; and

3 (I) the signature of the attorney representing the
4 state or a magistrate.

5 (e) Fees. The applicant will be required to pay a \$5 ~~\$5.00~~
6 restitution lien filing fee, in addition to a title application
7 fee in accordance with Transportation Code, §501.138, and any
8 other applicable fees required by Transportation Code, Chapters
9 501, 502, and 520.

10 (f) Recording a restitution lien. Upon receiving a
11 completed application for certificate of title, the required
12 supporting documents and any applicable fees, the department or
13 its designated agent will process and issue a certificate of
14 title recording the restitution lien. The original certificate
15 of title shall be mailed to the first lienholder, in accordance
16 with Transportation Code, §501.027.

17 (g) Release of perfected restitution liens. The clerk of
18 the court recorded as the lienholder will receive payments from
19 the defendant and maintain a record of the outstanding balance
20 of restitution, fines, or costs owed by the defendant. Upon
21 satisfaction of the lien, the clerk of the court shall execute
22 the release of lien as described in §217.106 of this title
23 (relating to Discharge of Liens).The release of lien must be

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- 1 provided to the owner or owner's designee. A photocopy of the
- 2 release of lien shall be forwarded to the department for filing.

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1 SUBCHAPTER H DEUPTIES

2 §217.163 Full Service Deputies.

3 (a) A county tax assessor-collector, with the approval of
4 the commissioners court of the county, may deputize a person to
5 act as a full service deputy in the same manner and with the
6 same authority as though done in the office of the county tax
7 assessor-collector, subject to the criteria and limitations of
8 this section, including signing the addendum as ~~entering into~~
9 ~~the agreement~~ specified in subsection (k) ~~(j)~~ of this section.

10 (b) A full service deputy must offer and provide titling
11 and registration services to the general public, and must accept
12 any application for registration, registration renewal, or title
13 transfer that the county tax assessor-collector would accept and
14 process, unless otherwise limited by the county.

15 (c) The county tax assessor-collector may impose reasonable
16 obligations or requirements upon a full service deputy in
17 addition to those set forth in this section. The additional
18 obligations or requirements must be reflected in the agreement
19 specified in subsection (j) of this section.

20 (d) To be eligible to serve as a full service deputy, a
21 person must be trained, as approved by the county tax assessor-
22 collector, to perform motor vehicle titling, registration, and
23 registration renewal services, or otherwise be deemed competent

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1 by the county tax assessor-collector to perform such services.

2 (e) To be eligible to serve as a full service deputy, a
3 person must post a bond payable to the county tax assessor-
4 collector consistent with §217.167 of this title (relating to
5 Bonding Requirements) with the bond conditioned on the person's
6 proper accounting and remittance of the fees the person
7 collects.

8 (f) A person applying to be a full service deputy must
9 complete the application process as specified by the county tax
10 assessor-collector. The application process may include
11 satisfaction of any bonding requirements and completion of any
12 additional required documentation or training of the deputy
13 before the processing of any title, registration, or
14 registration renewal applications may occur.

15 (g) A full service deputy must provide the physical address
16 at which services will be offered, the mailing address, the
17 phone number, and the hours of service. This information may be
18 published on the department's website and may be published by
19 the county if the county publishes a list of deputy locations.

20 (h) A full service deputy shall keep a separate accounting
21 of the fees collected and remitted to the county and a record of
22 daily receipts.

23 (i) A full service deputy may charge or retain fees

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1 consistent with the provisions of §217.168 of this title
2 (relating to Deputy Fee Amounts).

3 (j) A full service deputy must maintain records in
4 compliance with the State of Texas Records Retention Schedule as
5 promulgated by the Texas State Library and Archives Commission.

6 (k) Beginning January 1, 2017, a full service deputy must
7 sign an addendum provided by the department outlining the terms
8 and conditions of the full service deputy's access to and use of
9 the department's registration and titling system. Any contract
10 or agreement, or renewal of the contract or agreement, between
11 the county and the full service deputy that authorizes the full
12 service deputy to provide registration and titling services in
13 the county must specifically incorporate the addendum by
14 reference, and the contract or agreement may not supersede or
15 contradict any term within the addendum. An addendum described
16 by this subsection is required for each location at which the
17 full service deputy operates. The addendum must be incorporated
18 into any agreement or contract between the full service deputy
19 and the county beginning January 1, 2017. The county must
20 provide the department a current copy of each contract or
21 agreement, including any amendments, with a full service deputy
22 within 60 days of execution.



DATE: September 1, 2016
Action Requested: APPROVAL

To: Board of the Texas Department of Motor Vehicles (TxDMV)
From: William P. Harbeson, Enforcement Division Director; and Jimmy Archer, Motor Carrier Division Director
Agenda Item: 2.E.3.
Subject: Proposal of Rules under Title 43, Texas Administrative Code, Chapter 218, Motor Carriers (Household Goods) Amendments §§218.2, 218.13, 218.31, 218.32, 218.52, 218.53, 218.56, 218.59, 218.60, and 218.61

RECOMMENDATION

Approval to publish the proposed rules in the *Texas Register* for public comment.

PURPOSE AND EXECUTIVE SUMMARY

Transportation Code, §643.155 requires the department to appoint a rules advisory committee consisting of representatives of household goods motor carriers, the public, and the department. The advisory committee is required to examine the rules regarding the protection of consumers using the services of a household goods motor carrier, and to make recommendations to the department on modernizing and streamlining the rules. The department appointed the advisory committee, which met three times.

FINANCIAL IMPACT

There are no major fiscal implications related to the proposed amendments. A proposed amendment will require household goods motor carriers that lease vehicles under a short-term lease to display their name and certificate of registration number on their leased vehicles. These motor carriers can comply with this proposed requirement with minimal cost by placing printed magnets on the sides of these leased vehicles.

BACKGROUND AND DISCUSSION

Proposed amendments:

- Update the rules to be consistent with statute.
- Create separate definitions for an advertisement and a print advertisement, since print advertisements are governed by specific rules.
- Amend existing rules to provide for greater consumer protection.
- Modernize the rules to authorize certain documentation to be created and submitted in an electronic format.

If the proposed amendments are approved by the board, staff anticipates publication of the proposed amendments in the *Texas Register* on or about September 23, 2016. Comments on the proposed amendments will be accepted until 5:00 p.m. on October 24, 2016.

**PROPOSED PUBLICATION TO AMEND
43 TAC SECTIONS 218.2, 218.13, 218.31, 218.32, 218.52,
218.53, 218.56, 218.59, 218.60, AND 218.61,
RELATING TO MOTOR CARRIERS**

Description

This order proposes publication for comment of amendments to §§218.2, 218.13, 218.31, 218.32, 218.52, 218.53, 218.56, 218.59, 218.60, and 218.61.

Background

Transportation Code, §643.155 requires the department to appoint a rules advisory committee consisting of representatives of household goods motor carriers, the public, and the department. The advisory committee is required to examine the rules regarding the protection of consumers using the services of a household goods motor carrier, and to make recommendations to the department on modernizing and streamlining the rules. The department appointed the advisory committee, which met three times.

Proposed amendments:

- Update the rules to be consistent with statute.
- Create separate definitions for an advertisement and a print advertisement, since print advertisements are governed by specific rules.
- Amend existing rules to provide for greater consumer protection.
- Modernize the rules to authorize certain documentation to be created and submitted in an electronic format.

Other Comments

There are no major fiscal implications related to the proposed amendments. A proposed amendment will require household goods motor carriers that lease vehicles under a short-term lease to display their name and certificate of registration number on their leased vehicles. These motor carriers can comply with this proposed requirement with minimal cost by placing printed magnets on the sides of these leased vehicles.

If the proposed amendments are approved by the board, staff anticipates publication of the proposed amendments in the *Texas Register* on or about September 23, 2016. Comments on the proposed amendments will be accepted until 5:00 p.m. on October 24, 2016.

BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING PUBLICATION OF PROPOSED AMENDMENTS
43 TAC SECTIONS 218.2, 218.13, 218.31, 218.32, 218.52, 218.53, 218.56,
219.59, 219.60, AND 218.61,
RELATING TO MOTOR CARRIERS

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to amend Chapter 218, Motor Carriers, Subchapter A: §218.2, Definitions; Subchapter B: §218.13, Application for Motor Carrier Registration; Subchapter C: §218.31, Investigations and Inspections of Motor Carrier Records; §218.32, and Motor Carrier Records; Subchapter E: §218.52, Advertising; §218.53, Household Goods Carrier Cargo Liability; §218.56, Proposals and Estimates for Moving Services; §218.59, Inventories; 218.60, Determination of Weights; and §218.61, Claims.

The proposed amendments are attached to this resolution as Exhibit A, and are incorporated by reference as though set forth verbatim in this resolution, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the board that the attached rules are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The department is directed to take the necessary steps to implement the actions authorized in this order pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Raymond Palacios, Jr., Chairman
Board of the Texas Department of Motor Vehicles

Recommended by:

William P. Harbeson, Director
Enforcement Division

Order Number: _____

Date Passed: September 1, 2016

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1 SUBCHAPTER A GENERAL PROVISIONS

2 §218.2. Definitions.

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

6 (1) Advertisement--An oral, written, graphic, or
7 pictorial statement or representation made in the course of
8 soliciting intrastate household goods transportation services,
9 including, without limitation, a statement or representation
10 made in a newspaper, magazine, or other publication, or
11 contained in a notice, sign, poster, display, circular,
12 pamphlet, or letter, or on radio, the Internet, or via an on-
13 line service, or on television. The term does not include
14 direct communication between a household goods carrier or
15 carrier's representative and a prospective shipper, and does
16 not include the following:

17 (A) promotional items of nominal value such as
18 ball caps, tee shirts, and pens;

19 (B) business cards;

20 (C) listings not paid for by the household
21 goods carrier or its household goods carrier's agent; and

22 (D) listings of a household goods carrier's
23 business name or assumed name as it appears on the motor
24 carrier certificate of registration, and the household goods

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1 carrier's address, and contact information in a directory or
2 similar publication.

3 (2)~~(1)~~ Approved association--A group of household
4 goods carriers, its agents, or both, that has an approved
5 collective ratemaking agreement on file with the department
6 under §218.64 of this title (relating to Rates).

7 (3)~~(2)~~ Binding proposal--A formal written offer
8 stating the exact price for the transportation of specified
9 household goods and any related services.

10 (4)~~(3)~~ Board--Board of the Texas Department of
11 Motor Vehicles.

12 (5)~~(4)~~ Certificate of insurance--A certificate
13 prescribed by and filed with the department in which an
14 insurance carrier or surety company warrants that a motor
15 carrier for whom the certificate is filed has the minimum
16 coverage as required by §218.16 of this title (relating to
17 Insurance Requirements).

18 (6)~~(5)~~ Certificate of registration--A certificate
19 issued by the department to a motor carrier and containing a
20 unique number.

21 (7)~~(6)~~ Certified scale--Any scale designed for
22 weighing motor vehicles, including trailers or semitrailers
23 not attached to a tractor, and certified by an authorized
24 scale inspection and licensing authority. A certified scale

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1 may also be a platform-type or warehouse-type scale properly
2 inspected and certified.

3 (8)~~(7)~~ Commercial motor vehicle--

4 (A) Includes:

5 (i) any motor vehicle or combination of
6 vehicles with a gross weight, registered weight, or gross
7 weight rating in excess of 26,000 pounds, that is designed or
8 used for the transportation of cargo in furtherance of any
9 commercial enterprise;

10 (ii) any vehicle, including buses,
11 designed or used to transport more than 15 passengers,
12 including the driver; and

13 (iii) any vehicle used in the
14 transportation of hazardous materials in a quantity requiring
15 placarding under the regulations issued under the federal
16 Hazardous Materials Transportation Act (49 U.S.C. §§5101-
17 5128).

18 (B) Does not include:

19 (i) a farm vehicle with a gross weight,
20 registered weight, and gross weight rating of less than 48,000
21 pounds;

22 (ii) cotton vehicles registered under
23 Transportation Code, §504.505;

24 (iii) a vehicle registered with the

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1 Railroad Commission under Natural Resources Code, §113.131 and
2 §116.072;

3 (iv) a vehicle operated by a governmental
4 entity;

5 (v) a motor vehicle exempt from
6 registration by the Unified Carrier Registration Act of 2005;
7 and

8 (vi) a tow truck, as defined by
9 Occupations Code, §2308.002 and permitted under Occupations
10 Code, Chapter 2308, Subchapter C.

11 (9)~~(8)~~ Commercial school bus--A motor vehicle
12 owned by a motor carrier that is:

13 (A) registered under Transportation Code,
14 Chapter 643, Subchapter B;

15 (B) operated exclusively within the boundaries
16 of a municipality and used to transport preprimary, primary,
17 or secondary school students on a route between the students'
18 residences and a public, private, or parochial school or
19 daycare facility;

20 (C) operated by a person who holds a driver's
21 license or commercial driver's license of the appropriate
22 class for the operation of a school bus;

23 (D) complies with Transportation Code, Chapter
24 548; and

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1 (E) complies with Transportation Code,
2 §521.022.

3 (10)~~(9)~~ Conspicuous--Written in a size, color, and
4 contrast so as to be readily noticed and understood.

5 (11)~~(10)~~ Conversion--A change in an entity's
6 organization that is implemented with a Certificate of
7 Conversion issued by the Texas Secretary of State under
8 Business and Organizations Code, §10.154.

9 (12)~~(11)~~ Department--Texas Department of Motor
10 Vehicles (TxDMV).

11 (13)~~(12)~~ Director--The director of the Motor
12 Carrier Division, Texas Department of Motor Vehicles.

13 (14)~~(13)~~ Division--The Motor Carrier Division.

14 (15)~~(14)~~ Estimate--An informal oral calculation of
15 the approximate price of transporting household goods.

16 (16)~~(15)~~ Farmer--A person who operates a farm or
17 is directly involved in cultivating land or in raising crops
18 or livestock that are owned by or are under the direct control
19 of that person.

20 (17)~~(16)~~ Farm vehicle--Any vehicle or combination
21 of vehicles controlled or operated by a farmer or rancher
22 being used to transport agriculture products, farm machinery,
23 and farm supplies to or from a farm or ranch.

24 (18)~~(17)~~ FMCSA--Federal Motor Carrier Safety

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1 Administration.

2 (19)~~(18)~~ Foreign commercial motor vehicle--A
3 commercial motor vehicle that is owned by a person or entity
4 that is domiciled in or a citizen of a country other than the
5 United States.

6 (20)~~(19)~~ Gross weight rating--The maximum loaded
7 weight of any combination of truck, tractor, and trailer
8 equipment as specified by the manufacturer of the equipment.
9 If the manufacturer's rating is unknown, the gross weight
10 rating is the greater of:

11 (A) the actual weight of the equipment and its
12 lading; or

13 (B) the maximum lawful weight of the equipment
14 and its lading.

15 (21)~~(20)~~ Household goods--Personal property
16 intended ultimately to be used in a dwelling when the
17 transportation of that property is arranged and paid for by
18 the householder or the householder's representative. The term
19 does not include personal property to be used in a dwelling
20 when the property is transported from a manufacturing, retail,
21 or similar company to a dwelling if the transportation is
22 arranged by a manufacturing, retail, or similar company.

23 (22)~~(21)~~ Household goods agent--A motor carrier
24 who transports household goods on behalf of another motor

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1 carrier.

2 (23)~~(+22)~~ Household goods carrier--A motor carrier
3 who transports household goods for compensation or hire in
4 furtherance of a commercial enterprise, regardless of the size
5 of the vehicle.

6 (24)~~(+23)~~ Insurer--A person, including a surety,
7 authorized in this state to write lines of insurance coverage
8 required by Subchapter B of this chapter.

9 (25)~~(+24)~~ Inventory--A list of the items in a
10 household goods shipment and the condition of the items.

11 (26)~~(+25)~~ Leasing business--A person that leases
12 vehicles requiring registration under Subchapter B of this
13 chapter to a motor carrier that must be registered.

14 ~~(+26) Manager The manager of the department's Motor~~
15 ~~Carrier Division, Credentialing Section.]~~

16 (27) Mediation--A non-adversarial form of
17 alternative dispute resolution in which an impartial person,
18 the mediator, facilitates communication between two parties to
19 promote reconciliation, settlement, or understanding.

20 (28) Motor Carrier or carrier--A person who
21 controls, operates, or directs the operation of one or more
22 vehicles that transport persons or cargo over a public highway
23 in this state.

24 (29) Motor transportation broker--A person who

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1 sells, offers for sale, or negotiates for the transportation
2 of cargo by a motor carrier operated by another person or a
3 person who aids and abets another person in selling, offering
4 for sale, or negotiating for the transportation of cargo by a
5 motor carrier operated by another person.

6 (30) Moving services contract--A contract between a
7 household goods carrier and shipper, such as a bill of lading,
8 receipt, order for service, or work order, that sets out the
9 terms of the services to be provided.

10 (31) Multiple user--An individual or business who
11 has a contract with a household goods carrier and who used the
12 carrier's services more than 50 times within the preceding 12
13 months.

14 (32) Not-to-exceed proposal--A formal written offer
15 stating the maximum price a shipper can be required to pay for
16 the transportation of specified household goods and any
17 related services. The offer may also state the non-binding
18 approximate price. Any offer based on hourly rates must state
19 the maximum number of hours required for the transportation
20 and related services unless there is an acknowledgment from
21 the shipper that the number of hours is not necessary.

22 (33) Principal place of business--A single location
23 that serves as a motor carrier's headquarters and where it
24 maintains its operational records or can make them available.

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1 (34) Print advertisement--A written, graphic, or
2 pictorial statement or representation made in the course of
3 soliciting intrastate household goods transportation services,
4 including, without limitation, a statement or representation
5 made in or contained in a newspaper, magazine, circular, or
6 other publication. The term does not include direct
7 communication between a household goods carrier or carrier's
8 representative and a prospective shipper, and does not include
9 the following:

10 (A) promotional items of nominal value such as
11 ball caps, tee shirts, and pens;

12 (B) business cards;

13 (C) listings not paid for by the household
14 goods carrier or its household goods carrier's agent; and

15 (D) listings of a household goods carrier's
16 business name or assumed name as it appears on the motor
17 carrier certificate of registration, and the household goods
18 carrier's address, and contact information in a directory or
19 similar publication.

20 (35)[~~(34)~~] Public highway--Any publicly owned and
21 maintained street, road, or highway in this state.

22 (36)[~~(35)~~] Reasonable dispatch--The performance of
23 transportation, other than transportation provided under
24 guaranteed service dates, during the period of time agreed on

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1 by the carrier and the shipper and shown on the shipment
2 documentation. This definition does not affect the
3 availability to the carrier of the defense of force majeure.

4 (37)~~(36)~~ Replacement vehicle--A vehicle that takes
5 the place of another vehicle that has been removed from
6 service.

7 (38)~~(37)~~ Revocation--The withdrawal of
8 registration and privileges by the department or a
9 registration state.

10 (39)~~(38)~~ Shipper--The owner of household goods or
11 the owner's representative.

12 (40)~~(39)~~ Short-term lease--A lease of 30 days or
13 less.

14 (41)~~(40)~~ SOAH--The State Office of Administrative
15 Hearings.

16 (43)~~(41)~~ Substitute vehicle--A vehicle that is
17 leased from a leasing business and that is used as a temporary
18 replacement for a vehicle that has been taken out of service
19 for maintenance, repair, or any other reason causing the
20 temporary unavailability of the permanent vehicle.

21 (44)~~(42)~~ Suspension--Temporary removal of
22 privileges granted to a registrant by the department or a
23 registration state.

24 (45)~~(43)~~ Unified Carrier Registration System or

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1 UCR--A motor vehicle registration system established under 49
2 U.S.C. §14504a or a successor federal registration program.

3 (46)~~(44)~~ USDOT--United States Department of
4 Transportation.

5 (47)~~(45)~~ USDOT number--An identification number
6 issued by or under the authority of the FMCSA or its
7 successor.

8 SUBCHAPTER B MOTOR CARRIER REGISTRATION

9 §218.13. Application for Motor Carrier Registration.

10 (a) Form of application. An application for motor carrier
11 registration must be filed with the department's Motor Carrier
12 Division and must be in the form prescribed by the director
13 and must contain, at a minimum, the following information.

14 (1) USDOT number. A valid USDOT number.

15 (2) Business or trade name. The applicant must
16 designate the business or trade name of the motor carrier.

17 (3) Owner name. If the motor carrier is a sole
18 proprietorship, the owner must indicate the name and social
19 security number of the owner. A partnership must indicate the
20 partners' names, and a corporation must indicate principal
21 officers and titles.

22 (4) Principal place of business. A motor carrier
23 must disclose the motor carrier's principal business address.
24 If the mailing address is different from the principal

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1 business address, the mailing address must also be disclosed.

2 (5) Legal agent.

3 (A) A Texas-domiciled motor carrier must
4 provide the name and address of a legal agent for service of
5 process if the agent is different from the motor carrier.

6 (B) A motor carrier domiciled outside Texas
7 must provide the name and Texas address of the legal agent for
8 service of process.

9 (C) A legal agent for service of process shall
10 be a Texas resident, a domestic corporation, or a foreign
11 corporation authorized to transact business in Texas with a
12 Texas address for service of process.

13 (6) Description of vehicles. An application must
14 include a motor carrier equipment report identifying each
15 commercial motor vehicle that requires registration and that
16 the carrier proposes to operate. Each commercial motor vehicle
17 must be identified by its motor vehicle identification number,
18 make, model year, and type of cargo and by the unit number
19 assigned to the commercial motor vehicle by the motor carrier.
20 Any subsequent registration of vehicles must be made under
21 subsection (e) of this section.

22 (7) Type of motor carrier operations. An applicant
23 must state if the applicant:

24 (A) proposes to transport passengers, household

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1 goods, or hazardous materials; or

2 (B) is domiciled in a foreign country.

3 (8) Insurance coverage. An applicant must indicate
4 insurance coverage as required by §218.16 of this title
5 (relating to Insurance Requirements).

6 (9) Safety affidavit. Each motor carrier must
7 complete, as part of the application, an affidavit stating
8 that the motor carrier knows and will conduct operations in
9 accordance with all federal and state safety regulations.

10 (10) Drug-testing certification. Each motor carrier
11 must certify, as part of the application, that the motor
12 carrier is in compliance with the drug-testing requirements of
13 49 C.F.R. Part 382. If the motor carrier belongs to a
14 consortium, as defined by 49 C.F.R. Part 382, the applicant
15 must provide the names of the persons operating the
16 consortium.

17 (11) Duration of registration.

18 (A) An applicant must indicate the duration of
19 the desired registration. Registration may be for seven
20 calendar days or for 90 days, one year, or two years. The
21 duration of registration chosen by the applicant will be
22 applied to all vehicles. Household goods carriers may not
23 obtain seven day or 90 day certificates of registration.

24 (B) Interstate motor carriers that operate in

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1 intrastate commerce and meet the requirements under §218.14(c)
2 of this title (relating to Expiration and Renewal of
3 Commercial Motor Vehicles Registration) are not required to
4 renew a certificate of registration issued under this section.

5 (12) Additional requirements. The following fees and
6 information must be submitted with all applications.

7 (A) An application must be accompanied by an
8 application fee of:

9 (i) \$100 for annual and biennial
10 registrations;

11 (ii) \$25 for 90 day registrations; or

12 (iii) \$5 for seven day registrations.

13 (B) An application must be accompanied by a
14 vehicle registration fee of:

15 (i) \$10 for each vehicle that the motor
16 carrier proposes to operate under a seven day, 90 day, or
17 annual registration; or

18 (ii) \$20 for each vehicle that the motor
19 carrier proposes to operate under a biennial registration.

20 (C) An application must be accompanied by proof
21 of insurance or financial responsibility and insurance filing
22 fee as required by §218.16.

23 (D) An application for registration by a
24 household goods carrier must include a tariff that sets out

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1 the maximum charges for transportation of household goods
2 between two or more municipalities, or a copy of the tariff
3 governing interstate transportation services on a highway
4 between two or more municipalities.

5 (E)[(D)] An application must be accompanied by
6 any other information required by law.

7 (b) Conditional acceptance of application. If an
8 application has been conditionally accepted by the director
9 pursuant to Transportation Code, §643.055, the applicant may
10 not operate the following until the department has issued a
11 certificate under Transportation Code, §643.054:

12 (1) a commercial motor vehicle or any other motor
13 vehicle to transport household goods for compensation, or

14 (2) a commercial motor vehicle to transport persons
15 or cargo. [The director may conditionally accept an
16 application if it is accompanied by all fees and by proof of
17 insurance or financial responsibility, but is not accompanied
18 by all required information. Conditional acceptance in no way
19 constitutes approval of the application. The director will
20 notify the applicant of any information necessary to complete
21 the application. If the applicant does not supply all
22 necessary information within 45 days from notification by the
23 director, the application will be considered withdrawn and all
24 fees will be retained.]

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1 (c) Approved application. An applicant meeting the
2 requirements of this section and whose registration is
3 approved will be issued the following documents:

4 (1) Certificate of registration. The department will
5 issue a certificate of registration. The certificate of
6 registration will contain the name and address of the motor
7 carrier and a single registration number, regardless of the
8 number of vehicles requiring registration that the carrier
9 operates.

10 (2) Insurance cab card. The department will issue an
11 insurance cab card listing all vehicles to be operated under
12 the carrier's certificate of registration. The insurance cab
13 card shall be continuously maintained at the registrant's
14 principal place of business. The insurance cab card will be
15 valid for the same period as the motor carrier's certificate
16 of registration and will contain information regarding each
17 vehicle registered by the motor carrier.

18 (A) A current copy of the page of the insurance
19 cab card on which the vehicle is shown shall be maintained in
20 each vehicle listed, unless the motor carrier chooses to
21 maintain a legible and accurate image of the insurance cab
22 card on a wireless communication device in the vehicle or
23 chooses to display such information on a wireless
24 communication device by accessing the department's online

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1 system from the vehicle. The appropriate information
2 concerning that vehicle shall be highlighted if the motor
3 carrier chooses to maintain a hard copy of the insurance cab
4 card or chooses to display an image of the insurance cab card
5 on a wireless communication device in the vehicle. The
6 insurance cab card or the display of such information on a
7 wireless communications device will serve as proof of
8 insurance as long as the motor carrier has continuous
9 insurance or financial responsibility on file with the
10 department.

11 (B) On demand by a department
12 investigator~~[department-certified-inspector]~~ or any other
13 authorized government personnel, the driver shall present the
14 highlighted page of the insurance cab card that is maintained
15 in the vehicle or that is displayed on a wireless
16 communication device in the vehicle. If the motor carrier
17 chooses to display the information on a wireless communication
18 device by accessing the department's online system, the driver
19 must locate the vehicle in the department's online system upon
20 request by the department-certified inspector or other
21 authorized government personnel.

22 (C) The motor carrier shall notify the
23 department in writing if it discontinues use of a registered
24 commercial motor vehicle before the expiration of its

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1 insurance cab card.

2 (D) Any erasure or alteration of an insurance
3 cab card that the department printed out for the motor carrier
4 renders it void.

5 (E) If an insurance cab card is lost, stolen,
6 destroyed, or mutilated; if it becomes illegible; or if it
7 otherwise needs to be replaced, the department will print out
8 a new insurance cab card at the request of the motor carrier.
9 Motor carriers are authorized to print out a copy of a new
10 insurance cab card using the department's online system.

11 (F) The department is not responsible for a
12 motor carrier's inability to access the insurance information
13 using the department's online system.

14 (G) The display of an image of the insurance
15 cab card or the display of insurance information from the
16 department's online system via a wireless communication device
17 by the motor carrier does not constitute effective consent for
18 a law enforcement officer, the department-certified inspector,
19 or any other person to access any other content of the
20 wireless communication device.

21 (d) Additional and replacement vehicles. A motor carrier
22 required to obtain a certificate of registration under this
23 section shall not operate additional vehicles unless the
24 carrier identifies the vehicles on a form prescribed by the

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1 director and pays applicable fees as described in this
2 subsection.

3 (1) Additional vehicles. To add a vehicle, a motor
4 carrier must pay a fee of \$10 for each additional vehicle that
5 the motor carrier proposes to operate under a seven day, 90
6 day, or annual registration. To add a vehicle during the first
7 year of a biennial registration, a motor carrier must pay a
8 fee of \$20 for each vehicle. To add a vehicle during the
9 second year of a biennial registration, a motor carrier must
10 pay a fee of \$10 for each vehicle.

11 (2) Replacement vehicles. No fee is required for a
12 vehicle that is replacing a vehicle for which the fee was
13 previously paid. Before the replacement vehicle is put into
14 operation, the motor carrier shall notify the department,
15 identify the vehicle being taken out of service, and identify
16 the replacement vehicle on a form prescribed by the
17 department. A motor carrier registered under seven day
18 registration may not replace vehicles.

19 (e) Supplement to original application. A motor carrier
20 required to register under this section shall submit a
21 supplemental application under the following circumstances.

22 (1) Change of cargo. A registered motor carrier may
23 not begin transporting household goods or hazardous materials
24 unless the carrier submits a supplemental application to the

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1 department and shows the department evidence of insurance or
2 financial responsibility in the amounts specified by §218.16.

3 (2) Change of name. A motor carrier that changes its
4 name shall file a supplemental application for registration no
5 later than the effective date of the change. The motor carrier
6 shall include evidence of insurance or financial
7 responsibility in the new name and in the amounts specified by
8 §218.16. A motor carrier that is a corporation must have its
9 name change approved by the Texas Secretary of State before
10 filing a supplemental application. A motor carrier
11 incorporated outside the state of Texas must complete the name
12 change under the law of its state of incorporation before
13 filing a supplemental application.

14 (3) Change of address or legal agent for service of
15 process. A motor carrier shall file a supplemental application
16 for any change of address or any change of its legal agent for
17 service of process no later than the effective date of the
18 change. The address most recently filed will be presumed
19 conclusively to be the current address.

20 (4) Change in principal officers and titles. A motor
21 carrier that is a corporation shall file a supplemental
22 application for any change in the principal officers and
23 titles no later than the effective date of the change.

24 (5) Conversion of corporate structure. A motor

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1 carrier that has successfully completed a corporate conversion
2 involving a change in the name of the corporation shall file a
3 supplemental application for registration and evidence of
4 insurance or financial responsibility reflecting the new
5 company name. The conversion must be approved by the Office of
6 the Secretary of State before the supplemental application is
7 filed.

8 (6) Change in drug-testing consortium status. A
9 motor carrier that changes consortium status shall file a
10 supplemental application that includes the names of the
11 persons operating the consortium.

12 (7) Retaining a revoked or suspended certificate of
13 registration number. A motor carrier may retain a prior
14 certificate of registration number by:

15 (A) filing a supplemental application to re-
16 register instead of filing an original application; and

17 (B) providing adequate evidence that the
18 carrier has satisfactorily resolved the facts that gave rise
19 to the suspension or revocation.

20 (f) Change of ownership. A motor carrier must file an
21 original application for registration when there is a
22 corporate merger or a change in the ownership of a sole
23 proprietorship or of a partnership.

24 (g) Alternative vehicle registration for household goods

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1 agents. To avoid multiple registrations of a commercial motor
2 vehicle, a household goods agent's vehicles may be registered
3 under the motor carrier's certificate of registration under
4 this subsection.

5 (1) The carrier must notify the department on a form
6 approved by the director of its intent to register its agent's
7 vehicles under this subsection.

8 (2) When a carrier registers vehicles under this
9 subsection, the carrier's certificate will include all
10 vehicles registered under its agent's certificates of
11 registration. The carrier must register under its certificate
12 of registration all vehicles operated on its behalf that do
13 not appear on its agent's certificate of registration.

14 (3) The department may send the carrier a copy of
15 any notification sent to the agent concerning circumstances
16 that could lead to denial, suspension, or revocation of the
17 agent's certificate.

18 (h) Substitute vehicles leased from leasing businesses. A
19 registered motor carrier is not required to comply with the
20 provisions of subsection (e) of this section for a substitute
21 vehicle leased from a business registered under §218.18 of
22 this title (relating to Short-term Lease and Substitute
23 Vehicles). A motor carrier is not required to carry proof of
24 registration as described in subsection (d) of this section if

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1 a copy of the lease agreement for the originally leased
2 vehicle is carried in the cab of the temporary replacement
3 vehicle.

4 SUBCHAPTER C RECORDS AND INSPECTIONS

5 §218.31. Investigations and Inspections of Motor Carrier
6 Records.

7 (a) Certification of department investigators
8 [~~inspectors~~]. In accordance with Transportation Code, Chapter
9 643, the executive director or designee will designate
10 department employees as certified [~~inspectors~~] for the purpose
11 of entering the premises of a motor carrier to copy or verify
12 documents the motor carrier is required to maintain according
13 to this chapter [~~by this section to be maintained by the motor~~
14 ~~carrier~~]. The executive director or designee shall provide
15 credentials to department investigators [~~certified inspectors~~]
16 identifying them as department employees and as certified
17 [~~inspectors~~] to conduct investigations and inspect records on
18 behalf of the department.

19 (b) Investigations and Inspections.

20 (1) A motor carrier shall grant a department
21 investigator certified under this section [~~inspector~~] access
22 to the carrier's premises to conduct inspections or
23 investigations of alleged violations of this chapter and of
24 Transportation Code, Chapters 643 and 645. The motor carrier

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1 shall provide adequate work space with reasonable working
2 conditions and allow the department investigators [~~certified-~~
3 ~~inspector~~] to copy and verify records and documents the motor
4 carrier is required to maintain according to this chapter [~~be-~~
5 ~~maintained by the carrier under §218.32 of this title~~
6 ~~(relating to Motor Carrier Records)~~].

7 (2) The department investigator [~~certified-~~
8 ~~inspector~~] may conduct inspections and investigations during
9 normal business hours unless mutual arrangements have been
10 made otherwise.

11 (3) The department investigator [~~certified-~~
12 ~~inspector~~] will present his or her credentials [~~and a written~~
13 ~~statement from the department~~] to the motor carrier prior to
14 conducting an investigation or inspection [~~indicating the~~
15 ~~inspector's authority to inspect and investigate the motor~~
16 ~~carrier~~].

17 (c) Access. A motor carrier shall provide access to
18 requested records and documents at:

19 (1) the motor carrier's principal place of business;
20 or

21 (2) a location agreed to by the department and the
22 motor carrier.

23 (d) Designation of meeting time. If the motor carrier's
24 normal business hours do not provide the access necessary for

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1 the investigator to conduct the investigation and the parties
2 cannot reach an agreement as to a time to meet to access the
3 records, the department shall designate the time of the
4 meeting and provide written notice via the business address,
5 facsimile number, or e-mail address on file with the
6 department [~~by certified mail or facsimile~~].

7

8 §218.32. Motor Carrier Records.

9 (a) General records to be maintained. Every motor carrier
10 shall prepare and maintain in a complete and accurate manner:

11 (1) operational logs, insurance certificates,
12 documents to verify the carrier's operations, and proof of
13 registration fee payments;

14 (2) [~~complete and accurate~~] records of services
15 performed;

16 (3) all certificate of title documents, weight
17 tickets, permits for oversize or overweight vehicles and
18 loads, dispatch records, or any other document that would
19 verify the operations of the vehicle to determine the actual
20 weight, insurance coverage, size, and/or capacity of the
21 vehicle; and

22 (4) the original certificate of registration and
23 registration listing, if applicable.

24 [~~(b) Additional records for household goods carriers. In~~

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1 ~~order to verify compliance with Subchapters B and E of this~~
2 ~~chapter (relating to Motor Carrier Registration and Consumer~~
3 ~~Protection), every household goods carrier shall retain~~
4 ~~complete and accurate records maintained in accordance with~~
5 ~~reasonable accounting procedures of all services performed in~~
6 ~~intrastate commerce. Household goods carriers shall retain all~~
7 ~~of the following information and documents:]~~

8 ~~[(1) moving services contracts, such as bills of~~
9 ~~lading or receipts;]~~

10 ~~[(2) proposals for moving services;]~~

11 ~~[(3) inventories, if applicable;]~~

12 ~~[(4) freight bills;]~~

13 ~~[(5) time cards, trip sheets, or driver's logs;]~~

14 ~~[(6) claim records;]~~

15 ~~[(7) ledgers and journals;]~~

16 ~~[(8) canceled checks;]~~

17 ~~[(9) bank statements and deposit slips;]~~

18 ~~[(10) invoices, vouchers, or statements supporting~~
19 ~~disbursements; and]~~

20 ~~[(11) dispatch records.]~~

21 (b)~~[(e)]~~ Proof of motor carrier registration.

22 (1) Except as provided in paragraph (2) of this
23 subsection and in §218.13(c)(2) of this title (relating to
24 Application for Motor Carrier Registration), every motor

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1 carrier shall maintain a copy of its current registration
2 listing in the cab of each registered vehicle at all times. A
3 motor carrier shall make available to a department
4 investigator [~~certified inspector~~] or any law enforcement
5 officer a copy of the current registration listing upon
6 request.

7 (2) A registered motor carrier is not required to
8 carry proof of registration in a vehicle leased from a leasing
9 business that is registered under §218.18 of this title
10 (relating to Short-term Lease and Substitute Vehicles), when
11 leased as a temporary replacement due to maintenance, repair,
12 or other unavailability of the originally leased vehicle. A
13 copy of the lease agreement, or the lease for the originally
14 leased vehicle, in the case of a substitute vehicle, must be
15 carried in the cab of the vehicle.

16 (3) A motor carrier is not required to carry proof
17 of compliance with UCR or the UCR plan or agreement in its
18 vehicle.

19 [c][(~~d~~)] Location of files. Except as provided in this
20 subsection, every motor carrier shall maintain at a principal
21 place of business in Texas all records and information
22 required by the department.

23 (1) Texas motor carriers[~~firms~~]. If a motor carrier
24 wishes to maintain records at a specific location other than

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1 its principal place of business in Texas, the motor carrier
2 shall make a written request to the director~~[manager]~~. A motor
3 carrier may not begin maintaining records at an alternate
4 location until the request is approved by the
5 director~~[manager]~~.

6 (2) Out-of-state motor carriers~~[firms]~~. A motor
7 carrier whose principal business address is located outside
8 the state of Texas shall maintain records required under this
9 section at its [~~principal place of~~] business location in
10 Texas. Alternatively, a motor carrier may maintain such
11 records at a specific out-of-state facility if the carrier
12 reimburses the department for necessary travel expenses and
13 per diem for any inspections or investigations conducted in
14 accordance with §218.31 of this title (relating to
15 Investigations and Inspections of Motor Carrier Records).

16 (3) Regional office or driver work-reporting
17 location. All records and documents required by this
18 subchapter which are maintained at a regional office or driver
19 work-reporting location, whether or not maintained in
20 compliance with paragraphs (1) and (2) of this subsection,
21 shall be made available for inspection upon request at the
22 motor carrier's principal place of business or other location
23 specified by the Department within 48 hours after a request is
24 made. Saturdays, Sundays, and federal and state holidays are

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1 excluded from the computation of the 48-hour period of time in
2 accordance with 49 C.F.R. §390.29.

3 (e) Preservation and destruction of records. All books
4 and records generated by a motor carrier, except driver's time
5 cards and logs, must be maintained for not less than two years
6 at the motor carrier's principal business address. A motor
7 carrier must maintain driver's time cards and logs for not
8 less than six months at the carrier's principal business
9 address.

10 SUBCHAPTER E CONSUMER PROTECTION

11 §218.52. Advertising.

12 (a) A household goods carrier and its household goods
13 agents may not use any false, misleading, or deceptive
14 advertisements. [~~(a) Print advertising through August 4, 2015.~~
15 ~~A household goods carrier shall include the following~~
16 ~~information on print advertisements primarily addressing a~~
17 ~~local market within this state:]~~

18 [~~(1) the name of the household goods carrier as~~
19 ~~shown on the certificate of registration:]~~

20 [~~(2) the street address of the household goods~~
21 ~~carrier's or its agent's place of business in this state; and]~~

22 [~~(3) the household goods carrier's certificate of~~
23 ~~registration number in the following form, "DMV No. _____".]~~

24 (b) [~~Print advertising on or after August 5, 2015.~~] A

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1 household goods carrier shall include the following
2 information on all print advertisements primarily addressing a
3 local market within this state:

4 (1) the full business name or assumed name of the
5 household goods carrier as shown on the certificate of
6 registration;

7 (2) the street address of the household goods
8 carrier's or its agent's place of business in this state; and

9 (3) the household goods carrier's certificate of
10 registration number in the following form, "TxDMV No.
11 _____".

12 (c) Use of household goods agent's name. A household
13 goods carrier may include the name of its household goods
14 agent as filed with the department in its print
15 advertisements.

16 (d) A household goods carrier shall provide the following
17 information on the home page or, in the case of a national
18 household goods carrier, the page specific to Texas intrastate
19 household goods operations, on any website operated by or for
20 the household goods carrier:

21 (1) the household goods carrier's name;

22 (2) department's toll-free consumer help line as
23 listed on the department's website; and

24 (3) the household goods carrier's certificate of

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1 registration number in the following form, "TxDMV No.
2 _____".

3 [~~(d) Items not considered to be print advertisements~~
4 ~~through August 4, 2015. For the purposes of this section,~~
5 ~~print advertisement shall not include:~~]

6 [~~(1) promotional items of nominal value such as ball-~~
7 ~~caps, tee shirts, and pens;~~]

8 [~~(2) business cards;~~]

9 [~~(3) internet websites;~~]

10 [~~(4) listings not paid for by the household goods~~
11 ~~carrier or its household goods carrier's agent;~~]

12 [~~(5) nationally placed billboards; and~~]

13 [~~(6) single-line listings of a carrier name,~~
14 ~~address, and telephone number in a directory or similar~~
15 ~~publication.]~~

16 [~~(e) Items not considered to be print advertisements on~~
17 ~~or after August 5, 2015. For the purposes of this section,~~
18 ~~print advertisement shall not include:~~]

19 [~~(1) promotional items of nominal value such as ball-~~
20 ~~caps, tee shirts, and pens;~~]

21 [~~(2) business cards;~~]

22 [~~(3) Internet websites;~~]

23 [~~(4) listings not paid for by the household goods~~
24 ~~carrier or its household goods carrier's agent; and]~~

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1 ~~[(5) single line listings of a household goods~~
2 ~~carrier's name, address, and telephone number in a directory~~
3 ~~or similar publication.]~~

4 ~~[(f) Internet websites through August 4, 2015. A~~
5 ~~household goods carrier shall provide the department's toll-~~
6 ~~free telephone number (1-888-368-4689) and the household goods~~
7 ~~carrier's certificate of registration number on any website~~
8 ~~operated by or for the household goods carrier.]~~

9 ~~[(g) Internet websites on or after August 5, 2015. A~~
10 ~~household goods carrier shall provide the following~~
11 ~~information on any website operated by or for the household~~
12 ~~goods carrier:—~~

13 ~~[(1) department's toll-free consumer helpline as~~
14 ~~listed on the department's website; and]~~

15 ~~[(2) the household goods carrier's certificate of~~
16 ~~registration number in the following form, "TxDMV No.~~
17 ~~_____".]~~

18 ~~(e)[(h)]~~ Identifying markings on household goods
19 carrier's vehicles.

20 (1) A household goods carrier or its agent shall
21 display the following information on both sides of ~~[either]~~
22 the power unit, including power units operated under a short-
23 term lease~~[or trailer]:~~

24 (A) the business name or assumed name of the

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1 household goods carrier as it appears on the motor carrier
2 certificate of registration; and

3 (B) the household goods carrier's registration
4 number as it appears on the motor carrier certificate of
5 registration in the following form, "TxDMV No. _____".

6 (2) The markings required by [~~paragraph (1) of~~] this
7 subsection shall have clearly legible letters and numbers at
8 least two inches in height.

9 (3) This subsection does not apply to vehicles[+]
10 [~~(A)~~] required to comply with Transportation
11 Code, Chapter 642.[+~~or~~]

12 [~~(B) operated under a short term lease.~~]

13 [~~(i) Prohibited advertisements. For the purposes of this~~
14 ~~subsection, an advertisement is any communication to the~~
15 ~~public in connection with an offer or sale of an intrastate~~
16 ~~transportation service. A household goods carrier and its~~
17 ~~household goods agents may not use any false, misleading, or~~
18 ~~deceptive advertisements.~~]

19

20 §218.53. Household Goods Carrier Cargo Liability.

21 (a) Unless the carrier and shipper agree in writing to a
22 higher limit of carrier liability, a household goods carrier's
23 liability for loss or damage of property shall be \$.60 per
24 pound per article. Claims for loss or damage of property may

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1 be settled based on the weight of the article multiplied by
2 \$.60.

3 (b) If the carrier and shipper have agreed in writing to
4 a higher limit of liability, the carrier may charge the
5 shipper for this higher limit of liability. If the agreement
6 between the carrier and shipper to a higher limit of liability
7 provides for a deductible, the carrier's liability to pay for
8 loss or damage of property will be reduced by the amount of
9 the deductible.

10 ~~[A household goods carrier shall be liable for \$.60 per-~~
11 ~~pound per article, unless the carrier and shipper agree, in-~~
12 ~~writing, to a higher limit of carrier liability. The household-~~
13 ~~goods carrier shall not be liable for damages in an amount in-~~
14 ~~excess of the agreed to higher limit of liability for the-~~
15 ~~loss, destruction, or damage of the household goods.]~~

16

17 §218.56. Proposals and Estimates for Moving Services.

18 (a) Written proposals. Prior to loading, a household
19 goods carrier shall provide a written proposal, such as a bid
20 or quote, to the shipper. A proposal shall state the maximum
21 amount the shipper could be required to pay for the listed
22 transportation and listed related services. This section does
23 not apply if a pre-existing transportation contract sets out
24 the maximum amount the shipper could be required to pay for

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1 the transportation services. Pre-existing transportation
2 contracts include, but are not limited to, corporate contracts
3 for the relocation of multiple employees.

4 (1) A proposal must contain the name and
5 registration number of the household goods carrier as they
6 appear on the motor carrier certificate of registration. If a
7 proposal is prepared by the household goods carrier's agent,
8 it shall include the name of the agent as listed on the
9 carrier's agent filing with the department. A proposal shall
10 also include the street address of the household goods carrier
11 or its agent. [~~A proposal may not include the name, logo, or~~
12 ~~motor carrier registration number of any other motor carrier.~~]

13 (2) A proposal must clearly and conspicuously state
14 whether it is a binding or not-to-exceed proposal.

15 (3) A proposal must completely describe the shipment
16 and all services to be provided. A proposal must state, "This
17 proposal is for listed items and services only. Additional
18 items and services may result in additional costs."

19 (4) A proposal must specifically state when the
20 shipper will be required to pay the transportation charges,
21 such as if payment must be made before unloading at the final
22 destination. A proposal must also state what form of payment
23 is acceptable, such as a cashier's check.

24 (5) A proposal must conspicuously state that a

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1 household goods carrier's liability for loss or damage to
2 cargo is limited to \$.60 per pound per article unless the
3 household goods carrier and shipper agree, in writing, to a
4 higher limit of carrier liability.

5 (b) Hourly rates. If a proposal is based on an hourly
6 rate, then it is not required to provide the number of hours
7 necessary to perform the transportation and related services.
8 However, if the number of hours is not included in a proposal,
9 then the carrier must secure a written acknowledgment from the
10 shipper indicating the proposal is complete without the number
11 of hours.

12 (c) Proposal as addendum. If a proposal is accepted by
13 the shipper and the carrier transports the shipment, then the
14 proposal is considered an addendum to the moving services
15 contract.

16 (d) Additional items and services. If the household goods
17 carrier determines additional items are to be transported
18 and/or additional services are required to load, transport, or
19 deliver the shipment, then before the carrier transports the
20 additional items or performs the additional services the
21 carrier and shipper must agree, in writing, to:

22 (1) allow the original proposal to remain in effect;

23 (2) amend the original proposal or moving services
24 contract; or

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1 (3) substitute a new proposal for the original.

2 (e) Amendments and storage.

3 (1) An amendment to an original proposal or moving
4 services contract, as allowed in subsection (d) of this
5 section, must:

6 (A) be signed and dated by the household goods
7 carrier and shipper; and

8 (B) clearly and specifically state the amended
9 maximum price for the transportation of the household goods.

10 (2) If the household goods carrier fails to amend or
11 substitute an original proposal as required by this subsection
12 and subsection (d) of this section, only the charges stated on
13 the original proposal for moving services may be assessed on
14 the moving services contract. The carrier shall not attempt to
15 amend or substitute the proposal to add items or services
16 after the items or services have been provided or performed.

17 (3) If through no fault of the carrier, the shipment
18 cannot be delivered during the agreed delivery period, then
19 the household goods carrier may place the shipment in storage
20 and assess fees relating to storage according to the terms in
21 §218.58 of this title (relating to Moving Services Contract -
22 Options for Carrier Limitation of Liability), without a
23 written agreement with the shipper to amend or substitute the
24 original proposal.

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1 (f) Combination document. A proposal required by
2 subsection (a) of this section may be combined with other
3 shipping documents, such as the moving services contract, into
4 a single document. If a proposal is combined with other
5 shipping documents, the purpose of each signature line on the
6 combination document must be clearly indicated. Each signature
7 is independent and shall not be construed as an agreement to
8 all portions and terms of the combination document.

9 (g) Telephone estimates. A household goods carrier may
10 provide an estimate for the transportation services by
11 telephone. If the household goods carrier provides the
12 estimate by telephone, then the carrier must also furnish a
13 written proposal for the transportation services to the
14 shipper prior to loading the shipment.

15

16 §218.59. Inventories.

17 (a) Applicability. A household goods carrier has the
18 option of preparing an inventory of the shipment.

19 (b) Inventories prepared by the carrier. A household
20 goods carrier may prepare a complete or partial inventory for
21 its own use without an agreement between the carrier and
22 shipper. The household goods carrier may not charge a fee for
23 preparing an inventory for its own use.

24 (c) Inventories prepared by the carrier and shipper. If

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1 the household goods carrier and shipper agree to the
2 preparation of an inventory, the carrier may assess a fee for
3 this service.

4 (1) Information contained in the inventory.

5 (A) The inventory must contain the shipper's
6 name [~~and the household goods carrier's name as it appears on~~
7 ~~its motor carrier certificate of registration. The inventory~~
8 ~~may not include the name, logo, or motor carrier registration~~
9 ~~number of any other motor carrier~~]. The inventory may include
10 the name of the household goods carrier's agent as it is
11 listed on the carrier's agent filing with the department.

12 [~~(B) The inventory must describe each item in~~
13 ~~the shipment. If any charges are based on the size of the~~
14 ~~containers, the inventory must list the quantity and size of~~
15 ~~each container. Additionally, if the household goods carrier~~
16 ~~assesses handling charges for specific items, such as, pianos,~~
17 ~~the inventory must show these items separately, if not already~~
18 ~~shown on the moving services contract.]~~

19 [~~(C) The inventory must describe and use the~~
20 ~~symbol "CP" for all containers packed or crated by the~~
21 ~~carrier. Additionally, the inventory must describe and use the~~
22 ~~symbol "PBO" for all containers packed or crated by the~~
23 ~~shipper.]~~

24 (B)[~~(D)~~] The inventory must include a key for

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1 any abbreviation used to describe the condition of the items.

2 (2) Inventory at origin. The inventory shall be
3 signed by the household goods carrier and the shipper or
4 shipper's agent at origin. The inventory must include a
5 conspicuous statement that the shipper's signature is
6 affirming the contents and condition of the items in the
7 shipment.

8 (3) Inventory at destination. The carrier and the
9 shipper or shipper's agent shall sign the inventory at
10 destination. A legible copy of the inventory shall be given to
11 the shipper. Signing the inventory does not waive a claimant's
12 right to file a claim. [~~The inventory must include the~~
13 ~~following statement adjacent to the shipper's signature line,~~
14 ~~"Signing the inventory means:~~]

15 [~~(A) all items loaded have been received,~~
16 ~~except as noted;~~]

17 [~~(B) obvious loss or damage has been noted;~~
18 ~~and]~~

19 [~~(C) signing the inventory does not waive a~~
20 ~~claimant's right to file a claim."~~]

21 (4) Combination document. The inventory may be
22 combined with other shipping documents, such as the moving
23 services contract, into a single document. If the inventory is
24 combined with other shipping documents, the purpose of each

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1 signature line on the combination document must be clearly
2 indicated. Each signature is independent and shall not be
3 construed as an agreement to all portions and terms of the
4 combination document.

5 (d) Electronic format. An inventory may be prepared in an
6 electronic format.

7

8 §218.60. Determination of Weights.

9 (a) Shipment weights. A carrier transporting household
10 goods on a not-to-exceed proposal using shipment weight as a
11 factor in determining transportation charges shall determine
12 the weight of each shipment transported prior to the
13 assessment of any charges. Except as provided in this section,
14 the weight shall be obtained on a certified scale.

15 (b) Weighing procedures.

16 (1) The weight of each shipment shall be obtained by
17 determining the difference between the:

18 (A) tare weight of the vehicle on which the
19 shipment is to be loaded prior to the loading and the gross
20 weight of the same vehicle after the shipment is loaded; or

21 (B) gross weight of the vehicle with the
22 shipment loaded and the tare weight of the same vehicle after
23 the shipment is unloaded.

24 (2) At the time of both weighings, all pads,

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1 dollies, handtrucks, ramps, and other equipment required in
2 the transportation of a shipment shall be on the vehicle.
3 Neither the driver nor any other person shall be on the
4 vehicle at the time of the weighings.

5 (3) The fuel tanks on the vehicle shall be full at
6 the time of each weighing or, in the alternative, no fuel may
7 be added between the two weighings when the tare weighing is
8 the first weighing performed.

9 (4) The trailer of a tractor-trailer vehicle
10 combination may be detached from the tractor and weighed
11 separately at each weighing providing the length of the scale
12 platform is adequate to only accommodate and support the
13 entire trailer at one time.

14 (5) Shipments weighing 1,000 pounds or less may be
15 weighed on a certified platform or warehouse scale prior to
16 loading for transportation or subsequent to unloading.

17 (6) The net weight of shipments transported in
18 containers shall be the difference between the tare weight of
19 the container, including all pads, blocking and bracing used
20 or to be used in the transportation of the shipment, and the
21 gross weight of the container with the shipment loaded.

22 (7) The shipper or any other person responsible for
23 the payment of the freight charges shall have the right to
24 observe all weighings of the shipment. The household goods

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1 carrier must advise the shipper or any other person entitled
2 to observe the weighings of the time and specific location
3 where each weighing will be performed and must give that
4 person a reasonable opportunity to be present to observe the
5 weighings. Waiver by a shipper of the right to observe any
6 weighing or reweighing is permitted and does not affect any
7 rights of the shipper under this subchapter.

8 (c) Weight tickets.

9 (1) The carrier shall obtain a separate weight
10 ticket for each weighing required under this subsection and
11 the ticket shall be carried on the vehicle. However, if both
12 weighings are performed on the same scale, one weight ticket
13 may be used to record both weighings. Every weight ticket
14 shall be signed by the person performing the weighing. Weight
15 tickets or copies of weigh tickets in an electronic format
16 shall be maintained with~~[attached to]~~ the carrier's copy of
17 moving services contract covering the shipment. Weight tickets
18 shall contain:

19 (A) the complete name and location of the
20 scale;

21 (B) the date of each weighing;

22 (C) identification of the weight entries as
23 being tare, gross, or net weights;

24 (D) the company or carrier identification of

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1 the vehicle; and

2 (E) the last name of the shipper as it appears
3 on the moving services contract.

4 (2) This ticket must be retained by the carrier as
5 part of the records for [~~file on~~] the shipment. A bill
6 presented to collect any shipment charges dependent on the
7 weight transported must be accompanied by true copies of all
8 weight tickets in either a printed or electronic format
9 obtained in the determination of the shipment weight.

10 (d) Reweighing of shipments. Before unloading a shipment
11 weighed at origin and after the shipper is informed of the
12 billing weight and total charges, the shipper may request a
13 reweigh. The charges shall be based on the reweigh weight.

14 (e) Stored shipments. If a shipment is weighed and placed
15 in storage in transit or delivered out of storage to
16 destination by another vehicle, then no additional weighing
17 shall be required unless the shipment has been decreased or
18 increased in weight subsequent to the original weighing of the
19 shipment.

20 (f) Constructive weight. Where no certified scale is
21 available at origin, at a point en route, or at destination, a
22 constructive weight, based on seven pounds per cubic foot of
23 properly loaded space may be used to determine the weight of
24 the household goods shipment.

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1

2 §218.61. Claims.

3 (a) Filing of claims. A household goods carrier must act
4 on all claims filed by a shipper on shipments of household
5 goods according to this section.

6 (1) A claim must be filed in writing or by
7 electronic document transfer with the household goods carrier
8 or the household goods carrier's agent whose name appears on
9 the moving services contract. A claim is considered filed on
10 the date the claim is received by the household goods carrier.
11 A shipper must file a [~~written~~] claim either in writing or by
12 electronic format within 90 days:

13 (A) of delivery of the shipment to the final
14 destination; or

15 (B) after a reasonable time for delivery has
16 elapsed in the case of failure to make delivery.

17 (2) The claim must include enough facts to identify
18 the shipment. The claim must also describe the type of claim
19 and request a specific type of remedy.

20 (3) Shipping documents may be used as evidence to
21 support a claim, but cannot be substituted for a written
22 claim.

23 (4) A claim submitted by someone other than the
24 owner of the household goods must be accompanied by a written

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1 explanation of the claimant's interest in the claim.

2 (b) Acknowledgment and disposition of filed claims.

3 (1) A household goods carrier shall send an [~~a~~
4 ~~written~~] acknowledgment of the claim either in writing or by
5 electronic format to the claimant within 20 days (excluding
6 Sundays and nationally recognized holidays) after receipt of
7 the claim by the carrier or his agent.

8 (A) The claim acknowledgment shall include the
9 statement, "Household goods carriers have 90 days from receipt
10 of a claim to pay, decline to pay, or make a firm settlement
11 offer, in writing, to a claimant. Questions or complaints
12 concerning the household goods carrier's claims handling
13 should be directed to the Texas Department of Motor Vehicles
14 (TxDMV), [~~department's~~] Enforcement Division, via the toll-
15 free consumer helpline as listed on the department's website.
16 Additionally, a claimant has the right to request mediation
17 from TxDMV within 30 days (excluding Sundays and nationally
18 recognized holidays) after any portion of the claim is denied
19 by the carrier, the carrier makes a firm settlement offer that
20 is not acceptable to the claimant, or 90 days has elapsed
21 since the carrier received the claim and the claim has not
22 been resolved."

23 (B) The household goods carrier is not required
24 to issue the acknowledgment letter prescribed in this

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1 subsection if the claim has been resolved or the household
2 goods carrier has initiated communication regarding the claim
3 with the claimant within 20 days (excluding Sundays and
4 nationally recognized holidays) after receipt of the claim.
5 However, the burden of proof of the claim resolution or
6 communication with the claimant is the responsibility of the
7 household goods carrier.

8 (2) After a thorough investigation of the facts, the
9 household goods carrier shall pay, decline to pay, or make a
10 firm settlement offer in writing to the claimant within 90
11 days after receipt of the claim by the household goods carrier
12 or its household goods agent. The settlement offer or denial
13 shall state, "A claimant has the right to seek mediation
14 through the Texas Department of Motor Vehicles (TxDMV)~~[TxDMV]~~
15 within 30 days (excluding Sundays and nationally recognized
16 holidays) after any portion of the claim is denied by the
17 carrier, the carrier makes a firm settlement offer that is not
18 acceptable to the claimant, or 90 days has elapsed since the
19 carrier received the claim and the claim has not been
20 resolved."

21 (3) A household goods carrier must provide a copy of
22 the shipping documents to the shipper's insurance company upon
23 request. The carrier may assess a reasonable fee for this
24 service.

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1 (c) Documenting loss or damage to household goods.

2 (1) Inspection. If a loss or damage claim is filed
3 and the household goods carrier wishes to inspect the items,
4 the carrier must complete any inspection as soon as possible,
5 but no later than 30 calendar days, after receipt of the
6 claim.

7 (2) Payment of shipping charges. Payment of shipping
8 charges and payment of claims shall be handled separately, and
9 one shall not be used to offset the other unless otherwise
10 agreed upon by both the household goods carrier and claimant.

11 (d) Claim records. A household goods carrier shall
12 maintain a record of every claim filed. Claim records shall be
13 retained for two years as required by §218.32 of this title
14 (relating to Motor Carrier Records). At a minimum, the
15 following information on each claim shall be maintained in a
16 systematic, orderly and easily retrievable manner:

17 (1) claim number (if assigned), date received, and
18 amount of money or the requested remedy;

19 (2) number (if assigned) and date of the moving
20 services contract;

21 (3) name of the claimant;

22 (4) date the carrier issued its claim acknowledgment
23 letter;

24 (5) date and total amount paid on the claim or date

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- 1 and reasons for disallowing the claim; and
- 2 (6) dates, time, and results of any mediation
- 3 coordinated by the department.



Board Policy Documents

[Governance Process](#) (10/13/11)

[Strategic Planning](#) (10/13/11)

[Board Vision](#) (4/7/16)

[Agency Boundaries](#) (9/13/12)

[KPIs](#) (9/12/14)

Texas Department of Motor Vehicles TxDMV Board Governance Policy

1. PURPOSE

The directives presented in this policy address board governance of the Texas Department of Motor Vehicles (TxDMV).

2. SCOPE

The directives presented in this policy apply to the TxDMV Board and TxDMV agency personnel who interact with the Board. The TxDMV Board Governance Policy shall be one that is comprehensive and pioneering in its scope.

3. POLICY

3.1. TxDMV Board Governing Style

The Board shall govern according to the following general principles: (a) a vision for the agency, (b) diversity in points of view, (c) strategic leadership, providing day-to-day detail as necessary to achieve the agency vision, (d) clear distinction of Board and Executive Director roles, (e) collective decision making, (f) react proactively rather than reactively and with a strategic approach. Accordingly:

- 3.1.1. The Board shall provide strategic leadership to TxDMV. In order to do this, the Board shall:
 - 3.1.1.1. Be proactive and visionary in its thinking.
 - 3.1.1.2. Encourage thoughtful deliberation, incorporating a diversity of viewpoints.
 - 3.1.1.3. Work together as colleagues, encouraging mutual support and good humor.
 - 3.1.1.4. Have the courage to lead and make difficult decisions.
 - 3.1.1.5. Listen to the customers and stakeholders needs and objectives.
 - 3.1.1.6. Anticipate the future, keeping informed of issues and trends that may affect the mission and organizational health of the TxDMV.
 - 3.1.1.7. Make decisions based on an understanding that is developed by appropriate and complete stakeholder participation in the process of identifying the needs of the motoring public, motor vehicle industries,

and best practices in accordance with the mission and vision of the agency.

- 3.1.1.8. Commit to excellence in governance, including periodic monitoring, assessing and improving its own performance.
- 3.1.2. The Board shall create the linkage between the Board and the operations of the agency, via the Executive Director when policy or a directive is in order.
- 3.1.3. The Board shall cultivate a sense of group responsibility, accepting responsibility for excellence in governance. The Board shall be the initiator of policy, not merely respond to staff initiatives. The Board shall not use the expertise of individual members to substitute for the judgment of the board, although the expertise of individual members may be used to enhance the understanding of the Board as a body.
- 3.1.4. The Board shall govern the agency through the careful establishment of policies reflecting the board's values and perspectives, always focusing on the goals to be achieved and not the day-to-day administrative functions.
- 3.1.5. Continual Board development shall include orientation of new Board members in the board's governance process and periodic board discussion of how to improve its governance process.
- 3.1.6. The Board members shall fulfill group obligations, encouraging member involvement.
- 3.1.7. The Board shall evaluate its processes and performances periodically and make improvements as necessary to achieve premier governance standards.
- 3.1.8. Members shall respect confidentiality as is appropriate to issues of a sensitive nature.

3.2. TxDMV Board Primary Functions/Characteristics

TxDMV Board Governance can be seen as evolving over time. The system must be flexible and evolutionary. The functions and characteristics of the TxDMV governance system are:

- 3.2.1. Outreach
 - 3.2.1.1. Monitoring emerging trends, needs, expectations, and problems from the motoring public and the motor vehicle industries.
 - 3.2.1.2. Soliciting input from a broad base of stakeholders.

3.2.2. Stewardship

- 3.2.2.1. Challenging the framework and vision of the agency.
- 3.2.2.2. Maintaining a forward looking perspective.
- 3.2.2.3. Ensuring the evolution, capacity and robustness of the agency so it remains flexible and nimble.

3.2.3. Oversight of Operational Structure and Operations

- 3.2.3.1. Accountability functions.
- 3.2.3.2. Fiduciary responsibility.
- 3.2.3.3. Checks and balances on operations from a policy perspective.
- 3.2.3.4. Protecting the integrity of the agency.

3.2.4. Ambassadorial and Legitimizing

- 3.2.4.1. Promotion of the organization to the external stakeholders, including the Texas Legislature, based on the vision of the agency.
- 3.2.4.2. Ensuring the interests of a broad network of stakeholders are represented.
- 3.2.4.3. Board members lend their positional, professional and personal credibility to the organization through their position on the board.

3.2.5. Self-reflection and Assessment

- 3.2.5.1. Regular reviews of the functions and effectiveness of the Board itself.
- 3.2.5.2. Assessing the level of trust within the Board and the effectiveness of the group processes.

3.3. Board Governance Investment

Because poor governance costs more than learning to govern well, the Board shall invest in its governance capacity. Accordingly:

- 3.3.1. Board skills, methods, and supports shall be sufficient to ensure governing with excellence.

- 3.3.1.1. Training and retraining shall be used liberally to orient new members, as well as maintain and increase existing member skills and understanding.
 - 3.3.1.2. Outside monitoring assistance shall be arranged so that the board can exercise confident control over agency performance. This includes, but is not limited to, financial audits.
 - 3.3.1.3. Outreach mechanisms shall be used as needed to ensure the Board's ability to listen to stakeholder viewpoints and values.
 - 3.3.1.4. Other activities as needed to ensure the Board's ability to fulfill its ethical and legal obligations and to represent and link to the motoring public and the various motor vehicle industries.
- 3.3.2. The Board shall establish its cost of governance and it will be integrated into strategic planning and the agency's annual budgeting process.

3.4. Practice Discipline and Assess Performance

The Board shall ensure the integrity of the board's process by practicing discipline in Board behavior and continuously working to improve its performance. Accordingly:

- 3.4.1. The assigned result is that the Board operates consistently with its own rules and those legitimately imposed on it from outside the organization.
 - 3.4.1.1. Meeting discussion content shall consist solely of issues that clearly belong to the Board to decide or to monitor according to policy, rule and law. Meeting discussion shall be focused on performance targets, performance boundaries, action on items of Board authority such as conduct of administrative hearings, proposal, discussion and approval of administrative rule-making and discussion and approval of all strategic planning and fiscal matters of the agency.
 - 3.4.1.2. Board discussion during meetings shall be limited to topics posted on the agenda.
 - 3.4.1.3. Adequate time shall be given for deliberation which shall be respectful, brief, and to the point.
- 3.4.2. The Board shall strengthen its governing capacity by periodically assessing its own performance with respect to its governance model. Possible areas of assessment include, but are not limited to, the following:
 - 3.4.2.1. Are we clear and in agreement about mission and purpose?

- 3.4.2.2. Are values shared?
- 3.4.2.3. Do we have a strong orientation for our new members?
- 3.4.2.4. What goals have we set and how well are we accomplishing them?
- 3.4.2.5. What can we do as a board to improve our performance in these areas?
- 3.4.2.6. Are we providing clear and relevant direction to the Executive Director, stakeholders and partners of the TxDMV?
- 3.4.3. The Board Chair shall periodically promote regular evaluation and feedback to the whole Board on the level of its effectiveness.

Texas Department of Motor Vehicles Strategic Planning Policy

1. PURPOSE

The directives presented in this policy address the annual Strategic Planning process at the Texas Department of Motor Vehicles (TxDMV).

2. SCOPE

The directives presented in this policy apply to the TxDMV Board and TxDMV agency personnel who interact with the Board. TxDMV Strategic Planning Policy attempts to develop, document and expand its policy that is comprehensive in its scope in regards to the strategic planning process of the Board and the Department beyond that of the state strategic planning process.

3. POLICY

3.1. TxDMV Board Strategic Planning

This policy describes the context for strategic planning at TxDMV and the way in which the strategic plan shall be developed and communicated.

- 3.1.1. The Board is responsible for the strategic direction of the organization, which includes the vision, mission, values, strategic goals, and strategic objectives.
- 3.1.2. TxDMV shall use a 5-year strategic planning cycle, which shall be reviewed and updated annually, or as needed.
- 3.1.3. The 5-year strategic plan shall be informed by but not confined by requirements and directions of state and other funding bodies.
- 3.1.4. In developing strategic directions, the Board shall seek input from stakeholders, the industries served, and the public.
- 3.1.5. The Board shall:
 - 3.1.5.1. Ensure that it reviews the identification of and communication with its stakeholders at least annually.
 - 3.1.5.2. Discuss with agency staff, representatives of the industries served, and the public before determining or substantially changing strategic directions.

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- 3.1.5.3. Ensure it receives continuous input about strategic directions and agency performance through periodic reporting processes.
 - 3.1.6. The Board is responsible for a 5-year strategic plan that shall identify the key priorities and objectives of the organization, including but not limited to:
 - 3.1.6.1. The creation of meaningful vision, mission, and values statements.
 - 3.1.6.2. The establishment of a Customer Value Proposition that clearly articulates essential customer expectations.
 - 3.1.6.3. A Strengths, Weaknesses, Opportunities and Threats (SWOT) Analysis, to be updated annually.
 - 3.1.6.4. An assessment of external factors or trends (i.e., customer needs, political factors, economic factors, industry trends, technology factors, uncertainties, etc.)
 - 3.1.6.5. Development of the specific goals and objectives the Department must achieve and a timeline for action.
 - 3.1.6.6. Identification of the key performance indicators to measure success and the initiatives that shall drive results.
 - 3.1.6.7. Engage staff at all levels of the organization, through the executive director, in the development of the strategic plan through surveys, interviews, focus groups, and regular communication.
 - 3.1.6.8. Ensure the strategic planning process produces the data necessary for LBB/GOBPP state required compliance while expanding and enhancing the strategic plan to support the needs of the TxDMV. The overall strategic plan shall be used as a tool for strategic management.
 - 3.1.7. The Board delegates to the Executive Director the responsibility for **implementing** the agency's strategic direction through the development of agency wide and divisional operational plans.
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Texas Department of Motor Vehicles TxDMV Goals and Objectives

1. PURPOSE

The information presented in this policy addresses the goals and key objectives of the Board of the Texas Department of Motor Vehicles (TxDMV) as they relate to the mission, vision, and values of the TxDMV.

2. SCOPE

The scope of this policy is to define the desired state the TxDMV Board is working to achieve. This policy is designed to be inspirational in outlining the desired state of the agency that supports the TxDMV Board vision and meeting agency goals.

3. TxDMV MISSION

To serve, protect and advance the citizens and industries in the state with quality motor vehicle related services.

4. TxDMV VISION

The Texas Department of Motor Vehicles sets the standard as the premier provider of customer service in the nation.

5. TxDMV VALUES

To earn the trust and faith of all citizens of Texas with transparency, efficiency, excellence, accountability, and putting stakeholders first.

- 5.1. **Transparency** – Being open and inclusive in all we do.
- 5.2. **Efficiency** – Being good stewards of state resources by providing products and services in the most cost-effective manner possible.
- 5.3. **Excellence** – Working diligently to achieve the highest standards.
- 5.4. **Accountability** – Accepting responsibility for all we do, collectively and as individuals.
- 5.5. **Stakeholders** – Putting customers and stakeholders first, always.

6. TxDMV GOALS

6.1. GOAL 1 – Performance Driven

The TxDMV shall be a performance driven agency in its operations whether it is in customer service, licensing, permitting, enforcement or rule-making. At all times the TxDMV shall mirror in its performance the expectations of its customers and stakeholder by effective, efficient, customer-focused, on-time, fair, predictable and thorough service or decisions.

6.1.1. Key Objective 1

The TxDMV shall be an agency that is retail-oriented in its approach. To accomplish this orientation TxDMV shall concentrate the focus of the agency on:

- 6.1.1.1. Delivering its products and services to all of its customers and stakeholders in a manner that recognizes that their needs come first. These needs must be positively and proactively met. TxDMV works for and with its customers and stakeholders, not the other way around.
- 6.1.1.2. Operating the agency's licensing and registration functions in a manner akin to how a private, for-profit business. As a private, for-profit business, TxDMV would have to listen to its customers and stakeholders and implement best practices to meet their needs or its services would no longer be profitable or necessary. Act and react in a manner that understands how to perform without a government safety net and going out of business.
- 6.1.1.3. Simplify the production and distribution processes and ease of doing business with the TxDMV. Adapting and maintaining a business value of continuous improvement is central to TxDMV operations and processes.
- 6.1.1.4. All operations of the TxDMV shall stand on their own merits operationally and financially. If a current process does not make sense then TxDMV shall work within legislative and legal constraints to redesign or discard it. If a current process does not make or save money for the state and/or its customers or stakeholders then TxDMV shall work within legislative and legal constraints to redesign or discard it. TxDMV shall operate as efficiently and effective as possible in terms of financial and personnel needs. Divisions should focus on cost savings without sacrificing performance. Division directors are accountable for meeting these needs and applicable measures. All division directors are collectively responsible for the performance of TxDMV as a whole.
- 6.1.1.5. Focus on revenue generation for transportation needs as well as the needs of its customers.
- 6.1.1.6. Decisions regarding the TxDMV divisions should be based on the overriding business need of each division to meet or provide a specific service demand, with the understanding and coordination of overarching agency-wide needs.

- 6.1.1.7. Developing and regularly updating a long-range Statewide Plan describing total system needs, establishing overarching statewide goals, and ensuring progress toward those goals.
- 6.1.1.8. The TxDMV shall establish a transparent, well-defined, and understandable system of project management within the TxDMV that integrates project milestones, forecasts, and priorities.
- 6.1.1.9. The TxDMV shall develop detailed work programs driven by milestones for major projects and other statewide goals for all TxDMV divisions.
- 6.1.1.10. The TxDMV, with input from stakeholders and policymakers, shall measure and report on progress in meeting goals and milestones for major projects and other statewide goals.

6.2. GOAL 2 – Optimized Services and Innovation

The TxDMV shall be an innovative, forward thinking agency that looks for ways to promote the economic well-being and development of the industries it serves as well as the State of Texas within the legislative boundaries that have been established for the agency.

6.2.1. Key Objective 1

The TxDMV shall achieve operational, cultural, structural and financial independence from other state agencies.

- 6.2.1.1. Build the TxDMV identity. This means that TxDMV shall make customers aware of what services we offer and how they can take advantage of those services.
- 6.2.1.2. Build the TxDMV brand. This means that TxDMV shall reach out to the stakeholders, industries we serve and the public, being proactive in addressing and anticipating their needs.
- 6.2.1.3. Determine immediate, future, and long term facility and capital needs. TxDMV needs its own stand-alone facility and IT system as soon as possible. In connection with these needs, TxDMV shall identify efficient and effective ways to pay for them without unduly burdening either the state, its customers or stakeholders.
- 6.2.1.4. All regulations, enforcement actions and decision at TxDMV shall be made in a timely, fair and predictable manner.

6.2.2. Key Objective 2

Provide continuous education training on business trends in the industry with a particular emphasis on activities in Texas.

6.2.3. Key Objective 3

Provide continuous outreach services to all customers and stakeholders to access their respective needs and wants. This includes helping frame legislative or regulatory issues for consideration by other bodies including the legislature.

6.2.4. Key Objective 4

Examine all fees to determine their individual worth and reasonableness of amount. No fee shall be charged that cannot be defended financially and operationally.

6.3. GOAL 3 – Customer-centric

The TxDMV shall be a customer-centric agency that delivers today's services and decisions in a positive, solution-seeking manner while ensuring continuous, consistent and meaningful public and stakeholder involvement in shaping the TxDMV of tomorrow.

6.3.1. Key Objective 1

The TxDMV shall seek to serve its customer base through a creative and retail oriented approach to support the needs of its industries and customers.

6.3.2. Key Objective 2

The TxDMV shall develop and implement a public involvement policy that guides and encourages meaningful public involvement efforts agency-wide.

6.3.3. Key Objective 3

The TxDMV shall develop standard procedures for documenting, tracking, and analyzing customer complaint data. Successful problem resolution metrics should be monitored to support continuous improvement activities that shall permanently improve customer facing processes.

6.3.4. Key Objective 4

The TxDMV shall provide a formal process for staff with similar responsibilities to share best practices information.

6.3.5. Key Objective 5

The TxDMV shall provide central coordination of the Department's outreach campaigns.

6.3.6. Key Objective 6

The TxDMV shall develop and expand user friendly, convenient, and efficient website applications.

6.3.7. Key Objective 7

TxDmv shall timely meet all legislative requests and mandates.

Agency Operational Boundaries as Defined by Department Policies of the TxDMV Board (Board)

The Board is responsible for the policy direction of the agency. The Board's official connection to the day-to-day operation of the Texas Department of Motor Vehicles (TxDMV) and the conduct of its business is through the Executive Director of the TxDMV (ED) who is appointed by the Board and serves at its pleasure. The authority and accountability for the day-to-day operations of the agency and all members of the staff, except those members who report directly to the Board, is the sole responsibility of the ED.

In accordance with its policy-making authority the Board has established the following policy boundaries for the agency. The intent of the boundaries is not to limit the ability of the ED and agency staff to manage the day-to-day operations of the agency. To the contrary, the intent of the boundaries is to more clearly define the roles and responsibilities of the Board and the ED so as to liberate the staff from any uncertainty as to limitations on their authority to act in the best interest of the agency. The ED and staff should have certainty that they can operate on a daily basis as they see fit without having to worry about prior Board consultation or subsequent Board reversal of their acts.

The ED and all agency employees shall act at all times in an exemplary manner consistent with the responsibilities and expectations vested in their positions. The ED and all agency employees shall act in a manner consistent with Board policies as well as with those practices, activities, decisions, and organizational circumstances that are legal, prudent, and ethical. It is the responsibility of the ED to ensure that all agency employees adhere to these boundaries.

Accordingly, the TxDMV boundaries are as follows:

1. The day-to-day operations of the agency should be conducted in a manner consistent with the vision, mission, values, strategic framework, and performance metrics as established by the Board. These elements must not be disregarded or jeopardized in any way.
2. A team-oriented approach must be followed on all enterprise-wide decisions to ensure openness and transparency both internally and externally.
3. The agency must guard against allowing any financial conditions and decision which risk adverse fiscal consequences, compromise Board financial priorities, or fail to

show an acceptable level of foresight as related to the needs and benefits of agency initiatives.

4. The agency must provide timely, accurate, and honest information that will afford the Board, public, stakeholders, executive branch and the legislature the best ability to evaluate all sides of an issue or opportunity before forming an opinion or taking action on it. Any information provided that is intentionally untimely, inaccurate, misleading or one-sided will not be tolerated.
5. The agency must take all reasonable care to avoid or identify in a timely manner all conflicts of interest or even the appearance of impropriety in awarding purchases, negotiating contracts or in hiring employees.
6. The agency must maintain adequate administrative policies and procedures that are understandable and aid in staff recruitment, development and retention.
7. The agency must maintain an organizational structure that develops and promotes the program areas from an enterprise-wide perspective. No organizational silos or sub-agencies will be allowed. We are the TxDMV.
8. The agency must empower its entire staff to deliver a positive customer experience to every TxDMV customer, stakeholder or vendor to reduce their effort and make it easier for them to do business with the TxDMV.
9. The agency must at all times look to flattening its organizational structure to reduce cost as technology advances allow.
10. Agency staff shall anticipate and resolve all issues timely.
11. The agency must maximize the deployment and utilization of all of its assets – people, processes and capital equipment – in order to fully succeed.
12. The agency must not waste the goodwill and respect of our customers, stakeholders, executive branch and legislature. All communication shall be proper, honest, and transparent with timely follow-up when appropriate.
13. The agency should focus its work efforts to create value, make sure that processes, programs, or projects are properly designed, budgeted and vetted as appropriate with outside stakeholders to ensure our assumptions are correct so positive value continues to be created by the actions of the TxDMV.
14. The ED through his or her staff is responsible for the ongoing monitoring of all program and fiscal authorities and providing information to the Board to keep it apprised of all program progress and fiscal activities. This self-assessment must result in a product that adequately describes the accomplishment of all program

goals, objectives and outcomes as well as proposals to correct any identified problems.

15. In advance of all policy decisions that the Board is expected to make, the ED will provide pertinent information and ensure board members understand issues/matters related to the pending policy decision. Additionally, the ED or designee will develop a process for planning activities to be performed leading up to that particular policy decision and the timeframe for conducting these planning activities. It is imperative that the planning process describes not only when Board consideration will be expected but also when prior Board consultation and involvement in each planning activity will occur.
16. In seeking clarification on informational items Board members may directly approach the ED or his or her designee to obtain information to supplement, upgrade or enhance their knowledge and improve the Board's decision-making. Any Board member requests that require substantive work should come to the Board or Committee Chairs for direction.
17. The agency must seek stakeholder input as appropriate on matters that might affect them prior to public presentation of same to the Board.
18. The agency must measure results, track progress, and report out timely and consistently.
19. The ED and staff shall have the courage to admit a mistake or failure.
20. The ED and staff shall celebrate successes!

The Board expects the ED to work with agency staff to develop their written interpretation of each of the boundaries. The ED will then present this written interpretation to the Board prior to discussion between the Board and ED on the interpretation. The Board reserves the right to accept, reject or modify any interpretation. The intent is that the Board and the ED will come to a mutually agreeable interpretation of agency boundaries that will then form the basis of additional written thought on the part of the ED and staff as to how these boundaries will influence the actions of the agency.

GOAL	STRATEGY	#	MEASURE	Baseline	Target	Actual	OWNER
Performance Driven	Effective and efficient services	1	Average processing time for new franchise license applications	45 days	35 days		MVD
		2	Average processing time for franchise renewals	11 days	5 days		MVD
		3	Average processing time of franchise license amendments	20 days	8 days		MVD
		4	Average processing time for new Dealer's General Distinguishing Number (GDN) license applications	35 days	17 days		MVD
		5	Average processing time for GDN renewals	14 days	7 days		MVD
		6	Average processing time for GDN license amendments	19 days	7 days		MVD
		7	Average turnaround time for single-trip routed permits	33.88 mins	32 mins		MCD
		8	Average turnaround time for intrastate authority application processing	1.47 days	1.4 days		MCD
		9	Average turnaround time for apportioned registration renewal applications processing	2 days	2 days		MCD
		10	Average turnaround time to issue salvage or non-repairable vehicle titles	5 days	4 days		VTR
		11	Average time to complete motor vehicle complaints with no contested case proceeding	131 days	120 days		ENF
		12	Average time to complete motor vehicle complaints with contested case proceeding	434 days	400 days		ENF
		13	Average time to complete salvage complaints with no contested case proceeding	131 days	120 days		ENF
		14	Average time to complete salvage complaints with contested case proceeding	434 days	400 days		ENF
		15	Average time to complete motor carrier complaints with no contested case proceeding	297 days	145 days		ENF
		16	Average time to complete motor carrier complaints with contested case proceeding	133 days	120 days		ENF
		17	Average time to complete household goods complaints with no contested case proceeding	432 days	145 days		ENF
		18	Average time to complete household goods complaints with contested case proceeding	371 days	180 days		ENF
		19	Average time to complete Oversize/Overweight (OS/OW) complaints with no contested case proceeding	40 days	35 days		ENF
		20	Average time to complete OS/OW complaints with contested case proceeding	265 days	250 days		ENF
		21	Percent of lemon law cases resolved prior to referral for hearing	76%	60%		ENF
		22	Average time to complete lemon law cases where no hearing is held	147 days	65 days		ENF
		23	Average time to complete lemon law cases where hearing is held	222 days	150 days		ENF
		24	Percent of total renewals and net cost of registration renewal: A. Online B. Mail C. In Person	A. 15% B. 5% C. 80%	A. 16% B. 5% C. 79%		VTR
		25	Total dealer title applications: A. Through Webdealer B. Tax Office	Baseline in development	A. 5% B. 95%		VTR

GOAL	STRATEGY	#	MEASURE	Baseline	Target	Actual	OWNER
Optimized Services and Innovation	Implement appropriate best practices	26	Percent of total lien titles issued: A. Electronic Lien Title B. Standard Lien Title	A. 16% B. 84%	A. 20% B. 80%		VTR
		27	Percent of total OS/OW permits: A. Online (self-issued) B. Online (MCD-issued) C. Phone D. Mail E. Fax	A. 57.47% B. 23.03% C. 11.33% D. 1.76% E. 6.4%	A. 58% or greater B. 25% or greater C. 10% or less D. 1.7% or less E. 5.3% or less		MCD
		28	Average time to complete lemon law and warranty performance cases after referral	Baseline in development	25 days		OAH
		29	Average time to issue a decision after closing the record of hearing	Baseline in development	30 days		OAH
	30	Percent of audit recommendations implemented	Baseline in development	90% annual goal for these recommendations which Internal Audit included in a follow-up audit		IAD	
	31	Percent of projects approved by the agency's governance team that finish within originally estimated time (annual)	57%	100%		EPMO	
	32	Percent of projects approved by the agency's governance team that finish within originally estimated budget (annual)	71%	100%		EPMO/ FAS	
	33	Percent of monitoring reports submitted to Texas Quality Assurance Team (TXQAT) by or before the due date	79%	100%		EPMO	
	34	Percent of project manager compliance with EPMO project management standards based upon internal quality assurance reviews	Baseline in development	100%		EPMO	
	35	Percent of employees due a performance evaluation during the month that were completed on time by division.	Baseline in development	100%		HR	
36	Percent of goals accomplished as stated in the directors performance evaluation	Baseline in development	Measure annually at the end of the fiscal year		EXEC		
37	Employees who rate job satisfaction as above average as scored by the Survey of Employee Engagement (SEE)	3.47 (SEE 2012)	3.65	3.60 (SEE 2013)		HR	
38	Increase in the overall SEE score	337 (SEE 2012)	360	351 (SEE 2013)		HR	
Focus on the internal customer	Focus on the internal customer	39	Percent of favorable responses from customer satisfaction surveys	Baseline in development	90%		EPMO
		40	Annual agency voluntary turnover rate	6.5% (FY 2013)	5.0%		HR
	Increase transparency with external customers	41	Number of education programs conducted and number of stakeholders/customers attending education programs	4.48/80.61	4/80		MCD
		42	Number of education programs conducted and number of stakeholders/customers attending education programs	36/335	42/390		VTR
		43	Number of eLearning training modules available online through the Learning Management System and number of modules completed by stakeholders/customers	eLearning Modules Available - 28 Completed - 735	Available - 31 Completed - 814		VTR

GOAL	STRATEGY	#	MEASURE	Baseline	Target	Actual	OWNER
Customer Center		44	Number of Shows and Exhibits attended to educate stakeholders/customers about TxDMV services and programs	6	7		MVD
		45	Number of education programs conducted and number of stakeholders/customers attending education programs	3/250	3/250		ENF
		46	Number of education programs conducted and number of stakeholders/customers attending education programs	3/150	4/300		ABTPA
		47	Percent of customers and stakeholders who express above average satisfaction with communications to and from TxDMV	Baseline in development	80%		All Divisions
	Excellent Service Delivery	48	Average hold time	9 min	9 min		CRD
		49	Abandoned call rate	22%	20%		CRD
		50	Average hold time	Baseline in development	1 min		ITS
		51	Abandoned call rate	Baseline in development	5%		ITS
		52	Average hold time	Credentialing - 1.6 minutes Permits - 2.08 minutes CFS - 54.38 seconds	Credentialing - 1.5 minutes Permits - 2 minutes CFS - 50 seconds		MCD
		53	Abandoned call rate	Credentialing - 7% Permits - 6.42% CFS - 5.63%	Credentialing - 6% Permits - 5% CFS - 5%		MCD
Key:		Critical	Off Target	On target	Not yet started		
Vision: The Texas Department of Motor Vehicles sets the standard as the premier provider of customer service in the nation.							
Mission: To serve, protect, and advance the citizens and industries in the state with quality motor vehicle related services.							
Philosophy: The Texas Department of Motor Vehicles is customer-focused and performance driven. We are dedicated to providing services in an efficient, effective and progressive manner as good stewards of state resources. With feedback from our customers, stakeholders and employees, we work to continuously improve our operations, increase customer satisfaction and provide a consumer friendly atmosphere.							
Values: We at the Texas Department of Motor Vehicles are committed to: TEXAS-Transparency, Efficiency, EXcellence, Accountability, and Stakeholders.							