

# Board Meeting Agenda Book

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Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

**January 5, 2017**

**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, JANUARY 5, 2017**  
**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. Presentations may be made by the identified staff or Board member or other staff as needed. The Board reserves the right to discuss any items in executive session where authorized by the Open Meetings Act.

**1. Roll Call and Establishment of Quorum**

**2. Chair's Reports** - Chairman Raymond Palacios

**3. Executive Director's Reports** - Whitney Brewster

A. FY 2017 Interagency Agreement between TxDOT and TxDMV Update

B. [85th Legislative Session Update](#)

C. [Awards, Recognition of Years of Service, and Announcements](#)

**4. Public Comment**

**BRIEFING AND ACTION ITEMS**

**5. Finance and Audit**

A. [Internal Audit Division Status Report](#) - Sandra Menjivar-Suddeath (BRIEFING ONLY)

- Audit Report on Oversize and Overweight Vehicles Permitting - Sandra Menjivar-Suddeath and Derrick Miller (BRIEFING ONLY)

B. [2016 End of the Year Reports](#) - Linda M. Flores and Sergio Rey (BRIEFING ONLY)

- Annual Financial Report
- Annual Report of Nonfinancial Data

C. [2017 Quarterly Financial Report](#) - Linda M. Flores and Renita Bankhead (BRIEFING ONLY)

D. [Relocation of the San Antonio Regional Service Center](#) - Linda M. Flores and Ann Pierce

E. [Renewal of the Commercial Property Lease for the El Paso Regional Service Center](#) - Linda M. Flores and Ann Pierce

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**6. Projects and Operations**

- 110 A. [Enterprise Projects Update](#) - Judy Sandberg (BRIEFING ONLY)
- 121 B. [Performance Quality Recognition Program Update](#) - Jeremiah Kuntz  
(BRIEFING ONLY)

- 205 7. **Specialty Plates Designs (New Vendor Plates)** - Jeremiah Kuntz
- A. Carbon Fiber
- B. University of Iowa
- C. Colorado School of Mines

**CONTESTED CASE**

- 209 8. **Franchised Dealer's Protest of Manufacturer's Notice of Termination** - Daniel Avitia and Michelle Lingo  
MVD Docket No. 15-0015.LIC; SOAH Docket No. 608-15-4315.LIC  
*Cecil Atkission Orange, LLC, d/b/a Cecil Atkission Chrysler Jeep Dodge, Complainant v. FCA US, LLC, Respondent*

**RULES - ADOPTIONS**

- 397 9. **Title 43, Texas Administrative Code, Chapter 215, Motor Vehicle Distribution** - David D. Duncan, Daniel Avitia, and Bill Harbeson
- Rule Review, Government Code, §2001.039 (Notice of Intent Published June 19, 2015 - 40 Tex. Reg. 4012)
  - Amendments and Repeals, Subchapters A-J (Proposal Published September 9, 2016 - 41 Tex. Reg. 7011)
  - New, §215.160, Duty to Identify Motor Vehicles Offered for Sale as Rebuilt (Proposal Published September 9, 2016 - 41 Tex. Reg. 7011)
- 444 10. **Title 43, Texas Administrative Code, Chapter 218, Motor Carriers** - Bill Harbeson and Jimmy Archer  
Amendments, §§218.2, 218.13, 218.31, 218.32, 218.52, 218.53, 218.56, 218.59, 218.60, and 218.61 (Proposal Published November 25, 2016 - 41 Tex. Reg. 9246)

**RULES - PROPOSALS**

- 505 11. **Title 43, Texas Administrative Code** - David D. Duncan
- Chapter 206, Management  
Amendments, §206.131
  - Chapter 221, Salvage Vehicle Dealers, Salvage Pool Operators and Salvage Vehicle Rebuilders  
Amendments, §§221.16; 221.53; and 221.73



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- 531 **12. Title 43, Texas Administrative Code, Chapter 218, Motor Carriers** - Jimmy Archer and Bill Harbeson  
Amendments, §§218.13, 218.17, 218.56, 218.57, 218.65, and 218.73  
Repeal, §218.74, Settlement Agreements  
New §218.75, Cost of Preparing Agency Record

**EXECUTIVE SESSION**

- 13. The Board may enter into closed session under one or more of the following provisions of the Texas Open Meetings Act, Government Code, Chapter 551:**
- **Section 551.071** - Consultation with and advice from legal counsel regarding:
    - pending or contemplated litigation, or a settlement offer;
    - 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
    - any item on this agenda.
  - **Section 551.074** - Personnel matters.
    - Discussion relating to the appointment, employment, evaluation, reassignment, duties, discipline, and dismissal of personnel.
  - **Section 551.076** - Security devices or security audits:
    - the deployment, or specific occasions for implementation, of security personnel or devices; or
    - a security audit.

**14. ACTION ITEMS FROM EXECUTIVE SESSION****15. 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.



Board of the Texas Department of Motor Vehicles

Agenda: January 5, 2017

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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.



DATE: January 5, 2017

Action Requested: BRIEFING

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**To:** Texas Department of Motor Vehicles Board (TxDMV)  
**From:** Whitney Brewster  
**Agenda Item:** 3.B.  
**Subject:** Executive Director's Reports - 85<sup>th</sup> Legislative Session Update

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**PURPOSE AND EXECUTIVE SUMMARY**

This briefing will cover a review of the recommendations finally adopted by Texas Department of Motor Vehicles (TxDMV) Board to the 85th Legislative Session. Staff recommended the Board adopt the proposed legislative agenda as developed by Texas Department of Motor Vehicles (TxDMV) staff with stakeholder input and involvement at their meeting on November 3, 2016. A summary of the recommendations finally adopted is attached for reference.

**FINANCIAL IMPACT**

None.

**BACKGROUND AND DISCUSSION**

The briefing includes the status of the draft language and discussions that have occurred with members of the legislature for potential filing. Key dates throughout the legislative session are included as well. The Government and Strategic Communications Division will be providing regular updates throughout the session on the status of the approved agenda items.





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# 85<sup>th</sup> Legislative Session Update

**Agenda Item 3.B.**

**January 5, 2017**



# 85<sup>th</sup> Legislative Session Update

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## I. TxDMV Board 85<sup>th</sup> Legislative Agenda

The Texas Department of Motor Vehicles (TxDMV) Board is charged with considering opportunities to improve the operations of the department and recommending statutory changes to the Texas Legislature under Texas Transportation Code, Section 1001.025. TxDMV's Government and Strategic Communications Division worked with all the department's divisions and offices to identify statutory changes the board could recommend. Those changes were also evaluated by stakeholders.

At the last meeting of the TxDMV Board on November 3, a set of legislative recommendations was preliminarily adopted. Upon further review with members of the board and receiving additional feedback from stakeholders, a final group of recommendations was approved and has been present to the Office of the Governor, Lt. Governor, and Speaker; as well as the chairs of the Senate and House Transportation Committees for further drafting through Texas Legislative Council and consideration for filing. Please find a summary of the adopted recommendations in the briefing materials provided.

One change not included in the materials presented November 3 is a recommendation for TxDMV to assume the Camp Hubbard facilities from TxDOT for headquarters staff. We have continued to work closely with TxDOT and the Office of the Governor on this effort, and we have briefed legislative leadership on this concept which has been very well received so far.

In addition, we removed two fee items which would have redirected certain fees from salvage dealer licensing and motor carrier credentialing services from General Revenue to the TxDMV Fund. While the department continues to provide these services, at this time the TxDMV Fund is estimated to cover our needs for the next biennium. However, these items may be considered for future recommendations.



Prior to sharing the draft language with elected officials, staff was able to consolidate many of the recommendations and developed draft language for ten bills. This language was shared with the legislative leadership offices I mentioned above, and the Government and Strategic Communications Division will provide regular updates throughout the session on the status of the approved agenda items.

## **II. 85<sup>th</sup> Legislature Begins**

The 85<sup>th</sup> Legislature begins next Tuesday, January 10<sup>th</sup> at noon. This kicks off the 140 day process for the regular session. We anticipate preliminary committee hearings will start in early February to hear updates from agencies; and bills will start being considered in committee later that month. Some key dates to remember include:

- Friday, Mar. 10, 2017: 60th Day, last day to file general bills
- Monday, May 29, 2017: 140th day, the last day of session
- Sunday, Jun. 18, 2017: 20th day following final adjournment, the last day the Governor can sign or veto bills
- Monday, Aug. 28, 2017: 91st day following final adjournment and the date in which bills without specific effective dates become law

Caroline Love, Director of the Government and Strategic Communications Division, will provide us with an update on progress at the next meeting of the TxDMV Board.





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# **TxDMV Board Agenda for 85<sup>th</sup> Legislative Session**

Government and Strategic Communications Division

November 2016



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# TxDMV Board 85<sup>th</sup> Legislature Agenda

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The Texas Department of Motor Vehicles (TxDMV) Board is charged with considering opportunities for improvements to operations with recommended changes to statute to the Texas Legislature under Texas Transportation Code, Section 1001.025. TxDMV's Government and Strategic Communications Division worked with staff to identify areas of statute for such recommendations, and further evaluated those recommendations with stakeholders<sup>1</sup> for consideration by the TxDMV Board. The board considered the agenda at its November 3, 2016 meeting and recently finalized the recommendations contained within this report.

The TxDMV Board adopted several recommendations that were also recommended by the board to the 84<sup>th</sup> Legislature. Two omnibus bills from the 84<sup>th</sup> Legislative Session, H.B. 2701 by Pickett and S.B. 1043 by Nichols, contained many of the items being recommended by the TxDMV Board to the 85<sup>th</sup> Legislature. There was no known opposition to the bills, but there was not sufficient momentum behind the measures to overcome legislative timing issues. Many of the items contained in this report are repeat recommendations from what was adopted by the board in 2014 and are noted as such.

## I. Registration Code Changes

- The department has the ability to register multiple vehicles for one entity through a fleet program, but participation in the program has been limited. To make the program, which is much more efficient for both the department and the customer, more appealing, a recommendation, also made last session, to change the "fleet fee" from an annual \$10 per vehicle fee to a one-time \$10 per vehicle set-up fee upon initial registration in the fleet program. It is recommended that the amended "fleet fee" and the fleet related license plate fees, which are administrative fees separate and apart from registration fees that are deposited to the credit of the state highway fund, be deposited to the TxDMV fund to cover the costs of administering this program.
- Streamlines the process for when a closed or potentially closed county tax assessor-collector office's transactions can be performed by a different county to allow for continuity of services for customers. A conforming change for this item is also in the Title Act grouping.
- Allow for printed receipts from online vehicle registration renewal transactions to serve as proof of registration for 30 days (to allow the actual sticker time to be received through the mail). It is anticipated that this change will help reduce lines at the end and beginning of every month at tax assessor-collector and deputy offices as customers will also be allowed to use their receipt as proof of registration before their sticker expires at the end of the month.
- There is a recommendation, also made last session, to remove the ability for an owner of multiple vehicles to align vehicle registration renewal dates.

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<sup>1</sup> The following stakeholder groups were involved: Texas Automobile Dealers Association, Texas Independent Automobile Dealers Association, Texas Trucking Association, Texas Recreational Vehicle Association, Tax Assessor Collectors Association, Texas Association of Counties, Texas Conference of Urban Counties, Alliance of Automobile Manufacturers, Texas Farm Bureau, Texas Automotive Recyclers Association and others in the salvage vehicle, towing, and vehicle storage industries, and multiple insurance and law enforcement entities.



- There are also changes resulting from an internal audit recommendation associated with when counties remit registration fees to the state. Language is recommended to align the statute to correspond with when fees are processed by the system currently and adjust the time frames accordingly.

## II. Permanent Token Trailer Registration

A recommendation that was also made to the 84<sup>th</sup> Legislature is to make the token trailer license plate permanent and accordingly change the fee from \$15 per year to a one-time \$105 fee. The license plate will be required to bear the word “Permanent” and will last until the token trailer is removed from service or sold. Based upon feedback from stakeholders and industry trends, this program should increase Texas’ competitiveness nationally as other states offer similar programs.

## III. Motor Carrier Registration & Enforcement Changes

H.B. 2701 and S.B. 1043 from the 84<sup>th</sup> Legislative Session contained the following changes, which will promote greater efficiency and safety of the motoring public in TxDMV operations as it relates to the motor carrier industry and regulation of the industry. In this section motor carrier registration refers to the credentialed or operating authority a carrier needs to legally operate in the state as a motor carrier.

- Chameleon carriers (i.e., a carrier who changes names or operates under various aliases to continue operations without remedying previous penalties or sanctions, often related to safety), continue to be an issue. The changes will give the department the ability to revoke or deny motor carrier registration of a carrier who is, or affiliates with, a chameleon carrier.
- A limit of 180 days is proposed for when a motor carrier registration can be renewed after it has expired without having to obtain a new registration.
- For household goods movers, the requirement to file all tariffs (i.e., what the mover charges a consumer) with the TxDMV rather than just the current requirement of only tariffs for moves between municipalities.
- Additional recommendations: clarify TxDMV does not issue United States Department of Transportation numbers for carriers and allowing revocation, suspension, or denial of a motor carrier registration as a possible penalty for violating the size and weight and permitting chapters.

## IV. Title Act Changes

- To both the 84<sup>th</sup> and the 85<sup>th</sup> Legislature, the TxDMV Board recommended changing statute to allow the “Certified Copy of Original Title” (CCO) to serve as the only valid proof of ownership. Texas is one of the only states allowing multiple CCOs to all be evidence of ownership simultaneously, which can lead to confusion and fraud for motorists and lending institutions. Unlike the language included in last session’s legislation, there is no recommended change to the current CCO fee structure.
- Other initiatives from last session, which did not become law but are included in the 85<sup>th</sup> Legislative Agenda, include: changing the definition of “travel trailer” and “house trailer” from 40 feet in length to 45 feet in length to conform to the reality of such vehicles being sold and operated; only requiring each seller’s legal name, state and city to be on the title rather than the legal address due to system programming and space limits on titles; clarifying the exemption from mandatory titling for certain farm trailer/semitrailers with weight limited to



34,000 lbs. to conform to current practice (result of a legislatively mandated study on trailer titling); and allowing for permissive titling of farm trailers below 34,000 lbs. and semitrailers below 4,000 lbs. but requiring that once a trailer/semitrailer is permissively titled, all subsequent purchasers of that vehicle must title it.

- New recommendations include changing statute to reference and conform to the appropriate Code of Federal Regulations regarding odometer disclosure statement requirements. Providing this reference will assist with recent and ongoing changes to these requirements at the federal level.
- Another recommendation aligns Vehicle Identification Number (VIN) assignments and inspections with current practice and will allow for the expansion of the number of people authorized to perform VIN inspections to decrease fraud, streamline processes and improve the customer experience.
- Language is recommended to clean up the salvage titling statutes and to ensure accurate information is captured on such vehicles for purposes of reporting to the National Motor Vehicle Title Information System (NMVTIS). NMVTIS is a federal database that houses vehicle history information and contains information reported by states, insurance companies and the salvage industry.

## V. Lemon Law

Current statute requires three “tests” that serve as rebuttable presumptions to prove an owner has made a reasonable number of attempts to repair a vehicle before it can be eligible for a claim under the Texas “Lemon Law.” Each test currently requires that all repair attempts must take place within the first 24 months/24,000 miles after initial delivery, but a certain number of the attempts must occur in the first 12 months/12,000 miles after the vehicle is delivered; and other repair attempts occur within the next 12 months/12,000 miles following the last repair attempt. This can be confusing for vehicle owners and others involved in the “Lemon Law” process. To simplify the presumption “tests”, the proposal requires all repair requirements be met within the first 24 months/24,000 miles after original delivery of the vehicle without regard for when in the 24 months/24,000 miles the attempts occur. This new language also reflects practices adopted in other states.

During the 83rd Legislative Session, Lemon Law and warranty performance contested cases were moved from the State Office of Administrative Hearings jurisdiction and placed with TxDMV, in what is now the Office of Administrative Hearings. However, several of the same sections of code relating to Lemon Law and hearings were amended by two different bills passed by the 83<sup>rd</sup> Legislature in slightly different ways. There is a recommendation to make it clear which wording of the two versions prevails and includes a few clean-up items to clarify procedures and responsibilities in Lemon Law cases. This effort was contained in recommendations by the TxDMV Board for consideration by the 84<sup>th</sup> Legislature, but did not become law.

## VI. Seized Disabled Parking Placard Process

Language is recommended to clarify TxDMV’s role when disabled parking placards are seized by law enforcement. The current process requires that staff send letters to those whose placards have been seized and for those letters to be returned before the person can receive a replacement placard at their local tax assess-collector’s office. The recommendation will be that instead of sending letters, the person will reapply for a placard at the tax assessor-collector’s office since they will need to go to that office regardless to gain a replacement placard.



## VII. Vehicle Size & Weight Administrative Changes

- It is again recommended that the person (including a business entity and others as defined in statute) named on an oversize/overweight permit issued by TxDMV be the one who actually moves the load.
- It is also recommended that a shipper must provide a certificate of weight if the person transporting the load requests one; and the certificate must be provided to the TxDMV by the person transporting a load in cases where the combined weight is greater than 200,000 lbs.
- Loading in excess of size limits is again recommend to be added to the existing ability to sanction for loading excessive weight.
- Currently the revenues retained by the TxDMV from oversize/overweight (OS/OW) permits varies by permit type. To help streamline the process and provide revenues to cover the costs associated with the operation of the program, a new recommendation is that 10% of each OS/OW permit fee be deposited to the TxDMV fund. This provision would apply only to those OS/OW permits established by the 85<sup>th</sup> Legislature or after or if the Legislature designates otherwise.
- In addition, a new recommendation is to allow the department to deny an OS/OW permit if the carrier is currently placed “out-of-service” for safety reasons by the Federal Motor Carrier Safety Administration.

## VIII. Size & Weight Vehicle Specific Changes

There are new recommendations to conform Texas statutes with federal laws after passage of the recent Fixing America’s Surface Transportation (FAST) Act. These include: increasing the weight allowance for idle reduction technology; clarifying that the Annual Overlength permit authorized last session is only for loads that cannot reasonable be dismantled; clarifying the weight of emergency vehicles; cleaning up definitions for automobile transporter lengths and backhaul standards; and defining trailer transporter towing units. In addition, a recommendation is included to further clarify OS/OW permits can be issued for both equipment and commodities.

## IX. Notification to Demolish Vehicle Process Changes

There is also new language to clarify the fee for a certificate of authority to dispose of a vehicle to a demolisher is \$10, which also removes a redundant requirement that the department must send notice to an applicant who has been identified as the owner of a vehicle. This recommendation is based upon feedback from the industry and stakeholders.

## X. TxDMV Own/Control Real Property

The department has been working closely with the Office of the Governor and the Texas Department of Transportation (TxDOT) to identify a solution for housing TxDMV headquarters operations. Language is recommended allowing TxDMV to accept property from TxDOT, and for TxDMV to maintain, improve and have control over such property. The transfer from TxDOT would apply only to the Camp Hubbard location in Austin, where TxDMV headquarters is currently housed.



DATE: January 5, 2017

Action Requested: BRIEFING

To: Texas Department of Motor Vehicles Board (TxDMV)  
From: Whitney Brewster, Executive Director  
Agenda Item: *3.C. - Awards, Recognition of Years of Service, and Announcements*  
Subject: Executive Director's Reports – Recognition of Years of Service

## **RECOMMENDATION**

Board Chair and Members offer congratulations to employees reaching a state service milestone.

## **PURPOSE AND EXECUTIVE SUMMARY**

Beginning November 3, 2016, the Executive Director will announce the name of individuals who retired from the agency and will recognize employees who have reached a state service milestone of 20 years and every five-year increment thereafter. Recognition at the January 5, 2017 Board meeting for retirements and state service awards include:

Employees reaching a state service milestone of 20 years are Maria Dassing in the Consumer Relations Division, David Duncan – General Counsel, Michelle Lingo in the Motor Vehicle Division and Tommy Rodriguez in the Enforcement Division.

Employees reaching a state service milestone of 25 years are Bradley (Brad) Beaty in Finance and Administrative Services Division, Yolanda Garcia in the Motor Carrier Division, and Monica Hernandez in Finance and Administrative Services Division,.

Charles Bennett in the Enforcement Division reached 30 years of state service.

Finally, the following individuals recently retired from the agency are Nancy Naysmith and Esther Acosta.



DATE: January 5, 2017

Action Requested: BRIEFING

To: Texas Department of Motor Vehicles Board (TxDMV)  
From: Sandra Menjivar-Suddeath, Director, Internal Audit  
Agenda Item: 5. A.  
Subject: Internal Audit Division Status

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**RECOMMENDATION**

None.

**PURPOSE AND EXECUTIVE SUMMARY**

The status update provides information on the Internal Audit Division (IAD) activities that it has partaken in or is partaking in since the last TxDMV Board meeting. This status update includes information on audit engagements and external coordination and reviews.

**FINANCIAL IMPACT**

None.

**BACKGROUND AND DISCUSSION**

The IAD has three internal projects it will be providing a status update on: Registration and Title System (RTS) Refactoring and Single Sticker Post-Implementation Review Audit, Management Request – Advisory Service, and the Oversize/Overweight Permitting Audit. The IAD is finishing fieldwork on the Registration and Title System (RTS) Refactoring and Single Sticker Post-Implementation Review Audit and is beginning an advisory service for the Information Technology Services (ITS) Division. The IAD team will be conducting an organizational review of the Application Service Section within the ITS Division. The IAD also completed the Oversize/Overweight Permitting Audit, which had no findings and had an overall rating of 5.

In addition, the IAD has participated and conducted work with external entities. The IAD submitted the State Auditor's Office (SAO) Fraud Hotline Coordination report to the SAO. The report provides the disposition of complaints received from the SAO Hotline and provides an update on any current internal investigations. The IAD has also been facilitating the SAO audit on the agency's complaint process. The SAO will begin fieldwork in mid-January.





## Internal Audit Division (IAD) January Status Update TxDMV Board Meeting

### Status of the Fiscal Year 2017 Internal Audit Plan

Current Internal Audit Division Projects			
Project	Description	Current Status	Expected Report Release/Presentation Date
Registration and Title System (RTS) Refactoring and Single Sticker Post-Implementation Review Audit	Audit on the data reliability of Refactored RTS – Cognos reports	Finalizing Fieldwork	The audit is currently finalizing fieldwork and beginning the reporting phase. The report will be presented to management for review in February.
Management/Board Request - IT Organizational Review Advisory Service	Advisory Service for the Information Technology Service (ITS). The IAD team will be conducting an organizational review of one section in ITS.	Planning	The advisory service agreement was signed in December 2016. The expected release of the report will be in March/April 2017.
Oversize/Overweight Permitting Audit	Audit of the agency's processes to issue OS/OW permits	Completed	See attachment.

### State Auditor's Office (SAO) Fraud Hotline Coordination

TxDmv provided the SAO with the SAO Fraud Hotline Coordination Letter. The letter included the official agency response to 14 referrals and provided information on five internal referrals.

### External Audits

1. The SAO will begin fieldwork on the agency's complaint process in mid-January. The scope of the audit is complaints that Enforcement investigates and will look at complaints received from September 1, 2015 to November 30, 2016.

### Attachments

1. An Audit of the Oversize/Overweight Permitting





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**An Audit of Oversize/Overweight Permitting  
16-05**

**Internal Audit Division  
November 2016**



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## An Audit of Oversize/Overweight Permitting, 16-05

### EXECUTIVE SUMMARY

#### WHY AND WHAT WAS REVIEWED

Motor carriers and the traveling public rely on the Texas Department of Motor Vehicles (TxDMV), specifically the Motor Carrier Division (MCD), to issue timely and accurate permits and routes for vehicles and loads that exceed Texas legal size or weight limits (Oversize/Overweight). Timely and accurate permit and route information are crucial to both the motor carriers and the traveling public as Oversize/Overweight loads can present a safety risk to highway and bridge infrastructure. It is estimated that Oversize/Overweight loads that did not obtain appropriate permits or did not follow the permitted routes caused \$9.7 million in infrastructure damage in Texas during a three year period (2010 - 2013).

With Texas issuing more than 800,000 Oversize/Overweight permits in FY2015, it is important that accurate and timely permits and routes are issued.

The audit objective was to 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.

#### WHAT WE RECOMMENDED

No recommendations were included in this report.

#### WHAT WE DETERMINED

The MCD has processes for issuing Oversize/Overweight permits that are working as intended to provide timely and accurate route restriction updates to the motor carriers and the traveling public. Route restrictions are entered within hours of the restriction request being submitted.

The MCD successfully implemented multiple controls in its Permit Restriction Application process to ensure public safety. These controls included:

- Placing legal restrictions on affected road segments and reviewing restriction parameters prior to allowing vehicles with potential size or weight issues from traveling the restricted road segments.
- Ensuring sufficient bridge and road clearance on any routes issued to Oversize/Overweight loads.
- Ensuring new restriction and restriction updates are processed prior to restriction cancellations, thereby avoiding unnecessary risk to the traveling public and the motor carriers.
- Having multiple staff enter, review, and verify restriction requests, including validating the information into the system used for permit issuance and verify the processed restrictions match the original requests.
- Providing Texas Department of Transportation (TxDOT) district offices with a daily copy of restrictions added or updated within the last 24 hours.
- Notifying Oversize/Overweight permit holders of updated restrictions in a timely manner.

No findings were issued in this audit report.

#### MANAGEMENT RESPONSE

MCD Management agrees with Internal Audit Division's assessment of MCD's processes for issuing Oversize/Overweight permits, in general, and MCD's Restriction Application processes, in particular. MCD Management appreciates the work and insight of the Internal Audit staff throughout the audit process and looks forward to working with the Internal Audit Division in the future.



## Overall Conclusion

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### Maturity Assessment Rating

**5: Refined Process Level** – The process was found to be standardized, documented, communicated, and followed as a result of continuous improvement and the use of technology. Information technology is used in an integrated way to automate workflow and to improve quality and effectiveness.

### Strengths

The Motor Carrier Division (MCD) has processes for issuing permits to vehicles and loads that exceed Texas legal size or weight limits (Oversize/Overweight). These processes are working as intended to support the safety of the traveling public and to validate, update, and communicate route restrictions on a timely basis. The Internal Audit Division (IAD) reviewed the Permit Restriction Application process, where roadway restrictions are approved and entered into the Texas Permitting and Routing Optimization System (TxPROS). In this review, the IAD identified multiple controls used to ensure public safety and provide timely information to motor carriers and the traveling public:

- Restrictions on affected road segments are entered into the TxPROS on the same day or next business day the restrictions are received. Restrictions from the Texas Department of Transportation (TxDOT) include new restrictions, restriction updates, and restriction cancellations. New restrictions and restriction updates are entered first to ensure road safety, but all restriction are entered. On average, the restrictions were entered into the TxPROS within 5 hours from receiving the restriction application.
- When the restrictions are entered, the MCD staff review the restriction parameters (weight, height, or width) prior to allowing vehicles with potential size or weight issues from traveling in those new restriction segments. Staff also adds a buffer zone to the parameters to ensure the safety of the traveling public.
- Once those restrictions are entered, existing Oversize/Overweight permit holders that are impacted by the restrictions are notified through an automated process. The automated process generates a report for existing permit holders whose loads are in violation of newly entered restriction dimensions. The MCD then notifies the Oversize/Overweight permit holder using the contact information on record with the MCD. The notification is sent through e-mail. 11 of 11 (100%) Oversize/Overweight permit holders tested were notified of restriction changes on the same day the restrictions were entered.
- To verify all restrictions received were appropriately entered, the MCD staff provide TxDOT district offices with a daily copy of restrictions added or updated. The list is automatically generated. In addition, the master list of currently active restrictions is publicly available on the TxDMV's website.

These successful outcomes are a result of the MCD's use of a multi-staff entry and review process in which separate persons receive and confirm Restriction Applications and requested dimensions, enter restrictions into the TxPROS, and verify the processed restrictions match the original requests.



## Improvements

The IAD does not have any recommendations for improvement as part of this report.

## Executive Director Response

Thank you for the opportunity to respond to the Audit of Oversize/Overweight Permitting performed by the Internal Audit Division (IAD). The function of permitting and routing motor carriers is critical to the safety of the motor carrier community and the motoring public as well as to the protection of the state highway infrastructure. I am pleased that the IAD review found that the Texas Department of Motor Vehicles' Motor Carrier Division validates, updates and communicates route restrictions in a timely and accurate manner. I commend the IAD for auditing such an important agency function with professionalism and thoroughness.



## Background

---

The TxDMV, specifically the MCD, is responsible for regulating Oversize/Overweight loads. In fiscal year 2015, the MCD issued more than 800,000 Oversize/Overweight permits. The MCD uses the TxPROS, an online permitting & mapping system, to allow customers to apply for and self-issue many permits and obtain safe routing options for each trip. Routes provided to permit applicants are based on load type, load size and weight, and road conditions. Road conditions and restrictions requests due to conditions are provided by TxDOT district offices and updated by four MCD Geographic Information Specialists.

Restriction requests are received with an accompanying MCD Restriction Application form. The Restriction Application form includes information identifying the originating TxDOT district, road segment affected, allowable dimensions, start and end dates, reason for restriction, and any additional clarifying comments as needed. Restrictions request are usually received in advance of when the restriction will occur. The application forms and related email communication chains are maintained in MCD email archives.

This audit was included in the Fiscal Year 2017 Audit Plan. We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards and in conformance with the International Standards for the Professional Practice of Internal Auditing. 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.

The audit was performed by Stephen Schultz (Special Projects Coordinator), Derrick Miller (Senior Auditor), and Sandra Menjivar-Suddeath (Internal Audit Director).

In accordance with the Texas Internal Auditing Act (Texas Government Code, Chapter 2102) this report is distributed to the Board of the Texas Department of Motor Vehicles, Governor's Office of Budget, Planning, and Policy, Legislative Budget Board, State Auditor's Office, and the Sunset Advisory Commission.



## Appendix 1: Objectives, Scope, Methodology, Maturity Assessment

---

### Objectives

The objective of the audit was to 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.

### Scope and Methodology

The scope of this project included Oversize/Overweight permit issuance processes used by the MCD and the permit transactions completed between February 2, 2016 and July 6, 2016. A sample of permit transactions were selected to test for how timely the restrictions were entered into the TxPROS system and how timely the permit holders were notified of the new restrictions.

Information and documents that we reviewed included the following:

- *2016 Motor Carrier Division Operational Plan*
- *Texas Permitting and Routing Optimization System Narrative on Development and Performance*
- *Texas Administrative Code, Title 43, Part 10, Chapter 219, Subchapter B, Rule §219.11 General Oversize/Overweight Permit Requirements and Procedures*
- *Motor Carrier Division Fiscal Year 2017 Legislative Change Requests*
- *Interagency Contract for Fiscal Year 2015 between Texas Department of Motor Vehicles and Texas Department of Transportation*
- *Restriction Entries and audit logs in the TxPROS Restriction Manager module between February 1, 2016 and July 6, 2016.*
- *Motor Carrier Division Restriction Application archives*
- *Motor Carrier Division daily restriction worklist archives*
- *Motor Carrier Division historical restriction violator reports*
- *Motor Carrier Division email archives*
- *Interviews with Motor Carrier Division director, managers, and staff*
- *Observation of restriction application receipt, entry, and review*

### Maturity Assessment Rating Definition

The maturity assessment rating and information were derived from the Control Objectives of Information and Related Technologies (COBIT) 5 IT Governance Framework and Maturity Model and the Enterprise Risk Management (ERM) Maturity Model. The model was adapted for the TxDMV assurance audit purposes and does not provide a guarantee against reporting misstatement and reliability, non-compliance, or operational impacts. Below are the definitions for each rating level.

0 - A rating level of 0, also known as a non-existent process level, is defined as no process has been defined or used.

1 - A rating level of 1, also known as an initial and ad-hoc process level, is defined as a standardized process has not been developed and an ad hoc approach is being used when issues arise.



- 2 - A rating level of a 2, also known as repeatable but intuitive process level, is defined as having developed a process where similar procedures are followed by several employees, but the results may not be consistent. The process is not documented and has not been sufficiently evaluated to address risks.
- 3 - A rating level of a 3, also known as a defined process level, is defined as having a standardized, documented, communicated, and followed process. The process, however, may not detect any deviation due to the process not being sufficiently evaluated to address risks.
- 4 - A rating level of a 4, also known as a managed and measurable process level, is defined as having a standardized, documented, communicated, and followed process. Management monitors and measures compliance with process. Process is under constant improvement and provides good practice. The use of information technology would help automate workflow and improve quality and effectiveness.
- 5 - A rating level of a 5, also known as refined level, is defined as having a good process (e.g., standardized, documented, communicated, and followed process) as a result of continuous improvement and the use of technology. Information technology is used in an integrated way to automate workflow and to improve quality and effectiveness.



DATE: January 5, 2017

Action Requested: BRIEFING

To: Texas Department of Motor Vehicles Board (TxDMV)  
From: Linda M. Flores, Chief Financial Officer  
Agenda Item: [5. B. 2016 End of Year Reports](#)  
Subject: Annual Financial Report for year ended August 31, 2016

### RECOMMENDATION

This is a briefing of the Annual Financial Report. No action required.

### PURPOSE AND EXECUTIVE SUMMARY

The Annual Financial Report is prepared in compliance with Texas Government Code Ann. Section 2101.011 and in accordance with the reporting requirements established by the Comptroller's Office. The report is not audited but will be considered for audit by the State Auditor's Office as part of the State of Texas Comprehensive Annual Financial Report. The annual report was submitted to the Texas Comptroller by November 20, 2016, in compliance with the established deadline.

### FINANCIAL IMPACT

In Fiscal Year 2016, the TxDMV's method of finance (funding source) was supported by the General Revenue Fund (Fund 0001) making significant impacts in the agency's reporting.

### BACKGROUND AND DISCUSSION

#### *Exhibit I – Combined Balance Sheet (Statement of Net Assets)*

The TxDMV closes FY 2016 with an increase of approximately \$20 million from last year's total net asset balance.

- Cash in State Treasury consist of suspense and shared cash, i.e. trust funds, for the license plates. Suspense cash will be moved out as a due to other funds. FY16 had an increase in license plate revenue in the trust fund.
- Legislative Appropriations represents the unspent appropriations in General Revenue (Fund 0001.) This includes any benefits appropriations. In years past, only ABTPA was funded by General Revenue. In 2016, the TxDMV was funded 100% with General Revenue, which also included additional increases for legislative salary increases and related benefit appropriations.
- Accounts Receivable represents the amounts due from Tax Assessor Collectors and Regional Offices less collections.
- In Capital Assets, the non-current asset had a net decrease as a result of the increases in the amortization from last fiscal year purchases of computer software.
- Accounts Payable has a significant increase due to large accruals of September transactions associated with Fiscal Year 2016, and continued review and inclusion of accruable expenditures stemming from process changes to the lapse process.

#### *Exhibit II – Combined Statement of Revenues, Expenditures, and Changes in Fund Balances*

##### Revenues

In the State's income statement exhibit, the TxDMV revenue collections were impacted by increases in General Revenue.

- Legislative Appropriations: Original and Additional Appropriations (salary benefits, i.e. OASI, Retirement, Insurance, and Benefit Replacement Plan) increased since our operations were funded by General Revenue (Fund 0001) in FY 2016.



- Licenses, Fees and Permits reflect only the revenue collected and reportable by the TxDMV. Fees collected as General Revenue Fund 0001 are reported in the Comptroller's Annual Financial Report. In 2016, revenue increased 1.58% compared to FY2015 because of natural growth.

#### Expenditures

Expenditures increased overall during FY2016 primarily due to expenditures associated with automation related projects.

- Professional Fees and Services reflect the significant increase in information technology and data processing services associated with major components of the Registration & Titling System and eLicensing projects were paid in FY2016.
- Materials & Supplies reflect a decrease in expenditures in computer and telecommunication equipment purchases and postage, which were deferred to the new fiscal year.
- Repairs & Maintenance reflect an increase from last year due to increases in computer software maintenance.
- Other Operating Expenditures show an increase in license plate purchases. The agency received \$2.5 million in additional appropriations in FY 2016 for license plate production.
- Printing & Reproduction reflects a decrease as a result of lower costs in vendor contracts and no advertising campaign similar to the Single Sticker campaign in FY2015.
- State Grant Pass-Through Expenditures reflect a decrease in the following grant activity: the DPS Border Auto Theft Information Center (BATIC), DPS Stolen Vehicle Detection Training Seminars, and TDCJ FUGINET (a parolee/parolee violator data network).

#### *Exhibit VI – Combined Statement of Net Assets*

This exhibit reflects the August 31 cash balances in funds that are fiduciary in nature (i.e., non-operating activities such as child support, suspense fund, the Unified Carrier Registration Fund 0645, the International Registration Plan Fund 0021, City/County/MTA/SPD fund) to the TxDMV. These are detailed in Exhibit J-1.





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

## Annual Financial Report

**Fiscal Year Ended  
August 31, 2016**





# **Annual Financial Report**

## **Fiscal Year Ended August 31, 2016**



**Texas Department of Motor Vehicles**

Prepared by the  
Finance & Administrative Services Division

November 20, 2016



## **Texas Department of Motor Vehicles Board**

Raymond Palacios, Jr., Chair

Blake Ingram, Vice-Chair

Luanne Caraway

Guillermo "Memo" Treviño

Brett Graham

John Walker, III

Robert Barnwell, III

Gary Painter

Kate Hardy

Whitney H. Brewster

Executive Director

Published and distributed  
by the  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, Texas



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November 20, 2016

Honorable Greg Abbott, Governor  
Honorable Glenn Hegar, Texas Comptroller  
Ms. Ursula Parks, Director, Legislative Budget Board  
Ms. Lisa R. Collier, CPA, CFE, CIDA First Assistant State Auditor

Ladies and Gentlemen:

Attached is the Texas Department of Motor Vehicle's annual financial report for the year ended August 31, 2016, in compliance with Texas Government Code Annotated, Section 2101.011, and in accordance with the requirements established by the Texas Comptroller of Public Accounts.

Due to the statewide requirements embedded in Governmental Accounting Standards Board (GASB) Statement No. 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments*, the Comptroller of Public Accounts does not require the accompanying annual financial report to comply with all the requirements in this statement. The financial report will be considered for audit by the state auditor as part of the audit of the State of Texas *Comprehensive Annual Financial Report* (CAFR); therefore, an opinion has not been expressed on the financial statements and related information contained in this report.

If you have any questions, please contact Mr. Sergio Rey, Director of Accounting, at (512) 465-4203, or Ms. Linda M. Flores, CPA, Chief Financial Officer, at (512) 465-4125.

Sincerely,

Whitney H. Brewster  
Executive Director



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## **COMBINED FINANCIAL STATEMENTS**



-UNAUDITED-

**EXHIBIT I**  
**COMBINED BALANCE SHEET**  
**Statement of Net Assets - Governmental Funds**  
**August 31, 2016**

	Governmental Fund Types					
	General Revenue (0001) (EXH A-1)	Special Revenue State Highway Fund (0006)	Total Governmental	Capital Asset Adjustments	Long Term Liabilities Adjustments	Statement of Net Assets
<b>Assets</b>						
<b>Current Assets:</b>						
Cash on Hand	\$ 15,725.00	\$	\$ 15,725.00	\$	\$	\$ 15,725.00
Cash in Bank	20,000.00		20,000.00			20,000.00
Cash in State Treasury	3,853,144.40		3,853,144.40			3,853,144.40
Legislative Appropriations	64,482,999.55		64,482,999.55			64,482,999.55
Receivables:						
Federal	0.00		0.00			0.00
Accounts Receivable	5,831,961.52	113,480,985.70	119,312,947.22			119,312,947.22
Due From Other Funds (Note 12)	0.00	300,283.38	300,283.38			300,283.38
Due From Other Agencies (Note 12)	19,265.03	0.00	19,265.03			19,265.03
Consumable Inventories	59,066.42		59,066.42			59,066.42
<b>Total Current Assets</b>	<u>74,282,161.92</u>	<u>113,781,269.08</u>	<u>188,063,431.00</u>			<u>188,063,431.00</u>
<b>Non - Current Assets:</b>						
Capital Assets:						
Non - Depreciable						
Land and Land Improvements						
Depreciable						
Buildings and Building Improvements						
Less - Accumulated Depreciation						
Furniture and Equipment				4,380,134.65		4,380,134.65
Less - Accumulated Depreciation				(2,707,907.25)		(2,707,907.25)
Vehicles, Boats, & Aircraft				887,375.54		887,375.54
Less - Accumulated Depreciation				(811,969.62)		(811,969.62)
Intangibles Computer Software				3,768,722.91		3,768,722.91
Less - Accumulated Amortization				(1,913,347.67)		(1,913,347.67)
<b>Total Non Current Assets</b>				<u>3,603,008.56</u>		<u>3,603,008.56</u>
<b>Total Assets</b>	<u>\$ 74,282,161.92</u>	<u>\$ 113,781,269.08</u>	<u>\$ 188,063,431.00</u>	<u>\$ 3,603,008.56</u>	<u>\$</u>	<u>\$ 191,666,439.56</u>

The accompanying notes to the financial statements are an integral part of this exhibit.



	Governmental Fund Types					
	General Revenue (0001) (EXH A-1)	Special Revenue State Highway Fund (0006)	Total Governmental	Capital Asset Adjustments	Long Term Liabilities Adjustments	Statement of Net Assets
<b>Liabilities</b>						
Current Liabilities:						
Payables:						
Vouchers Payable	\$ 1,421,268.15	\$ 229,783.19	\$ 1,651,051.34	\$	\$	\$ 1,651,051.34
Accounts Payable	15,321,293.35	1,868,706.14	17,189,999.49			17,189,999.49
Payroll Payable	4,788,769.53	357.24	4,789,126.77			4,789,126.77
Due to Other Funds (Note 12)	300,283.38		300,283.38			300,283.38
Due to Other Agencies (Note 12)	3,344,241.51		3,344,241.51			3,344,241.51
Unearned Revenues						
Employees Compensable Leave (Note 5)					2,570,055.13	2,570,055.13
<b>Total Current Liabilities</b>	<b>25,175,855.92</b>	<b>2,098,846.57</b>	<b>27,274,702.49</b>		<b>2,570,055.13</b>	<b>29,844,757.62</b>
Non-Current Liabilities:						
Employees' Compensable Leave (Note 5)					1,446,104.72	1,446,104.72
<b>Total Non-Current Liabilities</b>					<b>1,446,104.72</b>	<b>31,290,862.34</b>
<b>Total Liabilities</b>	<b>25,175,855.92</b>	<b>2,098,846.57</b>	<b>27,274,702.49</b>		<b>4,016,159.85</b>	<b>61,135,619.96</b>
<b>Fund Financial Statement</b>						
Fund Balances:						
Non Spendable (Inventory)	59,066.42		59,066.42			59,066.42
Restricted		111,682,422.51	111,682,422.51			111,682,422.51
Unassigned	49,047,239.58		49,047,239.58			49,047,239.58
Total Fund Balances	49,106,306.00	111,682,422.51	160,788,728.51			160,788,728.51
<b>Total Liabilities and Fund Balances</b>	<b>\$ 74,282,161.92</b>	<b>\$ 113,781,269.08</b>	<b>\$ 188,063,431.00</b>			
<b>Government-Wide Statement of Net Assets</b>						
Net Assets:						
Invested in Capital Assets, Net of Related Debt			\$ 3,603,008.56	\$	\$	\$ 3,603,008.56
Unrestricted					(4,016,159.85)	(4,016,159.85)
Total Net Assets			<u>\$ 3,603,008.56</u>	<u>\$</u>	<u>(4,016,159.85)</u>	<u>\$ 160,375,577.22</u>



-UNAUDITED-

**EXHIBIT II**  
**COMBINED STATEMENT OF REVENUES, EXPENDITURES,**  
**AND CHANGES IN FUND BALANCES**  
**Statement of Activities - Governmental Funds**  
**For the Year Ended August 31, 2016**

	Governmental Fund Types			Capital	Long-Term	Statement of
	General	Special Revenue	Total	Assets	Liabilities	Activities
	(EXH A-2)	State Highway Fund	Governmental	Adjustments	Adjustments	
		(0006)				
<b>Revenues</b>						
Legislative Appropriations:						
Original Appropriations	\$ 161,413,842.00	\$	\$ 161,413,842.00		\$	\$ 161,413,842.00
Additional Appropriations	12,969,220.65		12,969,220.65			12,969,220.65
Federal Revenues	350,108.01		350,108.01			350,108.01
Federal Pass-Through Revenues						
State Grant Pass- Through						
Licenses, Fees and Permits	7,446,375.35	1,530,359,037.87	1,537,805,413.22			1,537,805,413.22
Interest & Investment Income	1,478.40		1,478.40			1,478.40
Settlement of Claims						
Sales of Goods and Services	72.00		72.00			72.00
Other	(33,270.26)	30,516.70	(2,753.56)			(2,753.56)
<b>Total Revenues</b>	<b>182,147,826.15</b>	<b>1,530,389,554.57</b>	<b>1,712,537,380.72</b>			<b>1,712,537,380.72</b>
<b>Expenditures</b>						
Salaries and Wages	39,622,961.77	31,376.41	39,654,338.18		82,322.67	39,736,660.85
Payroll Related Costs	12,611,930.71	(131,806.33)	12,480,124.38			12,480,124.38
Professional Fees and Services	18,418,642.53	9,139,225.86	27,557,868.39			27,557,868.39
Travel	351,133.54	3,691.19	354,824.73			354,824.73
Materials and Supplies	11,337,641.20	780,964.50	12,118,605.70			12,118,605.70
Communications and Utilities	4,748,274.40	618,731.38	5,367,005.78			5,367,005.78
Repairs and Maintenance	1,698,371.99	2,808,455.15	4,506,827.14			4,506,827.14
Rentals and Leases	947,942.58	4,628.25	952,570.83			952,570.83
Printing and Reproduction	4,744,885.14	100.00	4,744,985.14			4,744,985.14
Claims and Judgements	80,000.00		80,000.00			80,000.00
Federal Pass-Through Expenditures						
State Grant Pass-Through Expenditures	17,521.81		17,521.81			17,521.81
Intergovernmental Payments	13,387,500.66		13,387,500.66			13,387,500.66
Public Assistance Programs						
Other Operating Expenditures	40,963,302.32	1,390,768.07	42,354,070.39			42,354,070.39
Capital Outlay	249,073.25	676,625.40	925,698.65	(925,698.65)		0.00
Depreciation Expense				1,310,008.22		1,310,008.22
<b>Total Expenditures</b>	<b>149,179,181.90</b>	<b>15,322,759.88</b>	<b>164,501,941.78</b>	<b>384,309.57</b>	<b>82,322.67</b>	<b>164,968,574.02</b>
Excess (Deficit) of Revenues over Expenditures	32,968,644.25	1,515,066,794.69	1,548,035,438.94	(384,309.57)	(82,322.67)	1,547,568,806.70
<b>Other Financing Sources (Uses)</b>						
Transfers In (Note 12)	0.00		0.00			0.00
Transfers Out (Note 12)	(1,134.00)	(1,524,784,221.49)	(1,524,785,355.49)			(1,524,785,355.49)
Sale of Capital Assets	1,440.00	0.00	1,440.00	(1,440.00)		0.00
Legislative Financing Sources	0.00		0.00			0.00
Loss on Capital Assets						
Insurance Recoveries						
Legislative Transfers In (Note 12)						
Legislative Transfers Out (Note 12)						
Gain (Loss) on of Capital Assets				(14,793.98)		(14,793.98)
Inc (Dec) in Net Assets Due to Interagency Transfer				159,610.55		159,610.55
<b>Total Other Financing Sources (Uses)</b>	<b>306.00</b>	<b>(1,524,784,221.49)</b>	<b>(1,524,783,915.49)</b>	<b>143,376.57</b>	<b>0.00</b>	<b>(1,524,640,538.92)</b>
<b>Net Change in Fund Balances/Net Assets</b>	<b>32,968,950.25</b>	<b>(9,717,426.80)</b>	<b>23,251,523.45</b>	<b>(240,933.00)</b>	<b>(82,322.67)</b>	<b>22,928,267.78</b>
<b>Fund Financial Statement - Fund Balance</b>						
<b>Fund Balance - Beginning</b>	<b>18,816,196.37</b>	<b>121,399,849.31</b>	<b>140,216,045.68</b>			<b>140,216,045.68</b>
Restatements						
<b>Fund Balance as Restated</b>	<b>18,816,196.37</b>	<b>121,399,849.31</b>	<b>140,216,045.68</b>			<b>140,216,045.68</b>
Appropriations Lapsed	(2,678,840.62)		(2,678,840.62)			(2,678,840.62)
<b>Fund Balances - August 31, 2016</b>	<b>\$ 49,106,306.00</b>	<b>\$ 111,682,422.51</b>	<b>\$ 160,788,728.51</b>			<b>\$ 160,465,472.84</b>
<b>Government-wide Statement of Net Assets</b>						
Net Change in Net Assets			\$ 160,788,728.51	(240,933.00)	\$ (82,322.67)	\$ 160,465,472.84
Net Assets-Beginning				3,906,166.38	(3,933,837.18)	(27,670.80)
Restatements				(62,224.82)		(62,224.82)
Net Assets, September 1, 2015, as Restated and Adjusted				3,843,941.56	(3,933,837.18)	(89,895.62)
Net Assets-August 31, 2016			\$ 160,788,728.51	3,603,008.56	(4,016,159.85)	\$ 160,375,577.22



-UNAUDITED-

**EXHIBIT VI**  
**COMBINED STATEMENT OF NET ASSETS - FIDUCIARY FUNDS**  
**August 31, 2016**

	Agency Funds (Exhibit J-1)
<b>Assets</b>	
<b>Current Assets:</b>	
Cash in State Treasury	11,943,506
Accounts Receivable	133,455.47
<b>Total Current Assets</b>	<b>\$ 12,076,961.01</b>
 <b>Total Assets</b>	 <b>12,076,961.01</b>
 <b>Liabilities</b>	
Current Liabilities:	
Accounts Payable	995,915.80
Funds Held for Others	11,081,045.21
<b>Total Current Liabilities</b>	<b>12,076,961.01</b>
 <b>Total Liabilities</b>	 <b>\$ 12,076,961.01</b>
 <b>Net Assets</b>	
Net Assets:	(0.00)
<b>Total Net Assets</b>	<b>\$ (0.00)</b>



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## **NOTES TO THE FINANCIAL STATEMENTS**



-UNAUDITED-

## NOTES TO THE FINANCIAL STATEMENTS

### NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### Scope of Entity

The Texas Department of Motor Vehicles (TxDMV), created in 2009 by the authority of H.B. 3097, 81st Legislature, Regular Session, is an agency of the State of Texas. TxDMV is responsible for titling and registering vehicles, licensing and regulating of the motor vehicle sales and distribution, salvage dealers, registering commercial oversize/overweight (OS/OW) vehicles, and providing auto theft prevention grants.

The TxDMV has not identified any component units which should have been blended into an appropriated fund.

#### Basis of Presentation

Due to the statewide requirements included in Governmental Accounting Standards Board Statement No. 34, Basic Financial Statements - and Management's Discussion and Analysis - for State and Local Governments, the Comptroller of Public Accounts does not require the accompanying annual financial report to comply with all the requirements of this statement. The financial report will be considered for audit by the State Auditor as part of the audit of the State of Texas Comprehensive Annual Financial Report; therefore, an opinion has not been expressed on the financial statements and related information contained in this report.

#### Fund Structure

The accompanying financial statements are presented on the basis of funds, each of which is considered a separate accounting entity.

#### Governmental Fund Types & Government-wide Adjustment Fund Types

##### General Revenue Funds

General Revenue Fund (0001) – This fund is used to account for all financial resources of the state except those required to be accounted for in another fund. The following accounts are consolidated into the General Revenue fund.

License Plate Trust Fund (0802) – This fund is used to receive and account for fees charged from the sale of specialty license plates collected under Subchapter G, Transportation Code. Funds are to be used in accordance with their specific statutory purpose.

Suspense Fund (0900) – This fund is used to temporarily hold and account for receipts, until the correct disposition of the items is determined. Items held in the fund are cleared to the various other funds or refunded to the payer.

Specialty License Plates Account (5140) – This fund is used to receive and account for fees charged from the sale of special license plates and is in addition to motor vehicle registration fees.

##### Special Revenue Funds

State Highway Fund (0006) – This fund is restricted to expenditures for the building, maintaining, and policing of the state highways. It derives its financing primarily from legally dedicated revenues such as motor fuels tax and vehicle registration fees, and from federal reimbursements for selected construction projects. This fund includes revenue which supports the TxDMV's automated registration and title system.



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The agency collected \$25.8 million in revenue from the \$1 fee authorized by House Bill 3014, 76<sup>th</sup> Legislature, Regular Session, for a license plate or other registration insignia. The revenue is used to enhance the agency's automated registration and title system.

#### **Capital Assets Adjustments Fund Type**

Capital Assets Adjustment fund type is used to convert governmental fund types' capital assets from modified accrual to full accrual.

#### **Long Term Liabilities Adjustments Fund Type**

The Long-Term Liabilities Adjustments fund type is used to convert all other governmental fund types' debt from modified accrual to full accrual. The composition of this fund type is discussed in Note 5.

### **Fiduciary Fund Types**

Fiduciary funds account for assets held by the state in a trustee capacity or as an agent for individuals, private organizations, other governmental units, and/or other funds. When assets are held under the terms of a formal trust agreement, either a pension trust fund, or a private purpose trust fund is used.

#### **Agency Funds**

Agency Funds are used to account for assets held in a custodial capacity for the benefit of other agencies or individuals.

Proportional Registration Distributive Trust Fund (0021) – This fund is used primarily to collect and distribute registration fees from trucking companies that operate in more than one state. The fees are distributed to the individual states based on mileage driven.

Unified Carrier Registration Unappropriated Fund (0645) – This fund is used primarily to collect and distribute registration fees from motor carriers, motor private carriers, brokers, freight forwarders, and leasing companies that operate in more than one state. The fees are distributed in accordance to the Unified Carrier Registration System (49 U.S.C. Section 13908.)

Child Support Deductions (0807) – This fund is used as a holding account where child support payroll deductions are held until disbursed.

City, County, MTA, & SPD Fund (0882) - This fund is used as a holding account where taxes for the state are collected until disbursed.

Suspense Fund (0900) - This fund is used when depositing funds where final disposition has not been determined at the time of the receipt of funds.

Direct Deposit Correction Account (0980) – This fund is used to temporarily hold and account for direct deposits that are unable to be processed until the correct disposition of the item is determined.

### **Basis of Accounting**

The basis of accounting determines when revenues and expenditures or expenses are recognized in the accounts and reported in the financial statements. The accounting and financial reporting treatment applied to a fund is determined by its measurement focus.

Governmental fund types that build the fund financial statements are accounted for using the modified accrual basis of accounting. Under the modified accrual basis, revenues are recognized in the period in which they become



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measurable and available to finance operations of the fiscal year or liquidate liabilities existing at fiscal year end. The State of Texas considers receivables collected within sixty days after year-end to be available and recognizes them as revenues of the current year for Fund Financial Statements prepared on the modified accrual basis. For federal contracts and grants, revenues have been accrued to the extent earned by eligible expenditures within each fiscal year. Expenditures and other uses of financial resources are recognized when the related liability is incurred.

Governmental adjustment fund types that will build the government-wide financial statements are accounted for using the full accrual method of accounting. This includes capital assets, accumulated depreciation, unpaid Employee Compensable Leave, the unmatured debt service (principal and interest) on general long-term liabilities, long-term capital leases, and long-term claims and judgments. The activity will be recognized in these new fund types.

## **Budgets and Budgetary Accounting**

The budget is prepared biennially and represents appropriations authorized by the legislature and approved by the Governor (the General Appropriations Act). The Board adopts an annual operating budget and policies consistent with these appropriations. Encumbrance accounting is utilized for budgetary control purposes. An encumbrance is defined as an outstanding purchase order or other commitment for goods or services. It reserves a part of the applicable appropriation for future expenditure. Encumbrance balances are reported in Note 15.

Unencumbered and unexpended funds are generally subject to lapse 60 days after the end of the fiscal year for which they were appropriated.

## **Assets, Liabilities and Fund Balances**

### **Assets**

#### Cash and Cash Equivalents

Short-term highly liquid investments with an original maturity of three months or less are considered cash equivalents. Cash in bank represents the TxDMV Travel Advance Fund.

#### Receivables

The receivables represent revenue from fees and federal funds that has been earned but not received. This account is presented net of Allowance for Bad Debts.

#### Inventories and Prepaid Items

This represents supplies and postage on hand. Supplies for governmental funds are accounted for using the consumption method of accounting. The cost of these items is recognized as expenditure when items are consumed.

#### Capital Assets

Assets with an initial, individual cost of more than \$5,000 and an estimated useful life in excess of one year are capitalized. These assets are capitalized at cost or, if purchased, at appraised fair value as of the date of acquisition. Depreciation is reported on all "exhaustible" assets. Assets are depreciated over the estimated useful life of the asset using the straight-line method.

### **Liabilities**

#### Accounts Payable

Accounts payable represents the liability for the value of assets or services received at the balance sheet date for which payment is pending.

#### Payroll Payable

Payroll payable represents the liability for the August payroll payable on September 1<sup>st</sup>.



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Employees' Compensable Leave

Employees' compensable leave represents the liability that becomes due upon the occurrence of relevant events such as resignations, retirements, and uses of leave balances by covered employees. Liabilities are reported separately as either current or non-current in the statement of net assets. These obligations are normally paid from the same funding source from which each employee's salary or wage compensation was paid.

**Fund Balance/Net Assets**

The difference between fund assets and liabilities is "Net Assets" on the government-wide, proprietary and fiduciary fund statements, and the "Fund Balance" is the difference between fund assets and liabilities on the governmental fund statements.

**Fund Balance Components**

Nonspendable fund balance includes amounts not available to be spent because they are either (1) not in spendable form or (2) legally or contractually required to be maintained intact.

Restricted fund balance includes those resources that have constraints placed on their use through external parties or by law through constitutional provisions.

Unassigned fund balance is the residual classification for the general fund. This classification represents fund balance that was not assigned to other funds and was not restricted, committed or assigned to specific purposes within the general fund.

**Invested in Capital Assets, Net of Related Debt**

Invested in capital assets, net of related debt consists of capital assets, net of accumulated depreciation and reduced by outstanding balances for outstanding balances for bond, notes, and other debt that are attributed to the acquisition, construction or improvement of those assets.

**Unrestricted Net Assets**

Unrestricted net assets consist of net assets that have no constraints placed on net asset use by external sources or by law through constitutional provisions or enabling legislation. Unrestricted net assets often have constraints on resources, which are imposed by management but can be removed or modified.

**Interfund Activities and Balances**

The agency has the following types of transactions among funds:

Transfers

Legally required transfers that are reported when incurred as Transfers In by the recipient fund and as Transfers Out by the disbursing fund.

Reimbursements

Reimbursements are repayments from funds responsible for expenditures or expenses to funds that made the actual payment. Reimbursements of expenditures made by one fund for another that are recorded as expenditures in the reimbursing fund and as a reduction of expenditures into the reimbursed fund.

Accrual of Operating Transfers, Reimbursements, and Residual Equity Transfers are shown as Due To and Due From instead of accounts receivable or accounts payable.



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## NOTE 2: CAPITAL ASSETS

A summary of changes in Capital Assets for the year ended August 31, 2016, is presented below:

	PRIMARY GOVERNMENT							
Governmental Activities	Balance 09/01/15	Adjust/ Restate	Reclass. Completed CIP	Reclass. Increase Inter- Agency Transaction	Reclass. Decrease Inter- Agency Transaction	Additions	Deletions	Balance 08/31/16
Non-Depreciable Assets	\$	\$	\$	\$	\$	\$	\$	\$
<b>Total Non-Depreciable Assets</b>								
Depreciable Assets								
Buildings/Building Improvements								
Furniture and Equipment	3,641,607.69	(183,791.84)		370,426.20		640,287.56	(88,394.96)	4,380,134.65
Vehicles, Boats, & Aircraft	866,549.62			66,322.92			(45,497.00)	887,375.54
Other Assets								
<b>Total Depreciable Assets</b>	<b>4,508,157.31</b>	<b>(183,791.84)</b>		<b>436,749.12</b>		<b>640,287.56</b>	<b>(133,891.96)</b>	<b>5,267,510.19</b>
Less Accumulated Depreciation for:								
Buildings/Building Improvements								
Furniture and Equipment	(2,133,705.43)	121,567.02		(204,192.55)		(568,934.17)	77,357.88	(2,707,907.25)
Vehicles, Boats, & Aircraft	(782,277.86)			(66,322.92)		(3,919.44)	40,550.60	(811,969.62)
Other Capital Assets								
<b>Total Accumulated Depreciation</b>	<b>(2,915,983.29)</b>	<b>121,567.02</b>		<b>(270,515.47)</b>		<b>(572,853.61)</b>	<b>117,908.48</b>	<b>(3,519,876.87)</b>
<b>Depreciable Assets, Net</b>	<b>1,592,174.02</b>	<b>(62,224.82)</b>		<b>166,233.65</b>		<b>67,433.95</b>	<b>(15,983.48)</b>	<b>1,747,633.32</b>
Amortizable Assets – Intangible:								
Land Use Rights								
Computer Software	3,494,944.92					278,787.99	(5,010.00)	3,768,722.91
Other Capital Intangible								
<b>Total Amortizable Assets – Intangible</b>	<b>3,494,944.92</b>					<b>278,787.99</b>	<b>(5,010.00)</b>	<b>3,768,722.91</b>
Less Accumulated Amortization for:								
Land Use Rights								
Computer Software	(1,180,952.56)					(737,154.61)	4,759.50	(1,913,347.67)
Other Capital Intangible								
<b>Total Accumulated Amortization</b>	<b>(1,180,952.56)</b>					<b>(737,154.61)</b>	<b>4,759.50</b>	<b>(1,913,347.67)</b>
<b>Amortizable Assets –Intangible, Net</b>	<b>2,313,992.36</b>					<b>(458,366.62)</b>	<b>(250.50)</b>	<b>1,855,375.24</b>
<b>Governmental Activities Capital Assets, Net</b>	<b>\$ 3,906,166.38</b>	<b>(62,224.82)</b>		<b>166,233.65</b>		<b>(390,932.67)</b>	<b>(16,233.98)</b>	<b>\$ 3,603,008.56</b>



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### NOTE 3: DEPOSITS, INVESTMENTS, & REPURCHASE AGREEMENTS

#### Deposits of Cash in Bank

As of August 31, 2016, the carrying amount of deposits was \$20,000.00 as presented below:

	Amount
Cash in Bank – Carrying Amount	\$ 20,000.00
<b>Total Cash in Bank per AFR (Exhibit I)</b>	<b>\$ 20,000.00</b>

### NOTE 4: SHORT-TERM DEBT

Not applicable

### NOTE 5: LONG-TERM LIABILITIES

#### Changes in Long-Term Liabilities

During the year ended August 31, 2016, the following changes occurred in liabilities.

Governmental Activities	Balance 9/01/15	Additions	Reductions	Balance 8/31/16	Amounts Due Within Year
Compensable Leave	\$3,933,837.18	\$4,326,716.00	\$4,244,393.33	\$4,016,159.85	\$2,570,055.13

#### Employees' Compensable Leave

A state employee is entitled to be paid for all unused vacation time accrued, in the event of the employee's resignation, dismissal, or separation from State employment, provided the employee has had continuous employment with the State for six months. Expenditures for accumulated vacation leave balances are recognized in the period paid or taken in governmental fund types. For these fund types, the liability for unpaid benefits is recorded in the Statement of Net Assets. An expense and liability for proprietary fund types are recorded in the proprietary funds as the benefits accrue to employees. No liability is recorded for non-vesting accumulating rights to receive sick pay benefits.

### NOTE 6: BONDED INDEBTEDNESS

Not Applicable

### NOTE 7: DERIVATIVE INSTRUMENTS

Not Applicable



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## NOTE 8: LEASES

### Operating Leases

Included in the expenditures reported in the financial statement are the following amounts of rent paid or due under operating lease obligations:

Fund Type	Amount
Fund 0006	\$ 5,796.25
Fund 0001	\$ 873,844.20

Note: Future minimum lease rental payments under non-cancelable operating leases having an initial term in excess of one year are as follows:

Year Ended August 31,	
2017	\$ 757,104.59
2018	658,413.21
2019	478,694.83
2020	355,580.94
2021-25	1,342,899.90
<b>Total Minimum Future Lease Rental Payments</b>	<b>\$ 3,592,693.47</b>

## NOTE 9: PENSION PLANS AND OPTIONAL RETIREMENT PROGRAM

Not Applicable

## NOTE 10: DEFERRED COMPENSATION

Not Applicable

## NOTE 11: POST EMPLOYMENT HEALTH CARE AND LIFE INSURANCE BENEFITS

Not Applicable



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## NOTE 12: INTERFUND ACTIVITY AND TRANSACTIONS

The agency experienced routine transfers with other state agencies, which were consistent with the activities of the fund making the transfer. Repayment of interfund balances will occur within one year from the date of the financial statement. Individual balances and activity at August 31, 2016 are as follows:

	Due from Other Agencies	Due to Other Agencies	Source
<b>General Revenue (01)</b>			
Appd Fund 0802, D23 fund 0802			
Agy 300, D23 fund 0803		39,232.45	Shared Fund
Agy 300, D23 fund 0804		17,075.65	Shared Fund
Agy 300, D23 fund 0805		15,187.75	Shared Fund
Agy 300, D23 fund 0807		607.83	Shared Fund
Agy 302, D23 fund 0803		980.00	Shared Fund
Agy 302, D23 fund 0804		63,710.57	Shared Fund
Agy 302, D23 fund 0805		8,489.50	Shared Fund
Agy 305, D23 fund 0015		17,578.32	Shared Fund
Agy 306 D23 fund 3006		10,264.41	Shared Fund
Agy 332, D23 fund 0802		66.74	Shared Fund
Agy 403 D23 fund 3005		1,115.84	Shared Fund
Agy 403, D23 fund 3006		543.32	Shared Fund
Agy 411, D23 fund 0802		2,706.13	Shared Fund
Agy 506, D23 fund 0802		4,386.93	Shared Fund
Agy 529, D23 fund 0802		17,994.77	Shared Fund
Agy 530, D23 fund 0802		6,904.50	Shared Fund
Agy 537, D23 fund 0802		16,709.68	Shared Fund
Agy 537, D23 fund 0803		934,103.72	Shared Fund
Agy 537, D23 fund 0804		18,247.03	Shared Fund
Agy 537, D23 fund 0805		40,290.21	Shared Fund
Agy 538, D23 fund 0802		7,597.07	Shared Fund
Agy 539 D23 fund 0802		2,132.20	Shared Fund
Agy 542, D23 fund 0802		50.26	Shared Fund
Agy 542, D23 fund 4100	19,265.03		Shared Fund
Agy 542, D23 fund 4200		19,265.38	Shared Fund
Agy 551, D23 fund 0802		67,976.00	Shared Fund
Agy 555, D23 fund 2802		6,113.25	Shared Fund
Agy 555, D23 fund 2270		7,865.81	Shared Fund
Agy 555, D23 fund 3802		1,301.22	Shared Fund
Agy 576, D23 fund 0802		16,669.13	Shared Fund
Agy 582, D23 fund 0802		1,833.06	Shared Fund
Agy 701, D23 fund 2242		1,057.00	Shared Fund
Agy 701, D23 fund 2250		4,021.86	Shared Fund
Agy 701, D23 fund 2260		44.00	Shared Fund
Agy 701, D23 fund 2270		2,458.79	Shared Fund
Agy 701, D23 fund 2271		2,701.92	Shared Fund
Agy 701, D23 fund 2273		6,304.34	Shared Fund
Agy 701, D23 fund 2274		5,098.94	Shared Fund



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	Due from Other Agencies	Due to Other Agencies	Source
Agy 711, D23 fund 0802		61,303.92	Shared Fund
Agy 714, D23 fund 0802		10,157.99	Shared Fund
Agy 715, D23 fund 0802		102,075.58	Shared Fund
Agy 717, D23 fund 0802		14,993.19	Shared Fund
Agy 721, D23 fund 0802		140,685.07	Shared Fund
Agy 724, D23 fund 0802		18,079.18	Shared Fund
Agy 730, D23 fund 0802		7.37	Shared Fund
Agy 732, D23 fund 0802		1,537.71	Shared Fund
Agy 733, D23 fund 0802		5,310.53	Shared Fund
Agy 734, D23 fund 0802		604.95	Shared Fund
Agy 735, D23 fund 0802		161.77	Shared Fund
Agy 737, D23 fund 0802		164.26	Shared Fund
Agy 738, D23 fund 0802		1,314.42	Shared Fund
Agy 743, D23 fund 0802		110.00	Shared Fund
Agy 751, D23 fund 0802		3,885.50	Shared Fund
Agy 752, D23 fund 0802		24,782.42	Shared Fund
Agy 753, D23 fund 0802		4,308.82	Shared Fund
Agy 754, D23 fund 0802		37,952.71	Shared Fund
Agy 755, D23 fund 0802		16,613.64	Shared Fund
Agy 756, D23 fund 0802		19,150.19	Shared Fund
Agy 757, D23 fund 0802		7,877.91	Shared Fund
Agy 759, D23 fund 0802		567.55	Shared Fund
Agy 760, D23 fund 0802		11.00	Shared Fund
Agy 760, D23 fund 1802		1.83	Shared Fund
Agy 765, D23 fund 0802		1,941.42	Shared Fund
Agy 781, D23 fund 4001		22.00	Shared Fund
Agy 781, D23 fund 4002		5,930.39	Shared Fund
Agy 781, D23 fund 4003		32,955.54	Shared Fund
Agy 781, D23 fund 4004		754.38	Shared Fund
Agy 781, D23 fund 4005		4,586.55	Shared Fund
Agy 781, D23 fund 4006		178.09	Shared Fund
Agy 781, D23 fund 4007		1,229.40	Shared Fund
Agy 781, D23 fund 4008		44,468.84	Shared Fund
Agy 781, D23 fund 4009		17,974.36	Shared Fund
Agy 781, D23 fund 4010		22.61	Shared Fund
Agy 781, D23 fund 4011		1,501.41	Shared Fund
Agy 781, D23 fund 4012		10,210.14	Shared Fund
Agy 781, D23 fund 4013		369.14	Shared Fund
Agy 783, D23 fund 0802		11,347.33	Shared Fund
Agy 802, D23 fund 3030		31,026.84	Shared Fund
Agy 802, D23 fund 3043		611,956.58	Shared Fund
Agy 802, D23 fund 3044		128,847.60	Shared Fund
Agy 802, D23 fund 3045		73,608.07	Shared Fund
Agy 802, D23 fund 3046		23,485.21	Shared Fund
Agy 802, D23 fund 3047		180,462.50	Shared Fund
Agy 802, D23 fund 3048		21,533.27	Shared Fund
Agy 802, D23 fund 3049		17,460.99	Shared Fund



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	Due from Other Agencies	Due to Other Agencies	Source
Agy 802, D23 fund 3057		59,666.56	Shared Fund
Agy 802, D23 fund 3116		9,888.79	Shared Fund
Agy 802, D23 fund 3120		12,610.21	Shared Fund
Agy 802, D23 fund 3142		32,762.98	Shared Fund
Agy 802, D23 fund 3151		1,912.18	Shared Fund
Agy 808, D23 fund 0802		6,128.26	Shared Fund
Agy 813, D23 fund 0802		146,360.41	Shared Fund
Agy 902, D23 fund 8020		896.95	Shared Fund
Appd Fund 5140, D23 fund 5140			
Agy 551, D23 fund 5140		11,799.42	Shared Fund
<b>Total Due From/To Other Agencies</b>	<b>19,265.03</b>	<b>\$ 3,344,241.51</b>	

	Due from Other Funds	Due to Other Funds	Source
<b>General Revenue (01)</b>			
Appd Fund 0900, D23 fund 0090			
Agy 608, D23 fund 0006		300,283.38	OSOW Permit Funds
<b>Special Revenue (02)</b>			
Appd Fund 0006, D23 fund 0006			
Agy 608, D23 fund 0090	300,283.38		OSOW Permit Funds
<b>Total Due From/To Other Funds</b>	<b>\$ 300,283.38</b>	<b>\$ 300,283.38</b>	

	Transfer In	Transfer Out	Source
<b>General Revenue (01)</b>			
Appd Fund 0001, D23 fund 0001			
Agy 902, D23 fund 0001		1,134.00	Surplus Property
<b>Special Revenue (02)</b>			
Appd Fund 0006, D23 fund 0006			
Agy 601, D23 fund 0006		1,524,784,221.49	Shared Cash
<b>Total Transfers In/Out</b>		<b>\$ 1,524,785,355.49</b>	

## NOTE 13: CONTINUANCE SUBJECT TO REVIEW

Under the Texas Sunset Act, the Agency will be abolished effective September 1, 2019, unless continued in existence by the Legislature as provided by the Act. If abolished, the agency may continue until September 1, 2020, to close out its operations.



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## NOTE 14: ADJUSTMENTS TO FUND BALANCES AND NET POSITION

During Fiscal Year 2016, a net decrease in the amount of \$62,224.82, was made to total Net Assets. This adjustment was necessary due to the re-classification of certain capital assets and service costs associated with those assets.

## NOTE 15: CONTINGENCIES AND COMMITMENTS

### Federal Assistance

The TxDMV receives federal financial assistance for specific purposes that are subject to review or audit by the federal grantor agencies. Entitlement to this assistance is generally conditional upon compliance with the terms and conditions of the grant agreements and applicable federal regulations. Such audits could lead to requests for reimbursements to grantor agencies for expenditures disallowed under the terms of the grant. Management believes such disallowance, if any, will be immaterial.

### Encumbrances

As of August 31, 2016, the TxDMV had encumbered the following amounts in governmental funds for signed contracts and purchase orders:

	General Revenue Fund (0001)	Special Revenue Fund (0006)
Encumbrances	\$ 22,271,317.66	\$ 15,294,190.02

## NOTE 16: SUBSEQUENT EVENTS

Not Applicable

## NOTE 17: RISK MANAGEMENT

The department is exposed to a wide range of risks, due to the size, scope and nature of its activities. Some of these risks include, but are not limited to property and casualty losses, workers' compensation and health benefit claims, theft, damage of assets, etc. The department retains these risks, and manages them through insurance and safety programs. In FY2016, the department had \$80,000.00 in payments related to claims.

	Beginning Balance	Increases	Decreases	Ending Balance
2016	-	\$80,000.00	\$(80,000.00)	-



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## **NOTE 18: MANAGEMENT DISCUSSION AND ANALYSIS**

Fiscal Year 2016 was impacted by the creation and transition into the TxDMV Fund. The agency's method of finance for the FY 2016 appropriation was 100% funded by General Revenue. Any funding remaining from the State Highway Fund (Fund 006) are unexpended balances in the Capital Budget for which the agency has carry-forward authority.

For Fiscal Year 2016, overall revenue collections finished 1.6% or approximately \$24 million higher compared to Fiscal Year 2015 revenues. A majority of the higher than anticipated revenue collections are attributed to increased registration revenue driven by a 1.6% year- over-year increase in the number of registered vehicles. This increase was offset by decreased revenue collections associated with the number of permits issued for Oversize/Overweight carriers related to the decline in the oil industry.

Year-to-date expenditures through August 31, 2016 totaled \$164 million. Significant expenditure categories include salaries and operating expenses (postage, reproduction/printing and contract services), license plate production, registration and titling. Capital budget expenses totaled \$19 million primarily consisting of expenditures for the Data Center Consolidation contract (\$7.4 million), the TxDMV Automation project (\$8.8 million), County technology upgrades (\$1.5 million) and \$1.3 million in other projects like the Application Migration and Server Transformation (AMSIT), Commercial Vehicle Information Systems and Networks (CVISN), and Agency Growth and Enhancements.

The largest portion of Automation expenditures were for costs associated with the Registration and Titling System (RTS) Refactoring project (\$10.8 million). TxDMV has the authority to carry forward approximately \$49.8 million in capital funds including Automation, the Data Center services and other capital projects.

## **NOTE 19: THE FINANCIAL REPORTING ENTITY**

Not Applicable



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**NOTE 20: STEWARDSHIP, COMPLIANCE AND ACCOUNTABILITY**

Not Applicable

**NOTE 21:**

Not Applicable to the reporting requirement process.

**NOTE 22: DONOR RESTRICTED ENDOWMENTS**

Not Applicable

**NOTE 23: EXTRAORDINARY AND SPECIAL ITEMS**

Not Applicable

**NOTE 24: DISAGGREGATION OF RECEIVABLE AND PAYABLE BALANCES**

Not Applicable

**NOTE 25: TERMINATION BENEFITS**

Not Applicable

**NOTE 26: SEGMENT INFORMATION**

Not Applicable

**NOTE 27: SERVICE CONCESSION ARRANGEMENTS**

Not Applicable

**NOTE 28: DEFERRED OUTFLOWS AND DEFERRED INFLOWS OF RESOURCES**

Not Applicable

**NOTE 29: TROUBLE DEBT RESTRUCTURING**

Not Applicable

**NOTE 30: NON-EXCHANGE FINANCIAL GUARANTEES**

Not Applicable



## **COMBINING FINANCIAL STATEMENTS**



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**EXHIBIT A-1**  
**COMBINING BALANCE SHEET**  
**All General and Consolidated Funds**  
**August 31, 2016**

Consolidated Accounts						
	General Revenue Account (0001)	License Plate Trust Fund Account (0802)	Suspense Type Activities Account (0900)	Speciality License Plate Program Account (5140)	Returned Items Type Activities Account (9001)	Total
<b>Assets</b>						
Current Assets:						
Cash on Hand	\$ 15,725.00	\$	\$	\$	\$	15,725.00
Cash in Bank	20,000.00					20,000.00
Cash in State Treasury	35,350.79	3,532,386.60	308,958.38	11,799.42	(35,350.79)	3,853,144.40
Legislative Appropriations	64,482,999.55					64,482,999.55
Receivables:						
Federal	0.00					0.00
Accounts Receivable	5,831,961.52					5,831,961.52
Due From Other Funds (Note 12)	0.00	0.00				0.00
Due From Other Agencies (Note 12)	0.00	19,265.03				19,265.03
Consumable Inventories	59,066.42					59,066.42
<b>Total Current Assets</b>	<u>70,445,103.28</u>	<u>3,551,651.63</u>	<u>308,958.38</u>	<u>11,799.42</u>	<u>(35,350.79)</u>	<u>74,282,161.92</u>
<b>Liabilities</b>						
Current Liabilities						
Payables:						
Vouchers Payable	1,421,268.15					1,421,268.15
Account Payable	15,312,618.35		8,675.00			15,321,293.35
Payroll Payable	4,788,769.53					4,788,769.53
Due to Other Funds (Note 12)			300,283.38			300,283.38
Due to Other Agencies (Note 12)	0.00	3,332,442.09		11,799.42		3,344,241.51
<b>Total Current Liabilities</b>	<u>21,522,656.03</u>	<u>3,332,442.09</u>	<u>308,958.38</u>	<u>11,799.42</u>	<u>0.00</u>	<u>25,175,855.92</u>
<b>Fund Balances</b>						
Non Spendable (Inventory)	59,066.42					59,066.42
Restricted						
Unassigned	48,863,380.83	219,209.54			(35,350.79)	49,047,239.58
<b>Total Fund Balance</b>	<u>48,922,447.25</u>	<u>219,209.54</u>	<u>0.00</u>	<u>0.00</u>	<u>(35,350.79)</u>	<u>49,106,306.00</u>
<b>Total Liabilities and Fund Balances</b>	<u>\$ 70,445,103.28</u>	<u>\$ 3,551,651.63</u>	<u>\$ 308,958.38</u>	<u>\$ 11,799.42</u>	<u>\$ (35,350.79)</u>	<u>\$ 74,282,161.92</u>



-UNAUDITED-

**EXHIBIT A-2**  
**COMBINING STATEMENT OF REVENUES,**  
**EXPENDITURES, AND CHANGES IN FUND BALANCES**  
**All General and Consolidated Funds**  
**For the Year Ended August 31, 2016**

	General Revenue (0001)	License Plate Trust Fund (0802)	Suspense Type Activities (0900)	Specialty License Plate (5140)	Returned Items Type Activities (9001)	
<b>Revenues</b>						
Legislative Appropriations :						
Original Appropriations	\$ 161,413,842.00	\$	\$	\$	\$	161,413,842.00
Additional Appropriations	12,969,220.65					12,969,220.65
Federal Revenues	350,108.01					350,108.01
Federal Pass-Through						
State Grant Pass -Through						
Licenses, Fees and Permits	7,427,166.76	19,208.59				7,446,375.35
Interest & Investment Income		1,478.40				1,478.40
Settlement of Claims						
Sales of Goods and Services	72.00					72.00
Other Revenues					(33,270.26)	(33,270.26)
<b>Total Revenues</b>	<u>182,160,409.42</u>	<u>20,686.99</u>	<u>0.00</u>	<u>0.00</u>	<u>(33,270.26)</u>	<u>182,147,826.15</u>
<b>Expenditures</b>						
Salaries and Wages	39,622,961.77					39,622,961.77
Payroll Related Costs	12,611,930.71					12,611,930.71
Professional Fees and Services	18,418,642.53					18,418,642.53
Travel	351,133.54					351,133.54
Materials and Supplies	11,337,641.20					11,337,641.20
Communications and Utilities	4,748,274.40					4,748,274.40
Repairs and Maintenance	1,698,371.99					1,698,371.99
Rentals and Leases	947,942.58					947,942.58
Printing and Reproduction	4,744,885.14					4,744,885.14
Claims and Judgements	80,000.00					80,000.00
Federal Pass-Through Expenditures						
State Grant Pass-Through Expenditures	17,521.81					17,521.81
Intergovernmental Payments	13,387,500.66					13,387,500.66
Public Assistance Programs						
Other Operating Expenditures	40,963,302.32					40,963,302.32
Capital Outlay	249,073.25					249,073.25
<b>Total Expenditures</b>	<u>149,179,181.90</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>149,179,181.90</u>
Excess (Deficit) of Revenues over Expenditures	<u>32,981,227.52</u>	<u>20,686.99</u>	<u>0.00</u>	<u>0.00</u>	<u>(33,270.26)</u>	<u>32,968,644.25</u>
<b>Other Financing Sources (Uses)</b>						
Operating Transfers In (Note 12)						0.00
Operating Transfers Out (Note 12)	(1,134.00)	0.00				(1,134.00)
Insurance Recoveries						
Sale of Capital Assets	1,440.00					1,440.00
Legislative Financing Sources	0.00					0.00
Legislative Transfers In (Note 12)						
Legislative Transfers Out (Note 12)						
<b>Total Other Financing Sources (Uses)</b>	<u>306.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>306.00</u>
Excess (Deficit) of Revenues and other Sources Over Expenditures and Other Uses	32,981,533.52	20,686.99	0.00	0.00	(33,270.26)	32,968,950.25
<b>Fund Balance - Beginning</b>	18,619,754.35	198,522.55			(2,080.53)	18,816,196.37
Restatements						
<b>Fund Balance As Restated</b>	<u>18,619,754.35</u>	<u>198,522.55</u>	<u>0.00</u>	<u>0.00</u>	<u>(2,080.53)</u>	<u>18,816,196.37</u>
Appropriations Lapsed	(2,678,840.62)					(2,678,840.62)
<b>Fund Balance - Ending</b>	<u>\$ 48,922,447.25</u>	<u>\$ 219,209.54</u>	<u>\$ 0.00</u>	<u>\$ 0.00</u>	<u>\$ (35,350.79)</u>	<u>\$ 49,106,306.00</u>



-UNAUDITED-

**EXHIBIT J-1**  
**COMBINING STATEMENT OF CHANGES IN ASSETS AND LIABILITIES**  
**All Agency Funds**  
**August 31, 2016**

	<b>Beginning Balances September 1, 2015</b>	<b>Additions</b>	<b>Deductions</b>	<b>Ending Balances August 31, 2016</b>
<b>Unified Carrier Registration-Unappropriated Fund (0645)</b>				
Assets:				
Cash in State Treasury	0.00	17,766,003.51	17,766,003.51	0.00
Accounts Receivable	7,000,961.93	133,455.47	7,000,961.93	133,455.47
Total Assets	\$ 7,000,961.93	\$ 17,899,458.98	\$ 24,766,965.44	\$ 133,455.47
Liabilities:				
Accounts Payable	0.00	14,867,566.99	14,867,566.99	0.00
Funds Held for Others	7,000,961.93	10,765,041.58	17,632,548.04	133,455.47
Total Liabilities	\$ 7,000,961.93	\$ 25,632,608.57	\$ 32,500,115.03	\$ 133,455.47
<b>Proportional Registration Distributive Fund (0021)</b>				
Assets:				
Cash in State Treasury	2,866,000.62	105,310,044.34	97,235,043.18	10,941,001.78
Total Assets	\$ 2,866,000.62	\$ 105,310,044.34	97,235,043.18	\$ 10,941,001.78
Liabilities:				
Accounts Payable	0.00	28,449,809.73	28,449,809.73	0.00
Funds Held for Others	2,866,000.62	105,309,243.53	97,234,242.37	10,941,001.78
Total Liabilities	\$ 2,866,000.62	\$ 133,759,053.26	125,684,052.10	\$ 10,941,001.78
<b>Child Support - Employee Deduction (0807)</b>				
Assets:				
Cash in State Treasury	11,170.20	118,345.10	122,927.34	6,587.96
Total Assets	\$ 11,170.20	\$ 118,345.10	\$ 122,927.34	\$ 6,587.96
Liabilities:				
Accounts Payable	0.00	109,403.14	109,403.14	0.00
Funds Held for Others	11,170.20	118,345.10	122,927.34	6,587.96
Total Liabilities	\$ 11,170.20	\$ 227,748.24	232,330.48	\$ 6,587.96
<b>Suspense Fund (0900)</b>				
Assets:				
Cash in State Treasury	929,514.99	102,560,837.07	102,494,436.26	995,915.80
Total Assets	\$ 929,514.99	\$ 102,560,837.07	\$ 102,494,436.26	\$ 995,915.80
Liabilities:				
Accounts Payable	917,427.49	80,821,313.54	80,742,825.23	995,915.80
Funds Held for Others	12,087.50	102,560,837.07	102,572,924.57	0.00
Total Liabilities	\$ 929,514.99	\$ 183,382,150.61	\$ 183,315,749.80	\$ 995,915.80



**EXHIBIT J-1**  
**COMBINING STATEMENT OF CHANGES IN ASSETS AND LIABILITIES**  
**All Agency Funds**  
**August 31, 2016**

	<b>Beginning Balances September 1, 2015</b>	<b>Additions</b>	<b>Deductions</b>	<b>Ending Balances August 31, 2016</b>
Direct Deposit Correction Account (0980)				
Assets:				
Cash in State Treasury	0.00	18,036.07	18,036.07	0.00
<b>Total Assets</b>	\$ <u>0.00</u>	\$ <u>18,036.07</u>	<u>18,036.07</u>	\$ <u>0.00</u>
Liabilities:				
Funds Held for Others	0.00	18,036.07	18,036.07	0.00
<b>Total Liabilities</b>	\$ <u>0.00</u>	\$ <u>18,036.07</u>	<u>18,036.07</u>	\$ <u>0.00</u>
Unappropriated GR (1000)				
Assets:				
Cash in State Treasury	0.00	227,925,970.87	227,925,970.87	0.00
<b>Total Assets</b>	\$ <u>0.00</u>	\$ <u>227,925,970.87</u>	<u>227,925,970.87</u>	\$ <u>0.00</u>
Liabilities:				
Accounts Payable	0.00	335,018.13	335,018.13	0.00
Funds Held for Others	0.00	227,935,902.71	227,935,902.71	0.00
<b>Total Liabilities</b>	\$ <u>0.00</u>	\$ <u>228,270,920.84</u>	<u>228,270,920.84</u>	\$ <u>0.00</u>
<b>Total - All Agency Funds</b>				
Assets:				
Cash in State Treasury	3,806,685.81	453,699,236.96	445,562,417.23	11,943,505.54
Accounts Receivable	7,000,961.93	133,455.47	7,000,961.93	133,455.47
<b>Total Assets</b>	\$ <u>10,807,647.74</u>	\$ <u>453,832,692.43</u>	\$ <u>452,563,379.16</u>	\$ <u>12,076,961.01</u>
Liabilities:				
Accounts Payable	917,427.49	124,583,111.53	124,504,623.22	995,915.80
Funds Held for Others	9,890,220.25	446,707,406.06	445,516,581.10	11,081,045.21
<b>Total Liabilities</b>	\$ <u>10,807,647.74</u>	\$ <u>571,290,517.59</u>	\$ <u>570,021,204.32</u>	\$ <u>12,076,961.01</u>
				(Exhibit VI)

The accompanying notes to the financial statements are an integral part of this exhibit.



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## **SCHEDULES**



-UNAUDITED-

**SCHEDULE 1A**  
**SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS**  
**For the Fiscal Year Ended August 31, 2016**

Federal Grantor/ Pass-Through Grantor/ Program Title	Pass-Through From		State Agency or University Amount	Non-State Entities Amount	Direct Program Amount
	CFDA Number	Agency Number			
U.S. Department of Transportation					
Direct Programs:					
Performance and Registration Information Systems Management	20.231		\$	\$	\$ 1,436.61
Commercial Vehicle Information Systems and Networks	20.237				348,671.40
Total			<u>0.00</u>	<u>0.00</u>	<u>350,108.01</u>
TOTAL FEDERAL FINANCIAL ASSISTANCE			\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>350,108.01</u>

Note 2 - Reconciliation

Per Combined Statement of Revenues, Expenditures and Changes in Fund Balance (Governmental Fund Types (Exh II):

Federal Revenues (Exh II) \$ 350,108.01

Federal Pass-Through Revenues (Exh II)

Total \$ 350,108.01



Texas Department of Motor Vehicles (608)

Total Pass Through From & Direct Program	Pass-Through To		Expenditure Amount	Total Pass Through To & Expenditures
	Agency Number	State Agency or University Amount		
\$	\$	\$	\$	\$
<u>350,108.01</u>		<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
\$ <u><u>350,108.01</u></u>	\$	\$ <u><u>0.00</u></u>	\$ <u><u>0.00</u></u>	\$ <u><u>0.00</u></u>



-UNAUDITED-

**SCHEDULE 1B**  
**SCHEDULE OF STATE GRANT PASS-THROUGHS FROM/TO STATE AGENCIES**  
**For the Fiscal Year Ended August 31, 2016**

**General Funds**

**Pass -Through To:**

BATIC Grants	
Texas Dept of Public Safety (405)	\$ 17,390.61
Stolen Vehicles	
Texas Dept of Public Safety (405)	34.20
FUGINET	
Texas Dept of Criminal Justice (696)	<u>97.00</u>

<b>Total State Pass- Throughs to Other Agencies</b>	<b>\$ <u><u>17,521.81</u></u></b>
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Texas Department *of* Motor Vehicles  
4000 Jackson Avenue  
Austin, Texas 78731



DATE: January 5, 2017  
Action Requested: BRIEFING ONLY

To: Texas Department of Motor Vehicles Board (TxDMV)  
From: Linda M. Flores, Chief Financial Officer  
Agenda Item: 5. B. 2016 End of Year Reports  
Subject: Annual Report of Nonfinancial Data for year ended August 31, 2016

#### RECOMMENDATION

This is a briefing of the Annual Report of Nonfinancial Data. No action required.

#### PURPOSE AND EXECUTIVE SUMMARY

Government Code Section § 2101.0115 was added by Act of May 26, 2001, 77th Leg., R.S., H.B. 2914 and requires state agencies to submit an Annual Report of Nonfinancial Data. This report includes nonfinancial schedules previously included in the Annual Financial Report. The Annual Report of Nonfinancial Data was submitted to the Office of the Governor in accordance within the established December 31, 2016, deadline.

#### FINANCIAL IMPACT

No financial impact.

#### BACKGROUND AND DISCUSSION

- **Appropriation Item Transfer Schedule** identifies transfers of appropriated money between the agency's appropriated strategies.
  - In Fiscal Year 2016, transfers were limited to one-time, unanticipated costs.
- **HUB Strategic Plan Progress Form** provides a percentage of historically underutilized businesses (HUBs) used by an agency for specific procurement categories.
  - In 2016, TxDMV continued to establish more organizational procurement history and adjusted agency HUB goals to more accurately reflect department purchases. Now that TxDMV has more than five years of its own purchasing history, the HUB goals are adjusted accordingly. TxDMV continues to improve small businesses in Texas through the Historically Underutilized Business (HUB) program. TxDMV afforded HUBs the opportunity to meet with agency staff and participate in the mentor protégé program. The mentor protégé program provides an opportunity for small businesses to partner with prime vendors for a period of two years. TxDMV staff meet with the vendors on a regular basis to ensure that established goals set by both the mentor and protégé are being achieved. TxDMV staff also discussed TxDMV projects and organizational needs with HUB vendors at outreach forums. Through this effort, HUBs are more successful in doing business with state agencies.
- **Indirect Cost Schedule** provides detailed information about expenditures paid by or on behalf of the TxDMV for employee benefits including Social Security benefits, health insurance, retirement contributions, benefit replacement pay, and workers' and unemployment compensation. It also includes indirect costs related to debt service and services provided by oversight agencies such as the Comptroller, Attorney General, Department of Information Resources, and State Auditor.
  - Payroll related costs were higher in FY2016 because agency salaries increased from the prior year due to across the board salary increases approved by the 83rd Legislature.



- The Statewide Cost Allocation Plan (SWCAP) identifies and allocates costs the State incurs for central services provided by specific agencies. Agencies reimburse the General Revenue from other funding sources based on an allocation of current year appropriated funds. Since the TxDMV was solely funded from General Revenue Funds in FY2016, the agency was not required to process a SWCAP reimbursement.
- **Schedule of Professional/Consulting Fees and Legal Service Fees** provides an itemized list of fees paid for professional, consulting and legal services. The schedule includes the name of the vendor paid, the amount paid, and the reason the services were provided.
  - In FY2016, there was an increase of approximately \$6 million in expenditures specifically for Data Processing Service and Information Technology Services since major components of the Registration Titling System refactoring project were completed and paid in the fiscal year 2016.

**Professional/Consulting Services Vendors – Expenditures over \$300K in FY2016**

Name	Amount	Service Provided
Deloitte Consulting LLP	8,137,626.03	Information Technology Services
Texas Department of Information Resources	7,338,902.50	Computer Services-Statewide Tech. Center
Deloitte Consulting LLP	2,948,571.27	Data Processing Services
Texas Department of Transportation	1,640,480.40	Data Processing Services
NF Consulting	758,017.00	Information Technology Services
Southwest Research Institute	682,470.94	Consultant Services Other
TIBH Industries INC	544,857.34	Information Technology Services
Allied Consultants Inc/Filenet	485,167.56	Information Technology Services
Loblolly Consulting LLC	434,210.31	Information Technology Services
Dell Marketing LP	413,726.30	Information Technology Services
The Greentree Group	395,195.80	Information Technology Services
Software Engineering Services	308,812.53	Information Technology Services

- **Schedule of Space Occupied** lists the name and address of each building an agency occupies, the total amount of square feet leased, and the amount of square feet used in a state-owned building. It also lists the cost per square foot leased, the annual and monthly costs of leased space, and the name of each lessor.
- **Schedule of Vehicles Purchased** lists the vehicles purchased during this fiscal year.
  - Three vehicles were procured during FY2016.
- **Alternative Fuel Program Status** lists the number of vehicles purchased by fiscal year that use alternative fuel. Fuel usage is listed with the number of gallons used during the year.
- **Schedule of Itemized Purchases** identifies proprietary purchases that are procured from one vendor without considering an equivalent product to be supplied by another vendor. The schedule must provide a written justification explaining the need for the specifications, the reasons that competing products were not satisfactory and additional information as required by the Comptroller. The schedule identifies each product purchased, the amount of the purchase, and the name of the vendor.





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

## Annual Report of Nonfinancial Data

Fiscal Year Ended  
August 31, 2016





# **Annual Report of Nonfinancial Data**

## Fiscal Year Ended August 31, 2016



**Texas Department *of* Motor Vehicles**

Prepared by  
Finance & Administrative Services Division

December 31, 2016



**Texas Department *of* Motor Vehicles Board**

Raymond Palacios, Jr., Chair

Blake Ingram, Vice Chair

Luanne Caraway

Guillermo "Memo" Treviño

Brett Graham

John Walker, III

Robert Barnwell, III

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Kate Hardy

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Executive Director

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Texas Department *of* Motor Vehicles  
4000 Jackson Avenue  
Austin, Texas



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December 31, 2016

The Honorable Greg Abbott, Governor  
Ms. Lisa R. Collier, CPA, CFE, CIDA First Assistant State Auditor  
Ms. Ursula Parks, Director, Legislative Budget Board

Ladies and Gentlemen:

We are pleased to submit the Texas Department of Motor Vehicle's *Annual Report of Nonfinancial Data* for the year ended August 31, 2016, in compliance with the TEX. GOV'T CODE ANN. §2101.0115 and in accordance with the instructions for completing the Annual Report of Nonfinancial Data.

The accompanying report has not been audited and is considered to be independent of the agency's *Annual Financial Report*.

If you have any questions, please contact Mr. Sergio Rey, Director of Accounting, at (512) 465-4203, or Ms. Linda M. Flores, CPA, Chief Financial Officer, at (512) 465-4125.

Sincerely,

Whitney H. Brewster  
Executive Director



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(Unaudited)  
**Appropriation Item Transfers\***

For the Fiscal Year Ended August 31, 2016

**ITEM OF APPROPRIATION**

				<u>Transfers-In</u>	<u>Transfers-Out</u>	<u>Net Transfers</u>
<b>A. Goal: Optimize Services &amp; Systems</b>						
<i>Strategies:</i>						
A.1.1	13001	Titles, Registrations & Plates	\$	2,000.00	\$ -	\$ 2,000.00
A.1.3	13005	Motor Carrier Permits & Credential		-	(8,000.00)	(8,000.00)
						-
A.1.5	13007	Customer Contact Center		8,000.00	-	8,000.00
Total, Goal A: Optimize Services & Systems			\$	10,000.00	\$ (8,000.00)	\$ 2,000.00
<b>B. Goal: Protect the Public</b>						
<i>Strategies:</i>						
B.1.1	13008	Enforcement	\$	59,935.00	(2,000.00)	57,935.00
Total, Goal B: Protect the Public			\$	59,935.00	\$ (2,000.00)	\$ 57,935.00
<b>C. Goal: Indirect Administration</b>						
<i>Strategies:</i>						
C.1.2	13010	Information Resources		-	(59,935.00)	(59,935.00)
Total, Goal C: Indirect Administration				-	(59,935.00)	(59,935.00)
<b>NET APPROPRIATION ITEM TRANSFERS</b>			\$	<b>69,935.00</b>	\$ <b>(69,935.00)</b>	\$ <b>-</b>

\* This schedule does not include Benefit Replacement Pay transfers or Rider Reduction transfers.



(Unaudited)  
**HUB Strategic Plan Progress Report**

For the Fiscal Year Ended August 31, 2016

Source: Texas Government Code, Section 2161.124

Category	Actual for FY 15*	Actual for FY 16*	Goal for FY 17**
Heavy construction other than building contracts			
Building construction, including general contractors and operative builders contracts			
Special trade construction contracts	14.59%	13.43%	11.00%
Professional services contracts			
Other services contracts	21.88%	13.82%	11.00%
Commodities contracts	26.89%	28.50%	23.00%

\* Actual Percent spent with HUBS from HUB Report

\*\* HUB Goal from the Strategic Plan

Prepared By 

Fred Snell  
Printed Name

512-465-4177  
Phone Number

Approved By  , CTPM  
(Signature required.)

David Chambers  
Printed Name

512-465-1257  
Phone Number



(Unaudited)  
**Indirect Cost Schedule**  
For the Fiscal Year Ended August 31, 2016

**A. Payroll-related Costs**

*(Exhibit II, Annual Financial Report)*

FICA Employer Matching Contribution	\$	2,890,355.59	
Group Health Insurance		5,754,621.76	
Retirement		3,821,787.85	
Unemployment		13,359.18	
<b>Total Payroll-related Costs</b>			<b>\$ 12,480,124.38</b>

Workers' Compensation	\$	66,433.06	
Benefit Replacement Pay (BRP)		113,027.14	
<b>Total Workers' Compensation and BRP</b>			<b>\$ 179,460.20</b>

**B. Indirect Costs**

*(Not reported in Agency's Annual Financial Report)*

Bond Debt Service Payments			
Texas Facilities Commission (TFC)	\$	0.00	
Texas Public Finance Authority (TPFA)		0.00	
Other (if applicable)		0.00	
<b>Total Indirect Costs</b>			<b>\$ 0.00</b>

**C. Indirect Costs - Statewide Full Cost Allocation Plan (SWCAP)**

Comptroller of Public Accounts (CPA)	\$	0.00	
Department of Public Safety (DPS)		0.00	
Texas Facilities Commission (TFC)		0.00	
Governor Budget & Planning		0.00	
<b>Total Indirect Costs - Statewide Full Cost Allocation Plan</b>			<b>\$ 0.00</b>

<b>TOTAL INDIRECT COSTS</b>			<b>\$ 12,659,584.58</b>
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(Unaudited)

## Schedule of Professional/Consulting Fees & Legal Service Fees

For the Fiscal Year Ended August 31, 2016

### Professional/Consulting Fees:

<b>Name</b>	<b>Service Provided</b>	<b>Amount</b>
AAMVA	Educational/Training Services	500.00
Abdeladim & Associates	Information Technology Services	138,762.30
ACS Dataline LP	Educational/Training Services	(228.00)
Adjacent Technologies Inc	Information Technology Services	45,240.00
Adjacent Technologies Inc	Data Processing Services	294,200.00
Adjacent Technologies Inc	Educational/Training Services	3,750.00
Allied Consultants Inc	Information Technology Services	485,167.56
Anchor Computer	Data Processing Services	20,387.36
AT&T	Information Technology Services	192,941.50
Austin Contact Center Alliance	Educational/Training Services	1,590.00
Austin Ribbon & Computer Supplies	Professional Services-Other	15,890.00
Black Book National Auto Research Division	Information Technology Services	110,500.00
C & T Information Tech. Consulting Inc	Information Technology Services	163,795.00
Carahsoft Technology Corporation	Educational/Training Services	36,108.19
Carolyn Conn	Educational/Training Services	2,340.00
CDW Government Inc	Educational/Training Services	45,750.00
Cogent Infotech Corporation	Information Technology Services	113,669.00
Computer Consultants International Inc	Information Technology Services	16,740.00
Daspan Holdings	Data Processing Services	33,947.00
Dell Marketing LP	Educational/Training Services	11,200.00
Dell Marketing LP	Information Technology Services	413,726.30
Deloitte Consulting LLP	Information Technology Services	8,137,626.03
Deloitte Consulting LLP	Data Processing Services	2,948,571.27
Dispute Resolution Center	Educational/Training Services	950.00
Executive Women in Texas Government	Educational/Training Services	249.00
Explore Information Services LLC	Information Technology Services	251,650.00
Extended Stay Deluxe	Consultant Services-Computer	155.97
Galton Cunningham & Bourgeois PLLC	Professional Services-Other	650.00
Insight Public Sector Inc	Information Technology Services	5,130.00
Integrateus, LLC	Information Technology Services	33,660.00
Intratek Computer, Inc.	Information Technology Services	7,822.50
Intratek Computer, Inc.	Professional Services-Other	113,652.00



(Unaudited)

## Schedule of Professional/Consulting Fees & Legal Service Fees

For the Fiscal Year Ended August 31, 2016

### Professional/Consulting Fees:

<b>Name</b>	<b>Service Provided</b>	<b>Amount</b>
Inventrum LLC	Educational/Training Services	24.75
Iteris, Inc.	Information Technology Services	16,000.00
Loblolly Consulting LLC	Information Technology Services	434,210.31
Luna Data Solutions Inc	Information Technology Services	158,340.00
Malware Archaeology LLC	Educational/Training Services	210.88
MicroAssist Inc	Educational/Training Services	8,991.00
National Human Resource Group Inc	Information Technology Services	215,405.00
Navayuga Infotech LLC	Information Technology Services	70,384.00
NCS Pearson	Educational/Training Services	599.00
NF Consulting Services	Information Technology Services	758,017.00
NTT Data Inc	Data Processing Services	109,680.00
NU Info Systems Inc	Information Technology Services	182,990.50
OSS Inc	Information Technology Services	77,920.50
Paypal Inc	Educational/Training Services	225.00
Promiles Software Development Corp.	Information Technology Services	255,866.39
Robert Half Technology	Information Technology Services	380.61
Rockhurst College Inc	Educational/Training Services	995.00
Skillpath Seminars	Educational/Training Services	89.00
Soal Technologies LLC	Information Technology Services	2,946.50
Software Engineering Services	Information Technology Services	308,812.53
Solid Border Inc	Information Technology Services	8,000.00
Southwest Research Institute	Consultant Services - Other	682,470.94
Specialized Carriers Rigging Assn	Educational/Training Services	140.00
Steel Digital Studios Inc	Professional Services-Other	189,400.00
Texas Association of State Systems for Computing	Educational/Training Services	1,983.34
Texas Comptroller of Public Accounts	Professional Services-Other	10,000.00
Texas Comptroller of Public Accounts	Educational/Training Services	800.00
Texas Department of Information Resources	Computer Services-Statewide Tech	7,338,902.50
Texas Department of Public Safety	Information Technology Services	2,239.00
Texas Department of Transportation	Data Processing Services	1,640,480.40
Texas Govlink Inc	Information Technology Services	93,571.00
The Greentree Group	Information Technology Services	395,195.80



(Unaudited)

## Schedule of Professional/Consulting Fees & Legal Service Fees

For the Fiscal Year Ended August 31, 2016

### Professional/Consulting Fees:

<u>Name</u>	<u>Service Provided</u>	<u>Amount</u>
TIBH Industries Inc	Information Technology Services	544,857.34
TIBH Industries Inc	Professional Services-Other	246,958.25
TXC Texas Creative Ltd	Consultant Services - Other	2,200.41
University of Texas at Austin	Educational/Training Services	12,240.00
UT-Austin School of Social Work	Professional Services-Other	2,819.00
Voice Products Inc	Information Technology Services	25,444.59
Western Assoc of St Hwy & Transportation Officials	Educational/Training Services	1,100.00
Workers Assistance Program Inc	Professional Services-Other	15,748.32
<b>Total, Professional/Consulting Fees:</b>		<b>\$ 27,462,731.84</b>

### Legal Service Fees:

<u>Name</u>	<u>Service Provided</u>	<u>Amount</u>
State Office of Administrative Hearings (SOAH)	Legal Svcs-Approved by OFC ADM	95,136.55
<b>Total, Legal Service Fees:</b>		<b>\$ 95,136.55</b>

<b>TOTAL, PROFESSIONAL/CONSULTING FEES &amp; LEGAL SERVICE FEES</b>	<b>\$ 27,557,868.39</b>
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(Unaudited)  
**Schedule of Space Occupied**  
For the Fiscal Year Ended August 31, 2016

The Texas Department of Motor Vehicles is headquartered in Austin, Texas and maintains sixteen (16) regional offices across the state to facilitate delivery of services to the motoring public. Effective November 1, 2009, the Texas Department of Transportation allocated office space to the TxDMV through a Memorandum of Understanding as required by HB 3097, 81st Legislature, R.S.

Location	Address	Lessor	Lease No.
<b>State Owned Buildings</b>			
Camp Hubbard Complex	4000 Jackson Ave, Austin, Texas		
Building, CH 1			
Building, CH 2 (Fiesta Room)			
Building, CH 5			
Bull Creek Complex	4203 Bull Creek, Austin, Texas		
Building 22			
Building 40			
Building 43 A, B & C			
<b>Regional Offices</b>			
Abilene	4210 North Clack, Abilene, Texas		
Amarillo	5715 Canyon Drive, Building H, Amarillo, Texas		
Austin	1001 East Parmer Lane, Suite A, Austin, Texas		
Beaumont	8550 Eastex Freeway, Beaumont, Texas		
Corpus Christi	1701 South Padre Island Drive, Bldg 2, Corpus Christi, Texas		
Huntsville Warehouse Operations	810 FM 2821, Huntsville, Texas	TDCJ - Wynne Unit	
Longview	4549 West Loop 281, Longview, Texas		
Lubbock	135 Slaton Road, Lubbock, Texas		
Midland/Odessa	3901 East Hwy 80, Odessa, Texas		
Pharr	600 West Expwy 83, Pharr, Texas		
San Antonio	3500 NW Loop 410, San Antonio, Texas		
Wichita Falls	1601 Southwest Parkway, Bldg A, Wichita Falls, Texas		
<b>Leased Space</b>			
Centimeter Warehouse Facility	2000 Centimeter Circle, Austin, Texas	RUT-3-4-7, LTD	TxDOT MOU
CPA Warehouse	1811 Airport Blvd, Austin, Texas	4015 Limited Partnership	6728
<b>Regional Offices</b>			
Dallas	1925 E. Beltline Road, Carrollton, Texas	RDT Leasing	7959
El Paso	1227 Lee Trevino Drive, Suite 100, El Paso, Texas	Burnham Properties, Ltd.	10263
Fort Worth	2425 Gravel Drive, Fort Worth, Texas	Gravel Drive Limited	10462
Houston	2110 East Governors Circle, Houston, Texas	Ragsdale-Brookwood Joint Venture	20399
Waco	2203 Austin Avenue, Waco, Texas	Tony Martin, Trustee	8365



Location	Type	Usable Square Footage	FTEs	Cost Per			
				Month	Sq.Ft. Per Mo.	Year	Contract Period
State Owned Buildings							
Camp Hubbard Complex							
Building, CH 1	Office	71,684	281				
Building, CH 2 (Fiesta Room)	Office	1,102	0				
Building, CH 5	Office	33,134	115				
Bull Creek Complex							
Building 22	Office	7,664	54				
Building 40	Office	7,000	35				
Building 43 A, B & C	Office	5,030	22				
Regional Offices							
Abilene	Office	1,900	8				
Amarillo	Office	2,252	5				
Austin	Office	3,131	11				
Beaumont	Office	2,536	8				
Corpus Christi	Office	3,180	7				
Huntsville Warehouse Operations	Office	260	2				
Longview	Office	3,120	10				
Lubbock	Office	2,579	7				
Midland/Odessa	Office	2,900	6				
Pharr	Office	3,500	13				
San Antonio	Office	1,760	20				
Wichita Falls	Office	2,449	11				
Total, State Owned Buildings		155,181	615	\$ -		\$ -	
Leased Space							
Centimeter Warehouse Facility	Warehouse	2,500	0	401.59	0.1606	4,819.08	09/01/15 - 08/31/16
CPA Warehouse	Warehouse	3,000	0	1,694.73	0.5649	20,336.76	05/01/15 - 04/30/20
Regional Offices							
Dallas	Office	7,865	23	9,831.25	1.2500	117,975.00	04/01/15 - 03/31/20
El Paso	Office	3,771	11	4,485.78	1.1895	53,829.36	11/01/12 - 10/31/17
Fort Worth	Office	5,685	21	6,468.75	1.1379	77,625.00	10/01/10 - 09/30/20
Houston	Office	11,554	33	23,117.82	2.0008	277,413.84	11/01/14 - 10/31/24
Waco	Office	2,307	8	3,185.53	1.3808	38,226.36	09/01/15 - 08/31/20
Total, Leased Space		36,682	96	\$ 49,185.45		\$ 590,225.40	
GRAND TOTAL		191,863	711	\$ 49,185.45		\$ 590,225.40	



(Unaudited)

## Schedule of Vehicles Purchased

For the Fiscal Year Ended August 31, 2016

<u>Make</u>	<u>Model</u>	<u>Quantity</u>	<u>Purchase Price</u>	<u>Type of Use</u>	<u>Fuel Efficiency In Average Miles per Gallon</u>
Ford	Crown Victoria	1	\$ 2,453.00	Enforcement Operations	19.4
Ford	Crown Victoria	2	\$ 4,906.00	Vehicle Title & Registration Operations	19.4
<b>TOTALS</b>		<u><u>3</u></u>	<u><u>\$ 7,359.00</u></u>		



(Unaudited)  
**Alternative Fuel Program Status**  
For the Fiscal Year Ended August 31, 2016

**Alternative Fuel Vehicles Received Into Inventory by Fiscal Year**

The totals in the chart below represent the number of alternative fuel vehicles received into inventory between September 1 and August 31 of each fiscal year.

Fiscal Year	Type Of Fuel Capability				Total
	Natural Gas (CNG)	Propane (LPG)	Ethanol (E-85)	Gas/Electric Hybrid	
2016			3		3
2015					0
2014			8		8
2013			8		8
2012			6		6
2011					0
2010		6	1	11	18
<b>Totals</b>	<b>0</b>	<b>6</b>	<b>26</b>	<b>11</b>	<b>43</b>

Texas Department of Motor Vehicles was created by the 81st Legislature with House Bill 3097. The vehicles listed for FY2010 were part of the transfer from Texas Department of Transportation when the TxDMV began operations. The purchases to date were surplus vehicles bought from the Texas Department of Public Safety and one new vehicle procured via the Comptroller of Public Accounts Term Contract.

**Fuel Usage for the Fiscal Year Ended August 31, 2016**

	Gallons Used
Unleaded Gasoline	19,499
Unleaded for Gas Hybrid	3,481
Propane	101
Ethanol	3,283



(Unaudited)  
**Schedule of Itemized Purchases**  
For the Fiscal Year Ended August 31, 2016

Vendor Name	Amount	Product Purchased	Justification
Explore Information Services	\$ 915,775.00	<i>Programming and Support Services</i> Software programming to modify our current International Registration Plan software (TxIRP) web-based system to automate verification of Texas vehicle safety and emissions inspection records for the single sticker program.	<i>Competing Products Not Satisfactory</i> Explore Information Services wrote the source code for the system and currently supports it as well. As such, they are the only vendor that can supply the services required.
Southwest Research Institute	\$ 1,768,157.40	<i>Programming and Support Services</i> The Texas Department of Motor Vehicles (TxDMV) must maintain Core Commercial Vehicle Information System & Network (CVISN) deployment capabilities, support expanded CVISN deployment, and provide daily maintenance and operations of the TxCVIEW to provide needed information used in different state agencies participating in CVISN.	<i>Competing Products Not Satisfactory</i> Southwest Research Institute wrote the source code for the system and currently supports it as well. As such, they are the only vendor that can supply the services required.
Adjacent Technologies	\$ 217,800.00	<i>Data Conversion Services</i> Additional work needed for the TxDMV FileNet migration project. FileNet acts as the Electronic Data Management System (EDMS) for several TxDMV applications.	<i>Competing Products Not Satisfactory</i> Adjacent Technologies developed the existing system and TxDMV has a need for the awarded vendor to have a detailed understanding of the existing system.
Deloitte Consulting	\$ 420,000.00	<i>Programming and Support Services</i> Additional work needed for the TxDMV Licensing, Administration, Consumer Affairs and Enforcement (LACE) Replacement Application.	<i>Competing Products Not Satisfactory</i> Deloitte Consulting developed the existing system and TxDMV has a need for the awarded vendor to have a detailed understanding of the existing system.
Deloitte Consulting	\$ 8,100,000.00	<i>Programming and Support Services</i> Additional work needed for the TxDMV Registration and Titling System (RTS) refresh project.	<i>Competing Products Not Satisfactory</i> Deloitte Consulting developed the existing system and TxDMV has need for the awarded Vendor to have a detailed understanding of the existing system.
Texas Contract Construction	\$ 7,699.20	<i>Programming and Support Services</i> Installation of a door actuator compliant with the American Disabilities Act (ADA).	<i>Leased Facility</i> Facility is leased and TxDMV was required to utilize facility owner's vendor for work.
<b>TOTAL PURCHASES</b>	<b>\$ 11,429,431.60</b>		



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DATE: January 5, 2017

Action Requested: BRIEFING

To: Texas Department of Motor Vehicles Board (TxDMV)  
From: Linda M. Flores, CPA, Chief Financial Officer  
Agenda Item: 5.C.  
Subject: **2017 Quarterly Financial Report**

### RECOMMENDATION

The attached Financial Summary reflects revenues and expenditures for the TxDMV for the first quarter ending November 30, 2016.

### PURPOSE AND EXECUTIVE SUMMARY

The Texas Department of Motor Vehicles (TxDMV) Board are briefed quarterly by staff on the revenue collections and agency expenditures. TxDMV Fund first quarter collections of \$50,803,802 exceeded projections, however; collections for all revenues (including Fund 006) were 3.9%, under projection. Expenses for the same period totaled approximately \$26.2 million with salaries, contract services, and postage constituting the majority of the expenditures.

The agency completed the first quarter without any major cost overruns or unanticipated expenditures. Revenue collections were close to projections without any unanticipated fluctuations. The first quarter reflects the newly created TxDMV Fund and collections from the Processing and Handling (P&H) fee.

### FINANCIAL IMPACT

Beginning in 2017 the agency is funded from the newly created TxDMV Fund, with the exception of Automobile Burglary and Theft Prevention Authority (ABTPA) which will continue to be funded from General Revenue.

### BACKGROUND AND DISCUSSION

#### **Revenues**

At the end of the first quarter, TxDMV Fund collections met and exceeded expectations with overall revenue 4.2% higher than projected. Higher than anticipated automation fees (included in registration collections) and miscellaneous revenue offset weaker than anticipated oversize/overweight and business dealer licenses revenue. Title revenue was in line with revenue projections. In an agency first, Processing and Handling Fee revenue totaling \$3,412 was received in the month of November.

As of November 30, 2016, revenue collections for the new MyPlates contract exceeded \$22 million of which approximately \$10.9 million counts against the \$15 million General Revenue guarantee. At the current collection rate it is estimated the \$15 million General Revenue guarantee will be met in the Fall of calendar year 2017.

For the first quarter, collections for all revenues ended 3.9% or \$17.2 million lower than projections. The major driver for lower than projected revenue collections was realized in motor vehicle registrations and oversize/overweight revenue. Registration revenue started the year slowly, as the state has experienced a 1.2% decrease in the number of registered vehicles compared to the same period last year. In the first quarter, oversize/overweight revenue continues the downward slide it began in FY 16. The slump in oil prices and the related down turn in the oil patch continue to put pressure on the oversize/overweight category.





## Expenditures

Overall year-to-date expenditures through November 30, 2016 totaled \$26,171,363. Significant expenditure categories includes salaries, contract services for plate production, printing costs for Vehicles, Titles, and Registration (VTR) forms, postage, and Data Center Services (DCS) costs. Included in the year-to-date expenditures is approximately \$966,000 for contract payments to the MyPlates vendor. Contract payments to the MyPlates vendor are contingent upon revenues collected. As of the end of the first quarter, MyPlates revenues totaled \$1,037,774.

Included in the overall expenditure total are capital appropriation expenditures of approximately \$3.0 million, with the primary expenditure being \$1.5 million for Data Center Services (DCS) costs. Automation expenditures total approximately \$885,000 for the first quarter, primarily for project costs in RTS Refactoring and LACE Replacement/eLicensing.





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

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# FY 2017 Financial Summary for the 1st Quarter ending November 30, 2016

**Finance and Administrative Services Division**

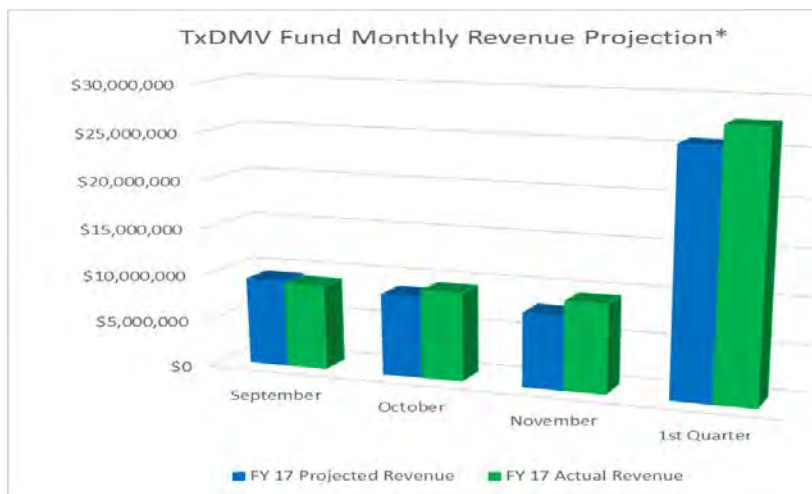
**January 5, 2017**



# 1st Quarter FY 2017 Financial Status Highlights

## TxDMV Fund Overview

<u>Revenues:</u>	<u>FY 2017 YTD Projected Revenue</u>	<u>FY 2017 YTD Actual Revenue</u>
Motor Vehicle Certificates of Title	\$ 9,449,066	\$ 9,377,919
Motor Vehicle Registration Fees	10,623,234	13,557,739
Motor Carrier - Oversize / Overweight	3,398,341	2,728,167
Business Dealer Licenses	1,657,709	1,306,250
Miscellaneous Revenue	643,100	830,315
TxDMV Fund One-time Transfer	23,000,000	23,000,000
Processing and Handling Fee	-	3,412
<b>Total DMV Revenue</b>	<b>\$ 48,771,449</b>	<b>\$ 50,803,802</b>



Overall, TxDMV Fund revenue is 4.2% over projection through the 1<sup>st</sup> quarter of FY17. Certificate of Title revenue is right on target through the 1<sup>st</sup> quarter while registration revenue is 27.6% higher than projected. Registration revenue for the quarter is higher than expected in automation and buyer tag fee collections. TxDMV is collecting \$1.00 Automation fees for the first four months of the fiscal year. The fee will drop to \$0.50 when the Process & Handling Fee (P&H) is implemented January 1, 2017.

Oversize/Overweight deposits to

TxDMV Fund are below projection as fewer permits have been issued in the depressed oil price environment. Through the 1<sup>st</sup> quarter of FY17, TxDMV has issued 8% fewer permits compared to same period of FY16. After a slow start to the year, Business Dealer Licenses revenue is 21.2% lower than projected. The Motor Vehicle division is working through a credential backlog that may account for lower than expected revenue. In the month of November the first P&H revenue was received by TxDMV in an amount of \$3,412. Significant P&H revenue is not expected until the month of February.

Top 10 TxDMV Fund Fees for the 1st Quarter	
Automation Fee	\$ 5,978,244
Title Fees (\$3 Portion)	4,742,304
Buyer's Tag	4,553,444
Delinquent Title Transfer (Public)	2,260,762
Oversize/Overweight Permits	2,133,980
Business Dealer Licenses	1,305,550
Salvage/Title Histories	1,060,883
My Plates - Renewal Fees	1,034,409
Delinquent Title Transfer (Dealer)	648,264
1547 Permits	594,223
<b>Top 10 TxDMV Fund Fees Deposits</b>	<b>\$ 24,312,064</b>
<b>Total TxDMV Fund Deposits (Excluding one-time transfer)</b>	<b>\$ 27,803,802</b>



## 1st Quarter FY 2017 Financial Status Highlights

### My Plates Contract Revenue and Guarantee Status

Through November of FY17, cumulative vendor deposits to GR totaled \$22,113,101. Of these deposits, \$10,867,871 counts toward the contractual guarantee of \$15 million in deposits to GR. At the current rate of growth and using conservative methodology, it is estimated MyPlates will meet the revenue guarantee in the Fall of 2017.



\* 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

General Revenue deposits from the sale of vendor specialty plates are determined by plate type and plate term with the state receiving:

- 40% from all plates sales of one year
- 95% of all renewals sales
- 60% of all auction sales
- 60% from all plate sales with a term of greater than one year
- 10% of all ancillary products



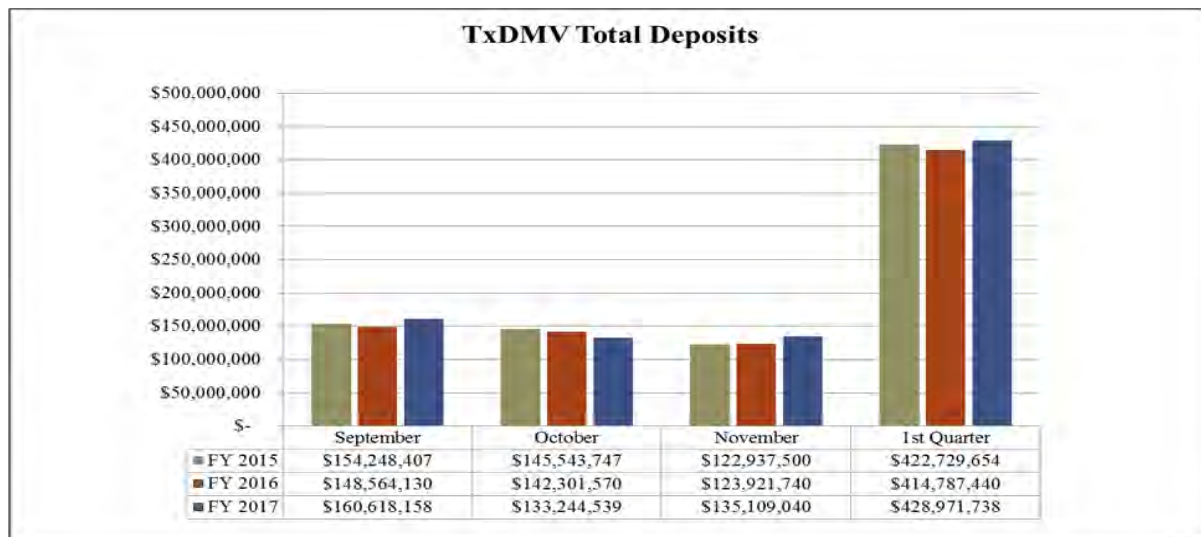
# 1st Quarter FY 2017 Financial Status Highlights

## Overview All Revenues

<u>Revenues:</u>	<u>FY 2017 YTD Projected Revenue</u>	<u>FY 2017 YTD Actual Revenue</u>
Motor Vehicle Certificates of Title	\$ 19,522,131	\$ 19,885,481
Motor Vehicle Registration Fees	356,964,456	347,440,873
Motor Carrier - Oversize / Overweight	41,087,926	33,855,045
Commercial Transportation Fees	2,226,802	1,718,610
Business Dealer Licenses	1,657,709	1,306,250
Miscellaneous Revenue	1,741,600	1,762,067
TxDMV Fund One-time Transfer	23,000,000	23,000,000
Processing and Handling Fee	-	3,412
<b>Total DMV Revenue</b>	<b>\$ 446,200,624</b>	<b>\$ 428,971,738</b>

Overall, revenue is 3.9% under projection through the 1st quarter of FY17 for all revenue collections. November FY17 showed positive revenue momentum as revenue was 9.0% higher compared to November FY16 and helped offset a weaker than expected September and October.

Certificate of Title revenue is 1.9% over projection, helped by strong auto sales and a nationwide Seasonally Adjusted Annual Rate (SAAR) of over 17 million for auto sales. Registration revenue is slightly below projected levels as the state has experienced a 1.2% decrease in the number of registered vehicles compared to the same period last year. As of November, there are 23,830,075 (excluding exempt vehicles) registered vehicles in Texas. Oversize/Overweight revenue continues to defy revenue expectations with revenue coinciding with a slump in the oil patch and ongoing weakness in permitting issuance. Seasonal variance accounts for the revenue shortfall in Commercial Transportation Fees and is expected to meet revenue projections in the second quarter. Business Dealer Licenses revenue is 21.2% below expectations after a slow start to the year. The Motor Vehicle Division is working through a credential backlog that may account for some of the revenue weakness in the 1st quarter.





# 1st Quarter FY 2017 Financial Status Highlights

## Expenditure Budget Status November 30, 2016

Expenditures:	2017 Adjusted Budget	1Q Sep - Nov	YTD Expenditures	FY 2017 Available Budget	FY 2017 Encumbrances	FY 2017 Available Budget
Salaries and Wages	\$ 40,760,119	\$ 9,391,703	\$ 9,391,703	\$ 31,368,417	\$ -	\$ 31,368,417
Benefit Replacement Pay	\$ 113,112	\$ 10,266	\$ 10,266	\$ 102,846	\$ -	\$ 102,846
Other Personnel Costs	\$ 1,228,192	\$ 293,343	\$ 293,343	\$ 934,849	\$ -	\$ 934,849
Professional Fees and Services	\$ 44,032,239	\$ 2,530,505	\$ 2,530,505	\$ 41,501,734	\$ 14,226,934	\$ 27,274,800
Fuels & Lubricants	\$ 75,650	\$ 8,358	\$ 8,358	\$ 67,292	\$ 51,413	\$ 15,879
Consumable Supplies	\$ 1,115,698	\$ 268,597	\$ 268,597	\$ 847,101	\$ 26,640	\$ 820,461
Utilities	\$ 4,723,616	\$ 713,743	\$ 713,743	\$ 4,009,873	\$ 550,751	\$ 3,459,122
Travel In-State	\$ 465,735	\$ 76,095	\$ 76,095	\$ 389,640	\$ -	\$ 389,640
Travel Out-of-State	\$ 89,962	\$ 9,336	\$ 9,336	\$ 80,626	\$ -	\$ 80,626
Rent - Building	\$ 1,271,050	\$ 184,379	\$ 184,379	\$ 1,086,671	\$ 437,538	\$ 649,133
Rent - Machine and Other	\$ 334,563	\$ 25,754	\$ 25,754	\$ 308,809	\$ 232,413	\$ 76,395
Advertising & Promotion	\$ 687,300	\$ 1,323	\$ 1,323	\$ 685,977	\$ 1,425	\$ 684,552
Purchased Contract Services	\$ 37,094,445	\$ 5,568,529	\$ 5,568,529	\$ 31,525,916	\$ 24,711,921	\$ 6,813,994
Computer Equipment Software	\$ 5,173,514	\$ 145,893	\$ 145,893	\$ 5,027,621	\$ 4,310,553	\$ 717,068
Fees & Other Charges	\$ 1,158,075	\$ 251,315	\$ 251,315	\$ 906,760	\$ 492,900	\$ 413,860
Freight	\$ 828,301	\$ 13,098	\$ 13,098	\$ 815,203	\$ 745,097	\$ 70,106
Maintenance & Repair	\$ 3,608,314	\$ 753,363	\$ 753,363	\$ 2,854,951	\$ 2,017,051	\$ 837,900
Memberships & Training	\$ 305,934	\$ 91,523	\$ 91,523	\$ 214,411	\$ 24,975	\$ 189,435
Other Expenses	\$ 14,302,848	\$ 15,583	\$ 15,583	\$ 14,287,265	\$ 25,339	\$ 14,261,925
Postage	\$ 10,081,472	\$ 4,556,567	\$ 4,556,567	\$ 5,524,905	\$ 4,803,096	\$ 721,809
Reproduction & Printing	\$ 5,880,584	\$ 1,129,177	\$ 1,129,177	\$ 4,751,407	\$ 3,801,898	\$ 949,509
Services	\$ 1,176,299	\$ 127,394	\$ 127,394	\$ 1,048,905	\$ 743,191	\$ 305,714
Grants	\$ 13,681,480	\$ -	\$ -	\$ 13,681,480	\$ 12,562,745	\$ 1,118,735
Other Capital	\$ 3,171,889	\$ 5,519	\$ 5,519	\$ 3,166,370	\$ 3,850	\$ 3,162,520
	<b>\$ 191,360,390</b>	<b>\$ 26,171,363</b>	<b>\$ 26,171,363</b>	<b>\$ 165,189,027</b>	<b>\$ 69,769,729</b>	<b>\$ 95,419,298</b>

### Budget Adjustments

Adjusted UB <sup>1</sup> \$ (380,396)

Total adjustment to original approved  
budget of \$191.7 million

**\$ (380,396)**

Comparison to Prior Year		
	Adjusted Fiscal Year 2016	Adjusted Fiscal Year 2017
Approved Adjusted Budget	\$ 195,961,106	\$ 191,360,390
Year-to-Date Expenditures	\$ 22,799,274	\$ 26,171,363
Available Budget	\$ 173,161,832	\$ 165,189,027
Encumbrances/Remaining Expenses	\$ 95,780,643	\$ 69,769,729
<b>Available Budget</b>	<b>\$ 77,381,189</b>	<b>\$ 95,419,298</b>

### Notes:

1. Unexpended balance amount adjusted to reflect actual costs in FY 2016 for AMSIT and Physical Security capital budgets.



## 1st Quarter FY 2017 Financial Status Highlights

### Expenditures:

Year-to-date expenditures through August 31, 2016 total \$26,171,363. The significant expenditure categories are detailed below:

**Salaries and Other Personnel** (\$9.8 million) – As of November 30, 2016, there were 709 filled positions and 54 vacancies.

**Purchased Contract Services** (\$5.6 million) – This line item includes Huntsville license plate production (\$3.6 million); Special License Plate Fees - Rider 3, (\$966K); and registration renewal and specialty plate mailing (\$863K).

**Professional Fees** (\$2.5 million) – The majority of these expenses are Data Center Services (DCS) (\$1.4 million) and Automation (\$847K).

**Postage** (\$4.5 million) – Postage permits for registration renewal mailings.

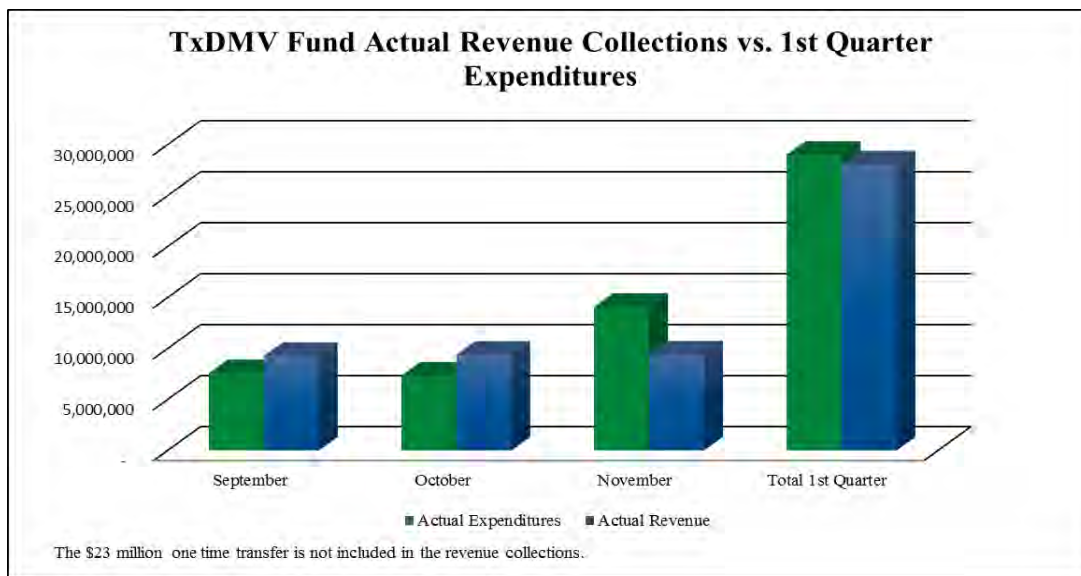
**Reproduction & Printing** (\$1.1 million) – Printing and imaging of titles (\$476K), title paper, envelopes, and registration inserts (\$600K).

**Utilities** (\$713K) – Information Technology data circuit and telephone costs.

**Maintenance and Repair** (\$753K) – Annual software maintenance costs (\$663K)

### TxDMV Fund Expenditures

Salary Related	\$ 9,637,031	
Professional Fees	\$ 2,474,199	
Travel	\$ 83,657	
Rent/Utilities	\$ 923,877	
Contract Services and Services	\$ 5,681,960	
Computer Equipment & Software and Maintenance & Repair	\$ 861,397	
Freight, Postage and Reproduction & Printing	\$ 5,698,842	
Membership & Training	\$ 90,886	
Advertising & Promotion, Fees & Other Charges	\$ 251,616	
Other Expenses	\$ 15,583	
Fuels & Lubricants and Consumables	\$ 276,955	
<b>Subtotal Operating Expenses</b>	<b>\$ 25,996,002</b>	
Fringe Benefits	\$ 3,001,370	
<b>1st Quarter Fund 10 Total Expenses</b>	<b>\$ 28,997,372</b>	





## 1st Quarter FY 2017 Financial Status Highlights

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### Capital Project Status

#### Technology Replacements and Upgrades - County Support

The total budget FY 2017 is \$9.2 million. This includes \$5.5 million in new 2017 appropriations and \$3.7 million in unexpended balance from 2016. Expenditures to date are for toner cartridges for county offices and network equipment maintenance. Encumbrances to date total \$6.0 million, with the majority of that amount for the County Equipment Refresh Project (CERP), which will provide workstation and printer upgrades to the 508 County offices throughout the state. The deployment of the workstation and printer upgrades will begin in December 2016 and is scheduled to be finished by May 2017.

#### TxDMV Automation System

The TxDMV Automation 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 \$13.1 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 the new Process and Handling (P&H) fee for RTS has been implemented.

Work continues on the LACE Replacement/eLicensing project. User Acceptance Testing (UAT) continues and training materials and training videos have been developed.

The Web Dealer Project continued with dealer implementation and enhancement testing. The modules implemented to date include New Vehicles, Used Vehicles, and Commercial Fleet. The Salvage module was implemented in July 2016. Adjustments have been 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 into FY 2017. The Automation funding for this project was \$1.2 million, with the majority of that cost being 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.

The unallocated reserve for Automation was increased in August 2016 by \$1.9 million through a transfer from operating lapse to fund the new WebLien project anticipated to begin in FY 2017. The unallocated reserve amount is currently budgeted at \$3.8 million.

#### 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 and laptops.

#### Commercial Vehicle Information Systems and Networks (CVISN) Grant

The Commercial Vehicle Information Systems and Networks (CVISN) 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. 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. Currently \$435,000 is encumbered to TxDOT for the ABC Warning Project.



## 1st Quarter FY 2017 Financial Status Highlights

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### 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 \$1.5 million through the end of November. The year-to-date total reflects charges for September 2016 services. The total DCS budget of \$9.5 million does not include the projected \$1.2 million payment to TxDOT for DCS charges, which will be paid from IT Operating in FY 2017.

### Relocation of Regional Service Centers

This project provides funding in FY 2017 for the relocation of three Regional Service Centers from TxDOT facilities. A lease for the Corpus Christi Regional Service Center has been signed with an estimated move date of April 1, 2017. After review and consideration of numerous properties and several requests for proposals from landlords of properties deemed to be viable, TxDMV staff recommends relocation to available property at 15150 Nacogdoches Road, San Antonio, Texas 78247 for the new San Antonio RSC location. The Pharr Regional Service Center's previous landlord's costs analysis in their Request for Proposal (RFP) was cost prohibitive to the agency. Two additional properties were selected for executive consideration and both properties have been reviewed. TxDMV is anticipating to receive cost and layout information in early December for the second of the two additional properties.

### Relocation of Bull Creek Campus

This project is new for FY 2017. Funding in the amount of \$800,000 for FY 2017 will be used to address costs related to the relocation of MCD staff from Bull Creek to the 5<sup>th</sup> Floor of Building 6 at Camp Hubbard. This move is anticipated to occur by January 2018.

### 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. Primary costs in FY 2016 were for project management and project services provided by NTT Data. The FY 2017 adjusted budget is \$6.5 million.

### Physical Security

In 2016, the TxDMV Board approved transfers from EPMO operating (\$122,040), and Growth and Enhancement, (\$175,000), to create the FY 2016 Physical Security Project budget. FY 2017 funding in the amount of \$354,156 includes \$130,000 in unexpended balance (UB) funding from FY 2016. This covered project management costs and other miscellaneous implementation expenses. Expenses to date in FY 2017 are for project management and cabling costs. As of the end of November new security systems have been installed in eight RSC's.



# 1st Quarter FY 2017 Financial Status Highlights

## Statement of Capital Project Expenditures through November 30, 2016

Capital Projects	2017 Approved Adjusted Budget	1Q Sep - Nov	FY 2017 YTD Expenditures	FY 2017 Available Budget	FY 2017 Encumbrances	FY 2017 Available Budget
Application Migration & Server Transformation (AMSIT)	6,480,559	37,010	37,010	6,443,549	146,447	6,297,102
Commerical Vehicle Information Systems & Network (CVISN)	435,000	-	-	435,000	350,000	85,000
Data Center Consolidations	9,574,259	1,486,448	1,486,448	8,087,811	6,149,985	1,937,826
Growth & Enhancements - Agency Operations Support	950,705	66,983	66,983	883,722	90,692	793,030
Technology Replacement & Upgrades - County Support	9,199,003	522,752	522,752	8,676,251	6,001,891	2,674,360
TXDMV Automation System Project	23,693,671	885,543	885,543	22,808,128	6,203,240	16,604,888
Regional Office Relocation	871,500	-	-	871,500	-	871,500
Bull Creek Relocation	800,000	-	-	800,000	-	800,000
Physical Security	354,156	48,987	48,987	305,169	296,226	8,943
<b>Total</b>	<b>52,358,853</b>	<b>3,047,722</b>	<b>3,047,722</b>	<b>49,311,129</b>	<b>19,238,480</b>	<b>30,072,648</b>

## Statement of TxDMV Automation Project Expenditures through November 30, 2016

<b>TxDMV Automation Project Appropriations</b>	<b>FY 2017</b>
Original Estimated Unexpended Balance Carry-Forward from FY 2016	\$ 23,693,671
<b>Total Automation Appropriations</b>	<b>\$ 23,693,671</b>

TxDMV Automation	2017 Approved Adjusted Budget	1Q Sep - Nov	2017 YTD Expenditures	2017 YTD Encumbrances	Available Budget
813010 RTS Refactoring	\$ 13,141,146	\$ 327,249.00	\$ 327,249	\$ 4,043,566	\$ 8,770,331
813015 WebDealer E-Titles	\$ 1,063,082	\$ 117,949.00	\$ 117,949	\$ 785,234	\$ 159,899
813020 E-Licensing	\$ 4,937,887	\$ 440,345.00	\$ 440,345	\$ 1,374,440	\$ 3,123,102
815028 Single Sticker Phase II	\$ 739,763	\$ -	\$ -	\$ -	\$ 739,763
84BDGT Unallocated	\$ 3,811,793	\$ -	\$ -	\$ -	\$ 3,811,793
<b>TxDMV Automation Total</b>	<b>\$ 23,693,671</b>	<b>\$ 885,543</b>	<b>\$ 885,543</b>	<b>\$ 6,203,240</b>	<b>\$ 16,604,888</b>



DATE: January 5, 2017

Action Requested: APPROVAL

**To:** Texas Department of Motor Vehicles Board (TxDMV)  
**From:** Linda M. Flores, CPA Chief Financial Officer  
**Agenda Item:** 5.D.  
**Subject:** Relocation of the San Antonio Regional Service Center

#### **RECOMMENDATION**

TxDMV staff recommends approval to relocate and support the San Antonio Regional Service Center (RSC) on Texas Facilities Commission (TFC) approved commercially leased property no later than August 31, 2017. The proposed lease includes the following estimated costs for Year 1 --\$179,500 in one-time costs; \$130,877 annual ongoing costs. The duration of the 10 lease is estimated not to exceed \$880,159.

#### **PURPOSE AND EXECUTIVE SUMMARY**

The agency received funding during the 84<sup>th</sup> Legislative Session to relocate staff from the Bull Creek Property (Motor Carrier Division) and selected Regional Service Centers. TxDMV and the Texas Facilities Commission worked together to determine appropriate space requirements to meet location and square footage needs and to develop appropriate property specifications for the location.

For San Antonio, TFC established square footage at ~3,916 square feet. They posted a request for proposal (RFP) for the project on January 19, 2016, and it closed on March 1, 2016. TFC did not receive any proposals. TFC then obtained a real estate broker (Aquila) to begin a property search in June 2016.

After review and consideration of numerous properties and several requests for proposals from landlords of properties deemed to be viable, TxDMV staff recommends relocation to available property at 15150 Nacogdoches Road, San Antonio, Texas 78247 for the new San Antonio RSC location.

The property is approximately 16.4 miles (about 19 minutes) from the current location, provides needed space to accommodate approximately 22 TxDMV staff, provides good access and sufficient parking and the lease is offered as "full service" (i.e., inclusive of monthly base rent, janitorial costs and utilities).

The Texas Facilities Commission approved the lease in November 2016.

#### **FINANCIAL IMPACT**

The lease terms are supported by the TxDMV operating budget.

#### **BACKGROUND AND DISCUSSION**

See attached additional information.





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# **TxDMV San Antonio Regional Service Center Relocation**

**Finance and Administrative Services Division**

*January 2017*



## 2017 TxDMV San Antonio RSC Relocation

**Purpose:** Requesting TxDMV Board grant approval or grant the Executive Director the authority to approve the lease agreement associated with the San Antonio Relocation for a ten year term.

**Authority:** In accordance with Government Code, Chapter 2167, the Texas Facilities Commission (TFC) holds authority for leasing and renewing commercially leased property on behalf of state agencies.

**Lease Timeframe:** The new lease would be effective May 1, 2017 through April 30, 2027.

### **Project Budget/Expenditures:**

- Property Location: 15150 Nacogdoches Road, San Antonio, Texas 78247
- Square Footage: ~3,916
- CPI = Consumer Price Index is a clause in the contract which allows the lessor to request an increase in lease payments due to increased economic charges. CPI is calculated by TFC and added to the monthly payment each year. TxDMV estimates this cost to be approximately 3% per year.
- Total 10 Year Projected Cost: \$880,158.48

Lease Date May 2017	Monthly Base Rent	50% of Base Rent	CPI (Estimated 3% per month)	Adjusted Rent Total (Monthly)	Adjusted Rent Total (Annualized)
2017*	\$ 6,818.73	\$ -	\$ -	\$ 6,818.73	\$ 54,549.84
2018	\$ 6,818.73	\$ 3,409.37	\$ 102.28	\$ 6,921.01	\$ 83,052.12
2019	\$ 6,921.01	\$ 3,460.51	\$ 103.82	\$ 7,024.83	\$ 84,297.96
2020	\$ 7,024.83	\$ 3,512.42	\$ 105.72	\$ 7,130.55	\$ 85,566.60
2021	\$ 7,130.55	\$ 3,565.28	\$ 106.96	\$ 7,237.51	\$ 86,850.12
2022	\$ 7,237.51	\$ 3,618.76	\$ 108.56	\$ 7,346.07	\$ 88,152.84
2023	\$ 7,346.07	\$ 3,673.04	\$ 110.19	\$ 7,456.26	\$ 89,475.12
2024	\$ 7,456.26	\$ 3,728.13	\$ 111.84	\$ 7,568.10	\$ 90,817.20
2025	\$ 7,568.10	\$ 3,784.05	\$ 113.52	\$ 7,681.62	\$ 92,179.44
2026	\$ 7,681.62	\$ 3,840.81	\$ 115.22	\$ 7,796.84	\$ 93,562.08
2027**	\$ 7,796.84	\$ 3,898.42	\$ 116.95	\$ 7,913.79	\$ 31,655.16
<b>Grand Total</b>					<b>\$ 880,158.48</b>

\* 2017 includes 8 monthly payments for the period of May 1, 2017 through December 31, 2017

\*\* 2027 includes 4 monthly payments for the period of January 1, 2027 through April 30, 2027

**Business Operations:** The San Antonio Regional Service Center is occupied by 22 TxDMV Full Time Equivalents (1 Regional Manager, 6 Investigators, 1 Coordinator and 14 Customer Service Representatives). The Regional Service Centers serve the Texas public by providing:

- Replacement titles;
- Bonded title rejection letters;



- Apportioned registration (IRP credentials and temporary operating authority for established accounts);
- Annual permits (NAFTA);
- Investigation and resolution of Texas title errors;
- Etc.

**2017 TxDMV San Antonio Relocation Cost Estimates include:**

<b>San Antonio RSC</b>	<b>Column A FY 2016-2017 Projections</b>	<b>Column B Proposed Lease Year 1 Annualized (rounded)</b>	<b>Difference Column A – Column B</b>
Annual Rent <sup>1</sup>	\$ 126,408	\$54,550	\$ 71,858
Badge System	6,000	6,000	-
Security	21,000	39,000	(18,000)
Janitorial	11,748	8,459	3,289
Modular Configuration	5,000	5,000	-
Electric, Gas, Waste	14,098	9,868	4,230
Telephone	8,000	8,000	-
<b>Total Ongoing Cost Year 1</b>	<b>\$192,254</b>	<b>\$130,877</b>	<b>\$ 61,377</b>
<b>One-Time Cost <sup>a</sup></b>	<b>\$179,500</b>	<b>\$179,500</b>	<b>-</b>
<b>Grand Total</b>	<b>\$371,754</b>	<b>\$310,377</b>	<b>\$61,377</b>

<sup>1</sup>\* 2017 includes 8 monthly payments for the period of May 1, 2017 through December 31, 2017


<b>YEAR 1</b>	
<b>"ONE TIME COSTS</b>	<b>SAN ANTONIO</b>
Moving	\$ 16,000
Furniture	\$ 42,500
IT Telecom Infrastructure (Cabling, Routers, Switches, etc.)	\$ 71,000
Badge System (Equipment)	\$ 50,000
<b>Total One Time Cost Year 1</b>	<b>\$ 179,500</b>



## State of Texas – Texas Department of Motor Vehicles – San Antonio

## Proposal Summary

October 10, 2016

Building	<b>Comanche Hills Shopping Center</b>
Scenario	Landlord Initial Proposal
Building Address	15150 Nacogdoches Rd
Building Photo	
<b>THE BUILDING</b>	
Space (RSF)	4,731 RSF
Space (USF)	4,421 USF
Suite	Combination of Suites 450 & 470.
<b>SPACE REQUIREMENT</b>	
Space (USF)	3,916 USF
Projected Commencement Date	January 1, 2017
Occupancy Date	December 1, 2016
<b>TERMS</b>	
Agreement to Use State Lease?	Agreed
Primary Term	One Hundred and Twenty (120) Months
Options to Renew per Section 5 of State Lease	Agreed
<b>ECONOMIC CONSIDERATIONS</b>	
Rental Rate	Months 01 - 12: \$21.00/rsf/yr (\$82,236) Months 13 - 24: \$21.50/rsf/yr Months 25 - 36: \$22.00/rsf/yr Months 37 - 48: \$22.50/rsf/yr Months 49 - 60: \$23.00/rsf/yr Months 61 - 72: \$23.50/rsf/yr Months 73 - 84: \$24.00/rsf/yr Months 85 - 96: \$24.50/rsf/yr Months 97 - 108: \$25.00/rsf/yr Months 109 - 120: \$25.50/rsf/yr
Estimated Janitorial Expense (Included in the rate)	\$705/month (\$8,459/year)
Estimated Electricity Expense (Included in the rate)	\$822/month (\$9,868/year)
Average Rental Rate which includes Janitorial and Electricity	<b>\$23.25/5F (\$91,047/year)</b>
Agreement to Use CPI Index per Section 6	Agreed



## Proposal Summary

*\*continued\**

Agreement to Use CPI Index per Section 6	Agreed	
Breakdown of 2015 and 2016 Operating Expenses	Year 2015 Estimated	Year 2016 Estimated
	Janitorial	N/A
	Property Taxes	N/A
	Security	N/A
	Landscaping	N/A
	Elevator	N/A
	Repair & Maintenance	N/A
	Insurance	N/A
	Other	N/A
	Total	N/A
ALLOWANCES AND EXPENSES		
Landlord in Agreement to Provide TurnKey Buildout?	Agreed	
Landlord to Provide Space Planning?	Agreed	
EXPANSION		
Right of First Refusal	Agreed	
OPERATIONS AND OTHER ISSUES		
HVAC	After hours HVAC is \$24.15 per hour.	
Parking	Landlord shall provide a total of fifty four (54) spaces.	
ADA, TDUR and TAS Compliance	Agreed	
Non-Disturbance	Agreed	
Amenities	Not Addressed	
Ownership	Not Addressed	
Asbestos Warranty	Agreed	
Signage	Not Addressed	
No warranty or representation, expressed or implied, is made as to the accuracy of the information contained herein, and same is submitted subject to error, omissions, change of price, rental or other conditions, withdraw without notice and to any special listing conditions.		



## SAN ANTONIO – 15150 NACOGDOCHES ROAD PHOTOS





DATE: January 5, 2017

Action Requested: APPROVAL

To: Texas Department of Motor Vehicles Board (TxDMV)  
From: Linda M. Flores, CPA Chief Financial Officer  
Agenda Item: 5.E.  
Subject: **Renewal of the Commercial Property Lease for the El Paso Regional Service Center**

#### **RECOMMENDATION**

TxDMV staff recommends approval to renew the current El Paso Regional Service Center (RSC) commercial lease for another five (5) year period. The total projected lease cost should not exceed \$301,653.42 over the five (5) year period.

#### **PURPOSE AND EXECUTIVE SUMMARY**

The El Paso RSC has been in their current commercially leased location since November 2002 and the lease has been renewed twice.

- The original 5 year lease was implemented by the Texas Department of Transportation (TxDOT) for the period of 11/01/02 through 1/31/07.
- TxDOT renewed the lease for a 5 year term for the period of 11/01/07 through 10/31/12. The lease was transferred from TxDOT to TxDMV after the agency was established in November 2009.
- TxDMV renewed the lease for a 5 year term for the period of 11/01/12 through 10/31/17.
- The current lease began in November 2012 and expires on October 31, 2017.
- This renewal request will be the third renewal for the location. The location still suits the agency's needs.

#### **FINANCIAL IMPACT**

Under authority of Government Code, Chapter 2167, the Texas Facilities Commission (TFC) will negotiate final terms which are supported by the TxDMV operating budget.

#### **BACKGROUND AND DISCUSSION**

See attached additional information.





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# **TxDMV El Paso Regional Service Center Lease Renewal**

**Finance and Administrative Services Division**

***January 2017***



## 2017 TxDMV El Paso RSC Lease Renewal

**Purpose:** Requesting TxDMV Board grant approval or grant the Executive Director the authority to approve the lease renewal associated with the El Paso lease renewal for a five year term.

**Authority:** In accordance with Government Code, Chapter 2167, the Texas Facilities Commission (TFC) holds authority for leasing and renewing commercially leased property on behalf of state agencies.

**Lease Timeframe:** The new lease would be effective November 1, 2017 through October 31, 2022.

### **Project Budget/Expenditures:**

- Property Location: 1227 Lee Trevino Drive, Suite 100, El Paso, Texas
- Square Footage: ~3,771
- CPI = Consumer Price Index is a clause in the contract which allows the lessor to request an increase in lease payments due to increased economic charges. CPI is calculated by TFC and added to the monthly payment each year. TxDMV estimates this cost to be approximately 3% per year.
- Supported by the TxDMV Operating Budget
- Total Projected 5 Year Cost: Not to exceed \$301,653.42

Lease Date November 2017	Monthly Base Rent	50% of Base Rent	CPI (Estimated 3% per month)	Adjusted Rent Total (Monthly)	Adjusted Rent Total (Annualized)
2017*	\$ 4,818.73	\$ -	\$ -	\$ 4,818.73	\$ 9,637.46
2018	\$ 4,818.73	\$ 2,409.37	\$ 72.28	\$ 4,891.01	\$ 58,692.12
2019	\$ 4,891.01	\$ 2,445.51	\$ 73.37	\$ 4,964.38	\$ 59,572.56
2020	\$ 4,964.38	\$ 2,482.19	\$ 74.47	\$ 5,038.85	\$ 60,466.62
2021	\$ 5,038.85	\$ 2,519.25	\$ 75.58	\$ 5,114.43	\$ 61,373.16
2022**	\$ 5,114.43	\$ 2,557.22	\$ 76.72	\$ 5,191.15	\$ 51,911.50
<b>Grand Total</b>				<b>\$</b>	<b>301,653.42</b>

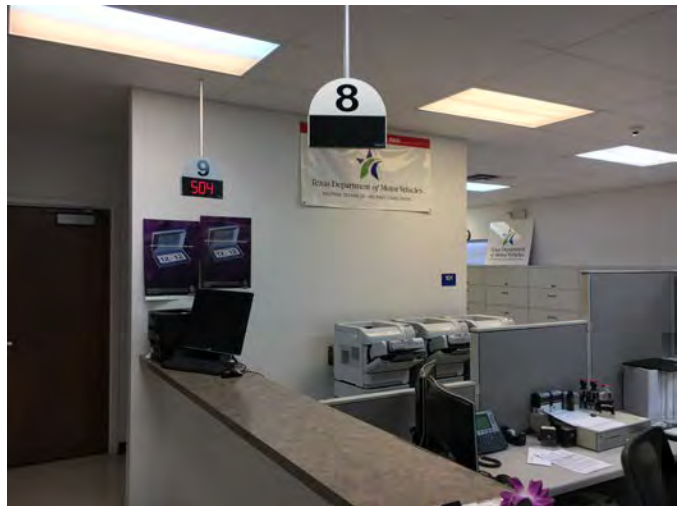
\* 2017 includes 2 monthly payments for the period of November 1, 2017 through December 31, 2017

\*\* 2022 includes 10 monthly payments for the period of January 1, 2022 through October 31, 2022

**Business Operations:** The El Paso Regional Service Center is the home of 9 TxDMV FTEs (1 Regional Manager, 1 Coordinator and 7 Customer Service Representatives). The Regional Service Centers serve the Texas public by providing:

- Replacement titles;
- Bonded title rejection letters;
- Apportioned registration (IRP credentials and temporary operating authority for established accounts);
- Annual permits (NAFTA);
- Investigation and resolution of Texas title errors







# Enterprise Projects Update

## January 5, 2017

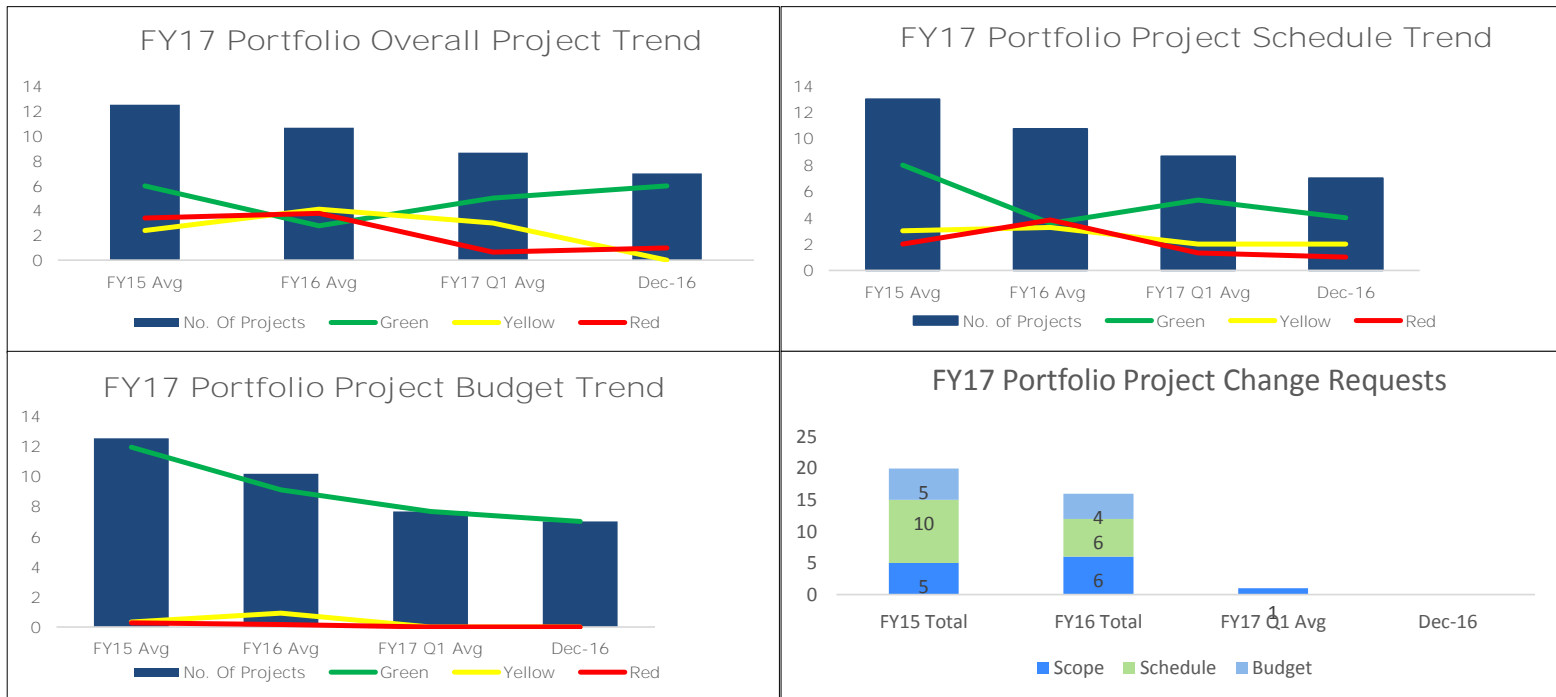
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# TXDMV Portfolio Trend

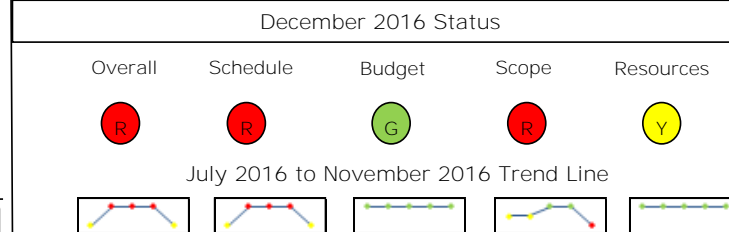
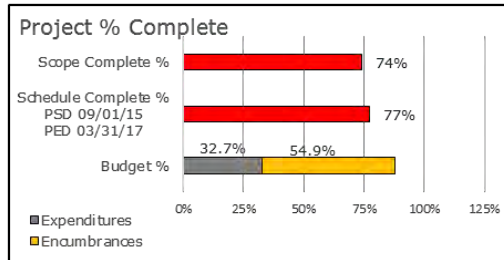




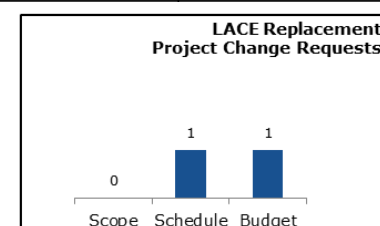
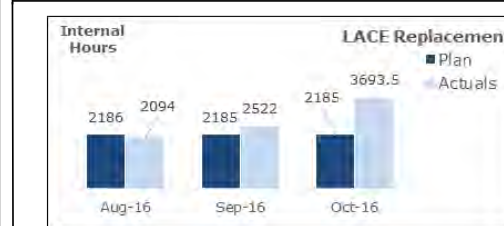


LACE Replacement	Benefits to Public	Benefits to Agency
<p>LACE Replacement will manage the licensing of dealers, motor vehicle converters, manufacturers etc.; track litigation and enforcement cases.</p> <p>Project Manager – M. Lucas Business Owners – D. Avitia, B. Harbeson, E. Sandoval Executive Sponsor – S. Mellott</p>	<ul style="list-style-type: none"> <li>Improved customer service with a web based, self-service application.</li> <li>Online submittal of protests and complaints.</li> <li>Online tracking of licensee applications, protests, and complaints.</li> </ul>	<ul style="list-style-type: none"> <li>Reduced support costs and submission errors.</li> <li>Improved data sharing and accuracy.</li> <li>Integrated case management.</li> </ul>

<p>LACE Replacement External Budget</p> <p>Source: Automation Total External Budget: \$10,093,862 Expenditures: \$4,045,510 Encumbrances: \$5,428,419 Budget Remaining: \$619,934</p>
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Requirements	✓
Design	✓
Development	✓
Test	R
Deploy	



<p><b>Accomplishments – Last 30 Days</b></p> <ul style="list-style-type: none"> <li>Completed 691 (66%) of 1,053 UAT test scripts.</li> <li>Passed 655 (62%) of UAT test scripts.</li> </ul>
<p><b>Milestones – Next 30 Days</b></p> <ul style="list-style-type: none"> <li>Complete remaining 34% of UAT test scripts.</li> <li>Verify/validate proposed change requests.</li> <li>Receive all repaired defects from Deloitte.</li> <li>Complete Regression testing of repaired defects.</li> <li>Set new go-live date.</li> <li>Complete end user training.</li> </ul>

Enterprise Projects Update - January 5, 2017

Risk/Issues	Mitigation/Corrective Action.
<p>I<sub>1</sub> – e-LICENSING product will not go live on December 14, 2016 as planned.</p> <p>I<sub>2</sub> – UAT is more complex than anticipated and was not finished on time and is not yet complete.</p> <p>I<sub>3</sub> – Quality of product is low with over 1500 defects found and only 66% of test cases completed.</p> <p>I<sub>4</sub> – Over 90 defects identified related to data. Data must be accurate to go live. Vendor says they cannot repair by December 14, 2016.</p> <p>I<sub>5</sub> – Several defects are proposed as change requests (CRs) requiring additional time and potentially increasing cost.</p> <p>R<sub>1</sub> – Services to dealers may be affected if legacy system is not sustained.</p>	<p>I<sub>1</sub> – Ask vendor to complete analysis of remaining effort and provide new, achievable end date.</p> <p>I<sub>2</sub> – Hold daily progress meetings with vendor, team, and executives to set daily quotas, UAT end date, and monitor progress.</p> <p>I<sub>3</sub> – Prioritize critical defects (green zone) to be repaired and re-tested before go live.</p> <p>I<sub>4</sub> – Vendor to provide estimate of time to repair data.</p> <p>I<sub>5</sub> – EPMO to perform due diligence to verify/validate whether they are CRs or defects, provide results to vendor, and reach agreement.</p> <p>R<sub>1</sub> – Keep using legacy system, manage announcements, make training available before go live.</p>



## RTS Refactoring, TxDMV Fund and P&H Fee

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

### Benefits to Public

- Improved customer service (system modernization provides opportunities for increased efficiency when implementing improvements).

### Benefits to Agency

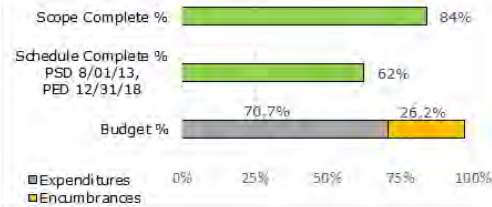
- Modernization of the RTS system.
- Business Intelligence reporting capabilities.
- Transitions RTS from TxDOT to the TxDMV infrastructure.



### RTS Refactoring Budget

Source: Automation  
Total External Budget: \$62,020,840  
Expenditures: \$43,863,659  
Encumbrances: \$16,272,426  
Budget Remaining: \$1,884,755

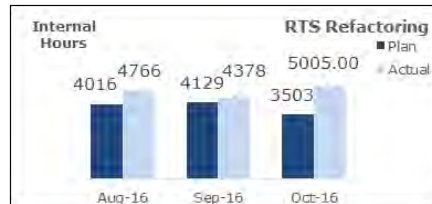
### Project % Complete



### December 2016 Status

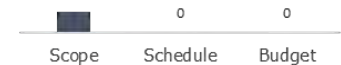


### July 2016 to November 2016 Trend Line



	WS2+	WS4-8.6.0	WS4-8.7.0 (P&H)	WS4-8.8.0	WS4-8.9.0
Req	✓	✓	✓	✓	G
Design	✓	✓	✓	✓	G
Devel	✓	✓	✓	✓	
Test	✓	✓	✓	✓	
Deploy	✓	✓	✓	✓	

### RTS Refactoring Project Change Requests



### Accomplishments – Last 30 Days

- Completed Dealer Training for Processing and Handling Fee on December 14, 2016.
- Completed/deployed RTS P&H Fee Release 13 (8.8.0) on December 19, 2016.
- Completed Requirements and General Design for RTS Release 14 (8.9.0).

### Milestones – Next 30 Days

- Complete Technical Design and commence Development for RTS Release 14 (8.9.0).

### Risk/Issues

I<sub>1</sub> – TxDMV, DCS, and Deloitte continue to closely monitor system stability.

R<sub>1</sub> – Resource constraints may impact the testing schedule.

### Mitigation/Corrective Action

I<sub>1</sub> – The team met with DCS and they agreed to expand Tiger Team to include DCS and DIR.

R<sub>1</sub> – Looking at additional test resources and working expanded hours.



## Single Sticker PII

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

### Benefits to Public

- 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.

### Benefits to Agency

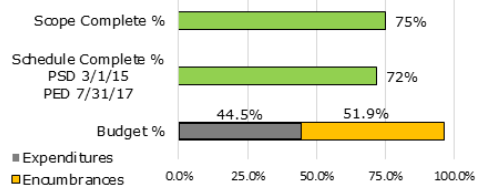
- Compliance with HB 2305 and HB 188
- Automates TxIRP solution for Motor Carrier Division.



### Single Sticker PII Budget

Source: Automation  
Total External Budget: \$1,245,000  
Expenditures: \$554,524  
Encumbrances: \$646,005  
Budget Remaining: \$44,471

### Single Sticker PII Project % Complete



### December 2016 Status



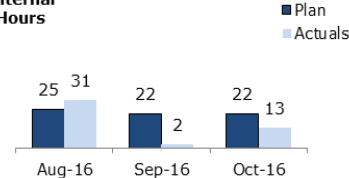
### July 2016 to November 2016 Trend Line



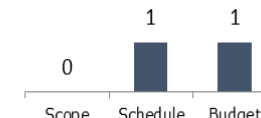
	RTS	TxIRP
Req	✓	G
Design	✓	G
Devel	✓	G
Test	✓	
Deploy	✓	

### Internal Hours

### Single Sticker PII



### Single Sticker PII Project Change Requests



### Accomplishments – Last 30 Days

- Continued execution of TxIRP phase of the project.
- Set March 1, 2017 as the planned go live date.

### Milestones – Next 30 Days

- Vendor continues development and weekly status meetings to meet March 1, 2017 go live date.

### Risk/Issues

I<sub>1</sub> – The TxIRP project has an external dependency on an RTS web service. Any delay in the December RTS release will have an impact on the TxIRP project.

### Mitigation/Corrective Action

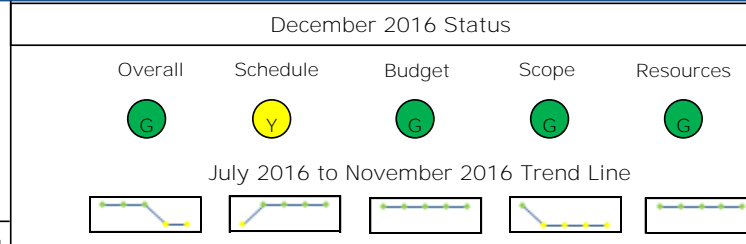
I<sub>1</sub> – Addressed in RTS December 19, 2016 go-live.



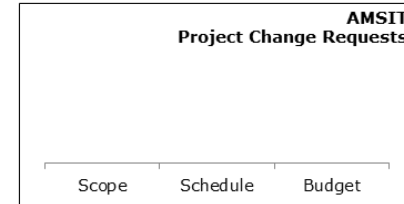
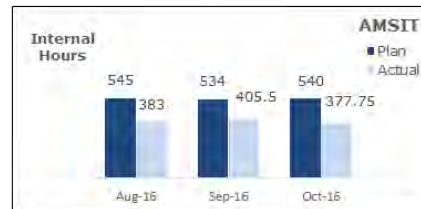
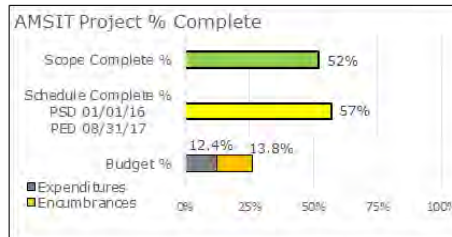
AMSIT	Benefits to Public	Benefits to Agency
<p>AMSIT plans and implements the separation of TxDMV applications and related IT infrastructure components from TxDOT.</p> <p>Project Manager – R. Abdeladim Business Owner – T. Benavides Executive Sponsor – E. Obermier</p>	<ul style="list-style-type: none"> <li>Improved <b>ability to meet customers'</b> needs with system autonomy.</li> <li>Improved service quality with stabilized environment.</li> </ul>	<ul style="list-style-type: none"> <li>Streamlined support processes and enhanced automation.</li> <li>Improved information security.</li> <li>Compliance with state mandates related to Data Center transformation.</li> </ul>



<p><b>AMSIT Budget</b></p> <p>Source: Capital Total External Budget: \$7,353,955 Expenditures: \$910,405 Encumbrances: \$1,015,447 Budget Remaining: \$5,428,103</p>
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Initiating	✓
Planning	
Executing	
Closing	



<p><b>Accomplishments – Last 30 Days</b></p> <ul style="list-style-type: none"> <li>Reached agreement with vendor on scope issues including migration from Novell to Windows, changing file transfer protocol (FTP) to secure FTP (SFTP), and to transfer the rest of Forgerock out of the contract to be handled by IT.</li> <li>Issued Purchase Order change (POCN) to vendor.</li> </ul>
<p><b>Milestones – Next 30 Days</b></p> <ul style="list-style-type: none"> <li>Work with vendor project manager to update schedule to complete work in POCN.</li> <li>Develop schedule/plan for in-house development of ForgeRock for webSub/eTags.</li> <li>Follow internal communication plan with divisions on impacts to their divisions.</li> </ul>

Risk/Issues	Mitigation/Corrective Action
<p>R<sub>1</sub> – Overall project schedule is at risk for completion by currently approved planned dates due to work efforts being on hold; overall project plan to be re-baselined upon POCN being issued to the vendor.</p> <p>R<sub>2</sub> – Migration to ForgeRock for LACE, and webDEALER/webSUB/eTAG may impact other in-progress projects.</p>	<p>R<sub>1</sub> – AMSIT PM to actively coordinate and work with Executive Sponsor &amp; purchasing.</p> <p>R<sub>2</sub> – AMSIT PM actively coordinating with WebDealer &amp; LACE Replacement PMs on schedule and resources.</p>

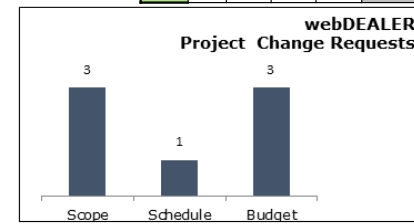
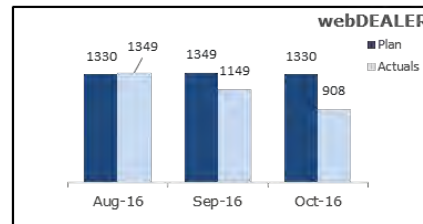
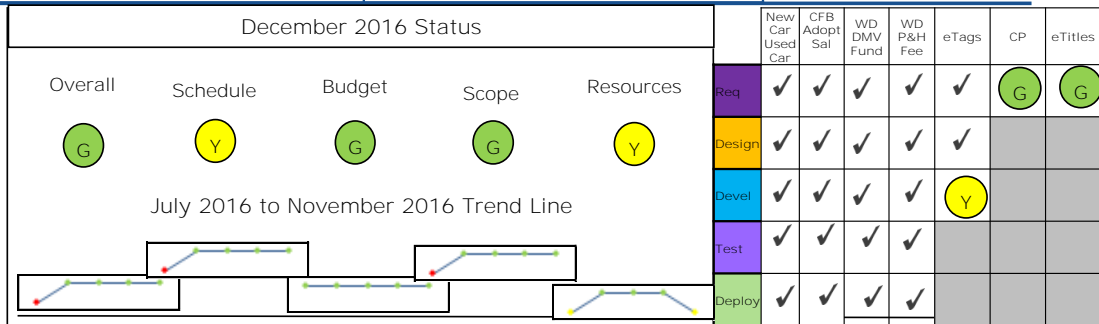
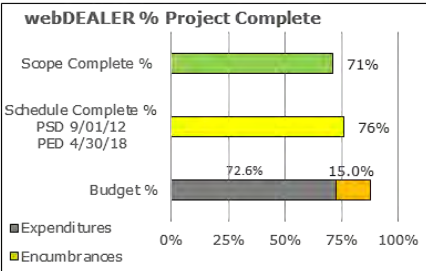


webDEALER	Benefits to Public	Benefits to Agency
<p>webDEALER allows a vehicle title to be created, stored and transferred in electronic form, improving the accuracy of the titling process.</p> <p>Project Manager – G. Wessels Business Owner – T. Thompson Executive Sponsor – J. Kuntz</p>	<ul style="list-style-type: none"> <li>Reduced costs for titling and registration services from motor vehicle sales.</li> <li>Improved titling and registration time by reducing manual processes.</li> </ul>	<ul style="list-style-type: none"> <li>Reduced costs for the county tax office and TxDMV to title and register vehicles.</li> <li>Improved system to track and manage registration and title services from Motor Vehicle Sales.</li> <li>Eliminates RSPS-DTA Processes.</li> </ul>



webDEALER Budget

Source: Automation  
Total External Budget: \$6,257,079  
Expenditures: \$4,541,408  
Encumbrances: \$938,817  
Budget Remaining: \$776,854












































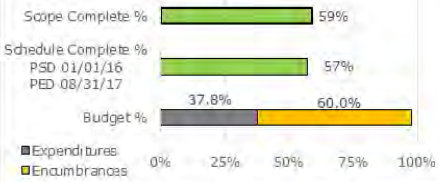

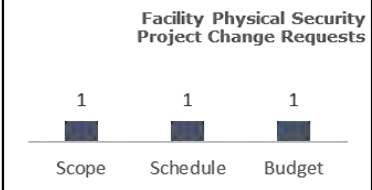


<p><b>Accomplishments – Last 30 Days</b></p> <ul style="list-style-type: none"> <li>Centralized Payment BRD Review Complete.</li> <li>Route webDEALER eTitles BRD for approval.</li> </ul>
<p><b>Milestones – Next 30 Days</b></p> <ul style="list-style-type: none"> <li>webDEALER Salvage Dealer expansion.</li> <li>webDEALER Centralized Payment BRD signoff.</li> <li>webDEALER eTitles BRD signoff.</li> </ul>

Risk/Issues	Mitigation/Corrective Action
<p>I<sub>1</sub> – Multiple Project Schedules, Resource Sharing and Operational needs has impacted the webDEALER SDLC eTAG and Centralized Payment milestone schedule.</p> <p>R<sub>1</sub> – RTS Release 15 capacity may not cover WD required items for the October 2017 release due to legislative actions and other priority items.</p> <p>R<sub>2</sub> – AMSIT / Forgerock requirements may impact eTAG release date.</p>	<p>I<sub>1</sub> – PM closely monitor to manage remaining eTAG and Centralized Payment SDLC and Milestone Schedules, allowing eTAG development to extend into March.</p> <p>R<sub>1</sub> – Coordinate the release planning early. Identify other candidates.</p> <p>R<sub>2</sub> – AMSIT PM actively coordinating with WebDealer &amp; LACE Replacement PMs on schedule and resources, and obtain approval from ESC for all 3 projects.</p>





Facility Physical Security	Benefits to Public	Benefits to Agency																								
<p>The Facility Physical Security Project will install an integrated security management system for all 16 Regional Service Centers (RSC).</p> <p>Project Manager – C. Archer Business Owners – W. Diggs Executive Sponsor – E. Obermier</p>	<ul style="list-style-type: none"><li>Customer Safety and Security.</li></ul>	<ul style="list-style-type: none"><li>Integrated security management system.</li><li>On-site control panels, monitoring and communication consoles.</li><li>24-hour security system monitoring.</li></ul>																								
<p>Facility Physical Security Budget</p> <p>Source: Capital/Overhead Total External Budget: \$1,334,196 Expenditures: \$504,221 Encumbrances: \$799,852 Budget Remaining: \$30,123</p>	<p>December 2016 Status</p> <table><tr><th>Overall</th><th>Schedule</th><th>Budget</th><th>Scope</th><th>Resources</th></tr><tr><td></td><td></td><td></td><td></td><td></td></tr></table> <p>July 2016 to November 2016 Trend Line</p> <table><tr><td></td><td></td><td></td><td></td><td></td></tr></table>		Overall	Schedule	Budget	Scope	Resources											<table><tr><td>Initiating</td><td></td></tr><tr><td>Planning</td><td></td></tr><tr><td>Executing</td><td></td></tr><tr><td>Closing</td><td></td></tr></table>	Initiating		Planning		Executing		Closing	
Overall	Schedule	Budget	Scope	Resources																						
																										
																										
Initiating																										
Planning																										
Executing																										
Closing																										
<p>Facility Physical Security Project % Complete</p> 	<p>Internal Hours Facility Physical Security Project</p> 		<p>Facility Physical Security Project Change Requests</p> 																							
<p>Accomplishments – Last 30 Days</p> <ul style="list-style-type: none"><li>Processed and Analyzed data from Amarillo, Beaumont, El Paso, and Midland RSC walkthroughs.</li><li>Completed Lubbock RSC Installation.</li></ul> <p>Milestones – Next 30 Days</p> <ul style="list-style-type: none"><li>Complete installations in: Midland, El Paso, Beaumont RSCs.</li><li>Complete approved Wish List Items for Houston, Austin.</li><li>Finalize Corpus Christi Installation Schedule.</li><li>Develop schedules for Pharr and San Antonio.</li></ul>	<p>Risk/Issues</p> <p>I<sub>1</sub> – Installation of a new secure door at the Waco RSC <b>delayed that office's completion schedule but will be completed before the contract and project end dates.</b></p> <p>R<sub>1</sub> – Walk-through/installation at the new San Antonio RSC may be delayed if the new lease contract is not ratified by the TxDMV Board.</p> <p>R<sub>1</sub> – Installation at a new location for the Pharr RSC is at high risk of not being completed before the contract / project end date on August 31, 2017 due to challenges in finalizing a new location.</p>	<p>Mitigation/Corrective Action</p> <p>I<sub>1</sub> – Project Manager in daily communication with door vendor and made on-sight visit on December 19, 2016 to reach closure.</p> <p>R<sub>1</sub> – <b>Lease decision is on the Board's agenda for their January 5, 2017 meeting.</b></p> <p>R<sub>1</sub> – Per ESC decision, security system will be installed at the current Pharr RSC location and moved along with other equipment when a new location is found.</p>																								



## County Equipment Refresh Project (CERP)

County Equipment Refresh Project (CERP) is a workstation and printer equipment upgrade to the 508 County offices in the state of Texas.

Project Manager – C. Sturm  
Business Owner – J. Kuntz  
Executive Sponsor – E. Obermier

### Benefits to Public

- Improved Customer Service with workstation and printer reliability.

### Benefits to Agency

- Improved workstation and printer reliability and reduced maintenance cost.



#### CERP Budget

Source: General Revenue/TxDMV Fund  
Total External Budget: \$6,408,747  
Expenditures: \$0  
Encumbrances: \$5,762,482  
Budget Remaining: \$646,266

#### December 2016 Status

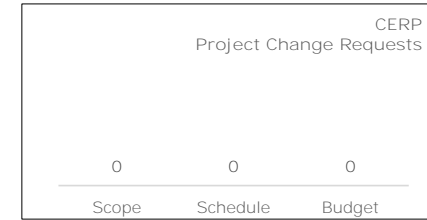
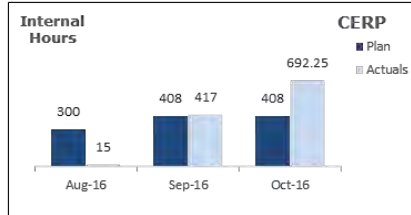
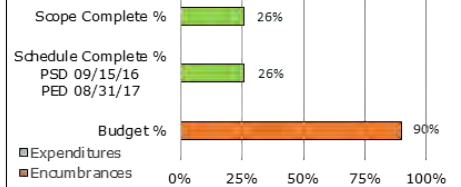


#### July 2016 to November 2016 Trend Line



Initiating	G
Planning	G
Executing	Y
Closing	

#### CERP % Project Complete



#### Accomplishments – Last 30 Days

	Complete	Total	%
Sites	76	510	14.90%
PC's	363	3000	12.10%
HP506 Printers	358	3000	11.93%
HP605 HV Printers	2	40	5.00%

#### Milestones – Next 30 Days

- Deployment of 159 sites, approximately 1,000 workstations & printers.
- Finalize Project Resource plan.

#### Risk/Issues

I<sub>1</sub> – Issues related to timely distribution and collection of equipment by the vendor.

R<sub>1</sub> – The process for validating assets at the CPA warehouse is taking longer than originally estimated.

R<sub>2</sub> – RTS outages could impact scheduled deployments.

#### Mitigation/Corrective Action

I<sub>1</sub> – TxDMV PM is conducting daily checkpoint meetings to address issues and efforts towards an acceptable service level from the vendor.

R<sub>1</sub> – The vendor will be holding assets at the shippers warehouse until space becomes available at the CPA warehouse

R<sub>2</sub> – Working with RTS team to ensure any outages are quickly resolved and communicated to CERP team to ensure minimal impact to the CERP project.





## Closed Projects

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- ▣ 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
  - Consolidated Call Center Project
- ▣ Governance Team Meeting October 20, 2016
  - FileNet Project
- ▣ Governance Team Meeting on December 15, 2016
  - CAPPS HR Project



# Glossary



API – Application Programming Interface	M – Migration	TAC – Tax Assessor Collector
AMSIT – Application Migration Server Infrastructure Transformation	M – Mitigation	TCEQ - Texas Commission on Environmental Quality
BA – Business Analyst	MCD – Motor Carrier Division	TPDF - Texas Project Delivery Framework
BAFO – Best and Final Offer	M/CA – Migration/Corrective Action	TS - Registration and Titling System
BRD - Business Requirements Document	MS - Mitigation Strategy	TxIRP – Texas International Registration Plan
C <sup>3</sup> – Consolidated Call Center	NIM – Nice Information Management	TxDOT – Texas Department of Transportation
CA - Corrective Action	NSOC – Network Security Operations Center	UAT - User Acceptance Testing
CCB - Courtesy Callback	MVD – Motor Vehicle Division	VTR – Vehicle Title and Registration Division
DCS – Data Center Services	OAG - Office of Attorney General	WD - webDEALER
CAPPS - Centralized Accounting and Payroll/Personnel System	P&H – Process and Handling	WFM – Work Force Management
CERP – County Equipment Refresh Program	PCR – Project Change Request	WS – Work Stream
CIO - Chief Information Officer	PED – Project End Date	WS2+ – Work Stream 2+
CPO - Chief Projects Officer	PM - Project Manager	WS4 – Work Stream 4
CPA - Comptroller of Public Accounts	PMLC - Project Management Life Cycle	Y – Yellow (Status)
CPU – Central Processing Unit	PMP - Project Management Professional	
CRD – Consumer Relations Division	PO – Purchase Order	
DCS – Data Center Services	POCN - Purchase Order Change Notice	
DEV Development	RQAT - Quality Assurance Team	
DIR - Department of Information Resources	PSD – Project Start Date	
DPS - Department of Public Safety	R – Red (Status)	
DTA – Dealer Title Application	R – Risk	
ENF - Enforcement	R/I – Risk/Issue	
EPMO - Enterprise Project Management Office	R/T - Registration and Title	
ERQ – Enterprise Reporting Quarter	RFO – Request For Offer	
ESC – Executive Steering Committee	RO – Regional Office	
FAQ – Frequently Asked Questions	RSPS – Remote Sticker Printing System	
FTE – Full Time Equivalent	RRTS - Refactored RTS	
G – Green (Status)	RSC – Regional Service Center	
GT – Governance Team	RTS - Registration & Title System	
HB – House Bill	OAT – Quality Assurance Team	
HEB - Howard E Butt Grocery Stores	QTR – Quarter	
HR – Human Resources	SIT – System Integration Test	
I – issue	SAT - System Acceptance Testing	
IAM – Identity and Access Management	SDLC - Systems Development Life Cycle	
IT – Information Technology	SDLC – Software Development Life Cycle	
ITSD – Information Technology Services Division	SMS – Security Management System	
Jama - Product management software developed By Jama S/W Co.	SOP – Standard Operating Procedures	
JIRA – Issue Tracking Software developed By Atlassian	SOW – Statement of Work	
LACE - Licensing, Administration, Consumer Affairs, and Enforcement	SS PII - Single Sticker Phase II	
LAST - Load and Stress Testing		
LPAR – Logical Partition		



DATE: January 5, 2017  
Action Requested: BRIEFING

To: Texas Department of Motor Vehicles Board (TxDMV)  
From: Jeremiah Kuntz, Vehicle Titles and Registration Division  
Agenda Item: 6.B.  
Subject: Performance Quality and Recognition Program Update

### RECOMMENDATION

This briefing will provide an overview of the Performance Quality and Recognition Program, including an introduction, criteria requirements, application process, and materials (application, certificate, and insignias).

### PURPOSE AND EXECUTIVE SUMMARY

Statutory authority under §520.004 requires the department to establish standards for uniformity and service quality for counties. The goal of the Performance Quality Recognition Program is designed to recognize county tax assessor-collectors and their offices for outstanding performance and efficiency in processing registration and title services to the motoring public. The Texas Department of Motor Vehicles understands the importance these services have on the overall satisfaction of Texas motorists. The criteria established is based on best practices that warrant recognition. This program will recognize a variety of items at different levels as specified by Texas Administrative Code. The levels established were Bronze, Silver, and Gold. The department created a working group comprised of department staff (Vehicle Titles and Registration, Office of General Counsel, and nine county tax assessor-collectors) who worked for several months to create the standard applicable for all county populations. The voluntary program will identify offices that implement cost-saving measures, customer satisfaction and feedback programs, and fraud, waste, and abuse awareness and prevention programs.

### FINANCIAL IMPACT

N/A

### BACKGROUND AND DISCUSSION

The board adopted Subchapter J, Chapter 217, Administrative Code, at the June 27, 2016, board meeting. The rules required the department to create a program to recognize county tax assessor-collectors and their offices for outstanding performance and efficiency in processing title and registration transactions. Following the adoption of the rules, staff developed the program with input from the Performance Quality and Recognition Program Working Group.





# PERFORMANCE QUALITY RECOGNITION PROGRAM GUIDE

JANUARY 2017





Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

January 1, 2017

Dear Tax Assessor-Collector,

The Texas Department of Motor Vehicles (TxDMV) is proud to introduce the inaugural version of the Performance Quality Recognition Program. This program is designed to recognize the valuable motor vehicle services Tax Assessor-Collectors provide to the citizens of Texas.

TxDmv understands the importance of the services you provide as well as the impact that you have on the overall satisfaction of Texas motorists. The Performance Quality Recognition Program is designed to recognize you and your counterparts for your achievements in providing quality registration and titling services to the motoring public. The criteria included in the program is based on best practices the TxDMV has identified with the assistance of the Performance Quality Recognition Program Working Group. I want to thank those Tax Assessor-Collectors and TxDMV staff who devoted their time, energy and talents to the creation of this program. A list of those who served on the working group can be found later in this document.

Although great effort went into providing comprehensive benchmarks that a Tax Assessor-Collector representing a county of any size or location could potentially achieve, TxDMV recognizes that there may be other best practices that warrant recognition that are not included in the initial version of this program. In an effort to continually improve the program and set the performance bar higher, TxDMV will update the program manual as needed to incorporate new criteria.

I hope that you find this program valuable in showcasing the great work you and your employees provide every day. I look forward to the inaugural year of the Performance Quality Recognition Program and learning more about the improvements you have implemented to positively impact the people of our great state. Thank you for being "driven to serve!"

Sincerely,

Whitney Brewster  
Executive Director



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## Introduction

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The TxDMV is proud to launch the Performance Quality Recognition Program, recognizing tax assessor-collectors for going above and beyond in complying with Texas laws, agency rules, and providing exceptional customer service. This is a voluntary multi-level recognition program available to all 254 counties interested in participating.

Transportation Code, §520.004, requires the department to establish standards for uniformity and service quality for counties. This subchapter prescribes the procedures and general criteria the department will use to establish and administer this voluntary program to recognize county tax assessor-collectors and their offices for outstanding performance and efficiency in processing title and registration transactions.

This guide will provide information on the three levels of recognition and instructions on how to participate and apply for the program.



# Instructions

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## Overview

All counties wanting to participate in the Performance Quality Recognition Program must apply for a desired level of recognition. The county tax assessor-collector must meet each of the requirements for the prior level(s) of recognition to be eligible for the two higher levels of recognition. For example, if a county tax assessor-collector wants to apply for the Gold Level of recognition, the applicant must also meet the requirements and complete the application for the Bronze, Silver and Gold Levels of recognition.

The program will recognize a variety of items at different levels as specified by the Texas Administrative Code, including, but not limited to, offices that:

1. remit fees on time;
2. consistently apply statutes, rules, and policies governing motor vehicle transactions;
3. maintain bonds required by statute or rule;
4. perform efficiently and with low error rates;
5. process transactions in a timely fashion;
6. have a fraud, waste, and abuse awareness program;
7. focus on customer satisfaction and feedback programs; and
8. implement cost saving measures.

## Application for Recognition

The application must be submitted on Form VTR-2017-001. The form can be found at [www.txdmv.gov/recognition](http://www.txdmv.gov/recognition) and in the Appendix. The application must be complete, and signed by the county tax assessor-collector.

In addition to completing the application, additional information, documentation, or clarification may be required as outlined for each level of recognition. Examples for some of the elements outlined within the criteria can be found in the Appendix.

At the department's discretion, additional information, clarification of information provided, and supporting documentation may be requested. The department will contact the county tax assessor-collector for this information and provide a deadline to respond.

## Submission of Application and Documentation

Applications can be accessed online at [www.txdmv.gov/recognition](http://www.txdmv.gov/recognition) and returned by mail or email.

For mailed applications, please send to:

Texas Department of Motor Vehicles  
Attn: County Recognition Program  
4000 Jackson Ave. Bldg. 1  
Austin, TX 78731

For emailed applications, please send to: [Recognition@txdmv.gov](mailto:Recognition@txdmv.gov)



## Ability to Apply

### Initial Application

If a county tax assessor-collector is applying for the first time, whether newly elected or incumbent, the county tax assessor-collector is eligible to apply once serving as the county tax assessor-collector for an entire state fiscal year. The county tax assessor-collector may apply for the highest level of recognition as long as they meet the requirements for each level of recognition. For example, if the county tax assessor-collector wants to apply for the Gold Level of recognition, they must also meet the requirements and complete the application for the Bronze, Silver, and Gold Levels of recognition.

### Reapplying

One year after the county tax assessor-collector's re-election recognition expires. A county tax assessor-collector wanting to maintain their existing recognition level or seek a higher level of recognition must re-apply. For example, if a county tax assessor-collector has a Silver Level recognition and was reelected for a term of office of beginning January 2017, the county tax assessor-collector will need to re-apply in October of 2017 to avoid a gap in recognition.

### Applying for a Higher Level of Recognition

County tax assessor-collectors who have obtained a recognition level are eligible to apply for a higher level after serving as the county tax assessor-collector for an entire state fiscal year after the recognition level was awarded. For example, if a Bronze Level of recognition was awarded in 2017, the county tax assessor-collector will have to serve the entire state fiscal year before being eligible to apply for a Silver or Gold Level of recognition in 2018.

## Deadline to Submit Application

The application evaluation period is September 1 through October 31. The application for the evaluation period must be received by the department or postmarked no later than **October 31**.



# Application Review Process

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## Review Committee

A committee comprised of TxDMV staff will review the applications and documentation submitted by county tax assessor-collectors. This committee consists of management staff, subject matter experts in registration and title, and regional service center (RSC) staff.

The committee is charged with verifying the application is complete and information provided is clear and meets the level of recognition sought. The committee may also access information from department records, as necessary, to support the application and contact the county tax assessor-collector if more information or clarification is needed.

The committee may award a recognition level based on information and documentation contained in the application and from department records.

The committee may deny an award of recognition based on the following:

- Application contains incomplete or inaccurate information.
- Tax assessor-collector fails to provide requested documentation.
- Application was not received by the deadline.
- Tax assessor-collector no longer holds the office of county tax assessor- collector.
- Tax assessor-collector did not sign the application.
- Tax assessor-collector does not meet the criteria for the recognition level sought.

## Committee's Decision to Award or Deny

The committee will make a decision to award or deny a recognition level no later than 90 calendar days after receiving the application for recognition. The committee will send a written notice to the county tax assessor-collector via email or mail. If the application was denied, the reason for denial will be provided. If there is a delay in the committee's decision, the county tax assessor-collector will be notified.



## Demotion or Revocation

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### Committee's Decision to Demote or Revoke

The committee may demote a county's recognition level if the county tax assessor-collector no longer meets the criteria for the current recognition level, but meets a for a lower recognition level. The recognition level will be demoted to the highest recognition level for which the county tax assessor-collector qualifies.

A recognition level can be revoked if the county tax assessor-collector no longer meets the criteria for any recognition level.

In the event the committee decides to demote or revoke a recognition level, the committee will send a written notice, including the reason for the demotion or revocation, to the county tax assessor-collector via email, fax, or mail.

### Ability to Apply Applying after Demotion

If a county tax assessor-collector's recognition level is demoted, the county tax assessor-collector is eligible to apply for a higher level of recognition after serving as the county tax assessor-collector for an entire state fiscal year after the recognition level was demoted. For example, if a county's Silver Level of recognition was demoted to Bronze in June 2017, the county tax assessor-collector will have to serve the entire 2018 state fiscal year before being eligible to apply for the Silver or Gold Levels of recognition in October 2018.

### Applying after Revocation

If a county tax assessor-collector's recognition level is revoked, the county tax assessor-collector is eligible to apply for a recognition level after serving as the county tax assessor-collector for an entire state fiscal year after the recognition level was revoked. For example, if a county's Bronze Level of recognition was revoked in June 2017, the county tax assessor-collector will have to serve the entire state fiscal year before being eligible to apply for Bronze or higher recognition level in October 2018.



## County Request to Appeal Decision

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### Appeal Review Justification

If a county tax assessor-collector disagrees with the committee's decision, the county tax assessor-collector may submit a signed request written on county letterhead, requesting the decision be reconsidered. The basis for the review may be for the following justification:

- (1) Application for recognition was denied.
- (2) County tax assessor-collector disagrees with the awarded level of recognition.
- (3) Level of recognition is revoked or demoted.

### County Requirements for Appeal Request

The county tax assessor-collector's request must specifically identify the basis for why the county tax assessor-collector disagrees with the committee's decision, include any evidence or legal authority that supports the request, and be postmarked or received by the department no later than 90 calendar days after the date of the committee's notification of their decision.

### Department's Appeal Review Process and Final Decision

Appeals of the review committee will be reviewed by the Vehicle Titles and Registration Division director or his designee. The TxDMV review committee will not review the county's request to reconsider the decision originally made by the committee.

The director or his designee will make a decision on the request no later than 90 calendar days after receiving the request. The department will send a written notice to the county tax assessor-collector, including information to support the decision via email, fax, or mail. If there is a delay in the decision, the county tax assessor-collector will be notified.



## Recognition Award

When a county tax assessor-collector has been awarded a recognition level, a Letter of Recognition and Certificate from the TxDMV executive director will be sent to the tax assessor-collector with the committee's decision to award.

The county tax assessor-collector will also receive an electronic insignia for the corresponding recognition. This insignia is to be shared with the public and county stakeholders to acknowledge the recognition made by the TxDMV. The insignia can be posted to the county website and will link to the TxDMV website that explains the program and accomplishments the recognition represents. The TxDMV will also acknowledge the counties participating in the program and their level of recognition awarded.



## Expiration of Recognition Level

### Awarded Recognition Level

The awarded recognition level expires on the latter end of the county tax assessor-collector's term of office during which the recognition was awarded or the one-year anniversary of the county tax assessor-collector's re-election term of office.

### Higher Level of Recognition

If a county tax assessor-collector chooses to apply for a higher level of recognition, the existing recognition level will terminate when the committee makes a decision on the application for the higher level of recognition.

### Demotion of Recognition Level

If a recognition level is demoted, the recognition level given after the demotion expires on the latter end of the county tax assessor-collector's term of office during which the recognition was demoted or the one-year anniversary of the county tax assessor-collector's re-election term of office. The county tax assessor-collector will be asked to change the electronic images posted on their website and return their certificate with the higher level of recognition. A new certificate and image with the lower level of recognition will be provided.

### Revocation of Recognition Level

A recognition level that is revoked will terminate on the effective date of the revocation. All awards and insignia must be removed from the county tax assessor-collector's office and website within 30 days of the's decision to revoke. The county tax assessor-collector will be asked to change the electronic images posted on their website and return their certificate of recognition. The county will be removed from the department's website that lists recognized counties.

### End of Office

Any recognition level awarded to the county tax assessor-collector will expire when the county tax assessor-collector no longer holds office as the county tax assessor-collector.



## Criteria for each Level of Recognition



### Bronze Level Criteria

Bronze Level recognizes tax assessor-collectors that comply with state laws and agency rules for registering and titling motor vehicles and related TxDMV training modules. Bronze represents the minimum recognition level.

#### Scoring

The scoring for this criterion is point based. Each criteria is worth one (1) point. Counties must meet all 12 criteria to receive Bronze Level recognition for a total of 12 points.

#### Criteria / Achievement

##### **B.1 The county tax assessor-collector has completed the oath of office *(Required)***

#### Purpose

Completion of the official oath of office meets Texas constitutional and statutory requirements and is a critical first step in taking the office of county tax assessor-collector. This oath asserts the individual will preserve, protect, and defend federal and state laws. Failure to take the oath may void official actions taken by the individual.

#### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide a certification stating the requirements for this section have been met.

#### Supporting Documentation

No additional supporting documentation is required to fulfill this requirement.

##### **B.2 Maintain required bond amounts *(Required)***

#### Background and Purpose

Bonds are required for the tax assessor-collector, and deputies appointed by the tax assessor-collector to ensure the faithful performance of their duties. The bond may be called upon by the county or state in the event the tax assessor-collector owes the county or state revenue from the collection of taxes and fees.

#### *County Bond Amount*

The bond for county taxes is set at an amount equal to ten percent of the total amount of the preceding tax year's county taxes not to exceed \$100,000 and is payable to the county commissioners court.

#### *State Bond Amount*

The bond for state taxes is set at an amount equal to five percent of the net state collections from motor vehicle sales and use taxes and motor vehicle registration fees in the county during the preceding year. This bond may not be less than \$2,500 or more than \$100,000 and must be approved by the commissioner's court and state comptroller of public accounts. The bond is payable to the governor.

#### *Bonds for Deputies*



County deputies are required to post a surety bond payable to the tax assessor-collector (one bond per deputy for a county regardless of number of locations) valued between \$100,000 and \$5 million for a full service or dealer deputy or between \$2,500 and \$1 million for a limited service deputy.

#### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide a copy of all applicable bond agreements to confirm compliance of the required bond amount.

#### Supporting Documentation

No additional supporting documentation is required to fulfill this requirement.

### **B.3 Remit registration fee collections on time *(Required)***

#### Background and Purpose

To ensure the timely remittance of state funds to support transportation, agency, and county supported activities.

The TxDMV, in partnership with the 254 county tax assessor-collectors, processes and collects fees for motor vehicle title and registration. A portion of the fees collected are retained by the county, and the remainder is distributed to the state and used by the Texas Department of Transportation to construct and maintain the state's transportation system.

The timely remittance of funds ensures the state has funding available to purchase supplies for the registration and titling activities of the department and county offices.

#### Requirement

The county must remit the net revenue from registration fees to the state no later than 34 days from the time of collection. In order to defer remittance, the county must notify the department. Otherwise, the net revenue from registration fees must be remitted to the state no later than three days from the time of collection. The amounts owed to the state are reflected in the weekly Funds Remittance Report. The county may satisfy the requirement by providing justification for late payments and evidence demonstrating payment of interest and penalties.

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide a certification stating the requirements for this section have been met.

#### Exceptions

No more than two late payments may be made within the state fiscal year, and justification for the late payment must be provided. If there is a defect in the RTS or Cognos system, the county will not be considered delinquent if the funds are remitted within two business days of the remittance report being made available. Funds not remitted to the county tax assessor-collector's office in a timely manner, such as payments from the Texas Comptroller's office, will not be held against the county tax assessor-collector.

#### Supporting Documentation

Timely remittance of registration fees collected will be verified by the TxDMV using the Unpaid Remittances and Aging Report – Summary/Detail. This report is available in Cognos, and the county can verify their remittance with their local RSC.

### **B.4 Remit motor vehicle sales tax and penalties on time *(Required)***



### **Background and Purpose**

Motor vehicle sales and rental taxes, motor fuel taxes, and other taxes produce large revenue streams for the state. A tax is levied on all retail sales of motor vehicles bought out of state and in Texas and used on Texas public highways by residents. State motor vehicle sales taxes are remitted to county tax assessor-collectors who remit them to the state on a schedule defined in the Tax Code (see below).

### **Requirement**

The county must remit the net revenue from motor vehicle sales and use taxes to the state in accordance with the following:

<b>Frequency</b>	<b>Amount of sales tax collections in previous state fiscal year</b>
Monthly (10th day of the month)	Less than \$2 million
Once each week	\$2 million to less than \$10 million
Daily	\$10 million or more

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide a certification stating the requirements for this section have been met.

### **Exception**

If the amount of net collections under Chapter 502, Transportation Code, and this chapter is insufficient to cover the amount of those net collections authorized to be retained by a county as a percentage of the tax and penalties collected, the comptroller shall, at the request of the county tax assessor-collector, authorize the county to retain a portion of the tax and penalties collected to cover the deficiency.

### **Supporting Documentation**

There is no available report to monitor the remittance.

Accreditation by the county auditor via a report, letter, or certification by the tax assessor-collector stating taxes have been remitted to the comptroller in a timely manner based on the collection amount must be provided.

## **B.5 Charge only fees allowed (*Required*)**

### **Background and Purpose**

Statewide consistency in title and registration fees ensures the motoring public is charged equitably regardless of their county of residence. Also, the motoring public must be able to find statutory authority for the fee amounts assessed by the tax assessor-collector's office when performing work on behalf of the state.

The tax assessor-collector is only authorized to collect and retain fees for services performed on behalf of the state pursuant to Texas Transportation Code, Chapters 501, 502, 504, 548, and 681. The tax assessor-collector is expressly prohibited from charging additional fees for services performed on behalf of the state or that facilitate the performance of services performed on behalf of the state unless provided for in Texas statute or Administrative Code.

RTS accounts for all fees that should be charged and collected within the applicable event for the transaction. However, RTS allows flexibility for collection of fees in Additional Collections in limited circumstances. For auditing



purposes, use of Additional Collections to collect fees outside the applicable event must be justified especially the use of Miscellaneous.

### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide a certification stating the requirements for this section have been met.

Counties utilizing the Additional Collections event in RTS should be able to provide documentation on all transactions and justification for why it was used. Counties can view the fees collected under Miscellaneous Fees through Additional Collections from the Fee Type Funds Report from RTS.

### Supporting Documentation

Compliance with this criterion can be verified by a Cognos query for any funds collected in RTS Additional Collections.

## **B.6 Contact information provided to the TxDMV *(Required)***

### Background and Purpose

When the county tax assessor-collector takes office, the TxDMV RSC manager will provide them with information related to the TxDMV. It is important for county tax assessor-collectors to provide the TxDMV with their contact information and email address to post to the TxDMV website for internal and external customers. This email address will also be added to a TxDMV email directory and used by the department to communicate important information directly to the tax assessor-collector. Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide the county tax assessor-collector's email address in order to receive communications from the department.

### Supporting Documentation

No additional supporting documentation is required to fulfill this requirement.

## **B.7 Have a fraud, waste, and abuse prevention policy *(Required)***

### Background and Purpose

The purpose of a fraud, waste, and abuse policy is to establish the expectation that all employees are responsible for preventing, detecting, and reporting fraud, waste, and abuse. County tax assessor-collectors are responsible for preserving the public trust to properly use and protect county and state resources.

A policy is intended to prevent fraud, waste, and abuse and, when necessary, stop continued fraud, waste, and abuse by any means within a county tax assessor-collector's authority. It is the duty of every employee to be vigilant in identifying and reporting suspected fraud, waste, and abuse in a timely manner to the appropriate supervisor whether the suspected activity concerns another employee or an individual who conducts business with or on behalf of the county.

Understanding, preventing, and stopping the waste or loss of the county and state's resources is absolutely critical to maintaining the public's trust and ensuring our continued success.



### Definitions

**Fraud** involves obtaining something of value through willful misrepresentation. Fraud includes a false representation by words, conduct, or omission that deceives or is intended to deceive another, so the individual will act upon the misrepresentation or omission to his or her legal detriment.

**Waste** is the misuse or loss of state resources through inefficient or ineffective practices or behaviors. Waste may result from mismanagement, inappropriate actions, and/or inadequate oversight.

**Abuse** is the misuse of authority or position that causes the loss or improper use of state resources.

### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide a copy of their county's policy related to fraud, waste, and abuse detection and prevention.

### Supporting Documentation

A sample policy is provided in the Appendix, which may be adapted for county use.

## **B.8 Staff required to complete non-disclosure agreement for Driver's Privacy Protection Act (DPPA) *(Required)***

### Background and Purpose

County tax assessor-collectors are responsible for educating county employees about the federal DPPA, the state Motor Vehicle Records Disclosure Act, and the state Public Information Act. Employees should be familiar with these privacy laws and have a clear understanding of the role the laws play in maintaining the integrity of Texas motor vehicle records.

### Requirement

In order to receive recognition for this criterion, the tax assessor-collector must certify that each county employee that has access to motor vehicle records signs a non-disclosure agreement for driver's privacy protection.

The agreement should contain a list of the required and permitted uses in the DPPA, and the employee should certify they have read and understand them.

At a minimum, the agreement should also affirm the employee understands the following:

- No personal information contained in a motor vehicle record may be verified or released over the telephone. Verification or release of non-personal information is acceptable. In order to verify or release personal information to a qualifying individual, a written request and photo identification is required.
- Violations of the DPPA can result in civil and criminal penalties.
- The release or use of personal information from motor vehicle records for the purpose of distribution of surveys, marketing, or solicitations is strictly prohibited.
- Access to motor vehicle records is for official internal use only and may not be released or disclosed for any purpose.
- The employee and tax assessor-collector (or designee) should sign and date the document, and the document should be kept in the employee's personnel file.

### Supporting Documentation

The draft non-disclosure agreement is included in the Appendix and may be utilized to satisfy this requirement.



## **B.9 Dedicated county tax assessor-collector office website *(Required)***

### **Background and Purpose**

Over 68 percent of the Texas population uses the Internet, and this percentage will continue to grow in the future. Texans expect government offices to maintain a dedicated website that provides information that makes doing business easier and reduces the amount of customer questions.

The county tax-assessor collector website must provide the following information:

1. Office location(s)
2. Address
3. Hours of operation
4. Contact phone number(s) and email address

### **Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide the web address (URL) to the dedicated county tax assessor-collector office website on the recognition application and the information listed above. Counties may receive more information on how to obtain a county tax assessor-collector website if needed, through the Tax Assessor-Collector Association (TACA).

### **Supporting Documentation**

No additional supporting documentation is required to fulfill this requirement.

## **B.10 Compact with citizens *(Required)***

### **Background and Purpose**

A customer or citizen compact is an agreement made with the customers of an institution to provide services that follow a predetermined set of guiding principles. This compact defines the standards that customers should expect. A multitude of state agencies, including the TxDMV, has a compact with the citizens of Texas. The TxDMV's compact with Texans supports the department's vision, mission, and goals of being customer-centric and providing premier customer service. Counties should have a similar compact with the citizens of their county.

### **Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide a copy of their county's compact with their citizens that outline their customer service policies and procedures.

### **Supporting Documentation**

A sample of TxDMV's compact with Texans is in the Appendix, which may be adapted for county use.

## **B.11 Commitment to training *(Required)***



### Background and Purpose

Training promotes productivity, efficiency, and professionalism and enhances our abilities to better serve the motoring public. When employees are encouraged to complete training, some immediate benefits include lower error rates and improved customer satisfaction.

The purpose of training, as it relates to vehicle registration and title in Texas, is to ensure employees have the necessary knowledge to complete transactions successfully. Training may also be used to enhance proficiency using software programs connected to a particular job or task or general customer service abilities.

### Commitment to Training Statement

*In my role as a tax assessor-collector, training for me and my employees is a high priority. I will encourage my employees to participate in job specific training to the best of my ability. I will also ensure my staff have sufficient access and time to complete necessary training and webinars provided by the TxDMV.*

### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide a certification stating the requirements for this section have been met.

### Supporting Documentation

No additional supporting documentation is required to fulfill this requirement.

## **B.12 Maintain accurate RTS and TxDMV eLearning user access *(Required)***

### Background and Purpose

County tax assessor-collectors should maintain staff access to TxDMV applications. When turnover occurs or job duties change, the user's access within the RTS application and eLearning system should be updated appropriately. Keeping this information up-to-date ensures staff are using the appropriate log-in credentials and only accessing applications relevant to their job duties. In addition, the department has a limited number of licenses available for accessing the eLearning system. Users who no longer need access should be removed, so new users can be added.

### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide a certification stating requirements for this section have been met.

### Supporting Documentation

No additional supporting documentation is required to fulfill this requirement.





## Silver Level Criteria

Silver Level recognizes tax assessor-collectors that satisfy the requirements for Bronze Level and are customer-centric and innovative. Applicants for Silver Level must comply with specific statutory and rule requirements and perform customer-centric business practices that meet or exceed expected levels of service. Silver represents the middle-tier recognition level.

### Scoring

The scoring for this criteria is point based. Each criteria is worth one (1) point unless otherwise stated within the criteria. Counties must meet the nine (9) required criteria and any electives that amount to five (5) additional points to reach a total of 14 points.

### Criteria / Achievement

#### **S.1 TxDMV annual inventory concludes with No Discrepancies Found *(Required)***

##### Background & Purpose

An annual inventory confirms proper internal controls are in place to secure and account for department inventory.

The TxDMV field service representatives (FSRs) conduct a yearly on-site inventory of department issued plates and placards. During the inventory, expired and unexpired inventory is accounted for within the last year. The inventory allows the FSR to review internal county controls in handling this inventory and allows them to make recommendations where weaknesses are identified. This allows the county to maintain strong controls over their daily operations involving department issued inventory and mitigates potential mishandling issues.

##### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to have an annual Inventory that concludes with No Discrepancies Found within the preceding 12 months.

##### Exception

An office that receives a review that includes discrepancies can still receive credit for this category if the follow-up review shows the inventory items have been reconciled and accounted for. The reconciled discrepancies must be completed within the state fiscal year prior to applying.

##### Supporting Documentation

FSR's inventory clearance letter concluding with No Discrepancies Found issued within the last 12 months. A sample letter can be found in the Appendix.

#### **S.2 Participation in GovDelivery (RTBs and notifications system) *(Required)***

##### Background and Purpose

Participating in GovDelivery ensures the county and stakeholders receives important updates concerning policy, procedure, and associated form changes and customers receive up-to-date information. Staying current on



important changes to policies and procedures demonstrates a commitment to providing outstanding customer service and following department policies and procedures.

#### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to certify the county has at least one individual from each county tax assessor-collectors office subscribed to receive and disseminate information from the department to appropriate staff. On the application, the county tax assessor-collector must provide the name and email address of at least one staff member subscribed to GovDelivery.

#### Supporting Documentation

No additional supporting documentation is required to fulfill this requirement. Instructions on how to subscribe to GovDelivery are provided in the Appendix.

### **S.3 Promote use of webDEALER *(Elective)***

#### Background and Purpose

To promote the use of webDEALER in order to provide efficient customer service. Promoting use of webDEALER by franchise and independent dealers provides dealerships and customers increased efficiency by utilizing an overall customer service-centric business model. When local county tax assessor-collectors promote effective use of webDEALER within their county, increased customer service options become available for both dealerships and walk-in customers. Increasing efficiency with a tax office displays a customer-centric atmosphere by the county tax assessor-collector's office.

#### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application must certify the following:

- County has received webDEALER training from their RSC.
- Dealerships (franchised and independent) in the tax assessor-collector's county have been notified of webDEALER's existence.
- The county tax assessor-collector has at least one (1) dealership submitting transactions.
- The county tax assessor-collector has at least ten (10) transactions submitted monthly.

#### Supporting Documentation

No additional supporting documentation is required to fulfill this requirement.

### **S.4 Promote customer efficiencies by use of webSUB *(Elective)***

#### Purpose

Promoting the use of webSUB by local grocery stores and businesses provides customers increased efficiency by offering additional options for customers that need to renew their registration. Often times, these businesses office hours are more flexible and can better accommodate customer's needs. The use of webSUB within a county decreases wait times for customers visiting the county tax office for other transactions. Counties should strive to provide convenient, efficient, and accessible options to customers.



**Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to have at least one subcontractor (non-county location) set up in webSUB and utilized the application at least six months out of the state fiscal year.

**Supporting Documentation**

No additional supporting documentation is required to fulfill this requirement. The TxDMV can confirm participation through webSUB.

**S.5 Monitor and maintain turnaround time for mailed renewals *(Elective)*****Background and Purpose**

The county's turnaround time to process registration renewals is essential to excellent customer service and satisfaction. Although law does not specify a set timeframe to process registration renewals mailed to a county office, the county should strive for efficiency and a quick output to meet customer needs. Counties should monitor and maintain the time it takes to handle mailed registration renewals to evaluate average processing time. Monitoring this information should result in improved county training and business processes to decrease the average turnaround time.

Many vendors offer high-speed machines that quickly scan the renewal, insurance, and/or check submitted by the customer to cashier the money and assist with processing. In addition, the TxDMV has provided vendors that have this equipment the ability to connect their software to the webSUB application for faster processing of registration renewals. These processes may benefit a county office in expediting the mailed registration renewal process.

**Requirement**

Tax assessor collector's receiving recognition will have implemented an internal program/process to monitor and maintain turnaround time for mailed registration renewals.

**Supporting Documentation**

Provide a copy of the program or process used to monitor and maintain the turnaround times for mailed registration renewals.

**S.6 Monitor and maintain turnaround times for titles *(Elective)*****Background and Purpose**

The county's turnaround time to process title paperwork is important to customer service and satisfaction. Law requires counties to input title paperwork into RTS within 72 hours of receiving the paperwork. Counties should monitor and maintain the time it takes to process complete and accurate title applications to evaluate average processing time. Monitoring this information should result in improved county training and business processes to decrease the average turnaround time.

**Requirement**

Tax assessor-collector's receiving recognition will have implemented an internal program/process to monitor and maintain turnaround time for complete and accurate title applications.



### Supporting Documentation

Provide a copy of the program or process used to monitor and maintain the turnaround times for titles that are complete and accurate.

## **S.7 Have a fraud, waste, and abuse prevention and training program *(Required)***

### Background and Purpose

This criterion further expands on the county's fraud, waste and abuse prevention policy by requiring the development of an internal program that substantiates its policy. The program must incorporate a written standard operating procedure that outlines specific guidelines for achieving policy goals and training. Development of this program offers the county transparency by serving as a central point of reference in its efforts to deter fraud for both its constituents and the department. The program also serves as a means to ensure consistency in the county's operations as it strives to prevent fraud, waste and abuse. Some program examples could include, but are not limited to, the following:

- Regular audits
- Random cash handling audits
- Inventory controls
- Training

### Requirement

A county must develop a standard operating procedure outlining roles and responsibilities of their employees should they discover fraud. Training should be developed to provide employees this information. The procedures should also include any additional measures the county is taking to detect and prevent fraud (e.g., a regular audit schedule).

### Supporting Documentation

Provide a copy of the county standard operating procedure relating to the county's fraud, waste, and abuse prevention policy and training outline or information provided to county employees.

## **S.8 Controls and procedures to prevent theft and misappropriation of funds *(Required)***

### Purpose

County offices handle large amounts of title and registration funds on a daily basis. Documented monetary controls and procedures can prevent theft or misappropriation of these funds. Examples of monetary controls and procedures include the following:

- Funds are deposited in the bank on a daily basis.
- Reconciliations of bank deposits are completed in a timely manner and reviewed by staff other than the person who prepared the deposit.
- Bank statements are reviewed weekly or monthly for accuracy.
- Checks returned for insufficient funds are logged and tracked.
- Cash drawers are counted at the end of the business day by the employee responsible for the drawer and verified by another employee.
- Access to and control of the key for locked cash drawers is restricted based upon employee position.



- Methods of payment other than cash or money order/cashier check are accepted for insufficient funds checks. Accepting other methods of payment prevents the creation of a source of cash that is not accounted for in county financial records.

#### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide written documentation of county controls and procedures to prevent theft and misappropriation of funds.

#### Supporting Documentation

Attach county standard operating procedures for cash handling and prevention of theft and misappropriation of funds. A sample cash handling standard operating procedure can be found in the Appendix, which may be adapted for county use.

### **S.9 Work closely with and assist local law enforcement (*Elective*)**

#### Background and Purpose

Provide support to local law enforcement on motor vehicle title and registration policy and procedures. Tax assessor-collector involvement with law enforcement at the local level is essential in order to respond to situations where title fraud or motor vehicle theft is suspected. Counties should work to develop relationships with law enforcement and ensure they have the knowledge related to titling and registering motor vehicles. Some specific titling and registration procedures may include, but are not limited to, the following:

- Insufficient fund procedures (inclusive of license plate and registration sticker seizure)
- Disabled Placard seizure procedures
- Trailer vehicle identification number (VIN) inspections

#### Requirement

Establish policies and procedures for working with local law enforcement agents. Key items that should be incorporated into this procedure include:

1. Identification of law enforcement agents and contact information.
2. Provide a list of key county tax office personnel to law enforcement.
3. Methods to educate law enforcement personnel about title and registration policies and procedures.

#### Supporting Documentation

Provide documentation of activities that develop relationships and assist law enforcement.

### **S.10 Offers customer surveys to collect customer satisfaction (*Required*)**

#### Background and Purpose

To monitor customer levels of satisfaction. The use of customer feedback allows each office to continuously improve operations, increase customer satisfaction, and provide a consumer-friendly atmosphere. The use of customer surveys facilitates easier collection of the vital information used to understand, from the customer's perspective, when customer service efforts are successful.



### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to offer customers the option to provide feedback through customer surveys. The survey must include the following:

1. Customers are offered the option of completing a survey covering at minimum the Overall Rating of Satisfaction.
2. The Overall Rating of Satisfaction should be evaluated by the following five satisfaction level ratings or by a 1-5 rating with 5 representing Excellent.  
Excellent  
Above Expectations  
Meets Expectations  
Below Expectations  
Unsatisfactory

### Supporting Documentation

The tax assessor-collector must provide an example of a customer survey used by the county.

## **S.11 Publish motor vehicle services and information on the county tax assessor-collector's website *(Required)***

### Purpose

To emphasize the importance of the county providing substantiate information on their website.

If the customer is unable to reach the county tax office by phone or prefers to research their request, the county website should provide the elements necessary for the customer to retrieve the documents or information they need. The links and information on the website should be current and link to the correct information.

The county tax assessor-collector's website may include, but is not limited to, the following:

- County holidays and closures
- County news
- Frequently asked questions
- Link to the TxDMV website for forms, publications and tools
- Ability for customers to leave feedback/comments
- Information or links to other stakeholders
- Provide acceptable payment methods and requirements

### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide the web address (URL) to the dedicated county tax assessor-collector office website and provide the items listed above.

### Supporting Documentation

No additional supporting documentation is required to fulfill this requirement.

## **S.12 Partnership with other counties to encourage information sharing *(Elective)***



### Purpose

To build a network of support and align processes across county lines. While each county faces a different set of difficulties, there are common challenges they face. Partnerships encourage information sharing and assist counties to overcome these challenges. This promotes consistency in business practices with surrounding counties.

### Requirements

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to attend regular regionally hosted meetings and one of the following:

1. Work with neighboring counties to create and document at least one standard operating procedure related to customer service.
2. Host meetings for counties to share concerns and resolve issues that affect the counties within their region.

### Supporting Documentation

Submit a copy of the regional meeting attendance and standard operating procedures between counties or a copy of a meeting agenda hosted by the county office.

## **S.13 Engage in outreach activities to notify customers about motor vehicle services (Elective)**

### Background & Purpose

Tax assessor-collectors should strive to keep the motoring public informed of different aspects of motor vehicle services.. Every community utilizes a variety of methods to disseminate information to its public, and the tax assessor-collector should take advantage of these methods to notify the public about available services, changes to existing services, upcoming rule changes, solicit feedback from the community, and provide general information.

### Requirement

The tax assessor-collector will be required to engage in outreach activities. Outreach activity should be motor vehicle related and targeted to residents of the county.

Some examples of outreach activities include, but are not limited to, the following:

- Mailing of motor vehicle information
- Distributing fliers, posters, or brochures
- Connecting to the public via social media
- Press releases
- Talk radio and/or news interviews
- Participating in local events

### Supporting Documentation

Submit evidence of outreach activities notifying customers about motor vehicle services.

## **S.14 Use queuing system/equipment to manage customer wait times (Elective)**



**Background and Purpose**

To reduce and manage customer wait time. Queuing systems act as a tool to manage and streamline customer wait times resulting in reduced lines. This enables office leadership to identify areas needing improvement. Offices can use simple queue management systems that use preprinted tickets or more sophisticated electronic versions.

**Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide proof that at least one office uses stanchions, a ticket dispenser and display, or other systematic means to manage customers' wait time.

**Supporting Documentation**

Submit evidence that at least one office uses queuing equipment/device to manage customers' wait time. Verifiable during office visit by RSC or FSR.

**S.15 Provide motor vehicle service information to non-English speaking customers  
(Elective)****Background and Purpose**

To improve customer service for non-English speaking customers.

This criteria would allow the county tax offices to receive credit for providing additional assistance for non-English speaking customers.

**Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to have at least one staff member that is capable of communicating with the non-English speaking customers that constitute the largest non-English speaking population in the county.

**Supporting Documentation**

No additional supporting documentation is required for this criterion.

**S.16 Alternate county business hours (Elective)****Background and Purpose**

To provide additional office hours for the varying needs of customers. Counties offering alternate office hours provides customers options for receiving service and demonstrate a commitment to the citizens they serve. Alternate hours should be clearly displayed on the exterior of the office, county website, and any other appropriate means.

**Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide alternate office hours at least twice a month. Alternate office hours include any one or more hours the office is open before 8:00 a.m. or after 5:00 p.m. Alternate hours do not require being open more than nine hours per day.

**Supporting Documentation**

Schedule indicating alternate office hours, advertising, or link to website promoting alternate hours.



### **S.17 Customer service workflow efficiencies *(Elective)***

#### **Background & Purpose**

This criterion recognizes county offices that implement business practices that streamline customer services. County offices that streamline processes to specific customers increase overall office experience and reduce customer inconvenience, such as long wait times when completing a renewal.

#### **Requirements**

In addition to handouts and checklists, a county that creates dedicated customer service windows or lanes allows expediting services to specific customers. Some examples of this business practice includes, but is not limited to, the following:

- A dedicated line or window for customer information
- An express lane for registration renewal transactions only

#### **Supporting Documentation**

The county tax office must submit evidence or description of the streamlined processes.

### **S.18 Staff participation in TxDMV webinars related to policies or procedures *(Required)***

#### **Background and Purpose**

Webinars are provided for counties and their staff when policies and procedures change or new programming is implemented. These webinars are provided after the TxDMV sends out policy and procedure changes documented in Registration and Title Bulletins or Release Notes.

The webinars serve as an opportunity for the TxDMV to explain changes and expectations of the counties and answer any questions county staff may have. Representation and involvement in these webinars ensures counties understand what is required of them by policy and/or administrative rules and statute. This communication between the TxDMV and counties is crucial to aligning operating procedures within the counties. Webinars are recorded and available on the TxDMV website in the event staff are unable to attend the live webinar.

#### **Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to certify at least one staff member other than the tax assessor-collector attended the live webinar or listened to the webinar recording for each topic provided over the course of the state fiscal year. For example, if over the course of the state fiscal year there were a total of five RTS webinars, the county should have attended or listened to the recorded version of at least one of these webinars.

#### **Supporting Documentation**

No additional supporting documentation is required to fulfill this requirement.

### **S.19 County tax assessor-collector receives continuing education credits through the TxDMV webinars *(Required)***



### **Background and Purpose**

Webinars are provided for counties and their staff when policies and procedures change or new programming is implemented. These webinars are provided after the TxDMV sends out policy and procedure changes documented in Registration and Title Bulletins or Release Notes.

The webinars serve as an opportunity for the TxDMV to explain changes and expectations of the counties and answer any questions county staff may have. Representation and involvement in these webinars ensures counties understand what is required of them by policy and/or administrative rules and statute. This communication between the TxDMV and the counties is crucial to aligning operating procedures within the counties. In addition, attending these webinars by a county tax assessor-collector or their deputies will earn credit towards the continuing education credit program.

Attendance by the county tax assessor-collector or the chief deputy creates a higher standard for their office since these positions represent the county as a whole and encourages growth and development. Webinars are recorded and available on the TxDMV website in the event the county tax assessor-collector or chief deputy was unable to attend the live webinar.

### **Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to certify the tax assessor-collector or chief deputy attended the live webinar or listened to the webinar recording for each webinar topic provided over the course of the state fiscal year. For example, if over the course of the state fiscal year there were a total of five county webinars for RTS, the tax assessor-collector or chief deputy should have attended or listened to the recorded version of at least one of these webinars.

### **Supporting Documentation**

No additional supporting documentation is required to fulfill this requirement.

## **S.20 County tax assessor-collector staff conducts on-site spot checks of all county and deputy locations *(Required)***

### **Purpose**

To inspect county and deputy locations (full service, dealer deputy, limited service deputy) for assigned department inventory or RTS equipment to ensure compliance with county and state guidelines. Counties should conduct regular on-site reviews of county and deputy locations to confirm adherence to policies and ensure consistency in work quality.

### **Requirement**

At a minimum, on-site inspections should include the following:

1. Examination of title transactions for conformance with state guidelines
2. Review of inventory handling and spot checks against RTS Inventory Report
3. Review of office security (i.e., employee oversight, money handling, etc.)

Tax assessor-collector offices should document and formalize their observations in a report.

### **Supporting Documentation**

Copy of internal standard operating procedure outlining areas to be inspected and a systematic guide on how to conduct those inspections along with a document summarizing the outcome of those inspections within the past 12-month period.



## **S.21 Staff participation in training or certification programs (*Elective*)**

### **Background and Purpose**

Training promotes productivity, efficiency, professionalism, and enhances our abilities to better serve the motoring public. When employees complete training, some immediate benefits include lower error rates and improved customer satisfaction.

The purpose of training as it relates to vehicle registration and title in Texas is to ensure employees possess the necessary knowledge to complete transactions successfully. Training or certification programs related to software, leadership, or management may also enhance proficiency in utilizing software programs connected to a particular job or task and customer service abilities.

### **Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide documentation of training or certification programs provided to staff. Training may be developed by the county, cross-training between staff members, or participation in the TxDMV learning modules related to topics that provide a benefit to the public when requesting registration and/or titling services from the county.

### **Supporting Documentation**

Submit a list of training and/or certification program(s), including the following items for each course or program:

- Copy of the course synopsis or outline, if applicable
- Date(s) of training (within the previous state fiscal year)
- Transcript of training completion

## **S.22 Staff participation in information technology (IT) security practices or training (*Elective*)**

### **Background and Purpose**

IT security practices and training familiarize data users with information protection resources in accordance with appropriate statutes, regulations, rules, standards, guidelines, processes, and procedures. The TxDMV administers an annual mandatory *SANS Securing the Human* training for their employees to ensure staff handle passwords, system credentials and personal identification information properly. Counties should provide information on IT security practices to all staff with access to the TxDMV systems and/or participate in IT security training.

### **Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to certify staff have been informed of IT security practices or attended training within the state fiscal year. Only one of the following will be counted towards this criterion:

- Inform staff of IT security practices – 1 point
- Participate in IT security training – 2 points

### **Supporting Documentation**

The tax assessor-collector should submit a summary of the annual IT security overview (practices) provided to county staff or transcript of training completion indicating when training was administered. A sample document information county staff can be found in the Appendix.





## Gold Level Criteria

Gold Level recognizes tax assessor-collectors that satisfy the requirements for Bronze and Silver Level and are performance-driven offices. Applicants must comply with specific statutory and rule requirements, perform customer-centric business practices that meet or exceed expected levels of service, and meet or exceed specific registration and titling performance goals. Gold represents the highest recognition level.

### Scoring

The scoring for this criteria is point based. Each criteria is worth one (1) point unless otherwise stated within the criteria. Counties must have a total of 24 points to meet the Gold Level. Counties should select all that apply; however, the county must meet the 6 criteria that are required and meet any of the electives to reach the points necessary to reach the 24 points total.

### Criteria / Achievement

#### **G.1 TxDMV FSR review concludes with No Concerns (*Required*)**

##### Background & Purpose

To review security and accountability controls within the county tax office. The review confirms proper internal controls are in place to secure and account for department inventory along with proper handling and remittance of state funds.

The TxDMV FSRs conducts on-site reviews of county operations to verify security and accountability. This includes conducting spot checks of inventories, inspection of voided/deleted inventory, inspection of title transfer documentation, and review of fiduciary reports along with hot check and refund programs. Weaknesses that may pose a risk to county operations or department property are identified and recommendations are provided to the county in order to mitigate the issue.

##### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to have an FSR review that concludes with a finding of “No Concerns” from the most recent review within the past state fiscal year to show that the county has adequate internal controls to minimize the risk of theft/fraud.

##### Exceptions

An office that receives a review finding of “Concerns / Recommendations” can still receive credit for this category if the follow-up review shows implementation of recommendations and follow-up review report concludes “No Concerns.”

Any office that has had an investigative review due to theft or fraud within the past six-month period preceding the application cannot apply for Gold Level consideration until after a new review report concludes in “No Concerns.”

##### Supporting Documentation

FSR’s Review Reports with a finding of “No Concerns” will show the county has met the criteria for this category.



## **G.2 Participation in GovDelivery by stakeholders (RTBs and notifications system) (Required)**

### **Background and Purpose**

Participating in GovDelivery ensures the county and stakeholders receive important updates concerning policy, procedure, and associated form changes. Counties should ensure stakeholders participate to keep them up to date on important changes to policy and procedures. This demonstrates the county's commitment to provide outstanding customer service and follow the policies and procedures set forth by the department.

### **Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to demonstrate county limited service deputies, full service deputies, and/or dealers participate in GovDelivery. On the application, the county tax assessor-collector must provide the name and email addresses of at least one stakeholder signed up for GovDelivery.

### **Supporting Documentation**

No additional supporting documentation is required to fulfill this requirement. The TxDMV will pull reports from GovDelivery to determine the participation of county stakeholders. Instructions on how to sign-up can be found in the Appendix.

## **G.3 Promote efficient titling by use of webDEALER (Elective)**

### **Background and Purpose**

To promote the use of webDEALER in order to provide efficient customer service. Promoting use of webDEALER by franchise and independent dealers provides customers increased efficiency and promotes a customer-centric business model. When local county tax assessor-collector's promote use of webDEALER within their county, wait times decrease due to dealerships no longer processing a high volume of transactions in conjunction with regular customer transactions. Increasing efficiency in this process displays a customer-centric atmosphere by the county tax assessor-collector's office.

### **Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application must select one of the criterion listed below.

40 percent of dealer transactions are processed through webDEALER = 1 point

60 percent of dealer transactions are processed through webDEALER = 2 points

80 percent of dealer transactions are processed through webDEALER = 3 points

### **Supporting Documentation**

The county tax assessor-collector must provide printed reports from the available webDEALER internal reports providing the yearly total of dealer transactions processed in webDEALER and the Vehicles Sold By Dealer Report available in COGNOS, which provides the yearly total of all dealer transactions completed within a county. Samples reports can be found in the Appendix.

## **G.4 Alternate business hours through use of webSUB (Elective)**



### **Background and Purpose**

To provide additional office hours for the varying needs of the customers. County offices with limited service deputies (subcontractors) should encourage use of these entities to offer office hours beyond the counties' office hours. Offering alternate office hours is an important part of creating and maintaining exceptional customer service. By offering customers another resource to process their registration in addition to hours beyond what is available through the county office demonstrates recognition of the varied lifestyles of the families in the community and provides convenience.

### **Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to have subcontractor locations with available office hours beyond the county office hours.

One (1) subcontractor location with alternate hours from the county office = 1 point

Three (3) subcontractor locations with alternate hours from the county office = 2 points.

Five (5) or more subcontractor locations with alternate hours from the county office = 3 points.

### **Supporting Documentation**

Provide the subcontractor name and office hour schedule of the subcontractor(s) locations.

## **G.5 Average mailed renewal turnaround time (*Elective*)**

### **Background and Purpose**

The turnaround time it takes for a county to process registration renewals is important to customer service and satisfaction. Although law does not specify a set timeframe to process registration renewals mailed to a county office, the county should strive for efficiency and a quick output to meet customer needs. Counties should monitor and maintain the time it takes to turnaround mailed registration renewals to evaluate internally the average processing time. Keeping track and monitoring this information should result in county training and internal business processes to increase the average turnaround time and limit the amount of time mailed renewals wait to be processed.

Many vendors offer high-speed machines to quickly scan the renewal, insurance, and/or check submitted by the customer to handle cashing of the money and assistance with processing. In addition, the TxDMV has provided vendors that have this equipment the ability to connect their equipment software to the webSUB application for quicker processing of the registration renewals. These available processes may benefit a county office in expediting the mailed registration renewal process.

### **Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide the average mailed registration renewal turnaround time for the county over the course of the state fiscal year. Points will be given for each performance measure achieved.

Three (3) days = 1 point

Two (2) days = 2 points

One (1) day = 3 points

### **Supporting Documentation**

Provide a copy of the mailed registration renewal turnaround times monitored over the course of the state fiscal year per month and find the average for the year. No more than a five day turnaround time in any given month of the state fiscal year.



## **G.6 Average title turnaround time (*Elective*)**

### **Background and Purpose**

The turnaround time it takes for a county to process title paperwork is important to customer service and satisfaction. Statute requires counties to input title paperwork into RTS within 72 hours of receiving the paperwork. Counties should monitor and maintain the time it takes to turnaround title paperwork for complete and accurate title applications to evaluate internally the average processing time. Monitoring this information should result in county training and internal business processes to try and meet the 72 hour processing time.

### **Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide the average title turnaround time for the county over the course of the state fiscal year for complete and accurate title applications. Points will be given for each performance measure achieved.

Three (3) days = 1 point

Two (2) days = 2 points

One (1) day = 3 points

### **Supporting Documentation**

Provide a copy of the title turnaround times monitored over the course of the state fiscal year per month and find the average for the year. No more than a five day turnaround time in any given month of the state fiscal year.

## **G.7 Percentage of staff participation in the county tax assessor-collector's fraud, waste, and abuse training (*Required*)**

### **Background and Purpose**

This criterion further expands on the county's internal fraud, waste, and abuse prevention program (FWAP) training that substantiates the county policy. The training program should incorporate the guidelines developed in their standard operating procedure. Development of this training program offers the county an opportunity to provide guidance to its employees along with an opportunity to address employee questions regarding their FWAP. It also serves as a means to ensure consistency in its operations as it strives to prevent fraud, waste, and abuse.

### **Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide the frequency of all employee participation in training as it applies to their internal FWAP.

90 percent of all employees completed FWAP training = 1 point

95 percent of all employees completed FWAP training = 2 points

100 percent of all employees completed FWAP training = 3 points

### **Supporting Documentation**

Provide copy of training materials or certifications along with a total number of employees and the number of employees that completed the training.



## **G.8 Establish an annual anti-fraud promotion event *(Elective)***

### **Background and Purpose**

Fraud can (and does) happen in state and local government offices, so tax assessor-collector offices must develop plans to proactively fight fraud and promote anti-fraud programs. Creation of an annual anti-fraud campaign is an opportunity to offer recurring education and training to employees and partners and sends a strong message that fraud prevention is a high priority in your office.

Ideas for fraud prevention activities can be easily found on the Internet. Offices should include the public (customers), law enforcement, and deputies in the program as appropriate.

### **Requirement**

Designate an annual period of time (week, month, and season) to focus on fraud prevention. During the fraud awareness event, counties could consider:

- offering specialized training to employees on topics such as fraud detection, prevention, investigation, ethics in government, auditing, removal of license plates at time of sale, filing a VTN, etc.;
- inviting guest speakers to talk with employees and deputies;
- reaching out and informing the community by issuing press releases, posting signs in your office, or publicizing on your website and social media;
- providing information on Title Check or Auto Burglary and Theft Prevention Authority (ABTPA) campaigns; and
- participating in news/radio interviews for anti-fraud promotion.

### **Supporting Documentation**

Submit a copy of the overall plan. After the event, submit a few examples of items such as meeting agendas, newspaper articles, and attendance at the planned events.

## **G.9 Expand local law enforcement partnership *(Elective)***

### **Background and Purpose**

Provide support to local law enforcement on motor vehicle title and registration policy and procedures. Tax assessor-collector involvement with law enforcement at the local level is essential in order to respond to situations where title fraud or motor vehicle theft is suspected. Counties should work to develop relationships with law enforcement and ensure they have the knowledge related to titling and registering motor vehicles.

### **Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application should host annual meetings with law enforcement to share information and provide training on motor vehicle title and registration procedures. Demonstrate satisfaction with the information shared and the training provided.

Meetings held once a year = 1 point

Meetings held two or more times a year = 2 points

### **Supporting Documentation**

1. Provide sign-in sheets of attendees and agenda.



## G.10 Customer satisfaction ratings *(Required)*

### Background and Purpose

To monitor customer levels of satisfaction. The use of customer feedback allows each office to continuously improve operations, increase customer satisfaction, and provide a consumer-friendly atmosphere. The use of customer surveys and feedback forms facilitates the easy collection of the vital information used to understand, from our customer's perspective, when customer service efforts are successful.

### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to demonstrate the Overall Rating of Satisfaction meets one of the following:

- If a minimum of 80percent of submitted surveys have been rated ***Meets Expectations*** or higher = 1 point
- If a minimum of 85 percent of submitted surveys have been rated ***Meets Expectations*** or higher = 2 points
- If a minimum of 95 percent of submitted surveys have been rated ***Meets Expectations*** or higher = 3 points

### Supporting Documentation

The tax assessor-collector must submit a summary data sheet demonstrating the ratings.

## G.11 County website analytics *(Elective)*

### Background and Purpose

In addition to providing customers relevant information on services offered, forms, publications, and websites should be adjusted based on customer behavior. Website analytic tools provide valuable information about customer demographics and most frequently visited links.

### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application should provide the information on the type of analytical software utilized.

### Supporting Documentation

County should provide print outs of dashboards or other reporting tools from the analytical software.

## G.12 Demonstrated information sharing between counties *(Elective)*

### Purpose

To build a network between counties for support and building team processes across county lines. While each county faces a different set of difficulties, there are many challenges that are common amongst the varied counties. Partnerships allow counties to work together to overcome commonly experienced problems faced in each county. If one county has an issue they need help in solving, another county may have the solution that can help. This would ensure that the surrounding counties are processing transactions in the same manner.

### Requirements

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to demonstrate the effectiveness of the procedure or training provided.



1. Demonstrate the standard operating procedure has been adopted by other counties within the state.
2. Demonstrate the satisfaction with the content of the training by those in attendance. This may include speaker evaluation forms and meeting surveys.

#### Supporting Documentation

1. Submit statement by county adopting the standard operating procedure.
2. Provide summary of speaker evaluations and surveys. A sample survey is provided in the Appendix.

### **G.13 Results of public outreach activities *(Elective)***

#### Background and Purpose

This criterion measures the results of the county's outreach activities. In order to gauge the success of the outreach activities, counties should track the progress before and after implementation.

#### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to track and demonstrate the engagement had a positive result with the public. This may include a reduction in phone calls, increase in social media followers, etc.

#### Supporting Documentation

Provide statistical information or examples of the positive results.

### **G.14 Average customer wait times *(Elective)***

#### Background and Purpose

This criterion expands on the use of queuing systems to manage customer wait time by additionally gathering and producing data on average wait time and type of service the customer desires. Queuing systems provide an automated process to manage customer wait times, streamline customer visit times, and reduce lines in the lobby. The more sophisticated systems track wait times allowing office leadership to identify areas that need improvement. Offices can use simple queue management system that use preprinted tickets or more sophisticated electronic versions.

#### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to provide reporting tools used to identify average wait times and the type of service needed per customer.

45 minutes average wait time = 1 point

35 minutes average wait time = 2 points

25 minutes average wait time = 3 points

#### Supporting Documentation

Submit evidence that of the reporting tool used to track average wait time per customer and type of service needed.

### **G.15 Staff availability to assist non-English speaking customers *(Elective)***



### Background and Purpose

To improve customer service for non-English speaking customers.

This criterion would allow the county tax offices to receive credit for providing additional assistance for non-English speaking customers.

### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to have bilingual staff available on-site that are capable of communicating with non-English speaking customers that constitute the largest non-English speaking population in the county one hundred percent of the time in at least one location.

### Supporting Documentation

The tax assessor-collector must certify that the requirements of the Gold Level have been met and explain how this was accomplished.

## **G.16 Report on customers served during alternate business hours *(Elective)***

### Background and Purpose

Offering alternate county business hours is an important part of creating and maintaining exceptional customer service. By offering extended office or drive-through hours, the county demonstrates recognition of the varied schedules of customers and ensures the office provides needed services outside of normal business hours.

### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to track and report on the number of customers served during the alternate county business hours.

### Supporting Documentation

Provide the alternate county business hours schedule and the number of customers served during the specified timeframe.

## **G.17 Alternative customer service locations *(Elective)***

### Background and Purpose

This criterion further expands on county alternative customer service practices by recognizing offices that provide unconventional locations from established county tax offices to complete registration services. Offering alternative locations expands the customer base that the county tax Offices reaches and provides another avenue for customers to complete their services.

### Requirements

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to have one of the following dedicated customer services:

- A drive-thru or walk-up window
- Self-service kiosks
- Mobile registration services
- Drop box
- Others as determined by the county tax office



### Supporting Documentation

The tax assessor-collector must provide a document that describes the alternative customer service location, the office hours it observes, and a picture of the location.

## **G.18 Percentage of staff participation in TxDMV webinars *(Required)***

### Background and Purpose

Webinars are provided for all counties and their staff when policy and procedures change or new programming is implemented. These webinars are provided after TxDMV sends out policy and procedure changes documented in the Registration and Title Bulletins or Release Notes.

The webinars serve as an opportunity for the TxDMV to explain the changes and expectations of the counties and answer any questions that county staff may have. Representation and involvement in these webinars ensures counties understand what is required of them by policy and/or administrative rules and statute. This communication between the TxDMV and the counties is crucial to proper operating procedures within the counties.

### Requirement

In order to receive recognition for this criterion, the tax assessor collector submitting the application will be required to have representation by at least one staff member for all webinars provided over the course of the state fiscal year. For example, if over the course of the state fiscal year there were a total of five county webinars for RTS, presence by the county should have been made to each of these webinars.

One (1) staff member = 1 point

Three (3) or 75 percent of staff members = 2 points

Five (5) or 100 percent of staff members = 3 points

### Supporting Documentation

The TxDMV will verify participation from the report received directly from the webinar tool. In order to do this, county staff logged into a webinar should provide in the chat/question feature, their county name and the first and last name of each individual participating.

## **G.19 County tax assessor-collector completion of professional training *(Required)***

### Background and Purpose

Continued training and professional development for leaders promotes productivity, efficiency, professionalism, and enhances the abilities to better serve the motoring public.

TACA Professional Designation Certification Programs are available to any paid active or associate member of TACA. There are several types of certifications offered through TACA with varying requirements offered to county tax assessor-collectors.

### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to have been awarded and/or maintained a certification from the TACA Professional Designation Certification Programs for the state fiscal year.

Certification level for the tax assessor-collector is based on the following:



County Tax Office Professional (CTOP) = 1 point

Professional County Assessor-Collector (PCAC) = 3 points

### Supporting Documentation

The tax assessor-collector must provide documentation to confirm being awarded or maintaining the TACA Professional Certification Designation.

## **G.20 Proper notation to prevent NMVTIS error 910 (5% error rate) *(Elective)***

### Background and Purpose

To verify the accuracy of information provided by county tax assessor-collectors office upon submission of documentation. County tax assessor-collectors are responsible for ensuring the citizens of Texas receive accurate title documentation. One tool used to ensure county tax assessor-collectors are inputting accurate information is NMVTIS. NMVTIS error 910 is caused by brands, such as salvage, rebuilt, etc., not being added to the Texas record at local county tax offices. Error 910 will occur when the brand is notated on out of state titles and/or records and is not added to the new record. Washing brands from out of state records can lead to serious consequences for customers; therefore, it is imperative brands are accurately recorded on Texas motor vehicle records.

### Requirement

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to have an annual five percent (5%) error rate out of the total number of NMVTIS errors received by the county. This error occurs when the county did not carry forward the existing brand from the surrendered title. Transactions receiving a 910 error when the brand was not on the title will not be included in the percentage. These transactions will be excluded using the report maintained by the NMVTIS Helpdesk, which shows how many letters were sent out for 910 errors when the brand was not on the title.

### Supporting Documentation

The county tax assessor-collector submitting the application must provide documentation validating the percentage of 910 errors incurred by the county tax office. Documentation will need to include a printed report from COGNOS showing the total number of 910 errors received in a year plus an easily discernible spreadsheet showing the number of transactions not included in the percentage since the county was not at fault for the missing brands. The number of transactions that receive 910 errors, which are not county errors, is obtained by keeping track of the transactions that the county cannot resolve on their own.

## **G.21 Completion of all TxDMV elearning modules *(Elective)***

### Background and Purpose

Training promotes productivity, efficiency, professionalism, and enhances our abilities to better serve the motoring public. When employees are encouraged to complete training, some immediate benefits include lower error rates and improved customer satisfaction.

The purpose of training as it relates to vehicle registration and title in Texas is to ensure employees have the necessary knowledge to complete transactions successfully. The TxDMV has learning modules developed related directly to specific title and registration processes to assist county personnel with everyday tasks.



**Requirement**

In order to receive recognition for this criterion, the tax assessor-collector submitting the application will be required to have had one hundred percent (100%) of staff with access to TxDMV systems complete all TxDMV learning modules and any new or updated modules during the given state fiscal year with a passing score.

**Exception**

Employees who began employment with the tax office within the last month of the state fiscal year.

**Supporting Documentation**

Provide a copy of the county's employee access reports from all TxDMV systems and a copy of the County Group Report from the TxDMV Learning Module application for a listing of each employee that completed all relevant learning modules within the state fiscal year.

The county can verify employee completion by pulling a county group report from the TxDMV learning module application. The report can be filtered by lesson to verify the staff that completed each module.

**G.22 Percentage of staff participation in IT security training (*Elective*)****Background and Purpose**

IT security training familiarizes data users with the need to protect information resources in accordance with appropriate statutes, regulations, rules, standards, guidelines, processes, and procedures. The TxDMV administers an annual mandatory *SANS Securing the Human* training for all their employees to ensure staff properly handle passwords, system credentials, and personal identification information. Counties should offer or participate in similar training through their internal IT staff and/or through a third party.

**Requirement**

In order to receive recognition for this criterion, the tax assessor collector submitting the application will be required to have employees in the county with access to TxDMV applications participate in IT security training within the state fiscal year. Points will be given for each performance measure achieved.

80 percent of staff members = 1 point

90 percent of staff members = 2 points

100 percent of staff members = 3 points

**Supporting Documentation**

The tax assessor-collector should provide documentation to confirm staff participation in IT security training.





## PERFORMANCE QUALITY RECOGNITION PROGRAM APPLICATION



Tax Assessor-Collector Name: \_\_\_\_\_

County: \_\_\_\_\_

Requested Certification Level: \_\_\_\_\_

I, \_\_\_\_\_, certify that the  
\_\_\_\_\_ County Tax Assessor-Collector Office meets the  
requirements of the \_\_\_\_\_ recognition level. I further certify that the information  
provided herein is true and accurate and that knowingly providing false or misleading information  
subjects me to the full force and effect of the law.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jeremiah Kuntz, Director  
Vehicle Titles and Registration Division

\_\_\_\_\_  
Date

\_\_\_\_\_  
Whitney Brewster, Executive Director  
Texas Department of Motor Vehicles

\_\_\_\_\_  
Date



**BRONZE LEVEL (12 POINTS NEEDED)****REQUIRED**

<input type="checkbox"/>	<b>B1</b>	I certify that I have taken the official oath of office for the position of county tax assessor-collector.	
<input type="checkbox"/>	<b>B2</b>	I certify that county and state bonds for both the tax assessor-collector and all appointed deputies are maintained at required amounts. Copies of all applicable bond agreements have been provided.	
<input type="checkbox"/>	<b>B3</b>	I certify that registration fee revenue is remitted to the state in a timely manner. TxDMV will verify timely remittance of registration fees using the Cognos report Unpaid Remittances and Aging Report – Summary/Detail.	
<input type="checkbox"/>	<b>B4</b>	I certify that motor vehicle related sales and use tax revenue is remitted to the state in a timely manner. An accreditation report or letter from the county auditor has been provided.	
<input type="checkbox"/>	<b>B5</b>	I certify that only <u>authorized</u> title and registration fees are charged and collected. Use of the Additional Collections field in RTS must be justified and documented for each transaction. Compliance may be verified using a Cognos query of RTS funds collected.	
<input type="checkbox"/>	<b>B6</b>	I certify that all pertinent contact information, including email addresses, has been provided to the TxDMV.	
<input type="checkbox"/>	<b>B7</b>	I certify that my office maintains a fraud, waste, and abuse prevention <u>policy</u> . A copy of this policy has been provided.	
<input type="checkbox"/>	<b>B8</b>	I certify that all county employees who have access to motor vehicle records have signed a non-disclosure agreement that complies with state and federal laws. A copy of the non-disclosure agreement has been provided.	
<input type="checkbox"/>	<b>B9</b>	I certify that a county tax assessor-collector website is maintained that includes office locations, physical addresses, hours of operation, and phone numbers and/or email addresses. The website URL has been provided to the TxDMV for verification.	
<input type="checkbox"/>	<b>B10</b>	I certify y office maintains a customer compact that specifies the county's guiding principles and standards of service that county citizens can expect to receive. A copy of this compact has been provided.	
<input type="checkbox"/>	<b>B11</b>	I certify that training for myself and my employees is a high priority. I will encourage my employees to participate in job specific training to the best of my ability. I will also ensure that my staff have sufficient access and time to complete necessary training and webinars provided by the TxDMV.	
<input type="checkbox"/>	<b>B12</b>	I certify that employee access to RTS and TxDMV eLearning is accurately maintained and users are added and deleted in a timely manner.	
<b>Total Bronze Points</b>			



## SILVER LEVEL (14 POINTS NEEDED – 9 REQUIRED PLUS 5 ELECTIVE)

### REQUIRED

<input type="checkbox"/>	S1	I certify that the annual inventory conducted by the TxDMV field service representative (FSR) in the last 12 months concluded with no discrepancies. An FSR's Inventory Clearance letter concluding with No Discrepancies Found issued within the last 12 months has been provided.	
<input type="checkbox"/>	S2	I certify that at least one tax assessor-collector employee subscribes to GovDelivery. Employee Name: Employee Email:	
<input type="checkbox"/>	S7	I certify that my office maintains a fraud, waste, and abuse prevention program, including written standard operating procedures (SOPs) and employee training. A copy of the written procedures and program has been provided.	
<input type="checkbox"/>	S8	I certify that my office documents and implements cash handling procedures designed to prevent theft and misappropriation of funds. A copy of our cash handling SOPs has been provided.	
<input type="checkbox"/>	S10	I certify that customers are given the opportunity to provide feedback through the use of a customer survey. The survey includes at a minimum an Overall Satisfaction Rating with five satisfaction level options (i.e., Excellent, Above Expectations, Meets Expectations, Below Expectations, and Unsatisfactory).	
<input type="checkbox"/>	S11	I certify that a county tax assessor-collector website is maintained that includes the requirements of B9 plus information and/or links that provide the customer with additional resources to fulfill his/her request, including county holidays and closures, county news, FAQs, link to the TxDMV website, ability for customers to submit feedback, information or links to other stakeholders, and accepted payment methods and requirements. The website URL has been provided to the TxDMV for verification.	
<input type="checkbox"/>	S18	I certify that at least one staff member (other than myself) attended at least one live county webinar (or listened to the webinar recording) during the previous state fiscal year.	
<input type="checkbox"/>	S19	I certify that the chief deputy attended at least one live county webinar (or listened to the webinar recording) during the previous fiscal year.	
<input type="checkbox"/>	S20	I certify that all county office and deputy locations with assigned TxDMV inventory or RTS equipment were inspected within the last 12 months to confirm adherence to all policies and procedures. Copies of the formal inspection reports for each location have been provided.	

### ELECTIVE

<input type="checkbox"/>	S3	I certify that my office promotes the use of webDEALER. My office has received webDEALER training from my designated TxDMV Regional Service Center (RSC). All dealerships (franchised and independent) in my county have been notified of webDEALER availability. My county has at least one dealership using webDEALER with at least ten total transactions per month. The TxDMV may verify participation with internal reports.	
<input type="checkbox"/>	S4	I certify that there is at least one subcontractor using webSUB for at least six months of the state fiscal year (September 1 to August 31). The TxDMV may verify participation with internal reports.	
<input type="checkbox"/>	S5	I certify that my office monitors, maintains, and strives to improve processing time for registration renewals submitted by mail. A copy of the internal policies and procedures used to monitor processing time has been provided.	
<input type="checkbox"/>	S6	I certify that my office monitors, maintains, and strives to improve processing time for title paperwork. A copy of the internal policies and procedures used to monitor processing time has been provided.	
<input type="checkbox"/>	S9	I certify that my office has established policies and procedures for working with law enforcement agents. A copy of policies and procedures for working with law enforcement entities has been provided.	



**SILVER LEVEL (14 POINTS NEEDED – 9 REQUIRED PLUS 5 ELECTIVE)****ELECTIVE (continued)**

<input type="checkbox"/>	<b>S12</b>	I certify that my office partners with other counties to encourage information sharing. To meet this criterion, I certify that I regularly attend meetings hosted by the region AND one of the following:		
		<input type="checkbox"/>	(a) My office works with neighboring counties and has created at least one SOP related to customer service.	
		<input type="checkbox"/>	(b) My office hosts meetings to promote county collaboration.	
		Copies of regional meeting attendance plus either an SOP or documentation of a hosted meeting has been provided.		
<input type="checkbox"/>	<b>S13</b>	I certify that my office engages in public outreach activities targeted to county residents related to motor vehicle services. Evidence of outreach activities has been provided.		
<input type="checkbox"/>	<b>S14</b>	I certify that at least one tax assessor-collector office utilizes queuing equipment or similar equipment to manage customer wait time. Criteria will be verified during an office visit by an RSC employee or FSR.		
<input type="checkbox"/>	<b>S15</b>	I certify that my office employs at least one staff member who can effectively communicate in the language that constitutes the majority of the non-English speaking population in the county.		
<input type="checkbox"/>	<b>S16</b>	I certify that office hours outside the hours of 8:00 AM and 5:00 PM are offered at least twice per month. Proof of alternate office hours has been provided.		
<input type="checkbox"/>	<b>S17</b>	I certify that business practices designed to streamline customer services have been implemented (e.g., dedicated window for customer information, express lane for registration renewal transactions only, etc.). A description of the business practice(s) implemented has been provided.		
<input type="checkbox"/>	<b>S21</b>	I certify that county staff have completed relevant training and/or certification. A list of all courses and certification programs, including the course date, course synopsis or outline (if available), and evidence of course completion (certificate or transcript) for all courses attended during the previous state fiscal year has been provided.		
<input type="checkbox"/>	<b>S22</b>	<input type="checkbox"/>	(a) I certify that county staff have been <i>informed</i> of IT security practices. (1 pt.)	
		<input type="checkbox"/>	(b) I certify that county staff <i>participated</i> in IT security training. (2 pts).	
		Documentation of the information or training provided during the previous state fiscal year has been provided.		
<b>Total Silver Points</b>				



## GOLD LEVEL (24 POINTS NEEDED – 6 REQUIRED PLUS 18 ELECTIVE)

### REQUIRED

<input type="checkbox"/>	<b>G1</b>	I certify that the annual inventory conducted by the TxDMV field service representative (FSR) in the last 12 months concluded with no concerns. An FSR's Inventory Clearance letter concluding with No Concerns Found issued within the last 12 months has been provided.	
<input type="checkbox"/>	<b>G2</b>	I certify that at least one tax assessor-collector stakeholder (full service deputy, limited service deputy, or dealer) subscribes to GovDelivery.	
		Stakeholder Name:	
		Stakeholder Email:	
<input type="checkbox"/>	<b>G7</b>	I certify that at least 90% of my employees have completed fraud, waste, and abuse prevention program (FWAP) training. A copy of the training material, a report showing the total number of employees, and the number of employees who completed the training have been provided.	
		<input type="checkbox"/> (a) At least 90% of employees completed FWAP training. (1 pt.)	
		<input type="checkbox"/> (b) At least 95% of employees completed FWAP training. (2 pts.)	
		<input type="checkbox"/> (c) 100% of employees completed FWAP training. (3 pts.)	
<input type="checkbox"/>	<b>G10</b>	I certify that at least 80% of <i>all</i> submitted customer surveys have an Overall Satisfaction Rating of Meets Expectations or higher. A copy of an internal report that tracks customer survey ratings has been provided.	
		<input type="checkbox"/> (a) At least 80% of submitted surveys are rated Meets Expectations or higher. (1 pt.)	
		<input type="checkbox"/> (b) At least 85% of submitted surveys are rated Meets Expectations or higher. (2 pts.)	
		<input type="checkbox"/> (c) At least 90% of submitted surveys are rated Meets Expectations or higher. (3 pts.)	
<input type="checkbox"/>	<b>G18</b>	I certify that at least one staff member (other than myself) attended <i>all</i> county webinars during the previous state fiscal year.	
		<input type="checkbox"/> (a) One (1) staff member (1 pt.)	
		<input type="checkbox"/> (b) Three (3) staff members (2 pts.)	
		<input type="checkbox"/> (c) Five (5) staff members (3 pts.)	
<input type="checkbox"/>	<b>G19</b>	I certify that I have been awarded a professional certification from the Tax Assessor-Collectors Association of Texas.	
		<input type="checkbox"/> (a) County Tax Office Professional (CTOP) (1 pt.)	
		<input type="checkbox"/> (b) Professional County Assessor-Collector (PCAC) (3 pts.)	

### ELECTIVE

<input type="checkbox"/>	<b>G3</b>	I certify that at least 40% of annual dealer transactions in my county are processed through webDEALER. The webDEALER report showing my county's annual total of dealer transactions processed through webDEALER plus the COGNOS report Vehicles Sold by Dealer (showing annual total of dealer transactions within the county) have been provided.	
		<input type="checkbox"/> (a) At least 40% of dealer transactions are processed through webDEALER. (1 pt.)	
		<input type="checkbox"/> (b) At least 60% of dealer transactions are processed through webDEALER. (2 pts.)	
		<input type="checkbox"/> (c) At least 80% of dealer transactions are processed through webDEALER. (3 pts.)	
<input type="checkbox"/>	<b>G4</b>	I certify that the county has at least one subcontractor who offers office hours outside county office hours. Subcontractor names and office hour schedules have been provided.	
		<input type="checkbox"/> (a) 1 subcontractor location with alternate hours from the county office (1 pt.)	
		<input type="checkbox"/> (b) 3 subcontractor locations with alternate hours from the county office (2 pts.)	
		<input type="checkbox"/> (c) 5 or more subcontractor locations with alternate hours from the county office (3 pts.)	



**GOLD LEVEL (24 POINTS NEEDED – 6 REQUIRED PLUS 18 ELECTIVE)****ELECTIVE (continued)**

<input type="checkbox"/>	<b>G5</b>	I certify that the average processing time during the previous state fiscal year for registration renewals submitted by mail is less than or equal to three days and that the average for any given month during the previous state fiscal year did not exceed five days. A county maintained report showing the processing times by month along with the annual average during the previous state fiscal year for registration renewals submitted by mail has been provided.	
	<input type="checkbox"/>	(a) Three (3) days (1 pt.)	
	<input type="checkbox"/>	(b) Two (2) days (2 pts.)	
	<input type="checkbox"/>	(c) One (1) day (3 pts.)	
<input type="checkbox"/>	<b>G6</b>	I certify that the average processing time during the previous state fiscal year for title paperwork input into RTS is less than or equal to three days and that the average for any given month during the previous state fiscal year did not exceed five days.	
	<input type="checkbox"/>	(a) Three (3) days (1 pt.)	
	<input type="checkbox"/>	(b) Two (2) days (2 pts.)	
	<input type="checkbox"/>	(c) One (1) day (3 pts.)	
<input type="checkbox"/>	<b>G8</b>	I certify that my office has an established anti-fraud promotional period or event that includes employees, public outreach, law enforcement, and deputies. A copy of the overall plan along with materials or documentation from the anti-fraud event (i.e., meeting agenda, newspaper article, attendance log, etc.) have been provided.	
<input type="checkbox"/>	<b>G9</b>	I certify that my office hosts meetings with law enforcement at least once per year. Meeting agendas and lists of attendees have been provided.	
	<input type="checkbox"/>	(a) Meetings held once per year (1 pt.)	
	<input type="checkbox"/>	(b) Meetings held two or more times per year (2 pts.)	
<input type="checkbox"/>	<b>G11</b>	I certify that my office utilizes website analytic software to monitor and analyze customer behavior. Print outs from the analytic software (e.g., dashboard, reports, etc.) have been provided.	
<input type="checkbox"/>	<b>G12</b>	I certify that my office partners with other counties to encourage information sharing. These partnerships have resulted in either:	
	<input type="checkbox"/>	(a) the adoption by another county within the state of a standard operating procedure (SOP) currently in place in my office OR	
	<input type="checkbox"/>	(b) satisfactory feedback from county partnership meeting attendees (e.g., speaker evaluation forms, meeting surveys, etc.).	
		A statement from the county that adopted the standard operating procedure or a summary of speaker evaluations or meeting surveys has been provided.	
<input type="checkbox"/>	<b>G13</b>	I certify that public outreach activities targeted to county residents related to motor vehicle services had positive statistical effects as demonstrated by relevant statistical data measured before and after the engagement (e.g., reduction in phone calls, increase in social media followers, etc.). A report showing the positive statistical effect(s) has been provided.	
<input type="checkbox"/>	<b>G14</b>	I certify that my office utilizes the analytical tools of its queuing system to monitor customer wait times and that the average wait time is 45 minutes or less. Evidence of the analytical tool used to track average wait times and the type of service rendered has been provided.	
	<input type="checkbox"/>	(a) Average wait time 45 minutes or less (1 pt.)	
	<input type="checkbox"/>	(b) Average wait time 35 minutes or less (2 pts.)	
	<input type="checkbox"/>	(c) Average wait time 25 minutes or less (3 pts.)	
<input type="checkbox"/>	<b>G15</b>	I certify that there is at least one staff member on-site 100% of the time who can effectively communicate in the language that constitutes the majority of the non-English speaking population in the county. An explanation of how this criterion is satisfied has been provided.	



## GOLD LEVEL (24 POINTS NEEDED – 6 REQUIRED PLUS 18 ELECTIVE)

### ELECTIVE (continued)

<input type="checkbox"/>	<b>G16</b>	I certify that the number of customers served during any <i>alternate</i> office hours (outside 8:00 AM to 5:00 PM) is tracked. Office hours schedules showing alternate office hours and the corresponding number of customers served during alternate office hours have been provided.		
<input type="checkbox"/>	<b>G17</b>	I certify that my county offers alternate customer service options for registration services that include <u>at least one of the following</u> : <ul style="list-style-type: none"> <li>• Drive-through or walk-up window</li> <li>• Self-service kiosk</li> <li>• Mobile registration services</li> <li>• Drop box</li> <li>• Other customer service options that satisfy the criterion</li> </ul> A picture of the alternate location along with a description, location, and observed office hours have been provided.		
<input type="checkbox"/>	<b>G20</b>	I certify that my county's NMVTIS Error 910 rate is less than or equal to 5% of the total number of county-caused NMVTIS errors. A COGNOS report showing the total number of 910 Errors in a year and a spreadsheet illustrating the number of error transactions excluded from the calculation due to no fault of the county have been provided.		
<input type="checkbox"/>	<b>G21</b>	I certify that all staff with access to the TxDMV's eLearning system have completed all available training modules with a passing score during the state fiscal year. A report from the eLearning system showing employee access and the County Group Report showing that each employee successfully completed all modules have been provided.		
<input type="checkbox"/>	<b>G22</b>	I certify that at least 80% of county staff with access to TxDMV applications completed the <i>SANS Securing the Human</i> IT security training during the state fiscal year. Proof of staff completion of IT security training has been provided.		
		<input type="checkbox"/>	(a) At least 80% of staff members completed the training. (1 pt.)	
		<input type="checkbox"/>	(b) At least 90% of staff members completed the training. (2 pts.)	
		<input type="checkbox"/>	(c) 100% of staff members completed the training. (3 pts.)	
<b>Total Gold Points</b>				



## Support Material

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### Texas Administrative Code

TITLE 43	TRANSPORTATION
PART 10	TEXAS DEPARTMENT OF MOTOR VEHICLES
CHAPTER 217	VEHICLE TITLES AND REGISTRATION
SUBCHAPTER J	PERFORMANCE QUALITY RECOGNITION PROGRAM RULES

#### [§217.201 Purpose and Scope](#)

Transportation Code, §520.004, requires the department to establish standards for uniformity and service quality for counties. This subchapter prescribes the procedures and general criteria the department will use to establish and administer a voluntary program called the Performance Quality Recognition Program. The department will use the Performance Quality Recognition Program to recognize county tax assessor-collectors and their offices for outstanding performance and efficiency in processing title and registration transactions.

#### [§217.202 Definitions](#)

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

- (1) Department--The Texas Department of Motor Vehicles.
- (2) Deputy--A person appointed to serve in an official government capacity to perform, under the provisions of Subchapter H of this chapter, designated motor vehicle titling, registration, and registration renewal services as a deputy assessor-collector. The term "deputy" does not include an employee of a county tax assessor-collector.
- (3) Office--The county tax assessor-collector office(s) for each county, including the office(s) of any deputy.

#### [§217.203 Recognition Criteria](#)

- (a) Levels of recognition. The department will establish criteria for multiple levels of recognition for performance.
- (b) Recognition criteria for minimum recognition level. The recognition criteria shall include, but are not limited to, factors that indicate whether the office:
  - (1) timely remits registration fee collections;
  - (2) timely remits motor vehicle sales tax and penalties;
  - (3) consistently applies statutes, rules, and policies governing motor vehicle transactions; and
  - (4) maintains bonds as required by statute or administrative rule.
- (c) Recognition criteria for a higher recognition level. In addition to the recognition criteria listed in subsection (b) of this section, the recognition criteria shall include, but are not limited to, factors that indicate whether the office:
  - (1) performs efficiently and with low error rates;
  - (2) processes transactions in a timely fashion;



- (3) has customer feedback programs; and
- (4) has fraud, waste, and abuse awareness and prevention programs.
- (d) Possible additional criteria for a higher recognition level. In addition to the recognition criteria listed in subsections (b) and (c) of this section, the department may include recognition criteria, such as the following, that indicate whether the office:
  - (1) implements cost-saving measures; and
  - (2) has customer feedback metrics to measure customer satisfaction.
- (e) Posting recognition criteria. The department shall post the recognition criteria on its website.

#### §217.204 Applications

- (a) Application deadline. If a county tax assessor-collector chooses to apply for a recognition level or to apply for a higher level of recognition under the Performance Quality Recognition Program, the county tax assessor-collector must submit an application to the department during any year of the county tax assessor-collector's term of office. The application must be received by the department or postmarked no later than October 31st.
- (b) Application from a successor county tax assessor-collector. A successor county tax assessor-collector is not eligible for a recognition level until after serving as the county tax assessor-collector during an entire state fiscal year, which is September 1st through August 31st.
- (c) Application for a higher level of recognition.
  - (1) If a county tax assessor-collector obtains a recognition level and chooses to apply for a higher level of recognition during the term of the existing recognition level, the county tax assessor-collector is not eligible to apply for a higher level until after serving as the county tax assessor-collector during an entire state fiscal year subsequent to the state fiscal year for which the existing recognition level was awarded.
  - (2) If the department demotes a county tax assessor-collector's recognition level, the county tax assessor-collector is not eligible to apply for a higher level of recognition until after serving as the county tax assessor-collector during an entire state fiscal year subsequent to the state fiscal year during which the existing recognition level was demoted.
- (d) Application for a recognition level after revocation of recognition level. If the department revokes a county tax assessor-collector's recognition level, the county tax assessor-collector is not eligible to apply for a recognition level until after serving as the county tax assessor-collector during an entire state fiscal year subsequent to the state fiscal year during which the recognition level was revoked.
- (e) Application form. The application must be submitted on a form prescribed by the department.
- (f) Signature on application. The county tax assessor-collector must sign the application.
- (g) Additional information, documentation, or clarification. At the department's discretion, the department may request additional information, documentation, or clarification from the county tax assessor-collector after the department receives an application. The department shall provide the county tax assessor-collector with a deadline to respond to the request.

#### §217.205 Department Decision to Award, Deny, Revoke, or Demote a Recognition Level

- (a) Award of recognition level. The department may award a recognition level based on the following for the time frame of September 1st through August 31st immediately preceding the application deadline:
  - (1) information and documents contained in the application;



- (2) any additional information, documentation, or clarification requested by the department; and
  - (3) information and documentation from department records.
- (b) Denial of recognition level. The department may deny an award of recognition if:
- (1) the application contains any incomplete or inaccurate information;
  - (2) the applicant fails to provide requested documents;
  - (3) the application contains incomplete documents;
  - (4) the application was not received by the department or postmarked by the department's deadline;
  - (5) the county tax assessor-collector who applied for recognition no longer holds the office of county tax assessor-collector;
  - (6) the county tax assessor-collector did not sign the application; or
  - (7) the department discovers information which shows the applicant does not comply with the criteria to receive a recognition level.
- (c) Revocation of recognition level or demotion of recognition level.
- (1) The department may revoke a recognition level if the department discovers information which shows the county tax assessor-collector no longer complies with the criteria for any recognition level.
  - (2) The department may demote a recognition level if the department discovers information which shows the county tax assessor-collector no longer complies with the criteria for the current recognition level, but still complies with the criteria for a recognition level. The recognition level will be demoted to the highest recognition level for which the county tax assessor-collector qualifies.
- (d) Notice of department decision to award, deny, revoke, or demote a recognition level. The department shall notify the county tax assessor-collector of the department's decision via email, facsimile transmission, or regular mail.
- (e) Deadline for department decision to award or to deny a recognition level. No later than 90 calendar days after receiving the application for recognition, the department shall send a written notice to the applicant stating:
- (1) the department's decision to award or to deny a recognition level; or
  - (2) there will be a delay in the department's decision.

#### **§217.206 Term of Recognition Level**

- (a) Expiration of recognition level. Except as provided in subsections (b), (c), (d), and (e) of this section, the recognition level expires on the later of the end of the county tax assessor-collector's term of office during which the recognition was awarded or the one-year anniversary of the start of their re-election term of office.
- (b) Demoted recognition level. If a recognition level is demoted during the term of a recognition level, the demoted recognition level expires on the later of the end of the county tax assessor-collector's term of office during which the recognition level was demoted or the one-year anniversary of the start of their re-election term of office, except as provided in subsections (c), (d), and (e) of this section. If a recognition level is demoted during the first year of the county tax assessor-collector's re-election term of office and the recognition level was awarded during the county tax assessor-collector's prior term of office, the demoted recognition level expires on the one-year anniversary of the start of their re-election term of office, except as provided in subsections (c) and (e) of this section.



- (c) Revoked recognition level. A recognition level that is revoked will terminate on the effective date of the revocation.
- (d) Decision on application for a higher level of recognition. If a county tax assessor-collector chooses to apply for a higher level of recognition, the existing recognition level terminates once the department makes a decision on the application for a higher level of recognition.
- (e) County tax assessor-collector no longer holds office. The recognition level awarded to a county tax assessor-collector expires when the county tax assessor-collector no longer holds the office of county tax assessor-collector.

#### §217.207 Review Process

- (a) Request for review. A county tax assessor-collector may request the department to review its decision by submitting a written request for review as prescribed by the department:
  - (1) if an application for recognition is denied;
  - (2) if the county tax assessor-collector is not satisfied with the awarded level of recognition; or
  - (3) if a level of recognition is revoked or demoted.
- (b) Deadline for request for review. The written request for review must be received by the department or postmarked no later than 90 calendar days after the date listed in the department's notice to the county tax assessor-collector of the department's decision for which review is requested.
- (c) County tax assessor-collector's request for review. The department will not consider a request for review submitted by someone other than the county tax assessor-collector who signed the application for recognition or who obtained the recognition level at issue. The request must:
  - (1) specifically identify the basis for the county tax assessor-collector's disagreement with the department's decision; and
  - (2) include any evidence or legal authority that supports the request for review.
- (d) Deadline for department decision on request for review. The department shall make a decision on the written request for review no later than 90 calendar days after receiving the written request for review.
- (e) Notice of department decision on request for review. The department shall notify the county tax assessor-collector of the department's decision via email, facsimile transmission, or regular mail.



	Policy		Programs and Procedures		Outcome Measures	
	Bronze Level		Silver Level		Gold Level	
Business Process	R	B. 1 The county tax assessor-collector has completed the oath of office	R	S.1 TxDMV annual inventory concludes with No Discrepancies Found	R	G.1 TxDMV field service representative review concludes with No Concerns
	R	B.2 Maintain required bond amounts	R	S.2 Participation in GovDelivery (RTBs and notifications system)	R	G.2 Participation in GovDelivery by stakeholders (RTBs and notifications system)
	R	B.3 Remit registration fee collections on time		S.3 Promote use of webDEALER		G.3 Promote efficient titling by use of webDEALER
	R	B.4 Remit motor vehicle sales tax and penalties on time		S.4 Promote customer efficiencies by use of webSUB		G.4 Alternate business hours through use of webSUB
	R	B.5 Charges only fees allowed		S.5 Monitor and maintain turnaround time for mailed renewals		G.5 Average mailed renewal turnaround time
	R	B.6 Contact information provided to TxDMV		S.6 Monitor and maintain turnaround time for titles		G.6 Average title turnaround time
Fraud Prevention	R	B.7 Have a fraud, waste, and abuse prevention policy	R	S.7 Have a fraud, waste, and abuse prevention and training program	R	G.7 Percentage of staff participation in the county tax assessor-collector's fraud, waste, and abuse training
	R	B.8 Staff required to complete non-disclosure agreement for Driver's Privacy Protection Act (DPPA)	R	S.8 Controls and procedures to prevent theft and misappropriation of funds		G.8 Establish an annual anti-fraud promotion event
				S.9 Work closely with and assist local law enforcement		G.9 Expand local law enforcement partnership
Customer Service	R	B.9 Dedicated county tax assessor-collector office website	R	S.10 Offers customer surveys to collect customer satisfaction	R	G.10 Customer satisfaction ratings
	R	B.10 Compact with citizens	R	S.11 Publish motor vehicle services and information on the county tax assessor-collector's website		G.11 County website analytics
				S.12 Partnership with other counties to encourage information sharing		G.12 Demonstrated information sharing between counties
				S.13 Engage in outreach activities to notify customers about motor vehicle services		G.13 Results of public outreach activities
				S.14 Use queuing system/equipment to manage customer wait times		G.14 Average customer wait times
				S.15 Provide motor vehicle service information to non-English speaking customers		G.15 Staff availability to assist non-English speaking customers
				S.16 Alternate county business hours		G.16 Report on customers served during alternative business hours
				S.17 Customer service workflow efficiencies		G.17 Alternative customer service locations
Training	R	B.11 Commitment to training	R	S.18 Staff participation in TxDMV webinars related to policies or procedures	R	G.18 Percentage of staff participation in TxDMV webinars
	R	B.12 Maintain accurate RTS and TxDMV eLearning user access	R	S.19 County tax assessor-collector receives continuing education credits through the TxDMV webinars	R	G.19 County tax assessor-collector completion of professional training
			R	S.20 County tax assessor-collector staff conducts on-site spot checks of all county and deputy locations		G.20 Proper notation to prevent NMVTIS error 910 (5% error rate)
				S.21 Staff participation in training or certification programs		G.21 Completion of all TxDMV eLearning modules
				S.22 Staff participation in information technology (IT) security practices or training		G.22 Percentage of staff participation in IT security training



# Appendix

## GovDelivery Sign-Up Instructions

### Stay Connected to the Department of Motor Vehicles

The Texas Department of Motor Vehicles (TxDMV) has a new digital subscription service to keep you informed about agency news. Now you can receive TxDMV updates on the topic of your choice and by your preferred delivery method (email or text message).

#### To Subscribe

It's quick and easy to sign up. Just click on the envelope icon at the bottom of the TxDMV website.



Enter your email address or phone number and click "Submit".

Confirm your information and set a password (optional).

From the Success page, click "Subscriber Preferences" and choose only the topics that interest you. (Note: some topics will ask what region of Texas you live in for location-specific updates.)

Click "Submit" to finalize your selections. You will also have the option to sign up to receive information from other state agencies.

Click "Finish" to leave the page or close the browser window.

You will receive an email or text message each time a notification concerning your selected topic is distributed. You will also be notified when changes to your subscriptions are made.



## Stay Connected to the Department of Motor Vehicles

### To Make Changes to your Subscriptions

You can manage your subscriptions and make changes anytime by clicking on the envelope icon at the bottom of your email notifications or the TxDMV website. Enter your email address or phone number and click "Submit" to update your information.

Click "Finish" to leave the page or close the browser window.

#### Subscriber Preferences

[Subscriptions](#) **Preferences** [Questions](#)

##### Subscriptions

You are subscribed to the following topics:

Topic	Check to Delete
Annual Reports	<input type="checkbox"/>
Clips Distribution	<input type="checkbox"/>
TxDMV Office Hours	<input type="checkbox"/>
Yearly Holiday Schedule	<input type="checkbox"/>

[Submit](#) [Cancel](#)

#### Success

You have successfully subscribed to updates from Texas Department of Motor Vehicles. Confirmation of your preferences will be sent to [sandra.carey@txdmv.gov](mailto:sandra.carey@txdmv.gov). To make additional changes or to unsubscribe visit your [Subscriber Preferences](#) page.

[Finish](#)



## SAMPLE County Fraud, Waste, and Abuse Prevention Policy

### Fraud, Waste, and Abuse

#### Purpose of Policy

To establish the expectation that all employees are responsible for preventing, detecting, and reporting fraud, waste, or abuse.

We at \_\_\_\_\_ County, are responsible for preserving the special trust placed in us by our many customers and stakeholders to properly use and protect the state's resources.

It is the policy of \_\_\_\_\_ County to prevent fraud, waste, and abuse, and, when necessary, stop continued fraud, waste, and abuse by any means within our authority. It is the duty of every employee to be vigilant in identifying and reporting suspected fraud, waste, and abuse in a timely manner to the appropriate supervisor whether the suspected activity concerns another employee or an individual who conducts business with or on behalf of the agency.

Understanding, preventing, and stopping the waste or loss of the county and state resources is a central element of \_\_\_\_\_ County philosophy and is absolutely critical to our maintaining the public's trust and ensuring the continued success of this agency.

County employees who violate this policy may be subject to disciplinary action up to and including termination.

#### Definitions

**Fraud** involves obtaining something of value through willful misrepresentation. Fraud includes a false representation by words, conduct, or omission that deceives or is intended to deceive another, so the individual will act upon the misrepresentation or omission to his or her legal detriment.

**Waste** is the misuse or loss of state resources through inefficient or ineffective practices or behaviors. Waste may result from mismanagement, inappropriate actions, and/or inadequate oversight.

**Abuse** is the misuse of authority or position that causes the loss or misuse of state resources.

### Reporting and Investigating Fraud, Waste, or Abuse

#### Employee Responsibilities

- Understand what constitutes fraud, waste, and abuse and the county policy and procedures on identifying, reporting, and stopping fraud, waste, and abuse.
- Immediately report all suspected fraud, waste, or abuse or conditions that could encourage fraud, waste, or abuse to your supervisor or division director.
- Cooperate in the investigation and disposition of cases of fraud, waste, and abuse.
- Do not discuss reports or investigations of suspected fraud, waste, or abuse with others except as authorized by your supervisor or division director.
- Employees may also contact the County Auditor's Office to report an incident by calling \_\_\_\_\_.

#### Supervisor and Division Director Responsibilities



- Ensure all employees understand what constitutes fraud, waste, and abuse and the county's policy and procedures on identifying, reporting, and stopping fraud, waste, and abuse, including maintaining confidentiality of an investigation.
- Supervisors – immediately review any reported concerns of fraud, waste, or abuse and forward to the appropriate manager.
- Managers – Upon receipt, review the reported concern and forward as necessary to the appropriate county tax assessor-collector, chief deputy, and county attorney.
- Do not discuss reports or investigations of suspected fraud, waste, or abuse with others except as authorized by the county tax assessor-collector, chief deputy, or county attorney.

**Retaliation**

Employees are prohibited from retaliating against another employee for reporting in good faith concerns of fraud, waste, or abuse.

An employee may register a complaint with the *{insert appropriate person for reporting (Civil Rights Officer or Human Resources)}* if the employee believes they are being retaliated against for reporting a violation of law (Whistleblower Act) or for participating in an investigation, proceeding, hearing, or litigation related to cases of fraud, waste, or abuse.



## SAMPLE Motor Vehicle Record Information Access Agreement

I \_\_\_\_\_ understand that no information (personal or non-personal) contained in a motor vehicle record may be released in response to a telephone inquiry by license plate number and that a written request is required to obtain information by license plate number.

I \_\_\_\_\_ understand that the federal Driver's Privacy Protection Act, or DPPA (18U.S.C.2721), and the Texas Motor Vehicle Records Disclosure Act (Transportation Code, Chapter 730) prohibit the release of personal information (names and addresses) contained in motor vehicle records except in certain situations. As a result, there lease and use of ALL personal information contained in ALL motor vehicle records is restricted. Personal information may only be released upon receipt of a specific written request certifying that (1) the information is requested for one of the required or permitted uses provided by law, (2) the requester is a subject of the record, or (3) the requestor has "express written consent" from a subject of the record. All users who have access to this protected information must be aware of the restrictions and must ensure that the personal information is not released or disclosed improperly. Non-personal information (vehicle identification number, license plate number, document number, title issuance date, etc.) maybe released without restriction. As a reminder of the restrictions, annotation that reads "RELEASE OF PERSONAL INFO RESTRICTED" is shown on all records.

I \_\_\_\_\_ understand that violations of the DPPA provisions can result in civil and criminal penalties as a result of falsifying statements to obtain information, using information obtained for an unlawful purpose, and knowingly obtaining, disclosing, or using personal information in violation of the provisions of the DPPA.

I \_\_\_\_\_ understand that, effective December 1, 2000, there lease or use of personal information from motor vehicle records for the purpose of distribution of surveys, marketing, or solicitations is strictly prohibited.

I \_\_\_\_\_ understand that access to motor vehicle records is granted for official internal county use only and personal information (names or addresses) may not be released or redisclosed for any other purpose. Any requests for disclosure of personal information contained in a motor vehicle record or information by license plate number will be referred to the TxDMV when appropriate. The TxDMV is prepared to assist in these matters and to accept such requests for information.

I \_\_\_\_\_ certify that I have read the above information regarding the restrictions on the use and disclosure of information from motor vehicle records and have been furnished a copy of the Required and Permitted Uses (as provided in the federal Driver's Privacy Protection Act).

\_\_\_\_\_  
Employee's Printed Name

\_\_\_\_\_  
District/Division/Office/Region

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date Signed



## REQUIRED AND PERMITTED USES

(As provided in the federal Driver's Privacy Protection Act and state Motor Vehicle Records Disclosure Act)

### **REQUIRED USES**

Personal information shall be disclosed for use in connection with matters of:

- (1) Motor vehicle or driver safety and theft,
- (2) Motor vehicle emissions,
- (3) Motor vehicle product alterations, recalls, or advisories,
- (4) Performance monitoring of motor vehicles and dealers by motor vehicle manufacturers,
- (5) Removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of the Automobile Information Disclosure Act, the Motor Vehicle Information and Cost Saving Act, the National Traffic and Motor Vehicle Safety Act of 1966, the Anti-Car Theft Act of 1992, and the Clean Air Act, and
- (6) Child support enforcement under Chapter 231, Family Code.

### **PERMISSIBLE USES**

Personal information may only be disclosed upon written certification that the intended use is one of the following:

- (1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.
- (2) For use in connection with matters of:
  - a. motor vehicle or driver safety and theft,
  - b. motor vehicle emissions,
  - c. motor vehicle product alterations, recalls, or advisories,
  - d. performance monitoring of motor vehicles, motor vehicle parts and dealers,
  - e. motor vehicle market research activities, including survey research, and
  - f. removal of non-owner records from the original owner records of motor vehicle manufacturers.
- (3) For use in the normal course of business by a legitimate business or an authorized agent of the business, but only --
  - (A) To verify the accuracy of personal information submitted by the individual to the business or the agent of the business; and
  - (B) If the information is not correct, to obtain the correct information, but only for the sole purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against the individual.
- (4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgements and orders, or pursuant to an order of a Federal, State, or local court.
- (5) For use in research activities, and for use in producing statistical reports, but only if the personal information is not published, redisclosed, or used to contact any individual.
- (6) For use by an insurer or insurance support organization, or by a self-insured entity, or an authorized agent of the entity, in connection with claims investigation activities, antifraud activities, rating or underwriting.



- (7) For use in providing notice to the owner of a towed or impounded vehicle.
- (8) For use by a licensed private investigative agency or licensed security service for any purpose permitted under this subsection.
- (9) For use by an employer or an agent or insurer of the employer to obtain and verify information relating to a holder of a commercial driver's license that is required under the 49 U.S.C. Chapter 313.
- (10) For use in connection with the operation of private toll transportation facilities.
- (11) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.
- (12) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.



## SAMPLE Compact with Texans

The Texas Department of Motor Vehicles (TxDMV) is the state agency responsible for vehicle registration and titling, issuing motor carrier operating authority, motor carrier enforcement, permitting services to transport oversize/overweight cargos, licensing vehicle dealers, awarding law enforcement agencies grants to reduce auto theft and increase public awareness, and much more. All of these activities require continuous communication and interaction with our customers and stakeholders.

### Agency Vision

The TxDMV sets the standard as the premier provider of customer service in the nation.

### Customer Service Principles

Our customers can expect TxDMV to:

- exercise courtesy and respect;
- be fair, ethical, and professional;
- provide timely and responsive service;
- give clear, accurate, and consistent information;
- follow through on our commitments;
- strive for continuous improvement in all of our services; and
- go the extra mile in our efforts to serve.

### Customer Feedback

Customer feedback received through the TxDMV Contact Center, located within the Consumer Relations Division, enables the agency to develop and support continuous activities for improving the way it does business.

The TxDMV Contact Center serves as the consumer doorway to better, faster, and more efficient customer service to the public and industries served by the agency.

Whether you contact us by phone, correspondence, or email, TxDMV will handle each call and inquiry in a professional manner that is tailored to your needs.

If you contact us by phone, you will reach one of our customer service representatives. If you contact us through email or mail, our goal is to respond to you within three business days.

### By Phone

To discuss an issue, call us toll-free at 1-888-DMV-GOTX (1-888-368-4689) or locally at (512)465-3000. Our hours of operation are 8:00 a.m. to 5:00 p.m. Central Standard Time, Monday through Friday.

### Email

You may also use a drop-down menu at <http://www.TxDmv.gov/contact-us>

To file a complaint, provide a compliment, or make a suggestion.

### By U.S. Mail

Send letters to us at the following address:



Texas Department of Motor Vehicles

4000 Jackson Ave.

Austin, TX 78731

Please include:

- your name and mailing address (telephone number and email are optional);
- a description of your comment or concern, including any background information or underlying facts; and
- the specific action or measure you are requesting of us.

Our customer service liaison, Gerri Ries, may be reached by phone at (512)872-8103 or by email at [Gerri.Ries@TxDMV.gov](mailto:Gerri.Ries@TxDMV.gov).

### Customer Satisfaction Survey

The TxDMV is committed to continually improving service to our customers. Your feedback is vital to our mission to serve, protect, and advance the citizens and industries in the state with quality motor vehicle related services. To assist us in receiving customer feedback, we encourage you to complete a short survey after an interaction with our agency.

The survey is available at [www.surveymonkey.com/s/TxDMVsurvey](http://www.surveymonkey.com/s/TxDMVsurvey).

### Customer Complaint Process

If you have a concern or complaint about a TxDMV division, program, or regional service center has not been resolved to your satisfaction, contact the TxDMV by phone, online, or by U.S. mail as listed above, and we will respond to you within three business days. Please provide as much detail about the issue as you can, including date, time, the person you spoke with, etc.

All customer complaints and suggestions are tracked by the agency in the Consumer Relations Database. The database is used to store and catalog all customer initiated complaints, compliments, and suggestions received by TxDMV.

### Additional Information

For additional information about TxDMV:

- Please visit our website at <http://www.TxDMV.gov>.
- Like us on Facebook at <http://www.facebook.com/TxDMV>.
- Follow us on Twitter at <http://twitter.com/TxDMV>.



## SAMPLE Inventory Review Letters

### Discrepancies Found

Vehicle Titles and Registration Division • 4210 N Clack Street • Abilene, Texas 79601.

<Select date>

The Honorable <First Last name>  
<County Name> County Tax Assessor-Collector  
<Address>  
<City>, Texas <Zip>

Dear <Ms./Mr. & Last name>:

The purpose of this letter is to inform you of the status regarding the inventory review conducted by your office and me on <enter date(s)>.

The inventory revealed the following discrepancies and requires a written response within two weeks on actions taken to locate the inventory.

Year of Item	Item Description	Shortage/Overage
<Ctrl+Tab to tab within table and create new line>		

This letter is not to be construed as a clearance of those items that appear on the RTS Inventory Inquiry Report but were not found on hand in your office during the aforementioned inventory.

If you have any questions, please contact me at (325) 674-1013.

Sincerely,

Jeanna Gordon, Field Service Representative  
Regional Services Section



**No Discrepancies Found**

Vehicle Titles and Registration Division • 4210 N Clack Street • Abilene, Texas 79601.

<Select date>

The Honorable <First Last name>  
<County Name> County Tax Assessor-Collector  
<Address>  
<City>, Texas <Zip>

Dear <Ms./Mr. & Last name>:

The purpose of this letter is to inform you of the status regarding the inventory review conducted by your office and me on <enter date(s)>.

All inventoried items were accounted for with no discrepancies found.

This letter serves as clearance for the expired registration items that were deleted from RTS and destroyed.

If you have any questions, please contact me at (325) 674-1013.

Sincerely,

Jeanna Gordon, Field Service Representative  
Regional Services Section



**Items Found**

Vehicle Titles and Registration Division • 4210 N Clack Street • Abilene, Texas 79601.

<Select date>

The Honorable <First Last name>  
<County Name> County Tax Assessor-Collector  
<Address>  
<City>, Texas <Zip>

Dear <Ms./Mr. & Last name>:

The purpose of this letter is to amend the status of our review of inventory items conducted on  
<enter date(s)>.

Your office notified me that the inventory previously listed as missing has been located. I have  
verified the following accountable inventory was located:

Year of Item	Item Description	Shortage/Overage
<Ctrl+Tab to tab within table and create new line>		

Attached is a copy of the Inventory Deleted Report that removed the inventory from your RTS  
inventory records. This letter is clearance of the above listed item(s) previously reported as  
missing at the aforementioned inventory. You are approved to use a dummy invoice to add any  
unexpired missing items back into your inventory. Please provide me with a copy of the Dummy  
Invoice Receipt to attach to your file.

If you have any questions, please contact me at (325) 674-1013.

Sincerely,

Jeanna Gordon, Field Service Representative  
Regional Services Section



**Items Not Found**

Vehicle Titles and Registration Division • 4210 N Clack Street • Abilene, Texas 79601.

<Select date>

The Honorable <First Last name>  
<County Name> County Tax Assessor-Collector  
<Address>  
<City>, Texas <Zip>

Dear <Ms./Mr. & Last name>:

On <select date>, a letter was sent to inform you of the status regarding the inventory review conducted by your office and me on <enter date(s)>.

The inventory revealed discrepancies and required a written response within two weeks on actions taken to locate the inventory. Since it has been over two weeks and the items were not found, you may delete these missing items. Please provide me with a copy of the Inventory Deleted Report.

This letter is not to be construed as a clearance of those items that appear on the RTS Inventory Inquiry Report but were not found on hand in your office during the aforementioned inventory. If at a later date, you locate the item(s), please let us know so that I can provide a clearance letter.

If you have any questions, please contact me at (325) 674-1013.

Sincerely,

Jeanna Gordon, Field Service Representative  
Regional Services Section



# SAMPLE Cash Handling Policies and Procedures

## 1 Policy–Cash Handling

### 1.1 Purpose

The purpose of this document is to establish uniform cash handling policies and procedures with respect to the handling, receiving, transporting, and depositing of cash. The proper control and safekeeping of cash assets will be accomplished by implementing the internal control activities outlined below.

### 1.2 Introduction

The county maintains a cashing function for the purpose of receiving funds for registration and titling. The following procedures outline the responsibility of county employees when handling revenue. The county may accept cash, checks, cashier's checks, money orders, and debit/credit cards as forms of payment for goods and services. Cash has the same meaning of all the above, including checks, cashier's checks, and money orders for the purpose of this policy.

**Historical practices shall not constitute justification for deviation from the following guidelines.** The material contained in this document supersedes any previous policies and procedures regarding the handling of cash followed within the county. **The county tax assessor-collector reserves the right to make interpretations and exceptions to the policies contained in this document.**

Changes in county cash handling policies and procedures may be made from time to time and will be communicated via official channels following official standard operating procedures maintenance procedures.

### 1.3 Required Authorization to Collect Money

The county tax assessor-collector must give prior approval before undertaking any new cash handling activity, operation, or changes to current activities and operations.

### 1.4 Segregation of Duties

There must be a separation of duties between the person receiving cash and the person responsible for maintaining the accounting records.

Cash handling duties are to be divided into stages: receiving, reconciling, and depositing. Segregation of duties protects employees from inappropriate accusations, charges of mishandling funds, and minimizes the opportunity for an employee to misappropriate funds and avoid detection.

The following responsibilities should be distributed among personnel, so one person is not responsible for all duties:

- Opening mail
- Endorsing checks
- Preparing deposits
- Reconciling to RTS and IRP closeout reports

### 1.5 Safekeeping of Funds

The supervisor of employees handling funds must ensure each employee is briefed quarterly on the proper actions in the event of a robbery. The briefing shall specifically instruct that no employee is to take any action that could endanger anyone.



All cash must be protected immediately by using a cash drawer or safe until daily closeout and/or it is deposited. Offices must identify a secure area for processing and safeguarding funds (e.g., closeouts should not be conducted in view of the public/customers).

At close of each business day, cash drawers should be locked and secured in the county's safe under dual control. If the safe cannot accommodate locked cash drawers, the county will secure the funds in locking bags within the safe.

Appropriate precautions must be taken when transporting funds. Managers or a tenured staff member (as assigned) will make deposits. Employees should make no intermittent stops while transporting funds, nor will they leave funds unattended during transport to and from the bank. Armored car service should be arranged when appropriate and approved.

Change requests from employee/cashier will be conducted under dual control as shown below.

Employee/cashier will enter the vault/safe along with a designated leadership employee (manager, supervisor, coordinator, or employee with authorized access). Change requests will be completed and both individuals will exit the vault/safe after confirming the vault/safe is secured.

## 1.6 Guidelines in the Event of a Robbery

The following guidelines are provided to ensure staff safety and avoid unnecessary risks:

- Cooperate with the robber.
- Avoid any confrontation and facilitate a rapid departure.
- Stay as calm as possible.
- Take no risks.
- Try not to panic or show any signs of anger or confusion.
- Make a mental note of any descriptive features or distinguishing marks on the robber such as his/her clothing, hair color, eye color, scars, tattoos, etc.
- Do not touch anything in areas the robbers occupied and note specific objects they touched.
- Try to note the robber's vehicle color, make, and direction of travel.
- Offices having security alarms; Trip the alarm as soon as it is safe.
- Dial 911 as soon as it is safe.
- The robbery should not be discussed with anyone until the police arrive.
- The victim should, above all else, remain calm and try to remember the details of what occurred and write them down. Use the form provided to aid in recalling details.



## 1.7 Be Alert, Be Observant

### BEALERT, BE OBSERVANT!!!

Features you can remember regarding the physical characteristics of suspicious persons or assailants can greatly assist your police department in their apprehension.

HAT (color, type, etc.):

HAIR:

EYES:

SCARS/TATTOOS:

SHIRT:

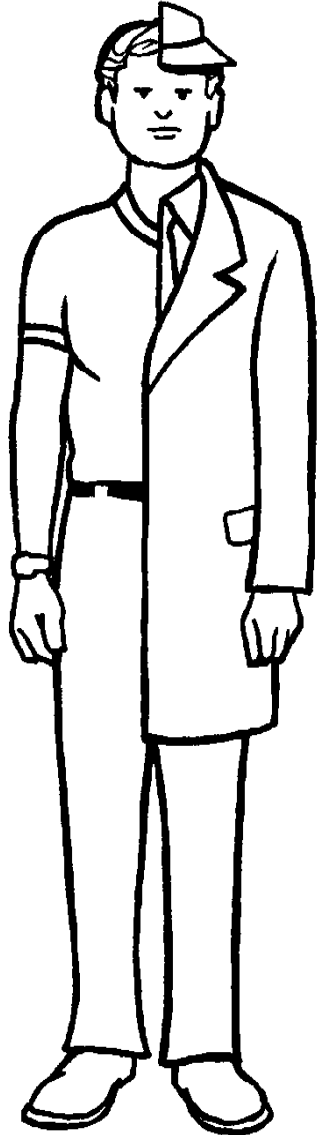
TIE:

COAT:

SHOES:

SEX:

WEIGHT:



DIRECTIONOF ESCAPE:

FOOT\_\_\_\_VEHICLE

VEHICLELICENSE:

VEHICLECOLOR:

NUMBEROF SUSPECTS:

TYPEOFWEAPON:

OTHERREMARKS:

CONTACTLOCALPOLICEASQUICKLYASPOSSIBLEAFTERDEPARTUREOFSUSPECT(S)

Phone Emergency: 911



## 1.8 Safes

Cash shall be stored in a vault/safe when not in use or in a register, locked drawer, or locked box. The vault/safe should be opened under dual control when persons in the vault/safe room is open. Cash in unlocked drawers or boxes should never be left unattended. Keys should not be left in cash drawers when the window is unattended (e.g., during breaks and lunch). Access to safe combinations should be limited to certain personnel.

All safe combinations should be changed before the end of the day when authorized individuals end employment or are no longer authorized to have access to funds. If extenuating circumstances do not permit a change within this time frame, the county tax assessor-collector should be notified immediately. Safe combinations should be memorized and not shared with anyone who is not authorized to have access. The safe should remain locked at all times when not in use.

The chief deputy should be provided all safe combinations for emergencies.

## 2 Control Concepts

### 2.1 Receiving Cash and Checks/Money Orders

- All checks/money orders should be made payable to the county/tax assessor-collector.
- All checks should immediately be restrictively endorsed "For Deposit Only" following receipt from customers.
- The numeric amount of the check must agree with the written amount.
- Checks must have a current date (no postdated checks).
- Checks must have the payor's name pre-printed.
- Checks from out-of-state and out-of-state financial institutions are acceptable.
- Business checks with an electronic signature are acceptable.
- No temporary checks (no exceptions).

### 2.2 Receipt of Cash/Checks

All title and registration related transactions should be recorded in RTS and a receipt issued to the customer. Cash must be kept in a safe or a secure place (e.g., cash drawer) until closeout. To maintain accountability over cash/checks and transactions, clerks should be assigned a specific cash drawers for the day and only operate out of their assigned workstations. Logging out of the workstation when stepping away and not sharing passwords or RTS login credentials is important to maintain accountability.

Clerks should scrutinize \$100.00 bills and larger denominations for possible counterfeits. The clerk should also be trained on detecting counterfeits such as use of black light to spot security threads or use of a bank note counter. Counterfeit currency should be given to the manager on duty for proper processing.

1. When receiving a check, be sure to use the cross pattern on the front and note the following:
  - Driver license number
  - Date of birth
  - Reference number (i.e., plate number, etc.)
  - Last six (6) digits of the VIN
2. Each check should be endorsed immediately upon receipt from the customer.
3. Open the mail in a central location. Do not open it in a cubicle or other closed space unless a second person is assisting/observing.
4. Rejected mail-in transactions should be entered in to the mail log.



## 3 Requirements for Deposits

### 3.1 Timely Deposit Requirements

It is county policy that all funds be deposited at the earliest possible time after receipt. The county should make every effort to deposit collected funds by the appropriate timeframe.

### 3.2 Deposit Routes and Times

Deposits should be taken to the bank by 2:00p.m. or by close of the banking business day (this will vary from bank to bank). The time the deposits are taken to the bank should change daily to prevent the criminal element from detecting a pattern. Multiple routes to the bank should be utilized to prevent a pattern.

### 3.3 Startup/Fund Change

Each employee/cashier shall have a sufficient amount as determined by the county tax assessor-collector for startup funds to perform cashiering functions.

The county shall maintain a fund for the purpose of making change. The amount of such funds shall be determined by the county tax assessor-collector. Under no circumstances should an employee make change using personal funds. All purses, wallets, backpacks, briefcases, and other similar items should be stored in drawers or maintained out-of-sight while working.

It is the employee's responsibility to accurately and timely process incoming funds for respective services. At the end of each day or cashiering session, employees will balance their cash drawers by taking the cash drawer and paper work to the designated manager/supervisor. The designated manager/supervisor will summarize their daily activity and verify the count in accordance with timely deposit requirements. A deposit will then be prepared and funds deposited in the bank the following morning by the manager or designated opening manager.

## 4 Office Procedure

### 4.1 Daily Processes

1. At the beginning of each day, a supervisor/senior staff member should provide each clerk with a till and verify the clerk counted their till. The clerk shall report any variance to the manager on duty immediately.
2. A receipt must be issued for each transaction.
3. All registration and title related funds received should be cashiered through RTS.

### 4.2 Procedures for Money Report

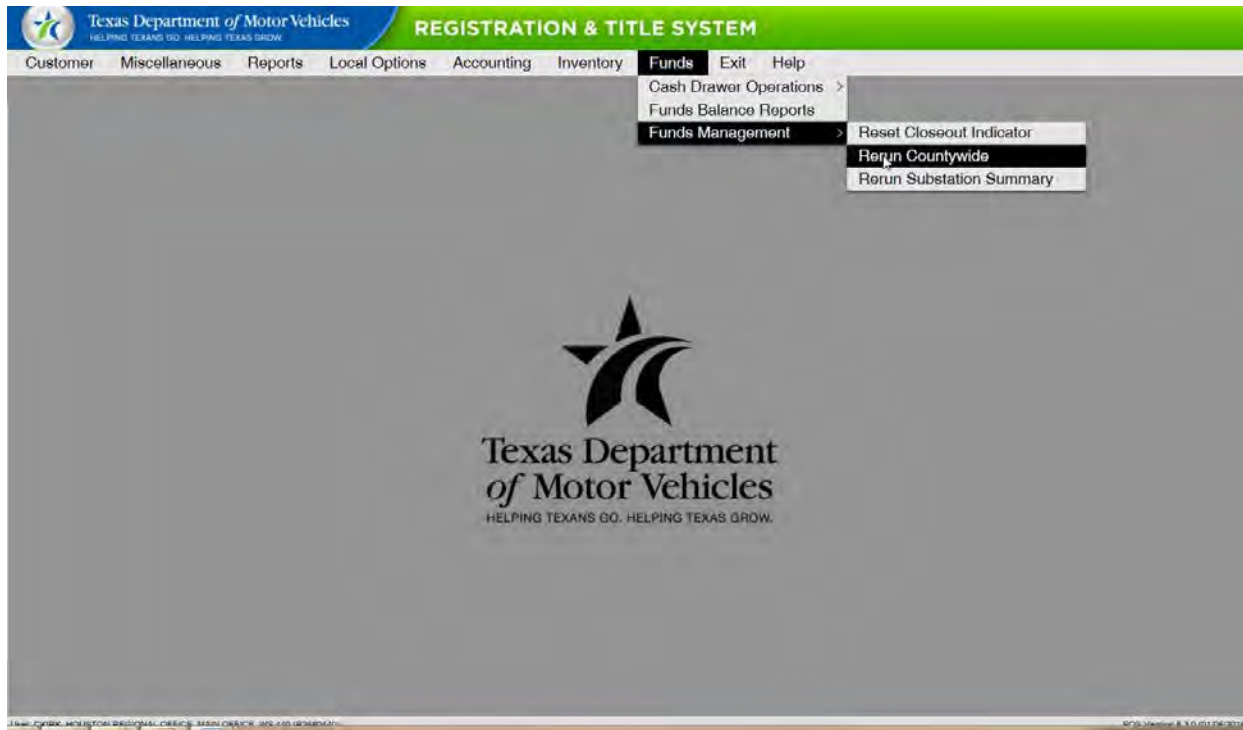
Always have two designated employees to process the money report. The employees who process the money report and prepare the deposit should not be the same employees that close the night before. Print the appropriate reports from:

- Voided Transaction Report(RTS.ADM.003)
- Fee Type Funds(RTS.FIN.013)
- Delete Inventory History(RTS.INV.002)
- Funds Remittance Report (RTS.FUN.002)

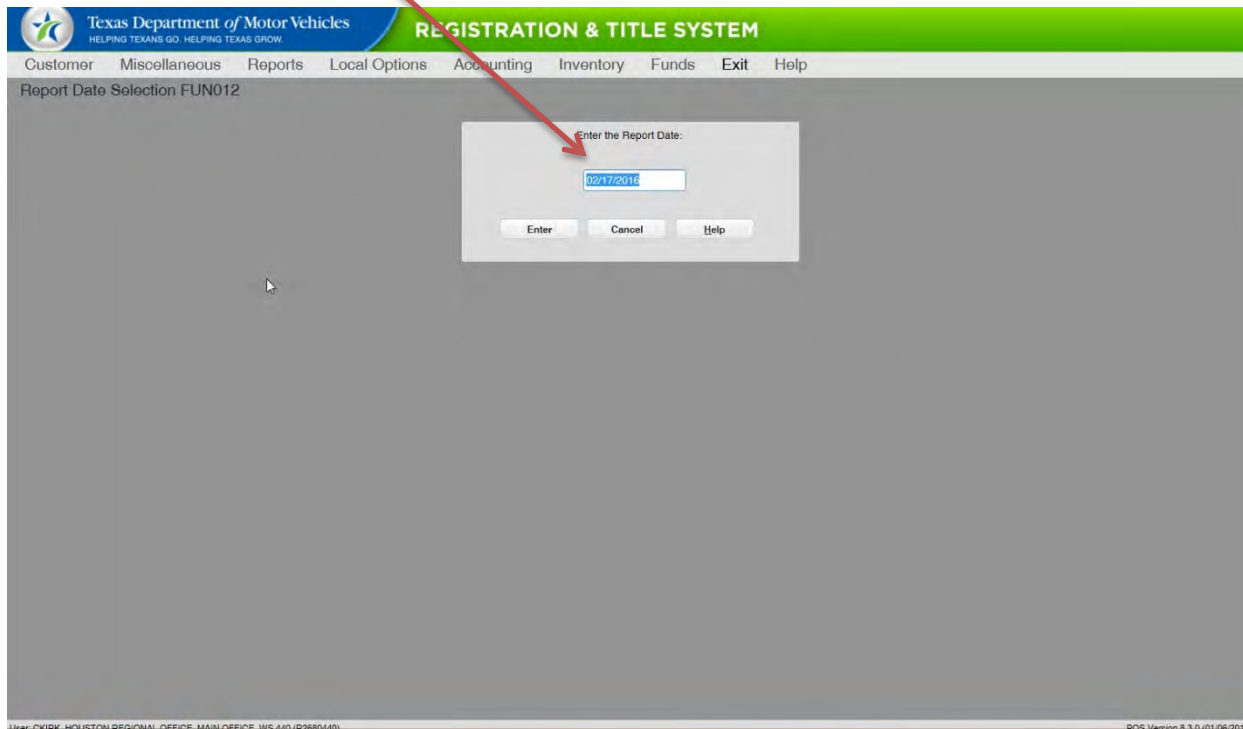
### 4.3 Reports from Registration and Title System

1. Open RTS, and go to Funds> Funds Management> Rerun Countywide.





2. Enter the previous days date.





3. Select "Print."

RTS.POS.5901  
WORKSTATION ID : 440  
REQUESTED BY : CKIRK  
REPORT DATE : 02/17/2016

COUNTYWIDE PAYMENT TYPE REPORT  
HOUSTON REGIONAL OFFICE  
SUMMARY

PAYMENT TYPE	CUSTOMER AMOUNT	QTY	SUBCONTRACTOR AMOUNT	QTY	DEALER TITLE AMOUNT	QTY	INTERNET AMOUNT	QTY	TOTAL AMOUNT	QTY
CASH DRAWER OPERATIONS:										
CASH	6,410.76								6,410.76	
CHECK	136,044.73	152							136,044.73	152
TOTAL	142,455.49		0.00		0.00		0.00		142,455.49	
REPORT TOTAL	142,455.49		0.00		0.00		0.00		142,455.49	

Print Enter Cancel Help Prev Next Last

User: CKIRK, HOUSTON REGIONAL OFFICE, MAIN OFFICE, WS 440 (R2680440) POS Version 8.3.0 (01/06/2016)

4. Select "All" and "Enter."

Print RPR008

Print Range:

☒ All  
☐ Current  
☐ Pages:

Enter page numbers and/or page ranges separated by commas. For example, 1,3,5-12


Enter Cancel Help

User: CKIRK, HOUSTON REGIONAL OFFICE, MAIN OFFICE, WS 440 (R2680440) POS Version 8.3.0 (01/06/2016)



5. The following reports will print:


➤ Report5901 (Countywide Payment Type Report)

 <b>Texas Department of Motor Vehicles</b>									
RTS.POS.5901 COUNTYWISE PAYMENT TYPE REPORT HOUSTON REGIONAL OFFICE SUMMARY									
WORKSTATION ID : 100 REQUESTED BY : CAYERS REPORT DATE : 06/10/2015									
PAYMENT TYPE	CUSTOMER AMOUNT	QTY	SUBCONTRACTOR AMOUNT	QTY	DEALER TITLE AMOUNT	QTY	INTERNET AMOUNT	QTY	TOTAL AMOUNT QTY
CASH DRIVER OPERATIONS:									
CASH	9,596.48	111							9,596.48 111
CHECK	28,089.00								28,089.00
TOTAL	37,685.48		0.00		0.00		0.00		37,685.48
REPORT TOTAL	37,685.48		0.00		0.00		0.00		37,685.48

➤ Report5902(Countywide Fees Report)

 <b>Texas Department of Motor Vehicles</b>									
RTS.POS.5902 COUNTYWISE FEES REPORT HOUSTON REGIONAL OFFICE SUMMARY									
WORKSTATION ID : 100 REQUESTED BY : CAYERS REPORT DATE : 06/10/2015									
DESCRIPTION	CUSTOMER AMOUNT	QTY	SUBCONTRACTOR AMOUNT	QTY	DEALER TITLE AMOUNT	QTY	INTERNET AMOUNT	QTY	TOTAL AMOUNT QTY
REGUL. OFFICE	100.00	2							100.00 2
144 HOUR PERMIT REGION	100.00	3							100.00 3
100 FEES CO REGION	19,795.48	33							19,795.48 33
ASSIGNED NUMBER REGION	2.00	1							2.00 1
BONDED TITLE FEE REGION	580.00	39							580.00 39
CAR CARD REGION	86.00	44							86.00 44
CCO MAIL REJECT REGION	9.00	4							9.00 4
CCO REGION MAIL IN CHARGE	16.00	8							16.00 8
CERTIFICATION MAIL	1.00	2							1.00 2
CERTIFIED COPY ORIG REGION	1,555.25	286							1,555.25 286
DUPLICATE REGISTRATION REGION	4.00	2							4.00 2
INQUIRY REGION	0.90	3							0.90 3
TITLE HISTORY REGION	12.25	6							12.25 6
VEH CERTIFICATION FEE REGION	2.00	2							2.00 2
TOTAL REGISTRATION	22,328.98		0.00		0.00		0.00		22,328.98
PASS THRU MONIES	15,356.50	29							15,356.50 29
TOTAL PASS THRU MONIES	15,356.50		0.00		0.00		0.00		15,356.50
REPORT TOTAL	37,685.48		0.00		0.00		0.00		37,685.48

➤ Report 5903 (Countywide Inventory Report)

 <b>Texas Department of Motor Vehicles</b>									
RTS.POS.5903 COUNTYWISE INVENTORY REPORT HOUSTON REGIONAL OFFICE SUMMARY									
WORKSTATION ID : 100 REQUESTED BY : CAYERS REPORT DATE : 06/10/2015									
ITEM DESCRIPTION	ITEM YEAR	QUANTITY SOLD	QUANTITY VOIDED	QUANTITY REUSED	QUANTITY REPRINTED				
144 HOUR PERMIT		2							
30 DAY PERMIT		6							
ASSIGNED TRAILERS		1							
CERTIFIED COPY ORIG TITLE		304	2						

## 4.4 Bank Deposit/Money Report

The daily deposit should be prepared under the dual control of the manager/supervisor/coordinator along with an assigned lead worker. The assigned lead worker should differ from the lead worker who closed the preceding



business day. **Dual control** is a control procedure where by the active involvement of two people is required to complete a specified process.

1. Collect all reports from Main Server 0100 that have been printed and separated according to report numbers.
2. Verify all checks and cash with the Countywide Payment Type Report (RTS.POS.5901) under dual control.
3. Verify central fund drawer under dual control.
4. Prepare bank cash (change) order under dual control.
5. Prepare deposit slip and simply list coins, cash, and check total under dual control (copies of checks not required).
6. After deposit is completed (under dual control), balance the Batch Inventory Action Report (BIAR) (RTS.ADM.003) with deletions, voids, and reissued inventory.
7. Account for all deleted and voided items.
8. Overages and shortages must be explained (see Section 9 on Overages/Shortage). Managers shall maintain a log of overages and shortages, including the amount and specific reason and person responsible for the variance. Logs shall be retained for review by the chief deputy and county tax assessor-collector. Further training should be enforced if frequency or variances are considered excessive.
9. The chief deputy should perform periodic, unannounced cash reconciliations.

## 5 Armored Car Service Procedures

This section only pertains to a county with contracted armored car service. The county will prepare their bank deposit based on the previous day's report. Deposits should be ready for pickup by the designated time.

### 5.1 Preparing Deposit Bag

Deposit(s) will be secured in a deposit bag. Clear plastic bags should not be used.

1. Complete the armored carrier security bag with the following:
  - Bills amount
  - Coins amount
  - Checks amount
  - Name of agency (county)
  - Account number (this is your bank account number)
  - Location number (county number and location)
  - Financial institution name (XX Bank)
2. Before sealing the bag:



- attach the white and yellow copies of the deposit slip to the checks and enclose in the check portion of the deposit bag,
- write the bag number on the deposit slip,
- attach the calculator tape to the cash and enclose in the cash portion of the deposit bag,
- Attach the pink copy of the deposit slip to the daily report and verify it is signed by the person who verifies deposits and,
- file with the reports (Section7).

## 5.2 Complete Armored Deposit Log

The following information should be completed in the armored deposit log book:

- Bag number.
  - Amount of deposit.
  - Place sticker to armored carrier deposit bag under "total amount."
- Log book will be signed by the armored car service employee.

## 5.3 Delivery to Bank

The deposit(s) will be delivered to the bank the following day before 2:00p.m. An example of the delivery is as follows:

- Deposit is picked up on Monday.
- Deposit is delivered to the bank on Tuesday.
- Bank deposits money into account on Wednesday.
- Bank faxes the deposit slip to the county.
- The county will use these to reconcile the deposits and be audit compliant.

## 5.4 Office Change Order


Change orders should be done under dual control and must be submitted in person.

## 6 Remitting Funds

Once the deposit is received from the bank, verify the bank validation on the deposit slip matches the County wide Fees Report (RTS.POS.5902). If this amount is correct, submit funds to Austin.

04/08/2011 09:36 NTX T00047 D R540740134  
 Acct# \*\*\*\*\*0679 CC 0005932 Tlr 00104


Less Cash \$0.00  
 Total Deposit To CHK \$4,284.80  
 Credit Pending Posts on 04/08/2011



Texas Department of Motor Vehicles  
RTS.POS.5902

150

COUNTYWIDE FEES REPORT  
ABILENE REGIONAL OFFICE  
SUMMARY



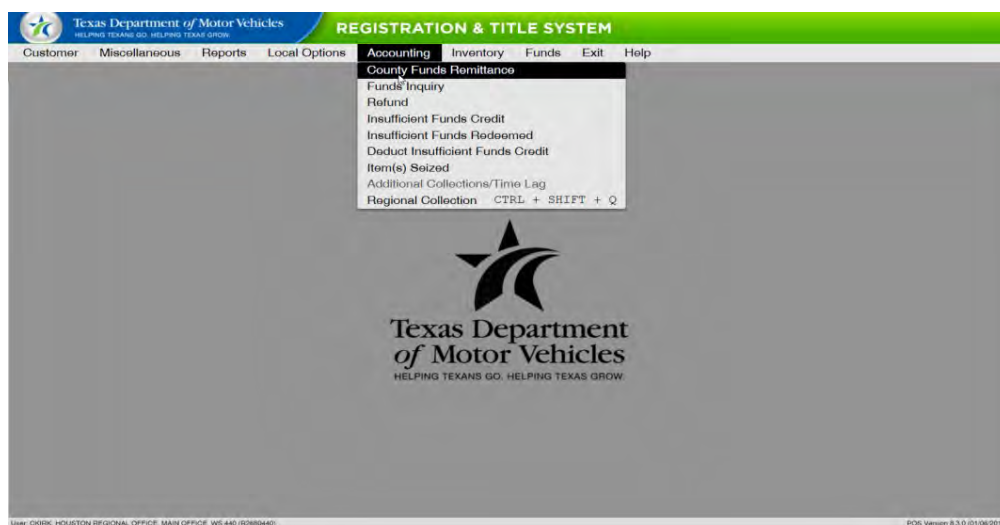
WORKSTATION ID: 100  
 REQUESTED BY: SYSTEM  
 REPORT DATE: 04/07/2011

DESCRIPTION	CUSTOMER AMOUNT	QTY	SUBCONTRACTOR AMOUNT	QTY	DEALER TITLE AMOUNT	QTY	INTERNET AMOUNT	QTY	TOTAL AMOUNT	QTY
REGNL OFFICE										
144 HOUR PERMIT REGION	150.00	3							150.00	3
IRP FEES OS REGION	1,582.99	1							1,582.99	1
ASSIGNED NUMBERS REGION	2.00	1							2.00	1
CAB CARD REGION	8.00	4							8.00	4
CERTIFIED COPY ORIG REGION	107.40	49							107.40	49
OVERAGE REGION	36.50	19							36.50	19
VEHICLE INQUIRY REGION	2.30	1							2.30	1
VEHICLE TRANS NOTIF. REGION		2								2
<b>TOTAL REGNL OFFICE:</b>	<b>1,889.19</b>		<b>0.00</b>		<b>0.00</b>		<b>0.00</b>		<b>1,889.19</b>	
PASS THRU MONIES										
IRP FEES TR REGION	2,395.61	1							2,395.61	1

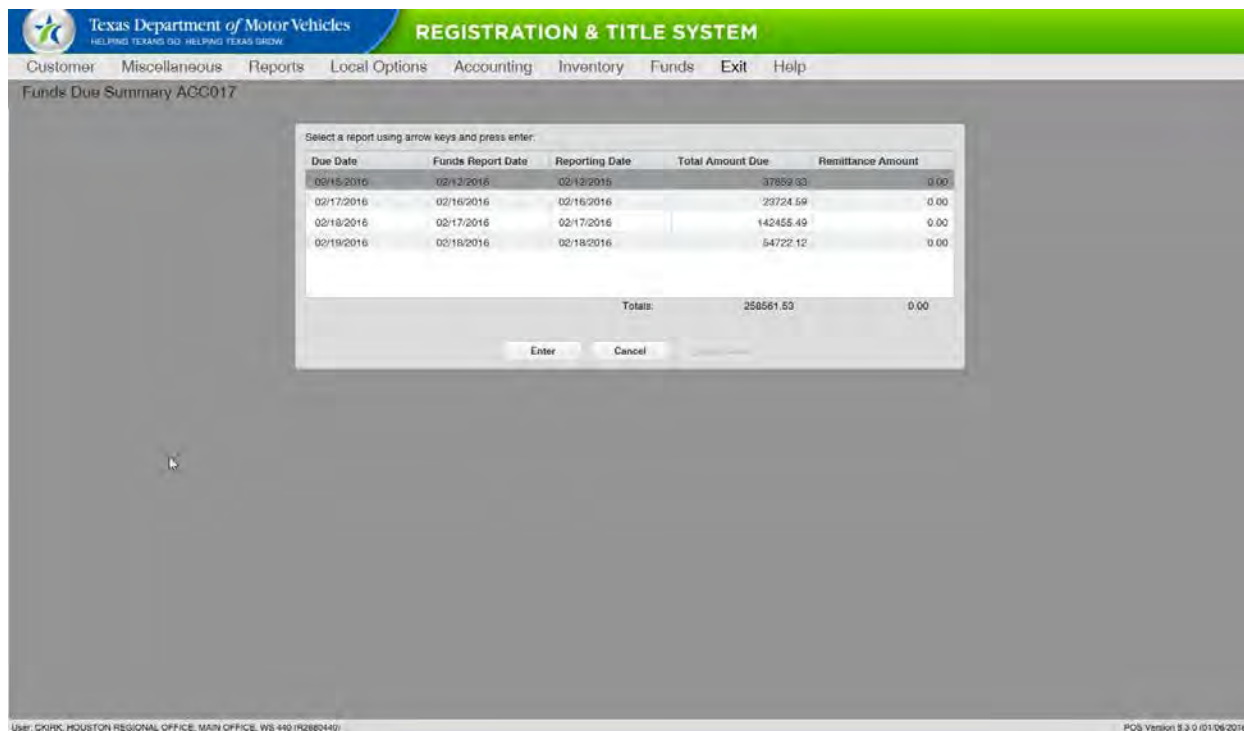


## 6.1 Remit Funds in RTS

1. Go to RTS. Select Accounting> County Funds Remittance.



2. Select the correct amount and enter "Pay in Full."



3. Remit Funds. When asked "if you are sure," choose "Yes."
4. Print Funds Remittance Verification Report before exiting the screen.



## 7 File Reports

The county will maintain the following work products on file:

- Deposit slip
- Countywide
  - Fee Report (5902)
  - Inventory Report(5903)
  - Payment Report (5901)
- Inventory Inquiry Report (3031)
- Funds
  - Verification Report (2311)
  - Remittance Report (2604)
  - Summary(4603)
  - Transactions(4602)
- Voided Transaction Report(5152)
- Fees Report (5241)
- Batch Inventory Action Report(9901)
- Payment Report for each workstation(5213)
- Transaction Reconciliation Report for each workstation(5231) if applicable

## 8 Daily Closeout Process

The manager will establish the appropriate time and order for closing the cash drawers and the designated closer. The designated closer will verify the central fund drawer amount under dual control with the manager on duty or a staff member designated by the leadership team (this is an exception and should be utilized in emergencies).

### 8.1 End of Day Reports

Each employee or the manager on duty should close out their RTS workstation and generate the following reports:

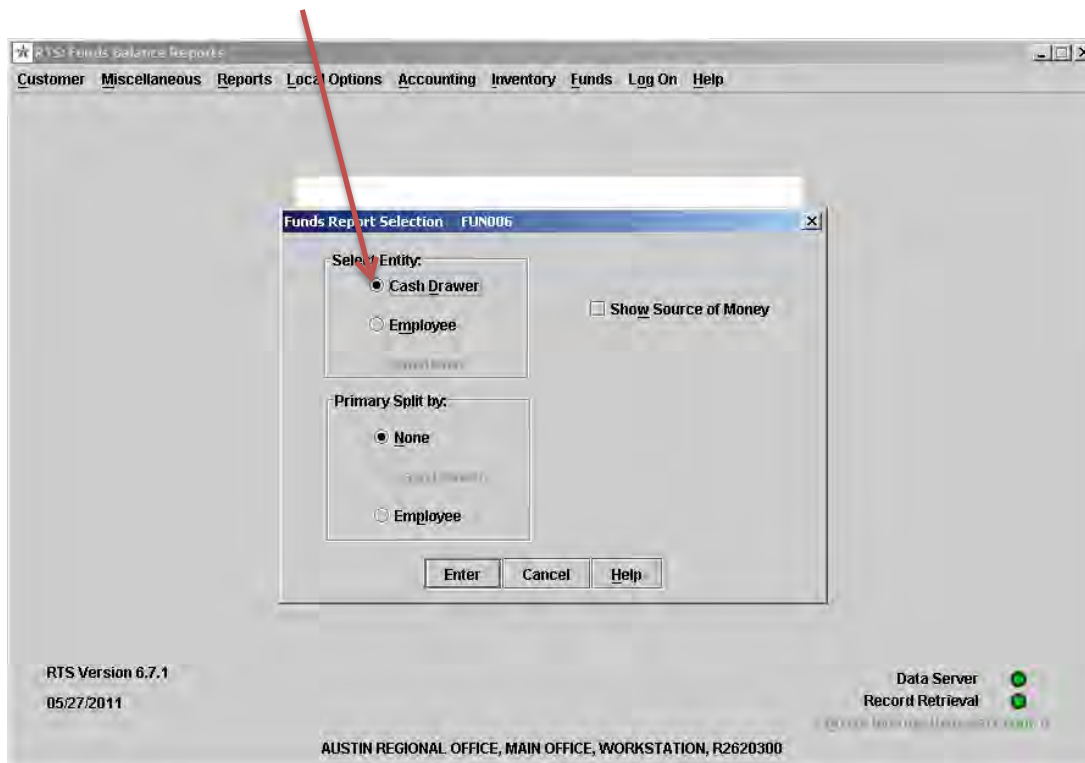
- Payment Report (RTS.POS.5211)
- Fees Report (RTS.POS.5241)
- Inventory Summary Report(RTS.POS.5221)
- Transaction Reconciliation Report (RTS.POS.5231)



1. Go to Funds> Funds Balance Reports.



2. Select "Cash Drawer." A cash drawer is designated to one employee and will not be shared at a workstation.





3. Select "Since Last Closeout" and "Select All Reports," and uncheck "Display Report(s) before Printing."

The screenshot shows the 'Report Selection FUN007' window. At the top, there's a table for 'Cash Drawer' with columns 'Id', 'Last Closeout', and 'Last Current Status'. Below this, there are two sections: 'Select Range' and 'Select Reports'. In 'Select Range', the 'Since Last Closeout' checkbox is checked. In 'Select Reports', the 'Select All Reports' checkbox is checked. At the bottom, the 'Display Report(s) before Printing' checkbox is checked. Red arrows point to these three checkboxes. The window also has 'Enter', 'Cancel', and 'Help' buttons at the bottom.

Id	Last Closeout	Last Current Status
440	02/18/2016 18:21:44	02/18/2016 18:21:44

Select Range:

- ☐ Last Closeout
- ☐ Since Last Current Status
- ☒ Since Last Closeout

Specify Date Range

Select Reports:

- ☒ Select All Reports
- PAYMENT REPORT
- TRANSACTION RECONCILIATION REPORT
- FEE REPORT
- INVENTORY DETAIL REPORT

☒ Display Report(s) before Printing

Enter Cancel Help

4. Select "Enter," and reports will print.

The screenshot shows the 'Report Generation Status FUN013' window. It has a 'Select Report' section with a list of reports: PAYMENT REPORT, TRANSACTION RECONCILIATION REPORT, FEE REPORT, INVENTORY DETAIL REPORT, and INVENTORY SUMMARY REPORT. Below this is a table for 'Cash Drawer' with columns 'Cash Drawer' and 'Report Status'. The table shows '440' and 'No Transactions'. At the bottom, there is an 'Enter' button. The window also has 'User: CKIRK, HOUSTON REGIONAL OFFICE, MAIN OFFICE, WS 440 (R2680440)' and 'POS Version 8.3.0 (01/06/2016)' at the bottom.

Select Report:

- PAYMENT REPORT
- TRANSACTION RECONCILIATION REPORT
- FEE REPORT
- INVENTORY DETAIL REPORT
- INVENTORY SUMMARY REPORT

Cash Drawer	Report Status
440	No Transactions

Enter

User: CKIRK, HOUSTON REGIONAL OFFICE, MAIN OFFICE, WS 440 (R2680440) POS Version 8.3.0 (01/06/2016)

5. Upon closeout, employee will take their cash drawer and reports to the designated closer/supervisor.



6. Cashier/supervisor will balance the cash drawer under dual control, verifying cash and checks against the Payment Report (RTS.POS.5211).

## 9 Overage/Shortage

Any overages/shortages must be processed in the respective RTS workstation and then reprint reports. (The Transaction Reconciliation Report should be used to assist in errors.)

The following steps should be followed when shortages occur:

1. All overages/shortages are reported to the manager on duty or designated staff member weekly.
2. Any overages/shortages of \$5.00 in cash require an Overage/Shortage form to be completed. Make two copies of the form. One copy is sent to the manager on duty and the other copy is kept in the employee's/cashier's personnel file.
3. Any overage/shortage of \$10.00 dollars or more needs to be reported immediately.
4. Any shortage of \$100.00 dollars will require steps 1, 2, and 3 be completed and, if criminal activity is suspected and approved by the chief deputy, contact the local police department to have a police report completed.

Count remaining cash in till to validate startup amount for the next workday. Cashier/employee will confirm under dual control with the manager on duty that the next day startup funds are correct. The cash drawer will be secured with a locking lid and returned to the safe/vault. If the safe/vault cannot accommodate a secured cash drawer, the funds will be secured in a locking bag and returned to the safe/vault.

## 10 Close Office

Upon reconciling all employees' cash drawers, generate the following final RTS closeout reports from Batch Server:

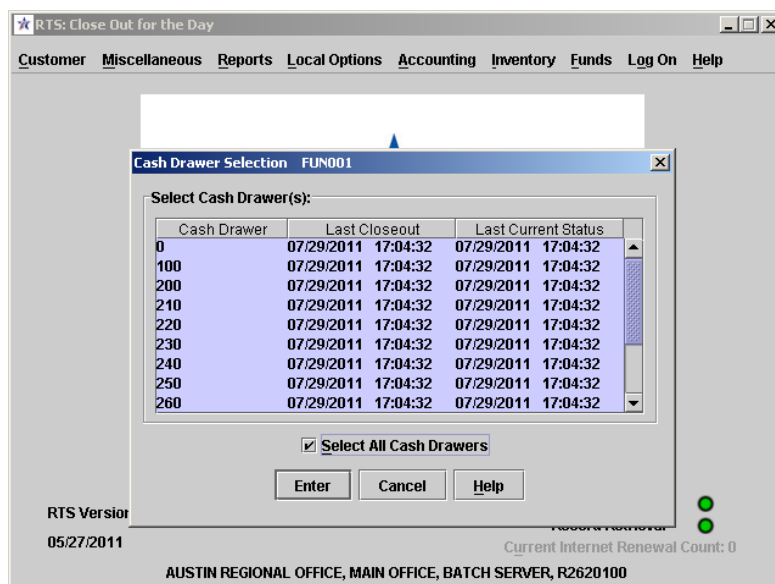
- Close Workstation(RTS.POS.5213)
- Statistics Report(RTS.POS.5201)
- Office Inventory (RTS.POS.3031)



5. Go to Funds > Cash Drawer Operations>Close Out for the Day.



6. Select “All Cash Drawers” then “Enter.”



7. Secure all inventories, funds, and cash drawers in a secure area or safe.

## 11 Document Retention

The Daily Money Report shall be maintained for fiscal year end (FE) plus three (3) years. At the end of the FE plus three-year period, the county shall destroy the reports by one of the below methods:

- Shredding the reports
- Other means available



## SAMPLE Speaker Evaluation/Survey

Date: \_\_\_\_\_ Sponsor: \_\_\_\_\_ Location: \_\_\_\_\_

**SUBJECT****INSTRUCTOR****GRADE**

(Circle Choice)&lt; Subject

&gt; \_\_\_\_\_

A B C D F

A) Excellent B) Good C) Fair D) Poor F) Needs Improvement

---

YES NO

1) Was the information presented educational and useful?

☐ ☐

2) Was the training what you expected?

☐ ☐

3) Was the instructor professional and courteous?

☐ ☐

4) Was the instructor's presentation interesting and organized?

☐ ☐

5) Did the instructor answer questions completely and clearly?

☐ ☐

6) Was the time allotted for the course sufficient?

☐ ☐

7) Have you previously attended Title Fraud training?

☐ ☐

8) Would you recommend this course to others in your field?

☐ ☐

9) Overall, how would you rate this training? Excellent ☐ Good ☐ Fair ☐ Poor ☐ Needs Improv. ☐

Business Affiliation:

Assn./Dept. Name: \_\_\_\_\_

COMMENTS/RECOMMENDATIONS:

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## SAMPLE Information Security Awareness Practices

### What is Confidential and Sensitive Data?

**Confidential information** is information that is excepted from disclosure requirements under the provisions of applicable state or federal law (i.e., the Texas Public Information Act - PII, PHI, IRS data, financial data, PCI, and education data).

- **Personally identifiable information** is information that can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc., alone or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.

**Sensitive information** is the loss, misuse, or unauthorized access to or modification of that could adversely affect the interest of the state or the conduct of state programs or the privacy to which individuals are entitled under 5 U.S.C., Section 552a (the Privacy Act), but that has not been specifically authorized under criteria established by a state or federal statute.

Examples of sensitive information include network diagrams, risk assessments, vulnerability scans, criminal history, driving record, and vehicle title and registration.

### How malware "gets in"

Clicked in...

- Clicking on links in emails or files

Brought in...

- Personal thumb drives moving from home to work
- CDs/DVDs from unknown sources

Surfed in...

- Ads in websites, even reputable sites, are notorious for having malware
- Visiting sites that are sent to you in emails
- Add-ons for Facebook, MySpace, etc. can often be infected

### Strong and Effective Passwords

#### Creating a strong password:

- Use BOTH upper and lowercase letters.
- Place numbers and punctuation marks randomly in your password.
- Make your password long and complex, so it is hard to crack. Between 8 to 20 characters long is recommended.
- Use one or more of these special characters: ! @ # \$ % \* ( ) - + = , < > : ; " ' .
- To help you easily remember your password, consider using a phrase or a song title as a password. For example, "Somewhere Over the Rainbow" becomes "Sw0tR8nBO" or "Smells Like Teen Spirit" becomes "sMll10nspT."
- Make your password easy to type quickly. This will make it harder for someone looking over your shoulder to steal it.



**Protecting your password:**

- Create different passwords for different accounts, do not use your work credentials password on your personal email account.
- Never enable the “save password” option. Pre-saved passwords just make it easier for an attacker to access your accounts.
- Never walk away from your workstation without logging off or “locking” it.
- Never share or post your passwords. You are responsible for actions performed with your account credentials.
- Do not use sample passwords given on websites or presentations.

**Social Engineering – Hacking People**

Common Methods	Common Vectors
<ul style="list-style-type: none"><li>• Impersonation/“Pulling Rank”</li><li>• Conformity</li><li>• Helplessness</li><li>• Surveys</li><li>• Tailgating</li><li>• Shoulder Surfing/Eavesdropping</li><li>• “Free” Stuff</li></ul>	<ul style="list-style-type: none"><li>• Telephone Calls</li><li>• Phishing/Spear Phishing Emails</li><li>• Website “Traps”</li><li>• Human Nature<ul style="list-style-type: none"><li>➤ Wanting to be helpful</li><li>➤ Everyone loves “free” stuff</li></ul></li></ul>

**What can I do?**

- Be careful what you click on and open.
- Know what confidential/sensitive information you work with.
- Practice good password habits. Do not save or share your passwords.
- Be aware of your surroundings and ask questions of unknown callers/persons.
- Remember that “free” is not usually free.
- Report lost or stolen IT resources/data as soon as possible.
- Secure confidential/sensitive information sent outside the agency.
- Dispose of confidential/sensitive hard copies securely or shred them.



DATE: January 5, 2017  
Action Requested: APPROVAL

To: Texas Department of Motor Vehicles Board (TxDMV)  
From: Jeremiah Kuntz, Vehicle Titles and Registration Division  
Agenda Item: 7.A., B., and C.  
Subject: **Specialty Plate Design**

## RECOMMENDATION

The Vehicle Titles and Registration Division seeks board approval or denial of the proposed vendor plate designs submitted for consideration.

## PURPOSE AND EXECUTIVE SUMMARY

Statutory authority for the board to approve vendor specialty license plates and invite the public's comment on proposed vendor plate designs is in Texas Transportation Code, Section(s) 504.851 (g) and (g-1) (1)). The board's approval criteria is clarified in Administrative Code, Section 217.52, *Marketing of Specialty License Plates through a Private Vendor*.

The renewed vendor contract specifies (paragraph #11, *Inventory Management Controls*) that following the board's contingent approval of a plate, the vendor must get at least 200 commitments within six months of the approval in order for the plate to be produced. (Equally, existing plates must maintain 200 registered in order to stay in the program.) My Plates' procedure is to first offer a plate to the public to register their interest. Following the board's contingent approval, My Plates then offers a plate online for prepaid orders. My Plates confirms when 200 prepaid orders are achieved. (Since the contract with My Plates was renewed in March 2014, the board has contingently approved 14 vendor plates. Of the 14, six did not achieve the required 200 commitments and were not produced.)

TxDMV's procedure is to invite comments on all proposed plates ahead of the board's review. The department's intent is to determine if any unforeseen public concerns about a plate's design exist. The department publishes a 10-day "like/dislike/comment-by-email" survey, called an eView, on its website. Although the survey counts the public's "likes" and "dislikes," it is unscientific and not used as an indicator of a plate's popularity. The vendor's OU plate received thousands of eView "dislikes" in 2010 (presumably because of college football rivalry) and has since sold over 1,000 plates.

No negative comments were received during the public comment period in October 2016 or December 2016. Three plates are presented: Colorado School of Mines, Carbon Fiber, and University of Iowa.

## **PROPOSED PLATES**

### **OCTOBER 2016 EVIEW**

#### Colorado School of Mines

As of November 30, 2016, My Plates stated that 468 people have registered their interest in this plate. The eView indicated 113 people liked this design and 107 did not.



### **DECEMBER 2016 EVIEW**

#### Carbon Fiber

As of November 30, 2016, My Plates stated that 160 people have registered their interest in this plate. The eView indicated 177 people liked this design and 70 did not.



#### University of Iowa

As of November 30, 2016, My Plates stated that 673 people have registered their interest in this plate. The eView indicated 410 people liked this design and 68 did not.





# TEXAS

206



# BB01BB

*Orediggers*





TEXAS

BB01BB1





TEXAS



BB01BB

HAWKEYES™







DATE: January 5, 2017  
ACTION REQUESTED: APPROVAL

To: Texas Department of Motor Vehicles Board  
From: Daniel Avitia, Director, Motor Vehicle Division  
Agenda Item: 8  
Subject: **Dealerships' Protest against Manufacturer's Proposed Termination:**  
**Cecil Atkission Orange, LLC d/b/a Cecil Atkission Chrysler Jeep Dodge, Complainant v.**  
**FCA US, LLC, Respondent; MVD Docket No. 15-0015 LIC; SOAH Docket No.**  
**608-15-4315.LIC**

#### PURPOSE AND EXECUTIVE SUMMARY

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

#### FINANCIAL IMPACT

None

#### BACKGROUND AND DISCUSSION

On December 19, 2014, FCA US, LLC (FCA) provided notice to Cecil Atkission, Orange, LLC d/b/a Cecil Atkission Chrysler Jeep Dodge (Atkission) of its decision to terminate the franchise.

The Motor Vehicle Division (MVD) referred the contested case matter to SOAH on June 15, 2015. The administrative law judges (ALJs) conducted the hearing on the merits February 8 through 12, 2016; closed the administrative record April 18, 2016; and issued the PFD on June 17, 2016.

The ALJs found that FCA established good cause for the termination of the franchise and recommended that the Board approve the franchise termination. Atkission filed Exceptions to the PFD. The Texas Automobile Dealers Association (TADA) filed an *amicus curiae* brief. FCA filed a Reply in response to Atkission's Exceptions.

On August 10, 2016, the ALJs issued an exceptions letter, providing that the ALJs were making no changes to the PFD and determining that TADA filed its *amicus curiae* brief timely. SOAH returned this contested case matter to the TxDMV. The Board now has jurisdiction to consider the contested case and to enter a final Order.

**The issue presented in this case is whether FCA established—by a preponderance of the evidence<sup>1</sup>—that there is good cause for termination of its franchise with Atkission, in accordance with Texas Occupations Code §2301.455.**

In determining whether FCA demonstrated good cause for termination, the Board shall consider all existing circumstances, including the following statutory factors.

1. **FACTOR 1: Dealer's Sales in Relation to the Sales in the Market** (PFD pp 14 – 22)

The ALJs decided this factor in favor of FCA. After consideration of the evidence and arguments presented by the parties at the hearing, the ALJs found that FCA established that Atkission has poor sales in relation to the market, a factor that supports termination.

<sup>1</sup> Tex. Occ. Code §2301.453(g) requires the Board to determine whether the party seeking the termination has established by a preponderance of the evidence that there is good cause for the proposed termination. Black's Law Dictionary defines "preponderance of the evidence" to mean the greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to include a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in a civil trial, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be.



2. **FACTOR 2: Dealer's Investment and Obligations** (PFD pp 23 – 29)

The ALJs decided this factor in favor of FCA. After consideration of the evidence and arguments presented by the parties at the hearing, the ALJs found that Atkission's investment is minimal, to the point of being inadequate to properly operate the business. The ALJs also found that Atkission's dealership obligations are equally minimal.

3. **FACTOR 3: Injury or Benefit to the Public** (PFD pp 29 – 32)

The ALJs decided this factor weighs heavily in favor of FCA. After consideration of the evidence and arguments presented by the parties at the hearing, the ALJs found that the termination of FCA's franchise with Atkission will have a positive impact on the public, because the majority of Chrysler customers are already driving 20-40 miles to avoid Atkission and because there are few employees who are not already shared with Atkission Toyota. These persons would likely become employees at the Toyota dealership. The ALJs also found that if a new Chrysler dealership is established, additional jobs will be created.

4. **FACTOR 4: Adequacy of the Dealer's Service Facilities, Equipment, Parts, and Personnel in Relation to those of Other Dealers of New Motor Vehicles of the Same Line-Make** (PFD pp 32 –33)

With regard to the adequacy of Atkission's **service facilities**, the ALJs decided the factor in favor of FCA. After consideration of the evidence and arguments presented by the parties at the hearing, the ALJs pointed to Atkission's testimony, admitting its facility is in poor condition, is not conducive to a successful business, is an eye-sore, and is not comparable to surrounding dealer's facilities. Atkission has no plans to improve this facility. Atkission has not maintained a viable general manager, sales staff, or other dealership personnel. The ALJs found the evidence to support termination of FCA's franchise with the dealership.

With regard to the adequacy of Atkission's **equipment or parts** in relation to those of other Chrysler dealers, the ALJs observed that neither party offered evidence. The ALJs found the factor to have a neutral impact on the god cause determination. The ALJs found that the adequacy of Atkission service facilities, equipment, parts, and personnel is a factor that weighs slightly in favor of termination.

5. **FACTOR 5: Whether Warranties are Being Honored by the Dealer** (PFD pp 33 –36)

The ALJs decided that this factor neither supports nor weighs against termination. After consideration of the evidence and arguments presented by the parties at the hearing, the ALJs noted that FCA never asserted that it desired to terminate the dealership due to warranty issues.

6. **FACTOR 6: Parties' Compliance with the Franchise, Except to the Extent that the Franchise Conflicts with Occupations Code Chapter 2301** (PFD pp 37-64)

After consideration of the evidence and arguments presented by the parties at the hearing, the ALJs decided that this factor supports FCA's termination of its franchise with Atkission.

- 6.1. The ALJs found that Atkission's **breach of sales performance obligations** favors FCA's termination of Atkission's franchise. The ALJs found Atkission to have a remarkably poor Minimum Sales Responsibility (MSR) achievement rate, the dealership ranks as the very worst performing FCA dealership in Texas, and the evidence does not demonstrate the poor sales performance was caused by *force majeure* (i.e., reconstruction on Interstate-10).
- 6.2. The ALJs considered whether Atkission had **breached warranty obligations** and found that the evidence neither supports nor weighs against FCA's termination of Atkission.
- 6.3. The ALJs found that Atkission's **breach of management obligations** favors FCA's termination of its franchise with Atkission. The ALJs found that Mr. Atkission failed to comply with his contractual obligation to manage the dealership and failed to comply with the 50% dealership presence requirement.



- 6.4. The ALJs found that Atkission's ***breach of personnel obligations*** favors FCA's termination of its franchise with Atkission. The ALJs found that Atkission contractually committed itself to employ a sufficient number of employees at its current location and that *force majeure* is not applicable in this contested case. The ALJs discussed that Atkission had five general managers since early 2012, resulting in a new sales manager and staff changes with each new general manager. The ALJs also considered the number of Atkission's employees who are also employees of Atkission Toyota, including the office manager, the finance and insurance employee, two office workers, an accounting department, and a comptroller.
- 6.5. The ALJs found that Atkission ***breached its facility obligations*** in the Dealer Agreements, thereby favoring FCA's termination of its franchise with Atkission. Mr. Atkission admitted that the facilities are in very poor repair, very outdated, not up to his standards, are very old, not laid out very well, are not very good, and do not compare favorably with other Chrysler dealerships or other dealerships in Orange, Texas.
- FCA's witnesses testified that the facilities are woefully inadequate, outdated, improperly branded, improperly maintained, do not meet FCA's current design standards or signage requirements, and almost appear to be abandoned. The ALJs again found that *force majeure* is not applicable in this case.
- The ALJs findings are based on Atkission's contractual commitments to operate in facilities that are relatively equivalent in their attractiveness, level of maintenance, and overall appearance to those of its competitors and contractually bound itself to the *current* location.
- 6.6. The ALJs found that Atkission's ***breach of business obligations*** favors FCA's termination of its franchise with Atkission. The ALJs found that FCA proved repeated violations of the place-of-business obligation in the Dealer Agreements, noting that the Chrysler brand is harmed when a Chrysler customer is made to travel to the facilities of another brand (i.e., to Atkission Toyota) to complete the transaction on Atkission's Chrysler products.
- 6.7. The ALJs found that Atkission's ***breach of advertising obligations*** favors FCA's termination of its franchise with Atkission. The ALJs found the evidence established that Atkission has not complied with its contractual obligation to promote FCA products and services vigorously and aggressively. The ALJs noted that Atkission does not devote vigorous effort to advertising, has not filled its advertising manager position, does not spend a fixed amount on advertising, and had not rented any of the available billboards near the dealership.
- 6.8. The ALJs found that Atkission's ***breach of signage obligations*** strongly supports FCA's termination of its franchise with Atkission. The dealership's inaction--since 2008--to repair the main pole-sign revealed a remarkable passivity and apathy by Atkission about its own dealership affairs. Atkission never repaired the main pole-sign that was damaged by Hurricane Ike in September 2008. Instead, Atkission placed a plastic bag over the sign with the dealership's name and brands printed on the bag.
- The ALJs noted that the dealer agreement requires Atkission to display and maintain signs, fascia, and other signage in compliance with FCA's policies and guidelines. On April 9, 2013, Mr. Atkission obligated Atkission to purchase FCA's current Millennium Signage; however, the dealership did not comply with the requirement and the dealership never installed the Millennium Signage. Mr. Atkission testified that he never intended to install the signage at the current dealership location.
- 6.9. The ALJs found that Atkission ***breached its working capital and net worth obligations*** in the Dealer Agreements and this factor favors FCA's termination of its franchise with Atkission. The ALJs found Atkission's financial statements to show the dealership's net worth has been a steadily growing negative number, Atkission has lost money every year since 2010, Atkission has not maintained working capital and net worth, and that Atkission's proposal is unreasonable. To show sufficient constructive working capital and constructive net worth throughout the dealership's existence, Atkission proposed to merely reclassify "Cecil Money" on the dealership's financial statements from "notes payable" and "contracts" to become "subordinated notes."

7. **FACTOR 7: Enforceability of the Franchise from a Public Policy Standpoint, Including Issues of the Reasonableness of the Franchise's Terms, Oppression, Adhesion, and the Parties' Relative Bargaining Power** (PFD pp 64)

The ALJs decided this factor in favor of FCA. Neither party asserted a public policy standpoint. After consideration of the evidence and arguments presented by the parties at the hearing, the ALJs discerned no public policy issues related to the enforceability of the franchise. Because the franchise is enforceable from a public policy standpoint and because Atkission is not in compliance with multiple requirements of the franchise, the ALJs decided this factor supports FCA's termination of its franchise with Atkission.



8. **Whether the Desire for Market Penetration is the Sole Basis for Termination** (pp 64-65)

After consideration of the evidence and arguments presented by the parties at the hearing, the ALJs found that a desire for market penetration is not FCA's sole basis for proposing termination of the franchise between FCA and Atkission. As other reasons for proposing termination, the ALJs pointed to Atkission's breaches of the franchise agreement, failure to take care of the interests of consumers in Orange, the high number of sales by surrounding Chrysler dealerships into the Atkission sales locality, the dealership's lack of effort to improve operations and to cure deficiencies, and Atkission's damage to the Chrysler brand.

**Board Authority**

**Tex. Occ. Code Chapter 2301** provides the Board authority over these parties and the decision in this contested case matter.

- A. **Tex. Occ. Code §2301.453** establishes requirements for a manufacturer's termination of its franchise with a franchised dealership.
  - **Tex. Occ. Code §2301.453(c)&(d)** provide requirements for a manufacturer's **notice** of termination of its franchise with a franchised dealership.
  - **Tex. Occ. Code §2301.453(e)** provides requirements for a dealership's **protest** of a manufacturer's notice of termination.
  - **Tex. Occ. Code §2301.453(g)** establishes that the burden of proof is on the manufacturer to establish by a preponderance of the evidence that there is good cause for the termination of the franchise with Atkission.
- B. **Tex. Occ. Code §2301.455** provides factors the Board must consider when determining whether FCA established good cause for the proposed franchise termination.
- C. **Tex. Occ. Code §2301.711** requires an order of the Board:
  1. to include a separate finding of fact for each of the specific issues in Tex. Occ. Code §2301.455; and
  2. to set forth additional findings of fact and conclusions of law on which the order is based.
- D. **Tex. Gov't Code §2001.058(e)** allows the Board to change a finding of fact or conclusion of law made by the ALJs... only if the Board determines:
  1. that the ALJs did not properly apply or interpret applicable law, agency rules,...or prior administrative decisions;
  2. that a prior administrative decision on which the ALJ relied is incorrect or should be changed; or
  3. that a technical error in a finding of fact should be changed.

The Board shall state, in writing, the **specific reason** and **legal basis** for a change made under this subsection.

**SOAH ALJs' Recommendations**

The SOAH ALJs found that FCA met its burden of proof (preponderance of the evidence) to show good cause for termination of its franchise with Atkission. The ALJs recommended the Board deny Atkission's protest and allow FCA to terminate the franchise. A draft final order is attached to this Executive Summary for the Board's consideration.

**Staff Review**

Staff's review of the PFD under Texas Government Code §2001.058(e) revealed no findings of fact or conclusions of law requiring change.

**Documents**

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

- |   |            |
|---|------------|
| 1. Proposed Draft Final Order   |            |
| 2. SOAH ALJs' Proposal for Decision                                   | 06/17/2016 |
| 3. Atkission's Exceptions to the Proposal for Decision                | 07/20/2016 |
| 4. Texas Automobile Dealers Association's (TADA) Amicus Curiae Brief  | 07/20/2016 |
| 5. FCA's Reply to Atkission's Exceptions to the Proposal for Decision | 08/04/2016 |
| 6. FCA's Reply to Amicus Curiae Brief of TADA                         | 08/04/2016 |
| 7. SOAH ALJs' Exceptions Letter                                       | 08/10/2016 |



**TEXAS DEPARTMENT OF MOTOR VEHICLES  
MOTOR VEHICLE DIVISION**

**CECIL ATKISSION ORANGE, LLC D/B/A  
CECIL ATKISSION CHRYSLER JEEP DODGE,  
Complainant**

**v.**

**FCA US, LLC,  
Respondent**

§  
§  
§  
§  
§  
§  
§

**MVD DOCKET NO. 15-0015 LIC  
SOAH DOCKET NO. 608-15-4315.LIC**

**FINAL ORDER**

The referenced contested case matter is before the Board of the Texas Department of Motor Vehicles (TxDMV) in the form of a Proposal for Decision (PFD) from the State Office of Administrative Hearings (SOAH) and involves FCA US, LLC's (FCA) termination of Cecil Atkission Orange, LLC d/b/a Cecil Atkission Jeep Dodge (Atkission).

The Board enters this final Order, having considered the evidence, arguments, findings of fact, and conclusions of law presented in:

1. The Administrative Law Judges' (ALJs') June 17, 2016, PFD;
2. Atkission's Exceptions to the PFD;
3. The Texas Automobile Dealers Association's *Amicus Curiae* brief;
4. FCA's Replies to the Exceptions to the PFD; and
5. The ALJs' August 11, 2016, exceptions letter that makes no changes to the ALJs' June 17, 2016, PFD.

**ACCORDINGLY, IT IS ORDERED:**

1. That findings of fact numbers 1-133 and conclusions of law numbers 1-14, as set out in the ALJs' June 17, 2016, PFD, are hereby adopted;
2. That Atkission's protest against FCA's termination is denied and Atkission's complaints are dismissed;
3. That FCA's franchise with Atkission is terminated and Motor Vehicle Division licensing staff shall close Cecil Atkission Orange, LLC d/b/a Cecil Atkission Chrysler Jeep Dodge's franchised dealer's license number A119522;
4. That any findings of fact or conclusions of law proposed by the parties that are not adopted in this Order are hereby rejected; and
5. That all remaining motions, exceptions, or objections, of any party, if any, are hereby denied.

Date: \_\_\_\_\_

\_\_\_\_\_  
Raymond Palacios, Jr., Chairman  
Board of the Texas Department of Motor Vehicles

ATTESTED:

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



# State Office of Administrative Hearings



Lesli G. Ginn  
Chief Administrative Law Judge

June 17, 2016

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

**VIA INTERAGENCY MAIL**

**RE: SOAH Docket No. 608-15-4315.LIC; MVD Docket No. 15-0015.LIC; Cecil Atkission Orange, LLC, d/b/a Cecil Atkission Chrysler Jeep Dodge v. FCA US LLC**

Dear Mr. Avitia:

Please find enclosed a Proposal for Decision in this case. It contains our 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](http://www.soah.state.tx.us).

Sincerely,

Meitra Farhadi  
Administrative Law Judge

Hunter Burkhalter  
Administrative Law Judge

MF/eh  
Enclosure

cc: Mark T. Cloutre, Webster C. Cash and John P. Streelman, Wheeler Trigg O'Donnell, LLP, 370 Seventeenth Street, Suite 4500, Denver, CO 80202 - **VIA REGULAR MAIL**  
John Chambliss, II, Thompson, Coe, Cousins & Irons, LLP, 701 Brazos, Suite 1500, Austin, TX 78701 - **VIA REGULAR MAIL**  
William R. Crocker, 807 Brazos, Suite 1014, Austin, TX 78701 - **VIA REGULAR MAIL**  
MVD Docket Clerk, Motor Vehicle Division, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 - **VIA INTERAGENCY MAIL**



**SOAH DOCKET NO. 608-15-4315.LIC**  
**MVD DOCKET NO. 15-0015.LIC**

**CECIL ATKISSION ORANGE, LLC,** § **BEFORE THE STATE OFFICE**  
**d/b/a CECIL ATKISSION CHRYSLER** §  
**JEEP DODGE,** §  
**Complainant** §  
 v. § **OF**  
**FCA US LLC,** §  
**Respondent** § **ADMINISTRATIVE HEARINGS**

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**SOAH DOCKET NO. 608-15-4315.LIC**  
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**CECIL ATKISSION ORANGE, LLC,** § **BEFORE THE STATE OFFICE**  
**d/b/a CECIL ATKISSION CHRYSLER** §  
**JEEP DODGE,** §  
**Complainant** §  
§  
**v.** § **OF**  
§  
**FCA US LLC,** §  
**Respondent** § **ADMINISTRATIVE HEARINGS**

## PROPOSAL FOR DECISION

Since 2008, Cecil Atkission Orange, LLC d/b/a Cecil Atkission Chrysler Jeep Dodge has operated a Chrysler dealership in Orange, Texas (Atkission Chrysler or the dealership) pursuant to Sales and Service Agreements and their Additional Terms and Provisions (the Dealer Agreements or the franchise agreement) with FCA US LLC (Chrysler or FCA). On December 19, 2014, Chrysler notified Atkission Chrysler of its decision to terminate the Dealer Agreements via a Notice of Termination, citing numerous reasons: (1) failure to meet sales performance obligations; (2) failure to comply with signage obligations; (3) failure to meet management and sales personnel obligations; (4) failure to meet advertising and sales promotion obligations; (5) failure to meet working capital obligations; and (6) failure to meet net worth obligations.<sup>1</sup> In response to the Notice of Termination, on February 20, 2015, Atkission Chrysler filed a protest with the Texas Department of Motor Vehicles (Department).<sup>2</sup> On June 15, 2015, the Department referred this case to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

<sup>1</sup> FCA Ex. 67.

<sup>2</sup> The applicable statutes reference the “board” which, for purposes herein, is the Department and its governing board. Tex. Occ. Code (Code) §§ 2301.002(2), .005(a).



In referring this matter to SOAH, the Department identified the following issues to be addressed in the hearing:

- (1) whether FCA's Notice of Termination complied with Texas Occupation Code (Code) § 2301.453;
- (2) whether FCA established good cause for termination in accordance with Code § 2301.455;
- (3) whether sanctions, penalties, or orders are appropriate under Code chapter 2301, including §§ 2301.651, 2301.801, and 2301.802; and
- (4) whether declaratory decisions or orders are required in accordance with Code § 2301.153(a)(8).

After considering the evidence and arguments presented, the Administrative Law Judges (ALJs) find that FCA's Notice of Termination complied with Code § 2301.453 (the procedural process for termination), and FCA has established good cause to terminate the Dealer Agreements in accordance with Code § 2301.455. Accordingly, the ALJs recommend termination of Atkission Chrysler's franchise. Further, because good cause for termination has been determined, sanctions, penalties, and further orders are not appropriate in this case, and further declaratory decisions or orders are not required.

## **I. PROCEDURAL HISTORY AND JURISDICTION**

The hearing on the merits was held on February 8-12, 2016, before ALJs Meitra Farhadi and Hunter Burkhalter in Austin, Texas. Atkission Chrysler appeared and was represented by attorneys William R. Crocker and Nathan Allen, Jr. FCA appeared and was represented by attorneys Mark T. Clouatre, John P. Streelman, and Webster C. Cash, III. The record closed on April 18, 2016, after the parties submitted written closing arguments.

Prior to the hearing on the merits, FCA filed a plea to the jurisdiction alleging Atkission Chrysler failed to timely file its protest, which was denied in SOAH Order No. 7. FCA again raises the same jurisdictional challenge in its closing brief—that, pursuant to Code



§ 2301.453(e), Atkission Chrysler had until February 20, 2015, to file a protest to the Notice of Termination but failed to meet that deadline.<sup>3</sup> Because the ALJs still find that Atkission Chrysler's protest was timely filed with the Department on February 20, 2015,<sup>4</sup> the jurisdictional challenge is again denied. No other notice or jurisdictional challenges were raised by the parties. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

## II. APPLICABLE LAW

### A. Regulatory Framework for Termination

Code chapter 2301 provides the regulatory framework for this case. Under the Code, the Department has the statutory authority to regulate franchise relationships between dealers and motor vehicle manufacturers. Among other things, the Code contains limits on a manufacturer's ability to terminate a franchise agreement with a dealership, requiring that any protested termination must first be approved by the Department.<sup>5</sup> Specifically, the Code provides:

**2301.453. TERMINATION OR DISCONTINUANCE OF FRANCHISE.**

(a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not terminate or discontinue a franchise with a franchised dealer or directly or indirectly force or attempt to force a franchised dealer to relocate or discontinue a line-make or parts or products related to that line-make unless the manufacturer, distributor, or representative provides notice of the termination or discontinuance as required by Subsection (c) and:

- (1) the manufacturer, distributor, or representative receives the dealer's informed written consent;
- (2) the appropriate time for the dealer to file a protest under Subsection (e) has expired; or
- (3) the board makes a determination of good cause under Subsection (g).

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<sup>3</sup> FCA Initial Brief at 5.

<sup>4</sup> See Exhibit 1 to Atkission Chrysler's Opposition to Plea to Jurisdiction.

<sup>5</sup> Code § 2301.453.



In determining whether to approve a franchise termination after a protest has been filed, the Department must determine whether the manufacturer has established, by a preponderance of the evidence, that there is good cause for the proposed termination.<sup>6</sup> In determining good cause, the Department is mandated to consider all “existing circumstances,” including:

- (1) the dealer’s sales in relation to the sales in the market;
- (2) the dealer’s investment and obligations;
- (3) injury or benefit to the public;
- (4) the adequacy of the dealer’s service facilities, equipment, parts, and personnel in relation to those of other dealers of new motor vehicles of the same line-make;
- (5) whether warranties are being honored by the dealer;
- (6) the parties’ compliance with the franchise, except to the extent that the franchise conflicts with this chapter; and
- (7) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise’s terms, oppression, adhesion, and the parties’ relative bargaining power.<sup>7</sup>

A desire for market penetration, standing alone, does not establish good cause for termination of a dealer’s franchise.<sup>8</sup> If a dealer files a timely protest, then the Department is required to notify the manufacturer, a hearing must be held, and the manufacturer may not terminate the franchise until the Department issues a final decision finding good cause for the termination.<sup>9</sup>

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<sup>6</sup> Code § 2301.453(g).

<sup>7</sup> Code § 2301.455(a)(1)-(7).

<sup>8</sup> Code § 2301.455(b).

<sup>9</sup> Code § 2301.453(a)(3), (f)(1)-(3).



## B. Disputed Legal Issues

In evaluating whether good cause exists for termination of the Atkission Chrysler franchise, the parties disagree on the relevant time period to consider as well as the relevant factors.

### 1. Time Period

While not specifying an exact time period for evidence to be relevant in this proceeding, Atkission Chrysler argues that the Department is required to consider evidence from both before and after the Notice of Termination.<sup>10</sup> FCA argues, on the other hand, that the Code's use of the phrase "all existing circumstances" means the Department is to consider the information that existed at the time of the Notice of Termination, but should not consider information that did not exist at the time of the Notice of Termination.<sup>11</sup>

While the statute does not set out a specific time period to consider, it does require the Department to consider "all *existing* circumstances."<sup>12</sup> Given this language, the ALJs find the inquiry is not limited to the information in existence at the time of the Notice of Termination. Rather, the inquiry should include all information available to the Department at the time it makes a final decision. The ALJs find further support for this reading in an opinion by the Third Court of Appeals holding that "[t]he Board is authorized to evaluate the dealer's past and *current* performance with regard to sales, service, warranties, and compliance with franchise agreements."<sup>13</sup> FCA cited to this case for the statement that the Board cannot base its decision on "a speculative evaluation of what kind of relationship a manufacturer and dealer might have in the future," and the ALJs agree. However, the circumstances existing up until the time of

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<sup>10</sup> Atkission Chrysler (AC) Reply Brief at 2-3.

<sup>11</sup> FCA Reply Brief at 2.

<sup>12</sup> Code § 2301.455(a) (emphasis added).

<sup>13</sup> *Ford Motor Co. v. Motor Vehicle Bd. of Texas Dept. of Transp./Metro Ford Truck Sales, Inc.*, 21 S.W.3d 744, 759 (Tex. App.—Austin 2000, pet. denied) (emphasis added).



hearing are not speculative in nature.<sup>14</sup> Because the Administrative Procedure Act requires that findings of fact be based upon evidence in the record or matters officially noticed,<sup>15</sup> the close of the evidentiary record serves as the natural end point for the relevant time period. Thus, the Department can take into account all available information from the evidentiary record when making its decision, giving the Department a better factual basis from which to make a decision. This comports with the language “all existing circumstances” found in the statute. At the same time, it also provides a defined “end point” to the inquiry—with such end point being the close of the evidentiary record. Therefore, the ALJs conclude that the Department should make its determination based on all of the evidence in the record, and this includes any information that bears upon the dealership’s performance at any time, including after the Notice of Termination has issued.

## 2. Factors

Atkission Chrysler claims that when making a good cause determination, the Department should be limited to the grounds listed in the Notice of Termination, “viewed in light of all existing or current circumstances.”<sup>16</sup> More specifically, Atkission Chrysler contends that, although the statutory good cause factors listed in Code § 2301.455 may support a termination on a ground identified in the Notice of Termination, they cannot support terminating the dealer’s franchise on an unnoticed ground.<sup>17</sup> While Atkission Chrysler cites to a number of decisions in which the Department terminated based on a ground specified in the termination notice, it fails to cite the ALJs to any support for the interpretation that the Department cannot terminate a dealer’s franchise on an unnoticed statutory good cause factor.

In contrast, FCA argues that, while the manufacturer must give notice of termination stating the grounds for termination, once a protest is filed the Department must then consider all

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<sup>14</sup> FCA Reply Brief at 2.

<sup>15</sup> Tex. Gov’t Code § 2001.141(c).

<sup>16</sup> AC Reply Brief at 3.

<sup>17</sup> AC Reply Brief at 4.



grounds stated in the Notice of Termination plus all factors listed in Code § 2301.455 to determine if the manufacturer has established good cause to terminate—even if the grounds in Code § 2301.455 include some not listed in the Notice of Termination. As support, FCA cites to a number of appellate cases wherein the inference is made that all of the statutory criteria must be considered by the Department to some degree.<sup>18</sup>

In construing the plain meaning of the Code, it is clear that the Department must consider the factors set forth in Code § 2301.455(a); however, the manufacturer may have additional reasons to terminate that they provide in the Notice of Termination. Thus, the ALJs conclude that the relevant factors for the Department to consider in making a good cause determination are both the grounds specified by the manufacturer in the Notice of Termination as well as the statutory factors set forth in Code § 2301.455(a).

### III. BACKGROUND

#### A. The Dealership

FCA is the exclusive distributor of Chrysler, Jeep, Dodge, and Ram vehicles (Chrysler or FCA vehicles) in the United States. FCA sells Chrysler vehicles to a network of authorized dealers, and the dealers, in turn, sell Chrysler vehicles and provide service to the general public. Atkission Chrysler is an authorized Chrysler dealer located on the south side of Interstate Highway 10 (I-10) at 4103 I-10 East in Orange, Texas.<sup>19</sup> Since March 3, 2008, FCA and Atkission Chrysler have been parties to the Dealer Agreements, which set out the respective obligations of the parties.<sup>20</sup> Atkission Chrysler is one of roughly 170 Chrysler dealers in the State of Texas and is part of FCA's Southwest Business Center—a network of Chrysler dealers spanning six states in the Southwestern United States.<sup>21</sup> Atkission Chrysler is the sole Chrysler

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<sup>18</sup> FCA Initial Brief at 50.

<sup>19</sup> FCA Ex. 10.

<sup>20</sup> FCA Exs. 27(b)-27(d), 27(f), 28(a)-28(b).

<sup>21</sup> Tr. at 38-39, 362-63.



dealer responsible for serving consumers in the township and rural areas surrounding Orange, Texas (the Orange Sales Locality).<sup>22</sup> The closest Chrysler dealer is approximately 22 miles away.<sup>23</sup> Atkission Chrysler is part of a dealership group that operates seven car dealerships throughout Texas, three of which are Chrysler dealerships. The group is controlled by Cecil Atkission, an owner and operator of car dealerships with over 30 years of experience in the industry.<sup>24</sup> In addition to the Atkission Chrysler dealership, Mr. Atkission also owns and operates a Toyota dealership in Orange (Atkission Toyota) located approximately 2 miles east of Atkission Chrysler.<sup>25</sup>

On December 17, 2013, FCA issued a Notice of Default to Atkission Chrysler, formally notifying it of its alleged breaches of the Dealer Agreements and allowing an opportunity to cure said breaches within the following 6-month period.<sup>26</sup> Twelve months later, on December 19, 2014, FCA issued the Notice of Termination.<sup>27</sup>

## **B. The Relocation Issue**

Throughout this proceeding, Atkission Chrysler has sought to turn this case into something that it is not. This is a case in which FCA is seeking permission to terminate its Dealer Agreements with Atkission Chrysler. The dealership, however, would like it to be a forum in which it proves that, rather than being terminated, the dealership should be relocated. In order to understand why the ALJs decline to convert this case into a relocation case, it is helpful to understand the history of the relocation issue.

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<sup>22</sup> FCA Exs. 27(b)-27(d), 27(f), 151 at 5; Tr. at 376. The Orange Sales Locality does not have separate sales zones within it. Tr. at 377.

<sup>23</sup> Tr. at 42.

<sup>24</sup> Tr. at 833-37. Mr. Atkission holds a 52% ownership interest in, and is President of, Atkission Chrysler. FCA Exs. 27(b)-27(d).

<sup>25</sup> Tr. at 833-37.

<sup>26</sup> FCA Exs. 64, 67 at 4.

<sup>27</sup> FCA Ex. 67. The cure deadline set out in the Notice of Default was June 30, 2014. However, FCA subsequently extended the deadline until December 19, 2014, for a total period of 12-months to cure. Tr. at 397.



For reasons that will be explained throughout the remainder of this PFD, Atkission Chrysler considers its current location to be “horrible” and wants to move the dealership to be co-located with the Atkission Toyota dealership. The dealership even takes the position that the move will be a “panacea” which will cure the many deficiencies in its performance.<sup>28</sup>

Mr. Atkission testified that he has never believed the dealership is in a good location, he has wanted to relocate since he bought it in 2008, and he has been working ever since then to relocate it.<sup>29</sup> Mr. Atkission testified that he has “always been committed to the relocation . . . from the time [I] bought it.”<sup>30</sup> In 2011 through 2013, he purchased the land next to his Toyota dealership where he hopes to relocate the Chrysler dealership.<sup>31</sup>

In November 2013, Atkission Chrysler made its first-ever, tentative request to FCA for permission to relocate to a site adjacent to Atkission Toyota (the 11/13 Relocation Request). The request consisted of a one-page letter. The only detail provided as to the requested move was the address of the Toyota location.<sup>32</sup> FCA witnesses testified that, in order to evaluate a relocation request, FCA must be provided a number of details, such as the size and dimensions of the new property, blueprints, architectural drawings, and other detailed explanations of what the proposed new facilities would look like, an anticipated construction timeline, and so on. No such details were provided in the 11/13 Relocation Request.<sup>33</sup>

In December 2013, Daniel Fritz, FCA Regional Network Manager for FCA’s Southwest, Mid-Atlantic, and Midwest Business Centers, called and emailed Mr. Atkission explaining that it was impossible for FCA to evaluate the 11/13 Relocation Request because it lacked all of the necessary information. Mr. Fritz asked for the additional information and promised that FCA

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<sup>28</sup> Tr. at 916.

<sup>29</sup> Tr. at 838-40.

<sup>30</sup> Tr. at 903.

<sup>31</sup> Tr. at 840-42.

<sup>32</sup> FCA Ex. 63(a).

<sup>33</sup> Tr. at 185-86, 292-93.



would evaluate the request as soon as the information was received.<sup>34</sup> Mr. Fritz reminded Mr. Atkission in January 2014 that he needed more information.<sup>35</sup> In February 2014, Mr. Fritz and Mr. Atkission toured the proposed relocation site and Mr. Fritz again reminded Mr. Atkission that FCA needed more details about the requested relocation.

In July 2014, eight months after submitting the 11/13 Relocation Request and more than six years after acquiring the dealership, Mr. Atkission first provided to FCA a few details about the proposed relocation. Specifically, he provided a one-page plat of the proposed relocation site.<sup>36</sup> The plat was unsettling to FCA and still lacked the information (such as dimensions, interior layouts, etc.) needed to evaluate the relocation request. FCA was concerned that, as depicted in the plat, the Toyota and Chrysler dealerships would be closely interwoven in a manner that would be confusing to customers. It was also a different layout than had been explained to Mr. Fritz during his February 2014 tour.<sup>37</sup> Nevertheless, FCA evaluated the request and, by letter dated July 28, 2014, notified the dealership that it was denying its 11/13 Relocation Request because it was counter to FCA policies (the 7/14 Relocation Denial).<sup>38</sup> The dealership never challenged the 7/14 Relocation Denial, such as by filing a complaint with the Department.

On May 6, 2015, six months after FCA filed its Notice of Termination and on the day a mediation was being held in this termination case, Mr. Atkission emailed to FCA, without any further explanation, three architectural drawings that appear to represent the configuration of his hoped-for new location adjacent to the Toyota dealership (the 5/15 Relocation Request).<sup>39</sup> FCA treated the drawings as a request to relocate, promptly evaluated the request and, by letter dated May 19, 2015, notified the dealership that it was denying the 5/15 Relocation Request for the

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<sup>34</sup> Tr. at 185-90; FCA Ex. 63(b).

<sup>35</sup> Tr. at 190-91.

<sup>36</sup> FCA Ex. 65(b) at 4; Tr. at 193-94.

<sup>37</sup> Tr. at 194-95.

<sup>38</sup> FCA Ex. 66; Tr. at 196-97.

<sup>39</sup> FCA Ex. 68.



same reasons it denied the prior one (the 5/15 Relocation Denial).<sup>40</sup> According to the FCA employee who signed the 5/15 Relocation Denial letter, National Dealer Placement Manager Christopher Chandler, the 5/15 Relocation Request was: (1) incomplete; (2) unreasonable because it “jammed” the Chrysler facilities into the Toyota facilities and left Toyota with many times the roadway frontage allotted to Chrysler; and (3) improper because it constituted a relocation request at a time when all proceeding regarding Atkission Chrysler should have been legally stayed in light of the pending termination proceeding.<sup>41</sup> The dealership never challenged the 5/15 Relocation Denial, such as by filing a complaint with the Department.

In early September 2015, nine months after FCA filed its Notice of Termination and three months after this termination case had been referred to SOAH, Mr. Atkission emailed to FCA new and different site plans for his hoped-for new location adjacent to the Toyota dealership (the 9/15 Relocation Request).<sup>42</sup> FCA again promptly evaluated the request and, by letter dated September 21, 2015, notified the dealership that it was denying the 9/15 Relocation Request for the same reasons (the 9/15 Relocation Denial).<sup>43</sup> By letter dated October 6, 2015, Mr. Atkission responded to the 9/15 Relocation Denial. This appears to be the first time the dealership ever responded to any of the relocation denials. In the letter, Mr. Atkission stated that the 9/15 Relocation Request “was never intended to be a formal proposal or request for approval of the relocation of the dealership” nor “was it ever intended to satisfy the applicable requirements of the Texas Occupations Code.” Instead, its purpose was merely to show FCA the relocation “concept.”<sup>44</sup>

Despite Mr. Atkission’s insistence that he had never filed an actual relocation request, on December 31, 2015, Atkission Chrysler filed with the Department an Original Complaint appealing the 9/15 Relocation Denial. On February 10, 2016, the Department notified the

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<sup>40</sup> FCA Ex. 69; Tr. at 294-95.

<sup>41</sup> Tr. at 408-09.

<sup>42</sup> FCA Exs. 72, 74; Tr. at 296, 411-12.

<sup>43</sup> FCA Ex. 75; Tr. at 412-13.

<sup>44</sup> FCA Ex. 76.



dealership that it was rejecting the Original Complaint on the grounds that it was barred by a statutory stay and, therefore, not ripe for adjudication.<sup>45</sup> Since the 9/15 Relocation Request, FCA has received no more relocation requests.<sup>46</sup>

Atkission Chrysler has never provided to FCA all of the information needed to fully evaluate a relocation request.<sup>47</sup> Mr. Atkission claimed to have received “tentative” approval from Toyota for the move, but agreed that he lacked “final” approval from Toyota.<sup>48</sup>

The ALJs present this history regarding the relocation issue to make two points. First, as a matter of law the dealership’s desire to relocate has never been, and cannot legally be, a part of this case. By statute, as soon as FCA initiated this termination proceeding, the dealership was prohibited from committing any act that could affect the legal rights or duties of the parties.<sup>49</sup> Accordingly, on March 2, 2015, the Department issued an order imposing a stay in accordance with the statute. On December 31, 2015, Atkission Chrysler moved to have its appeal of the 9/15 Relocation Denial consolidated with this case. Because that appeal was stayed by operation of law and because the appeal had not been referred by the Department to SOAH as a contested case, the dealership’s request was denied.<sup>50</sup> Moreover, on February 10, 2016, the Department notified the dealership that was rejecting the dealership’s Original Complaint on the grounds that it is not ripe for adjudication.<sup>51</sup>

Second, the history of the relocation issue sheds an unflattering light on the dealership in a way that suggests termination is warranted. As will be seen throughout the rest of this PFD, Atkission Chrysler consistently has been a poorly performing dealership since its inception in

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<sup>45</sup> FCA Ex. 163.

<sup>46</sup> Tr. at 415.

<sup>47</sup> Tr. at 291, 1004.

<sup>48</sup> Tr. at 1004-05.

<sup>49</sup> Code § 2301.803(a)(2).

<sup>50</sup> SOAH Order No. 8 issued January 8, 2016.

<sup>51</sup> FCA Ex. 163.



2008. In this case, the dealership has blamed its location as the sole cause of its poor performance. As will be discussed more below, the ALJs are not convinced that the location is a bad one, nor are they convinced that the dealership's poor performance can be blamed on the location.

Mr. Atkission repeatedly testified that he has always believed that the location was bad and has been working to move it since purchasing it in 2008. The evidence proves otherwise. The dealership's first request to move was made in late 2013. That request and all those that followed were incomplete, ineffective, and submitted without any urgency on the dealership's part. Despite repeated explanations from FCA as to what information was needed, none of the dealership's requests were complete, but consisted of only the barest of information. Moreover, most of the requests came after this termination proceeding had already begun. This suggests that the relocation issue was not being legitimately raised by the dealership but, rather, constitutes a defensive strategy to counter the termination proceeding. Even today, there is no complete relocation request, but only a bare-bones "concept."

Thus, taking the dealership's arguments at face value, that it is in a "horrible" location that has caused it to perform at a very sub-par level for eight years, it still has to correct the situation or even start the process with FCA whereby the situation might be corrected. This suggests that the dealership lacks the fundamental will or ability to manage its own affairs. This behavior leads to the conclusion that it is entirely reasonable for FCA to want to terminate its business relationship with the dealership.

#### **IV. DISCUSSION OF THE ISSUES**

Because all six of FCA's reasons for termination overlap with the statutory factors, they will be discussed within the context of the statutory factors.



**A. Whether FCA's Notice of Termination Complied with Code § 2301.453**

The evidence in the record shows the following. On December 19, 2014, FCA notified Atkission Chrysler of its decision to terminate the dealer franchise agreement, citing the following reasons: (1) failure to meet sales performance obligations; (2) failure to comply with signage obligations; (3) failure to meet management and sales personnel obligations; (4) failure to meet advertising and sales promotion obligations; (5) failure to meet working capital obligations; and (6) failure to meet net worth obligations.<sup>52</sup> The notice contained specific grounds for the termination, included the required "conspicuous statement," and specified that the termination would not take effect until 60 days after the date the dealer received the Notice of Termination.<sup>53</sup> In response, Atkission Chrysler filed a Notice of Protest of Franchise Termination with the Department on February 20, 2015.

Atkission Chrysler does not contend that FCA's Notice of Termination failed to comply with the requirements set forth in Code § 2301.453. The ALJs conclude that FCA's Notice of Termination complied with Code § 2301.453.

**B. Atkission Chrysler's Sales in Relation to Sales in the Market**

One of FCA's primary contentions in this case is that Atkission Chrysler has consistently underperformed in its market.<sup>54</sup> In addition to the Code's required analysis of the dealership's sales in relation to sales in the market, FCA's Notice of Termination identified Atkission Chrysler's failure to meet its sales performance obligations as one of the reasons it seeks to terminate the Dealer Agreements.<sup>55</sup> FCA based this reason on Paragraph 4 of each Dealer Agreement and Paragraph 11(a) of the Additional Provisions of each Dealer Agreement. These sections provide:

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<sup>52</sup> FCA Ex. 67.

<sup>53</sup> Code § 2301.453(c); FCA Ex. 67.

<sup>54</sup> FCA Initial Brief at 19.

<sup>55</sup> FCA Ex. 67.



Dealer will actively and effectively sell and promote the retail sale of [Chrysler] vehicles, vehicle parts and accessories in the Dealer's Sales Locality.<sup>56</sup>

Dealer shall use its best efforts to promote energetically and sell aggressively and effectively . . . [Chrysler] vehicles . . . in Dealer's Sales Locality. Dealer will sell the number of new [Chrysler] vehicles necessary to fulfill Dealer's Minimum Sales Responsibility.<sup>57</sup>

FCA expert witness Sharif Farhat, Vice President of Expert Analytical Services for Urban Science Application,<sup>58</sup> evaluated Atkission Chrysler's sales performance as compared to its sales performance obligations, the reasonableness of FCA's determination that Atkission Chrysler failed to actively and effectively promote the sale of Chrysler vehicles, and whether FCA has good cause to terminate Atkission Chrysler's franchise for unsatisfactory sales performance.<sup>59</sup> To perform his analysis, Mr. Farhat identified the relevant area to be analyzed and the standard upon which to assess performance, measured actual performance to the standard identified, and determined the cause(s) of the dealer's performance variation.<sup>60</sup> Based on his analysis, Mr. Farhat concluded that good cause existed to terminate the Dealer Agreements.<sup>61</sup> He explained that FCA's method of evaluating dealer sales performance is reasonable, conservative, and consistent with industry standards; Atkission Chrysler has failed to capture anywhere near its available sales opportunities; and Atkission Chrysler's poor sales performance is due to factors under Atkission Chrysler's direct control.<sup>62</sup>

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<sup>56</sup> "Sales Locality" means the area designated in writing as the territory of the dealer's responsibility for the sale of Chrysler vehicles, although the dealer is free to sell to customers wherever they may be located. FCA Exs. 27(b) at 2, 27(c) at 2, 27(d) at 2.

<sup>57</sup> FCA Exs. 28(a) at 3, 28(b) at 3.

<sup>58</sup> Urban Science Application is a consulting company that specializes in dealer network analysis in the automotive industry. FCA Ex. 151 at 1.

<sup>59</sup> FCA Ex. 151 at 1.

<sup>60</sup> FCA Ex. 151 at 3.

<sup>61</sup> FCA Ex. 151 at 4.

<sup>62</sup> FCA Ex. 151 at 4.



## 1. FCA's Method for Evaluating Dealer Sales Performance

Mr. Farhat explained that, similar to the vast majority of automotive manufacturers operating in the United States, FCA measures a dealer's "sales effectiveness" as a percentage of the dealer's Minimum Sales Responsibility (MSR)—a measure of the sales actually achieved by a dealer against an expected level of sales.<sup>63</sup> The expected level of sales for a dealer is derived from the number of sales a dealer must make to equal the state market share in the dealer's local market (in this case, the Orange Sales Locality).<sup>64</sup> Mr. Farhat testified that MSR is designed to measure whether a dealer's sales are proportional to the opportunity available to the dealer in its assigned area, and that the MSR methodology is commonly used in the automotive industry and is a reasonable benchmark for sales performance.<sup>65</sup> When a dealer's actual sales equal its MSR, its MSR percentage is 100%.<sup>66</sup> An MSR of 100% means that a dealer is meeting the amount of sales it is expected to capture. Atkission Chrysler did not dispute MSR as a reasonable method to evaluate sales in relation to sales in the market.

In calculating Atkission Chrysler's MSR, FCA accounts for consumer characteristics or economic conditions unique to the Orange Sales Locality that could negatively impact Atkission Chrysler's expected sales.<sup>67</sup> For instance, Atkission Chrysler's MSR is adjusted to reflect a larger local consumer preference for large pickup trucks and a weaker local demand for compact cars.<sup>68</sup>

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<sup>63</sup> FCA measures Minimum Sales Responsibility (MSR) based on the ratio of the dealer's sales anywhere in the United States. FCA Ex. 151 at 4-5; Tr. at 378, 565-66.

<sup>64</sup> FCA Ex. 151 at 4-5.

<sup>65</sup> FCA Ex. 151 at 4-5; Tr. at 565, 599-602.

<sup>66</sup> FCA Ex. 151 at 7.

<sup>67</sup> FCA Ex. 151 at 17-18; Tr. at 566-69.

<sup>68</sup> FCA Ex. 151 at 18-20; Tr. at 575-81.



## 2. Atkission Chrysler's Poor Sales Performance

The evidence was undisputed that Atkission Chrysler has never met its annual MSR since the dealership commenced operations.<sup>69</sup> The following chart depicts Atkission Chrysler's percentage for MSR achieved since its inception:<sup>70</sup>

Month/Year (YTD)	% MSR Attained
December 2008	40.1%
December 2009	38.2%
December 2010	63.4%
December 2011	49.2%
December 2012	23.6%
December 2013	39.7%
December 2014	27.2%
October 2015	16.2%

Looking more specifically at data from the most recent complete year, 2014, Atkission Chrysler's MSR was 551 vehicles (based on Texas average sales penetration applied to actual consumer segment preferences in the Orange Sales Locality), yet Atkission Chrysler only sold 150 vehicles, representing 27.2% of its MSR.<sup>71</sup> However, in that same year, the Chrysler dealers immediately surrounding Atkission Chrysler reported the following MSR scores:<sup>72</sup>

<sup>69</sup> FCA Exs. 39(a)-(h), 129 at 32-33; Tr. at 268-73, 879, 925, 931; AC Initial Brief at 9-10.

<sup>70</sup> FCA Exs. 39(a)-(h); Tr. at 268-73, 879, 931.

<sup>71</sup> FCA Ex. 151 at 7, 30.

<sup>72</sup> FCA Ex. 151 at 32; Tr. at 585-88.



Surrounding Chrysler Dealer	% MSR Attained
Weaver Motors (Kirbyville, TX)	295.9%
Mid County (Port Arthur, TX)	145.5%
Mike Smith (Beaumont, TX)	91.4%
Mark Dodge (Lake Charles, LA)	84.9%

The evidence showed that the surrounding dealers were achieving a higher percentage of MSR than Atkission Chrysler and, unlike Atkission Chrysler, their sales increased correspondingly with the growth in market demand for Chrysler vehicles in Texas.<sup>73</sup>

The data also showed that the surrounding dealers are selling the majority of Chrysler vehicles registered in the Orange Sales Locality. This demonstrates that the residents of Orange are driving anywhere from 20 to 40 miles beyond Atkission Chrysler to purchase Chrysler vehicles. These are referred to as “pump-in” sales.<sup>74</sup> In December 2012, Atkission Chrysler sold only 13.3% of Chrysler vehicles registered in the Orange Sales Locality.<sup>75</sup> From January to August 2014, 88.2% of Chrysler vehicles registered in the Orange Sales Locality were purchased from the surrounding dealers rather than Atkission Chrysler.<sup>76</sup> Christopher Chandler, National Dealer Placement Manager with FCA, described the high degree of pump-ins in the Orange Sales Locality as “stunning” in light of the fact that Atkission Chrysler is the only dealer assigned to that territory.<sup>77</sup>

### 3. Factors Affecting Atkission Chrysler’s Poor Sales Performance

FCA argued that Atkission Chrysler’s poor sales performance is due to an insufficient and aging vehicle inventory; high employee and general manager turnover; understaffed sales

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<sup>73</sup> Tr. at 62, 179, 306, 573-74, 585-88; FCA Ex. 151 at 25, 32.

<sup>74</sup> Tr. at 79-82, 622-26; FCA Exs. 57(a)-(m).

<sup>75</sup> FCA Ex. 57(b).

<sup>76</sup> Tr. at 399-400; FCA Ex. 67 at 4.

<sup>77</sup> Tr. at 399-400.



force; low advertising expenditures; poor internet promotion and presence; an aging facility with improper signage; and higher prices than surrounding Chrysler dealerships.<sup>78</sup> FCA offered extensive evidence on their efforts to help Atkission Chrysler improve its sales performance, including the opportunity to participate in its dealer upgrade program.<sup>79</sup> The program gives a low performing dealer the opportunity to obtain extra inventory based on the specific inventory shortfalls on that dealer's lot.<sup>80</sup> Despite multiple conversations and notifications from FCA representatives expressing concern that Atkission Chrysler was not achieving 100% of its MSR and urging it to improve its sales performance,<sup>81</sup> Atkission Chrysler declined all but one of the opportunities to participate in the dealer upgrade program, and it increased its inventory for one month only.<sup>82</sup> Terry Williams, FCA's Area Sales Manager for the portion of Texas that includes Orange and Atkission Chrysler, testified that he was surprised by Atkission Chrysler's refusal to participate in the program based on how many extra vehicles it could have obtained for its inventory.<sup>83</sup>

While acknowledging that its sales are far below MSR, Atkission Chrysler argued that the shortfall is caused by its "terrible location." The dealership also contends that FCA is not harmed by its poor performance because the expected market share is being achieved for the Orange Sales Locality—just through the surrounding dealers instead of Atkission Chrysler.<sup>84</sup> The dealership contends that because it is impossible for it to increase its sales from its current location, there is no reason to spend more money on advertising or to increase its inventory.<sup>85</sup>

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<sup>78</sup> FCA Initial Brief at 8, 11-12, 55; Tr. at 43, 52, 55-62, 105-06, 136, 510-11.

<sup>79</sup> FCA Exs. 54(a)-(l), 54(a),(b),(d)-(g), 56, 58, 59, 61, 62, 64; Tr. at 46-47, 52, 56-58.

<sup>80</sup> Tr. at 114.

<sup>81</sup> FCA Exs. 54(a), 54(c)-(l), 55(a), (b), (d)-(g), 56, 58; Tr. at 52-54, 85-135, 925-26, 930-31.

<sup>82</sup> Tr. at 117; FCA Ex. 53(i).

<sup>83</sup> Tr. at 139-42.

<sup>84</sup> AC Initial Brief at 17; AC Reply Brief at 14.

<sup>85</sup> AC Initial Brief at 20-21.



In addition to pointing to its location as justification for its poor sales, Atkission Chrysler theorized its lack of sales could have been caused by Hurricane Ike, which hit the area in the fall of 2008; the Chrysler bankruptcy filing in 2009; the recession of 2008-2009; and the construction on I-10 that began in February 2010.<sup>86</sup> Mr. Atkission testified that, in his opinion, the hurricane affected the dealership positively at first, in that there was an uptick in sales by people who needed to replace cars damaged by the storm.<sup>87</sup> Mr. Atkission believed that, following the initial increase in sales, however, the market demand diminished due to shifting priorities in response to damage from the hurricane.<sup>88</sup> With regard to the Chrysler bankruptcy in 2009, Mr. Atkission testified that he believed it had a bad effect on the automotive industry as a whole.<sup>89</sup> In discussing the recession that hit the national economy shortly after Mr. Atkission purchased Atkission Chrysler, he explained that business got tough in general but that he did not know what impact it had on Atkission Chrysler.<sup>90</sup> Turning to the construction on I-10, Mr. Atkission stated that it began in February 2010 and took three years to complete in front of Atkission Chrysler. He explained that its major impact was to elevate the portion of I-10 that passes in front of the dealership.<sup>91</sup> Mr. Atkission testified that the access to Atkission Chrysler is worse now than it was before the construction began, and that in his opinion it has affected sales at the dealership because “[d]riving up and down Interstate 10, if you don’t know [the dealership] is there, you don’t know it’s there.”<sup>92</sup> When asked about the biggest reason for the poor sales performance of Atkission Chrysler, Mr. Atkission opined that it was due to its location. He does not believe the recession, hurricane, or Chrysler bankruptcy are having any lingering effects on sales.<sup>93</sup>

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<sup>86</sup> AC Initial Brief at 7; Tr. at 662-63, 847-48, 851-53, 855, 880-82; FCA Ex. 129 at 22.

<sup>87</sup> Tr. at 853.

<sup>88</sup> Tr. at 854-55.

<sup>89</sup> Tr. at 855-56.

<sup>90</sup> Tr. at 847-48, 851.

<sup>91</sup> Tr. at 856-57.

<sup>92</sup> Tr. at 859.

<sup>93</sup> Tr. at 931.



FCA argues that Code § 2301.455 is straightforward and does not allow for a dealership to explain why its performance may be poor.<sup>94</sup> The ALJs agree that the Code does not provide for affirmative defenses to the good cause elements; yet, to the extent that the arguments raised by Atkission Chrysler can be shown to affect the analysis of the dealership's sales in relation to sales in the market, they are relevant.

Examining the evidence, however, demonstrates that none of the excuses offered by Atkission Chrysler were shown to affect the dealership's sales in relation to sales in the market. For example, as Mr. Farhat explained, MSR itself is designed to measure whether a dealer's sales are proportional to the opportunity available in its assigned area, and takes into account national and local changes in vehicle sales.<sup>95</sup> Therefore, any impact of the recession, Chrysler bankruptcy, or Hurricane Ike would be reflected in the MSR. In other words, if those factors affected sales in the market, then the dealership's MSR would be lower and, accordingly, easier for the dealership to achieve. This argument is also refuted by the fact that Atkission Chrysler's sales were at their highest immediately after the recession.<sup>96</sup> Notwithstanding the several reasons given by Atkission Chrysler for the sales deficits, the evidence shows that sales are continuing to decline. In 2012, for example, during a time period when Chrysler sales were increasing across the country, Atkission Chrysler was one of only two Chrysler dealers in the entire Southwest Business Center with declining sales.<sup>97</sup> Turning to Atkission Chrysler's argument that the I-10 construction and location of the dealership in general are the reason why it is one of the worst performing dealerships in Texas, the evidence does not establish that either factor affected the dealership's sales. Specifically, Atkission Chrysler's sales were poor before, during, and after the I-10 highway construction.<sup>98</sup> And nothing suggests that relocating the dealership adjacent to the Atkission Toyota dealership would have any impact on the sales domination by Chrysler

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<sup>94</sup> FCA Reply Brief at 15.

<sup>95</sup> Tr. at 581-83.

<sup>96</sup> Tr. at 588-90.

<sup>97</sup> Tr. at 305-06.

<sup>98</sup> Tr. at 590, 608-10; FCA Ex. 151 at 11, 68.



dealerships 20-40 miles away.<sup>99</sup> These pump-in sales demonstrate that Chrysler customers are not basing their purchasing decisions on convenience of location.

While Atkission Chrysler's MSR scores alone are telling, they become even more significant when compared to the MSR scores of the Chrysler dealers immediately surrounding the Orange Sales Locality. Whereas Atkission Chrysler's sales have continued to decline, the demand for Chrysler vehicles has increased, and the sales of the surrounding Chrysler dealerships have reflected that increase. The opportunity for sales of Chrysler vehicles in the Orange Sales Locality is evident, but Atkission Chrysler is falling far short of capturing its expected share of these sales.

Additionally, FCA established that Atkission Chrysler received numerous warnings regarding its poor sales performance. FCA also gave Atkission Chrysler multiple opportunities to improve its sales performance, but the dealership failed to do so by not ordering and displaying sufficient product and by not aggressively marketing to compete with the other dealerships. Atkission Chrysler was not just a poor sales performer, it was the worst performing of all Chrysler dealers in Texas in sales.<sup>100</sup> As Mr. Farhat stated, "the difference between [Atkission Chrysler] and the next lowest performing dealer is dramatic."<sup>101</sup>

Although Atkission Chrysler offered multiple excuses for why its sales performance was so low, they do not adequately explain Atkission Chrysler's exceptionally low sales in relation to sales in the market. Therefore, based on the evidence and argument presented, the ALJs conclude that FCA has established that Atkission Chrysler has extremely poor sales in relation to the market, a factor supporting good cause for termination.

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<sup>99</sup> Tr. at 608-613; FCA Ex. 151 at 69.

<sup>100</sup> FCA Ex. 151 at 40.

<sup>101</sup> Tr. at 586.



**C. Atkission Chrysler's Investment and Obligations**

Atkission Chrysler contends that it has substantial investments in the business. Mr. Atkission testified that when he purchased the dealership in March 2008, he paid \$500,000 to acquire the tangible assets (existing buildings, furniture, fixtures, equipment, tools, etc) plus another \$150,000 for the intangibles (business goodwill).<sup>102</sup> In the years since, he has loaned to Atkission Chrysler roughly \$6.25 million.<sup>103</sup> Mr. Atkission estimates, if the dealership is terminated, he will personally lose roughly \$4 million.<sup>104</sup> He further opined that the only way he can ever recoup his investment is for Atkission Chrysler to be relocated where it can become profitable.<sup>105</sup>

FCA takes issue with the numbers posited by Atkission Chrysler in two ways. First, it challenges their accuracy. For example, although Mr. Atkission may have paid \$500,000 for the tangible assets in 2008, the value of those assets is now much lower. In an October 2015 financial statement, the dealership stated that the net value of its building and equipment totaled \$88,512. Moreover, if the dealership was terminated, many of those assets could be sold, meaning that their total value would not be lost.<sup>106</sup> FCA also challenges the claim that Mr. Atkission would lose \$4 million if the dealership was terminated. The dealership's October 2015 financial statement identified "retained earnings" of -\$3,631,353, plus year-to-date earnings of -\$613,346, for a total of -\$4,244,699.<sup>107</sup> Mr. Atkission conceded that this means the dealership has already lost this value, such that if the dealership is terminated, the only value remaining to be lost is the value of the building and equipment.<sup>108</sup>

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<sup>102</sup> Tr. at 837, 886-88.

<sup>103</sup> Tr. at 712, 886, 888.

<sup>104</sup> Tr. at 889, 1034.

<sup>105</sup> Tr. at 904-05.

<sup>106</sup> Tr. at 1001-02; FCA Ex. 38(k).

<sup>107</sup> FCA Ex. 38(k).

<sup>108</sup> Tr. at 1003.



Second, and more importantly, FCA contends that the investments and obligations of Mr. Atkission are completely irrelevant. In analyzing the investments and obligations, FCA draws a distinction between the individual (Mr. Atkission) and the dealership (Atkission Chrysler). FCA concedes that Mr. Atkission has made a substantial investment in the dealership, but it contends that his investment is irrelevant to this case. Pursuant to Code § 2301.455(a)(2), the factor to be considered is the “dealer’s investment and obligations.” By statute, the “dealer” is the “person who holds a general distinguishing number issued by the Board.”<sup>109</sup> In turn, “person” expressly includes a “partnership, corporation . . . or any other legal entity.”<sup>110</sup> In this case, it is Atkission Chrysler, not Mr. Atkission, which holds the general distinguishing number for the dealership.<sup>111</sup> For this reason, FCA argues, Mr. Atkission’s investments and obligations have no bearing on the case as a matter of law.

Atkission Chrysler responds that FCA’s argument on this point is “schizophrenic” and “hyper-technical.” Essentially, the dealership argues that Mr. Atkission and Atkission Chrysler are one and the same, so that the individual’s investments should also count as the entity’s.<sup>112</sup> The ALJs disagree. FCA is not construing the statute in a hyper-technical manner. Rather, it is accurately applying the plain meaning of the statute. Moreover, it is Atkission Chrysler, not FCA, that is advocating an unreasonable interpretation. That is, the dealership is essentially arguing that the \$6.25 million in loans made by Mr. Atkission should count as the dealership’s investments *and* obligations. Logic dictates that it cannot be both. Thus, the ALJs conclude that the \$6.25 million cannot be considered as an investment of Atkission Chrysler. As discussed below, however, those monies might be considered as an obligation of the dealership.

As to the other investments of Atkission Chrysler, FCA argues that they are minimal.

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<sup>109</sup> Code § 2301.002(7).

<sup>110</sup> Code § 2301.002(27).

<sup>111</sup> Tr. at 928-29.

<sup>112</sup> AC Reply Brief at 10.



- Unique among all new car dealerships owned by Mr. Atkission, Atkission Chrysler leases the premises and does not own the land where the dealership is located. The lease expired in 2013, but the dealership remains on a month-to-month holdover tenancy.<sup>113</sup>
- By Mr. Atkission's own admission, the dealership has never been in a desirable location; the dealership's facilities are "in very poor repair, very outdated, not up to [Atkission's] standards at all," "very old" and not laid out very well, and "not very good;" the facilities do not compare favorably to other Chrysler dealerships, or to the Chevrolet, Toyota, and Ford dealerships in Orange; and the facilities need a lot of repairs, are not conducive to a successful business, and not compliant with FCA's image program.<sup>114</sup>
- Tyrone Allred, the current General Manager for Atkission Chrysler, agrees that the dealership's facilities are in poor condition, overdue for replacing, not worth updating, poorly located, and with "horrible" access problems that have lingered for years.<sup>115</sup>
- In January 2008 (at the time he was attempting to acquire the dealership), Mr. Atkission wrote a letter to FCA in which he "committed" to, within 24 months, complete several itemized construction projects in order to "enhance the facility."<sup>116</sup> At the hearing, Mr. Atkission admitted that none of the projects identified in his letter were ever constructed.<sup>117</sup>
- The main sign in front of the dealership was damaged by Hurricane Ike in 2008. The damage was never fixed. Rather, Atkission Chrysler merely placed a plastic bag over it with signage printed on the bag. For years, the dealership has declined to invest in a new sign because Mr. Atkission hopes to relocate.<sup>118</sup>
- As will be discussed in more detail in Section IV.G. below (regarding the dealership's compliance with the terms of the Dealer Agreements), FCA argues that Atkission Chrysler has consistently underfunded and declined to invest in adequate advertising and sales promotion programs.

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<sup>113</sup> Tr. at 838-39.

<sup>114</sup> Tr. at 838-39, 984-87.

<sup>115</sup> Tr. at 662-63.

<sup>116</sup> FCA Ex. 3.

<sup>117</sup> Tr. at 989-91.

<sup>118</sup> Tr. at 866-70.



- Similarly, as will be discussed in more detail in Section IV.G. below (regarding the dealership's compliance with the terms of the Dealer Agreements), FCA argues that Atkission Chrysler's working capital and net worth have consistently been inadequate, which is further evidence of the minimal nature of the dealership's investments.
- Herbert Walter, FCA's financial and accounting expert, examined the dealership's financial statements and concluded that, as of October 31, 2015, the total value of the dealership's long-term assets was less than \$100,000, which, in Mr. Walter's opinion, reflected a lack of permanent investment by the dealership.<sup>119</sup>
- According to Mr. Walter, the great majority of the dealership's assets (slightly more than \$4 million) consists of the vehicle inventory, the value of which could largely be recouped by the dealership if its franchise were terminated.<sup>120</sup>

As to Atkission Chrysler's obligations, FCA argues that those obligations are also minimal. As noted above, the dealership is on a month-to-month lease, which frees it from the obligations of a long-term lease. Mr. Atkission has loaned to Atkission Chrysler roughly \$6.25 million over the course of several years. On the surface then, this would appear to constitute an obligation of the dealership. FCA argues, however, that given the details of those loans, they should not be considered real obligations. Mr. Atkission's loans to the dealership are made through what he and the dealership employees call "Cecil Money." The funds for the loans come from Mr. Atkission's personal accounts. His long-term practice is to simply write checks to the dealership.<sup>121</sup> These loans are unsecured, treated as subordinated debt on the dealership's books, and apparently lack any of the paperwork that one would normally expect to see with a loan.<sup>122</sup> When the dealership receives a "Cecil Money" check, it records the money as loaned funds, and then pays Mr. Atkission interest on the loans.<sup>123</sup> According to Curtis Coleman, an accountant employed by the corporate group owned by Mr. Atkission, none of the principal of the \$6.25 million in Cecil Money loaned to Atkission Chrysler has ever been repaid. However,

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<sup>119</sup> Tr. at 514-16; FCA Ex. 152 at 63-64.

<sup>120</sup> Tr. at 514-15.

<sup>121</sup> Tr. at 708-10, 753-54.

<sup>122</sup> Tr. at 712, 1066. There was some testimony from Mr. Atkission suggesting that the loans are supported by written agreements, but that the agreements have all been lost or destroyed. Tr. at 979-80.

<sup>123</sup> Tr. at 749-50, 870-71.



interest has been paid on the loans.<sup>124</sup> According to Mr. Atkission, he is paid interest at the rate of around 4%. Thus, assuming loans in the amount of \$6.25 million, Mr. Atkission receives annual interest payments from the dealership totaling \$250,000.<sup>125</sup>

The dealership's evidence about the extent to which the principal on the loans constitutes an obligation for the dealership was inconsistent at the hearing. On the one hand, the dealership asserted that the loans might one day have to be repaid by Atkission Chrysler. For example, Mr. Coleman opined that if the dealership ever becomes profitable, then Mr. Atkission would begin to be repaid the principal.<sup>126</sup> Mr. Atkission testified that, in the best case scenario, he would ultimately be repaid the \$6.25 million in principal.<sup>127</sup>

More often, however, the dealership indicated that it is under no obligation to repay the loans. Mr. Atkission testified that he expects to be paid interest on the principal, but not the principal itself.<sup>128</sup> Tyra Boram, the dealership's office manager and bookkeeper, testified that none of the principal has ever been repaid.<sup>129</sup> Regarding the \$6.25 million, Mr. Coleman testified, "[I]t's not debt. It's not repaid to him. It's never been repaid to him. More than likely, it will never be repaid to him."<sup>130</sup> In his opening statement, the dealership's counsel asserted that Mr. Atkission does not want the \$6.25 million to be repaid.<sup>131</sup> Based on this evidence, FCA argues that the \$6.25 million is not an obligation of the dealership, but a "capital contribution with no terms of repayment."<sup>132</sup>

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<sup>124</sup> Tr. at 750-51.

<sup>125</sup> Tr. at 977-79.

<sup>126</sup> Tr. at 750-51.

<sup>127</sup> Tr. at 1025.

<sup>128</sup> Tr. at 979-80.

<sup>129</sup> Tr. at 711.

<sup>130</sup> Tr. at 812.

<sup>131</sup> Tr. at 31-32.

<sup>132</sup> FCA Initial Brief at 25.



In sum, FCA argues that the dealership's obligations and investments are minimal or non-existent, and wholly inadequate to operate the business successfully. FCA contends that proof of the inadequacy of the dealership's investments is evidenced by the dealership's chronic sub-par performance, which is discussed throughout the remainder of this proposal for decision.<sup>133</sup>

After considering the evidence and arguments, the ALJ finds this factor supports good cause for termination of the dealership agreements. On the one hand, the dealership's investments are paltry. The dealership does not own the land where the dealership is located, and it only leases the land on a month-to-month basis. The net value of the dealership's building and equipment is less than \$100,000. This reflects an almost complete refusal to permanently invest in the business. If the dealership is terminated, these assets could be sold, and much of that value recouped. The asset of greatest value to the dealership is the inventory of vehicles, the value of which appears to hover around \$4 million. If the dealership is terminated, the vehicles in inventory could be sold, and much of that value recouped. Mr. Atkission's investments in the dealership cannot properly be considered to be the dealership's investments. The dealership has never been willing to invest a sufficient amount in itself, as evidenced by the fact that the facilities are in poor, outdated condition. The fact that Atkission Chrysler does not have significant investment shows the dealership's lack of commitment to its business and, as such, supports FCA's contention that the dealership should be terminated.

Similarly, the dealership's obligations are minimal. At any given time, Atkission Chrysler is obligated by a one-month tenancy on the land the land where it is located, and the dealership has an obligation to pay roughly 4% interest to Mr. Atkission each year. It is difficult, however, to conclude that the principal on which that interest is calculated (i.e., the \$6.25 million in Cecil Money) constitutes a real obligation of the dealership. Essentially everyone, including Mr. Atkission, concedes that those "loans" will probably never be repaid. No principal has ever been repaid, or even demanded, and there is no documentation in the record to indicate that the principal must be repaid. As such, the ALJs cannot conclude that the dealership is under an actual obligation to repay the \$6.25 million.

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<sup>133</sup> FCA Reply Brief at 18-19.



After taking into account all relevant considerations, the ALJs conclude that: (1) Atkission Chrysler's investments are minimal, to the point of being inadequate to properly operate the business; (2) the dealership's obligations are equally minimal; and (3) these factors establish good cause to terminate.

#### **D. Injury or Benefit to the Public**

The Code requires an analysis concerning any injury or benefit to the public that might accrue due to termination. FCA argues that this factor weighs heavily in favor of termination because of Atkission Chrysler's failure to satisfy market demand in the Orange Sales Locality, its poor customer service, and its outdated facilities. Also FCA will replace Atkission Chrysler with a more competitive dealer, and the replacement dealer would presumably better satisfy customer needs in the Orange Sales Locality.

Christopher Chandler, National Dealer Placement Manager with FCA, testified that the Orange Sales Locality is a substantial market with a considerable customer base that needs to be taken care of.<sup>134</sup> Mr. Chandler explained that the Orange customers are already traveling past Atkission Chrysler to other Chrysler dealers outside Orange to satisfy their Chrysler needs.<sup>135</sup> Therefore, FCA reasons, the public is currently being inconvenienced by having to drive to other Chrysler dealerships 20-40 miles away from Orange to meet their needs.<sup>136</sup> Consequently, Mr. Chandler opined that, even if there is a time period with no Chrysler dealer in Orange, there would be minimal impact to the public.<sup>137</sup> Moreover, because it is FCA's intent to replace Atkission Chrysler with a stronger local dealer as soon as possible, FCA contends that the inconvenience consumers currently face will be remedied and the public will also have an added benefit of more jobs created in the community.<sup>138</sup>

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<sup>134</sup> Tr. at 405-06.

<sup>135</sup> Tr. at 406.

<sup>136</sup> FCA Initial Brief at 25-26; Tr. at 329, 592-99.

<sup>137</sup> Tr. at 406.

<sup>138</sup> FCA Initial Brief at 26; Tr. at 405.



FCA also points to consumer dissatisfaction with the Atkission Chrysler dealership as further evidence of public harm that is being caused by the status quo. In customer satisfaction rankings for 2015, Atkission Chrysler was ranked among the worst in Texas. Specifically, it was ranked 88th out of 90 dealers in Texas for sales advocacy, and 85th out of 90 dealers for service advocacy.<sup>139</sup> FCA opined that the customer experience is diminished at Atkission Chrysler due to the dealership's current business practices, refusal to upgrade its signage, failure to maintain an adequate sales staff, and failure to operate from a modern facility.<sup>140</sup> With regard to Atkission Chrysler's current business practices, the testimony revealed that when customers want to purchase a Chrysler vehicle from Atkission Chrysler, they currently have to travel to Atkission Toyota to complete the paperwork and then return to Atkission Chrysler to take possession of the vehicle.<sup>141</sup> Also, Atkission Chrysler routinely charges higher prices for vehicles than other dealerships in the surrounding area and focuses on selling various insurance products and other add-ons to customers. Although beneficial to Atkission Chrysler, these practices pass additional, significant expenses onto the customer.<sup>142</sup> For all these reasons, FCA argues that termination is in the public interest.

Atkission Chrysler asserts, however, that the public has not been inconvenienced by having to drive further away to purchase Chrysler vehicles. Instead, the dealership argues that the only inconvenience shown is to FCA in not achieving its desire for a greater market share in the Orange Sales Locality.<sup>143</sup> As support for this argument, Atkission Chrysler points to the lack of evidence offered by FCA regarding complaints from customers about having to travel to other Chrysler dealerships further away.<sup>144</sup> However, the dealership also paradoxically argues that the

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<sup>139</sup> Tr. at 277-78.

<sup>140</sup> FCA Initial Brief at 26.

<sup>141</sup> Tr. at 49-50, 896-98, 920-21.

<sup>142</sup> FCA Initial Brief at 28; Tr. at 921.

<sup>143</sup> AC Initial Brief at 22-23.

<sup>144</sup> AC Initial Brief at 23.



termination of its franchise would upset existing customers and require Orange residents to drive to dealerships in the surrounding communities to satisfy their Chrysler needs.<sup>145</sup>

Atkission Chrysler also claims that the injury to the public is derived from its current location, and that allowing Atkission Chrysler to relocate to a different location is the only way to make the dealership more convenient for customers.<sup>146</sup> With regard to its customer satisfaction rankings for 2015, Atkission Chrysler points out that rankings for “sales advocacy” and “service advocacy” are not the same as customer satisfaction scores, and that its customer dissatisfaction level for dealership service was only “sometimes lower than the . . . group average.”<sup>147</sup>

After considering the arguments and evidence, the ALJs find that the termination of Atkission Chrysler would have a positive impact on the public. The evidence shows that the public will not be injured by the termination of Atkission Chrysler because the majority of Chrysler customers are already driving 20-40 miles away to avoid having to go to Atkission Chrysler.<sup>148</sup> Even if Atkission Chrysler’s franchise were terminated and FCA never installed a new Chrysler dealer in Orange, the impact to the public would be negligible. However, the evidence showed that FCA intends to replace Atkission Chrysler with a new dealer, which would further benefit the public by increasing employment opportunities within Orange and allowing local customers to have their needs met without the inconvenience of driving 20-40 miles away. Regardless of whether Atkission Chrysler is the worst ranked dealership or an average ranked dealership in terms of customer satisfaction, customers are choosing to avoid the dealership altogether and instead travel between 20-40 miles, one way, to visit other Chrysler dealerships in lieu of purchasing from Atkission Chrysler.

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<sup>145</sup> AC Initial Brief at 23-24.

<sup>146</sup> AC Initial Brief at 23.

<sup>147</sup> AC Reply Brief at 14-15; FCA Ex. 54(a) at 1.

<sup>148</sup> Atkission Chrysler agrees that traveling to surrounding communities is an inconvenience for the public. See AC Initial Brief at 23-24.



The evidence also established that, if FCA were to terminate the Atkission Chrysler franchise, the few current employees the dealership has that are not already shared employees with Atkission Toyota would likely be hired at the Toyota dealership.<sup>149</sup> Thus the impact on employment of terminating the Atkission Chrysler franchise in the short-run would be negligible, and in the long-run positive if a new Chrysler dealership is installed and additional jobs are created in Orange. Therefore, the ALJs find that the injury or benefit to the public factor weighs heavily in favor of termination.

**E. Adequacy of Atkission Chrysler's Service Facilities, Equipment, Parts, and Personnel in Relation to Those of Other Dealers of New Motor Vehicles of the Same Line-Make**

FCA argues that Atkission Chrysler has consistently failed to hire and retain competent sales and management personnel, failed to maintain a personnel force commensurate with other Chrysler dealers, and operates a facility that is significantly worse than those maintained by other Chrysler dealers.<sup>150</sup> While Atkission Chrysler agrees that its facility is generally old and outdated, it argues that FCA failed to produce any evidence to show that its service facilities, equipment, and parts inventory are inadequate in relation to other Chrysler dealers.<sup>151</sup> The dealership also agrees that it has a high turnover of management and personnel; but argues that the high turnover is the result of poor sales, which is caused by being in a bad location.<sup>152</sup>

Minimal evidence was offered with regard to the dealership's service facilities. The evidence that was presented consisted of MSR worksheets for 2013, which indicated that Atkission Chrysler was below its goal to varying degrees and below the average for the Southwest Business Center for service advocacy.<sup>153</sup> The dealership also conceded that it has not

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<sup>149</sup> Tr. at 1019.

<sup>150</sup> FCA Initial Brief at 37, 39.

<sup>151</sup> AC Initial Brief at 24.

<sup>152</sup> AC Initial Brief at 24-25.

<sup>153</sup> The factors making up service advocacy appear to be customer satisfaction with the service advisor, the service arrival, and the service pickup processes. FCA Exs. 54(a)-(l); Tr. at 103-04, 113.



been able to maintain a viable general manager, sales staff, or other dealership personnel because of the dealership's poor sales.<sup>154</sup> Coupled with Atkission Chrysler's admission that its facility as a whole is in "poor condition," "not conducive to a successful business," an "eye-sore," not comparable to surrounding dealer facilities, and that there are no plans to improve the facility, the evidence leans in favor of termination with regards to the adequacy of the service facilities.<sup>155</sup> Because neither party offered evidence as to the adequacy of the dealership's equipment or parts in relation to those of other Chrysler dealers, this factor has a neutral impact on the good cause determination.

#### **F. Whether Warranties are Being Honored by Atkission Chrysler**

Atkission Chrysler contends that this factor favors it.<sup>156</sup> In his role as FCA Regional Network Manager (and his prior role as an FCA Dealer Placement Manager), Mr. Fritz visited Atkission Chrysler twice in 2014. He met both times with Mr. Atkission for the purpose of discussing the dealership's deficiencies. During those meetings, he never indicated that the dealership was not honoring warranties.<sup>157</sup> Mr. Fritz testified that a failure to honor warranties was not one of the reasons why FCA decided to terminate the dealership's franchise.<sup>158</sup> The Notice of Termination itself does not list a failure to honor warranties as a ground for termination.<sup>159</sup> Todd Tunic is FCA's Dealer Network Manager for the Southwest Business Center. He also participated in FCA's decision to issue the Notice of Termination, and he agreed that a failure to honor warranties was not among the reasons for issuing the notice.<sup>160</sup>

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<sup>154</sup> Tr. at 680, 864-65.

<sup>155</sup> Tr. at 662, 667, 718, 728, 984-87.

<sup>156</sup> AC Initial Brief at 25.

<sup>157</sup> Tr. at 174-85.

<sup>158</sup> Tr. at 213.

<sup>159</sup> FCA Ex. 67.

<sup>160</sup> Tr. at 240-43, 246.



Mr. Williams testified that he was unaware of any customer complaints about warranty service at Atkission Chrysler.<sup>161</sup>

FCA, however, does point to two audits of Atkission Chrysler as evidence that the dealership was not properly honoring warranties. Pursuant to the Dealer Agreements, Atkission Chrysler is obligated to “comply with parts, service, and warranty guides established by [FCA] from time to time.” The agreements also include a procedure whereby FCA can issue a “chargeback” to a dealer in order to recoup warranty payments that it made to the dealer if FCA discovers that the payments should not have been made due to a discrepancy caused by the dealer.<sup>162</sup>

FCA periodically audits its dealerships to ensure that they are complying with warranty policies and procedures.<sup>163</sup> In recent years, FCA conducted two audits at Atkission Chrysler, a formal one in 2012 and an informal one in 2014. In the 2012 audit, FCA found a number of errors or discrepancies in the dealership’s charges to FCA for various warranty work it had performed. The value of the discrepancies totaled \$31,172.86. As a result, FCA issued a chargeback (i.e., demanded reimbursement) for this amount. The dealership apparently paid the chargeback. The causes of the discrepancies are listed in the audit report and consist of the following: “customer signature missing,” “tech. notes do not support repair,” “labor not supported,” “unsupported sublet repairs,” “add on operations,” “required specs not recorded,” “parts unavailable,” and “unsupported MOPAR claims.” Of all the different causes, “customer signature missing” was far and away the most common cause of discrepancies.<sup>164</sup>

In the 2014 audit, Sheryl Broussard, FCA’s service representative, reviewed the dealership’s warranty records and identified four instances in which Atkission Chrysler violated FCA’s warranty policy when submitting claims for reimbursement for warranty work. The four

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<sup>161</sup> Tr. at 160.

<sup>162</sup> FCA Exs. 28(a) at 4; 28(b) at 4.

<sup>163</sup> Tr. at 149.

<sup>164</sup> FCA Ex. 41.



claims stated that technicians trained to perform warranty work did the work in question when, in reality, non-trained technicians performed the work.<sup>165</sup>

FCA argues that both of the audits are troubling, but stresses that the 2014 informal audit is especially worrisome because it demonstrates that the dealership used untrained technicians to perform warranty work, but was then reimbursed by FCA at trained technician rates. According to FCA:

Not only is this conduct dishonest to [FCA] and a violation of the Dealer Agreements, it also creates an extreme danger to the public by allowing untrained technicians to repair vehicles they are not qualified to work on. In short, a technician untrained to perform vehicle repair services exposes . . . customers to undue danger or additional trips to the dealership for subsequent repairs.<sup>166</sup>

Atkission Chrysler responds by pointing out that these audits do not suggest that it is failing to honor the warranties of its customers (which is the relevant factor pursuant to Code § 2301.455(a)(5)). Rather, they merely show that the FCA procedures regarding warranties had not been followed in all respects.<sup>167</sup> Moreover, argues the dealership, the fact that FCA did not mention warranty issues in the Notice of Termination suggests that the company has not considered Atkission's handling of warranty issues to be a significant problem.<sup>168</sup>

The ALJs conclude that this factor is neutral and does not weigh in favor of termination. FCA asserts in briefing that the discrepancies discovered in the two audits are "serious failures" and "anything but typical,"<sup>169</sup> but there is little evidence in the record to support these claims. For example, Mr. Tunic could not offer an opinion as to whether the warranty issues were a "big problem."<sup>170</sup> The ALJs suspect that it is not uncommon for a warranty audit to identify

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<sup>165</sup> FCA Ex. 43; Tr. at 152-53.

<sup>166</sup> FCA Initial Brief at 35.

<sup>167</sup> AC Initial Brief at 26.

<sup>168</sup> AC Initial Brief at 26.

<sup>169</sup> FCA Reply Brief at 23.

<sup>170</sup> Tr. at 319-21.



discrepancies. Indeed, a chargeback provision is included in the Dealer Agreements to account for discrepancies. If an audit reviews thousands of service records and identifies only a handful of discrepancies, then this might be evidence that the dealership in question is doing excellent work with regards to warranty issues. On the other hand, if an audit of a different dealership reviews thousands of service records and identifies hundreds of discrepancies, then this might be evidence that the dealership is doing a poor job. In this case, there is no yardstick by which the ALJs can measure the scale of the warranty problems at Atkission Chrysler. For the 2012 and 2014 audits, the ALJs cannot discern how many service records were reviewed or the time periods reviewed. Thus, the ALJs cannot know the dealership's accuracy rate in handling warranty issues. For example, with the informal 2014 audit, if Ms. Broussard had reviewed four warranty records and found that, in all four instances, the dealership identified the wrong technician, then this would suggest a 100% failure rate. If, on the other hand, Ms. Broussard had reviewed four thousand warranty records and found only four violations, this would suggest a 0.001% failure rate. Also, there is no evidence in the record as to what constitutes an acceptable discrepancy rate. For example, there is no evidence by which the ALJs can compare Atkission Chrysler's discrepancy rate against those of other dealerships.

The ALJs agree with FCA that the violations found in the 2014 audit are more serious because they demonstrate that warranty work was being performed by untrained technicians. Without more information, however, it is impossible to know how significant a problem this is. The most relevant evidence giving some context to the violations is the fact that FCA has never asserted that it wanted to terminate the dealership because of warranty concerns.

Clearly, there were some issues in which the dealership handled the warranty issues poorly when dealing with FCA, but most of those issues were minor and administrative in nature (such as not getting the customer's signature on the service form). Ultimately, the evidence establishes neither exceptionally good nor exceptionally bad performance by the dealership on warranty issues. Therefore, the ALJs conclude that this factor neither supports nor weighs against termination.



**G. The Parties' Compliance with the Franchise, Except to the Extent that the Franchise Conflicts with Code ch. 2301<sup>171</sup>**

FCA contends that Atkission Chrysler has breached the Dealer Agreements in no less than nine separate ways, each one of which, standing alone, warrants termination.<sup>172</sup> The nine alleged violations are discussed as follows.

**1. Breach of Sales Performance Obligations**

The Dealer Agreements obligate Atkission Chrysler to “actively and effectively sell and promote the retail sale of [FCA] vehicles . . . in [the dealership’s] Sales Locality,” and “use its best efforts to promote energetically and sell aggressively and effectively at retail . . . each and every model of [FCA] vehicles.”<sup>173</sup> More concretely, the Dealer Agreements obligate the dealership to “sell the number of new [FCA] vehicles necessary to fulfill [the dealership’s] Minimum Sales Responsibility for each passenger car line or truck line” sold by the dealership.<sup>174</sup> This latter requirement is colloquially referred to as the dealership’s obligation to achieve 100% of its MSR.

The obligation to achieve 100% of MSR is not a requirement that is unique to Atkission Chrysler. Rather, as admitted to by Mr. Atkission, it is an industry-wide standard that is frequently utilized in auto dealer franchise agreements.<sup>175</sup> Mr. Farhat described the 100% of MSR requirement as a fundamental and long-used standard by many manufacturers in the auto dealership industry.<sup>176</sup> MSR equals the number of retail sales a dealer must sell to equal the state market share in the dealer’s local market (in this case, the Orange Texas sales locality).<sup>177</sup>

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<sup>171</sup> Neither party contends that any provision of the franchise agreement conflicts with Code ch. 2301.

<sup>172</sup> FCA Initial Brief at 36.

<sup>173</sup> FCA Exs. 27(b) at 2, 27(c) at 2, 27(d) at 2, 28(a) at 3.

<sup>174</sup> FCA Ex. 28(a) at 3.

<sup>175</sup> Tr. at 656.

<sup>176</sup> Tr. at 565, 656.

<sup>177</sup> FCA Ex. 151 at 4-5.



Achieving 100% of MSR is equivalent to earning a passing, but average, grade. Many dealers greatly exceed 100% of MSR.<sup>178</sup> For example, in 2014, 91 of the 157 FCA dealers in Texas met or exceeded (in many cases greatly exceeded) their MSR.<sup>179</sup> Atkission Chrysler never challenged the propriety of subjecting it to a MSR standard, nor did it argue that the standard was applied to it incorrectly.

Since its inception in 2008, Atkission Chrysler has achieved 100% of its MSR in only one month.<sup>180</sup> Mr. Atkission acknowledged the dealership's poor MSR performance at the hearing.<sup>181</sup> He also acknowledged that the dealership has never achieved a satisfactory sales volume.<sup>182</sup> Over the years, Mr. Atkission has had multiple conversations with FCA representatives in which those representatives have expressed concern that the dealership is not achieving 100% of its MSR and urged it to improve its performance. The dealership has also received a multitude of letters, reports, and other documents from FCA making the same points.<sup>183</sup>

The dealership's MSR achievement percentages have been quite low. In 2008, the year Mr. Atkission purchased the dealership, its monthly MSR achievement rate began at 70% and steadily declined such that its monthly achievement rate for December was 40%.<sup>184</sup> In 2009, the dealership's monthly MSR achievement percentages ranged in the forties in the months of January and February, and in the thirties every month thereafter.<sup>185</sup> In 2010, the monthly MSR

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<sup>178</sup> FCA Ex. 151 at 7; Tr. at 52-54, 248, 655.

<sup>179</sup> FCA Ex. 151 at 7.

<sup>180</sup> FCA Ex. 39(d) at 1.

<sup>181</sup> Tr. at 925.

<sup>182</sup> Tr. at 879.

<sup>183</sup> FCA Exs. 54(a), 54(c), 54(d), 54(e), 54(f), 54(g), 54(h), 54(i), 54(j), 54(k), 54(l), 55(a), 55(b), 55(d), 55(e), 55(f), 55(g), 56, 58; Tr. at 52-54, 85-135.

Tr. at 925-26, 930-31.

<sup>184</sup> FCA Ex. 39(a).

<sup>185</sup> FCA Ex. 39(b).



achievement percentages ranged from the thirties to the sixties.<sup>186</sup> In 2011, the dealership began in January with a 113% MSR achievement rate. Thereafter, the rates were never again at or above 100% and steadily declined, such that the rate in December was 49%.<sup>187</sup> In 2012, the percentages were especially low, hovering in the teens and low twenties.<sup>188</sup> In 2013, the dealership began the year at 68% and then steadily declined to end the year at 40%.<sup>189</sup> In 2014, the dealership began in January at 50%, and then spent the rest of the year in the twenties and thirties.<sup>190</sup> In 2015, the percentages were again chronically low, hovering in the teens and twenties.<sup>191</sup> Mr. Chandler calls Atkission Chrysler “one of the worst-performing dealers in the State of Texas.”<sup>192</sup> Mr. Fritz agrees and calls the dealership’s MSR performance “grossly deficient.”<sup>193</sup>

The remarkably poor MSR achievement rate of Atkission Chrysler can perhaps be best understood by comparing its MSR performance against all other FCA dealers in Texas. Over the past four years, out of all FCA dealers in Texas, Atkission Chrysler’s MSR achievement rate has ranked as follows:

- In 2012: 148th out of 148
- In 2013: 155th out of 156;
- In 2014: 157th out of 157; and
- In 2015: 165th out of 165.<sup>194</sup>

Atkission Chrysler does not dispute these numbers. Rather, it blames its poor sales performance on what it claims is the poor location of the dealership, as exacerbated by the

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<sup>186</sup> FCA Ex. 39(c).

<sup>187</sup> FCA Ex. 39(d).

<sup>188</sup> FCA Ex. 39(e).

<sup>189</sup> FCA Ex. 39(f).

<sup>190</sup> FCA Ex. 39(g).

<sup>191</sup> FCA Ex. 39(h).

<sup>192</sup> Tr. at 396.

<sup>193</sup> Tr. at 180, 183.

<sup>194</sup> FCA Ex. 151 at 40. The data for 2015 is year-to-date through August.



reconstruction of I-10 in front of the dealership that took place in 2010-13.<sup>195</sup> Mr. Atkission testified that, at the time he bought the dealership in 2008, he believed it was in a bad location, and he has always intended to move the dealership. Indeed, he testified that he has been reluctant to spend money improving the current location because his plan has always been to relocate.<sup>196</sup>

The dealership contends it is poorly located because it is in an area where there are no other vehicle dealerships or major retailers nearby. Moreover, in February 2010, the Texas Department of Transportation (TxDOT) began reconstructing I-10 in front of the dealership. That construction work ended in early 2013. Prior to the reconstruction, I-10 in front of the dealership was at ground level. The reconstruction raised the height of I-10 so that it would serve as an overpass over Martin Luther King Boulevard (MLK Blvd.), the cross-street near the dealership. According to Mr. Atkission, the result was that the elevated freeway now largely blocks the dealership from the view of travelers.<sup>197</sup> Prior to reconstruction, there was an MLK Blvd. exit ramp off the freeway that made it easy for customers to access the dealership. According to Mr. Atkission, during the two or three years of construction, all I-10 traffic was routed off the freeway and onto the access roads. The eastbound access road is directly in front of the dealership. Mr. Atkission opined that this was too much traffic in front of the dealership and it was frightening to customers. He testified that, once the construction was completed, road access to the dealership was “worse” but, other than the visibility of the dealership, he did not specify how access was worsened.<sup>198</sup>

The dealership’s current General Manager, Tyrone Allred, testified that it is “almost impossible” to see the dealership when driving in front of it on I-10, and that customers have

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<sup>195</sup> AC Initial Brief at 27.

<sup>196</sup> Tr. at 837-40.

<sup>197</sup> Tr. at 856-57.

<sup>198</sup> Tr. at 856-61.



complained about the difficulty of finding it.<sup>199</sup> Mr. Allred conceded, however, that there are still exit ramps off I-10 for MLK Blvd.<sup>200</sup>

The Dealer Agreements include the following force majeure clause:

#### INABILITY TO PERFORM

[N]either DEALER nor [FCA] will be liable for failure to perform its part of this Agreement when the failure is due to . . . acts of government, . . . or other circumstances beyond the control of the parties.<sup>201</sup>

Atkission Chrysler contends that its failure to achieve 100% of MSR was caused by an act of government (TxDOT's reconstruction of I-10) and, therefore, the dealership should not be held accountable for its non-compliance with the MSR requirement.<sup>202</sup>

FCA responds to this force majeure argument in two ways. First, it challenges the notion that the current location is bad. Essentially all of FCA's witnesses testified that the current location is perfectly acceptable for an auto dealership. Mr. Tunic testified that, when he first visited the dealership in 2014, he had no difficulty seeing, finding, or accessing it. His opinion is that the dealership is in "a fine location."<sup>203</sup> He also stated that he is familiar with a number of auto dealers who have continued to meet their MSR requirements even as highway construction has been ongoing in front of their locations.<sup>204</sup> Mr. Fritz testified that, regardless of whether one is traveling east or west on I-10, the dealership is visible and easily accessed from the freeway. He also opined that the current location is conducive to selling cars because it is located on, and is visible from, a major highway, and it is close to population centers and other retail outlets.<sup>205</sup>

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<sup>199</sup> Tr. at 666-67.

<sup>200</sup> Tr. at 669-70.

<sup>201</sup> FCA Ex. 28(a) at 17.

<sup>202</sup> AC Initial Brief at 27-28; AC Reply Brief at 6.

<sup>203</sup> Tr. at 254-56, 345, 357.

<sup>204</sup> Tr. at 303-04.

<sup>205</sup> Tr. at 197-99.



Mr. Williams does not believe the poor performance can be blamed on the location. He also believes that the public has easy access from the freeway by simply taking the MLK Blvd. exit, regardless of whether traveling east or west on I-10.<sup>206</sup> Mr. Farhat testified that the dealership is easily accessed from the MLK Blvd. exit and, if a customer traveling in either direction on I-10 misses the MLK Blvd. exit, the next exits are not far and finding the way to the dealership remains “very easy.” The dealership’s signage is visible from the freeway, regardless of the direction of travel. In Mr. Farhat’s opinion, as compared to other dealerships Atkission Chrysler is “a very easily accessible dealership.”<sup>207</sup>

Moreover, FCA argues that the dealership’s actions over the years suggest that it does not really believe the location is as bad as it now contends. Mr. Williams testified that if Atkission Chrysler had really been concerned about visibility problems, it could have rented the several billboards that are near the dealership on both sides of the freeway and are available to rent, but the dealership has never done so.<sup>208</sup> Mr. Atkission agreed that billboards can increase sales, but admitted that the dealership currently has none rented. He also agreed that there is a billboard available to rent directly on the other side of I-10 from the dealership.<sup>209</sup> A photograph of that billboard was admitted in evidence. It depicts a large billboard with the words “ADVERTISE HERE” and a phone number.<sup>210</sup> Mr. Farhat testified that there are other such billboards along I-10 in proximity to the dealership.<sup>211</sup>

Mr. Atkission conceded that the dealership:

- Never spoke with or wrote to TxDOT before or during the construction to modify the design or obtain temporary signage to help customers find their location;

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<sup>206</sup> Tr. at 43-46.

<sup>207</sup> Tr. at 613-14.

<sup>208</sup> Tr. at 45-46.

<sup>209</sup> Tr. at 946-47.

<sup>210</sup> FCA Ex. 160.

<sup>211</sup> Tr. at 618-22.



- Never asked FCA for any help or adjustments in response to the construction; and
- Never made any operational or advertising changes to deal with the changes (either during or after the construction).<sup>212</sup>

The Dealer Agreements include a provision whereby Atkission Chrysler may ask FCA to lower its required MSR percentage in order to “take into account extraordinary local conditions to the extent . . . such conditions are beyond DEALER’s control and have affected DEALER’s sales performance.”<sup>213</sup> Atkission Chrysler has never asked FCA to adjust its MSR obligation in response to the freeway construction or for any other reason.<sup>214</sup> Mr. Tunic also stated that the dealership has never complained that the MSR requirement was unfair.<sup>215</sup>

As a second counterpoint to the dealership’s force majeure claim, FCA argues that the dealership’s contention that its poor performance is caused by the TxDOT reconstruction is simply not borne out by the facts. As pointed out by FCA, the dealership’s sales “were terrible before the construction, terrible during the construction, and terrible after the construction.”<sup>216</sup> FCA’s expert witness, Mr. Farhat, examined the highway construction and concluded it could not be blamed for Atkission Chrysler’s poor sales performance. He noted that the dealership’s sales performance had been consistently bad since its inception. Moreover, its best sales performance periods (relatively speaking) occurred during the highway construction, which belied its claim that the construction was disruptive to business.<sup>217</sup>

The ALJs conclude that this factor favors termination. The dealership has chronically failed to achieve 100% of MSR since 2008, in violation of the terms of the Dealer Agreements.

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<sup>212</sup> Tr. 987-89.

<sup>213</sup> FCA Exs. 28(a) at 3, 28(b) at 4.

<sup>214</sup> Tr. at 54, 304, 378-79.

<sup>215</sup> Tr. at 304-05.

<sup>216</sup> AC Reply Brief at 25.

<sup>217</sup> Tr. at 608-10; FCA Ex. 151 at 68.



These failures have almost always been by a wide margin, such that the dealership ranks as the very worst performing FCA dealership in the entire state.

The evidence does not prove that this failure was caused by the I-10 reconstruction. The dealership's testimony on this point was not credible. For example, the dealership contended that the reconstruction caused both too much access (i.e. during construction all eastbound traffic was routed onto the access road in front of the dealership, thereby "scaring" customers) and too little access (i.e., the dealership is not visible, post construction). Essentially all of the FCA witnesses testified that the dealership was visible and easily accessed. The ALJs found this testimony to be credible. The dealership's actions throughout the construction and post-construction phases suggest that the freeway was not really the cause of the dealership's problems. In sum, the dealership failed to prove that its non-achievement of 100% of MSR, and all of its other breaches of the Dealer Agreements, were caused by the I-10 construction. For this reason, the force majeure clause is not applicable.

## **2. Breach of the Warranty Obligations**

Pursuant to the Dealer Agreements, Atkission Chrysler is obligated to "comply with parts, service, and warranty guides established by [FCA] from time to time," as well as FCA's "then current" warranty policies and procedures.<sup>218</sup> As discussed more fully in Section IV.F., above, an audit of Atkission Chrysler in 2012 found that the dealership had committed errors or discrepancies in its charges to FCA for various warranty work it had performed. As a result, FCA issued a \$31,172.86 chargeback.<sup>219</sup> A 2014 informal audit identified four instances in which Atkission Chrysler submitted claims for reimbursement to FCA for warranty work and the claims stated that technicians who are trained to perform warranty work did the work in question when, in reality, non-trained technicians actually performed the work, in violation of FCA's

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<sup>218</sup> FCA Exs. 28(a) at 4, 28(b) at 4.

<sup>219</sup> FCA Ex. 41.



warranty policies.<sup>220</sup> For the same reasons as discussed in Section IV.F., above, the ALJs conclude that this factor is basically neutral, neither supporting nor weighing against termination.

### 3. Breach of the Management Obligations

In the Dealer Agreements, there is a section entitled “DEALER’S MANAGEMENT,” which reads as follows:

[FCA] has entered into this Agreement relying on the active, substantial and continuing personal participation in the management of DEALER’s organization by:

Cecil R. Atkission

DEALER represents and warrants that at least one of the above-named individuals will be physically present at the DEALER’s facility . . . during most of its operating hours and will manage all of DEALER’s business relating to the sale and service of [FCA] products. DEALER shall not change the personnel holding the above described position(s) or the nature and extent of his/her/their management participation without the prior written approval of [FCA].<sup>221</sup>

Mr. Chandler testified that, oftentimes, dealers will insert more than one name in this paragraph of the Dealer Agreement, such as by adding the name of the dealership’s general manager. This is particularly so in cases in which the owner of the dealership does not live in the town where the dealership is located. In this case, however, the dealership chose only to include Mr. Atkission’s name in the provision. FCA leaves the decision regarding whose name(s) to insert completely up to the dealership.<sup>222</sup>

In other dealer agreements that Mr. Atkission has executed for the two other FCA dealership locations that he owns elsewhere in Texas, he chose to insert his name and his general manager’s name in this contractual provision. As to Atkission Chrysler, however, Mr. Atkission

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<sup>220</sup> FCA Ex. 43; Tr. at 152-53.

<sup>221</sup> FCA Exs. 27(b) at 1, 27(c) at 1, 27(d) at 1.

<sup>222</sup> Tr. at 366-67, 456-57.



admitted that he, and only he, made the decision to solely insert his name in the Dealer Agreements.<sup>223</sup> Mr. Atkission admitted that, when he signed the Dealer Agreements for Atkission Chrysler, he represented to FCA that: (1) he was going to be the manager of the dealership; and (2) he would be present during at least half of the dealership's business hours (the 50% presence requirement).<sup>224</sup>

The evidence is undisputed that Mr. Atkission failed to comply with the 50% presence requirement. Mr. Atkission lives in Kerrville, Texas, which is several hundred miles from Orange. He does not have an office at the dealership. He comes to Orange on most (but not all) Tuesdays and splits his time on that day between Atkission Chrysler and Atkission Toyota.<sup>225</sup> Mr. Atkission admitted that he has never been present at the dealership during at least half of its business hours, but estimated he has been present roughly 15% to 20% of business hours.<sup>226</sup> FCA argues that this constitutes a material breach of the agreement.<sup>227</sup>

Atkission Chrysler concedes that Mr. Atkission has failed to abide by the 50% presence requirement. However, it argues that the requirement is not binding. At the time Mr. Atkission signed the Dealer Agreements for Atkission Chrysler, FCA was aware that he owned multiple other dealerships. From these facts, Atkission Chrysler argues that it and FCA had an "understanding" that the 50% presence requirement was not binding.<sup>228</sup>

The dealership's argument is not convincing. As pointed out by FCA, Mr. Atkission has, on multiple occasions, included the names of general managers in the 50% presence requirement

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<sup>223</sup> Tr. at 911-12.

<sup>224</sup> Tr. at 912-13.

<sup>225</sup> Tr. at 48, 683, 725-26, 909-10.

<sup>226</sup> Tr. at 912-13. The ALJs suspect that this is a too-generous estimation by Mr. Atkission. Mr. Atkission is present for a half day, one day a week. If one assumes a half day equals 4 hours, and the dealership is open 40 hours per week, then he is present only 10% of the time. However, the ALJs suspect the dealership is open substantially more than 40 hours per week.

<sup>227</sup> Tr. at 401-02; FCA Initial Brief at 37-38.

<sup>228</sup> AC Initial Brief at 36-37.



on other dealer agreements. Because he chose to insert only his name in the 50% presence requirement of the Atkission Chrysler Dealer Agreements, it was reasonable for FCA to assume that Mr. Atkission personally planned to comply with the 50% presence requirement.<sup>229</sup> The fact that he has not done so constitutes a breach of the Dealer Agreements, a factor that favors termination.

#### **4. Breach of the Personnel Obligations**

The Dealer Agreements obligate Atkission Chrysler to “employ and maintain for its retail business a number of trained and competent new and used motor vehicle sales . . . and general management personnel that are sufficient for DEALER to carry out successfully all of DEALER’s undertakings in this Agreement.”<sup>230</sup> Mr. Atkission admitted that it is very difficult to find, hire, and retain employees at the dealership. He attributes this problem to the dilapidated appearance of the dealership. He stated: “[I]f I was looking for a job, it’s probably not one of the spots that I would want to work at.”<sup>231</sup> He also blamed the poor location and poor sales of the dealership, which he believes makes it hard for employees “to make a living.”<sup>232</sup> Mr. Atkission and the dealership’s current general manager, Mr. Allred, conceded that the store experiences high employee turnover due to low sales.<sup>233</sup>

According to Mr. Williams, the National Dealer Association (NDA) publishes guidelines and recommendations regarding various aspects of the industry. NDA recommends that a salesman should be expected to make roughly eight sales per month. Because Atkission Chrysler’s 100% MSR achievement rate works out to roughly 40 cars per month, Mr. Williams and FCA contend that the dealership should have on staff at least five salespeople.<sup>234</sup> The

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<sup>229</sup> FCA Reply Brief at 38.

<sup>230</sup> FCA Exs. 28(a) at 5, 28(b) at 5.

<sup>231</sup> Tr. at 864.

<sup>232</sup> Tr. at 865.

<sup>233</sup> Tr. at 680, 939.

<sup>234</sup> Tr. at 76-77.



dealership has consistently had fewer salespeople on staff, typically three, but sometimes only two. For example, in August 2012, the dealership had one new car salesman and two used car salesmen. By contrast, the number of salesmen at other dealerships FCA considers Atkission Chrysler to be competitive with averaged nine for new car sales and eight for used car sales.<sup>235</sup>

On numerous occasions over the years, FCA has expressed to Atkission Chrysler concerns about the lack of a sufficient and competent sales force at the dealership. For example, in October 2012, FCA prepared and discussed with the dealership a MSR/Critical Review Worksheet which discussed what FCA considered to be numerous defects in the dealership's operations. At that time, the dealership had three car salesmen on staff, while FCA believed that 4 to 5 were needed in order to achieve 100% of MSR. Moreover, FCA noted that the dealership had "high turnover in sales force and mgmt."<sup>236</sup> Similar conversations were had over the course of many months.<sup>237</sup> In one report, Mr. Williams identified "personnel issues" as being among the causes of the dealership's failure to achieve 100% of MSR.<sup>238</sup>

The dealership has also had high turnover at the general manager (GM) position. Since its inception in March 2008, the dealership has had at least six GMs, a number that Mr. Atkission admits he is not proud of.<sup>239</sup> There have been five GMs just since early 2012. Each change of GM has typically also brought about a new sales manager and further changes in staff. The rate of change in GMs is excessive in comparison to other dealerships.<sup>240</sup> The high turnover of GMs has been disruptive to the business's operations and customer relations.<sup>241</sup> The fact that Mr. Atkission is not personally heavily involved or present at the dealership makes the absence of a steady hand in the GM position even more problematic for efficient operation of the

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<sup>235</sup> FCA Ex. 53(b); Tr. at 85.

<sup>236</sup> FCA Ex. 53(b) at 1.

<sup>237</sup> See, e.g., FCA Exs. 53(e), 53(j), 54(a), 54(d), 54(e), 54(f), 54(g), 54(h), 55(d).

<sup>238</sup> FCA Ex. 55(a).

<sup>239</sup> Tr. at 939, 947-49.

<sup>240</sup> Tr. at 51-52.

<sup>241</sup> Tr. at 251.



dealership.<sup>242</sup> The most recent, and current, GM is Mr. Allred. He started in that position roughly seven months after FCA issued the Notice of Termination, and he has been GM for less than a year.<sup>243</sup> He received no training for his new job.<sup>244</sup> Moreover, each GM has served a dual role—as the GM not only of Atkission Chrysler, but also of Atkission Toyota.<sup>245</sup> The dealership touts Mr. Allred’s long years of experience in the auto sales industry and expresses optimism that, with Mr. Allred, they now have “the right guy” in the GM position. The ALJs find it notable, however, that Mr. Allred was not hired until many months after the Notice of Termination.

Atkission Chrysler also shares a number of other key employees with Atkission Toyota. Ms. Boram serves as the office manager for both businesses and spends most of her time at the Toyota location.<sup>246</sup> The two locations share an employee who handles Finance and Insurance (F&I), two office workers, an accounting department, and a comptroller.<sup>247</sup> Other management positions at the dealership also experience high turnover. For example, at the time Mr. Allred was deposed for this case, the dealership’s sales manager had only been employed for a month, his predecessor had held that job for only eight months, the service advisor had held the position for only three months, and the position for advertising manager was vacant. The advertising manager position remained vacant at the time of the hearing.<sup>248</sup>

Atkission Chrysler does not dispute that the dealership is understaffed. Rather, it contends that it has the right number of employees to operate at a sub-par level: “Atkission has staffed the Dealership with the sales and service personnel necessary to meet the low demand

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<sup>242</sup> Tr. at 278-79.

<sup>243</sup> Tr. at 949.

<sup>244</sup> Tr. at 680.

<sup>245</sup> Tr. at 681.

<sup>246</sup> Tr. at 950.

<sup>247</sup> Tr. at 918.

<sup>248</sup> Tr. at 679-80.



caused by the bad location.”<sup>249</sup> The dealership argues that it should be excused, pursuant to the force majeure clause in the Dealer Agreements, from having any more staff on hand: “Requiring the Dealership to spend money . . . for more personnel at the current location would be senseless economically, which is why Section 37 [the force majeure clause] applies to this situation.”<sup>250</sup>

The ALJs are unpersuaded by the dealership’s arguments. As already discussed above, the ALJs have concluded that the force majeure clause is not applicable to this case. Atkission Chrysler contractually committed itself to employ a sufficient number of employees for it to successfully carry out all of its obligations under the Dealer Agreements. It admits that it has not done so. Instead, it has maintained only enough employees to operate at a level at which it is not carrying out all of its contractual obligations. Moreover, it has declared that it will do no more, because to do so would be “senseless.” The dealership argues that it could do better if it moved to a new location, but it contractually bound itself to do better at the *current* location. For these reasons, the ALJs conclude that Atkission Chrysler has breached its personnel obligations in the Dealer Agreements, a factor that favors termination.

## 5. Breach of the Facility Obligations

The Dealer Agreements obligate Atkission Chrysler to “at all times maintain the Dealership Facilities so that they . . . are relatively equivalent in their attractiveness, level of maintenance, overall appearance and use to those facilities maintained by DEALER’s principal competitors.”<sup>251</sup> The evidence establishes that the dealership has not complied with this requirement.

By Mr. Atkission’s own admission, the dealership’s facilities are “in very poor repair, very outdated, not up to [Atkission’s] standards at all,” “very old” and not laid out very well, and “not very good;” the facilities do not compare favorably to other Chrysler dealerships, or to

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<sup>249</sup> AC Reply Brief at 6.

<sup>250</sup> AC Reply Brief at 7.

<sup>251</sup> FCA Exs. 28(a) at 5, 28(b) at 5.



the Chevrolet, Toyota, and Ford dealerships in Orange; and the facilities need a lot of repairs, are not conducive to a successful business, and are not compliant with FCA's image program.<sup>252</sup> In January 2008 (at the time he was attempting to acquire the dealership), Mr. Atkission committed, in writing, to complete several construction projects in order to "enhance the facility."<sup>253</sup> At the hearing, Mr. Atkission admitted that none of these projects was ever undertaken.<sup>254</sup>

Mr. Allred agrees that the dealership's facilities are in poor condition, overdue for replacing, and not worth updating.<sup>255</sup> He also agrees that the poor condition of the facilities impacts the dealership's success and affects its customers.<sup>256</sup> Ms. Boram, the dealership's office manager, agrees that the dealership's facilities are worse than the other auto dealers in the area and that the main sign for the facility is "an eyesore."<sup>257</sup> Ms. Boram thinks the best approach for the needed updating of the facility is to simply "burn it" and replace it.<sup>258</sup>

FCA's witnesses agree that the facilities are woefully inadequate and outdated. Mr. Chandler described the dealership as "one of the worst facilities I've ever seen. . . . It's improperly branded, it's improperly maintained. It's old. It's – it's everything that we're trying to get away from as a company."<sup>259</sup> Mr. Fritz testified that the facility does not meet FCA's current design standards, uses obsolete signage, and is poorly maintained.<sup>260</sup> Mr. Tunic testified that the facility is old, dated, in need of repair, and not competitive with other dealers in the

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<sup>252</sup> Tr. at 838-39, 984-87.

<sup>253</sup> FCA Ex. 3.

<sup>254</sup> Tr. at 989-91.

<sup>255</sup> Tr. at 662-63.

<sup>256</sup> Tr. at 686-87.

<sup>257</sup> Tr. at 728.

<sup>258</sup> Tr. at 718.

<sup>259</sup> Tr. at 381.

<sup>260</sup> Tr. at 199-200.



area.<sup>261</sup> Mr. Farhat described it as a “tired looking,” “dated,” “sleepy” facility that is in need of paving repairs in the lot, and almost appears to be abandoned.<sup>262</sup>

Atkission Chrysler concedes that it has not met its obligation to operate in facilities that are relatively equivalent in their attractiveness, level of maintenance, and overall appearance to those of its competitors. In his testimony, Mr. Atkission expressly acknowledged this fact.<sup>263</sup> Rather, the dealership argues that it should be excused, pursuant to the force majeure clause in the Dealer Agreements, from this obligation: “Requiring the Dealership to spend money . . . to upgrade its leased facility at the current location would be senseless economically, which is why Section 37 [the force majeure clause] applies to this situation.”<sup>264</sup>

The ALJs remain unpersuaded by the dealership’s arguments. The ALJs have concluded that the force majeure clause is not applicable to this case. Atkission Chrysler contractually committed itself to operate in facilities that are relatively equivalent in their attractiveness, level of maintenance, and overall appearance to those of its competitors. It admits that it has not done so and declared that it will not do so because it would be “senseless.” The dealership argues that it could do better if it moved to a new location, but it contractually bound itself to do better at the current location. For these reasons, the ALJs conclude that Atkission Chrysler has breached its facility obligations in the Dealer Agreements, a factor that favors termination.

## **6. Breach of the Place of Business Obligations**

The Dealer Agreements obligate Atkission Chrysler to conduct its operations “only from the dealership location” and prohibit it from, “either directly or indirectly establish[ing] any place or places of business for the conduct of its Dealership Operations other than from the Dealership’s Facilities and Dealership Operations location as set forth in the Dealership Facilities

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<sup>261</sup> Tr. at 256.

<sup>262</sup> Tr. at 616-18.

<sup>263</sup> Tr. at 932-33.

<sup>264</sup> AC Reply Brief at 7.



and Location Addendum.”<sup>265</sup> The Dealership Facilities and Location Addendum, in turn, authorizes Atkission Chrysler to conduct operations solely at its place of business. Atkission Toyota is not identified as an approved location for operations associated with Atkission Chrysler.<sup>266</sup>

The preponderance of the evidence establishes that this “place of business obligation” has been repeatedly breached by the dealership. Typically, the business of completing a transaction for the sale of a new vehicle is handled at the business location of the dealership making the sale.<sup>267</sup> At Atkission Chrysler, the process is handled differently. Because the dealership does not have its own infrastructure as far as a business office or an F&I office, these things are taken care of at the Toyota store. Thus, an Atkission Chrysler customer will deal with a salesperson at the Chrysler location, but when he agrees to purchase an FCA vehicle, he has to travel to the Atkission Toyota location to sign the paperwork and contracts. He then returns to the Chrysler store to take delivery of the vehicle. Mr. Williams testified that this process is more difficult for the customer and makes Atkission Chrysler the “stepchild of” and “subservient to” Atkission Toyota.<sup>268</sup>

Mr. Atkission conceded that the F&I activities for sales of cars at the dealership are handled at the Atkission Toyota location, which is less convenient for the customers. He also agreed that F&I activities are a part of dealership operations.<sup>269</sup> He considers Atkission Chrysler’s business office to be located at Atkission Toyota.<sup>270</sup> Mr. Tunic opined that, by making Chrysler customers travel the Toyota location to complete their purchases, Atkission Chrysler is undermining its customer relations.<sup>271</sup>

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<sup>265</sup> FCA Exs. 28(a) at 5, 28(b) at 5.

<sup>266</sup> FCA Exs. 20, 21; Tr. at 931-35.

<sup>267</sup> Tr. at 279.

<sup>268</sup> Tr. at 49-51.

<sup>269</sup> Tr. at 897-98, 920-21, 936.

<sup>270</sup> Tr. at 897-98.

<sup>271</sup> Tr. at 279-802.



Atkission Chrysler does not dispute that it makes customers travel to the Toyota location to complete transactions. Rather, it makes a “no harm no foul” argument, asserting that this is not a meaningful violation of the terms of the Dealer Agreements because FCA “offered no evidence of any customer complaints about having to complete some paperwork at the Toyota dealership in connection with the purchase of a Chrysler vehicle.”<sup>272</sup>

The ALJs find that FCA proved repeated violations of the place-of-business obligation set forth in the Dealer Agreements. Making Chrysler customers travel to the facilities of another brand to complete their transactions causes harm to the Chrysler brand. This fact is self-evident with or without evidence of customer complaints. The ALJs suspect this is precisely why FCA included the place of business obligation in the Dealer Agreements in the first place. The ALJs conclude that this is another factor favoring termination.

## **7. Breach of the Advertising Obligations**

The Dealer Agreements obligate Atkission Chrysler to “promote [FCA] products and services vigorously and aggressively.”<sup>273</sup> The evidence establishes that the dealership has not complied with this requirement.

The dealership does not devote vigorous effort to advertising. The dealership’s advertising manager position is unfilled.<sup>274</sup> Mr. Atkission explained that the dealership does not spend a fixed amount on advertising. Instead, it aims to spend between 6% and 8% of its gross profits on advertising. Because the amount of gross profits varies over time, the amount spent on advertising also varies.<sup>275</sup> Moreover, because its sales are low and the dealership is a chronically money-losing business, the dealership’s gross profits are low, resulting in low advertising expenditures. Based on the amounts spent on advertising as shown in the dealership’s own

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<sup>272</sup> AC Initial Brief at 37.

<sup>273</sup> FCA Exs. 28(a) at 6, 28(b) at 6.

<sup>274</sup> Tr. at 680.

<sup>275</sup> Tr. at 974-75.



financial reports, the dealership has, for years, spent less than half of what other dealers in the Orange area and other dealers of comparable size spend on advertising each month.<sup>276</sup> The dealership argues that its financial statements understate, by roughly \$1,600 per month, the amount it spends on advertising.<sup>277</sup> Even assuming this claim is true, however, it does not alter the fact that the dealership greatly underspends on advertising. Even with the claimed amount added in, Mr. Atkission admitted that the dealership spends much less on advertising than its competitors and comparable other dealers.<sup>278</sup>

Since 2013, the dealership has not rented any of the several billboards that are near the dealership on both sides of the freeway and are available to rent.<sup>279</sup> Atkission Chrysler concedes that it has not met its advertising obligations. Again, it argues that it should be excused, pursuant to the force majeure clause, from the obligation of promoting FCA products and services vigorously and aggressively: “Requiring the Dealership to spend money . . . for more advertising . . . at the current location would be senseless economically, which is why Section 37 [the force majeure clause] applies to this situation.”<sup>280</sup>

The force majeure clause is not applicable to this case. Atkission Chrysler contractually committed itself to engage in sufficient advertising. It admits that it has not and will not, because to do more would be “senseless.” The dealership argues that it could do better if it moved to a new location, but it contractually bound itself to do better at the current location. For these reasons, the ALJs conclude that Atkission Chrysler has breached its advertising obligations in the Dealer Agreements, a factor that favors termination.

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<sup>276</sup> Tr. at 70-71, 75, 251-52, 402-03; *see also, e.g.*, FCA Exs. 53(b) at 10, 53(e) at 1.

<sup>277</sup> Tr. at 901-02, 942-43.

<sup>278</sup> Tr. at 941.

<sup>279</sup> Tr. at 45-46, 687.

<sup>280</sup> AC Reply Brief at 7.



## 8. Breach of the Signage Obligations

The Dealer Agreements obligate Atkission Chrysler to “display and maintain brand signs, fascia and other signage in compliance with the policies and guidelines of [FCA’s] Dealership Identification Program, including any modification or revisions to such policies and guidelines.”<sup>281</sup> Consistent with this obligation, Mr. Atkission signed, on April 9, 2013, a Dealer Identity Program Consent and Participation Agreement (Dealer Identity Agreement) in which the dealership obligated itself to purchase and display FCA’s current signage, called “Millennium Signage,” which reflects the company’s current brand logos and is intended to promote FCA’s effort to maintain a recognizable and consistent image nationwide.<sup>282</sup> Millennium Signage has been in effect since 2010.<sup>283</sup>

The evidence establishes that the dealership has not complied with this requirement and has never installed the Millennium Signage. Signage in this context refers not only to the dealership’s signs on poles, but also the “fascia,” or brands signs that go on the walls of the dealership.<sup>284</sup> The dealership still uses old, out-of-date signage.<sup>285</sup> As stated previously, the main pole sign in front of the dealership was damaged by Hurricane Ike in September 2008, but never fixed.<sup>286</sup> Rather, Atkission Chrysler placed a plastic bag over it with the dealership’s name and brands printed on the bag. For years, the dealership has declined to invest in a new sign.<sup>287</sup> According to Mr. Chandler, all of the dealership’s current signage is not compliant with FCA policies,<sup>288</sup> and it is the only dealer in the Southwest Business Center whose signage is non-compliant.<sup>289</sup>

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<sup>281</sup> FCA Exs. 28(a) at 6, 28(b) at 6.

<sup>282</sup> FCA Ex. 31(g); Tr. at 201-02, 415-17.

<sup>283</sup> Tr. at 420-21.

<sup>284</sup> Tr. at 256.

<sup>285</sup> Tr. at 256-57, 401.

<sup>286</sup> Tr. at 713.

<sup>287</sup> Tr. at 866-70, 1012.

<sup>288</sup> Tr. at 418-19.

<sup>289</sup> Tr. at 421-22; FCA Ex. 128.



In May and August 2013, the Principal Group, FCA's vendor responsible for installing Millennium Signage, sent Atkission Chrysler a detailed proposal to bring its signage into compliance. The dealership informed the Principal Group that they were not interested.<sup>290</sup> In May 2015, FCA wrote a letter again urging the dealership to update its signage by implementing the proposal from the Principal Group. The estimated cost of the proposal was roughly \$53,000, of which roughly \$30,000 was to be paid as a deposit and the remainder was to be paid prior to product shipment.<sup>291</sup> FCA wrote follow-up letters again urging the dealership to come into compliance in August and September 2015.<sup>292</sup> In meetings with Mr. Fritz during this time, Mr. Atkission reported that he had no intention of installing new, compliant signage because he wanted to relocate.<sup>293</sup>

Finally, in mid-September 2015, many months after the Notice of Termination had been issued, the dealership sent the deposit to Principal Group for the signage.<sup>294</sup> However, the dealership never paid the remainder, never sent in documentation needed by the Principal Group to prepare the signs, and never installed the new, required signage. Further, Mr. Atkission testified that he did not intend to do so at the current location.<sup>295</sup> As late as December 31, 2015, Mr. Atkission was told by the Principal Group that it needed additional documentation, but the dealership has not provided it.<sup>296</sup> The ALJs conclude that, by paying the deposit but not doing the other things necessary to complete the installation of the signage, the dealership was attempting to create, for the purposes of this hearing, the appearance of doing something with regard to signage, without really doing anything.

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<sup>290</sup> FCA Exs. 31(h), 70; Tr. at 417-20.

<sup>291</sup> FCA Ex. 70; Tr. at 423-24.

<sup>292</sup> FCA Exs. 71, 73.

<sup>293</sup> Tr. at 204.

<sup>294</sup> FCA Ex. 144.

<sup>295</sup> Tr. at 211-12; 869-70.

<sup>296</sup> Tr. at 1012-13.



The dealership maintains that it is FCA's duty, not the dealership's, to fix the damaged pole sign. According to Ms. Boram, the sign is owned by FCA and the dealership pays monthly rent to FCA for its use.<sup>297</sup> Mr. Atkission also believes that FCA owns and is responsible for maintaining the pole sign.<sup>298</sup> He testified that the dealership tried unsuccessfully to find the parts needed to repair the sign. He admitted that, other than placing the bag over it and illuminating it, the sign has not been repaired since the 2008 hurricane.<sup>299</sup>

Atkission Chrysler concedes that it has not met its signage obligations. Again, it argues that, pursuant to the force majeure clause in the Dealer Agreements, it should be excused from having compliant signage: "Requiring the Dealership to spend money . . . for new signage . . . at the current location would be senseless economically, which is why Section 37 [the force majeure clause] applies to this situation."<sup>300</sup>

The force majeure clause is not applicable to this case. Atkission Chrysler contractually committed itself to have compliant signage. It admits that it lacks such signage and will not bring the signage up to compliance because to do so would be "senseless." The dealership argues that it could do better if it moved to a new location, but it is contractually bound to do better at the current location. For these reasons, the ALJs conclude that Atkission Chrysler has breached its signage obligations in the Dealer Agreements, a factor that favors termination.

The ALJs find the circumstances regarding the pole sign to be particularly troubling and illustrative. The sign was damaged by a hurricane in 2008. For the almost eight years since then, the sign has consisted of a plastic bag. The dealership claims that it is FCA's duty to repair the sign, but this is contradicted by the plain text of the Dealer Agreements. The dealership's assertion that it tried to fix the sign but was unsuccessful is not credible. The ALJs suspect that signs can be fixed in Orange, Texas just as capably as they can in any other part of the state. The

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<sup>297</sup> Tr. at 713-15.

<sup>298</sup> Tr. at 865-66.

<sup>299</sup> Tr. at 867-68.

<sup>300</sup> AC Reply Brief at 7.



dealership's actions (or, more accurately, inactions) with respect to the pole sign reveal a remarkable passivity and apathy about its own affairs. This strongly supports FCA's entitlement to the termination it seeks.

## **9. Breach of the Working Capital and Net Worth Obligations**

The Dealer Agreements obligate Atkission Chrysler to “maintain and employ in connection with DEALER’s business such net working capital [and] net worth . . . necessary for DEALER to carry out successfully DEALER’s undertakings pursuant to this Agreement and in accordance with guides therefore as may be issued by [FCA] from time to time.”<sup>301</sup> The dealership also signed a Minimum Working Capital Agreement in which it expressly agreed: (1) that “Working Capital of \$908,847 is necessary for DEALER to carry out said DEALER’s undertakings;” (2) that the dealership’s working capital at the time of the agreement (March 2008) equaled \$1,033,200; and (3) that the dealership would maintain working capital of at least \$908,847 at all times.<sup>302</sup> The Dealer Agreements further obligate the dealership to submit to FCA “complete and accurate” monthly financial statements which report, among other things, the dealership’s net worth and working capital figures.<sup>303</sup>

The evidence establishes that the dealership has not complied with these requirements. The dealership’s own financial statements indicate the following, with regard to working capital and net worth:

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<sup>301</sup> FCA Ex. 28(a) at 5.

<sup>302</sup> FCA Ex. 20.

<sup>303</sup> FCA Ex. 28(a) at 6.



**The Dealership's Working Capital<sup>304</sup>**

<b>Year-end</b>	<b>Dealership's Working Capital</b>	<b>Amount of Working Capital Required by FCA Guide<sup>305</sup></b>	<b>Working Capital Deficiency</b>
2010	\$848,830	\$1,080,000	(\$231,170)
2011	\$593,332	\$1,108,800	(\$515,468)
2012	\$628,871	\$1,120,000	(\$491,129)
2013	\$1,058,514	\$1,160,000	(\$101,486)
2014	\$698,426	\$1,191,400	(\$492,974)
2015 (thru October)	\$545,263	\$1,254,000	(\$708,737)

**The Dealership's Net Worth<sup>306</sup>**

<b>Year-end</b>	<b>Dealership's Net Worth</b>
2010	(\$637,667)
2011	(\$1,143,468)
2012	(\$1,723,136)
2013	(\$1,996,226)
2014	(\$2,609,882)
2015 (thru October)	(\$3,361,905)

The fact that the dealership's net worth has been a steadily growing negative number reflects that Atkission Chrysler has steadily lost money every year since 2010.<sup>307</sup> The numbers reported by the dealership to FCA prove that the dealership has violated the Dealer Agreements by not maintaining: (1) working capital in accordance with the mandatory FCA guides; and (2) net worth at levels necessary for it "to carry out successfully" its obligations under the Dealer

<sup>304</sup> FCA Exs. 33(l), 34(l), 35(l), 36(l), 37(l), 38(k).

<sup>305</sup> The amount of working capital required by the FCA guide varies over time because it is derived from a mathematical formula that takes into account numerous factors related to actual dealership operations. See FCA Ex. 20 at 2.

<sup>306</sup> FCA Exs. 33(l), 34(l), 35(l), 36(l), 37(l), 38(k).

<sup>307</sup> See also FCA Ex. 152 at 21; Tr. at 478-80.



Agreements. The parties agree that the only way the dealership has remained in operation despite these losses has been the periodic infusions of “Cecil Money.”<sup>308</sup>

Atkission Chrysler agrees that, as reflected in the financial statements prepared by the dealership and submitted to FCA over the years, the company’s net worth and working capital do not meet the requirements set out in the Dealer Agreements. However, the dealership now argues that, rather than relying on the “working capital” and “net worth” entries on the financial statements, the ALJs and the Department should consider the adequacy of the dealership’s “constructive working capital” and “constructive net worth.”<sup>309</sup> Specifically, the dealership contends that the “Cecil Money” Mr. Atkission has periodically poured into the dealership ought to be counted as a part of the dealership’s working capital and net worth.

To do this, the dealership’s accounting expert, Mr. Woodward, would reclassify the Cecil Money on the dealership’s financial statements. As reported to FCA, the Cecil Money has been recorded in two entries, “Notes Payable” and “Other Notes and Contracts.” Mr. Woodward testified that those entries should be deleted and, in their place, the entire amount of Cecil Money should be entered on the “Subordinated Notes” section of the financial statements. Mr. Woodward argues for this change because he considers “Subordinated Notes” to be a “quasi-capital-net worth account.”<sup>310</sup> According to Mr. Woodward, when these changes are made, the dealership’s numbers for 2015 (through October) would be:

- “Constructive Working capital”: \$2,226,237, instead of (\$708,737) as reported to FCA; and
- “Constructive Net worth”: \$2,688,095, instead of (\$3,361,905) as reported to FCA.<sup>311</sup>

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<sup>308</sup> See, e.g., AC Initial Brief at 29.

<sup>309</sup> Tr. at 763-75, 1070.

<sup>310</sup> AC Ex. 29 at 2. During most of the hearing, Atkission Chrysler contended that the Cecil Money totaled \$6,250,000. However, the accounting performed by Mr. Woodward suggests that the true amount is \$6,050,000.

<sup>311</sup> AC Ex. 29 at 2; Tr. at 1068-69.



With these same changes on all of the financial statements, the dealership would show sufficient working capital and net worth throughout its existence.<sup>312</sup> Mr. Woodward testified that, in the auto retail dealer industry, it is an accepted practice to treat money that an owner loans to his dealership as the dealership's equity, even though it is technically a loan.<sup>313</sup> With these changes, Atkission Chrysler argues that it has never been undercapitalized. It points out that it has always had sufficient capital on hand to pay its bills.<sup>314</sup> Mr. Coleman opined that it is appropriate to treat Cecil Money like working capital because, in practice, the dealership uses it like working capital, to pay the dealership's expenses.<sup>315</sup>

The ALJs find that the dealership's attempt to redefine its working capital and net worth at this stage is unreasonable. FCA points out that Mr. Woodward developed his theory many months after the Notice of Termination was issued, and his recommended changes to the dealership's accounting came about only in response to the Notice of Termination. Mr. Woodward was a credible witness and clearly has expertise in matters of accounting for auto dealerships. Nevertheless, for the eight years of its existence, Atkission Chrysler and FCA have agreed on a generally-accepted yardstick for measuring the dealership's working capital and net worth. During those eight years, the dealership's reported working capital and net worth have always come up short. Now that Atkission Chrysler is confronted with the consequences of not measuring up, it seeks to change the yardstick.

Moreover, the ALJs are convinced that the method of measuring working capital and net worth advocated by FCA (and as reported by the dealership for eight years) is the more standard and generally accepted practice and ought to govern here. For example, prior to this proceeding no one at the dealership ever complained to FCA that the working capital and net worth amounts it had reported over the years were inaccurate or needed to be changed, despite a thorough review by the GM, office manager, dealership accountant, and Mr. Atkission each month prior to

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<sup>312</sup> Tr. at 763-75, 1082-83.

<sup>313</sup> Tr. at 1075, 1078.

<sup>314</sup> AC Initial Brief at 36; Tr. at 697, 722-23, 755-56.

<sup>315</sup> Tr. at 752-53.



submission to FCA.<sup>316</sup> Moreover, the terms “constructive working capital” and “constructive net worth,” as now advocated by the dealership, are not terms of art used in the accounting profession, and the financial reporting forms used by FCA and the dealership do not use either of those terms.<sup>317</sup> The dealership reports its working capital and net worth to the United States Internal Revenue Service in exactly the same way it has always reported them to FCA.<sup>318</sup> Working capital is generally defined as current assets minus current liabilities.<sup>319</sup> A current liability, in turn, is any short-term obligation (i.e. any debt that is paid back within 12 months).<sup>320</sup> The infusions of Cecil Money are often (possibly primarily) used by the dealership to fund short-term loans for vehicle inventory, loans that are often paid down on a daily basis. As explained by FCA’s accounting expert, Herbert Walter, because the loans are paid back quickly, they are not long-term obligations and, therefore, cannot be considered a part of working capital or net worth.<sup>321</sup>

Understandably, FCA believes it is important to keep an eye on the working capital and net worth amounts of its dealers. It does this so that it can monitor the financial health of those dealerships. In this case, the numbers paint a clear picture: the dealership has been a slowly dying patient for at least six years, and the only thing keeping it alive has been periodic infusions of Cecil Money. The dealership’s attempted reclassification of the accounts would not change that reality. The dealership has lost between \$5 million and \$6 million since its inception in 2008,<sup>322</sup> and the evidence in the record suggests that this downward trend is only accelerating. The ALJs conclude that Atkission Chrysler has breached its working capital and net worth obligations in the Dealer Agreements, a factor that favors termination.

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<sup>316</sup> Tr. at 262-63, 790-93.

<sup>317</sup> Tr. at 793-94.

<sup>318</sup> Tr. at 501-02, 995-96.

<sup>319</sup> Tr. at 489.

<sup>320</sup> Tr. at 1120.

<sup>321</sup> Tr. 490-502,

<sup>322</sup> Tr. at 820.



**H. The Enforceability of the Franchise from a Public Policy Standpoint**

Neither party has asserted that the franchise is unenforceable from a public policy standpoint,<sup>323</sup> and the ALJs can discern no public policy issues related to the enforceability of the franchise. The ALJs conclude that, because the franchise is enforceable from a public policy standpoint and Atkission Chrysler is not complying with multiple requirements of the franchise, this factor supports termination.

**I. Whether the Desire for Market Penetration is the Sole Basis for Termination**

Market penetration is the ratio of vehicle registrations for a specific brand to the number of vehicle registrations by competitors in a geographic area.<sup>324</sup> The market penetration for Chrysler vehicles in the Southwest Business Center was 11.3% in 2012, 12.2% in 2013, 12.9% in 2014, and 13.1% YTD for 2015, showing a steady increase in the demand for Chrysler vehicles over the past four years.<sup>325</sup> Code § 2301.455(b) provides that in determining whether the party seeking termination has established good cause, “[t]he desire . . . for market penetration does not by itself constitute good cause.” In this case, Atkission Chrysler argues that the “true reason” FCA is seeking termination of the Atkission Chrysler franchise is to increase FCA’s market penetration in the Orange Sale Locality.<sup>326</sup> As support for this argument, Atkission Chrysler points to the testimony of FCA witnesses wherein they acknowledge FCA’s desire to have a dealer in the Orange Sales Locality who will achieve 100% of MSR and have a bigger market share.<sup>327</sup> Additionally, Atkission Chrysler points to the evidence that FCA is achieving 100% of its market share, or 100% registration effectiveness, in the Orange Sales Locality.<sup>328</sup>

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<sup>323</sup> See, e.g., FCA Ex. 129 at 31; Tr. at 1017.

<sup>324</sup> FCA Ex. 151 at 6.

<sup>325</sup> FCA Ex. 151 at 25.

<sup>326</sup> AC Initial Brief at 38.

<sup>327</sup> AC Initial Brief at 38; Tr. at 63, 329-30, 460-61.

<sup>328</sup> AC Initial Brief at 39; Tr. at 157.



FCA responds that its requested termination of the Atkission Chrysler franchise is bigger than simply a desire for increased market penetration. FCA points to the large amount of evidence expressing the many reasons why FCA is seeking termination of the Atkission Chrysler franchise:

- Atkission Chrysler's many breaches of the Dealer Agreements;
- Atkission Chrysler's failure to take care of the interests of the consumers in the Orange Sale Locality;
- the high amount of "pump in" sales by the surrounding Chrysler dealers into the Orange Sales Locality;
- the lack of efforts made by Atkission Chrysler to improve its operations and cure its deficiencies, and its continual worsening; and
- the damage to the Chrysler brand.<sup>329</sup>

Code § 2301.455(b) makes it clear that the desire to expand market share is, by itself, not sufficient good cause for a modification. However, FCA's concern is not simply a desire for greater market share, but rather a desire to match market performance to what is expected for a dealer in Atkission Chrysler's Sales Locality. In addition, FCA has established a myriad of other bases for termination, including the multiple violations of the Dealer Agreements by Atkission Chrysler, and the potential damage to the Chrysler brand. If Atkission Chrysler were meeting expectations, but FCA simply wanted greater market share, then that factor alone would not justify a modification. But, Atkission Chrysler's underperformance, *i.e.* the failure to meet expectations in regard to sales and sales efforts, is a factor that may be considered in support of good cause. Therefore, the ALJs find that a desire for market penetration is far from a sole basis for termination of the Atkission Chrysler franchise.

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<sup>329</sup> FCA Initial Brief at 53-54; FCA Reply Brief at 36.



## V. CONCLUSION

Based upon the evidence, FCA's notice of termination complied with Code § 2301.453. Additionally, the evidence overwhelmingly established that good cause exists to terminate Atkission Chrysler's franchise and, accordingly, no penalties, sanctions, or other orders are necessary to address. Therefore, the ALJs recommend that the Department deny Atkission Chrysler's protest and allow FCA to terminate the franchise.

## VI. FINDINGS OF FACT

### Background/Procedural History

1. FCA US LLC (Chrysler or FCA) is a licensed new motor vehicle distributor in the state of Texas.
2. Cecil Atkission Orange, LLC d/b/a Cecil Atkission Chrysler Jeep Dodge (Atkission Chrysler or the dealership) is a licensed new motor vehicle dealer of Chrysler vehicles and is located at 4103 I-10 E, Orange, Texas 77630.
3. Atkission Chrysler is part of FCA's Southwest Business Center—a network of Chrysler dealers spanning six states in the southwestern United States.
4. Atkission Chrysler is the sole Chrysler dealer responsible for serving consumers in the township and rural areas surrounding Orange, Texas (the Orange Sales Locality).
5. Atkission Chrysler is part of a dealership group that operates seven car dealerships throughout Texas, three of which are Chrysler dealerships, under the direction of Cecil Atkission—an owner and operator of car dealerships with over 30 years of experience in the industry.
6. Atkission Chrysler operates pursuant to Sales and Service Agreements and their Additional Terms and Provisions (the Dealer Agreements or franchise agreement) with FCA.
7. On December 17, 2013, FCA issued a Notice of Default to Atkission Chrysler, formally notifying Atkission Chrysler of its alleged breaches of the Dealer Agreements and allowing an opportunity to cure.



8. On December 19, 2014, FCA notified Atkission Chrysler of its decision to terminate the Dealer Agreements (Notice of Termination), citing Atkission Chrysler's: (1) failure to meet sales performance obligations; (2) failure to comply with signage obligations; (3) failure to meet management and sales personnel obligations; (4) failure to meet advertising and sales promotion obligations; (5) failure to meet working capital obligations; and (6) failure to meet net worth obligations.
9. The Notice of Termination contained specific grounds for the termination, included the required "conspicuous statement," and specified that the termination would not take effect until 60 days after the date the dealer received the Notice of Termination.
10. Atkission Chrysler's timely filed a protest of the Notice of Termination with the Texas Department of Motor Vehicles (Department or Board) on February 20, 2015.
11. On June 15, 2015, the staff (Staff) of the Department referred this case to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

### **The Relocation Issue**

12. Mr. Atkission also owns a Toyota dealership in Orange, Texas (Atkission Toyota). Atkission Chrysler and Atkission Toyota are both located on I-10, roughly two miles apart.
13. Over the years, Atkission Chrysler has made several informal overtures to FCA for permission to move the dealership to a location adjacent to Atkission Toyota. The first such request came in late 2013, and each subsequent request was made after FCA had issued its Notice of Termination.
14. Every relocation request made by Atkission Chrysler was cursory and lacked the information needed in order for FCA to evaluate it.
15. The dealership has never submitted a complete, formal relocation request to FCA, but has only raised the issue of relocation as a concept.

### **Atkission Chrysler's Sales in Relation to Sales in the Market**

16. Minimum Sales Responsibility (MSR) is a measure of sales actually achieved by a dealer against an expected level of sales. The expected level of sales for a dealer is derived from the number of sales a dealer must make to equal the manufacturer's state market share in the dealer's local market.



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17. MSR is designed to measure whether a dealer's sales are proportional to the opportunity available to the dealer in its assigned sales locality.
18. When a dealer's actual sales equal its MSR, its MSR percentage is 100%. An MSR of 100% means that a dealer is meeting the amount of sales it is expected to capture.
19. The MSR methodology is commonly used in the automotive industry and is a reasonable benchmark for sales performance.
20. Atkission Chrysler has never met its annual MSR since the dealership commenced operations.
21. FCA is achieving 100% of its market share, or 100% registration effectiveness, in the Orange Sales Locality.
22. The surrounding Chrysler dealers are selling the majority of Chrysler vehicles registered in the Orange Sales Locality. These are referred to as "pump-in" sales.
23. The majority of Orange residents purchasing Chrysler vehicles are driving 20 to 40 miles beyond Atkission Chrysler to purchase Chrysler vehicles.
24. The opportunity for sales of Chrysler vehicles exists in the Orange Sales Locality, but Atkission Chrysler is not capturing these sales.
25. Atkission Chrysler's sales performance has been consistently bad since its inception.
26. Atkission Chrysler MSR performance is reflected in the following statistics:

<b>Month/Year (YTD)</b>	<b>% MSR Attained</b>
December 2008	40.1%
December 2009	38.2%
December 2010	63.4%
December 2011	49.2%
December 2012	23.6%
December 2013	39.7%
December 2014	27.2%
October 2015	16.2%

27. Atkission Chrysler is the worst of all Chrysler dealers in Texas in regard to its sales.



28. Over the past four years, out of all FCA dealers in Texas, Atkission Chrysler's MSR achievement rate has ranked as follows:
  - In 2012: 148th out of 148
  - In 2013: 155th out of 156;
  - In 2014: 157th out of 157; and
  - In 2015: 165th out of 165.
29. Hurricane Ike hit the Orange area in the fall of 2008.
30. Chrysler filed bankruptcy in 2009.
31. The economy was in a recession from 2008 through 2009.
32. MSR takes into account national and local changes in vehicle sales.
33. Atkission Chrysler's sales were at its highest immediately after the recession.
34. I-10 underwent re-construction in front of Atkission Chrysler from 2010 through 2013.
35. Atkission Chrysler's sales were poor before, during, and after the I-10 re-construction project.
36. Atkission Chrysler's poor sales performance is not due to the re-construction on I-10.
37. Atkission Chrysler's location is an acceptable location for an auto dealership.
38. Atkission Chrysler refuses to spend more money on advertising or to increase its inventory.
39. From at least 2012 to the present, the demand for Chrysler vehicles has increased both nationally and state-wide, and the sales of the surrounding Chrysler dealerships have increased correspondingly.
40. Atkission Chrysler's sales performance is low and declining.
41. Atkission Chrysler's poor sales performance is not due to any impact from Hurricane Ike.
42. Atkission Chrysler's poor sales performance is not due to the impact from Chrysler's bankruptcy.
43. Atkission Chrysler's poor sales performance is not due to the recession.
44. Atkission Chrysler's poor sales performance is not due to its location.



45. Atkission Chrysler's poor sales performance is due to factors under Atkission Chrysler's direct control.
46. FCA established that Atkission Chrysler has extremely poor sales in relation to the market, which provides good cause for termination.

### **Atkission Chrysler's Investments and Obligations**

47. The value of the dealership's building and equipment is less than \$100,000, which reflects under-investment by the dealership.
48. Atkission Chrysler leases the land upon which it is located. The lease is expired, but the dealership remains on a month-to-month holdover tenancy.
49. Atkission Chrysler's asset of greatest value is the motor vehicle inventory, the value of which generally hovers around \$4 million.
50. The dealership has never been willing to invest a sufficient amount in itself and, as a consequence, its facilities are in very poor, outdated condition.
51. Over the course of years, Mr. Atkission has loaned the dealership roughly \$6.05 million. These funds are referred to as "Cecil Money" at the dealership. The Cecil Money is unsecured, subordinated debt, lacking the paperwork normally expected with a loan.
52. The dealership pays Mr. Atkission roughly 4% interest on the Cecil Money, but it has never repaid any of the principal, and it likely never will repay it.
53. The \$6.05 million in Cecil Money is not an investment of the dealership's.
54. The \$6.05 million in Cecil Money is not a binding obligation of the dealership.
55. Atkission Chrysler's investments are inadequate to properly operate the business. This is a factor that favors termination.
56. Atkission Chrysler's obligations are minimal. This is a factor that favors termination.

### **Injury or Benefit to the Public**

57. The Orange Sales Locality is a substantial market with a considerable customer base.



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58. The public is currently being underserved by Atkission Chrysler and inconvenienced by having to drive to other Chrysler dealerships 20-40 miles away from Orange to meet their needs.
59. In 2015, Atkission Chrysler was ranked among the worst in Texas for sales and service advocacy.
60. FCA intends to replace Atkission Chrysler with a more competitive dealer as soon as possible.
61. Replacing Atkission Chrysler with a new dealer will benefit the public by increasing employment opportunities within Orange and by allowing local consumers to have their needs met without the inconvenience of driving 20-40 miles away.
62. Atkission Chrysler shares many of its employees with Atkission Toyota.
63. If FCA were to terminate the Atkission Chrysler franchise, the few current employees the dealership has that are not already shared employees with Atkission Toyota would likely be hired at the Toyota dealership.
64. The impact on employment of terminating the Atkission Chrysler franchise in the short-run would be negligible, and in the long-run positive.
65. Termination of Atkission Chrysler would have positive benefits for the public, a factor that favors termination.

**Adequacy of Atkission Chrysler's Service Facilities, Equipment, Parts, and Personnel in Relation to Those of Other Dealers of New Motor Vehicles of the Same Line-Make**

66. Atkission Chrysler's facility as a whole is in poor condition, not conducive to a successful business, an eye-sore, and not comparable to surrounding dealer facilities.
67. Atkission Chrysler has no plans to improve the facility.
68. The evidence favors termination with regard to the adequacy of the service facilities.
69. There is no evidence as to the inadequacy of Atkission Chrysler's equipment or parts in relation to those of other Chrysler dealers.
70. For service advocacy in 2013, Atkission Chrysler was below its goal to varying degrees and below the average for the Southwest Business Center.



71. Atkission Chrysler has not been able to maintain a viable general manager, sales staff, or other dealership personnel.
72. The adequacy of Atkission Chrysler's service facilities, equipment, parts, and personnel is a factor that weighs slightly in favor of termination.

### **Whether Warranties are Being Honored by Atkission Chrysler**

73. The evidence does not establish either particularly good or particularly bad performance by Atkission Chrysler with respect to honoring warranties.
74. This factor neither supports nor weighs against termination of Atkission Chrysler's franchise.

### **Parties' Compliance with the Franchise Agreement**

75. Atkission Chrysler has violated the terms of its franchise agreement with FCA in eight separate ways, each one of which favors termination.

- **Breach of the Sales Performance Obligation**

76. Atkission Chrysler breached its contractual obligation to sell the number of FCA vehicles necessary to fulfill the dealership's MSR. This is referred to as the obligation to "achieve 100% of MSR."
77. Since its inception in 2008, Atkission Chrysler achieved 100% of MSR in only one month.
78. The dealership's MSR achievement percentages have been quite low, often in the teens and twenties.
79. Out of the roughly 160 FCA dealers in Texas, Atkission Chrysler has, for years, consistently ranked last or second-to-last in terms of its MSR achievement percentage.
80. The re-construction work on I-10 did not make Atkission Chrysler's current location untenable or bad.
81. Atkission Chrysler is in a fine location that is conducive to selling cars.
82. Atkission Chrysler's poor MSR achievement percentages cannot be blamed on the I-10 reconstruction.



83. The force majeure clause in the franchise agreement is not applicable in this case.
84. Atkission Chrysler chronically breached its contractual obligation to achieve 100% of MSR, a factor that favors termination.
- **Breach of the Warranty Obligations**
85. The evidence does not establish either particularly good or particularly bad performance by Atkission Chrysler with respect to honoring warranties.
86. This factor neither supports nor weighs against termination.
- **Breach of the Management Obligation**
87. Atkission Chrysler breached its contractual obligation to have Mr. Atkission physically present at the dealership during most of its operating hours.
88. During its entire existence, Mr. Atkission has never been physically present at the dealership during most of its operating hours. He has typically been present only roughly 10% or less of operating hours.
89. Atkission Chrysler's breach of this contractual obligation is a factor that favors termination.
- **Breach of the Personnel Obligations**
90. Atkission Chrysler breached its contractual obligation to employ a sufficient number of sales staff and general management to carry out successfully all of its obligations under the franchise agreement.
91. The dealership chronically experiences difficulty in hiring and retaining competent employees.
92. The dealership has chronically had too few salespeople to achieve 100% of its MSR.
93. The dealership has had excessively high turnover of employees and general managers.
94. The high turnover of general managers has been disruptive to the business's operations and customer relations.
95. Atkission Chrysler's general manager also serves as general manager of Atkission Toyota, and his time is divided between the two stores. As a result, his attention is insufficiently focused on the needs of Atkission Chrysler.



96. A number of other dealership employees serve as dual employees for the Chrysler and Toyota stores. As a result, their attention is insufficiently focused on the needs of the Chrysler store.
97. Atkission Chrysler's breach of this contractual obligation is a factor that favors termination.
98. Atkission Chrysler's failure to employ a sufficient number of employees and management personnel is not caused by the I-10 reconstruction.

- **Breach of the Facility Obligations**

99. Atkission Chrysler breached its contractual obligation to maintain its facilities so that they are relatively equivalent in attractiveness and overall appearance to the facilities used by the dealership's principal competitors.
100. Since Mr. Atkission acquired it, the dealership's facilities have been in very poor repair, very outdated, and not relatively equivalent in their attractiveness and overall appearance to the dealership's principal competitors.
101. The dealership's facilities are not conducive to a successful business and not compliant with FCA's image program.
102. The poor state of the dealership's facilities has negatively impacted the dealership's success and customer relations.
103. Atkission Chrysler's breach of this contractual obligation is a factor that favors termination.
104. Atkission Chrysler's failure to maintain adequate facilities cannot be blamed on the I-10 reconstruction.

- **Breach of the Place of Business Obligations**

105. Atkission Chrysler has chronically breached its contractual obligation to conduct its operations solely at the dealership location.
106. Because the dealership does not have its own business office and Finance and Insurance (F&I) office, these matters are handled at Atkission Toyota. A purchaser of an Atkission Chrysler vehicle must travel to Atkission Toyota to complete the transaction.
107. By conducting some of its dealership operations at Atkission Toyota, Atkission Chrysler is not only breaching the franchise agreement, but also undermining customer relations.



108. Atkission Chrysler's breach of this contractual obligation is a factor that favors termination.

- **Breach of the Advertising Obligations**

109. Atkission Chrysler breached its contractual obligation to promote FCA products and services vigorously and aggressively.

110. The dealership does not devote vigorous efforts to advertising.

111. The dealership chronically and substantially underspends its competitors with respect to advertising.

112. Atkission Chrysler's failure to vigorously and aggressively promote its products and services cannot be blamed on the I-10 reconstruction.

113. Atkission Chrysler's breach of this requirement is a factor that favors termination.

- **Breach of the Signage Obligations**

114. Atkission Chrysler breached its contractual obligation to display and use signage that complies with FCA policies and guidelines.

115. FCA's current signage guidelines and policies have, since 2010, required the use of "Millennium Signage."

116. The dealership has never installed Millennium Signage, but still uses old, out-of-date signage.

117. The main pole sign in front of the dealership was damaged by Hurricane Ike in 2008. Since then, the damage has never been fixed, and the sign merely consists of a plastic bag with the dealership's name and brands printed on it.

118. For years, the dealership has declined to invest in new signage because it hopes to relocate.

119. Atkission Chrysler, not FCA, is responsible for maintenance and repairs to signage at the dealership, including the pole sign.

120. Atkission Chrysler's failure to comply with its signage obligations cannot be blamed on the I-10 reconstruction.

121. Atkission Chrysler's breach of this requirement is a factor that favors termination.



- **Breach of the Working Capital and Net Worth Obligations**

122. Atkission Chrysler breached its contractual obligations to maintain adequate working capital consistent with FCA guides and adequate net worth.
123. For every year since 2010, the amount of the dealership's working capital has been substantially below the amount required by FCA guidelines.
124. For every year since 2010, the dealership has had a negative net worth, and each year's net worth has been a much larger negative number than the previous year.
125. As of October 2015, the dealership's net worth was a negative amount -- (\$3,361,905).
126. Since its inception in 2008, the dealership has lost between \$5 million and \$6 million.
127. The only way the dealership has remained in operation despite these large losses has been the periodic infusions of Cecil Money.
128. The dealership's effort during the hearing to recalculate its working capital and net worth was not reasonable and should not be adopted.
129. Atkission Chrysler's breach of this contractual obligation is a factor that favors termination.

**The Enforceability of the Franchise from a Public Policy Standpoint**

130. The franchise is enforceable from a public policy standpoint, and Atkission Chrysler is not complying with multiple requirements of the franchise.
131. This factor supports termination.

**Whether the Desire for Market Penetration is the Sole Basis for Termination**

132. Market penetration is the ratio of vehicle registrations for a specific brand to the number of vehicle registrations by competitors in a geographic area.
133. A desire for market penetration is not the sole basis for termination of the Atkission Chrysler franchise.



## VII. CONCLUSIONS OF LAW

1. The Department and its governing board 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.
3. FCA properly notified Atkission Chrysler of the intent to terminate Atkission Chrysler's franchise pursuant to Texas Occupations Code § 2301.453(c).
4. Atkission Chrysler timely filed a protest with the Department. Tex. Occ. Code § 2301.453(e).
5. Notice of Atkission Chrysler's protest and of the hearing on the merits of the protest 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 and 215.307.
6. A "franchise" is one or more contracts between a franchised dealer and a manufacturer. Tex. Occ. Code § 2301.002(15).
7. A manufacturer may not terminate or discontinue a franchise with a franchised dealer unless the manufacturer provides notice of the termination and: (1) the franchised dealer consents in writing to the termination, (2) the appropriate time for the dealer to file a protest has expired, or (3) the Board makes a determination of good cause for the termination. Tex. Occ. Code § 2301.453(a), (g).
8. FCA has the burden of proving by a preponderance of the evidence that good cause exists for the proposed termination. Tex. Occ. Code § 2301.453(g).
9. In determining whether FCA established by a preponderance of the evidence that there is good cause for terminating Atkission Chrysler's franchise, the Board is required to consider all existing circumstances, including seven statutory factors. Tex. Occ. Code § 2301.455(a).
10. The Board has the exclusive jurisdiction to determine the issue of good cause, including the weight to be given each statutory factor. *Austin Chevrolet, Inc. v. Motor Vehicle Bd.*, 212 S.W.3d 425, 432 (Tex. App.—Austin 2006, pet. denied).
11. FCA has established good cause to terminate the Dealer Agreements in accordance with Texas Occupations Code § 2301.455.



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12. No provision of the franchise agreement in this case conflicts with Texas Occupations Code ch. 2301.
13. FCA's proposed termination of Atkission Chrysler's franchise should be approved.
14. Sanctions, penalties, and further orders are not appropriate in this case, and further declaratory decisions or orders are not required. Tex. Occ. Code §§ 2301.153(a)(8), .651, .801, and .802.

**SIGNED June 17, 2016.**



MITTRA FARHADI  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS



HUNTER BURKHALTER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS



CARDWELL, HART & BENNETT, L.L.P.

ATTORNEYS AT LAW

807 BRAZOS  
SUITE 1001  
AUSTIN, TEXAS 78701-2553

TELEPHONE: (512) 322-0011  
FAX: (512) 322-0808

July 20, 2016

Via Electronic Upload

Hon. Meitra Farhadi  
Hon. Hunter Burkhalter  
Administrative Law Judges  
State Office of Administrative Hearings  
300 West 15th Street, Room 502  
Austin, Texas 78701

Re: SOAH Docket No. 608-15-4315.LIC; MVD Docket No. 15-0015.LIC, *Cecil Atkission Orange, LLC, d/b/a/ Cecil Atkission Chrysler Jeep Dodge v. FCA US LLC*.

Dear Judges Farhadi and Burkhalter:

Enclosed please find Complainant's Exceptions to the Proposal for Decision.

Very truly yours,

  
J. Bruce Bennett

Enclosure

cc: Daniel Avitia, Director  
Motor Vehicle Division  
Texas Department of Motor Vehicles  
P. O. Box. 2293  
Austin, Texas 78768  
Via Fax (512-465-3599)

Mark J. Cloutre  
WHEELER TRIGG  
O'DONNELL, LLP  
370 Seventeenth Street,  
Suite 4500  
Denver, CO. 80202  
Via Email

Wm. R. Crocker  
Via Email



**BEFORE THE BOARD  
OF  
THE TEXAS DEPARTMENT OF MOTOR VEHICLES**

<b>CECIL ATKISSION ORANGE, LLC,</b>	§	
<b>d/b/a CECIL ATKISSION CHRYSLER</b>	§	
<b>JEEP DODGE,</b>	§	<b>SOAH DKT. NO. 608-15-4315.LIC</b>
	§	
<i>Complainant</i>	§	
	§	<b>MVD DKT. NO. 15-0015. LIC</b>
<b>FCA US LLC,</b>	§	
	§	
<i>Respondent.</i>	§	

**COMPLAINANT'S EXCEPTIONS  
TO THE PROPOSAL FOR DECISION**

Complainant Cecil Atkission Orange, LLC d/b/a Cecil Atkission Chrysler Jeep Dodge ("Atkission") makes the following exceptions to the Proposal for Decision ("PFD") issued on June 17, 2016, which recommends the termination of Atkission's franchise by FCA US LLC ("Chrysler" or "FCA").

**INTRODUCTION AND SUMMARY OF THE EXCEPTIONS**

The PFD wrongly recommends terminating Atkission's franchised Chrysler-Jeep-Dodge dealership in Orange, Texas. Because franchise termination is a harsh and punitive action, which destroys most of a dealership's value, the Legislature intends for termination to occur only after a very careful and correct legal and factual assessment of "all existing circumstances, including" the "dealer's investment and obligations" and every other statutory factor set forth in § 2301.455(a) of the Tex. Occ. Code ("Code") which might be relevant. Because the Administrative Law Judges ("ALJs") failed to conduct such assessment in this case,



the Board should reject the PFD and sustain Atkission's protest. Alternatively, the Board should remand this matter to the ALJs so that a proper assessment of all the relevant, existing circumstances can be made in accordance with the correct legal interpretation and application of the statutory mandate.

**I.  
FAILURE TO CONSIDER THE IMPACT OF MR. ATKISSION'S \$6.25  
MILLION CAPITAL INFUSION INTO THE DEALERSHIP**

The ALJs' recommendation to terminate rests substantially on their misinterpretation and misapplication of § 2301.455(a)'s requirement that "all existing circumstances, including . . . the dealer's investment and obligations" be considered. Cecil Atkission owns 100% of the dealership.<sup>1</sup> Since acquiring the dealership in 2008, he has plowed \$6.25 million of his own money into it. Under basic accounting principles, this infusion of \$6.25 million in capital constitutes either an equity investment in the dealership *or* a debt obligation of it.<sup>2</sup> Yet, the ALJs have treated it as neither equity nor debt, and therefore given the \$6.25 million

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<sup>1</sup> The ALJs incorrectly state that Mr. Atkission owns only 52% of the dealership entity. Mr. Atkission owned 52% when the dealership was purchased in 2008. However, Mr. Atkission now owns 100% of the dealership entity and is its sole member. [Testimony of Cecil Atkission, Tr. at 836, line 25 – 837, line 1].

<sup>2</sup> An "investment" is the outlay of funds for income or profit. See Merriam-Webster's Collegiate Dictionary 659 (11<sup>th</sup> ed. 2005). If such funds "have been advanced with reasonable expectations of repayment, they are loans; if as a matter of substantial economic reality they are risked upon the success of the venture, the funds are actual capital." *Matter of Transystems, Inc.*, 569 F.2d 1364, 1370 (5<sup>th</sup> Cir. 1978), quoting, Herzog & Zweibel, "The Equitable Subordination of Claims in Bankruptcy, 15 Vanderbilt L. Rev. 83, 94-95 (1961). The ALJs wrongly assert that Atkission contends that the \$6.25 million "should count as the dealership's investments *and* obligations." (PFD at 24). *Atkission has never made such an argument.* Atkission's argument is that regardless of whether his cash contributions are called investments or obligations, they can and should be considered "capital" for calculating working capital and net worth.



no significance in their analysis. (PFD at 28-29). Their mistreatment of this substantial infusion of capital into the dealership – most of which will be lost if the dealership is terminated – not only is based on a distorted and legally incorrect interpretation of § 2301.455(a), but also violates basic accounting principles.<sup>3</sup>

Exalting form over substance, the ALJs interpret the word “dealer” in the phrase “dealer’s investment and obligations” to mean only the entity holding the general distinguishing number, which in this case is Mr. Atkission’s limited liability company, and not Mr. Atkission, its sole owner. Applying this interpretation, the ALJs concluded that the \$6.25 million was not an investment made *by* the dealership – thus ignoring the fact that it was an investment of capital *in* the dealership by Mr. Atkission. By mandating the consideration of “all existing circumstances, including . . . the dealer’s investment . . .”, the Legislature intends for investments made *in* the dealership by its owner or owners to be analyzed in deciding whether termination is warranted. The vast majority of general distinguishing numbers in Texas are issued to franchised dealers conducting business as limited liability, corporate or partnership entities, rather than as individuals. This is done for a myriad of tax and business reasons. Acceptance of the ALJs’ interpretation will create a dangerous and unfair precedent that will render millions of dollars in investments made in dealerships by their owners, like Mr. Atkission, meaningless.

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<sup>3</sup> If the franchise is terminated, Mr. Atkission estimates that he will lose up to \$4 million. [Testimony of Cecil Atkission, Tr. at 889, lines 15-18; 1034, lines 2-15].



If Mr. Atkission's \$6.25 million is not treated as an equity investment in his dealership, then it must be treated as the dealership's debt obligation to him. The \$6.25 million has always been recorded on the dealership's financial statements as short-term or long-term debt – on which interest has always been paid to Mr. Atkission.<sup>4</sup>

Chrysler itself recognized that Mr. Atkission's \$6.25 million infusion constituted a debt of the dealership. (FCA Brief at 60, 61-62). However, the ALJs assert that the \$6.25 million is not really a debt, and thus not a dealership "obligation," because they think Mr. Atkission does not expect the \$6.25 million to be repaid. (PFD at 28). Assuming that were true, then the \$6.25 million constitutes a capital contribution, *i.e.*, an equity investment.<sup>5</sup> In fact, Chrysler's "Dealer Financial Statement" contains a line item under "Net Worth" for "Investments (Proprietor Partner or Member)." Mr. Atkission is the sole member of the dealership entity, a limited liability company. Also, Chrysler's financial expert admitted that the \$6.25 million was "invested capital," which constitutes an investment in the dealership.<sup>6</sup>

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<sup>4</sup> Testimony of Tyra Boram, Tr. at 711, line 25; 712, lines 1-2; 744, lines 10-25; Testimony of Curtis Coleman, Tr. at 751, lines 3-15; Testimony of Cecil Atkission, Tr. at 870, lines 10-12; 871, lines 14-17; 977, lines 22-25; 978, lines 1-5; Testimony of Carl Woodward, Tr. at 1066, lines 7-15; Complainant Ex. 29, Exhibit 2; Respondent Ex. 33(1), 34(1), 35(1), 36(1), 37(1), 38(k), 38(1).

<sup>5</sup> In fact, Mr. Atkission testified that he expects the dealership to repay him if and when the dealership becomes profitable, which can only happen if the Dealership is relocated to a suitable site. [Testimony of Cecil Atkission, Tr. at 874, lines 24-25; 875, lines 1-16; 977, lines 22-25; 978, lines 1-2].

<sup>6</sup> Respondent Ex. 152-008, ¶ 31. Even if the \$6.25 million were a gift to the dealership, it would still be classified as equity and would positively affect the dealership's working capital and net worth.



Based on their misinterpretation of the Code concerning the effect and impact of the \$6.25 million on the dealership's finances, the ALJs erred in finding that the dealership violated Chrysler's working capital and net worth requirements. (PFD at 76). Because of Mr. Atkission's infusion of \$6.25 million into the dealership – which Chrysler's expert admits is “invested capital” – the dealership has always exceeded Chrysler's working capital and net worth guides and continues to do so.<sup>7</sup> That \$6.25 million also refutes the ALJs' disparaging assertions in the PFD that Mr. Atkission lacks commitment to his dealership and has refused to “permanently invest” in it. (PFD at 28). On the contrary, the \$6.25 million conclusively shows his commitment to the dealership's survival and to its future in Orange.

## II. FAILURE TO CONSIDER THE NEED TO RELOCATE THE DEALERSHIP

The ALJs' recommendation to terminate the Atkission franchise is also based on their refusal to consider the need to relocate the dealership as an “existing circumstance” present in this case, and on their belief that “the Code does not provide for affirmative defenses to the good cause elements . . .” (PFD at 21). *The Code does not strip franchised dealers of defenses against termination.*

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<sup>7</sup> Respondent Ex. 152-008, ¶ 31. However, the manner in which the dealership was reporting the \$6.25 million infusion from Mr. Atkission on its financial statements materially understated both the dealership's actual working capital and its net worth. [Testimony of Curtis Coleman, Tr. at 754, lines 20-24; 759, lines 1-12; Complainant Ex. 29 at 2]. Accounting expert, Carl Woodward, advised the dealership to begin reporting those funds on its financial statements as subordinated notes. [Complainant Ex. 29 at 2].



The ALJs' assertion that "as a matter of law the dealership's desire to relocate has never been, and cannot legally be, part of this case" is both legally incorrect and untrue. (PFD at 12). The evidence conclusively establishes that the dealership cannot survive in its present location.<sup>8</sup> To survive, it must relocate.<sup>9</sup> That need is a circumstance falling within the legislative command in § 2301.455(a) to consider "all existing circumstances" and is required to be considered by the Board – even if a formal relocation application has not yet been submitted. The ALJs' refusal to consider the dealership's need to relocate constitutes a legal misinterpretation and violation of that statute.

The ALJs' error is compounded by their erroneous determination that the *force majeure* clause of the Atkission-Chrysler franchise agreements and other affirmative defenses do not apply to the adverse impact on the dealership and its franchise obligations of a massive and lengthy TxDOT reconstruction project – particularly those obligations concerning sales, personnel, signage, and advertising.<sup>10</sup> The ALJs cite no legal authority holding that a dealer cannot invoke affirmative defenses in a termination case. To the undersigned's knowledge, no such authority exists. Moreover, the statutory command to the Board is to consider

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<sup>8</sup> Testimony of Tyrone Allred, Tr. at 666, lines 11-16; Testimony of Cecil Atkission, Tr. at 899, lines 8-19; 903, lines 6-14.

<sup>9</sup> Although the dealership has not submitted a formal relocation application, over the last several years, Mr. Atkission been acquiring land for a relocation site next to his Toyota dealership, which is located on I-10 in one of Orange's commercial areas. [Testimony of Cecil Atkission, Tr. at 841, lines 21-25; 842, lines 1, 9-12; 843, line 25; 844, lines 1-2; 891, lines 6-11, 15-17].

<sup>10</sup> *Force majeure* is recognized as an affirmative defense. 3 Tex. Prac. Guide Bus. & Com. Litig. § 19:160; 30 Williston on Contracts § 77:31.



“all existing circumstances” “*notwithstanding* the terms of any franchise . . .” Thus, circumstances constituting affirmative defenses – regardless of what the manufacturer has written in the franchise agreement – such as *force majeure*, waiver, estoppel, or any other matter that would provide grounds for avoiding a franchise termination, must be considered by the Board.<sup>11</sup>

The franchise agreements provide that Atkission will *not* “be liable for failure to perform its part of this Agreement when the failure is due to . . . *acts of government*, . . . or other circumstances beyond the control of the parties.” [FCA Ex. 28(a) at 17]. The dealership is located on the south side frontage road next to I-10 in an area devoted almost exclusively to light industry.<sup>12</sup> The TxDOT project, which lasted three years, had a significant negative impact on the dealership and has undermined its ability to perform its franchise obligations in two ways.<sup>13</sup>

First, the project eliminated convenient access to the dealership from the eastbound lanes of I-10.<sup>14</sup> Before the project, eastbound drivers could see the

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<sup>11</sup> The seven statutory factors of § 2301.455(a) are in the nature of affirmative defenses to termination.

<sup>12</sup> Testimony of Tyrone Allred, Tr. at 662, lines 17-25; 663, lines 1-7; Testimony of Cecil Atkission, Tr. at 880, lines 20-25; 881, lines 1-12; 882, lines 3-16. Atkission bought the dealership’s assets and goodwill value knowing that it was situated in a poor location, was housed in an outdated facility, and would need to be relocated. [Testimony of Cecil Atkission, Tr. at 838, lines 2-9; 880, lines 20-25; 881, lines 1-12; 882, lines 3-16]. Then, and now, no other motor vehicle dealerships are located nearby; nor are any major retailers located near the dealership. [Testimony of Tyrone Allred, Tr. at 662, lines 17-25; 663, lines 1-7]. The dealership has never been able to become profitable on a yearly basis at its current location. [Testimony of Cecil Atkission, Tr. at 861, lines 13-17; 1046, lines 10-12; Complainant Ex. 7, 8; Respondent Ex. 33(l), 34(l), 35(l), 36(l), 37(l), 38(k).

<sup>13</sup> Testimony of Cecil Atkission, Tr. at 857, lines 1-7; 859, lines 306; 987, lines 19-24.

<sup>14</sup> Testimony of Tyrone Allred, Tr. at 663, lines 3-7.



dealership on the south side of I-10 shortly before coming to an exit located just west of the dealership and could use that exit to easily reach the dealership using the frontage road. Both I-10 and the dealership were then on ground level. But the TxDOT project not only substantially elevated I-10 in front of the dealership, it also removed the convenient exit from the eastbound lanes to the dealership.<sup>15</sup> Because a wooded area is located west of the dealership on the south side of I-10, drivers see the dealership as before, but they no longer have the convenient exit to access it.<sup>16</sup> Instead, they must take the next exit located east of the dealership, go under I-10 at the next exit, head back west, then take an exit from the westbound lanes, go under I-10, and stay on the frontage road back to the dealership.

Second, before the project, westbound drivers on I-10 could easily see the dealership, take the next exit, go under I-10 and remain on the frontage road back to the dealership. But the elevation of I-10 has made it almost impossible to see the dealership from the westbound lanes.<sup>17</sup> And *if* drivers do see the dealership, from that point they have to take the next exit, a mile or so farther west, go under I-10, and know to stay on the eastbound frontage road past the wooded area back to the dealership.<sup>18</sup>

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<sup>15</sup> Testimony of Tyrone Allred, Tr. at 666, lines 20-25; 667, lines 1-4; Testimony of Cecil Atkission, Tr. at 856, lines 12-22; 857, lines 15-25; 858, lines 1-9; 858, lines 24-25; 859, lines 1-2, 14-17.

<sup>16</sup> Testimony of Tyrone Allred, Tr. at 670, lines 3-6.

<sup>17</sup> Testimony of Sharif Farhat, Tr. at 642, lines 3-8; Testimony of Cecil Atkission, Tr. at 882, lines 20-21.

<sup>18</sup> Testimony of Tyrone Allred, Tr. at 669, lines 8-17; Testimony of Cecil Atkission, Tr. at 863, lines 1-18.



The reconstruction left access to the dealership and its visibility in far worse shape than before.<sup>19</sup> As Mr. Atkission described the current situation: “Driving up and down Interstate 10, if you don’t know [the dealership is] there, you don’t know it’s there.” [Testimony of Cecil Atkission, Tr. at 859, lines 7-11]. *Yet, the ALJs make only a single reference to the removal of the eastbound exit in their PFD (at page 40) and only two references to the elevation of I-10 (PFD at 20, 40). They devote scarcely any attention – and almost no analysis – to the impact on the dealership of these major changes to its accessibility and visibility.*

Once the TxDOT project was completed in 2013, the dealership’s sales plummeted and have never recovered, making relocation of the dealership essential to its viability.<sup>20</sup> The ALJs disregarded the significance of the objective, post-reconstruction sales data – the validity of which no one questions – and found that the reconstruction work did not make the dealership location bad or untenable. They even find that the dealership “is in a fine location that is conducive to selling cars.” (PFD at 72). The basis for this incredible finding is the opinion testimony of several Chrysler witnesses. Significantly, two of those witnesses, who were

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<sup>19</sup> Testimony of Cecil Atkission, Tr. at 857, lines 1-7; 859, lines 3-6; 987, lines 19-24.

<sup>20</sup> In January 2011, the Dealership had an MSR of 112.50%. [Respondent Ex. 39(d)-001]. As the TxDOT reconstruction progressed and impeded access to the dealership, its MSR fell sharply. After April 2011, it never again rose above 70% for any month and was almost always well below 50% on a monthly basis. [Respondent Ex. 39(d)-004 to 39(d)-012, 39(e), 39(f), 39(g), 39(h)]. Since the reconstruction in front of the Dealership ended in 2013, the Dealership’s new vehicle sales and its percentage of MSR have plummeted from 181 sales in 2013 to 96 as of November 2015, and from an MSR of 39.7% in 2013 to 17.3% as of August 2015. [Respondent Ex. 36(l), 37(l), 38(l), 151-035)].



unfamiliar with the dealership's location, had to use a GPS to find the dealership.<sup>21</sup> This opinion testimony is entitled to no weight because it is contrary to the objective sales data and to the testimony of the persons who work at the dealership and make their living trying to sell cars there.

For these reasons, the ALJs erred in finding that the *force majeure* clause does not apply to this case. This error produced other findings about the dealership's performance of its obligations under the franchise agreements that are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole.

### III.

#### **ERROR IN CONSIDERING GROUNDS NOT SPECIFIED IN THE NOTICE OF TERMINATION**

Section 2301.453(c) of the Code requires a manufacturer to "provide written notice . . . to the dealer and the board stating the specific grounds for the termination or discontinuance. Over Atkission Chrysler's objection, the ALJs allowed FCA to introduce evidence of alleged five grounds for termination that were *never* mentioned in Chrysler's termination notice and have recommended termination based on such improper grounds. The ALJs' action constitutes a flagrant violation of the Code and renders their PFD unreliable. Section 2301.453(c) is a statute, not a mere guideline to be enforced or ignored at the whim of the ALJs.

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<sup>21</sup> Testimony of Todd Tunic, Tr. at 358, lines 9-13; Testimony of Sharif Farhat, Tr. at 641, lines 16-19.



## EXCEPTIONS

1. Atkission excepts to the ALJs' failure to consider all existing circumstances in determining whether "good cause" for the proposed termination exists. Section 2301.455(a) of the Code requires that "in determining whether good cause has been established . . . the board *shall* consider *all existing circumstances*, including" seven specifically identified elements.<sup>22</sup> The PFD shows, on its face, that the ALJs failed to consider "all existing circumstances" in determining good cause. Specifically, the ALJs erred in not considering:

- the impact of the \$6.25 million Mr. Atkission invested in the dealership on the dealership's working capital and net worth because they erroneously view that money as neither an investment in the dealership nor an obligation of the dealership;
- the need to relocate the dealership, especially after completion of the I-10 reconstruction project and its devastating impact on the dealership's accessibility, visibility, and sales; and
- *force majeure* and other affirmative defenses raised by the evidence in this case.

2. Atkission excepts to the ALJs' interpretation and application of the "notice of termination" provisions of § 2301.453(c) of the Code. Specifically, the ALJs wrongly interpreted that statute to allow Chrysler to use the seven factors

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<sup>22</sup> Section 311.011(a) of the Texas Gov't Code, the "Code Construction Act," provides that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." When used as an adjective, as in "existing circumstances," the word "existing" means "[i]n existence or operation at the time under consideration; current . . ." Oxford Advanced Learner's Dictionary. See also, MacMillan Dictionary ("used for describing something that exists now . . ."); Collins Thesaurus of the English Language ("In existence now . . .").



listed in § 2301.455(a) of the Code as additional grounds for attempting to terminate Atkission's franchise even though those factors are not stated in Chrysler's notice of termination as grounds for termination. The Legislature requires the "*specific grounds for the termination*" to be stated in a manufacturer's notice of termination and provided both "to the dealer and the board" for a reason – so that (1) the dealer can decide whether or not to spend its resources fighting the proposed termination on the stated grounds; (2) the Board will know the exact grounds on which termination is sought; and (3) the issues for mandatory mediation and possible settlement are identified. The Code therefore confines the focus of the Board's "good cause" review to the "*specific grounds*" for termination "*stated*" in the termination notice viewed in light of all existing circumstances, including the specific factors of § 2301.455(a)(1)-(7) that are relevant to those specifically noticed grounds. New *grounds* for termination raised for the first time in the manufacturer's response to the protest should be disregarded or given little, if any, weight, and can never be the basis for franchise termination.

In this case, Chrysler identified only three specific grounds for termination in its notice of termination: (1) lack of sales or market penetration; (2) inadequate working capital; and (3) inadequate net worth. Any termination of Atkission's franchise must be based on one of those specifically stated grounds. The ALJs erred in recommending termination on other grounds that Chrysler raised in response to Atkission's protest. For these reasons, the following conclusion of law should be adopted:



- No. 3A. FCA stated the following three specific grounds for termination in its notice of termination: (1) lack of sales or market penetration; (2) inadequate working capital; and (3) inadequate net worth.
- No. 3B. The Board must decide whether termination is warranted on those specifically stated grounds for termination after considering all existing circumstances, including the factors listed in § 2301.455(a).
- No. 3C. FCA cannot rely on grounds for termination that were not specifically stated in its notice of termination.
- No. 3D. A notice of termination that does not state any specific grounds for a proposed termination does not satisfy the requirements of § 2301.453(c) of the Code.
- No. 3E. The factors listed § 2301.455(a)(1)-(7) do not provide grounds for terminating a franchise unless they are specifically identified as grounds for termination in the notice of termination .
- No. 3F. Because FCA did not list “poor customer service,” low advocacy scores, warranty issues, the sharing of four employees with Atkission Toyota, or the amount of time Mr. Atkission spends at the dealership as specific grounds for termination in the termination notice, the Board may not consider them as grounds for termination.

3. Atkission excepts to Finding of Fact Nos. 35, 36, 37, 44, 45, and 46 concerning the adverse impact on the dealership of TxDOT’s reconstruction project and the suitability of the dealership’s location. Those findings are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole and are the product of an incorrect application and interpretation of applicable law. In particular, the findings ignore and are contrary to the market data showing the plunge in the dealership’s sales caused by the



TxDOT project.<sup>23</sup> They also ignore the applicability of the *force majeure* provision of the franchise agreement.<sup>24</sup> For these reasons, the foregoing Findings of Fact should be changed to provide as follows:

- No. 35. Atkission Chrysler's sales were poor before and during the I-10 re-construction, but its sales were far worse following the completion of the re-construction, which has made the current location unsuitable for the dealership.
- No. 36. Atkission Chrysler's poor sales performance is primarily due to the re-construction of I-10, especially after completion of that work.
- No. 37. Because of the re-construction of I-10, Atkission Chrysler's location, which was already a poor location in a light industrial area of Orange, Texas, is no longer an acceptable location for an auto dealership.
- No. 44. Atkission Chrysler's poor sales performance is due to its location, which the I-10 re-construction has made unsuitable for an auto dealership.
- No. 45. Atkission Chrysler's poor sales performance is due to factors that were not under its control.
- No. 46. Atkission Chrysler's poor sales in relation to the market have been caused by the dealership's poor location, which the TxDOT re-construction has made no longer suitable for an auto dealership.

4. Atkission excepts to Finding of Fact Nos. 50, 53, 54, 55, and 56 concerning the investments in the dealership and the dealership's obligations. Those findings are not reasonably supported by substantial evidence considering

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<sup>23</sup> Respondent Ex. 39(d)-001; Respondent Ex. 39(d)-004 to 39(d)-012, 39(e), 39(f), 39(g), 39(h); Respondent Ex. 36(l), 37(l), 38(l), 151-035)].

<sup>24</sup> FCA Ex. 28(a) at 17.



the reliable and probative evidence in the record as a whole and are the product of an incorrect application and interpretation of applicable law. As shown above, Mr. Atkission has invested \$6.25 million in the dealership to keep it adequately capitalized and operating.<sup>25</sup> This \$6.25 million must be treated as either an investment in the dealership *or* a long-term “unsecured, subordinated debt” of the dealership, which has been more than adequate to fund dealership operations at its current location.<sup>26</sup> For these reasons, the foregoing Findings of Fact should be changed to provide as follows:

- No. 50. The amount invested in the dealership has been sufficient in view of its unsuitable location and the state of its leased facilities.
- No. 53. If the \$6.25 million in “Cecil Money” is considered to be “invested capital” or a “capital contribution,” then it is an investment in the dealership.
- No. 54. If the \$6.25 million in “Cecil Money” is considered to be an “unsecured, subordinated debt” of the dealership, then it is a binding obligation of the dealership payable to the owner of the dealership.
- No. 55. The \$6.5 million in “Cecil Money” placed by Cecil Atkission in Atkission Chrysler, whether considered debt or investment, provides, and has always provided, adequate capital for the operation of the business and sufficient capital to meet or exceed the capital requirements of FCA, which disfavors termination.

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<sup>25</sup> Testimony of Tyra Boram, Tr. at 712, lines 7-19; Testimony of Cecil Atkission, Tr. at 874, lines 24-25; 875, lines 1-16; 886, lines 1-4; 888, lines 22-24.

<sup>26</sup> Complainant Ex. 29 at 2; Testimony of Curtis Coleman, Tr. at 752, lines 5-21; 753, lines 8-14; Testimony of Carl Woodward, Tr. at 1065, lines 21-25, 1006, lines 1-15; Respondent Ex. 152-008, ¶ 31.



- No. 56. Atkission Chrysler's obligations to its floor plan financing source and Cecil Atkission, however that obligation is characterized, are substantial, which disfavors termination.

5. Atkission excepts to Finding of Fact Nos. 61, 62, 63, 64, and 65 concerning the injury or benefit to the public. Those findings are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole and are the product of an incorrect application and interpretation of applicable law. The public inconvenience that currently exists in the Orange Sales Locality is caused by the dealership's unsuitable location. Customers have complained of their inability to find it.<sup>27</sup> Relocating the dealership to a suitable location site – which Mr. Atkission already has bought, would solve the problem and increase employment opportunities in the Orange community. Mr. Atkission is ready, willing, and able to build a new facility for the dealership at a superior location.<sup>28</sup> But the ALJs erroneously refused to consider the need to relocate and erred in finding that Atkission Toyota would hire “many” of the dealership’s employees. (PFD at 71). In fact, only four employees work at both dealerships.<sup>29</sup> Mr. Atkission “couldn’t say that” he would hire all or

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<sup>27</sup> Testimony of Tyrone Allred, Tr. at 667, lines 1-4; 668, lines 1-11.

<sup>28</sup> Testimony of Todd Tunic, Tr. at 316, lines 15-18; Testimony of Cecil Atkission, Tr. at 903, lines 10-14.

<sup>29</sup> Testimony of Cecil Atkission, Tr. at 918, lines 21-25; 1037, line 25; 1038, lines 1-25.



many of them, but would have to evaluate each one.<sup>30</sup> For these reasons, the foregoing Findings of Fact should be changed to provide as follows:

- No. 61. Replacing Atkission Chrysler with a new dealership at its current location will not benefit the public.
- No. 62. Atkission shares four of its employees with Atkission Toyota.
- No. 63. If FCA were to terminate the Atkission Chrysler franchise, some but not all of the dealership employees might be hired by Atkission Toyota.
- No. 64. The impact on employment of terminating the Atkission Chrysler franchise would be negative and substantial.
- No. 65. Termination of Atkission Chrysler would have negative benefits for the public, a factor that disfavors termination.

6. Atkission excepts to Finding of Fact Nos. 68, 71, and 72 concerning the adequacy of the dealership's facilities, equipment, parts, and personnel. Those findings are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole and are the product of an incorrect application and interpretation of applicable law. The dealership's leased facilities are outdated and located on an unsuitable site, but this favors relocating the dealership, not terminating its franchise.<sup>31</sup> Other dealerships in Orange and nearby cities are housed in newer facilities and located close to major retail areas,

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<sup>30</sup> Testimony of Cecil Atkission, Tr. at 1019, lines 9-18.

<sup>31</sup> Testimony of Tyrone Allred, Tr. at 662, lines 17-25; 663, lines 1-7; Testimony of Cecil Atkission, Tr. at 880, lines 20-25; 881, lines 1-12; 882, lines 3-16.



all of which helps a dealership increase its sales.<sup>32</sup> The high turnover of dealership personnel is caused by the dealership's bad location.<sup>33</sup> For these reasons, the foregoing Findings of Fact should be changed to provide as follows:

- No. 68. The evidence shows that the facilities of Atkission Chrysler are unsuitable and not adequate to serve its market area.
- No. 71. The evidence shows that Atkission Chrysler has not been able to maintain a viable general manager, sales staff, or other dealership personnel because of its unsuitable location.
- No. 72. The inadequacy of Atkission Chrysler's facilities, equipment and personnel is a factor that weighs in favor of relocation, not termination.

7. Atkission excepts to Finding of Fact Nos. 76, 80, 81, 82, 83, and 84 concerning the dealership's sales obligations. Those findings are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole and are the product of an incorrect application and interpretation of applicable law. The findings are contrary to, and ignore, the objective market data showing the sharp drop in the dealership's sales caused by the TxDOT reconstruction project.<sup>34</sup> Those findings also ignore the applicability of the *force majeure* provision of the franchise agreement to that project. Any possible chance the dealership had of meeting MSR and of becoming profitable at the current

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<sup>32</sup> Testimony of Terry Williams, Tr. at 42, line 25; 43, lines 1-3; 117, lines 1-6; Testimony of Todd Tunic, Tr. at 358, lines 2-4.

<sup>33</sup> Testimony of Tyrone Allred, Tr. at 680, lines 4-7.

<sup>34</sup> Respondent Ex. 39(d)-001; Respondent Ex. 39(d)-004 to 39(d)-012, 39(e), 39(f), 39(g), 39(h); Respondent Ex. 36(l), 37(l), 38(l), 151-035)].



location was destroyed by the *force majeure* event – the TxDOT reconstruction project. TxDOT's acts in removing the exit from I-10 to the frontage road on which the dealership is located, and in elevating I-10 in front of the dealership fall squarely within the *force majeure* provision of the franchise agreements. Those events and the new obstacles they created for the dealership were beyond Atkission's control, and they excuse the dealership's inability to meet the sales and performance, facility, and signage obligations imposed by the franchise agreements. The available market data confirms this fact, as Chrysler itself recognized: "Atkission's performance declined dramatically through 2013." (FCA Brief at 11). The findings also ignore the fact that the dealership has never been in a suitable location and that the need to relocate became essential once the TxDOT reconstruction project was over.<sup>35</sup> For these reasons, the foregoing Findings of Fact should be changed to provide as follows:

- No. 76. Atkission Chrysler's failure to meet its contractual obligation to sell the number of FCA vehicles necessary to fulfill its MSR was excused by the operation of the *force majeure* provision of the franchise agreement.
- No. 80. The re-construction work on I-10 made Atkission Chrysler's current location an untenable site for an auto dealership.
- No. 81. Atkission Chrysler is located on an unsuitable site that is not conducive to selling cars.
- No. 82. Atkission Chrysler's poor MSR achievement percentages are caused by its unsuitable location, which the I-10 re-construction project made untenable.

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<sup>35</sup> Testimony of Cecil Atkission, Tr. at 838, lines 2-9; 880, lines 16-19.



- No. 83. The *force majeure* provision of the franchise agreement is applicable to the case.
- No. 84. Atkission Chrysler's failure to meet its contractual obligation to achieve 100% of MSR does not favor termination and cannot, by itself, constitute good cause for termination.

8. Atkission excepts to Finding of Fact Nos. 87 and 89 concerning the dealership's management obligations. Those findings are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole and are the product of an incorrect application and interpretation of applicable law. The evidence is undisputed that when Chrysler approved Mr. Atkission's purchase of the Orange dealership that Chrysler knew that he owned other dealerships located in the Central Texas area and would not be physically present at the Orange dealership during most of its operating hours.<sup>36</sup> Furthermore, in multiple dealer situations, such provisions are interpreted to mean that the dealer principal will devote his full attention to his automotive businesses, including the Orange dealership. The evidence shows that Mr. Atkission has done so. He visits the dealership weekly, and stays in constant communication with the dealership's management personnel by telephone, texts, and emails.<sup>37</sup> Thus, any breach of the obligation in the agreement requiring Mr. Atkission's presence at the dealership during most of its hours of operation was waived, as further established by Chrysler's failure to raise this complaint in its notice of default, its notice of

<sup>36</sup> Testimony of Todd Tunic, Tr. at 278, lines 22-25; 279, lines 1-2; Testimony of Cecil Atkission, Tr. at 1036, lines 4-10; 1037, lines 2-6.

<sup>37</sup> Testimony of Cecil Atkission, Tr. at 909, lines 19-22; 1034, lines 16-25; 1035, lines 1-3.



termination or in its dealer contact reports. The ALJs wrongfully ignored this evidence. For these reasons, the foregoing Findings of Fact should be changed to provide as follows:

- No. 87. Atkission Chrysler knew that Mr. Atkission would not be physically present at the dealership during most of its operating hours, did not raise any concern about lack of presence in its dealer contract reports, did not assert this concern in its notices of default and termination, and thus has waived any breach of the contractual provision requiring such presence.
- No. 89. Because any breach of the contractual obligation requiring Mr. Atkission's presence at the dealership during most of its operating hours was waived, this is not a factor that favors termination.

9. Atkission excepts to Finding of Fact Nos. 90, 95, 96, 97, and 98 concerning the dealership's personnel obligations. Those findings are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole and are the product of an incorrect application and interpretation of applicable law. The findings ignore the market data showing the plunge in the dealership's sales caused by the TxDOT reconstruction project<sup>38</sup> as well as the applicability of the *force majeure* provision of the franchise agreement.<sup>39</sup> The findings further ignore the fact that the dealership was never in a suitable location and that the need to relocate became

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<sup>38</sup> Respondent Ex. 39(d)-001; Respondent Ex. 39(d)-004 to 39(d)-012, 39(e), 39(f), 39(g), 39(h); Respondent Ex. 36(l), 37(l), 38(l), 151-035]

<sup>39</sup> FCA Ex. 28(a) at 17.



essential once the reconstruction project was completed.<sup>40</sup> The evidence shows that these circumstances have caused personnel problems.<sup>41</sup> But the evidence also shows that the dealership always has employed a sufficient number of sales staff and managers commensurate with the limited demand for vehicles at the present location, and that those employees have devoted the attention necessary to fulfill that demand.<sup>42</sup> The ALJs' assert that the attention of the dealership's general manager and some other employees, who also work at Atkission Toyota, are "insufficiently" focused on the needs of the Atkission Chrysler dealership, but cite no evidence to support their assertion. (PFD at 73, 74). For these reasons, the foregoing Findings of Fact should be changed to provide as follows:

- No. 90. Atkission Chrysler employed a sufficient number of sales staff and general management to carry out its obligations under the franchise agreement.
- No. 95. The attention of Atkission Chrysler's general manager is sufficiently focused on the needs of the dealership to satisfy its obligations under the franchise agreement.
- No. 96. The attention of Atkission Chrysler's employees, including those also employed at the Atkission Toyota store, are sufficiently focused on the needs of the Atkission Chrysler's dealership to satisfy its obligations under the franchise agreement.
- No. 97. Any breach of Atkission Chrysler's personnel obligations was excused by the *force majeure* provision of the franchise agreement.

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<sup>40</sup> Testimony of Cecil Atkission, Tr. at 838, lines 2-9; 880, lines 16-19.

<sup>41</sup> Testimony of Cecil Atkission, Tr. at 864, lines 6-25; 865, lines 1-3.

<sup>42</sup> Testimony of Cecil Atkission, Tr. at 865, lines 4-7.



- No. 98. The number of employees and management personnel required at the Atkission Chrysler dealership was reduced by the I-10 re-construction project and by the unsuitability of the current dealership location.

10. Atkission excepts to Finding of Fact Nos. 99, 102, 103, and 104 concerning the dealership's facility obligations. Those findings are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole and are the product of an incorrect application and interpretation of applicable law. The findings are contradicted by, and ignore, the objective market data showing the sharp drop in the dealership's sales caused by the TxDOT reconstruction project.<sup>43</sup> The dealership's facilities are adequate for the limited market it is currently able to serve from its existing location.<sup>44</sup> The findings also ignore the applicability of the *force majeure* provision of the franchise agreement.<sup>45</sup> The findings further disregard the fact that the dealership was never in a suitable location and that the need to relocate became essential once the reconstruction project was completed.<sup>46</sup> For these reasons, the foregoing Findings of Fact should be changed to provide as follows:

- No. 99. Atkission Chrysler has sufficiently maintained its facilities given the limited demand for vehicles at its current location.

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<sup>43</sup> Respondent Ex. 39(d)-001; Respondent Ex. 39(d)-004 to 39(d)-012, 39(e), 39(f), 39(g), 39(h); Respondent Ex. 36(l), 37(l), 38(l), 151-035]

<sup>44</sup> Testimony of Cecil Atkission, Tr. at 884, lines 23-25.

<sup>45</sup> FCA Ex. 28(a) at 17.

<sup>46</sup> Testimony of Cecil Atkission, Tr. at 838, lines 2-9; 880, lines 16-19.



- No. 102. The state of the dealership's facilities has not negatively impacted its success and customer relations at its current location; any such negative impact has been caused by the current location's unsuitability, which the I-10 re-construction has made untenable.
- No. 103. Any breach of the dealership's facilities obligation was excused by the *force majeure* provision of the franchise agreement and favors relocation, not termination of the franchise.
- No. 104. Any failure of the dealership to maintain adequate facilities was due to its unsuitable location, which the I-10 re-construction has made much worse.

11. Atkission excepts to Finding of Fact Nos. 105, 106, 107, and 108 concerning the dealership's place of business obligations. Those findings are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole and are the product of an incorrect application and interpretation of applicable law. The findings ignore the fact that although financing and insurance paperwork is occasionally handled off-site, the sales of Chrysler vehicles occur and are closed at the Atkission Chrysler dealership.<sup>47</sup> The lack of substance to the alleged breach of the franchise agreement on this point is shown by the fact that it was *never* mentioned in Chrysler's notices of default and termination, or raised as a concern in any of the dealer contact reports.<sup>48</sup> Furthermore, Chrysler offered no evidence of any customer complaints about having to complete some paperwork at the Toyota dealership in connection with the purchase of a Chrysler vehicle. Under these

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<sup>47</sup> Testimony of Cecil Atkission, Tr. at 897, lines 22-25, 898, lines 1-6; Testimony of Tyrone Allred, Tr. at 684, lines 1-5.

<sup>48</sup> Testimony of Todd Tunic, Tr. at 332, lines 13-15.



circumstances, any breach of the franchise agreement was both excused and waived. For these reasons, the foregoing Findings of Fact should be changed to provide as follows:

- No. 105. Any breach of Atkission Chrysler's contractual obligation to conduct its operations solely at the dealership location was excused by the *force majeure* provision of the franchise agreement and waived by FCA.
- No. 106. All sales of FCA vehicles are completed and closed at the Atkission Chrysler dealership.
- No. 107. The conduct of financing operations at the Atkission Toyota store has not undermined any customer relationships with the Atkission Chrysler dealership, and any breach of the franchise agreement was waived by FCA and excused by the *force majeure* provision of the franchise agreement.
- No. 108. The conduct of financing operations at the Toyota store does not favor termination of Atkission Chrysler's franchise.

12. Atkission excepts to Finding of Fact Nos. 109, 110, 111, 112, and 113 concerning the dealership's advertising obligations. Those findings are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole and are the product of an incorrect application and interpretation of applicable law. The findings contradict and ignore the objective market data in evidence showing the plunge in the dealership's sales caused by the TxDOT reconstruction project.<sup>49</sup> The findings also fail to account for the

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<sup>49</sup> Respondent Ex. 39(d)-001; Respondent Ex. 39(d)-004 to 39(d)-012, 39(e), 39(f), 39(g), 39(h); Respondent Ex. 36(l), 37(l), 38(l), 151-035]



applicability of the *force majeure* provision of the franchise agreement.<sup>50</sup> The findings further ignore the fact that the dealership was never in a suitable location and that the need to relocate became essential once the reconstruction project was completed.<sup>51</sup> Under these circumstances, it is impossible for the dealership to increase sales to a satisfactory level from its current location no matter how much is spent on advertising.<sup>52</sup> For these reasons, the foregoing Findings of Fact should be changed to provide as follows:

- No. 109. Any breach of Atkission Chrysler's advertising obligation to promote FCA products and services was excused by the *force majeure* provision of the franchise agreement.
- No. 110. The dealership devotes efforts to advertising that is commensurate with its location and the limited ability to sell FCA vehicles at the present location.
- No. 111. Because of the dealership's unsuitable location, it spends less than its competitors on advertising.
- No. 112. Atkission Chrysler's efforts to promote FCA products and services has been substantially impaired and rendered ineffective by the re-construction of I-10.
- No. 113. The amount of Atkission Chrysler's advertising expenditures and efforts do not favor termination of the franchise.

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<sup>50</sup> FCA Ex. 28(a) at 17.

<sup>51</sup> Testimony of Cecil Atkission, Tr. at 838, lines 2-9; 880, lines 16-19.

<sup>52</sup> Testimony of Cecil Atkission, Tr. at 880, lines 16-19; 901, lines 16-25; 902, lines 1-17; 942, lines 10-12; 942, lines 10-25; 943, lines 1-10].



13. Atkission excepts to Finding of Fact Nos. 114, 119, 120, and 121 concerning the dealership's signage obligations. Those findings are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole and are the product of an incorrect application and interpretation of applicable law. The findings ignore the need to relocate the dealership, the *force majeure* provision of the franchise agreement, and Chrysler's requirement to repair the signage at the dealership. The dealership's main sign was badly damaged in Hurricane Ike.<sup>53</sup> In particular, the sign's internal lighting was broken.<sup>54</sup> Repairing and maintaining the sign is Chrysler's responsibility for which Atkission pays a monthly fee.<sup>55</sup> Despite several requests to repair the sign, Chrysler has never fixed it.<sup>56</sup> Atkission tried unsuccessfully to find the parts needed to repair the sign.<sup>57</sup> To make the sign serviceable, Atkission, at its own expense, installed outside lighting to illuminate it at night and placed a canvas bag, not a plastic bag, on the sign with the brand names of Chrysler, Jeep, and Dodge printed on it.<sup>58</sup> Because of its plan to relocate the dealership, Atkission has resisted buying and

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<sup>53</sup> Testimony of Tyra Boram, Tr. at 713, lines 15-17; Testimony of Cecil Atkission, Tr. at 866, lines 4-5.

<sup>54</sup> Testimony of Cecil Atkission, Tr. at 866, lines 16-19; 867, lines 5-8.

<sup>55</sup> Testimony of Tyra Boram, Tr. at 712, line 25; 713, lines 1-10; 713, line 25; 714, line 1; Testimony of Cecil Atkission, Tr. at 865, lines 24-25; 866, lines 1-3.

<sup>56</sup> Testimony of Tyra Boram, Tr. at 714, lines 2-3; Testimony of Cecil Atkission, Tr. at 866, lines 20-25; 867, lines 9-10; 940, lines 15-21.

<sup>57</sup> Testimony of Cecil Atkission, Tr. at 868, lines 3-9.

<sup>58</sup> Testimony of Cecil Atkission, Tr. at 867, lines 1-4, 14-20.



installing a new sign and incurring the expense of relocating it.<sup>59</sup> However, in September 2015, Atkission paid the required deposit of \$30,399.00 for the new sign.<sup>60</sup> The existing sign has not been removed, and Atkission is still paying the monthly maintenance fee for it. [Testimony of Cecil Atkission, Tr. at 868, lines 10-16]. For these reasons, the foregoing findings should be changed to provide as follows:

- No. 114. Atkission Chrysler did not breach its signage obligation to display and use signage that complies with FCA's policies and guidelines.
- No. 119. FCA is responsible for maintenance and repairs to signage at the dealership, including the pole sign.
- No. 120. Hurricane Ike, the I-10 re-construction, and need to relocate excused any failure to comply with its signage obligations.

14. Atkission excepts to Finding of Fact Nos. 122, 123, 124, 125, 128, and 129 concerning the dealership's working capital and net worth obligations. Those findings are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole and are the product of an incorrect application and interpretation of applicable law. As shown above, since acquiring the dealership in 2008, Mr. Atkission has invested an additional \$6.25 million in the dealership to keep it adequately capitalized and operating in

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<sup>59</sup> Testimony of Daniel Fritz, Tr. at 204, lines 9-17; Testimony of Cecil Atkission, Tr. at 868, lines 20-25; 869, lines 1-25; 870, line 1.

<sup>60</sup> Respondent Ex. 144-002.



accordance with FCA's working capital and net worth guides.<sup>61</sup> This \$6.25 million constitutes either an investment in the dealership *or* an "unsecured, subordinated debt" obligation of the dealership to its owner, which at all times, has been more than adequate to fund dealership operations at its current location.<sup>62</sup> Properly accounted for, the \$6.25 million conclusively establishes that the dealership has always met FCA's working capital<sup>63</sup> and net worth requirements.<sup>64</sup>

The ALJs found Atkission's financial expert, Carl Woodward, who suggested and supported the reclassification, to be credible. (PFD at 62). But the ALJs disregarded Mr. Woodward's evidence because the reclassification was done after termination proceedings were instituted. (PFD at 62). The ALJs' action is yet another example of their penchant for favoring form over substance in this case. It is undisputed that Atkission put \$6.25 million in cash into his dealership. That is not a "minimal" amount. The only issue is how those funds should be treated on the dealership's books. The \$6.25 million is either a debt owed to Mr. Atkission or it is

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<sup>61</sup> Testimony of Tyra Boram, Tr. at 712, lines 7-19; Testimony of Cecil Atkission, Tr. at 874, lines 24-25; 875, lines 1-16; 886, lines 1-4; 888, lines 22-24.

<sup>62</sup> Complainant Ex. 29 at 2; Testimony of Curtis Coleman, Tr. at 752, lines 5-21; 753, lines 8-14; Testimony of Carl Woodward, Tr. at 1065, lines 21-25, 1006, lines 1-15; Respondent Ex. 152-008, ¶ 31.

<sup>63</sup> Complainant Ex. C-29 at 2; Respondent Ex. 33(l), 34(l), 35(l), 36 (l), 37(l), 38(k), 38(l); Testimony of Curtis Coleman, Tr. at 762, lines 22-25; 763, lines 1-7; 766, lines 19-22; 768, lines 18-23; 771, lines 13-16;; 773, lines 10-17; 774, lines 7-13; 775, lines 3-17; Testimony of Cecil Atkission, Tr. at 879, lines 5-7; Testimony of Carl Woodward, Tr. at 1069, lines 8-15; 1074, lines 3-16; 1082, lines 21-25; 1083, lines 1-12; 1096, lines 19-25; 1098, lines 10-13.

<sup>64</sup> Complaint's Ex. 29 at 2; Respondent Ex. 33(l), 34(l), 35(l), 36 (l), 37(l), 38(k), 38(l); Testimony of Curtis Coleman, Tr. at 763, lines 8-17; 766, lines 23-25; 768, lines 24-25; 769, lines 1-21; 771, lines 24-25; 772, lines 1-8; 773, lines 2-9; 774, lines 14-16; Testimony of Carl Woodward, Tr. at 1082, lines 21-25; 1083, lines 1-12; 1097, lines 4-11; 1098, lines 18-21.



equity invested in the dealership by him. The dealership treated those funds as subordinated loans from the owner rather than contributions to capital. But whether classified as an investment or a debt obligation, the financial impact is the same: *Atkission has always satisfied Chrysler's working capital and net worth guides, as the dealership's survival shows.*

The ALJs' misunderstanding of basic accounting principles is again revealed on page 63 of the PFD. The two sentences in the paragraph ending in the middle of that page are fundamentally wrong. Since 2008, Mr. Atkission has provided, in the form of a loan, \$6.25 million to the dealership to be used as its working capital. No part of that loan, which has been increasing since shortly after the dealership was purchased, has ever been repaid. The dealership regularly uses some of that loaned money to pay part of the dealership's floor plan loans on its new vehicle inventory. That use is *not* a loan of money *by the dealership*. No short-term use of the funds Mr. Atkission has loaned to the dealership by dealership can re-characterize the \$6.25 million loan into a short-term loan. The ALJs should have stated in the PFD that:

"The \$6.25 million that Mr. Atkission has loaned to the dealership constitutes a long-term working capital loan, not a current liability of the dealership. Part of the money Mr. Atkission loaned to the dealership is regularly used by the dealership to fund new vehicle inventory on a short-term basis. Mr. Atkission's long-term working capital loan to the dealership, because it is a subordinated loan from the owner, should be considered to be the same as equity in any calculation of the dealership's working capital or net worth."



The ALJs should have found that the dealership has never failed to meet its working capital and net worth obligations in the franchise agreements, and termination on the basis of the allegations that working capital and net worth standards have not been met is not justified.

For these reasons, the foregoing Findings of Fact should be changed to provide as follows:

- No. 122. Atkission Chrysler has not breached its contractual obligations to maintain adequate working capital consistent with FCA guides and net worth.
- No. 123. For every year since 2010, the amount of the dealership's working capital has been above the amount required by FCA guidelines.
- No. 124. For every year since 2010, the dealership has had a positive net worth.
- No. 125. As of October 2015, the dealership's net worth was a positive number -- \$ 2,688,095.00.
- No. 128. The dealership's recalculation of its working capital and net worth at the hearing was reasonable and should be adopted.
- No. 129. Atkission Chrysler's compliance with its working capital and net worth obligations is a factor that does not support termination.

15. Atkission excepts to Finding of Fact No. 133. This finding is not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole and is the product of an incorrect application and interpretation of applicable law. Chrysler's true reason for wanting to terminate the franchise is to increase its market penetration in the Orange Sales Locality – a



reason the Code forbids from constituting good cause for termination by itself. This desire was convincingly shown by the testimony of Chrysler's market expert, its area sales manager, its dealer network manager, and its national dealer placement manager.<sup>65</sup> But the ALJs never acknowledge that Chrysler's market share in the Atkission market area was 105% of the state average market share at the time of the hearing. This shows that the Atkission dealership is causing no harm to Chrysler, notwithstanding its poor sales performance.

When confronted with the fact that Chrysler was achieving more than its expected sales in the Orange Sales Locality, and thus losing no sales to competing brands, Chrysler's market expert, Mr. Farhat, countered that the standard on which MSR for the Dealership (and the rest of the Chrysler dealers in Texas) was based – and on which his expert report is based – is too low and thus inappropriate.<sup>66</sup> Chrysler's area sales manager, Mr. Williams, admitted that Chrysler was achieving 100% MSR in the Orange Sales Locality, but testified that Chrysler's intent was to replace Cecil Atkission with a dealer who would sell more product and “[t]ake market share.”<sup>67</sup> Chrysler's dealer network manager, Mr. Tunic, testified that he did not want the dealership to take sales away from other Chrysler dealers, but to take them from Chrysler's competitors in order to have a bigger market share for

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<sup>65</sup> Testimony of Terry Williams, Tr. at 63, lines 16-23; 81, lines 22-24; Testimony of Todd Tunic, Tr. at 329, lines 18-25; 330, lines 1-3; Testimony of Christopher Chandler, Tr. at 460, lines 24-25; 461, lines 1-2; Testimony of Sharif Farhat, Tr. at 636, lines 18-25; 637, lines 1-13; 640, lines 6-15].

<sup>66</sup> Testimony of Sharif Farhat, Tr. at 657, line 25; 658, lines 1-8.

<sup>67</sup> Testimony of Terry Williams, Tr. at 63, line 23; 157, lines 9-24; 158, lines 7-11.



Chrysler.<sup>68</sup> Chrysler's national dealer placement manager, Mr. Chandler, testified that Chrysler wanted "a higher market share" than was being achieved in the Orange Sales Locality.<sup>69</sup> For these reasons, the foregoing Finding of Fact should be changed to provide as follows:

- No. 133. FCA's desire for market penetration is the sole basis on which it seeks to terminate the Atkission Chrysler franchise.

16. Atkission excepts to the ALJs' statements at pages 26, 27, and 28 of the PFD concerning the impact of a termination on the dealership's assets and the expected loss to Mr. Atkission if termination occurs. The dealership's inventory of vehicles (both new and used), having a book value of over \$4 million as shown by Respondent Ex. 38(k) and 38(l), is subject to new car floor plan loans from Ally Bank (or GMAC) of just under \$2 million. A sale of those assets resulting from a termination of the franchise will net at best approximately \$2 million -- *not* the \$4 million the ALJs project to be recouped. (PFD at 26). The forced sale of the dealership's assets can be expected to produce the following, in rounded numbers:

New and used vehicle inventory	\$4,000,000
Less floor plan debt (not Atkission)	<u>\$2,000,000</u>
Net	\$2,000,000
Plus parts	\$300,000
Plus furniture, fixtures and equipment	<u>\$200,000</u> (generous estimate)

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<sup>68</sup> Testimony of Todd Tunic, Tr. at 329, lines 18-25; 330, lines 1-3.

<sup>69</sup> Testimony of Christopher Chandler, Tr. at 460, lines 13-25; 461, lines 1-2.



Total proceeds of sale (at most)                      \$2,500,000<sup>70</sup>

With the original dealership acquisition cost capitalized at \$882,794 (as shown by Respondent Ex. 38(k) and 38(l)), plus the additional \$6.25 million that Mr. Atkission invested in the dealership, he will be very fortunate to hold his total loss to \$4 million in the event Atkission Chrysler is terminated. For these reasons, the following Finding of Fact should be added:

- No. 134. Termination of Atkission Chrysler's franchise would result in a financial loss to Mr. Atkission of no less than \$4 million.

17. Atkission excepts to Conclusion of Law Nos. 11 and 13. Those legal conclusions are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole and are the product of an incorrect application and interpretation of applicable law. For these reasons, the foregoing Conclusions of Law should be changed to provide as follows:

- No. 11. FCA has not established good cause to terminate the Dealer Agreements in accordance with Texas Occupations Code § 2301.455.
- No. 13. FCA's proposed termination of Atkission Chrysler's franchise should be denied.

### **CONCLUSION AND PRAYER**

For the foregoing reasons, Atkission prays that its exceptions be in all things sustained; that the ALJs' findings and conclusions that Chrysler proved good cause for the proposed termination of Atkission's franchise be changed and modified to

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<sup>70</sup> Respondent Ex. 38(l).

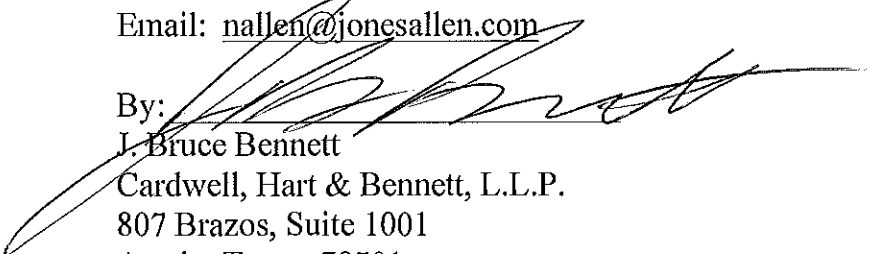


find and conclude that Chrysler failed to prove good cause for the proposed termination and that Atkission's protest be sustained. Alternatively, Atkission prays that this case be remanded to the ALJs for reconsideration and for such other relief to which it has shown itself to be entitled.

Respectfully submitted,

Wm. R. Crocker  
Attorney at Law  
807 Brazos, Ste. 1014 (78701)  
Post Office Box 1418  
Austin, Texas 78767  
Telephone: 512-478-5611  
Facsimile: 512-474-2540  
State Bar No. 0591000  
Email: [crockerlaw@earthlink.net](mailto:crockerlaw@earthlink.net)

Nathan Allen, Jr.  
JONES, ALLEN & FUQUAY, L.L.P.  
8828 Greenville Avenue  
Dallas, Texas 75243-7143  
Telephone: 214-343-7400  
Facsimile: 214-343-7455  
Email: [nallen@jonesallen.com](mailto:nallen@jonesallen.com)

By:   
J. Bruce Bennett  
Cardwell, Hart & Bennett, L.L.P.  
807 Brazos, Suite 1001  
Austin, Texas 78701  
Telephone: (512) 322-0011  
Facsimile: (512) 322-0808  
Email: [jbb.chblaw@me.com](mailto:jbb.chblaw@me.com)

ATTORNEYS FOR COMPLAINANT

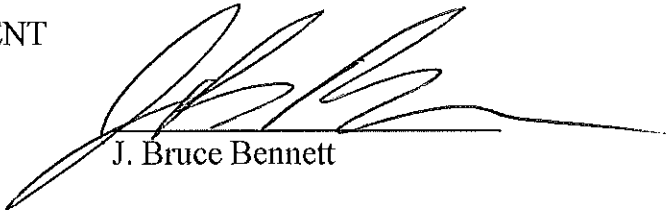


**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Complainant's Closing Statement has been sent via electronic means on this 20<sup>th</sup> day of July 2016, to the following counsel of record in this contested case:

Mr. Mark J. Clouatre  
Wheeler Trigg O'Donnell, LLP  
370 Seventeenth Street, Suite 4500  
Denver, CO. 80202  
[clouatre@wtotrial.com](mailto:clouatre@wtotrial.com)

ATTORNEYS FOR RESPONDENT



J. Bruce Bennett



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1108 Lavaca, Suite 800  
Austin, Texas 78701  
Phone: 512-476-2686  
www.tada.org

**FACSIMILE COVER SHEET**

Date: July 20, 2016

To: The Hon. Meitra Farhadi  
The Hon. Hunter Burkhalter  
Administrative Law Judges  
SOAH  
VIA FAX: 512-322-2061

Re: SOAH Docket No. 608-15-4315.LIC  
MVD Docket No. 15-0015.LIC

c: Mr. Daniel Avitia  
Director  
Motor Vehicle Division  
VIA FAX: 512-465-4135

From: Karen Phillips  
General Counsel/EVP  
TADA

Total Pages, including cover: 28

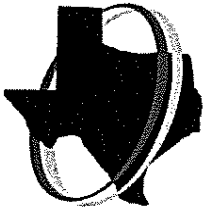
If you do not receive all of the pages, please contact 512-476-2686, TADA Legal Department.

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## Agenda Briefing Notebook

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**TADA**

Texas Automobile Dealers Association

July 20, 2016

1108 Lavaca, Suite 800  
Austin, Texas 78701  
Phone: 512-476-2686  
www.tada.org

The Hon. Meitra Farhadi  
The Hon. Hunter Burkhalter  
Administrative Law Judges  
SOAH  
300 West 15<sup>th</sup> St., Suite 502  
Austin, TX 78701

*Sent via facsimile:* 512-322-2061

Re: SOAH Docket No. 608-15-4315.LIC  
MVD Docket No. 15-0015.LIC

Cecil Atkission Orange, LLC d/b/a Cecil Atkission Chrysler Jeep Dodge,  
Complainant

v.  
FCA USA LLC,  
Respondent

Dear Judges Farhadi and Burkhalter:

Enclosed is the Amicus Curiae Brief of the Texas Automobile Dealers Association for filing in the above-referenced cause of action.

A copy is being forwarded via electronic means as set out in the Certificate of Service to counsel.

If you have any question or difficulty with the transmission, please do not hesitate to contact me.

Sincerely,

Karen Phillips  
General Counsel/EVP

c: Daniel Avitia



TEXAS DEPARTMENT OF MOTOR VEHICLES  
MOTOR VEHICLE DIVISION

Cecil Atkission Orange, LLC d/b/a	§	
Cecil Atkission Chrysler Jeep Dodge,	§	
	§	SOAH Docket
Complainant	§	No. 608-15-4315.LIC
	§	
v.	§	
	§	MVD Docket
FCA US LLC,	§	No. 15-0015.LIC
	§	
Respondent	§	

AMICUS CURIAE BRIEF  
OF  
TEXAS AUTOMOBILE DEALERS ASSOCIATION

The Texas Automobile Dealers Association (hereinafter referred to as “TADA”), an association of franchised motor vehicle and truck dealers, files this amicus curiae brief in the above-styled cause of action. TADA’s comments center around the process and the importance of the board’s role as the decision-maker in a contested case filed under the Occupations Code, Chapter 2301 or under Transportation Code, Chapter 503, specifically regarding the termination process.

BOARD IS THE DETERMINER

The Texas Department of Motor Vehicle’s board is the determiner as to whether good cause is established by a manufacturer, distributor, or representative for a proposed termination or discontinuance of a franchise. This responsibility does not fall upon “the department” as referenced in the Proposal for Decision (hereinafter referred to as “PFD”)—this statutory mandate is given to the board.



The TEXAS OCCUPATIONS CODE states:

§ 2301.453(g): After a hearing, the board shall determine whether the party seeking the termination or discontinuance has established by a preponderance of the evidence that there is good cause for the proposed termination or discontinuance.<sup>1</sup>

The “board” means the board of the Texas Department of Motor Vehicles.<sup>2</sup> The board consists of nine members appointed by the governor with the advice and consent of the senate. Requirements for the board’s make-up and appointment include public members; dealer members; a tax-assessor collector member; a law enforcement member; a motor carrier industry member; and a manufacturer or distributor member. Ineligibility for board appointment is succinctly spelled out in the statute.<sup>3</sup>

Although the board may delegate certain of its powers, the power to issue a final order is not delegated in a termination proceeding.<sup>4</sup> The rule adopted by the board regarding a final decision

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<sup>1</sup>TEX. OCC. CODE ANN. § 2301.453(g) (Vernon 2012).

<sup>2</sup>*Id.*, § 2301.002(2); § 2301.005(a).

*See also* TEX. TRANSP. CODE ANN. § 1001.001(1) and (2): “‘Board’ means the board of the department.” “‘Department’ means the Texas Department of Motor Vehicles.” (Vernon Supp. 2015).

<sup>3</sup>TEX. TRANSP. CODE ANN. § 1001.021 (Vernon Supp. 2015).

<sup>4</sup>TEX. OCC. CODE ANN. § 2301.154(b) and (c):

(b) “The board by rule may delegate any power relating to a contested case hearing brought under this chapter or Chapter 503, Transportation Code, other than the power to issue a final order, to: (1) one or more of the board’s members; (2) the executive director; (3) the director; or (4) one or more of the department’s employees.”

(c) “The board by rule may delegate the authority to issue a final order in a contested case hearing under this chapter or Chapter 503, Transportation Code, to: (1) one or more of the board’s members; (2) the executive director; or (3) the director of a division within the department designated by the board or the executive director to carry out the requirements of this chapter.”



states that the board has final order authority in this proceeding.<sup>5</sup>

The nine-member board is given great responsibility as its decisions impact the state and its citizens; thus, it is essential that a hearing and a proposal for decision accurately reflect the statute for the decision-maker's, i.e., the board's, consideration. The accountability for a final order is the nine-member board, not "the department."<sup>6</sup>

The PFD's Conclusions of Law (PFD at 77) recognize the board as the decision-maker in No. 7, No. 9 and No. 10:

7. A manufacturer may not terminate or discontinue a franchise with a franchised dealer unless the manufacturer provides notice of the termination and: (1) the franchised dealer consents in writing to the termination, (2) the appropriate time for the dealer to file a protest has expired, or (3) the Board makes a determination of good cause termination. TEX. OCC. CODE § 2301.453(a),(g).
9. In determining whether FCA established by a preponderance of the evidence that there is good cause for terminating Atkission Chrysler's franchise, the Board is required to consider all existing circumstances, including seven statutory factors. TEX. OCC. CODE § 2301.455(a).

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<sup>5</sup>43 TAC § 215.55: (a) "The board has final order authority in a contested case under Occupations Code, § 2301.204 or §§ 2301.601 - 2301.613, initiated by a complaint filed before January 1, 2014."

(b) "The hearings examiner has final order authority in a contested case under Occupations Code, § 2301.204 or §§ 2301.601-2301.613, filed on or after January 1, 2014.

**(c) Except as provided by subsections (a) and (b) of this section, the Board has final order authority in a contested case filed under Occupations Code, Chapter 2301, or under Transportation Code, Chapter 503."**

(d) "An order shall be deemed final and binding on all parties and all administrative remedies are deemed to be exhausted as of the effective date, unless a motion for rehearing is filed with the appropriate motion for rehearing authority as provided by law."  
(Emphasis added.)

<sup>6</sup>PFD at 4, 5, 6, 7.



10. The Board has the exclusive jurisdiction to determine the the issue of good cause, including the weight to be given each statutory factor. *Austin Chevrolet, Inc. v. Motor Vehicle Bd.*, 212 S.W.3d 425, 432 (Tex. App.–Austin 2006, pet. denied).

There can be no misunderstanding regarding the board's consequential role in the livelihood and investment of one of its citizens as well as the board's reach on the dealership's employees, consumers, and community that their decision affects.

### CODE REQUIREMENTS

In 1971, the 62<sup>nd</sup> Legislature adopted the Texas Motor Vehicle Commission Code. The language in the 1971 bill<sup>7</sup> referencing the required notice of termination by a manufacturer, distributor, or representative is all but identical to the statute's current language.

The 1971 adopted language stated:

Sec. 5.02. It shall be *unlawful* for any manufacturer, distributor, or representative to:

...

(3) *Notwithstanding the terms of any franchise agreement*, terminate or refuse to continue any franchise with a dealer unless (A) the *dealer and the Commission have received written notice sixty days* before the effective date thereof setting forth the *specific grounds* for termination or noncontinuance and (B) if the dealer files a protest with the Commission, it is established by a preponderance of evidence at a hearing called by the Commission that there is *good cause* for the termination or noncontinuance. The Commission<sup>8</sup> shall consider *all the existing circumstances* in determining good cause, including without limitation the dealer's sales in relation to the market, the dealer's investment and obligations, injury to public welfare, adequacy of service facilities, equipment, parts and personnel of the dealer and other dealers of new

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<sup>7</sup>Texas Motor Vehicle Commission Code, 62<sup>nd</sup> Leg., R.S., ch. 51, 1971 Tex. Gen. Laws 89, 97.

<sup>8</sup>The "Commission" consisted of six persons appointed by the Governor with the advice and consent of the Senate. *Id.* at 90.



motor vehicles of the same line-make, whether warranties are being honored, and compliance with the franchise agreement. Good cause shall not be shown solely by a desire for further market penetration. (Emphasis added.)

...

The statute at issue today maintains that notwithstanding the franchise, a manufacturer, distributor, or representative must provide a notice of termination with the specific grounds to a dealer and to the board.<sup>9</sup> In addition, the circumstances to consider whether there is a good cause to terminate are retained as well as expanded from the initial 1971 Code adoption.

In 1971, the conditions or facts for consideration of good cause for a termination are, without limitation:

1. The dealer's sales in relation to the market;
  2. The dealer's investment and obligations;
  3. Injury to public welfare;
  4. Adequacy of service facilities, equipment, parts and personnel of the dealer and other dealers of new motor vehicles of the same line-make;
  5. Whether warranties are being honored; and,
  6. Compliance with the franchise agreement.
- Good cause shall not be shown solely by a desire for further market penetration.

Today, the statute continues to list determinative factors the board is to consider for a finding of "good cause" to terminate and retains the elements from 1971 as well as expanding the enumerated considerations in 1989, as underlined below:

1. The dealer's sales in relation to the sales in the market;
2. The dealer's investment and obligations;
3. Injury or benefit to the public;
4. The adequacy of the dealer's service facilities, equipment, parts, and personnel in relation to those of other dealers of new motor vehicles of the same line-make;

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<sup>9</sup>TEX. OCC. CODE ANN. § 2301.453(a).



5. Whether warranties are being honored by the dealer;
6. The parties' compliance with the franchise, except to the extent that the franchise conflicts with this chapter; and
7. The enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms, oppression, adhesion, and the parties relative bargaining power.<sup>10</sup>

The desire of a manufacturer, distributor, or representative for market penetration does not by itself constitute good cause.<sup>11</sup>  
(Emphasis added)

In addition to the 1989 underlined language above regarding "good cause," the "specific grounds" for the termination or discontinuance continue to be required to be given to the dealer.<sup>12</sup>

The requirement that a dealer be given the "specific grounds" for a termination or noncontinuance is a requirement placed on a manufacturer, distributor or representative since 1971 and continues to be required forty-five years later.

In order for a dealer to mount a defense to allegations regarding the dealer's investment, livelihood, and the dealership's employees and consumers, the dealer must know of what he or she is being accused.

The "specific grounds" requirement also gives a manufacturer the opportunity to analyze the veracity and seriousness of its allegations to terminate.

#### FCA US LLC December 19, 2014, Notice of Termination

The certified and return receipt and overnight letter of December 19, 2014, to the board and to Mr. Atkission gave the Chrysler, Jeep and Dodge required "Notice of Termination." On page 1

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<sup>10</sup>Act of June 16, 1989, 71<sup>st</sup> Legislature, R.S., ch. 1130, 1989 Tex. Gen. Laws 4653, 4665 and now codified in TEX. OCC. CODE ANN. at § 2301.455(a).

<sup>11</sup>*Id.* § 2301.455(b).

<sup>12</sup>*Id.* § 2301.453(c).



of the December 19, 2014 letter, the outlined notice for material breach of the Dealer Agreements states:

- (1) sales performance (Dealer Agreements ¶ 4 and ¶ 11(a) of Additional Provisions of each Dealer Agreement),
- (2) working capital (Dealer Agreements ¶ 11(e)), and,
- (3) net worth (Dealer Agreements ¶ 11(e)).

Under the noticed “sales performance” cause are “other factors” noticed in the December 19, 2014, letter at 6 and 7:

- (1) sales performance,
  - (A) Dealer’s Signage Obligations (¶ 11(g) of the Additional Provisions of each Dealer Agreement);
  - (B) Dealer’s Management and Sales Personnel Obligations (¶ 11(f) of the Additional Provisions of the Dealer Agreements);
  - (C) Dealer’s Advertising and Sales Promotion Obligations (Dealer Agreements ¶ 12).<sup>13</sup>

The board and Mr. Atkission have notice of the “specific grounds” for termination as of December 19, 2014, and those grounds specify that the sales performance– including his signage, management and sales personnel obligations, and advertising and sales promotion obligations; working capital; and, net worth are the specific grounds for termination.

If a manufacturer, distributor, or representative determines there are new or additional grounds beyond the noticed specific grounds given for termination, then a new notice must be sent; otherwise, the statutorily required notice of “specific grounds” is incomplete and non-compliant.

This new notice must comply with Section 2301.453. The new notice must be sent registered or certified mail to the board and to the dealer; list the “specific grounds” for the termination; be received no later than the 60<sup>th</sup> day before the effective date of the termination or discontinuance; and

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<sup>13</sup>SOAH Exhibit R67.



contain the required notice.

Not only must a dealer know with specificity the reason for the termination prior to hearing, but the board must also be given this required information. This notice to the board is necessary as matters relating to a complaint or protest under Subchapter J of the Occupations Code are mediated through the agency's mediation procedure prior to a referral to SOAH.<sup>14</sup>

Adding new or additional reasons to terminate a dealer after sending a required Notice of Termination must start the process afresh. To do otherwise circumvents the "specific grounds" notice requirement as well as the agency's procedure and opportunity to mediate the dispute.

### DETERMINING GOOD CAUSE

The statute requires the board to consider all existing circumstances in making a good cause determination for a dealer's termination, notwithstanding the franchise agreement.<sup>15</sup> The statute lists items for the board to consider when making a good cause determination.

In 1989, when the Legislature was debating amendments to the statute, new requirements were placed on the Commission, now board, to require that the franchise agreement's enforceability be taken into account. Mr. Gene Fondren, former President of TADA, made the following comments to the House Committee on Transportation on April 4, 1989, and which are still applicable today:

. . .  
The amendments in H.B. 2552 and the committee substitute which more directly deal with the substantive rights and duties of the licensees of the Commission generally follow the same structure and pattern

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<sup>14</sup>TEX. OCC. CODE ANN. § 2301.703(c) (Vernon Supp. 2015); 43 TAC § 215.305 and § 215.306.

<sup>15</sup>*Id.* § 2301.455(a).



which have existed in the Code since its inception.

As an example, both the new and revised provisions of Section 5.02 of the Code establish substantive and procedural rights of a dealer franchisee in his relationship with his manufacturer or distributor “notwithstanding the terms of any franchise agreement.” In recognizing the relationship between a Texas dealer and his franchisor, the legislature has chosen not to require the franchisor to rewrite terms of a manufacturer’s or distributor’s agreement with the dealer. The legislature has clearly declared, however, that whenever a provision in such an agreement is in conflict with the laws of the state of Texas, then and in that event, a dealer may insist on the rights granted to him under the law “notwithstanding the terms of any franchise agreement.” In taking this approach, the legislature recognizes that manufacturer and distributor agreements are generally written on a national basis and are undoubtedly subject to differing laws of the many jurisdictions in which dealers operate.

Therefore, rather than imposing upon manufacturers the burden of writing an agreement in compliance with the laws of each jurisdiction, including Texas, this legislature has wisely declared that any provisions in these agreements which are contrary to the public policy and laws of this state, upon a licensee’s action to secure his rights, must give way to the laws of this state.  
(Exhibit 1)

If a franchise agreement is relied upon as the source of the “specific grounds” for termination, the “specific grounds” must be stated in the written notice to the dealer as required by § 2301.453(c) and those grounds must first be determined to be a good cause in light of the consideration of “all existing circumstances.” This analysis is necessary not because those grounds are a part of a franchise agreement, but because the statute looks at good cause “notwithstanding the franchise agreement.”

The franchise provisions alleged to have been violated must also be analyzed “from a public policy standpoint, including issues of the reasonableness of the franchise’s terms, oppression, adhesion, and the parties relative bargaining power” as required by § 2301.455(a)(7). The cause for



termination must be good cause under Texas law—not just because of an alleged violation of a stated franchise provision.

In determining whether an alleged violation of a franchise provision is good cause for termination, the board must be guided by “all existing circumstances,” including the seven considerations in § 2301.455.

A dealer in receipt of a termination notice is given the opportunity to file a protest and have a hearing on whether there is a good cause. After a hearing, the board determines whether, by a preponderance of evidence, the manufacturer has met the burden of showing there is good cause. The board issues the final order or decision.<sup>16</sup>

In order for the board to determine whether good cause exists for a termination, it is necessary to hear the dealer’s arguments. The board does not make a determination in a vacuum or with partial information as it is charged with reviewing “all existing circumstances.”

In addition, if the breach of a franchise provision is the stated good cause reason for a proposed termination, an analysis must be made of each such franchise provision with respect to its enforceability from a public policy standpoint, including consideration of the reasonableness of the franchise’s terms, oppression, adhesion, and the parties’ relative bargaining power, as required by § 2301.455(7).

Termination based on an alleged breach of a franchise provision without the analysis required in subsection (7) is incomplete and not compliant with Government Code § 2001.058(e).<sup>17</sup>

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<sup>16</sup>*Id.* § 2301.453(f) and (g).

<sup>17</sup>TEX. GOV’T CODE ANN. §2001.058(e): “A state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines:



Termination for a specific ground including one based on an alleged breach of a specific franchise provision without the benefit of a dealer's explanation and defense does not give the board the benefit of "all existing circumstances." Whether a dealer's explanation and defense refutes a specific ground for termination or shows that the alleged good cause is not proven is a decision for the board.

Any suggestion that a dealer may not explain or defend a termination ground takes away a party's potential defense and explanation and leaves the board with only partial knowledge—not the required consideration of all existing circumstances. To ask the board as the decision-maker to rule with incomplete information is contrary to the board's charge to consider "all existing circumstances" as set forth in § 2301.455(a).<sup>18</sup>

Whether a particular franchise provision is a good cause ground for termination must also be analyzed for its compliance with the code as required by § 2301.455(a)(6).<sup>19</sup> For example, sales

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(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under Subsection (c), or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.  
(Vernon 2016).

<sup>18</sup>FCA US LLC's Reply Closing Brief at 15: "Section 2301.455(a)(1) gives dealerships no opportunity to explain away poor performance; instead, its clear terms contemplate only sales performance itself, without investigating 'why.' Therefore, the analysis of this factor ends with Atkission's admission that its sales performance over its entire existence was dismissal [sic]. But even after indulging Atkission and evaluating its purported explanations, the undisputed evidence reveals its excuses are groundless."

<sup>19</sup>§ 2301.455(a)(6): "Notwithstanding the terms of any franchise, in determining whether good cause has been established under Section 2301.453 or 2301.454, the board shall consider all existing circumstances, including: . . .

(6) the parties' compliance with the franchise, *except to the extent that the franchise conflicts with this chapter*; and . . ." (Emphasis added).



or service standards may not be unreasonable under § 2301.467(a)(1); the purchase of special tools or equipment must be reasonable according to § 2301.467(a)(2); relocation requirements must be reasonable as required by § 2301.467(b).

The consideration of a manufacturer's or distributor's compliance with the code may also be necessary to apprise the board of all existing circumstances, such as whether motor vehicles or parts are delivered as required by § 2301.452; whether the manufacturer or distributor is equitable in its application of standards or guidelines as well as its treatment of all dealers when applying a formula or other computation or process that gauges the performance of a dealership under § 2301.468 as well as satisfying the duty of acting in good faith and fair dealing as outlined in § 2301.478.

The legislature determined that the Code's provisions are inter-related and a thorough analysis be given to the decision-maker when making decisions that affect the general economy and citizenry of Texas.

### CONCLUSION

The historical perspective regarding a statute is a valuable tool for a decision-maker. The inter-relationship of a statute with other statutes is also useful and may be required information in arriving at a decision.

The legislature adopts and amends laws as it finds necessary. In a termination cause of action, the statute is much the same today as in 1971. It is unlawful for a manufacturer, distributor, or representative to terminate or discontinue a franchise without providing a sixty days written notice to both the board and to the dealer. The specific grounds for the termination or discontinuance must be stated in the written notice.

Notwithstanding a franchise agreement's terms, a good cause determination for a termination



must be found by the board. The board is to consider all existing circumstances. The board's consideration must include the dealer's sales in relation to sales in the market; the dealer's investment and obligations; the injury or benefit to the public; the adequacy of the dealer's service facilities, equipment, parts, and personnel in relation to those of other dealers of new motor vehicles of the same line-make; whether warranties are being honored by the dealer; the parties' compliance with the franchise, except to the extent that the franchise conflicts with this chapter; and, the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms, oppression, adhesion, and the parties' relative bargaining power. A manufacturer's, distributor's, or representative's desire for market penetration does not by itself, constitute good cause for a termination of a dealer.

If a termination is based upon a franchise agreement's provisions, those provisions must be analyzed and shown to be good cause for termination as required under the § 2301.455. An analysis of whether a franchise provision is in conflict with Chapter 2301, Occupations Code, as well as whether a franchise provision is enforceable from a public policy standpoint must be made if a franchise provision is the alleged good cause reason for termination as the statute specifically says "notwithstanding the franchise."

If the stated termination is based on a franchise provision that is not a good cause for termination considering all existing circumstances under § 2301.455, then the termination cannot be allowed. If the franchise provision is in conflict with Chapter 2301 or, if the franchise provision is not enforceable from a public policy standpoint, the board must weigh these findings with the other "existing circumstances."

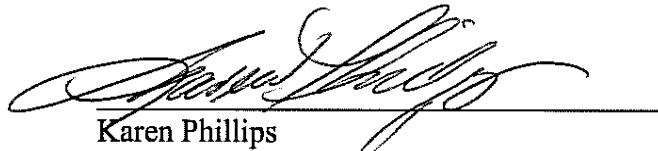
The board must be given the requisite information to make a decision, including whether a



franchise provision is in conflict with state law or is not an enforceable provision. If there is a misapplication or an improper interpretation of law, the board may change a finding of fact or a conclusion of law in a PFD.

The board's responsibility and authority cannot be overstated as its decisions impact licensees, employees of licensees, motor vehicle owners and operators, communities, the citizenry, and this State.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Karen Phillips', is written over a horizontal line.

Karen Phillips  
General Counsel/EVP  
Texas Automobile Dealers Association  
1108 Lavaca St., Suite 800  
Austin, TX 78701  
Telephone: 512-476-2686  
Facsimile: 512 476-5854  
State Bar No.: 04487400

ATTORNEY FOR TADA, Amicus Curiae



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Amicus Curiae Brief of the Texas Automobile Dealers Association has been sent via electronic means on this 20<sup>th</sup> day of July, 2016, to the following counsel of record in this contested case:

Mr. Mark J. Clouatre  
Wheeler Trigg O'Donnell, LLP  
370 Seventeenth Street, Suite 4500  
Denver, CO 80202  
[clouatre@wtotrial.com](mailto:clouatre@wtotrial.com)

Mr. John W. Chambless II  
Thompson, Coe, Cousins & Irons, LLP  
701 Brazos, Suite 1500  
Austin, TX 78701  
[jchambless@thompsoncoe.com](mailto:jchambless@thompsoncoe.com)

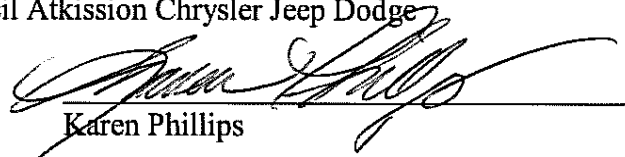
ATTORNEYS FOR RESPONDENT,  
FCA US LLC

Mr. William R. Crocker  
807 Brazos, Suite 1014  
Austin, TX 78701  
[crockerlaw@earthlink.net](mailto:crockerlaw@earthlink.net)

Mr. Nathan Allen, Jr.  
Jones, Allen & Fuquay, LLP  
8828 Greenville Av.  
Dallas, TX 75234  
[nallen@jonesallen.com](mailto:nallen@jonesallen.com)

Mr. J. Bruce Bennett  
Cardwell, Hart & Bennett, LLP  
807 Brazos, Suite 1001  
Austin, TX 78701  
[jbb.chblaw@me.com](mailto:jbb.chblaw@me.com)

ATTORNEYS FOR COMPLAINANT,  
Cecil Atkission Orange, LLC, d/b/a Cecil Atkission Chrysler Jeep Dodge



Karen Phillips



# Exhibit 1





Agenda Briefing Notebook

# House of Representatives Committee on Transportation

DAVID CAIN  
Chairman

Sam Russell  
Vice Chairman

Ron Lewis  
Chairman for Budget & Oversight

Billy Clemons  
Al Edwards  
George Pierce  
M.A. Taylor  
Garfield Thompson  
Brad Wright

May 9, 1990

I certify that the attached documents are correct copies of written testimony provided by Mr. Gene Fondren to the House Committee on Transportation at a Public Hearing held April 4, 1989.

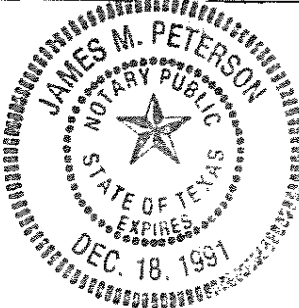
STEVEN M. POLUNSKY  
Chief Committee Clerk

STATE OF TEXAS ) (

COUNTY OF TRAVIS ) (

Before me, a Notary Public, on this day personally appeared Steven M. Polunsky, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed it for the purposes and consideration therein expressed.

Given under my hand and seal of office, this the 9th day of May 19 90.



Notary Public in and of the  
State of Texas



STATEMENT OF GENE FONDREN  
H.B. 2552 and Committee Substitute

Mr. Chairman and members of the House Committee on Transportation, my name is Gene Fondren. I am President of the Texas Automobile Dealers Association, comprised of some 1450 new car and truck dealers who are licensed to do business in Texas, and I am here tonight to speak in support of H.B. 2552 and the committee substitute laid out at the request of Chairman Cain.

As Chairman Cain has pointed out, H.B. 2552, including the committee substitute, amends the Texas Motor Vehicle Commission Code in several particulars.

H.B. 2552 and the committee substitute contain both substantive and procedural amendments to the Code.

The amendments which I would generally classify as procedural are designed to reinsure and re-enforce the jurisdiction of the Texas Motor Vehicle Commission over the distribution and sale of new motor vehicles in Texas as set out in the policy and purpose clause (Section 1.02) and elsewhere throughout the act. Further, these procedural changes are designed to refine and re-enforce the authority of the Commission and its staff to carry out its licensing activities and to conduct hearings and enter orders and final decisions in as prompt and efficient a manner as is reasonably possible.

In the furtherance of these objectives, language has been drawn from a substantial number of other statutes governing Texas regulatory agencies and from statutes with similar objectives in one or two other jurisdictions.

While some of these procedural and jurisdictional changes are responsive to challenges raised in contested cases (all such challenges have been unsuccessful to date), they also represent a natural extension and delegation to an agency which has proven its worth in regulating an industry of vital importance to the social and economic good of this state and in preserving and protecting valuable property rights of its citizens.

A compendium of other statutes referenced in these amendments to the Code is attached for the purpose of this record.

The amendments in H.B. 2552 and the committee substitute which more directly deal with the substantive rights and duties of the licensees of the Commission generally follow the same structure and pattern which have existed in the Code since its inception.



## STATEMENT OF GENE FONDREN

H.B. 2552 and Committee Substitute - page 2

As an example, both the new and revised provisions of Section 5.02 of the Code establish substantive and procedural rights of a dealer franchisee in his relationship with his manufacturer or distributor "notwithstanding the terms of any franchise agreement." In recognizing the relationship between a Texas dealer and his franchisor, the legislature has chosen not to require the franchisor to rewrite the terms of a manufacturer's or distributor's agreement with the dealer. The legislature has clearly declared, however, that whenever a provision in such an agreement is in conflict with the laws of the state of Texas, then and in that event, a dealer may insist on the rights granted to him under the law "notwithstanding the terms of any franchise agreement." In taking this approach, the legislature recognizes that manufacturer and distributor agreements are generally written on a national basis and are undoubtedly subject to differing laws of the many jurisdictions in which dealers operate.

Therefore, rather than imposing upon manufacturers the burden of writing an agreement in compliance with the laws of each jurisdiction, including Texas, this legislature has wisely declared that any provisions in these agreements which are contrary to the public policy and laws of this state, upon a licensee's action to secure his rights, must give way to the laws of this state.

It is to be noted that Subdivisions (1) and (2) of Section 5.02 proscribe certain conduct by manufacturers or distributors, making such proscribed conduct unlawful.



## COMMENTS

Section 1.03.(10): The definition of "broker" has been clarified by adding language which exempts bona fide employees of dealers, representatives and distributors from the definition of broker only when they are acting on behalf of their employer.

Section 1.03.(16): This definition, adopted from the Administrative Procedure and Texas Register Act, serves to limit the scope of rule and/or regulation so that the agency may adopt internal rules and specify forms and take care of other miscellaneous internal administrative matters without having to go through a formal rulemaking and also provides a standard which serves to limit the extent to which an agency may engage in informal rulemaking through the use of internal memorandums.

Section 1.03.(17): A definition of "party", derived from the Administrative Procedure and Texas Register Act, was added to the Code so that "party" could be added as a necessary term of art to the Code.

Section 1.03.(18): A definition of "relocation" was added to provide a statutory definition of the term.

Section 1.04.: This section is a standard construction and severability provision which will serve to maintain the validity of the balance of the Texas Motor Vehicle Commission Code in the event that any portion of the Code should be held invalid.

Section 2.02A.: This section has been added because the Sunset Advisory Commission will require its addition in 1991 during Sunset review.

Section 2.08.(a): This section has been amended to grant the Chairman and the Executive Director the power to call special Commission meetings.

Section 2.09.(a): This section makes the Executive Director the chief executive and administrative officer of the agency and requires that he be a licensed attorney. He serves at the pleasure of the Commissioners.

Section 2.09.(b): This section requires the Executive Director to meet with the Commissioners in an advisory capacity in all proceedings of the Commission. It also requires the Executive Director to submit reports to the Commission as may be required by the Commission's rules or by this Act.

Section 2.09.(c): This section provides for maintaining minutes of Commission proceedings and for the custodianship of the Commission's files and records.



Section 2.09.(d): This section grants the Executive Director the power to, with the consent of a majority of the Commissioners, enter into contracts on behalf of the Commission.

Section 2.09.(e): This section grants the Executive Director the power to employ the Commission's staff.

Section 2.09.(f): This section carries forward the language which was previously set forth in section 2.09.(b).

Section 2.09.(g): This section carries forward the language which was previously set forth in section 2.09.(c).

Section 2.09.(h): This section creates a blanket indemnity by the State for all Commission officials and employees for all good faith acts in their official capacity. This is to insulate these officials from the chilling effect of the threat of personal liability for their good faith acts in performance of their duties. The general indemnity statutes of this state are more restricted and provide inadequate protection.

Section 2.09.(i): This section focuses the flow of documents into the Commission by requiring them to be directed to the Executive Director.

Section 2.09A.: This section requires hearing examiners to be licensed attorneys.

Section 2.12.: This section now contains certain complaint reporting requirements which will also be required by the Sunset Advisory Commission in 1991.

Section 2.13.: This section has been added to incorporate a number of provisions which will be required by the Sunset Advisory Commission in 1991.

Section 3.01.: This section has been created to provide a clear jurisdictional grant, and power to implement, over all issues involving the distribution and sale of new motor vehicles.

Section 3.02.: This section specifies the duties of the Commission.

Section 3.03.: This section grants the Commission the power to exercise its grant of jurisdiction.



Section 3.04.: Provides a clear and express delegation of powers structure within the Commission. This section allows more precise delegation of powers by the Commission.

Section 3.05.: Grants the power to investigate complaints and the power to dismiss unmeritorious complaints.

Section 3.06.: This section is a delegation of power to the Commission to adopt Rules.

Section 3.07.: This section delegates to the Executive Director the power to execute the final decisions of the agency.

Section 3.08.(a): This section sets up the general hearing procedure in contested cases and sets up the general prescription that the APA will control in contested cases to the extent that it "does not conflict" with this Code. It also delegates certain Commission powers to the presiding examiner including the authority to issue interlocutory, cease and desist orders.

Section 3.08.(b): This section specifies the contents of a hearing notice.

Section 3.08.(c): This section provides the notice procedure for rulemaking and requires the promulgation of rules to govern licensing proceedings.

Section 3.08.(d): Governs certain due process issues of notice in a contested case.

Section 3.08.(e): This section specifies the time and place for the conduct of hearings.

Section 3.08.(f): This section sets forth the rights of any person who is a party before the Commission.

Section 3.08.(g): Specifies the procedures for all contested cases.

Section 3.08.(h): Contains the mechanics for motion for rehearing practice in all contested cases.

Section 3.08.(i): This section provides for and specifies the detailed procedure for filing a complaint concerning defects in motor vehicles which are covered by a manufacturer's, converter's or distributor's warranty.

Section 3.08.(j): This section authorizes the Commission to dismiss a complaint or protest if it determines that a complaint or protest is frivolous or was made for purposes of harassment.



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Section 3.08A.: This is a general statutory stay which estops all parties from disturbing the status quo once they receive notice of a complaint or protest against their actions. Subsection (b) allows aggrieved parties an intraagency challenge of the stay.

Section 3.09.: Allows the Code to preempt conflicting APA provisions.

Section 4.01.: Expressly makes all proceedings involving licenses contested cases. The Commission may, by rule, provide for published notice in Section 4.02 licensing proceedings.

Section 4.02.(a): This section has been grammatically corrected.

Section 4.02.(c): This section has received grammatical and stylistic corrections.

Section 4.02.(d): This section has been grammatically corrected.

Section 4.03.: This section has received grammatical and stylistic corrections.

Section 4.06.(a): This section has been revised to remove the element of subjective intent from several of the grounds for revoking or suspending an outstanding license.

Section 4.06.(c): This section has been modified to set forth the standards the Commission shall consider in determining whether an applicant has, after protest, failed to establish good cause for a new dealership application.

Section 4.06.(d): This section sets forth the standing requirements to protest a dealer's application to establish a dealership.

Section 4.06.(e): This section has received grammatical corrections.

Section 4.06.(f): This section has been amended to allow the Commission to inspect the books and records of a licensee in connection with the performance of its duties under this Act.

Section 4.08.(a): This section has had an internal citation corrected to harmonize with the rest of the Code.

Section 4.08.(c): This section has received grammatical corrections and has been adjusted to provide that failure to give the notice required by section 4.07 is a violation of the Act.



Section 5.02.(3): This is a specific statutory stay for franchise terminations. This section contains specific notice requirements and procedures which must be followed by any manufacturer or distributor and estops all parties from disturbing the status quo upon notice of protest of a franchise termination.

Section 5.02.(4): This is an additional, express statutory stay which operates when any manufacturer or distributor seeks to modify or replace a franchise.

Section 5.02.(5): This gives factors the Commission shall consider in determining good cause under Section 5.02. It includes a new factor regarding the enforceability, from a public policy standpoint, of the franchise in question and exculpates a dealer from failure to comply with "oppressive" franchise terms.

Section 5.02.(6): This section repeats the former language of section 5.02.(4).

Section 5.02.(7): This section now permits dealers to reasonably change the capital structure of their dealerships.

Section 5.02.(8): This adjustment was made so that the Commission does not have to give approval to all preventions of sales or transfers unless a dealer or other interested party has complained of the prevention of transfer.

Section 5.02.(9): This section was grammatically corrected so that it would integrate with the leading paragraph of section 5.02.

Section 5.02.(10): This section was grammatically corrected so that it would integrate with the leading paragraph of section 5.02.

Section 5.02.(11): This section received various grammatical corrections, including the adjustment to conform it to the leading paragraph of section 5.02, and was adjusted to extend this section to distributors.

Section 5.02.(12): This section repeats the language of former section 5.02.(10).

Section 5.02.(13): This section repeats the language of 5.02(11) and adjusts the test to be applied by the Commission so that a succession would be disallowed upon a showing that the succession would be detrimental to the public interest and to the representation of the manufacturer or distributor.

Section 5.02.(14): This section repeats the language of former section 5.02.(12) and adds the provision that this section would apply notwithstanding the terms of any franchise agreement.



Section 5.02.(15): This section repeats the language of the former section 5.02.(13).

Section 5.02.(16): This section essentially repeats the language of former section 5.02.(14) but with the addition of language which requires payment to a dealer or any lienholder in accordance with their respective interests after a franchise is terminated and, in subpart (F), the time periods for payments to a terminated franchisee are shortened.

Section 5.02.(17): This makes illegal a manufacturer's or distributor's attempt to terminate a franchise by changing business structure or method of distribution.

Section 5.02.(18): This section governs the usage of arbitration.

Section 5.02.(19): This section deals with a dealer's required relationship with any advertising association.

Section 5.03.: This section was grammatically corrected.

Section 5.04.(a) and (c): These subsections were grammatically corrected and the language of subsection (a)(2) was adjusted to declare that an agent of a licensee may not engage in the business of buying, selling or exchanging new motor vehicles.

Section 6.01.: Changes the Commission's civil penalty statute to bring it in line with other state agencies. Most notably it amends the penalty power to an amount not to exceed \$10,000 per day per act of violation.

Section 6.01A.: Contains the mechanics and guidelines for implementing the Commission's injunction powers. It closely follows the statute authorizing and providing the factors for issuing district court injunctions (Tx. Civ. Prac. & Rem. Code §65.001 et seq.) but is tailored to the Commission's own needs. It provides for intraagency appeal of interlocutory, cease and desist orders prior to resorting to the courts.

Section 6.02.: This section was grammatically corrected and adjusted to allow suit for injunctive relief to be instituted in any court.

Section 6.03.: This section received various grammatical corrections.

Section 6.04: Creates additional venue options for actions brought to enforce Commission orders.

Section 6.05: This section was grammatically corrected and adjusted to allow a court to issue ex parte relief.



Section 6.06.(a): This section was grammatically corrected and was adjusted to require that due deference be given to findings of fact and conclusions of law which the Commission may have issued in any final order which forms the basis of a civil suit.

Section 6.06.(d): This section requires that all actions against a dealer be brought in an appropriate Texas forum and that Texas law be applied.

Section 6.07.(a) and (b): These sections were adjusted to extend coverage to converters.

Section 6.07.(c): This section was adjusted to extend coverage to converters and to provide that the Commission may not order a manufacturer, distributor or converter to refund or replace a defective vehicle until an opportunity has been given to cure the alleged defect or nonconformity.

Section 6.07.(d): This section was adjusted to incorporate a rebuttable presumption regarding a reasonable number of repair attempts and to provide that out of service for repair time does not accrue during any period of time that a manufacturer or distributor lends a comparable motor vehicle.

Section 6.07.(e): This section was adjusted to cover converters and was grammatically corrected. Trial de novo has also been deleted.

Section 6.07.(g): This section was adjusted to cover converters and provides that the Commission may only order a dealer to reimburse for items or options added to a vehicle by the dealer.

Section 6.07.(i): This section prohibits the contractual modification of the remedies provided by this Code unless done in accordance with a settlement agreement.

Section 7.01: Allows parties to appeal Commission orders to either the Travis County District Court or the Court of Appeals for the Third Supreme Judicial District. The objective is to provide a quick, efficient and relatively inexpensive forum for TMVC appeals.

This section also requires that citation be served on all record parties before the Commission by the appellant and allows dismissal of an appeal for failure to prosecute within a reasonable time.







of its poor performance, and its own lack of a viable defense, Atkission asks the ALJs for a wholesale reversal of these findings without acknowledging the overwhelming evidence that led to them. In doing so, Atkission simply rehashes the same arguments the ALJs expressly addressed and rejected in their Proposal for Decision. And in simply duplicating its prior arguments, Atkission has failed to provide the ALJs with any reason to revisit their well-reasoned findings and conclusions on these issues. Accordingly, the ALJs should disregard Atkission's Exceptions wholesale and leave the Proposal for Decision unchanged.

### **ATKISSION'S LEGAL ARGUMENT IS MERITLESS**

Atkission's Exceptions are premised almost entirely on their unpersuasive contentions that the ALJs (1) erred in interpreting the statutory factor that considers the "dealer's investment" (though Atkission itself has no investment), (2) failed to consider the dealership's relocation "concept" (despite having made no credible attempt to move locations in over seven years of operations), and (3) erred in considering grounds for termination not specified in the Notice of Termination (while simultaneously conceding the ALJs are obligated to consider any factors "which might be relevant" to termination). Atkission's arguments are meritless—factually and legally—and the ALJs should affirm their Proposal for Decision.

#### **A. The ALJs Correctly Interpreted "Dealer's Investment" As Not Including Mr. Atkission's Personal Investment**

The ALJs correctly concluded that Mr. Atkission's \$6.25 million in personal loans to the dealership did not qualify as the "dealer's investment" under section § 2301.455(a)(2). The ALJs found that Atkission's investments are minimal, and the dealership's obligations are similarly minimal. (PFD at 29.) By statute, the "dealer" is the dealership (not Mr. Atkission) because the dealership holds the general distinguishing number issued by the Board. (PFD at 24.) The ALJs' interpretation of "dealer" "accurately appl[ies] the plain meaning of the statute" and any other



interpretation would render the statutory definition of “dealer” superfluous. *Id.* Ignoring the plain language of the statute altogether, Atkission insists that the ALJs erred because Mr. Atkission’s \$6.25 million in personal loans should have been treated as a capital investment in the dealership. This argument misses the point: Mr. Atkission’s investment in the dealership is not the same thing as “*the dealer’s* investment”—the inquiry that is highlighted under the statute.

Also unpersuasive is Atkission’s contention that the term “dealer” was somehow intended to be broader than its statutory definition. Atkission’s attempt to redefine the term “dealer” in a manner contrary to its plain statutory definition should be disregarded. *See Jaster v. Comet II Const., Inc.*, 438 S.W.3d 556, 574 (Tex. 2014) (“When interpreting the Legislature’s words, we cannot revise them under the guise of interpreting them.”) For the same reason, there is no merit to Atkission’s claim that applying the statutory definition of “dealer” according to its plain meaning “will create a dangerous and unfair precedent that will render millions of dollars in investments made in dealerships by their owners, like Mr. Atkission, meaningless.” (Exceptions at 3.) Under ordinary circumstances, the loans of an individual owner to a dealership would be given significant weight when considering the “dealer’s . . . obligations.” The ALJs recognized this exact point, opining that “those monies [invested by Mr. Atkission] might” normally “be considered as an obligation of the dealership.” (PFD at 24.) Here, however, the circumstances surrounding Mr. Atkission’s loans were anything but normal. Instead the undisputed evidence established that Mr. Atkission’s personal loans did not qualify as actual obligations of the dealership because the loans did not require repayment:

Essentially everyone, including Mr. Atkission, concedes that those “loans” will probably never be repaid. No principal has ever been repaid, or even demanded, and there is no documentation in the record to indicate that the principal must be repaid. As such, the



ALJs cannot conclude that the dealership is under an actual obligation to repay the \$6.25 million. (*Id.* at 28)

Because the ALJs' analysis of the investment and obligation factor is legally and factually sound, the ALJs should leave their Proposal for Decision unchanged.

**B. Atkission's Relocation "Concept" Was Neither Legally Relevant Nor Credible**

The ALJs expressly rejected Atkission's attempt to "blame[] its location as the sole cause of its poor performance," explaining that—in light of the evidence—they were "not convinced that the location is a bad one, nor . . . that the dealership's poor performance can be blamed on the location." (*Id.* at 13.) The ALJs also found "that the relocation issue was not being legitimately raised by the dealership" because the undisputed evidence showed that Atkission's requests to relocate "were incomplete, ineffective, and submitted without any urgency on the dealership's part." (*Id.*) In this regard, the ALJs concluded that "the history of the relocation issue shed an unflattering light on the dealership in a way that suggests termination is warranted" and that Atkission's attempts to manufacture a baseless relocation defense underscored exactly why "it is entirely reasonable for FCA [US] to want to terminate its business relationship with the dealership." (*Id.*) Although the voluminous evidence discrediting Atkission's relocation argument need not be repeated in detail here, the evidence fully supports the ALJs' conclusions and the ALJs were correct to "decline to convert this case into a relocation case." (*Id.* at 8.)

Notwithstanding the evidentiary record establishing that Atkission's relocation "concept" is not credible, Atkission's various claims that the ALJs erred in rejecting its relocation defenses are meritless as follows:

**1. The Statutory Stay Prohibited the ALJs from Considering the Relocation "Concept"**



Atkission claims that the ALJs erred in finding good cause for termination without first permitting the dealership to implement its relocation “concept.” However, the ALJs were required to disregard this issue because approval of Atkission’s relocation “concept” was, as the ALJ observed, “barred” by the mandatory and automatic statutory stay imposed by the Department and was otherwise “not ripe for adjudication.” (*Id.* at 12.) Had the ALJs permitted Atkission to conflate this proceeding with its relocation “concept” then FCA US’s legal rights would have been jeopardized in violation of the stay and in direct contravention of the Department’s order that Atkission’s relocation “concept” have no bearing on the question of termination.

**2. The ALJs Properly Considered and Rejected Atkission’s Arguments Attempting to Excuse Poor Performance**

At the hearing, the dealership raised the relocation “concept” and many other arguments in an attempt to avoid termination. The ALJs heard extensive testimony on these arguments from Atkission’s witnesses but ultimately determined they were either not credible or legally irrelevant. Atkission now seeks to paint the ALJs’ decision to reject these arguments as a failure to consider the dealership’s “affirmative defenses.” (Exceptions at 6-7.) Aside from the fact that no affirmative defense could render Atkission’s proffered arguments viable, Atkission again mistakes reality; the ALJs expressly clarified that nothing in the statutory framework prevented Atkission from raising any defense to termination and that good cause would turn “on all of the evidence in the record . . . includ[ing] any information that bears upon the dealership’s performance at any time.” (PFD at 6.) Consistent with the ALJs’ clarification, the ALJs heard and considered all of Atkission’s proffered evidence that the dealership’s poor performance was caused—or excused by—outside forces. Although the ALJs rejected Atkission’s proffered



evidence, the dealership had every opportunity to defend against termination. It just failed to do so credibly.

### **3. Atkission's Deficiencies Were Caused by Internal Deficiencies and Not Outside Forces**

As a corollary to its affirmative defense argument, Atkission also argues that the ALJs erred in not considering its force majeure defense that "lengthy" highway construction excuses the dealership's poor performance and contractual breaches "concerning sales, personnel, signage, and advertising." (*Id.* at 6.) Atkission's claim once again mischaracterizes the Proposal for Decision. In reality, the ALJs' expressly addressed and rejected Atkission's force majeure argument, finding that "[t]he dealership's testimony on this point was not credible" and that the "force majeure clause is not applicable." (PFD at 44.) In support of these findings, the ALJs rejected Atkission's argument that the construction hindered the dealership's visibility and access and, instead, accepted as credible the testimony of "[e]ssentially all of the FCA witnesses that the dealership was visible and easily accessed." (*Id.*) The ALJs also noted that "the dealership's sales 'were terrible before the construction, terrible during the construction, and terrible after the construction'" and that Atkission's "best sales performance periods (relatively speaking) occurred during the highway construction, which belied [Atkission's] claim that the construction was disruptive to business." (*Id.* at 43.)

The evidence fully supports the ALJs findings and credibility determinations. As such, the ALJs should disregard Atkission's attempts to distort the record. Further, that the ALJs properly concluded outside forces did not cause Atkission's deficiencies is confirmed by Atkission's years-long failure to ever request a local-market adjustment to counter these supposed outside forces. (*See* Chandler, Tr. at 378, line 18 to 379, line 8, FCA Exs. 28(a), 28(b))



at ¶ 11(a) (“Upon dealer’s written request, [FCA US] may adjust dealer’s [MSR], if appropriate in [FCA US’s] judgment, to take into account extraordinary local conditions”); Tunic, Tr. at 303, line 17 to 304, line 24; Williams, Tr. at 54, lines 6–20.)

**C. The ALJs Correctly Considered “All Existing Circumstances” Rather than Just the Specific Grounds for Termination in the Notice**

For the third time in this case, Atkission argues that the good cause determination is limited by the grounds specified in the Notice of Termination. This time, Atkission reasserts its strained interpretation while simultaneously conceding that termination is appropriate “only after a very careful and correct legal and factual assessment of ‘all existing circumstances, including . . . every other statutory factor . . . *which might be relevant.*” (Exceptions at 1.) Atkission’s concession is entirely consistent with the ALJs’ conclusion “that the relevant factors for the Department to consider in making a good cause determination are both the grounds specified by the manufacturer in the Notice of Termination as well as the statutory factors set forth in [section] 2301.455(a).” (PFD at 7.) Because the mandatory statutory language states that the ALJs “*shall consider all existing circumstances*”—and Atkission seemingly agrees—the ALJs’ conclusion is the only correct one and should be reaffirmed. *See Columbia Med. Ctr. of Las Colinas, Inc. v. Hogue*, 271 S.W.3d 238, 256 (Tex. 2008) (courts must not interpret the statute “in a manner that renders any part of the statute meaningless or superfluous”).

**REPLY TO EXCEPTION NO. 1**

Atkission claims the ALJs erred in not considering the \$6.25 million in personal loans from Mr. Atkission, the impact of the highway construction, Atkission’s force majeure defense, and other “affirmative defenses.” As described above, however, Mr. Atkission’s personal loans do not aid the dealership in this matter, no credible evidence supports Atkission’s claim that the highway construction had any impact whatsoever on the dealership’s operations, and the ALJs



expressly addressed and rejected Atkission's force majeure contention as well as its other arguments attempting to blame poor dealership operations on outside forces. The ALJs should deny Exception No. 1.

### **REPLY TO EXCEPTION NO. 2**

The ALJs have already ruled twice previously (and correctly) that the termination statute mandates consideration of "all existing circumstances" rather than—as Atkission insists—solely the deficiencies specified in the Notice. As described above, Atkission's interpretation of the statute is contrary to both the plain language of the statute and its own statement that the ALJs must consider all statutory factors "which might be relevant." (Exceptions at 1.) The ALJs should deny Exception No. 2 and Atkission's Proposed Conclusions of Law Nos. 3A through 3F.

### **REPLY TO EXCEPTION NO. 3**

Atkission claims that the ALJs ignored evidence that the highway construction negatively impacted the dealership's sales. Again, the ALJs determined Atkission's construction defense was not credible and accepted the overwhelming evidence presented at the hearing that Atkission's performance was "terrible before the construction, terrible during the construction, and terrible after the construction." (PFD at 43.) The ALJs should deny Exception No. 3 and Atkission's proposed modifications to Findings of Fact Nos. 35 through 37 and 44 through 46.

### **REPLY TO EXCEPTION NO. 4**

Atkission again argues that Mr. Atkission's personal loans to the dealership should be considered the "dealer's investment." As established above, the ALJs correctly ruled that Mr. Atkission's personal investment is not the "dealer's investment" and, in addition, that these loans are not an "obligation" of the dealership because they do not require repayment. The ALJs should



deny Exception No. 4 and Atkission's proposed modifications to Findings of Fact Nos. 50 and 53 through 56.

### REPLY TO EXCEPTION NO. 5

Atkission contends that the ALJs wrongly concluded that the injury and benefit to the public weighed in favor of termination because any public inconvenience resulted exclusively from the dealership's poor location. However, as set forth above, Atkission's location argument is not credible and significant harm to the public occurred because Atkission lacks "the fundamental will or ability to manage its own affairs." (PFD at 13.) The record also supports the ALJs' finding that termination will benefit the public welfare, especially because "the evidence showed that FCA intends to replace Atkission Chrysler with a new dealer, which would further benefit the public by increasing employment opportunities within Orange and allowing local customers to have their needs met without the inconvenience of driving 20-40 miles away." (*Id.* at 31.) The ALJs should therefore deny Exception No. 5 and Atkission's proposed modifications to Findings of Fact Nos. 61 through 65.

### REPLY TO EXCEPTION NO. 6

Atkission argues that its poor location caused the dealership's deficiencies with respect to facilities, equipment, parts, and personnel. Again, Atkission's attempt to blame its deficiencies on its location is not credible. Nor is Atkission's argument persuasive in light of the overwhelming evidence outlined in the Proposal for Decision that Atkission's facilities, equipment, parts, and personnel are unacceptable and among the worst in Texas—if not the nation. Indeed, even Mr. Atkission and the dealership personnel agreed that the facility is in "poor condition," "not conducive to a successful business," an "eye-sore," and that the dealership "has a high turnover of management and personnel." (PFD at 32-33.) The ALJs should therefore



deny Exception No. 6 and Atkission's proposed modifications to Findings of Fact Nos. 68, 71, and 72.

#### **REPLY TO EXCEPTION NO. 7**

Atkission contends its admittedly dismal sales should be excused by the highway construction and the poor location. These arguments are not credible and contrary to the overwhelming weight of the evidence: Atkission's "sales performance has been consistently bad since its inception," Atkission "is the worst of all Chrysler dealers in Texas in regard to its sales," Atkission "refuses to spend more money on advertising or to increase its inventory," and Atkission's "poor sales performance is due to factors under [Atkission's] direct control." (PFD at 70.) The ALJs should deny Exception No. 7 and Atkission's proposed modifications to Findings of Fact Nos. 76 and 80 through 84.

#### **REPLY TO EXCEPTION NO. 8**

Atkission asserts the ALJs wrongfully concluded that the dealership breached its contractual obligation requiring Mr. Atkission's physical presence at the dealership during most of its operating hours. The evidence fully supports the ALJs' conclusion that the dealership's argument on this point "is not convincing"—especially because Mr. Atkission testified he agreed to be personally present more than 50 percent of working hours but "estimated he has been present roughly 15% to 20% of business hours." (PFD at 46.) As the ALJs concluded, the fact that Mr. Atkission failed to comply with the 50% presence requirement "constitutes a breach of the Dealer Agreements, a factor that favors termination." (*Id.* at 47.) The ALJs should deny Exception No. 8 and Atkission's proposed modifications to Findings of Fact Nos. 87 and 89.

#### **REPLY TO EXCEPTION NO. 9**



Atkission next argues that the dealership's location caused (and excuses) its consistent failure to meet its personnel obligations. Once again, location is not a valid excuse and, as the ALJs observed, it is irrelevant that Atkission "could do better if it moved to a new location" because "it contractually bound itself to do better at the *current* location." (PFD at 50.) The evidence overwhelmingly supports termination on this point. The ALJs should deny Exception No. 9 and Atkission's proposed modifications to Findings of Fact Nos. 90 and 95 through 98.

#### **REPLY TO EXCEPTION NO. 10**

Atkission claims its outdated and noncompliant facilities are excused by the highway construction and the dealership's location. As with its other similar claims relative to its location, these arguments are not persuasive, lack credibility, and are contrary to the overwhelming evidence that the dealership's facilities are among the worst in the nation. The ALJs should deny Exception No. 10 and Atkission's proposed modifications to Findings of Fact Nos. 99 and 102 through 104.

#### **REPLY TO EXCEPTION NO. 11**

Atkission argues the evidence is insufficient to support the ALJs' finding that the dealership breached its place of business obligations, which require Atkission to conduct operations from its current location. In light of the significant evidence in the record, the ALJs should not modify the Proposal for Decision on this point. The evidence establishes that Atkission "repeatedly breached" this obligation by closing sales at the Toyota store, forced FCA US "customers [to] travel to the facilities of another brand" causing "harm to the Chrysler brand," and Atkission's breach of this obligation "is self-evident with or without evidence of customer complaints." (PFD at 53-54.) The ALJs should deny Exception No. 11 and Atkission's proposed modifications to Findings of Fact Nos. 105 through 108.



**REPLY TO EXCEPTION NO. 12**

Atkission argues the ALJs erred in finding the dealership failed to meet its advertising obligations because the highway construction and Atkission's location prevented meaningful advertising. As outlined above, highway construction and the dealership's location do not excuse Atkission's poor advertising—which the ALJs correctly determined was woefully insufficient. The ALJs were also correct to find unreasonable Atkission's argument that advertising at the current location was "senseless" because the dealership "contractually bound itself to" advertise vigorously at its current location. (PFD at 55.) The ALJs should deny Exception No. 12 and Atkission's proposed modifications to Findings of Fact Nos. 109 through 113.

**REPLY TO EXCEPTION NO. 13**

Atkission claims outside forces and FCA US are to blame for Atkission's failure to meet its signage obligations. The ALJs have already expressly addressed and rejected these arguments, finding them not credible and, to the contrary, concluding that "the circumstances regarding the pole sign [are] particularly troubling and illustrative," further revealing "a remarkable passivity and apathy about [Atkission's] own affairs." (PFD at 58-59.) The ALJs should deny Exception No. 13 and Atkission's proposed modifications to Findings of Fact Nos. 114 and 119 through 121.

**REPLY TO EXCEPTION NO. 14**

Although the ALJs carefully considered and ultimately rejected Atkission's contrived attempt to retroactively satisfy its 5-year failure to meet FCA US's working capital and net worth obligations, Atkission accuses the ALJs of "misunderstanding" basic accounting principles. (Exceptions at 30.) This accusation is misplaced (and inappropriate) as the ALJs correctly determined that Atkission's "working capital and net worth have always come up short" and,



once faced with termination, the dealership simply attempted to “change the yardstick” to avoid the “consequences” with its purported reclassification theory. (PFD at 59-62.) Nevertheless, the record supports the ALJs’ holding that the “attempted reclassification of the accounts” does not change the reality that Atkission breached its net worth and working capital obligations. (*Id.* at 63.) Significant evidence—expert and otherwise—confirms the ALJs’ findings, which should be affirmed. Accordingly, the ALJs should deny Exception No. 14 and Atkission’s proposed modifications to Findings of Fact Nos. 122 through 129.

#### **REPLY TO EXCEPTION NO. 15**

As it unsuccessfully sought to argue before, during, and after the hearing, Atkission again claims without basis that FCA US’s sole reason for terminating Atkission was a desire to increase market penetration. The ALJs correctly rejected this argument, finding that “FCA has established a myriad of other bases for termination, including the multiple violations of the Dealer Agreements by Atkission Chrysler, and the potential damage to the Chrysler brand.” (*Id.* at 65.) The evidence clearly and unequivocally supports this conclusion. The ALJs should therefore deny Exception No. 15 and Atkission’s proposed modifications to Findings of Fact No. 133.

#### **REPLY TO EXCEPTION NO. 16**

Atkission also contends the ALJs erred in not finding that termination would result in a personal loss to Mr. Atkission of “no less than \$4 million.” (Exceptions at 34.) The undisputed evidence squarely disproved this claim, however, as the dealership has already lost the \$4 million in loans from Mr. Atkission and, irrespective of that loss, “the great majority of the dealership’s assets (slightly more than \$4 million) consists of the vehicle inventory, the value of which could



largely be recouped.” (PFD at 26.) Accordingly, no evidence supports Atkission’s claim and the ALJs should deny Exception No. 16 and Atkission’s Proposed Finding of Fact No. 134.

### REPLY TO EXCEPTION NO. 17

Finally, Atkission asks that the ALJs overturn their conclusion that good cause exists to terminate the dealership. In light of the overwhelming evidence outlined in the Proposal for Decision, the ALJs should deny Exception No. 17 and Atkission’s proposed modifications to Conclusions of Law Nos. 11 and 13.

### CONCLUSION

Atkission’s Exceptions seek wholesale reversal of the ALJs’ findings that good cause exists for termination without acknowledging the law and the facts supporting these findings. For the reasons stated above, FCA US respectfully requests that the ALJs deny all of Atkission’s Exceptions and affirm their Proposal for Decision.

Respectfully submitted this 4th day of August , 2016.

By: 

**Mark T. Clouatre, Esq.**  
Texas State Bar No. 00793521  
**John P. Streelman, Esq.**  
Admitted Pro hac vice  
**Webster C. Cash, III, Esq.**  
Admitted Pro hac vice  
**Wheeler Trigg O'Donnell LLP**  
370 Seventeenth Street, Suite 4500  
Denver, CO 80202  
Telephone: 303-244-1800  
Facsimile: 303-244-1879  
Email: clouatre@wtotrial.com  
Email: streelman@wtotrial.com  
Email: cash@wtotrial.com



~and~

**John W. Chambless II, Esq.**  
Texas State Bar No. 00796334  
Thompson, Coe, Cousins & Irons, LLP  
701 Brazos, Suite 1500  
Austin, Texas 78701  
Telephone: (512) 708-8200  
Facsimile: (512) 708-8777  
Email: jchambless@thompsoncoe.com


**COUNSEL FOR FCA US LLC**



**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of this instrument was served upon the following in accordance with TEX. R. Civ. P. 21a on this 4th day of August, 2016:

<p>William R. Crocker Attorney at Law 807 Brazos, Suite 1014 Austin, Texas 78701 Telephone: (512) 478-5611 Facsimile: (512) 474-2540 Email: <a href="mailto:crockerlaw@earthlink.net">crockerlaw@earthlink.net</a> <b>Counsel for Complainant</b></p>	<p>MVD Docket Clerk Motor Vehicle Division Texas Department of Motor Vehicles 4000 Jackson Avenue Austin, TX 78731 Telephone: (512) 465-7354 Facsimile: (512) 465-3666</p>
<p>Karen Phillips General Counsel/EVP Texas Automobile Dealers Association 1108 Lavaca St., Suite 800 Austin, TX 78701 Telephone: (512) 476-2686 Facsimile: (512) 476-5854 Email: <a href="mailto:kphillips@tada.org">kphillips@tada.org</a> <b>Counsel for TADA</b></p>	<p>MVD Docket Clerk P.O. Box 26487 Austin, Texas 78755 Facsimile: (512) 465-4135</p>
<p>Nathan Allen, Jr. Jones, Allen &amp; Fuquay, LLP 8828 Greenville Avenue Dallas, Texas 75243-7143 Telephone: (214) 343-7400 Facsimile: (214) 343-7455 E-mail: <a href="mailto:nallen@jonesallen.com">nallen@jonesallen.com</a> <b>Counsel for Complainant</b></p>	<p>J. Bruce Bennett Cardwell, Hart &amp; Bennett, L.L.P. 807 Brazos, Suite 1001 Austin, Texas 78701 Telephone: (512) 322-0011 Facsimile: (512) 322-0808 E-mail: <a href="mailto:jbb.chblaw@me.com">jbb.chblaw@me.com</a> <b>Counsel for Complainant</b></p>

  
\_\_\_\_\_  
John W. Chambless, II



TEXAS DEPARTMENT OF MOTOR VEHICLES  
MOTOR VEHICLE DIVISION

Cecil Atkission Orange, LLC d/b/a Cecil  
Atkission Chrysler Jeep Dodge,

Complainant

**v.**

FCA US LLC,

Respondent

SOAH DOCKET  
NO. 608-15-4315.LIC

MVD DOCKET  
DOCKET NO. 15-0015 LIC

**FCA US LLC'S REPLY TO THE AMICUS CURIAE BRIEF OF TEXAS  
AUTOMOBILE DEALERS ASSOCIATION**

Respondent FCA US LLC (“FCA US”) submits its Reply to the Amicus Curiae Brief of the Texas Automobile Dealers Association (“TADA”).

## INTRODUCTION

An untimely amicus brief “will not be considered by the Board, unless good cause is shown.” 43 Tex. Admin. Code § 215.311; *accord id.* § 215.56. Nonetheless, having made no attempt to show good cause, TADA asks this Board to consider its brief, which was filed after more than twice the standard statutory length of time had passed. § 215.311; *see id.* § 215.56; 1 Tex. Admin. Code § 155.507(c)(1). TADA attempts to shoehorn its deadline into an order entered pursuant to a motion for extension filed by Complainant in recognition of a death in the family of Complainant’s counsel. The motion did not mention TADA or any amicus. TADA sought and received no extension. The brief, as a matter of law, should be ignored.

In addition to being untimely, however, the brief is meritless for several more reasons. First, Texas Occupational Code § 2301.455 mandates that in rendering a good cause



determination, the Board “shall consider all existing circumstances.” *Id.* Despite that clear language, the Complainant in this matter has repeatedly (and unsuccessfully) argued that the Board should not “consider all existing circumstances.” (*See, e.g.*, FCA US LLC’s Reply to Exceptions to the Proposal for Decision at 7; FCA US LLC’s Reply Closing Brief, filed Apr. 18, 2016, at 2-5; FCA US LLC’s Closing Brief, filed Apr. 1, 2016, at 49-53.) In its untimely brief, TADA attempts the same tack again, which should fail like the similar, prior attempts.

In essence, the Amicus Brief attempts to work a magic trick: it blends irrelevant statutory history, comments by a lobbyist (that just so happens to be TADA’s former President), and linguistic sleight of hand in an effort to contend that § 2301.455’s “all existing circumstances” mandate applies only to evidence that benefits dealerships. In the place of § 2301.455’s simplicity, TADA would have the Board perform cognitive gymnastics, considering just those limited circumstances regarding breaches of a franchise agreement, but refusing to hear other circumstances unless a manufacturer or distributor restarts the process by issuing a new notice of termination; the result of TADA’s suggested process would be to effectively prolong the process and waste the resources of the Board, the State and the parties. TADA offers no mechanism for the Board to distinguish between the “all existing circumstances” that it allegedly can and cannot consider. This argument must be rejected.

The Amicus Brief also makes a hyper-technical but incorrect argument relating to the use of the term “department” in the proposal for decision. Even were there merit to the argument, it has no practical impact—there is no suggestion that the proper decision-making processes are not at play in the present matter. For all of these reasons, the untimely amicus brief should be ignored.



## ARGUMENT

### I. THE AMICUS BRIEF SHOULD NOT BE CONSIDERED BY THE BOARD

As an initial matter, the amicus brief is untimely and should not even be considered. The rules require “[a]ny interested person wishing to file an amicus brief for consideration in a contested case” to do so “not later than the deadline for exceptions.” 43 Tex. Admin. Code § 215.311; *see id.* § 215.56. That deadline is fifteen days after the date of service of the PFD. 1 Tex. Admin. Code § 155.507(c)(1). An amicus brief “not filed with the Board and with SOAH within the period prescribed by this section will not be considered by the Board, unless good cause is shown why this deadline should be waived or extended.” 43 Tex. Admin. Code § 215.311; *accord id.* § 215.56.

Here, TADA filed its brief on July 20, 2016, far more than fifteen days after service of the PFD on June 17, 2016. TADA offers no cause—good or otherwise—to justify its failure to meet the deadline. Pursuant to the plain language of the statute, the brief should not be considered.

Indeed, the only justification offered by TADA for its delay was that Atkission’s counsel moved for, and received, an extension of time to file exceptions to the PFD. But neither the motion for extension nor the order granting an extension to Atkission referenced TADA or any other amicus. Rather, in his motion for extension of time, Atkission’s counsel explained that he was unable to comply with the deadline due to, *inter alia*, a death in his family. (Mot. for Extension, filed June 30, 2016, at 1 ¶ 2.) The motion gave no indication that the same concern would somehow prevent TADA’s separate counsel from complying with the statutory deadlines. TADA did not move for, or receive, a corresponding extension. Accordingly, TADA’s untimely brief should not be considered.



## II. TADA'S PRIMARY ARGUMENT IS A STRAINED STATUTORY INTERPRETATION THAT HAS ALREADY BEEN REPEATEDLY REJECTED

### A. TADA's Position Lacks Legal Support

It appears that the primary purpose of the amicus brief is to re-hash an argument that this tribunal has already rejected: that the Board, despite being required to "consider all existing circumstances," is somehow constrained from considering "all existing circumstances." Tex. Occ. Code § 2301.455. TADA's regurgitation of the rejected interpretation and its manipulation of § 2301.455 relies heavily on a self-serving statement prepared by its own former President. The position should be rejected yet again.

TADA seeks to weave a complicated—nearly incomprehensible—analysis out of a very simple mandate. Section 2301.455(a) provides:

(a) Notwithstanding the terms of any franchise, in determining whether good cause has been established under Section 2301.453 or 2301.454, the board shall consider all existing circumstances, including:

- (1) the dealer's sales in relation to the sales in the market;
- (2) the dealer's investment and obligations;
- (3) injury or benefit to the public;
- (4) the adequacy of the dealer's service facilities, equipment, parts, and personnel in relation to those of other dealers of new motor vehicles of the same line-make;
- (5) whether warranties are being honored by the dealer;
- (6) the parties' compliance with the franchise, except to the extent that the franchise conflicts with this chapter; and
- (7) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms, oppression, adhesion, and the parties' relative bargaining power.

(Emphasis added.) "If the statute is clear and unambiguous, we must apply its words according to their common meaning without resort to rules of construction or extrinsic aids." *State v.*

*Shumake*, 199 S.W.3d 279, 284 (Tex. 2006). A statute should be interpreted to "give effect to the Legislature's intent." *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009).



Where the statutory text is “clear, text is determinative of that intent.” *Id.* (noting exception only when “enforcing the plain language of the statute as written would produce absurd results”).

Here, the plain language of the statute is clear—as even TADA curiously concedes: “The statute requires the board to consider all existing circumstances in making a good cause determination for a dealer’s termination . . . . The statute lists items for the board to consider when making a good cause determination.” (Amicus Br. at 8.) Yet from that simple mandate, TADA attempts to weave a web of redundancies, none of which are supported by the law. Predominantly, TADA claims that “[i]f a manufacturer, distributor, or representative determines there are new or additional grounds” that could support a termination, “beyond the noticed specific grounds given for termination, then a new notice must be sent . . . .” (Amicus Br. at 7.) This cannot be the correct interpretation of the statute.

First, TADA interprets the language “the board shall consider all existing circumstances” to mean “the board shall consider all existing circumstances that favor the dealership.” That is, TADA argues that a dealership should be able to “explain or defend” every termination ground with all existing circumstances. (*Id.* at 11.) But if there is an “existing circumstance” which supports termination but was not known at the time of or listed in a notice of termination, TADA contends “a new notice must be sent,” re-initiating the entire protest cycle. (*Id.* at 7.) Thus, TADA would turn the “all existing circumstances” requirement from a mandate for the Board’s good cause analysis into a unilateral tool for dealerships to string out termination determinations.

The Amicus Brief attempts to justify its departure from the statutory language by seeking to narrow § 2301.455 to issues that originate in a franchise agreement. (*Id.* at 8-10.) To support



the conclusion, it block quotes an inapt comment by its own lobbyist and former president.<sup>1</sup> (Amicus Br. at 8-9 & Ex. 1.) But even TADA's own comments on the bill do not justify the position TADA now seeks to take. The position is unsupported.

Second, TADA's entire position seems to be predicated on conveniently ignoring the discovery process. First, it ignores a dealer's ability to discover "all existing circumstances." For instance, in the present matter, TADA's fear "that a dealer may not explain or defend a termination" ignores not only the law, but the fact that the Complainant had the right to exchange statements of position with FCA US, to exchange witness lists, to serve written discovery requests, to serve Rule 194 disclosure requests, to submit and review expert reports, to take depositions, and to seek resolution through dispositive motions.<sup>2</sup> (See Order No. 4, Scheduling Order.) Dealerships, including the Complainant here, have ample opportunities to explore "all

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<sup>1</sup> TADA's argument that § 2301.455 is somehow only applicable to termination grounds rooted in breach of a franchise agreement is difficult to understand, and to justify. (See Amicus Br. at 9.) The language "Notwithstanding the terms of any franchise" does not limit the applicability of the statute to disputes over the terms of a franchise agreement, as the Board "shall consider all existing circumstances" whenever it is "determining whether good cause has been established under Section 2301.453." § 2301.455. Rather, the "Notwithstanding" phrase simply clarifies that a franchise agreement cannot limit the good cause determination, exactly as TADA attempts to do here. See, e.g., *Cont'l Cars, Inc. v. Mazda Motor of Am., Inc.*, No. C11-5266BHS, 2011 WL 4026793, at \*5 (W.D. Wash. Sept. 9, 2011) (in another legal context, stating that "this phrase—'notwithstanding the terms of a franchise [agreement]'"—is meant to set out the baseline [from] which a manufacturer cannot depart"); (see also Amicus Br. at 8-9). That is, a clause "notwithstanding the terms" of a franchise indicates the legislature's "intent that these provisions were to apply regardless of existing franchise agreements," *Scuncio Motors, Inc. v. Subaru of New England, Inc.*, 555 F. Supp. 1121, 1129 (D.R.I. 1982), *aff'd*, 715 F.2d 10 (1st Cir. 1983), not that they were to apply only to certain disputes regarding franchise agreements.

<sup>2</sup> Incidentally, Complainant almost entirely failed to engage in the discovery process in this Protest. For example, Complainant chose not to submit written discovery requests or Rule 194 disclosure requests to FCA US, even though such requests were expressly contemplated by the draft scheduling order agreed to and submitted by the parties and which the ALJs entered upon the parties' submission.



the existing circumstances” and to prepare for a hearing appropriately in the current statutory scheme. Thus, TADA’s suggestion that a dealership could not prepare a defense without a new notice of termination is unjustified.

TADA’s position also ignores that the respondent in this matter is similarly entitled to discovery. The Amicus Brief’s position, however, would render discovery conducted by a manufacturer or distributor superfluous. According to TADA’s position, any issues discovered during the discovery process that favor a manufacturer or distributor would either (1) require the manufacturer or distributor to go back to square one, and issue a new notice of termination to allow a new protest to begin; or (2) fall outside of the “all existing circumstances” that the Board can consider. TADA’s position ignores the law and the process in place and would do nothing but introduce waste into the system.

In sum, TADA’s position, when boiled down to its essence, is that § 2301.455 should be interpreted—despite no indicia in the text or otherwise to support the interpretation—as a one-way street: the Board should allegedly consider “all existing circumstances” that favor the dealership, but allegedly not consider all existing circumstances that mandate termination. Rather, those must be ignored, TADA claims, unless they are in the notice of termination. Although TADA’s lobbyists would no doubt have appreciated such a unilateral position, it is not supported by the text.

Moreover, TADA does not even attempt to explain how the Board could draw the line between evidence of “all existing circumstances” that must be considered and evidence concerning alleged new grounds for termination that would purportedly require restarting the entire process. Rather, different evidence is likely to demonstrate or support more than one



conclusion, and TADA does not even attempt to explain how the Board could even draw the distinction that TADA insists it should.

It is no surprise, then, that the *only* case reference in TADA's entire brief is encapsulated within a quote from the Proposal for Decision. (Amicus Br. at 4.) Case law, instead, reflects the clear statutory language. *See, e.g., Lone Star R.V. Sales, Inc. v. Motor Vehicle Bd. of the Texas Dep't of Transp.*, 49 S.W.3d 492, 495 (Tex. App. 2001) (restating about previous codification that, "[i]n determining whether good cause has been established, the Board must consider 'all the existing circumstances . . .'"); *Ford Motor Co. v. Motor Vehicle Bd. of Texas Dep't of Transp./Metro Ford Truck Sales, Inc.*, 21 S.W.3d 744, 755 (Tex. App. 2000) (acknowledging specific notice requirement, but stating, without limitation, that "Board must consider 'all the existing circumstances,'" and that the statute (in its previous codification) "mandates a consideration of 'existing circumstances'"); *see also Meier Infiniti Co. v. Motor Vehicle Bd.*, 918 S.W.2d 95, 100 (Tex. App. 1996), writ denied (Jan. 17, 1997) (in case in relocation context, stating cases stand for proposition that Board must consider all of statutory criteria).

TADA's argument is meritless and repetitive of the failed arguments made by the Complainant. It contradicts the plain language of the statute it purports to interpret. The Brief should be ignored, and the PFD adopted.

**B. Even if TADA's Complaints Were Meritorious (Which They Are Not), The Board Should Not Reach Them Because the Termination Is Supported by All of the Factors from the Notice of Termination**

Even were the Board somehow inclined to consider TADA's position, TADA's argument regarding consideration of matters outside of the notice of termination is moot in this matter. In *Star Houston, Inc. v. Texas Dep't of Transp., Motor Vehicle Div.*, 957 S.W.2d 102 (Tex. App. 1997), the appellant argued that the Board improperly considered matters that were not in the



notice of termination. *Id.* at 110. The Court of Appeals held that it need not reach the argument because it could affirm the termination on a ground included in the termination. *Id.* The Court said that although the only reason for termination indicated in the notice of termination was for a failure to comply with the signage clause in the franchise agreement, the Board had “adopted an order effectively deciding Star failed to comply with the signage requirements and that Star performed poorly in its assigned market.” *Id.* The Court concluded that, “[b]ecause we uphold the Commission’s decision based on its resolution of the signage issue, we need not decide whether [the manufacturer or distributor] was required to give Star notice of the other performance issues the Board considered in its final order.” *Id.*

Here, FCA US’s notice of termination cited the following reasons for termination: “(1) failure to meet sales performance obligations; (2) failure to comply with signage obligations; (3) failure to meet management and sales personnel obligations; (4) failure to meet advertising and sales promotion obligations; (5) failure to meet working capital obligations; and (6) failure to meet net worth obligations.” (PFD at 14.) The PFD effectively decided that FCA US was correct about each one of those reasons—that each one supported termination. (See PFD at 37-63, 72-76.) Under *Star Houston*’s logic, one of those many reasons would be enough to justify the termination. Even if TADA’s statutory interpretation were correct (it is not), it is a moot point—even inappropriately limited to the grounds in the notice of termination, a court would conclude that there is no doubt that good cause for the termination was demonstrated here.

### **III. REFERENCES TO THE “DEPARTMENT” DO NOT CONSTITUTE ERROR**

Finally, TADA opens its Amicus Brief with an oddly technical complaint that the PFD refers to the “department” where it allegedly should state “board.” As the amicus notes, the “board” is the “board of the Texas Department of Motor Vehicles.” Tex. Occ. Code § 2301.005.



The “department” is the “Texas Department of Motor Vehicles.” Tex. Occ. Code Ann. § 2301.002. Reference to the “department” is thus reference to the larger entity, rather than the more specific “board.” And this is appropriate where, as the Amicus Brief specifically recognizes, most tasks can be delegated by the Board and, as a practical matter, become work for the “department.” (Amicus Br. at 2.) This complaint is nit-picky at best, particularly as the Amicus Brief specifically notes that the role of the Board is highlighted and respected in the PFD. (*Id.* at 3-4.) There is no suggestion that the Board will not be exercising its authority to render the final order in this case. The Amicus Brief’s position—to the extent that there is one—lacks any practical impact and should be ignored.

### CONCLUSION

The amicus brief was untimely and should not be considered. Even if it were to be considered, however, it is meritless. The Board should adopt the PFD as it is currently drafted.

Respectfully submitted this 4th day of August, 2016.

By: 

**Mark T. Clouatre, Esq.**  
Texas State Bar No. 00793521  
**John P. Streelman, Esq.**  
Admitted Pro hac vice  
**Webster C. Cash, III, Esq.**  
Admitted Pro hac vice  
**Wheeler Trigg O'Donnell LLP**  
370 Seventeenth Street, Suite 4500  
Denver, CO 80202  
Telephone: 303-244-1800  
Facsimile: 303-244-1879  
Email: clouatre@wtotrial.com  
Email: streelman@wtotrial.com  
Email: cash@wtotrial.com

~and~



**John W. Chambliss II, Esq.**  
Texas State Bar No. 00796334  
Thompson, Coe, Cousins & Irons, LLP  
701 Brazos, Suite 1500  
Austin, Texas 78701  
Telephone: (512) 708-8200  
Facsimile: (512) 708-8777  
Email: jchambliss@thompsoncoe.com

**COUNSEL FOR FCA US LLC**



**CERTIFICATE OF SERVICE**

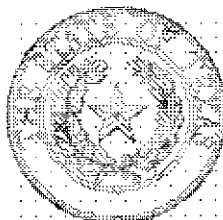
The undersigned certifies that a copy of this instrument was served upon the following in accordance with TEX. R. Civ. P. 21a on this 4th day of August, 2016:

<p>William R. Crocker Attorney at Law 807 Brazos, Suite 1014 Austin, Texas 78701 Telephone: (512) 478-5611 Facsimile: (512) 474-2540 Email: <a href="mailto:crockerlaw@earthlink.net">crockerlaw@earthlink.net</a> <b>Counsel for Complainant</b></p>	<p>MVD Docket Clerk Motor Vehicle Division Texas Department of Motor Vehicles 4000 Jackson Avenue Austin, TX 78731 Telephone: (512) 465-7354 Facsimile: (512) 465-3666</p>
<p>Karen Phillips General Counsel/EVP Texas Automobile Dealers Association 1108 Lavaca St., Suite 800 Austin, TX 78701 Telephone: (512) 476-2686 Facsimile: (512) 476-5854 Email: <a href="mailto:kphillips@tada.org">kphillips@tada.org</a> <b>Counsel for TADA</b></p>	<p>MVD Docket Clerk P.O. Box 26487 Austin, Texas 78755 Facsimile: (512) 465-4135</p>
<p>Nathan Allen, Jr. Jones, Allen &amp; Fuquay, LLP 8828 Greenville Avenue Dallas, Texas 75243-7143 Telephone: (214) 343-7400 Facsimile: (214) 343-7455 E-mail: <a href="mailto:nallen@jonesallen.com">nallen@jonesallen.com</a> <b>Counsel for Complainant</b></p>	<p>J. Bruce Bennett Cardwell, Hart &amp; Bennett, L.L.P. 807 Brazos, Suite 1001 Austin, Texas 78701 Telephone: (512) 322-0011 Facsimile: (512) 322-0808 E-mail: <a href="mailto:jbb.chblaw@me.com">jbb.chblaw@me.com</a> <b>Counsel for Complainant</b></p>

  
\_\_\_\_\_  
John W. Chambless, II



## State Office of Administrative Hearings



Lesli G. Ginn  
Chief Administrative Law Judge

**RECEIVED**  
**AUG 11 2016**  
TEXAS DEPARTMENT OF MOTOR VEHICLES  
MOTOR VEHICLE DIVISION

August 10, 2016

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

**VIA FACSIMILE NO. 512/465-3666**

**RE: SOAH Docket No. 608-15-4315.LIC; MVD Docket No. 15-0015.LIC; Cecil Atkission Orange, LLC, d/b/a Cecil Atkission Chrysler Jeep Dodge v. FCA US LLC**

Dear Mr. Avitia:

This letter constitutes our response to: (1) the exceptions to the Proposal for Decision (PFD) filed by Cecil Atkission Orange, LLC d/b/a Cecil Atkission Chrysler Jeep Dodge (Atkission Chrysler); (2) the amicus curie brief of the Texas Automobile Dealers Association (TADA); and (3) the replies to both filed by FCA US LLC (Chrysler).

Chrysler argues that TADA's amicus brief was untimely filed and, therefore, should not be considered. We disagree. An amicus brief must be filed "not later than the deadline for exceptions."<sup>1</sup> SOAH Order No. 11 specified that the "deadline for filing exceptions to the PFD is now July 20, 2016." Because TADA's amicus brief was filed by that deadline, we believe it was timely filed and can appropriately be considered in this case. TADA focused much of its brief on explaining that the Board of the Texas Department of Motor Vehicles is who determines whether good cause for termination has been established, not the Department. The ALJs do not disagree, and point out that footnote 2 on page 1 of the PFD clarifies that references to the Department throughout the PFD include the governing board. Having considered the amicus brief and Chrysler's substantive responses to it, we conclude that the brief raises no issues that merit any further discussion here, nor do we believe it warrants any revisions to the PFD.

<sup>1</sup> 43 Tex. Admin. Code § 215.311(a).



SOAH Docket No. 608-15-4315  
 Exceptions Letter  
 Page 2

Similarly, we consider all of the arguments made in Atkission Chrysler's exceptions to be redundant of arguments already considered, and rejected, in the PFD.

Accordingly, we recommend no changes to the PFD.

Sincerely,



Meitra Farhadi  
 Administrative Law Judge



Hunter Burkhalter  
 Administrative Law Judge

HB/dk  
 Enclosure

cc: Karen Phillips, General Counsel/EVP, Texas Automobile Dealers Association, 1108 Lavaca St. Suite 800, Austin, TX 78701 - **VIA FACSIMILE**  
 Mark T. Clouatre, Webster C. Cash and John P. Steelman, Wheeler Trigg O'Donnell, LLP, 370 Seventeenth Street, Suite 4500, Denver, CO 80202 - **VIA FACSIMILE**  
 John Chambliss, II, Thompson, Coe, Cousins & Irons, LLP, 701 Brazos, Suite 1500, Austin, TX 78701 - **VIA FACSIMILE**  
 William R. Crocker, J. 807 Brazos, Suite 1014, Austin, TX 78701 - **VIA FACSIMILE**  
 J. Bruce Bennett, Cardwell, Hart & Bennett, LLP, 807 Brazos, Suite 1001, Austin, TX 78701 - **VIA EMAIL**  
 Nathan Allen, Jr., Jones, Allen & Fuquay, LLP, 8828 Greenville Ave., Dallas, TX 75234 - **VIA FACSIMILE**  
 MVD Docket Clerk, Motor Vehicle Division, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 - **VIA FACSIMILE**



**STATE OFFICE OF ADMINISTRATIVE HEARINGS****AUSTIN OFFICE****300 West 15th Street Suite 502****Austin, Texas 78701****Phone: (512) 475-4993****Fax: (512) 322-2061****SERVICE LIST**

**AGENCY:** Motor Vehicles, Texas Department of (TDMV)  
**STYLE/CASE:** CECIL ATKISSON CHRYSLER JEEP DODGE v. FCA US LLC  
**SOAH DOCKET NUMBER:** 608-15-4315.LIC  
**REFERRING AGENCY CASE:** 15-0015-LIC

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS****ADMINISTRATIVE LAW JUDGE****ALJ HUNTER BURKHALTER**

---

**REPRESENTATIVE / ADDRESS****PARTIES**

MVD DOCKET CLERK  
MOTOR VEHICLE DIVISION  
TEXAS DEPARTMENT OF MOTOR VEHICLES  
4000 JACKSON AVENUE  
AUSTIN, TX 78731  
(512) 465-7354 (PH)  
(512) 465-4135 (FAX)  
marie.medina@txdmv.gov

MOTOR VEHICLE DIVISION

---

J. BRUCE BENNETT  
CARDWELL, HART & BENNETT, L.L.P.  
807 BRAZOS, STE 1001  
AUSTIN, TX 78701  
(512) 322-0011 (PH)  
(512) 322-0808 (FAX)  
jbb.chblaw@sbcglobal.net

CARDWELL, HART &amp; BENNETT, L.L.P.

---

MARK T. CLOUATRE  
ATTORNEY  
WHEELER TRIGG O'DONNELL, L.L.P.  
370 SEVENTEENTH STREET, SUITE 4500  
DENVER, CO 80202  
(303) 244-1800 (PH)  
(303) 244-1879 (FAX)  
CLOUATRE@WTOTRIAL.COM

FCA US LLC



JOHN CHAMBLESS, II  
ATTORNEY  
THOMPSON, COE, COUSINS & IRONS, L.L.P.  
701 BRAZOS, SUITE 1500  
AUSTIN, TX 78701  
(512) 708-8200 (PH)  
(512) 708-8777 (FAX)  
jchambless@thompsoncoe.com

FCA US LLC

---

NATHAN ALLEN, JR.  
ATTORNEY  
JONES, ALLEN & FUQUAY, LLP  
8828 GREENVILLE AVENUE  
DALLAS, TX 75243-7143  
(214) 343-7400 (PH)  
(214) 343-7455 (FAX)

JONES, ALLEN & FUQUAY, LLP

---

WILLIAM R. CROCKER  
ATTORNEY AT LAW  
807 BRAZOS, SUITE 1014  
AUSTIN, TX 78701  
(512) 478-5611 (PH)  
(512) 474-2540 (FAX)  
crockerlaw@earthlink.net

CECIL ATKISSON ORANGE, L.L.C. D/B/A CECIL  
ATKISSON CHRYSLER JEEP DODGE

---

WEBSTER C. CASH  
WHEELER TRIGG O'DONNELL LLP  
370 SEVENTEENTH STREET, SUITE 4500  
DENVER, CO 80202  
(303) 244-1924 (PH)  
(303) 244-1879 (FAX)

FCA US LLC

---

JOHN P. STREELMAN  
WHEELER TRIGG O'DONNELL, LLP  
370 SEVENTEENTH STREET, SUITE 4500  
DENVER, CO 80202  
(303) 244-1865 (PH)  
(303) 244-1879 (FAX)  
streelman@wtotrial.com

FCA US LLC

---



KAREN PHILLIPS  
TEXAS AUTOMOBILE DEALERS ASSOCIATION  
1108 LAVACA, STE 800  
AUSTIN, TX 78701  
(512) 476-2686 (PH)  
(512) 322-0561 (FAX)

TEXAS AUTOMOBILE DEALERS ASSOCIATION

---

xc: Docket Clerk, State Office of Administrative Hearings  
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**STATE OFFICE OF ADMINISTRATIVE HEARINGS****AUSTIN OFFICE****300 West 15th Street Suite 502****Austin, Texas 78701****Phone: (512) 475-4993****Fax: (512) 322-2061****SERVICE LIST**

**AGENCY:** Motor Vehicles, Texas Department of (TDMV)  
**STYLE/CASE:** CECIL ATKISSON CHRYSLER JEEP DODGE v. FCA US LLC  
**SOAH DOCKET NUMBER:** 608-15-4315.LIC  
**REFERRING AGENCY CASE:** 15-0015-LIC

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

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**ADMINISTRATIVE LAW JUDGE  
ALJ HUNTER BURKHALTER**

---

**REPRESENTATIVE / ADDRESS****PARTIES**

MVD DOCKET CLERK  
MOTOR VEHICLE DIVISION  
TEXAS DEPARTMENT OF MOTOR VEHICLES  
4000 JACKSON AVENUE  
AUSTIN, TX 78731  
(512) 465-7354 (PH)  
(512) 465-4135 (FAX)  
marie.medina@txdmv.gov

MOTOR VEHICLE DIVISION

---

J. BRUCE BENNETT  
CARDWELL, HART & BENNETT, L.L.P.  
807 BRAZOS, STE 1001  
AUSTIN, TX 78701  
(512) 322-0011 (PH)  
(512) 322-0808 (FAX)  
jbb.chblaw@sbcglobal.net

CARDWELL, HART & BENNETT, L.L.P.

---

MARK T. CLOUATRE  
ATTORNEY  
WHEELER TRIGG O'DONNELL, L.L.P.  
370 SEVENTEENTH STREET, SUITE 4500  
DENVER, CO 80202  
(303) 244-1800 (PH)  
(303) 244-1879 (FAX)  
CLOUATRE@WTOTRIAL.COM

FCA US LLC

---



JOHN CHAMBLESS, II  
ATTORNEY  
THOMPSON, COE, COUSINS & IRONS, L.L.P.  
701 BRAZOS, SUITE 1500  
AUSTIN, TX 78701  
(512) 708-8200 (PH)  
(512) 708-8777 (FAX)  
jchambless@thompsoncoe.com

FCA US LLC

---

NATHAN ALLEN, JR.  
ATTORNEY  
JONES, ALLEN & FUQUAY, LLP  
8828 GREENVILLE AVENUE  
DALLAS, TX 75243-7143  
(214) 343-7400 (PH)  
(214) 343-7455 (FAX)

JONES, ALLEN & FUQUAY, LLP

---

WILLIAM R. CROCKER  
ATTORNEY AT LAW  
807 BRAZOS, SUITE 1014  
AUSTIN, TX 78701  
(512) 478-5611 (PH)  
(512) 474-2540 (FAX)  
crockerlaw@earthlink.net

CECIL ATKISSON ORANGE, L.L.C. D/B/A CECIL  
ATKISSON CHRYSLER JEEP DODGE

---

DANIEL AVITIA  
DIRECTOR  
TEXAS DEPARTMENT OF MOTOR VEHICLES  
MOTOR VEHICLE DIVISION  
4000 JACKSON AVENUE  
AUSTIN, TX 78731

(512) 465-3666 (FAX)

TEXAS DEPARTMENT OF MOTOR VEHICLES

---

WEBSTER C. CASH  
WHEELER TRIGG O'DONNELL LLP  
370 SEVENTEENTH STREET, SUITE 4500  
DENVER, CO 80202  
(303) 244-1924 (PH)  
(303) 244-1879 (FAX)

FCA US LLC

---



JOHN P. STREELMAN  
WHEELER TRIGG O'DONNELL, LLP  
370 SEVENTEENTH STREET, SUITE 4500  
DENVER, CO 80202  
(303) 244-1865 (PH)  
(303) 244-1879 (FAX)  
streelman@wtotrial.com

FCA US LLC

---

KAREN PHILLIPS  
TEXAS AUTOMOBILE DEALERS ASSOCIATION  
1108 LAVACA, STE 800  
AUSTIN, TX 78701  
(512) 476-2686 (PH)  
(512) 322-0561 (FAX)

TEXAS AUTOMOBILE DEALERS ASSOCIATION

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xc: Docket Clerk, State Office of Administrative Hearings  
Docket Clerk TDMV, Fax No. 512-465-4135



## STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE  
 300 West 15th Street Suite 502  
 Austin, Texas 78701  
 Phone: (512) 475-4993  
 Fax: (512) 322-2061

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TEXAS DEPARTMENT OF MOTOR VEHICLES  
 MOTOR VEHICLE DIVISION

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EXCEPTIONS LETTER (BY ALJ)

DOCKET NUMBER:

608-15-4315.LICJUDGE HUNTER BURKHALTERFAX TO:FAX TO:

WILLIAM R. CROCKER (ATTORNEY AT LAW)

(512) 474-2540

KAREN PHILLIPS (TEXAS AUTOMOBILE DEALERS  
ASSOCIATION)

(512) 322-0561

JOHN CHAMBLESS, II (THOMPSON, COE, COUSINS &  
IRONS, L.L.P.)

(512) 708-8777

WEBSTER C. CASH

(303) 244-1879

MARK T. CLOUATRE

(303) 244-1879

JOHN P. STREBELMAN

(303) 244-1879

J. BRUCE BENNETT

VIA EMAIL

NATHAN ALLEN, JR. (JONES, ALLEN &amp; FUQUAY, LLP)

(214) 343-7455

MVD DOCKET CLERK (MOTOR VEHICLE DIVISION)

(512) 465-4135

DANIEL AVITIA (TEXAS DEPARTMENT OF MOTOR  
VEHICLES)

(512) 465-3666

**Docket Clerk, Fax Number 512/465-4135****NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT DENISE KIMBROUGH(dki) (512) 475-4993**

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DATE: January 5, 2017  
Action Requested: APPROVAL

**To:** Texas Department of Motor Vehicles Board (TxDMV)  
**From:** David Duncan, General Counsel, Daniel Avitia, Director, Motor Vehicle Division, Bill Harbeson, Director, Enforcement  
**Agenda Item:** 9  
**Subject:** Adoption of Rules under Title 43, Texas Administrative Code, Chapter 215, Motor Vehicle Distribution  
Rule Review, Government Code, §2001.039; Amendments and Repeals, Subchapter A-J  
New §215.160, Duty to Identify Motor Vehicles Offered for Sale as Rebuilt

### **RECOMMENDATION**

Approve adoption of rule review, amendments, repeals, and new section for publication in the *Texas Register*.

### **PURPOSE AND EXECUTIVE SUMMARY**

This order adopts the required rule review in compliance with Government Code, §2001.039, amendments, repeals, and new section.

### **FINANCIAL IMPACT**

There will be no significant fiscal implications related to the rule review, amendments, repeals, and new section.

### **BACKGROUND AND DISCUSSION**

This rule package was previously published for comment on June 19, 2015, and it was 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, repeals, and new §215.160 to the Texas Register for publication for comment.

As a result of the rule review, 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.



The proposed rule review, amendments, repeals, and new section were published in the *Texas Register* for public comment on September 9, 2016. The comment period closed on October 10, 2016. The department received comments from the Texas Automobile Dealers Association (TADA), the Texas Independent Automobile Dealers Association (TIADA), Gulf States Toyota, Inc. (GST), and Lloyd E. Ferguson. In addition, a meeting was held with stakeholders to address their concerns and a consensus was reached. The comments are included with these materials. The comments and responses include:

- §215.114. Sale of a Vehicle by a Manufacturer or Distributor at a Wholesale Motor Vehicle Auction  
 COMMENT: TADA comments that a typographical error appears in the following sentence: “A GDN is sued...” and TADA suggests that the language is intended to read: “A GDN issued...”  
 RESPONSE: The department agrees with this comment and the language was corrected.
- §215.144(k). Records [Records of Sales and Inventory]  
 COMMENT: TIADA requests that language be added to (k): “Original hard copy titles are not required to be kept at the licensed location, but must be made available to the agency upon reasonable request.”  
 RESPONSE: The department made the requested changes to §215.144(k).
- §215.160. Duty to Identify Motor Vehicles Offered for Sale as Rebuilt  
 COMMENT: TADA requests that language be included stating that if the seller knows that a motor vehicle offered for sale has been a salvage motor vehicle as defined by Transportation Code, §501.091(15) and a regular title is subsequently issued under Transportation Code, §501.100, a dealer shall provide a written disclosure that the vehicle has been repaired, rebuilt, or reconstructed and issued a title.  
 RESPONSE: The department made changes to this section to add a “knowing” requirement.
- §215.244. Definitions  
 COMMENT: GST comments that it is in agreement with the department’s proposed changes to subsection (13) which provides for a “Monroney Label.” GST recommends that language “including, but not limited to” be added to (17), the definition for “savings claim or discount,” to ensure that other forms of incentives such as low APR financing, subvention cash, and special lease offers are also included.  
 RESPONSE: The department agrees with GST and has added the requested language.  
 The department and the stakeholders agreed to add a new definition for “Distributor’s Suggested Retail Price in Section 215.244(9), and a new definition for “Manufacturer’s Suggested Retail Price” in Section 215.244(14). The department and stakeholders also agreed to add “or distributor as applicable” after the word “manufacturer” in sub-section (13)(A) and in sub-section (13)(B).
- §215.249. Manufacturer’s Suggested Retail Price  
 COMMENT: GST comments that it believes that the language “suggested retail price” terminology currently found in the existing section and the heading “Manufacturer’s Suggested Retail Price” should be left unchanged.  
 RESPONSE: After the meeting with stakeholders, the department and stakeholders agreed to retitle the section to read “Manufacturer’s/Distributor’s Suggested Retail Price”, and to add “/Distributor’s” in each section or subsection in which “Manufacturer’s Suggested Retail Price” is included, and where applicable.
- §215.250. Price Advertising; Savings Claims; Discounts  
 COMMENT: GST has concerns regarding the removal of the word “Dealer” from the heading of this section and requests that the “Dealer” be placed back into the heading for the purpose of clarifying the subsections of § 215.250.  
 RESPONSE: The department agrees with GST and will make the requested addition to the section heading.
- §215.250(f)  
 COMMENT: GST expressed concerns that the proposed changes to subsection (f) would prohibit the use of “up to,” “as much as,” and “from” savings claims and discount offers by manufacturers and distributors.  
 RESPONSE: GST and the department agreed that the department will add “by a dealer” after the word “used” and before “in connection.”
- §215.250(g)  
 COMMENT: GST expresses concern that the proposed change to this subsection because it would likely apply to manufacturers and distributors, and it would seriously impede the ability of most manufacturers and distributors to advertise certain offers in Texas.  
 RESPONSE: In addressing GST’s concern, the department will add the phrase “by a dealer” after the phrase “when advertised”. Additionally, the department will clarify in the Adoption Preamble that in cases where these sections





state a “motor vehicle” the reference is being made to a specific vehicle, and not to a type, class or group of vehicles.

- §215.250(h)

COMMENT: GST recommends that (h)(1) be modified to read: If a savings claim or discount offer includes only a dealer discount, that incentive must be disclosed as a deduction from the total suggested retail price (MSRP). The following are acceptable formats for advertising a dealer discount with and without a sales price.

RESPONSE: After a meeting with stakeholders, the department and stakeholders agreed to modify (h)(1) to read: If a savings claim or discount offer includes only a dealer discount, that incentive must be disclosed as a deduction from the MSRP/DSRP, as applicable. The following are acceptable formats for advertising a dealer discount with and without a sales price. Every use of MSRP/DSRP, as applicable after that (subsequent subsections in Section 215.250) would carry that same meaning.

- § 215.250(l)

COMMENT: GST commented that the term “savings claim” be changed to “a dealer discount” so as to prevent dealers from manipulating with the non-factory option pricing.

RESPONSE: The department agrees and will make the requested change in language.

- § 215.250(m)

COMMENT: GST strongly opposes the proposed language in that “it seeks to specifically call out and highlight distributor installed options and equipment as part of dealer advertising.”

RESPONSE: The department agrees and the proposed language will be withdrawn.

If the board adopts the rule review, amendments, repeals, and new section during its January 5, 2017, open meeting, staff anticipates:

- publication of the adoption in the January 27, 2017 issue of the *Texas Register*; and
- an effective date of February 2, 2017.





1108 Lavaca, Suite 800  
 Austin, Texas 78701  
 Phone: 512-476-2686  
 www.tada.org

October 8, 2016

Mr. David Duncan  
 General Counsel  
 Texas Department of Motor Vehicles  
 4000 Jackson Avenue, Bldg. 1  
 Austin, TX 78731

Sent via email: [rules@txdmv.gov](mailto:rules@txdmv.gov)

Re: Proposed Amendments to 43 TAC Chapter 215. Motor Vehicle Distribution

Dear Mr. Duncan:

On behalf of the Texas Automobile Dealers Association (TADA), please accept the following comments regarding the proposed rule amendments to 43 TAC Chapter 215 as published in the September 9, 2015, *Texas Register*, 41 *Tex Reg* 7011 - 7071 and 41 *TexReg* 7150 - 7160.

**Subchapter D. Franchised Dealers, Manufacturers, Distributors, and Converters**  
**§ 215.160. Duty to Identify Motor Vehicles Offered for Sale as Rebuilt**

Recognizing that a disclosure regarding a formerly known salvage, rebuilt, or reconstructed vehicle is necessary when selling a motor vehicle, the proposed rule does not require knowledge of the salvage, rebuilt, or reconstructed vehicle to be necessary in order to trigger the disclosure.

Unfortunately, sellers relying upon former owners to disclose a vehicle's past history or depending upon state or national services, whether government or private businesses who charge for the information, are not always accurate or timely.

A dealer should not be strictly liable for a disclosure that cannot be made because the dealer has no knowledge of a vehicle's past salvage history. A seller should not be held to be in violation of the proposal without a requirement that the seller has knowledge of the vehicle having been a salvage, rebuilt, or reconstructed vehicle.

In addition, if a vehicle seller relies upon inaccurate state or private information that does not indicate that the vehicle has been a salvage, rebuilt, or reconstructed vehicle, the seller should not



Mr. David Duncan  
October 8, 2016  
page 2

be considered to be in violation of the rule.

TADA suggests that language be included stating that the if the seller *knows* that a motor vehicle offered for sale has been a salvage motor vehicle as defined by Transportation Code § 501.091(15) and a regular title subsequently issued under Transportation Code § 501.100, a dealer shall provide a written disclosure that the vehicle has been repaired, rebuilt, or reconstructed and issued a title.

Members of TADA do not knowingly, as a matter of course, retail a vehicle that has been a salvage unit; however, this type of sale may occur if the dealer is unaware of the prior salvage branding. Misinformation or incorrect information or even unknown information about the vehicle's salvage status does happen and the seller should not be strictly liable for disclosing information that they do not have or know.

TADA also requests that the dealers be given adequate time to obtain signs that must be visible from the outside of the motor vehicle, containing lettering that is reasonable in size, stating: "This motor vehicle has been repaired, rebuilt, or reconstructed after formerly being titled as a salvage motor vehicle."

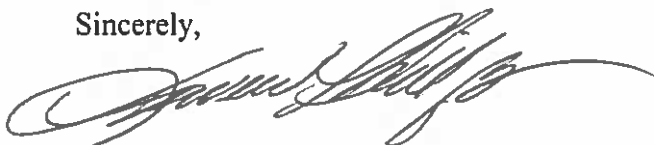
The disclosure that may be incorporated in a buyer's order or other disclosure document, including the disclosure on the motor vehicle required in § 215.160(a)(2), that the purchaser acknowledges that they were made aware at the time of purchase that the vehicle had been repaired, rebuilt, or reconstructed, should be effective only after a reasonable time for printing of forms.

§ 215.114. Sale of a Vehicle by a Manufacturer or Distributor at a Wholesale Motor Vehicle Auction

A typographical error appears in the following sentence: "A GDN is sued. . . ." and TADA suggests that the language is intended to read: "A GDN issued . . ."

On behalf of the franchised motor vehicle and truck dealers in Texas, I appreciate the opportunity to work with the agency and recognize and compliment the care and effort made by the TxDMV with respect to today's proposal.

Sincerely,



Karen Phillips  
General Counsel/EVP





October 10, 2016

Mr. David Duncan  
General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Ave.  
Austin, TX 78731

Sent via email: rules@txdmv.gov

Re: Proposed TAC, Chapter 215 Amendments published in the Texas Register September 9, 2016

Dear Mr. Duncan:

On behalf of the Texas Independent Automobile Dealers Association (TIADA) I want to thank you for the opportunity to submit the following comments with regard to the proposed amendments.

The association appreciates the significant effort the agency undertook to amend Chapter 215 and is largely supportive of the changes; however, we do have a concern regarding the amended §215.144(k).

The new subsection reads as follows:

“(k) Electronic records. A license holder may maintain a record in an electronic format if the license holder can print the record at the licensed location upon request by a representative of the department. A license holder does not have to maintain a copy of a vehicle title if the title is submitted through the electronic title system.”

This proposed amendment replaces the previous §215.144(k), which stated, in part: “Original hard copy titles or photocopies of the front and back of titles of vehicles in a dealer's inventory shall be kept in a secure location at the licensed location or within the same county as the licensed location.”

TIADA would like to request that the following provision (or similar) be added to §215.144(k): “Original hard copy titles are not required to be kept at the licensed location, but must be made available to the agency upon reasonable request.”

Original hard copy titles are extremely valuable to our dealers; the safety and security of these documents is of paramount concern. The association would strongly prefer that each individual business be allowed to make its own decision with regard to the proper safekeeping of these ownership documents.

TIADA appreciates the opportunity to comment on these amended rules and looks forward to working with the agency in the future. Please feel free to contact me directly with any questions or concerns you may have.

Sincerely,

Danny Langfield  
TIADA Deputy Executive Director



October 10, 2016

VIA EMAIL: [David.Duncan@txdmv.gov](mailto:David.Duncan@txdmv.gov); [rules@txdmv.gov](mailto:rules@txdmv.gov)

Mr. David Duncan  
General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, Texas 78731

RE: Proposed Changes to 43 TAC Chapter 215

Dear Mr. Duncan:

The following comments are submitted on behalf of Gulf States Toyota, Inc. ("GST") with respect to the most recent proposed rule amendments to Chapter 215, Motor Vehicle Distribution, and as published in the September 9, 2016, *Texas Register*, 41 TexReg 7011 – 7160.

We are very appreciative of the Texas Department of Motor Vehicles ("TXDMV") staff that have worked so diligently on preparing these proposed rules and for their coordination with industry stakeholders regarding the potential adoption and future implementation of these proposed rules.

We offer the following comments and suggestions for clarification, understanding, and consideration:

***43 TAC §215.244. Definitions***

Gulf States Toyota is in agreement with the proposed changes to subsection (12), which was formerly "Manufacturer's label" and under the proposed amendments would now become "Monroney label." The revised definition and use of this terminology better reflects the realities of widely held industry practice. Today's automobile manufacturers and distributors use Monroney labels which contain information about the new motor vehicle, including, but certainly not limited to, the initial base manufacturer's suggested retail price along with a total suggested retail price inclusive of all equipment and options on the new motor vehicle installed by a manufacturer or distributor prior to the vehicle arriving at the dealership. Gulf States Toyota further supports the agency's other proposed changes to the definitions set forth in 43 TAC §215.244 with the following clarification.



Subsection (15) defines a “savings claim or discount” as “an offer to sell or lease a motor vehicle at a reduced price, including a manufacturer’s or distributor’s customer rebate, a dealer discount, or a limited rebate.” To help avoid confusion, Gulf States Toyota believes that it should be clarified that this definition is not limited to only these three examples of rebates or discounts. Rather, this definition would benefit from the inclusion of the phrase, “including but not limited to,” which could ensure that other typical forms of incentives such as low APR financing, subvention cash, and special lease offers are also included.

### ***43 TAC §215.249. Manufacturer’s Suggested Retail Price***

Gulf States Toyota supports the TXDMV’s proposed changes to largely maintain the substantive existing language contained within this section, which appear to take into consideration and incorporate previous comments from, discussions with, and consensus reached among industry stakeholders in June of 2016. By maintaining the substantive existing language in the section §215.249, Texas remains consistent with other states like Oklahoma and Louisiana, which include the same or extremely similar language stating that a “suggested retail price” by a manufacturer or distributor must be inclusive of all costs and charges for that advertised vehicle.<sup>1</sup> In other words, in the case of a distributor, a distributor’s

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<sup>1</sup> LA. ADMIN. CODE. TITL. 46 § 717 states as follows:

#### **§717. Manufacturer's Suggested Retail Price**

A. The suggested retail price of a new motor vehicle when advertised by a manufacturer or distributor shall include all costs and charges for the vehicle advertised, except that destination and dealer preparation charges, state and local taxes, title, and license fees may be excluded from such price, provided that the advertisement clearly and conspicuously states that such costs and charges are excluded. With respect to advertisements placed with local media in Louisiana by a manufacturer or distributor which includes the names of the local dealers of the vehicles advertised, if the price of a vehicle is stated in the advertisement, such price must include all costs and charges for the vehicle advertised, including destination and dealer preparation charges and may exclude only state and local taxes, license, and title fees.

OKLA. ADMIN. CODE § 465 15-3-6 states as follows:

#### **465:15-3-6. Manufacturer’s suggested retail price**

The suggested retail price of a new motor vehicle when advertised by a manufacturer or distributor shall include all costs and charges for the vehicle advertised, except that destination and dealer preparation charges, and state and local taxes, title, and license fees may be excluded from such price, provided that the advertisement conspicuously states that such costs and charges are excluded. However, with respect to advertisements placed with local media in Oklahoma by a manufacturer, distributor, or advertising association which include the names of the local dealers for the vehicles advertised, if the price of a vehicle is stated in the advertisement, such price must include all costs and charges for the vehicle advertised, including destination and dealer preparation charges and may exclude only state and local taxes, license, and title fees.



total suggested retail price would constitute the specific suggested retail price advertised by the distributor that is inclusive of all costs and charges for the vehicle advertised at the time of delivery to the franchised dealer and prior to any dealer installed options. This interpretation is further supported by the existing language found in §215.262.

Unfortunately, it has been suggested previously that reference to the term “suggested retail price” instead of MSRP “is capable of being misunderstood and does not track the federal statute” and that the use of any terms beyond the single acronym “MSRP” are “a departure from the intent and adoption of the language in the federal Automobile Information Disclosure Act requiring the use of a ‘Monroney’ label. Gulf States Toyota firmly believes that arguments claiming that any deviation from, clarification to, or expansion beyond, the limited language (of the now almost sixty year old Automobile Disclosure Act) cannot be considered by this agency, are wholly without merit. In fact, existing law under §215.262 already refers to “distributor’s...suggested list or retail price” and “factory suggested retail price.” TIT. 43 TAC §215.262(a)&(3)(c).

Numerous states go well beyond Texas and the use of the acronym MSRP in trying to more accurately capture the terminology used by manufacturers and distributors on today’s Monroney labels and in their advertising—all in an effort to assist consumers and provide clarity. For example, New York uses the phrase “distributor’s suggested retail price.” *See* N.Y. Veh. & Traf. Law § 463(p). Virginia also uses the term “distributor suggested retail price” and utilizes the phrase “suggested retail price” with the qualifiers of “manufacturer” or “distributor.” *See* 24 V.A.C. § 22-30-30.F. Montana law uses the phrase “franchisor suggested retail price” which by definition includes a distributor. *See* MONT. CODE ANN. § 61-4-201(8) Alaska makes clear that throughout its applicable statute, the definition of “manufacturer” includes “distributor” and “manufacturer suggested retail price” or “list price” for a new motor vehicle must reference “the final price listed by the manufacturer on the Monroney sticker” inclusive of all “accessories and options physically attached to the vehicle at the time of delivery to the dealer...” *See* ALASKA STAT. § 45.25.990(10) and § 45.25.400(b)(1). Numerous other states include “distributor” under the definition of “manufacturer” in their respective codes or statutes, thereby making it clear that a reference to MSRP is inclusive of the total suggested retail delivered price set forth by a distributor.<sup>2</sup>

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<sup>2</sup> *See* KY. REV. STAT. ANN. § 190.010(a) (defining manufacturer so as to expressly include “distributor”); *see* MICH. COMP. LAWS §257.233b (2)(a) (adopting the definition of manufacturer found at MICH. COMP. § 445.1564 which includes “distributor”); *SEE* N.C. GEN. STAT. §20-305.1.(e)(3) and N.C. GEN. STAT. § 20-28.6(8e) (“manufacturer” is defined to expressly include the term “distributor”); WASH. REV. CODE § 46.70.011(8)(a) & § 46.70.180(17)(d)(ii) (“manufacturer” is defined so as to specifically include “distributor” and MSRP is defined as “the retail price of a new motor vehicle suggested by the manufacturer, and includes the retail delivered price suggested by the



Still other states utilize both the term “manufacturer’s suggested retail price” as well as “factory suggested retail price,” the latter of which includes a distributor suggested retail price. *See* Ariz. Rev. Stat. § 28-101.30 & § 28-44060.E.3(a) (defining “manufacturer” and separately defining “factory” as “a manufacturer, importer or distributor...”). Arizona law provides that a distributor (considered the “factory”) may establish or change the manufacturer’s suggested retail price on the Monroney label. *see* Ariz. Rev. Stat. 4460.B.3.(a)(i). These are only a handful of examples for how other states have addressed the realities of the current industry and marketplace as they relate to capturing the total suggested retail price of a new motor vehicle at the time of delivery to a franchised dealer. To suggest that this agency is precluded from referring in these rules to the total suggested retail price of a new motor vehicle as anything other than a single acronym “MSRP” is simply inaccurate.

For these reasons, Gulf States Toyota firmly believes that the widely used “suggested retail price” terminology currently found in the existing language of § 215.249 and the heading referring to “Manufacturer’s Suggested Retail Price” should be left unchanged and aligned with other states.

### ***43 TAC §215.250. Price Advertising; Savings Claims; Discounts***

Gulf States Toyota has a number of serious concerns related to the various proposed changes to 43 TAC §215.250. At the outset, Gulf States Toyota notes that it was the shared understanding of numerous stakeholders that attended a June 15, 2016 meeting with TXDMV staff, that due to the lack of consensus among stakeholders around both 43 TAC §215.249 and 43 TAC §215.250, each section would be left substantively unchanged and that the “status quo” would be maintained. However, in light of the substantive changes now proposed for §215.250, Gulf States Toyota believes it has no alternative but to offer the following comments to protect its business and the interests of many different franchised dealers including the eighty-seven Toyota dealers licensed in the State of Texas.

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manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer that is not included within the retail price suggested by the manufacturer for the new motor vehicle.” Accordingly, “manufacturer’s suggested retail price” includes the distributor’s suggested retail price since the definition of “manufacturer” includes distributor.); *see* W.VA. CODE § 46A-6A-3(a) & W.VA. CODE § 46A-6A-2(2) (definition for “manufacturer” includes “distributor”); *see* WIS. ADMIN. CODE § 139.02(2) & 139.02(9) (defining “manufacturer” in two relevant statutes so as to include “distributor”); *see* WYO. STAT. ANN. § 31-16-101(a)(xiii) (definition of “Manufacturer” includes “distributor”) *see* MASS. REGS. CODE TIT. 940, § 50.01 (definition of “manufacturer” includes a “distributor”—any person engaged in the business of selling or distributing new and unused motor vehicles to motor vehicles dealers in Massachusetts); *see* DEL. CODE ANN. TIT. 6, § 4902(7)(defining “manufacturer” such that it expressly includes “distributor”)



### ***§215.250(a)-(d) and the Removal of “Dealer” From the Section Heading***

The agency has proposed removing the word “Dealer” from the heading for this section. Although Title 3, Section 311.024 of the Texas Government Code states that “the heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of a statute,” removal of this term may cause unnecessary confusion because one might still argue that this entire section could now be improperly read to suggest that it applies to all licensees. A close reading of this section reveals a number of reasons why removal of the word “Dealer” from the section heading could be misinterpreted and thus problematic for manufacturers and distributors.

The proposed changes to subsection (a) of §215.250 are as follows:

- (a) When featuring a sales ~~[an advertised sale]~~ price of a new or used motor vehicle in an advertisement, the dealer must be willing to sell the motor vehicle for that featured sales ~~[such advertised]~~ price to any retail buyer. The featured sales ~~[advertised sale]~~ price shall be the price before the addition or subtraction of any other negotiated items. Destination and dealer preparation charges must be included in the featured sales price. ~~[The only charges that may be excluded from the advertised price are:]~~
- ~~{{(1) any registration, certificate of title, or license fees;}}~~
  - ~~{{(2) any taxes; and}}~~
  - ~~{{(3) any other fees or charges that are allowed or prescribed by law.}}~~

Manufacturers and distributors are prohibited from engaging in retail motor vehicle sales in Texas. Therefore, only a licensed motor vehicle dealer should ever be offering a “featured sales price.” Additionally, dealer preparation charges included in a featured sales price are set by the dealer, not the manufacturer or distributor, and may vary from dealership to dealership—without any visibility by the manufacturer or distributor. Subsections (b), (c), and (d) should likewise only apply to a dealer.

### ***§215.250(e)***

The proposed language under subsection (e) states that no savings claims or discount offers may be made except on new motor vehicles and that “**no person** may advertise a savings claim or discount offer on a used motor vehicle.” (emphasis added) It is not uncommon for a manufacturer or distributor to offer something of value in the context of the purchase of a certified pre-owned (CPO) vehicle and there is concern that the proposed rules could be read to potentially preclude a



manufacturer or distributor from doing so where a monetary value can be assigned to that offering.

For example, some manufacturers will offer a three to six month subscription to satellite radio as complimentary with the purchase of a certified pre-owned vehicle. A monetary value can be assigned to such an offer and a savings claim (at least in terms of what the customer would have had to pay to the satellite radio provider without the complimentary subscription) is something of value that a manufacturer, distributor, or dealer, should not be precluded from advertising as a savings to the consumer. There are also numerous certified pre-owned incentives offered by manufacturers and/or their captive finance companies that are reduced-rate loans offered to qualified buyers of CPO vehicles that can provide a significant finance savings to the consumer. Other incentives offered by manufacturers or distributors towards the purchase of a certified pre-owned vehicle may include complimentary service plans for scheduled maintenance visits and in-vehicle safety and concierge services, like OnStar. Again, manufacturers, distributors, and dealers should not be precluded from advertising the savings associated with these important offers. One approach to consider might be for the TXDMV to include additional language clarifying that such CPO related offers are not savings taken from or based on the particular used vehicle advertised *per se*. Such a clarification would be beneficial to manufacturers, distributors, and dealers in continuing to market CPO vehicles in Texas.

Gulf States Toyota believes that the agency could modify subsection (e) as follows to accomplish what we understand is the intent of this provision---to make sure that a dealer does not claim that there is a savings based off of an arbitrarily inflated advertised sales price:

(e) A savings claim or discount offer by a dealer that is taken from or based upon a featured sales price is prohibited except to advertise a new motor vehicle. No person may advertise a savings claim or discount offer on a used motor vehicle except that no person shall be prohibited from referring to a discount offer or incentive made available by a manufacturer, distributor, or finance company to a consumer related to the purchase of a certified pre-owned vehicle.

We believe that such a change is necessary in order to ensure that certain offerings from manufacturers, distributors, and finance companies related to the purchase of certified pre-owned vehicles can continue to be offered in Texas.

### ***§215.250(f)***

The proposed changes to subsection (f) are also problematic to the extent



that they would prohibit “up to,” “as much as,” and “from” savings claims or discount offers by manufacturers and distributors. It is not uncommon for manufacturers and distributors to have a suite of offerings available that a consumer may be eligible for such as, customer cash, combined with a special APR finance rate savings, and bonus customer cash from a captive finance company. Manufacturers, distributors, and dealers should be able to advertise these offers with the terminology of “up to,” “from,” or “as much as” in reaching a total savings claim for qualified buyers so long as the advertisements comply with 43 TAC §215.241 and 43 TAC §215.242.

### ***§215.250(g)***

Proposed changes to subsection (g) state that a “savings claim or discount offer for a new motor vehicle, when advertised, must be the savings claim or discount available to any and all members of the buying public.” Here again we have a provision that is not limited to dealers but would conceivably include manufactures and distributors. This proposed change is problematic not just because of the applicability to manufacturers and dealers, but also because from a practical standpoint, it would seriously impede the ability of most manufacturers and distributors to advertise certain offers in Texas such as those geared to “first time buyers,” “recent college grads,” and “members of the military.” It would appear that even offers or discounts intended to incentivize owner loyalty or conquest customers could be prohibited based on this proposed change.

Gulf States Toyota is concerned that subsection (g) as written could be construed to prohibit a significant number of customary incentive offers from being advertised in the State of Texas which would be financially harmful to Texas dealers and could drive customers to purchase new vehicles out of state. Additionally, these types of incentives are typically components of larger regional or national advertising and marketing strategies by manufacturers and distributors. Should Texas prohibit manufacturers and distributors from advertising such offers in the state, it will be highly disruptive and costly to the manufacturers and distributors in having to modify their national and regional advertising exclusively for Texas.

### ***§215.250(h)***

In prior comments Gulf States Toyota has highlighted the fact that there is a wide range of nomenclature used by manufacturers and distributors to describe what constitutes the total suggested retail price shown on a respective Monroney label. As is evident from the numerous Monroney labels used for new motor vehicles here in Texas, (examples of which were obtained in 2016 and are included in Attachment “A” for reference), manufacturers and distributors vary greatly in how they approach describing what refers to a total suggested retail price shown on



the Monroney label versus the initial price provided including, but not limited to, “Total MSRP” (as opposed to “MSRP...Base Price”) (Ford), “Total” (as opposed to “Manufacturer’s Suggested Retail Base Price”) (Nissan & Infiniti), “Total Vehicle Price” (as opposed to “Standard Vehicle Price”) (Chevrolet), “Total Vehicle Price” (Honda & Acura), “Total Price” (as opposed to “Manufacturer’s Suggested Retail Price...Including Dealer Preparation – Base Price”) (Chrysler), “Total Suggested Retail” (as opposed to “Suggested Retail Price at Port of Entry”) (Aston Martin), “Total Suggested Retail Price” (as opposed to Manufacturer’s Suggested Retail Price”) (Subaru), and “Total Distributor Suggested Retail Price” (as opposed to “Manufacturer’s Suggested Retail Price”) (Gulf States Toyota). Therefore, Gulf States Toyota recommends the following modification to the proposed language in subsection (h)(1):

If a savings claim or discount offer includes only a dealer discount, that incentive must be disclosed as a deduction from the total ~~manufacturer's~~ suggested retail price (MSRP). The following are acceptable formats for advertising a dealer discount with and without a sales price. Figure: 43 TAC §215.250(h)(1)

By including the word “total” in place of the word “manufacturer’s,” this section can be read to more easily include, but not be limited to, each of the various references manufacturers and distributors currently make to express the total price shown on the Monroney label (which have been captured above and are set forth in the examples that comprise Attachment “A”).

Preserving the reference to the acronym “(MSRP)” does two important things. First, it supports the consensus reached by stakeholders during a meeting on June 15, 2016 that section §215.250 should remain largely status quo by utilizing the acronym “MSRP” instead of “SRP” for capturing the total suggested retail price of new motor vehicle. Second, including the acronym MSRP after and in conjunction with the added wording “total” suggested retail price provides improved clarity that when reference is made to “MSRP” in these rules, such reference is not intended to refer to a “Base MSRP” or any other lesser price indicated on a Monroney label, but rather only the ultimate total suggested retail price of that new motor vehicle as set by the manufacturer or distributor.

Failure to include the word “total” when describing a suggested retail price in this section of the proposed rules could be interpreted as requiring a dealer to utilize a listed price found on the Monroney label that is less than the ultimate total suggested retail price. Should that occur, it could be argued that the dealer’s savings claim would be inaccurate and the negative results from this could include finding that the dealer made both a false and misleading savings claim to the consumer. Not only could the dealer be forced to honor a price well below the total suggested retail



price of the vehicle (likely resulting in a financial loss on the vehicle sale), but it could legally expose the dealer to potential fines, penalties, and Deceptive Trade Practices Act (DTPA) claims by the consumer.

Stated another way, using an initial MSRP or other price that precedes the total price shown on the Monroney label for a savings claim would likely result in a situation where the advertisement fails to properly include all costs and charges associated with the motor vehicle prior to applying a savings claim (e.g. additional options or option packages from the manufacturer or distributor are typically not reflected in the initial or “base” suggested retail price)—thereby confusing or misleading the consumer regarding the vehicle price being artificially lower than intended. (See Attachment “A”) Given the importance of clarifying that a dealer should be referring to the total suggested retail price when making a savings claim, it is important that each of the illustrative figures found in proposed figures § 215.250(h)(1) through § 215.250(j) be modified to reflect “Total MSRP” instead of just “MSRP.” Gulf States Toyota believes these changes to the proposed language to § 215.250(h)(1)-(3) and the corresponding illustrative figures support the purpose and scope of the Subchapter H advertising rules set forth in § 215.241 that require truthful and accurate advertising practices for the benefit of the citizens of this state and also fully comport with the letter and spirit of § 215.242 which seeks to prevent any person advertising motor vehicles from engaging in false, deceptive, unfair or misleading advertising by providing some needed clarity and improved accuracy in terms of how savings claims can be expressed in advertisements by dealers.

### **§215.250(i)**

With respect to § 215.250(i), Gulf States Toyota recommends the following modification to the agency’s proposed rule in relevant part:

(i) [(d)] [sic] If a savings claim or discount offer includes an option package discount, [In the event that the manufacturer or distributor offers a discount on a package of options, then] that discount should be disclosed above, or prior to, the MSRP with a total sales price of the motor vehicle before option discounts.

\*\*\*      \*\*\*      \*\*\*

This change more accurately reflects the fact that discount packages are also offered by distributors.

### **§215.250(j)**

The proposed addition of subsection (j) to § 215.250 appears to be sourced from the suggestions of a single stakeholder and is wholly inconsistent with the consensus reached by all the stakeholders attending a meeting before the DMV staff



on June 15, 2016. It reads as follows:

(l) Except as provided herein, the calculation of the featured sales price or featured savings claim or discount may not include a limited rebate. A limited rebate may be advertised by providing the amount of the limited rebate and explaining the conditions or restrictions on qualification for the limited rebate in a statement below the featured sales price or featured savings claim or discount.

Figure: 43 TAC §215.250(j)

The proposed language is somewhat ambiguous and confusing. While the proposed language for subsection (a) now makes reference to the term “featured sales price” which can also be found in subsection (j), nowhere in proposed rules for Subchapter H is the term “featured savings claim” defined.<sup>3</sup> Gulf States Toyota believes that a featured sales price (formerly advertised sale price) is a concept that represents a price that can only be offered by a licensed dealer and therefore would not and should apply to manufacturers or distributors.

Additionally, subsection (j) appears to be inconsistent with subsection (g) which provides that any savings claim or discount offer for a new motor vehicle, when advertised, must also be available to any member of the buying public. While it may be possible to remedy this inconsistency by adding language to the beginning of subsection (g) that states “Except as otherwise provided herein,” the inclusion of subsections (g) and (j) appear inconsistent and contrary to one another, and could cause unnecessary uncertainty and confusion with trying to comply with these provisions. For these reasons, Gulf States Toyota believes subsection (j) should also be withdrawn.

### ***§215.250(k)***

Similarly, subsection (k) appears to be sourced from a single stakeholder and is inconsistent with the consensus reached at the June 15, 2016 meeting. It states as follows:

(k) In an internet advertisement with multiple limited rebates

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<sup>3</sup> The term “featured savings claim” can be found in the current language of § 215.262(3)(b) which states as follows:

(b) The featured savings claim or discount offer for a new motor vehicle, when advertised, must be the savings claim or discount which is available to any and all members of the buying public.



available on an advertised new motor vehicle, a dealer may display each limited rebate separately allowing a potential buyer to "click" on the limited rebate to view the sales price after deducting the applicable limited rebate or applicable multiple rebates.

Figure: 43 TAC §215.250(k)

While not likely the agency's intention, it is anticipated that in order for dealers to comply with subsection (k), there could be a substantial cost associated with upgrading their websites or internet advertisements to include the type of computational functionality contemplated by this particular subsection. This could include requiring a dealer to pay their marketing company or website provider to design or write code necessary to meet the requirements of this subsection to calculate variations of combinations of limited rebates with a corresponding sales price. For these reasons, Gulf States Toyota believes subsection (k) should also be withdrawn.

### ***§215.250(l)***

Gulf States Toyota remains concerned about the unintentional impact of the proposed language set forth in subsection (l) which states as follows:

(l) If a dealer has added an option that was not obtained from the manufacturer or distributor of the motor vehicle, a savings claim may not be advertised for that vehicle. If a dealer has added an option obtained from the manufacturer or distributor and disclosed that option and its suggested retail price on a dealership addendum, the dealer may advertise a savings claim for that motor vehicle if the option is listed, and the difference is shown between the dealer's sales price and the MSRP of the vehicle including the option obtained from the manufacturer or distributor.

Figure: 43 TAC §215.250(l)

The first sentence of subsection (l) sets up the situation where if a dealer has added an option like window etching, nitrogen filled tires, or custom wheels, then that dealer could arguably be prohibited from advertising any savings claim based on an offer from the manufacturer or distributor that might otherwise have been applicable and available to that particular new motor vehicle. One could also argue that this advertising rule would serve as a deterrent to dealers to add dealer installed options or accessories prior to the time of sale and typically found on a dealer addendum (even if such options or accessories were more likely to increase the likelihood for the vehicle to sell). This would not be in the public interest because it could lead dealers to stock less in their parts and



accessories inventory at their dealerships potentially resulting in staffing reductions and/or changes and potentially decreasing parts and accessories profits (and corresponding sales tax revenue to the state). Gulf States Toyota recommends the following change to the first sentence of this proposed subsection.

If a dealer has added an option that was not obtained from the manufacturer or distributor of the motor vehicle, a savings claim may not be advertised for that vehicle except to the extent that dealer installed option is listed separately from any manufacturer or distributor discount or savings.

The following additional figure could be included with 43 TAC §215.250(l) to illustrate this scenario:

MSRP	\$20,000.00
Total Dealer Installed Options (non-factory)	\$500.00
Total	\$20,500.00
Less Distributor Discount	\$2,500.00
Less Dealer Discount	\$250.00
Sales Price	\$17,750.00

***§215.250(m)***

Gulf States Toyota is strongly opposed to the language of proposed subsection (m), which seeks to specifically call out and highlight distributor installed options and equipment as part of dealer advertising. It is very troubling to Gulf States Toyota that despite the consensus of the stakeholders in the prior meeting, an attempt to disadvantage certain dealers while trying to benefit others is once again being considered—especially in the face of being informed by Gulf States Toyota and Texas Toyota dealers that such language was harmful to them both.

There was absolutely no agreement whatsoever between any of the stakeholders in attendance at the June 15, 2016 meeting with TXDMV staff regarding this language or even the very concept of placing this burden on Toyota dealers in Texas. In fact, during that June TXDMV meeting, Gulf State Toyota expressed its complete and utter opposition to this very language and shared with the stakeholders as well as TXDMV staff that Texas Toyota dealers were also very much opposed to any proposal which gives certain dealers a competitive advantage



over others.

The proposed language states as follows:

(m) If a distributor physically installs a factory available option on a new motor vehicle, a savings claim may be advertised for that vehicle if the option is disclosed on a vehicle label along with the suggested retail price for the option. A dealer may advertise a savings claim for that motor vehicle if the dealer discloses the total MSRP and the total of the distributor installed options and the difference is shown between the dealer's sales price and the total of the MSRP and distributor installed options for that vehicle.

Figure: 43 TAC §215.250(m)

This provision and the accompanying illustrative figure deliberately seek to single out advertising involving any automotive brand that utilizes a private distributor in Texas. It further aims to penalize their franchised dealers by imposing an undue burden of informing comparison shopping consumers needlessly and in a confusing manner about distributor options and equipment. Specifically, unlike dealer added options, equipment placed on a new motor vehicle by a licensed distributor in Texas is covered one hundred percent by a full factory warranty. And, unlike dealer installed options, distributor installed options and equipment are included on a new motor vehicle prior to the time of delivery to a franchised Toyota dealer in Texas because those vehicles were preferenced, configured, and/or ordered that way by a Toyota dealer.

The proposed language fails to consider how a licensed distributor in Texas actually operates. First there is no separate “vehicle label” as suggested by this proposed language. Distributor installed options are found on the Monroney label only—not on a separate vehicle label similar to or the same as a dealer addendum, as suggested by subsection (m).

Second, distributors are in many instances responsible for installing both manufacturer available options and distributor available options. Both categories of options and accessories are covered by warranty. However, it is far from clear under this proposed language how a dealer is to make such a distinction when advertising. For example, Gulf States Toyota is contractually obligated to install certain vehicle options and accessories at the direction of Toyota Motor Sales (e.g. TRD Pro factory package which includes, among other things, 17 inch wheels and a special skid plate). (See Attachment “B,” Gulf States Toyota TRD Pro 4Runner Monroney Label) In other situations Gulf States Toyota installs “factory” equipment



such as roof racks on FJ Cruisers because such vehicles may not be shipped via rail with such equipment attached. The proposed language places the impossible burden on Toyota dealers advertising a savings claim of having to somehow extrapolate from the Monroney label the apportionment of the vehicle price attributable to such options and accessories that the distributor is directed to install on behalf of Toyota. For this reason alone, the proposed language is impossible to comply with and could arguably and needlessly expose Toyota dealers to numerous violations of §215.242.

Third, in other instances Gulf States Toyota installs certain option packages that consist of distributor sourced and installed options, such as those that comprise the Texas Edition Toyota Tacoma and Toyota Tundra pickup trucks. These packages are competitive with the same or similar packages offered by domestic manufacturers like GM, Ford, and Ram. Under the proposed language, only the Toyota dealers would be required to expressly call out the Texas package on the Toyota vehicles while GM, Ford, and Ram vehicles would not be required to do so. The net result is that GM, Ford, and Ram dealers would be able to suggest to customers that distributor sourced vehicles are somehow subject to additional markup when, as the licensed Toyota distributor, Gulf States Toyota is simply including what are the equivalent competitive packages and options on Toyota trucks to those offered by the domestics. Stated another way, as a licensed distributor of Toyota vehicles and products in the State of Texas, Gulf States Toyota is doing nothing more than any other manufacturer in terms of installing optional packages and equipment backed by warranty.

Fourth, the proposal would place an undue burden and cost exclusively on Toyota dealers by requiring that additional time and expense be incurred in trying to make their print, internet, radio, and television advertising comply with unique and non-standard information and language describing distributor installed options. This increased cost and burden places Texas Toyota dealers at a direct competitive disadvantage.

Lastly, certain proposed changes to §215.250 (including those to subsection (m)) are contrary to the Fiscal Note and Public Benefit and Cost explanations contained in the explanatory section for these proposed rule amendments found at 41 TexReg 7013-14. Specifically, the Fiscal Note states that it has been “certified that there would be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments, new section, and repeals.” *Id.* This is inaccurate.

Should certain contemplated changes to §215.250 take effect, Gulf States Toyota and its franchised dealers would be negatively impacted from a financial standpoint. Moreover, in the explanation of the Public Benefit and Cost, it states



that “[t]here are no anticipated economic costs for persons required to comply with the amendments, new sections, and repeals as proposed.” *Id.* Again this is inaccurate as it relates to the proposed changes to §215.250. It further states “[t]here will be no adverse economic effect on small businesses or micro-businesses.” *Id.* As discussed above the contemplated changes would negatively impact small businesses (e.g. Toyota dealers) from an economic standpoint. Gulf States Toyota and Toyota dealers in Texas deserve to be treated with no lesser status or stature than other licensees in Texas by the TXDMV when considering the adoption of these proposed amendments.

For all these reasons, Gulf States Toyota believes subsection (m) should be withdrawn.

We very much appreciate the opportunity to comment on these proposed changes. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Laird", with a stylized flourish at the end.

Laird Doran  
Director of Government Relations and Senior Counsel for The Friedkin Group,  
Submitted on Behalf of Gulf States Toyota



**ATTACHMENT “A”**  
**Monroney Label (Examples 2016)**



# ACURA

## 2016 MDX TECH ENT

Color: FATHOM BLUE P  
Metal: GRAYSTONE

### STANDARD EQUIPMENT AT NO EXTRA COST

#### TECHNICAL FEATURES

- 200hp 3.5L SOHC 24-Valve Direct Injection VTEC V6 Engine with Variable Cylinder Management (VCM)
- 9-Speed Automatic Transmission
- 4-Wheel Independent Suspension
- Integrated Dynamics System (IDS)

#### SAFETY FEATURES

- Driver's and Front Passenger's Front-Impact Airbags (SAB)
- Driver's and Front Passenger's Side Airbags w/ SmartVent
- Side Curtain Airbags with Rollover Sensing
- Driver's Knee Airbag
- Vehicle Stability Assist (VSA)
- Anti-Lock Braking System (ABS)
- Electronic Brake Distribution (EBD)
- Active Handling Assist Dynamic Steering System
- Tire Pressure Monitoring System
- LATCH System for Child Seats

#### INTERIOR FEATURES

- Multi-View Rear Camera with Dynamic Guidelines
- On-Demand Multi-Use Display Touch Screen
- SiriusXM Satellite Radio
- Pandora Internet Radio Interface
- Bluetooth HandsFreeLink
- SMS Text Messaging Functionality
- Push Button Shift
- Driver's 10-Way Power Seat
- Front Passenger's 8-Way Power Seat
- Driver Recognition Memory System
- Sport Seats with Leather Trim
- Heated Front Seats
- Push-Button Ignition
- HomeLink System

#### EXTERIOR FEATURES

- Power Tailgate
- Power Moonroof with Tilt Feature
- 19" x 8.0" Alloy Wheels
- 245/45 R19 All-Season Tires (in place of spare tire)
- Jewel Eye LED Headlights
- Heated Power Side Mirrors with Turn Indicators
- Keyless Access System with 4DOOR AUTOMOTIVE

### TECH PACKAGE

- Adaptive Navigation System with Voice Recognition
- Adaptive Communication System with Real-Time Traffic with Smart and Freeway Conditions (Available in select markets)
- Adaptive LED Headlamps Premium Audio System with 11 Speakers
- HD Radio
- GPS Link, 10-Touch Audio Control with Air-Filtration System
- Blind Spot Information
- LED Puddle Lights
- Rain Sensing Wipers
- Lane Departure Warning
- Forward Collision Warning
- Lane Keeping Assist System
- Rear Cross Traffic Monitor

Manufacturer's Suggested Retail Price

## \$49,290.00

MSRP includes:

- 4-year/50,000 Mile Powertrain Warranty
- 3-year/50,000 Mile 4-Door Service Warranty
- Full Tank of Fuel

Includes:

- 3-year/50,000 Mile Free Service (excl. AK & HI)
- Complimentary AcuraLink Standard Package for 3 Years

Destination and Handling

## \$940.00

### TOTAL VEHICLE PRICE

(Includes Pre-Delivery Service)

## \$50,230.00

Licenses and title fees, state and local taxes and dealer options and accessories are not included in the manufacturer's suggested retail price.

### EPA Fuel Economy and Environment

City 22 MPG Highway 27 MPG Combined 22 MPG

4.5 gallons per city mile

You spend **\$2,250** in fuel costs over 5 years (compared to the average new vehicle)

Annual fuel cost **\$2,250**

Fuel Economy & Greenhouse Gas Rating: 1 to 10 (5 is average)

Star Rating: 5 stars

Actual results will vary for many reasons, including driving conditions and how you drive and maintain your vehicle. The average new vehicle gets 24 mpg and costs \$4,000 to fuel over 5 years. Cost estimates are based on 15,000 miles per year at \$1.50 per gallon. Actual results may vary. Please see dealer for more information. Vehicle emissions are a significant cause of climate change and smog.

[fuelconomy.gov](http://fuelconomy.gov)

Calculate personalized estimates and compare vehicles

### PARTS CONTENT INFORMATION

FOR VEHICLES IN THIS COUNTRY

U.S./Canadian Parts Content: **65%**

NOTE: Parts content does not include final assembly, distribution or other non-parts costs.

### GOVERNMENT 5-STAR SAFETY RATING

Overall Vehicle Score: **★★★★★**

Based on the combined ratings of frontal, side and roof impact. Should only be compared to other vehicles of similar size and weight.

Crash Type	Occupant Position	Star Rating
Frontal Crash	Driver	★★★★★
	Passenger	★★★★★
Side Crash	Front seat	★★★★★
	Rear seat	★★★★★
Rollover		★★★★

Based on the risk of rollovers in single vehicle tests.

Star Ratings range from 1 to 5 stars (★★★★★) with 5 being the highest. Source: National Highway Traffic Safety Administration (NHTSA). [www.safercar.gov](http://www.safercar.gov)

### FOR THIS VEHICLE

Fiscal Assembly Point:  
**LINCOLN, ALABAMA**  
USA

Country of Origin: Engine  
**U.S.A.**

Transmission:  
**U.S.A.**

QHS, DLR: 90992  
REV. NO.: 0102402  
VIN CODE: AL-9816  
MISSION: 50 STATE  
COUNTRY: 017171

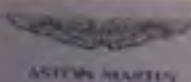
PORT OF ENTRY: ALABAMA  
DELIVERY POINT: ALM CCA FORD  
SHIP:   
HOWSPACE:   
TRANSMET-CO: J20 PEARLAND

QHS 376 31446 151  
4384451 306  
LANSAGE

438-000205

438-000205




**ASTON MARTIN**

Dealer: STAR MOTOR CARS

Model: Vantage V8 Coupe  
Model Year: 2018  
Engine Number: AM201802  
VIN: SCFFMCHU5V94402618  
Exterior Colour: Ultramarine Blue  
Interior Colour: All Black except

**Owner Benefits:**  
3 years unlimited mileage warranty

24-hour roadside assistance

**STANDARD FEATURES**

**Engineering and Performance**  
5.0-litre V8 engine  
0-60 mph in 4.1 seconds  
190 maximum horsepower  
Independent sequential fuel injection  
Variable Valve Timing  
Optimised Drive Cycle  
Throttle-by-Wire 8-speed Automatic Transmission  
Rear-wheel drive  
4-wheel ventilated, carbon ceramic disc brakes  
Anti-lock Braking System (ABS)  
Electronic Stability Control (ESC)  
Dynamic Stability Control (DSC)  
Steering Responsive Active Airmatic  
Traction Control (TC)  
3-stage Adaptive Damping System (ADS)  
Rear View Mirror  
18-speaker Bose Surround Sound  
Occupant sensing front passenger seat  
Power windows with auto-lock  
Auto-brake engine immobiliser  
Tyre Pressure Monitoring  
**Comfort and Convenience**  
170-watt stereo  
Bluetooth USB in-car interface  
5-point memory seats and exterior powered mirrors  
Electrically adjustable front seats  
Dual-zone heated front seats  
Stability control system  
Bang & Olufsen Sound System  
Integrated iPod, USB and auxiliary 3.5mm connection  
Satellite radio  
Electronic handbrake/parking  
Trip computer and cruise control  
Front and rear parking sensors  
Reversing camera  
Automatic headlights and wipers

Taxi Charger: \$1,000.00  
Transmission and handling: \$3,000.00  
**TOTAL SUGGESTED RETAIL\*** \$30,000.00

\*Total amount charged includes state and federal taxes, dealer fees and destination

**EPA DOT Fuel Economy and Environment**

**Fuel Economy**  
16 MPG combined city/hwy  
13 city  
21 highway  
6.3 gallons per 100 miles  
\$1,300 per gallon (at \$20.93/gal)

**Annual fuel cost \$3,100**

**Fuel Economy & Greenhouse Gas Rating**  
1 3 10 5 10  
This vehicle earns 107 points (100 per mile). The best score is 100 per mile (100 mpg) and the worst is 100 per mile (100 mpg).  
Calculate performance at [fuelconomy.gov](http://fuelconomy.gov)


**Parts Content Information**  
FOR VEHICLES IN THIS CARLINE:  
U.S./CANADIAN PARTS CONTENT: 3%  
MAJOR SOURCES OF FOREIGN PARTS CONTENT:  
UK 66%  
Germany 22%  
Other 12%  
FOR THIS VEHICLE:  
FABRIASSEMBLY POINT:  
Gardon, Warrickville, OH  
COUNTRY OF ORIGIN ENGINE PARTS:  
GERMANY  
TRANSMISSION PARTS:  
GERMANY

**Bumper Quality Label**  
THIS VEHICLE IS EQUIPPED WITH A FRONT BUMPER THAT HAS BEEN TESTED AT AN IMPACT SPEED OF 2.5 MPH (PER HOUR) AND A REAR BUMPER THAT HAS BEEN TESTED AT AN IMPACT SPEED OF 2.5 MPH (PER HOUR) AND HAS SURVIVED NO DAMAGE TO THE VEHICLE'S BODY AND MINOR DAMAGE TO THE BUMPER AND ATTACHMENT HARDWARE. MINOR DAMAGE TO BUMPER REPAIRS DAMAGE THAT CAN BE REPAIRED IN THE USE OF TYPICAL REPAIR MATERIALS WITHOUT REPLACING PARTS. THE STRONGER THE BUMPER THE LESS LIKELY THE CAR WILL REQUIRE REPAIR AFTER A LOW SPEED COLLISION. (FOR COMPARISONS, THE IMPACT IS 60% OF THAT STATED ABOVE.)


**IMPORTANT NOTICE**  
THESE IMPACT SPEEDS ARE GOOD FAITH ESTIMATES OF THE SPEEDS AT WHICH THE DESCRIBED EXTENT OF BUMPER DAMAGE WILL NOT BE EXCEEDED BASED ON REASONABLE ENGINEERING JUDGMENT AND DATA FROM TESTING PURSUANT TO THE FEDERAL BUMPER STANDARD WHICH PROVIDES DAMAGE TO THE VEHICLE BODY OR SAFETY SYSTEM AT 2.5 MPH IMPACT. BUT DOES NOT PROVIDE DAMAGE TO BUMPERS AND THEIR ASSOCIATED COMPONENTS AND FASTENERS. THIS VEHICLE MEETS THE FEDERAL BUMPER STANDARD AT 2.5 MPH FRONT AND REAR, AND 1.5 MPH IN THE BUMPER CORNERS.

**GOVERNMENT 5-STAR SAFETY RATING**  
This vehicle has not been rated by the government for overall vehicle score, front-impact, side-impact or rollover risk.  
Source: National Highway Traffic Safety Administration (NHTSA)  
[www.safercar.gov](http://www.safercar.gov) or 1-888-327-4273




**CHEVROLET**

**2015 CITY EXPRESS LT**



**EXTERIOR: DESIGNER WHITE**  
**INTERIOR: MEDIUM PEWTER**

**ENGINE: 2.0L DOHC I4**  
**TRANSMISSION: XTRONIC CVT**

Visit us at [www.chevy.com](http://www.chevy.com)

### STANDARD EQUIPMENT

STANDARD EQUIPMENT INCLUDES AIR CONDITIONING AND 16" STEEL WHEELS. SEE DEALER FOR DETAILS.

- CHEVROLET COMPLETE CARE
- SEE [WWW.CHEVY.COM](http://WWW.CHEVY.COM) OR DEALER FOR TERMS, DETAILS & LIMITS
- 2 YR./34,000 MILE SCHEDULED MAINTENANCE
- 5K A/FILTER CHANGE
- 4 WHEEL TIRE ROTATION
- 27 POINT INSPECTION
- 3 YR./50,000 MILES BUMPER-TO-BUMPER WARRANTY
- 5 YR./100,000 MILES POWERTRAIN LIMITED WARRANTY
- ROADSIDE ASSISTANCE
- COURTESY TRANSPORTATION

### MECHANICAL

- ELECTRIC POWER STEERING
- ALTERNATOR, 1
- ENGINE, 2.0L I4
- TRANSMISSION, 6-SPEED AUTOMATIC

### SAFETY & SECURITY

- AIR BAGS (8) DRIVER AND FRONT PASSENGER, SIDE IMPACT, HEAD-CURTAIN
- REMOTE KEYLESS ENTRY
- THEFT DETECTION SYSTEM
- SHOCKS, 4-WHEEL ANTI-LOCK
- FRONT DISC, REAR DRUM
- VEHICLE STABILITY ENHANCEMENT SYSTEM
- DAYTIME RUNNING LAMPS
- REAR PARK ASSIST
- TIRE PRESSURE MONITOR SYSTEM (TPMS) (SPARE TIRE)

### EXTERIOR

- MIRRORS, OUTSIDE HEATED, BLACK
- SPARE TIRE STORAGE - EXTERNAL
- ROOF RACK PROVISIONS
- TIRE, SPARE, FULL SIZE WITH STEEL WHEEL
- HEADLAMPS, HALOGEN

### INTERIOR

- DUAL SLIDING SIDE DOORS
- POWER WINDOWS
- DRIVER EXPRESS DOWN
- SEAT ADJUSTER, 1ST PASSENGER MANUAL
- MANUAL SEAT ADJUSTER, DRIVER 8-WAY
- SEATS, FRONT BUCKET W/ CUSTOM CLOTH TRIM
- POWER DOOR LOCKS
- FRONT VINYL FLOOR COVERING
- REAR VINYL FLOOR COVERING
- AIR CONDITIONING
- AUXILIARY HEATER/DEFROSTER
- POWER OUTLETS, 2 AUXILIARY
- MOBILE OFFICE CENTER CONSOLE
- CARGO AREA REINFORCED MOUNTING
- CARGO HOOKS (8) REAR
- LATCHER SLAT TRAY / PASS SIDE
- INTERIOR PROTECTION PANELS

### CONNECTIVITY FEATURES

- AUDIO SYSTEM, AM/FM STEREO W/ CD PLAYER
- BLUETOOTH FOR PHONE

### OPTIONS & PRICING

MINIMUM 12 MONTHS WARRANTY REQUIRED

<b>STANDARD VEHICLE PRICE</b>	<b>\$23,515.00</b>
-------------------------------	--------------------

OPTIONAL EQUIPMENT IS AVAILABLE WITH OR WITHOUT THE 2015 CITY EXPRESS LT. SEE DEALER FOR DETAILS.

<b>TECHNOLOGY PACKAGE</b>	<b>\$45.00</b>
AUDIO SYSTEM, COLOR CONNECTED RADIO WITH NAVIGATION	
XM RADIO + SERVICE	
SUBSCRIPTIONS (SOLD SEPARATELY)	

### BY REQUEST AFTER 3 MONTHS

- BLUETOOTH STREAMING AUDIO AND SELECT PHONES
- USB PORT
- REAR VISION CAMERA

**APPEARANCE PACKAGE:**

- OUTSIDE DOOR HANDLES, BODY COLOR
- MIRRORS-POWER OUTSIDE, HEATED
- WHEEL COVERS, 15"
- CHROME GRILL
- BUMPER, FRONT, BODY COLOR
- SLATS, DEEP FRY, SLAT DOORS AND DRIVER/PASSENGER SIDE SLIDING DOOR
- REAR WINDOW DEFROSTER
- MIRROR, MIRROR, MIRROR IN VIEW

<b>TOTAL OPTIONS</b>	<b>\$1,500.00</b>
<b>TOTAL VEHICLE &amp; OPTIONS</b>	<b>\$25,015.00</b>
<b>DESTINATION CHARGE</b>	<b>\$65.00</b>

<b>TOTAL VEHICLE PRICE*</b>	<b>\$26,670.00</b>
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### EPA DOT Fuel Economy and Environment

**Fuel Economy**

**25 MPG** (combined city/highway)

24 city 26 highway

4.0 gal/100 mi

**Annual fuel cost \$2,100**

**Fuel Economy & Greenhouse Gas Rating**

1 6 10

**Smog Rating**

1 6 10

**You save \$500** in fuel costs over 5 years compared to the average.

[fuelconomy.gov](http://fuelconomy.gov)

### GOVERNMENT 5-STAR SAFETY RATINGS

This vehicle has not been rated by the government for overall vehicle score, frontal crash, side crash or rollover risk.

Source: National Highway Traffic Safety Administration (NHTSA) [www.safercar.gov](http://www.safercar.gov) or 1-800-327-4236

### PARTS CONTENT INFORMATION

FOR VEHICLES IN THIS CARLINE:

U.S./CANADIAN PARTS CONTENT: 11%

MAJOR SOURCES OF FOREIGN PARTS CONTENT:

MEXICO 58%

JAPAN 15%

NOTE: PARTS CONTENT DOES NOT INCLUDE FINAL ASSEMBLY, DISTRIBUTION, OR OTHER NON-PARTS COSTS.

FOR THIS VEHICLE:

FINAL ASSEMBLY POINT: JUTEPEC, MX MEXICO

COUNTRY OF ORIGIN: ENGINE: MEXICO

TRANSMISSION: MEXICO



**CHRYSLER** 2016 200C

For more information visit: [www.chrysler.com](http://www.chrysler.com)  
or call 1-800-CHRYSLER FCA US LLC

THIS VEHICLE IS MANUFACTURED TO MEET SPECIFIC UNITED STATES REQUIREMENTS. THIS VEHICLE IS NOT MANUFACTURED FOR SALE OR REGISTRATION OUTSIDE OF THE UNITED STATES.

**MANUFACTURER'S SUGGESTED RETAIL PRICE OF THIS MODEL INCLUDING DEALER PREPARATION**

**Base Price: \$27,570**

**CHRYSLER 200C**  
Exterior Color: Phantom Black Tri-Coat Pearl Exterior Paint  
Interior Color: Black / Deep Mocha Interior Colors  
Interior: Premium Leather-Trimmed Vent Seats  
Engine: 2.4-Liter I4 MultiAir® Engine  
Transmission: 9-Speed 945TE Automatic Transmission - 2.4L Engine

**STANDARD EQUIPMENT (UNLESS REPLACED BY OPTIONAL EQUIPMENT)**  
**FUNCTIONAL/SAFETY FEATURES**  
Advanced Multistage Front Airbags  
Supplemental Front Seat-Mounted Side Airbags  
Supplemental Side-Curtain Front and Rear Airbags  
Driver Inflatable Knee-Bolster Airbag  
Passenger Inflatable Knee-Bolster Airbag  
LATCH Ready Child Seat Anchor System  
ParkView® Rear Back-Up  
Pioneer® Start System  
Electronic Stability Control  
Traction Control  
Anti-Lock 4-Wheel Disc Brakes  
Ride and Handling Suspension  
Brake Assist  
Electric Park Brake  
Electric Power Steering  
Keyless Enter-In®  
Security Alarm

**INTERIOR FEATURES**  
A/C Air Temperature Controls with Dual Zone Climate Control  
8.4  
8.4-Inch Touchscreen Display  
Navigation-Optional. See Dealer for Activation  
Key Fob, with optional Drive-Connect™  
1 (optional) Access 6-Mile Trail (Optional Road & 6-Speed)  
Integrated Voice Command with Bluetooth®  
SiriusXM® Sub Radio w/ 1-21 Radio Stations  
For More Information, Call 800-4-A-CHRYSLER  
Audio Jack Input for Mobile Devices  
Premium 2-Way Driver Information Display Cluster  
Removable USB Port  
Leather-Wrapped Steering Wheel  
Heated Steering Wheel  
Power Front Windows w/ 1-Click Up and Down Feature  
Heated Front Seats  
Power 8-Way Driver Seat  
Power 4-Way Driver Lumbar Adjust  
9-Way Power Passenger Seat  
Illuminated LED Interior Lighting  
12-Volt Auxiliary Power Outlet in Console  
Active Noise Control  
Bluetooth® Hands-Free  
Automatic Headlights

9-Pinch Holster Projector Headlamps w/ Light Pipe  
Fog Lamps  
LED Tail Lamps  
17-Inch x 7.5-Inch Solid Silver Aluminum Wheels  
Exterior Mirrors with Integrated Turn Signals  
Power Heated Mirrors with Manual Fold-Away

**OPTIONAL EQUIPMENT (May Require Standard Equipment)**  
Phantom Black Tri-Coat Pearl Exterior Paint \$190  
Customer Preferred Package 200 \$900  
Premium Sound  
Premium Leather-Trimmed Vent Seats  
Ventilated Front Seats  
Luxury Door Trim Panel  
115-Volt Auxiliary Power Outlet  
Exterior Mirrors with Memory  
Audio Through / Ext. Mirror / Driver's Seat Memory  
Heated 2-Tone Leather Steering Wheel  
Rear Wheel 2-Speed Cruise Control  
Navigation and Sound System  
Connectivity 8.4 NAV  
SiriusXM® Tri-Link 5-11 Tri-Link Subscription  
GPS Navigation  
8 Amplified Speakers with Subwoofer  
HD® Radio  
Agust® 506-Watt Amplifier  
SiriusXM® Traffic / 5-11 Traffic Subscription  
Dual-Park Panoramic Camera  
Pioneer® Lighting Group  
LED Headlamps with LED Daytime Running Lamps  
LED Fog Lamps  
10" x 8" Polished Face aluminum Power Side  
Heavy Duty Anti-Lock 4-Wheel Disc Brakes \$895

**DESTINATION CHARGE**

**TOTAL PRICE: \*\$34,335**

**WARRANTY COVERAGE**  
5-year or 60,000-mile Powertrain Limited Warranty  
3-year or 36,000-mile Basic Limited Warranty  
Ask Dealer for a copy of the limited warranties or see your owner's manual for details.

**5-YEAR/60,000-MILE POWERTRAIN WARRANTY**

**EPA DOT Fuel Economy and Environment**

**Fuel Economy**  
28 MPG  
23 36 3.6  
combined city/hwy city highway gallons per 100 miles  
Driving Range  
From 440 miles  
To 330 miles

**You save \$1,000 in fuel costs over 5 years**  
compared to the average new vehicle

**Annual fuel cost \$1,600**

**Fuel Economy & Greenhouse Gas Rating**  
Smog Rating: 7  
Greenhouse Gas Rating: 7

**Actual results may vary for many reasons, including driving conditions and how you drive and maintain your vehicle. The average new vehicle gets 24 mpg and costs \$1,600 to fuel over 5 years. Cost estimates are based on 15,000 miles per year at \$2.00 per gallon. This is a four-cylinder automobile. MPG is miles per gallon. Actual results may vary. Vehicle estimates are a significant source of change in cost and energy.**

**GOVERNMENT 5-STAR SAFETY RATINGS**

**Overall Vehicle Score ★★★★★**  
Based on the government's safety ratings for cars and minivans.  
Source: NHTSA. See [www.safercar.gov](http://www.safercar.gov) for more information on vehicle safety ratings.

**Frontal Crash ★★★★★**  
Driver Passenger  
Based on tests performed in a frontal crash.  
Rating reflects the probability of serious or fatal injury.

**Side Crash ★★★★★**  
Front seat Rear seat  
Based on the test results in a side impact.

**Rollover ★★★★★**  
Based on the test results in a rollover test.

**Size ratings range from 1 to 5 stars (★★★★★) with 5 being the highest.**  
Source: National Highway Traffic Safety Administration (NHTSA).  
[www.safercar.gov](http://www.safercar.gov) or 1-800-427-4236

**PARTS CONTENT INFORMATION**  
FOR VEHICLES IN THIS CLASS:  
U.S. / CANADIAN PARTS CONTENT: 84%  
MAJOR SOURCES OF FOREIGN PARTS CONTENT:  
MEXICO: 18%  
OTHER: 14%  
FOR THIS VEHICLE:  
FINAL ASSEMBLY POINT:  
STERLING HTS., MICH., U.S.A.  
COUNTRY OF ORIGIN:  
ENGINE: UNITED STATES  
TRANSMISSION: UNITED STATES

Model: 200C  
Year: 2016  
VIN: 1C3CXXG7G7G7141891  
MSRP: \$27,570  
Destination Charge: \$895  
Total Price: \$34,335



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ford.com

## VEHICLE DESCRIPTION

FUSION

GR 302972

2016 FUSION TITANIUM FWD  
5-PASSENGER  
2.0L ECOBOOST ENGINE  
6-SPD AUTO TRANSMISSION

EXTERIOR  
SHADOW BLACK  
INTERIOR  
CHARCOAL BLK LTHR TRIM SEAT

## STANDARD EQUIPMENT INCLUDED AT NO EXTRA CHARGE

## EXTERIOR

- 18" POLISHED ALUMINUM WHEELS
- AUTO HALOGEN HEADLAMPS
- CONFIGURABLE DAYTIME RUNNING LAMPS
- DUAL-ZONE ELECTRONIC AUTO CLIMATE CONTROL
- DUAL EXHAUST SYSTEM
- EASY FUEL CAPLESS FILLER
- FOG LAMPS
- INTEGRATED BLIND SPOT MIRRORS -MAN FOLD DUAL PWR HEATED W/MEMORY
- SECURITY APPROACH LAMPS
- TURN SIGNAL INDICATORS

## INTERIOR

- 60/40 SPLIT FOLD REAR SEAT
- ALUMINUM SPORT PEDALS
- AMBIENT LIGHTING
- DUAL ILLUM VANITY MIRRORS
- FRONT AND REAR FLOOR MATS
- LEATHER TRIMMED SEATS WITH 10-WAY HTD DR/PA & DR MEM
- LEATHER WRAPPED STR WHEEL
- POWERPOINTS (3)
- REAR A/C & HEAT DUCTS
- TILT STEERING WHL/ CRUISE & AUDIO CONTROLS

## FUNCTIONAL

- GLOBAL OPEN/CLOSE WINDOWS
- HD RADIO
- HILL START ASSIST
- INTELLIGENT ACCESS W/PUSH BUTTON START
- INTERMITTENT SPEED WIPERS
- MYKEY
- PRM. AUDIO SYSTEMS BY SONY
- 12 SPEAKERS
- REAR VIEW CAMERA
- REMOTE START
- SIRIUS SAT SVC N/A AK&HI
- SYNC W/ MYFORD TOUCH
- TRANSMISSION - SELECTSHIFT AUTO WITH PADDLE SHIFTERS

## SAFETY/SECURITY

- AIRBAG-DRIVER/PASS KNEE
- AIRBAGS - DUAL STAGE FRONT
- AIRBAGS - FRONT SEAT
- MOUNTED SIDE IMPACT
- AIRBAGS - SIDE AIR CURTAIN
- ADVANCETRAC ESC
- EMERGENCY BRAKE ASSIST
- REVERSE SENSING SYSTEM
- SECURICODE KEYLESS KEYPAD
- SECURILOCK PASS ANTI THEFT
- TIRE PRESSURE MONITOR SYS

## WARRANTY

- 3YR/36,000 BUMPER / BUMPER
- 5YR/60,000 POWERTRAIN
- 5YR/60,000 ROADSIDE ASSIST

## INCLUDED ON THIS VEHICLE (MSRP)

EQUIPMENT GROUP	(MSRP)
MOONROOF W/UNIV GAR DR OPENER	1095.00
FRONT LICENSE PLATE BRACKET	NO CHARGE
HEATED/COOLED DRV/PASS SEATS	395.00
NAVIGATION SYSTEM	795.00
19" H-SPOKE DK STNLS ALUM WHLS	695.00
DRIVER ASSIST PACKAGE	290.00
LANE KEEPING SYSTEM	
BLIS W/CROSS TRAFFIC ALERT	

## PRICE INFORMATION

BASE PRICE	\$31,120.00
TOTAL OPTIONS/OTHER	4180.00
TOTAL VEHICLE & OPTIONS/OTHER DESTINATION & DELIVERY	35300.00
TOTAL BEFORE DISCOUNTS	36175.00
SYNC AND SOUND DISCOUNT	- 490.00
TOTAL SAVINGS	- 490.00

TOTAL MSRP \$35,685.00

This label is affixed pursuant to the Federal Automobile Information Disclosure Act. Gasoline, License, and Title Fees, State and Local taxes are not included. Dealer installed options or accessories are not included unless listed above.

SOLD TO  
MERCHANDISING MANAGER  
5700 Granite Parkway, Suite 10  
Plano, TX 75024

SHIP TO (IF OTHER THAN SOLD TO)

SHIP THROUGH

521 865

RAMP ONE

RK34

RAMP TWO

RAIL

DEALER NO.

521 865

FINAL ASSEMBLY PLANT

HERMOSILLO

ITEM #: 52-R004 O/T 7

F182 S 6AS X 640 000089 01 28 16

## EPA DOT Fuel Economy and Emissions



Gasoline Vehicle

## Fuel Economy



**26** MPG  
combined city/hwy

22

city

33

highway

3.8 gallons per 100 miles

Midsized Cars range from 13 to 114 MPG.  
The best vehicle rates 119 MPG.

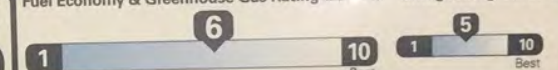
You save

\$250

in fuel costs  
over 5 years  
compared to the  
average new vehicle.

Annual fuel cost  
**\$1,750**

Fuel Economy &amp; Greenhouse Gas Rating (tailpipe only)

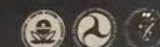


This vehicle emits 336 grams CO<sub>2</sub> per mile. The best emits 0 grams per mile (tailpipe only). Producing and distributing fuel also create emissions. Learn more at [fuelconomy.gov](http://fuelconomy.gov)

Actual results will vary for many reasons, including driving conditions and how you drive and maintain your vehicle. The average new vehicle gets 25 MPG and costs \$9,000 to fuel over 5 years. Cost estimates are based on 15,000 miles per year at \$2.00 per gallon. MPGe is miles per gasoline gallon equivalent. Vehicle emissions are a significant cause of climate change and smog.

**fuelconomy.gov**

Calculate personalized estimates and compare vehicles



## GOVERNMENT 5-STAR SAFETY RATINGS

## Overall Vehicle Score

★★★★★

Based on the combined ratings of frontal, side and rollover.  
Should ONLY be compared to other vehicles of similar size and weight.

Frontal  
CrashDriver  
Passenger

★★★★★

Based on the risk of injury in a frontal impact.  
Should ONLY be compared to other vehicles of similar size and weight.

Side  
CrashFront seat  
Rear seat

★★★★★

Based on the risk of injury in a side impact.

Rollover

★★★★★

Based on the risk of rollover in a single-vehicle crash.

Star ratings range from 1 to 5 stars (★★★★★), with 5 being the highest.  
Source: National Highway Traffic Safety Administration (NHTSA).

[www.safercar.gov](http://www.safercar.gov) or 1-888-327-4236



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Scan this code to  
experience this  
vehicle or text  
3FGR302972 to  
48028

or Visit  
[ford.com/  
windowsdollar](http://ford.com/windowsdollar)

Standard messaging &amp; data plan rates may apply.



FORD PROTECT

Insist on Ford Protect! The only extended service plan fully backed by Ford and honored at every Ford dealership in the U.S., Canada and Mexico. See your Ford dealer for additional details, or visit [www.FordOwner.com](http://www.FordOwner.com) for more information.



FORD CREDIT

Choose the vehicle you want. Whether you decide to lease or finance, you'll find the choices that are right for you. See your Ford Dealer for details or visit [www.FordCredit.com](http://www.FordCredit.com).





DESC.: TUNDRA 4X2 SR5 DOUBLE CAB FFV  
VIN: 5TFRW5F12GX198200  
YR/MDL: 2016/8231 A  
COLOR: SUPER WHITE/GRPHTE,STRAGR,S (0040/13)  
PORT/PLANT: San Antonio,TX/TMMTX

**GOVERNMENT 5-STAR SAFETY RATINGS****Overall Vehicle Score**

★★★★★

Based on the combined ratings of frontal, side and rollover.

Should ONLY be compared to other vehicles of similar size and weight.

▲ Safety concern: Visit [www.safercar.gov](http://www.safercar.gov) or call 1-888-327-4236 for more details**Frontal****Driver**

★★★★★

**Crash****Passenger**

★★★★★

Based on the risk of injury in a frontal impact.

Should ONLY be compared to other vehicles of similar size and weight.

**Side****Front seat**

★★★★★

**Crash****Rear seat**

★★★★★

Based on the risk of injury in a side impact.

**Rollover**

★★★★

Based on the risk of rollover in a single-vehicle crash.

Star ratings range from 1 to 5 stars (★★★★★) with 5 being the highest.

Source: National Highway Traffic Safety Administration (NHTSA)

[www.safercar.gov](http://www.safercar.gov) or 1-888-327-4236**STANDARD EQUIPMENT****MECHANICAL & PERFORMANCE**

- 5.7L i-FORCE V8 E85 Flex Fuel DOHC 32V with Dual Ind VVT-i 381 hp / 401 lb-ft
  - 6-Spd Automatic Trans w/Sequential Shift TripleTech Frame
  - Tow Hitch Rcvr, 4.30 Rear Diff, TOW/HAUL Mode, Engine Oil Cooler, Trans Oil Cooler, Heavy Duty Batt & Alt, And Integrated 4 & 7-Pin Connector
  - Automatic Limited-Slip Differential
  - Ind Coil-Spring High-Mounted Double Wishbone Front Susp w/ Stabilizer Bar
  - Trapezoidal Multi-Leaf Rear Suspension w/ Staggered Outboard Mounted Shocks
  - Power-Assisted 4 Wheel Disc Brakes
  - 18" Styld Stl Wheels w/ P255/70R18 Tires
- SAFETY & CONVENIENCE**
- Rear Backup Camera
  - Manual Headlamp Level Control
  - Trailer Brake Contr. & Trailer-Sway Cont
  - Star Safety System: Vehicle Stability Cntrl, Traction Cntrl, ABS w/Elec Brake Force Dist, Brake Asst, Smart Stop Tech
  - 3-Point Seatbelts for All Positions w/ Driver ELR & ALR/ELR for All Passengers
  - 8 Total Airbags (Incl Fr & Rr RSCA)
  - Tire Pressure Monitor System (TPMS)

**EXTERIOR**

- 6.5' Double-Walled Bed w/ Rail Caps
- Easy Lower and Lift Tailgate

**INTERIOR**

- 40/20/40 Split Fold-Down 4-Way Driver & 4-Way Passenger Adj Front Bench Seat
- Entune Audio Plus w/ Connctd Nav Scout GPS Link App, 7" Hi-Res Touch Screen, AM/FM/HD Radio, SXM w/ 3mo Trial, CD, USB/AUX, Bluetooth, and Siri Eyes Free
- Single Zone Air Conditioning
- Power Windows/Door Locks/Heated Mirrors
- Remote Keyless Entry System
- Cruise Control, Engine Immobilizer
- \*\*\* Full Tank of Gas \*\*\*

**MANUFACTURER'S SUGGESTED RETAIL PRICE**

\$32,150.00

**OPTIONAL EQUIPMENT**

- ED Entune Audio Plus with Connected Navigation App: Includes the Entune Multimedia Bundle (7 In. High Resolution Touch-Screen Display, AM/FM CD Player, MP3/WMA Playback Capability, Auxiliary Audio Jack, USB 2.0 Port with iPod Connectivity and Control, Advanced Voice Recognition, Hands-Free Phone Capability, Phone Book Access and Music Streaming Via Bluetooth Wireless Technology), Connected Navigation Scout GPS Link App, Siri Eyes Free, SiriusXM All Access Radio with 3-Mo Complimentary Trial, HD Radio, HD Traffic and Weather In Major Metro Areas, and Integrated Backup Camera Display
- RE Federal Emissions
- SP SR5 Upgrade Package: Adds Larger 3B.0 Gallon Fuel Tank (5.7L V8 Only), Replaces Front Bench Seating with Front Bucket Seats with Power Driver Seat with Power Lumbar Support, Adds Front Center Console with Floor Mounted Urethane Shift Lever and Knob, Tilt and Telescoping Urethane Steering Wheel, 3 Front Cup Holders, Auto-Dimming Rearview Mirror with Compass and HomeLink Universal Transceiver, and An Anti-Theft System with Alarm and Engine Immobilizer

1,220.00

**GULF STATES TOYOTA, INC. (INDEPENDENT DISTRIBUTOR)****DISTRIBUTOR SUGGESTED RETAIL PRICE**

34,565.00

**DISTRIBUTOR INSTALLED OPTIONS**

FN	Fender Flares	625.00
BT	Spray-On Bedliner	529.00
TX	Texas Edition Package	4,275.00
	20 Inch Tire & Premium Finish PVD Alloy Wheels (Replaces Factory Wheels & Tires)	
	5 Inch Chrome Oval Tube Steps	
	Stainless Steel Exhaust Tip	
	Custom Carpet Floor Mats	
	Texas Edition Badging	
F1	VIP Sales Follow-Up	
P2	Vehicle Protection Package	299.00
	Lusterizing Sealant	
	Sealant Cleaner	
	Fabric Guard	
	Rental Car Assistance	
I1	PDS - Pre Delivery Services	

**EPA DOT Fuel Economy and Environment****E85 Flexible-Fuel Vehicle**  
**Gasoline-Ethanol (E85)****Fuel Economy****15** MPG

Standard Pickups range from 15 to 24 mpg. The best vehicle rates 119 MPGe. Values are based on gasoline and do not reflect performance and ratings based on E85.

13

18

6.7

combined city/hwy city highway gallons per 100 miles

**Driving Range**

Gasoline: 570 miles

Ethanol (E85): 418 miles

**You spend****\$6,000**

more in fuel costs over 5 years compared to the average new vehicle.

**Annual fuel Cost****\$3,000****Fuel Economy & Greenhouse Gas Rating (tailpipe only)**

MPG

2

1

5

10

Best

This vehicle emits 592 grams CO<sub>2</sub> per mile. The best emits 0 grams per mile (tailpipe only). Producing and distributing fuel also create emissions; learn more at [fuelconomy.gov](http://fuelconomy.gov).**Smog Rating (tailpipe only)**

5

1

10

Best

Actual results will vary for many reasons, including driving conditions and how you drive and maintain your vehicle. The average new vehicle gets 25 MPG and costs \$9,000 to fuel over 5 years. Cost estimates are based on 15,000 miles per year at \$3.00 per gallon. This is a dual fueled automobile. MPGe is miles per gasoline gallon equivalent. Vehicle emissions are a significant cause of climate change and smog.

**fuelconomy.gov**

Calculate personalized estimates and compare vehicles



Smartphone QR Code



DELIVERY, PROCESSING AND HANDLING FEE

1,195.00

**TOTAL****\$34,565.00**

The New Vehicle Limited Warranty provides 3-year/36,000 mile basic coverage, 5-year/60,000 mile powertrain coverage, plus 5-year/unlimited mile corrosion perforation coverage. See Warranty and Maintenance Guide for details. An extended service contract may be available for the vehicle. Ask dealer for details.

Manufacturer's suggested retail price includes manufacturer's recommended pre-delivery service. Gasoline, license and title fees, applicable federal, state and local taxes and dealer and distributor installed options and accessories are not included in the manufacturer's suggested retail price.

ToyotaCare, which covers normal factory scheduled maintenance for two years or 25,000 miles, whichever occurs first, is included as part of the sales price of the vehicle for qualifying buyers.

See participating dealer for eligibility and coverage details.

**TOTAL DISTRIBUTOR INSTALLED OPTIONS**

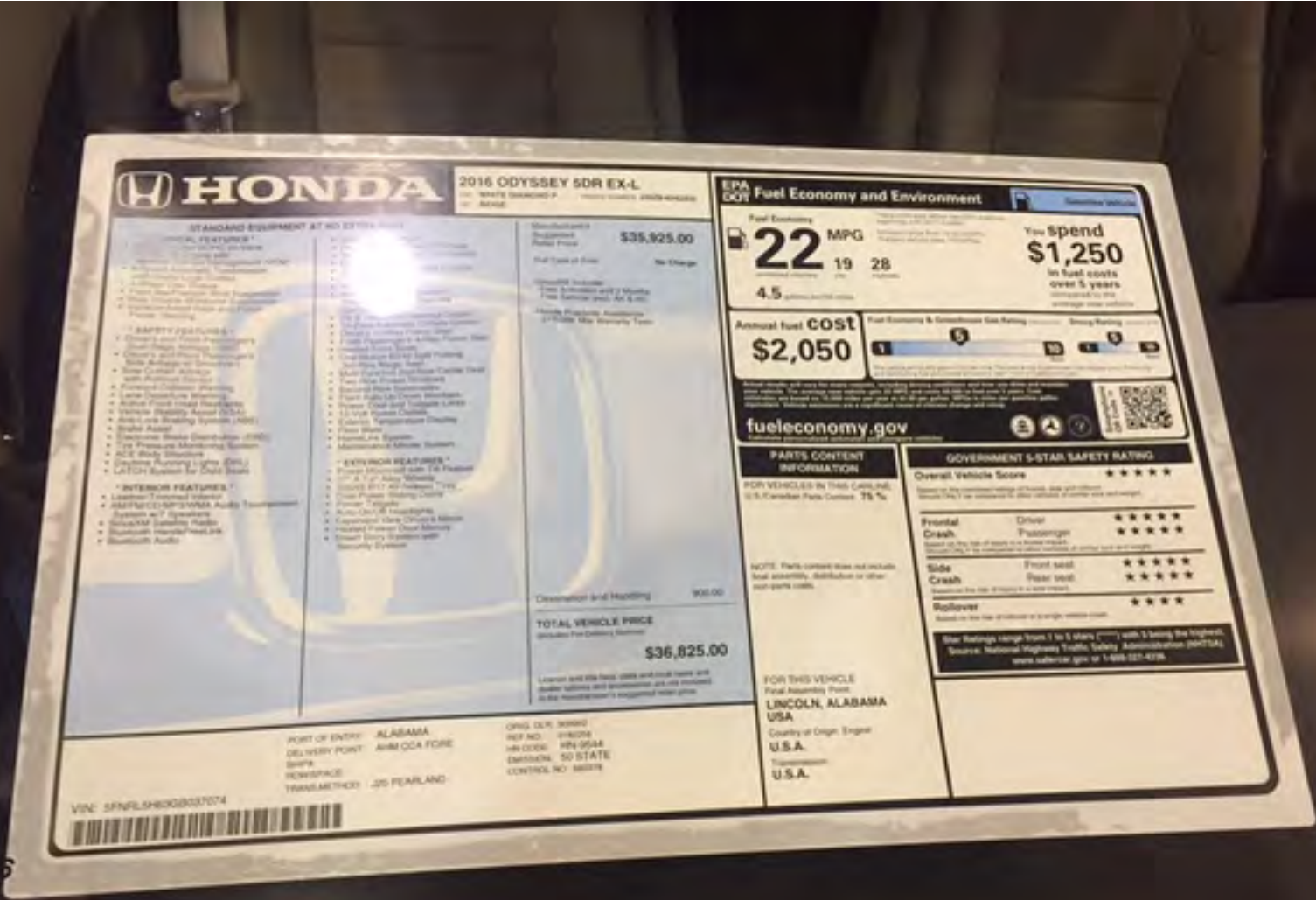
5,728.00

**TOTAL DISTRIBUTOR SUGGESTED RETAIL PRICE****\$40,293.00****Delivered by Truck to: 42095****FRED HAAS TOYOTA WORLD**  
20400 INTERSTATE 45 NORTH  
SPRING

TX 77373

**LOAD: 946**









## 2016 INFINITI QX80

### 5.6L V8 2WD

#### Standard Equipment Included at No Extra Charge

#### PERFORMANCE:

5.6-liter V8 engine with VVEL and DIG  
400 horsepower  
413 lb-ft torque  
Rear-wheel drive with Snow Mode, Tow Mode, and Hill Start Assist  
7-speed automatic transmission with Adaptive Shift Control (ASC) and manual shift mode with Downshift Rev Matching  
20-inch, split 6-spoke aluminum-alloy wheels with 275/60R20 all-season tires  
Rear automatic self-leveling suspension  
Integrated Class IV tow hitch and 7-pin wiring harness with cover  
Independent double-wishbone front and rear suspension

#### LUXURY:

Leather-appointed seats  
Mocha Burli trim  
Heated 10-way power driver's seat  
Including 2-way power lumbar support  
Heated 8-way power passenger front seat including 2-way power lumbar support  
Heated Mocha Burli and leather-wrapped steering wheel  
Power tilt/telescopic steering column  
Automatic on/off LED high/low beam  
Signature Headlights with High Beam Assist  
Integrated front LED fog lights  
Power sliding tinted glass moonroof with one-touch open/close, tilt feature and sliding sunshade  
Tri-Zone Automatic Temperature Control System with microfilter  
Power 60/40-split folding and reclining third row seats  
Integrated Rear Bumper Protector  
Sequential welcome lighting  
Auto-dimming inside mirror with Homelink®  
Universal Transceiver  
Power rear liftgate  
Rain-sensing, variable intermittent front windshield wipers  
Power folding, auto-dimming, heated outside mirrors with integrated LED turn signals, courtesy lights and reverse tilt-down feature  
Infiniti signature analog clock

#### TECHNOLOGY:

Infiniti Navigation System  
Infiniti Voice Recognition  
SiriusXM Satellite Radio\*\*\*\*  
NavTraffic and NavWeather\*\*\*\*  
Around View® Monitor, with Moving Object Detection and Front and Rear Sonar System  
Infiniti Connection™ \*\*\*\*  
Remote Engine Start System  
Infiniti Intelligent Key with Illuminated Push Button Ignition  
Bluetooth® Hands-free Phone System  
Streaming audio via Bluetooth® wireless technology  
Bose® 13-speaker Premium Sound System, including two subwoofers, AM/FM radio, single in-dash CD/DVD player with MP3 playback capability, Radio Data System and speed-sensitive volume control  
USB connection port for iPod® interface and other compatible devices

#### SAFETY AND SECURITY:

Infiniti Advanced Air Bag System  
Driver and front passenger seat-mounted side-impact supplemental air bags  
Roof-mounted curtain side-impact supplemental air bags for all three rows with rollover sensor  
3-point height adjustable front seat belts with pretensioners, and load limiters  
Front-seat Active Head Restraints  
Lower Anchors and Tethers for Children (LATCH) for 2nd row outboard positions  
Child safety rear door locks  
4-wheel Anti-lock Braking System (ABS)  
Brake Assist  
Electronic Brake force Distribution  
Vehicle Dynamic Control (VDC) with Traction Control System (TCS)  
Tire Pressure Monitoring System (TPMS) with Tire Inflation Indicator  
Vehicle Security System  
Infiniti Vehicle Immobilizer System

\*\*\*\*3 months of SiriusXM service included; subscription sold separately; not available to buyers in AK or HI; some features not available in all markets.

++ Optional equipment replaces standard equipment

Manufacturer's Suggested  
Retail Base Price: \$63,250.00

Options Included by Manufacturer  
ROOF RAIL CROSSBARS 400.00  
PEARL PAINT 500.00  
DRIVER'S ASSISTANCE PACKAGE 2,500.00  
Blind Spot Warning  
Backup Collision Intervention  
Predictive Forward Collision Warning and Forward Emergency Braking  
Intelligent Cruise Control  
Distance Control Assist  
CARGO MAT, CARGO NET & FIRST AID KIT 200.00  
ILLUMINATED KICK PLATES++ 440.00  
TIRE & WHEEL PACKAGE++ 2,800.00  
22-inch, 14-spoke forged aluminum-alloy wheels with all-season tires

DESTINATION CHARGES 995.00

Total\* \$71,085.00

\*\*\*\*Requires compatible 2G cell network.  
On 12/31/16 AT&T 2G network will end and service will not function. Enroll by 3/31/16. See website for details.  
Subscription agreement terms apply.

\*Does not include dealer installed options and accessories, local taxes or license fees. This label has been applied pursuant to federal law. Do not remove prior to delivery to the ultimate purchaser.

## EPA DOT Fuel Economy and Environment

Gasoline Vehicle

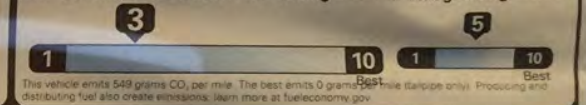
**Fuel Economy**  
**16** MPG  
combined city/hwy  
14 city  
20 highway  
6.2 gallons per 100 miles

STANDARD SUVS range from 13 to 28 MPG. The best vehicle rates 119 MPG.

**You spend  
\$6,500**  
more in fuel costs  
over 5 years  
compared to the  
average new vehicle.

**Annual fuel cost  
\$3,100**

**Fuel Economy & Greenhouse Gas Rating** (tailpipe only) **Smog Rating** (tailpipe only)



Actual results will vary for many reasons, including driving conditions and how you drive and maintain your vehicle. The average new vehicle gets 25 MPG and costs \$9,000 to fuel over 5 years. Cost estimates are based on 15,000 miles per year at \$3.30 per gallon. MPGe is miles per gasoline gallon equivalent. Vehicle emissions are a significant cause of climate change and smog.

**fueleconomy.gov**

Calculate personalized estimates and compare vehicles



## GOVERNMENT 5-STAR SAFETY RATINGS

## DELIVERY

**Overall Vehicle Score** **Not Rated**  
Based on the combined ratings of frontal, side and rollover.  
Should ONLY be compared to other vehicles of similar size and weight.

**Frontal Crash** **Driver Passenger** **Not Rated**  
Based on the risk of injury in a frontal impact.  
Should ONLY be compared to other vehicles of similar size and weight.

**Side Crash** **Front seat Rear seat** **Not Rated**  
Based on the risk of injury in a side impact.

**Rollover** **Not Rated**  
Based on the risk of rollover in a single-vehicle crash.

Star ratings range from 1 to 5 stars (\*\*\*\*\*), with 5 being the highest.  
Source: National Highway Traffic Safety Administration (NHTSA)  
[www.safercar.gov](http://www.safercar.gov) or 1-888-327-4236

## TOTAL OWNERSHIP EXPERIENCE

Every Infiniti Vehicle includes Infiniti's:

- 4-Year/60,000 Mile Basic Limited Warranty Coverage \*\*
- 6-Year/70,000 Mile Powertrain Limited Warranty Coverage \*\*
- 7-Year/Unlimited Mileage Corrosion Limited Warranty Coverage \*\*
- 24-hour Roadside Assistance \*\*
- Complimentary Service Loan Car \*\*\*

\*\* Please see the Infiniti Warranty Information booklet for details.  
\*\*\* Please ask your Infiniti retailer for details.

**VEHICLE COLORS:**  
EXT: MAJESTIC WHITE  
INT: GRAPHITE

**FINAL ASSEMBLY POINT:**  
LOS ANGELES  
**TRANSPORT METHOD:**  
TRUCK

**DEALER:**  
SOUTHWEST INFINITI  
10495 SOUTHWEST FWY  
HOUSTON TX  
77074

VIN: JN8AZ2NF9G9610797  
EMS: 50 STATE EMISSIONS  
MDL: 83116-610797 QAB-G  
OPT: C-B92C03E10F01L92N92  
S55W01206

20151111223402AS70235





# 2016 NISSAN LEAF SL 30 KWH BATTERY 107 MILE EPA-RATED RANGE\*\*



Scan QR code for general model information & options

## 100% ELECTRIC. NO GAS. NISSAN LEAF.

Standard Equipment Included at No Extra Charge

### MECHANICAL & PERFORMANCE

30 kWh Lithium-Ion Battery  
(107 Mile EPA-Rated Range\*\*)  
6.6 kW Onboard Charger  
Quick Charge Port  
Regenerative Braking System  
80 kW AC Synchronous Motor  
4-Wheel Power-Assisted Vented Disc Brakes  
Portable Trickle Charge Cable (120V EVSE)  
17" Alloy Wheels

### SAFETY & SECURITY

Nissan Advanced Air Bag System (AABS)  
Front Seat-Mounted Side-Impact  
Supplemental Air Bags  
Roof-Mounted Curtain Side-Impact  
Supplemental Air Bags  
Lower Anchors and Tethers for  
Children (LATCH)  
4-Wheel Anti-Lock Braking System (ABS)  
Tire Pressure Monitoring System (TPMS)  
w/ Easy Fill Tire Alert  
Nissan Vehicle Immobilizer System  
Vehicle Security System (VSS)  
Vehicle Dynamic Control (VDC)  
Traction Control System (TCS)

### COMFORT & CONVENIENCE

Leather-Appointed Seating  
NissanConnect™ with Navigation  
and Mobile Apps\*\*\*  
7" Color Display with Multi-Touch Control  
Nissan Voice Recognition  
for Navigation and Audio  
HD Radio  
SiriusXM Travel Link™  
(Sports, Weather, Movie Listings,  
and Stock Prices)  
USB Connection Port for iPod® Interface  
and Other Compatible Devices  
Bluetooth® Hands-Free Phone System  
Streaming Audio via Bluetooth®  
Hands-Free Text Messaging Assistant\*\*\*\*  
NissanConnect™ EV\*\*\*  
Remote Connection to the Vehicle  
Monitor Battery State of Charge  
Start Charging Event  
Turn on HVAC  
60/40 Split Fold  
Homelink® Universal Remote (for  
RearView Monitor)  
Charging Time  
Hybrid Heater  
Heated Steering Wheel  
Heated Front and Rear Seats  
HVAC Timer (Pre-Set/P Cool Cabin))  
Automatic Temperature Control  
AM/FM/CD/Aux In Audio System w/ 6 Speakers  
SiriusXM® Satellite Radio\*\*\*\*  
6-Way Adjustable Driver Seat  
Nissan Intelligent Key® w/ Charge Port  
Door Release  
Power Door Locks  
Cargo Cover

### EXTERIOR FEATURES

LED Low Beam Headlights  
Auto On/Off Headlights  
Fog Lights  
Photovoltaic Solar Panel Spoiler  
Dual Power Remote-Controlled Heated  
Outside Mirrors  
Aerodynamic Underbody Cover and Rear  
Diffuser  
Charge Port Light and Lock

Manufacturer's Suggested  
Retail Base Price:

\$36,790.00

Options Included by Manufacturer  
FLOOR MATS AND CARGO AREA MAT  
HOLOGRAM KICK PLATES  
PREMIUM PACKAGE\*\*\*\*\*

180.00

130.00

1,570.00

Around View® Monitor  
BOSE® 7 Speaker Audio System

DESTINATION CHARGES

850.00

Total\* \$39,520.00

\*\*\*\*\*Replaces Standard Equipment

\*\*2016 Nissan LEAF SL trim EPA range is 107 miles.  
Actual range may vary with driving conditions -  
use for comparison only.

\*\*\*Only use when safe to do so. Availability  
varies by vehicle/trim. Compatible cellular  
network, smartphone & Subscription required.  
Cellular network/GPS signals not always available.  
Nissan not responsible for third party  
termination/cancellation costs, which may occur  
without notice. Visit [www.NissanUSA.com/connect](http://www.NissanUSA.com/connect)  
for details. Text/data rates may apply.

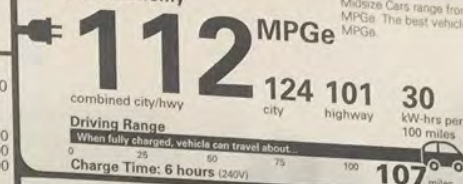
\*\*\*\*Compatible smartphone required. Standard text  
rates and/or data usage may apply.

\*\*\*\*\*SiriusXM® Satellite Radio includes activation & 3  
months of service only. SiriusXM® Satellite Radio  
coverage not available in HI or AK and some markets.

## EPA DOT Fuel Economy and Environment

Electric Vehicle

Fuel Economy



Midsize Cars range from 13 to 114  
MPGe. The best vehicle rates 119  
MPGe.

You save  
**\$6,000**

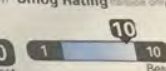
in fuel costs  
over 5 years  
compared to the  
average new vehicle.

Annual fuel cost  
**\$600**

Fuel Economy & Greenhouse Gas Rating (tailpipe only)



Smog Rating (tailpipe only)



Actual results will vary for many reasons, including driving conditions and how you drive and maintain your vehicle. The average new vehicle gets 25 MPG and costs \$9,000 to fuel over 5 years. Cost estimates are based on 15,000 miles per year at \$0.13 per kW-hr. MPGe is miles per gasoline gallon equivalent. Vehicle emissions are a significant cause of climate change and smog.

**fuelconomy.gov**

Calculate personalized estimates and compare vehicles

## GOVERNMENT 5-STAR SAFETY RATINGS

Overall Vehicle Score

★★★★

Based on the combined ratings of frontal, side and rollover.  
Should ONLY be compared to other vehicles of similar size and weight.

Frontal  
Crash

Driver  
Passenger

★★★★★  
★★★

Based on the risk of injury in a frontal impact.  
Should ONLY be compared to other vehicles of similar size and weight.

Side  
Crash

Front seat  
Rear seat

★★★★★  
★★★

Based on the risk of injury in a side impact.

Rollover

★★★★

Based on the risk of injury in a single-vehicle crash.

Star ratings range from 1 star to 5 stars (★★★★★) with 5 being the highest.

Source: National Highway Traffic Safety Administration (NHTSA)  
[www.safercar.gov](http://www.safercar.gov) or 1-888-327-4236

This Vehicle qualifies for Nissan's

## Security+Plus Extended Protection Plan

The only service agreement backed by  
Nissan Extended Services North America!  
Ask your dealer for details, or call 1-800-NISSAN-1  
for more information

## DELIVERY

VEHICLE COLORS:

EXT: BRILLIANT SILVER  
INT: BLACK

FINAL ASSEMBLY POINT:

SMYRNA

TRANSPORT METHOD:

TRUCK

DEALER:

VIN: 1N4BZ0CP8GC307440

EMS: 50 STATE EMISSIONS

MDL: 17216-307440 K23-G

OPT: H-L93N10P01286C03

20160303093205RP

\*Does not include dealer installed options and accessories, local taxes or license fees. This label has been applied pursuant to federal law. Do not remove prior to delivery to the ultimate purchaser.



# BRZ

**VIN:** JF1...  
**Model Code:** 2011...  
**Exterior Color:** Pure Red  
**Pack / Assembly:** Premium  
**Deliver by / Center:** Track / Sportline

**SUBARU**

Confidence in Motion

---

### STANDARD EQUIPMENT SAFETY

- Vehicle Stability Control
- Subaru Adaptive Drive System
- Front Seat Side-Impact Airbags
- Side-Curtain Airbags
- 4-Wheel Disc Brakes w/Brake Assist
- ABS-Lock Braking System (ABS)
- Electronic Brake-Power Distribution
- Rear Vision Camera
- Tire Pressure Monitoring System (TPMS)
- Ring-Strapped Reinforcement Frame
- Anti-Theft Alarm & Immobilizer System
- Daytime Running Lights (DRL)

### PERFORMANCE

- Rear-Wheel Drive (RWD)
- 2.0L Horizontally-Opposed DOHC Engine
- Torsen Limited-Slip Rear Differential
- Sport-Tuned Suspension
- 17-Inch Aluminum Alloy Wheels
- 215/45 R17 Summer-Performance Tires

### INTERIOR / EXTERIOR

- High-Intensity Discharge Headlights
- 6.2 Infotainment Sys./HD Radio/CD Player
- Bluetooth Hands-Free Phone Connectivity
- SiriusXM (4-Mos Free) & USB w/iPod Con.
- Automatic Climate Control w/Filtration
- Front Fog Lights & Rear Decklid Spoiler
- Cruise Control/Trip/Telescope Steering
- Power Door Locks & Dual Power Mirrors
- Keyless Access w/Push-Button Start
- Power Windows w/Auto-Up/Down
- Leather-wrapped Steering Wheel & Shifter
- Aluminum-Trimmed Upholstery
- Height Adjustable Drivers Seat
- Heated Front Seats and Exterior Mirrors

### LIMITED WARRANTY/ROADSIDE ASSISTANCE

- 3 Years / 36,000 Miles Basic
- 5 Years / 80,000 Miles Powertrain
- 5 Year/Unlimited Mileage Rust Perforation
- 3 Yrs / 36,000 \$47 Roadside Assistance
- See Owner's Mktg/Warranty For Details

### OPTIONAL EQUIPMENT AND OTHER ITEMS

Manufacturer's Suggested Retail Price	\$27,340.00
<b>Option Package: 01 - STANDARD PACKAGE</b>	
Full Tank of Gas	
<b>Popular Package Kit</b>	
Wheel Lock Kit	
Steering Wheel Horn	
Carbon Fiber	
Chrome Pedal Set	
Rear Bumper Applique	

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### GOVERNMENT 5-STAR SAFETY RATINGS

**Small Vehicle Score \*\*\*\*\***

Based on the combined ratings of frontal, side and rollover should ONLY be compared to other vehicles of similar size and weight.

Crash Test	Driver	Passenger	Score
Frontal	Driver	Passenger	*****
Side	Front seat	Rear seat	*****

**Rollover \*\*\*\*\***

Based on the risk of injury in a rollover crash.

Star ratings range from 1 to 5 stars (★★★★★) with 5 being the highest.  
 Source: National Highway Traffic Safety Administration (NHTSA)  
[www.safercar.gov](http://www.safercar.gov) or 1-888-327-4226

### EPA DOT Fuel Economy and Environment

**Fuel Economy MPG**

**25** city **22** hwy **30** mpg

combined city/hwy

4 gallons per 100 miles

You spend **\$1,000** in fuel costs over 5 years compared to the average new vehicle.

### Annual fuel cost \$2,000

### Fuel Economy & Greenhouse Gas Rating

**6** (out of 10)

Actual results may vary for many reasons including driving conditions and how you drive. When comparing your vehicle, the average new vehicle gets 24 MPG and costs \$2,000 to fuel over 5 years. Cost estimates are based on 15,000 miles per year at \$3.00/gallon. Vehicles are rated for public information purposes only and are not intended to be used as a basis for purchase decisions.

**fueleconomy.gov**

Get latest government estimated and actual mileage

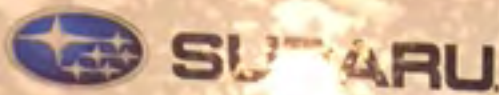
### FAIR USE CONTENT INFORMATION FOR VEHICLES IN THIS CATALOG

ALL INFORMATION IS PROVIDED AS IS WITHOUT WARRANTY OF ANY KIND, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE USER ASSUMES ALL LIABILITY FOR ANY DAMAGE OR LOSS OF DATA ARISING FROM THE USE OF THIS WEBSITE.


FOR FURTHER INFORMATION, CONTACT US AT: 1-800-333-3333

JF1ZCAC19G9601556





**SUBARU**  
*Confidence in Motion*




**OPTIONAL EQUIPMENT AND OTHER ITEMS**

Manufacturer's Suggested Retail Price	\$27,395.00
<b>Option Package: 01 - STANDARD PACKAGE</b>	
Full Tank of Gas	INCLD
<b>Popular Package #2c</b>	\$654.00
Wheel Lock Kit	
Dim Mirror/Com W/Homelink	
Cargo Tray	
Chrome Fender Trim	
Rear Bumper Applique	

Destination and Delivery \$795.00  
**Total Suggested Retail Price \$28,844.00**

**Additional protection is available on this vehicle from Subaru**



**ADDED SECURITY**

**Always Insist on Genuine Subaru Products**

- Added Security® protects your investment
- Mechanical and Maintenance plans available
- Coverage up to 100,000 miles
- Genuine Subaru replacement parts
- Towing & Rental car benefits
- Trip Interruption and Tire Hazard benefits available
- Transferable

**THE ONLY EXTENDED SERVICE PLAN BACKED AND ENDORSED BY SUBARU FOR OVER 30 YEARS!**



## **ATTACHMENT “B”**

**Gulf States Toyota Monroney Label for  
New Toyota TRD Pro 4Runner**





DESC: **4RUNNER 4X4 TRD PRO V6**  
 VIN: XXXXXXXXXX  
 YR/MO/L: 2015/08/14 A  
 COLOR: SUPER WHITE/BLK GRAPHITE (0040/22)  
 PORT PLANT: Brea, CA/TMC

### GOVERNMENT 5-STAR SAFETY RATINGS

#### Overall Vehicle Score ★★★★★

Based on the combined ratings of frontal, side and rollover.  
 Should ONLY be compared to other vehicles of similar size and weight.  
 Safety concern: Visit [www.safercar.gov](http://www.safercar.gov) or call 1-888-327-4236 for more details.

Frontal	Driver	★★★★★
Crash	Passenger	★★★

Based on the risk of injury in a frontal impact.  
 Should ONLY be compared to other vehicles of similar size and weight.

Side	Front seat	★★★★★
Crash	Rear seat	★★★★★

Based on the risk of injury in a side impact.

Rollover	★★★★★
----------	-------

Based on the risk of rollover in a single-vehicle crash.

Star ratings range from 1 to 5 stars (★★★★★) with 5 being the highest.

Source: National Highway Traffic Safety Administration (NHTSA)

[www.safercar.gov](http://www.safercar.gov) or 1-888-327-4236

### EPA DOT Fuel Economy and Environment



Gasoline Vehicle

#### Fuel Economy

**18** MPG  
 17 21  
 combined city/hwy city highway  
 5.6 gallons per 100 miles

Standard SUV's range from 13 to 26 MPG.  
 The best vehicle rates 119 MPG.

You spend  
**\$3,500**  
 more in fuel costs  
 over 5 years  
 compared to the  
 average new vehicle.

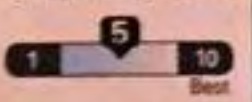
Annual fuel cost  
**\$2,900**

Fuel Economy & Greenhouse Gas Rating (tailpipe only)



This vehicle emits 428 grams CO<sub>2</sub> per mile. The best emits 0 grams per mile (tailpipe only). Fueling and distributing fuel also create emissions. Learn more at [fuel-economy.gov](http://fuel-economy.gov).

Smog Rating (tailpipe only)



Actual results will vary for many reasons, including driving conditions and how you drive and maintain your vehicle. The average new vehicle gets 24 MPG and costs \$11,500 to fuel over 5 years. Cost estimates are based on 15,000 miles per year at \$3.55 per gallon. MPGe is miles per gasoline gallon equivalent. Vehicle emissions are a significant cause of climate change and smog.

**fuel-economy.gov**

Calculate personalized estimates and compare vehicles



#### STANDARD EQUIPMENT

##### MECHANICAL & PERFORMANCE

- 4.0L DOHC 24-Valve V6 w/Dual Independent VVT-i: 270HP / 279 Lb.-Ft. Torque
- Part-Time 4WD System with Active TRAC
- 5-Speed Auto Transmission w/ECT-4
- Power-Assisted Rack-and-Pinion Steering
- Locking Rear Diff: Multi-Terrain Select
- Crawl Control: Hill Start Assist Ctrl
- Front and Rear Ventilated Disc Brakes
- Front and R Stabilizer Bars

##### SAFETY & CONVENIENCE

- Star Safety System: Vehicle Stability Control, Traction Control, Anti-Lock Brake System with EBD, Brake Assist and Smart Stop Technology
- Dr & Fr Pass: Advanced Airbag System, TAP Side & Knee Airbags, Active Headrests
- All Row Roll-Over Sensing Side Curtain Airbags
- LATCH-Lower Anchor & Tether for Children

##### EXTERIOR

- Hood Scoop, Rr Privacy Glass, Fog Lamps
- Color-Key Bumpers, Overfenders, Outside Mirrors, Rr Side w/Integrated Rr Wiper, and Door Handles; Silver Roof Rails
- Projection Headlights, LED Taillights
- Tow Hitch Receiver w/7-Ball Connector
- Front and Rear Mud Guards

##### INTERIOR

- Air Conditioning w/Filter & 2nd-Row Vent
- AM/FM/CD 6.1" Hi Res Touch Screen / Navl App Suite/Bluetooth/USB/AUX/SD-Media
- Self-Parking: Trimmed, Power Heated Front Seats
- 40/20/40 Split, Recline&Fold-Flat 2nd-Row
- Back Up Camera w/Projected Path
- Homelink; Auto Dim Rearview Mirror
- Keyless Entry; Power Sliding Rear Window
- 2-Fx/2 Rr/1 Cargo 12V & 120V Power Outlets

##### TRD PRO

- 17" TRD Alloy Wheels; P265/70R17 Tires
- TRD Bilstein Shocks w/Rear Remote Reser
- TRD Stamped Aluminum Front Skid Plate
- "TOYOTA" Front Grille, "TRD Pro" Badges
- TRD Shift Knob; "TRD Pro" Floor Mats
- \*\*\* Full Tank of Gas \*\*\*

#### MANUFACTURER'S SUGGESTED RETAIL PRICE

\$41,110.00

#### OPTIONAL EQUIPMENT

- |    |                                   |        |
|----|-----------------------------------|--------|
| CD | Sliding Rear Cargo Deck           | 350.00 |
| FE | w/Under Floor Storage Compartment |        |
|    | 50 State Emissions                |        |

#### GULF STATES TOYOTA, INC. (INDEPENDENT DISTRIBUTOR)

42,410.00

#### DISTRIBUTOR SUGGESTED RETAIL PRICE

#### DISTRIBUTOR INSTALLED OPTIONS

- |    |                             |  |
|----|-----------------------------|--|
| I2 | POS - with State Inspection |  |
|----|-----------------------------|--|

DELIVERY, PROCESSING AND HANDLING FEE

950.00

TOTAL

\$42,410.00

TOTAL DISTRIBUTOR INSTALLED OPTIONS

TOTAL DISTRIBUTOR SUGGESTED RETAIL PRICE

\$42,410.00

Dealer Name/Address: 42295

Ship to:

PAT LOBB TOYOTA OF  
 3350 S. CENTRAL EXPRESSWAY  
 MCKINNEY

TX 75070



LOAD:



October 10, 2016

LLOYD E. FERGUSON  
(512) 499-3641  
Direct Fax (512) 536-5705  
Buddy.Ferguson@strasburger.com

David Duncan, General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Ave.  
Austin, Texas 78731

[david.duncan@txdmv.gov](mailto:david.duncan@txdmv.gov)

RE: Proposed Rule Changes to 43 Tex. Admin. Code Chap. 215

Dear Mr. Duncan:

As I noted in prior comments regarding the proposed changes to Chapter 215, the rules have been in need of an update for some time. That is an arduous task. To all who worked on promulgating the proposed rules, please extend my appreciation for their hard work. It is well deserved.

By my calculation, this is the third attempt at making changes to Chapter 215. I thought we had a consensus following the meeting of stakeholders in June. But the latest set of proposed rules does not appear to be in conformity with what was agreed to at that meeting, or perhaps more appropriately stated, my recollection of the consensus reached at that meeting.

For your consideration, I offer the following comments:

**Consensus from June 15, 2016 Meeting Was to Not Make Substantive Changes to Chapter 215.249 and 215.250:**

The June 15, 2016 at the DMV was an excellent idea and well attended by stakeholders from the industry as well as DMV staff. I know that you had a conflict and could not attend the entire meeting, but I thought the discussion throughout was very frank and open among the attendees.

As an example, a suggested change to the historical language of Suggested Retail Price was discussed and terms such as Manufacturer's Suggested Retail Price or Distributor's Suggested Retail Price, were vetted. After that discussion, my recollection is that we were told that we would stay with the current language and no substantive changes to Chapter 215.250 would occur. But some of the proposed rules and illustrations are contrary to that consensus. In my opinion, one example of that is Proposed Rule 215.250(m).



David Duncan  
October 10, 2016  
Page 2

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Also, Proposed Rule 215.250(h)(1) is another example where the change is substantive, even though it may not appear to be so. The previous rules talked about “price of the vehicle”. Now the proposed rule references the MSRP—which varies by manufacturer or distributor. In the materials presented by other stakeholders, I noted that for some MSRP is the final or all-inclusive price for the vehicle. For others, it is simply the base price of the vehicle before factory installed options are added which then leads to a Final Price or some other designation taking into account all items.

Read literally, rule 215.250(h)(1) puts a dealer in harm’s way. If the MSRP for their vehicle is not the “all-inclusive price” or “final” price on the sticker, are they not committing a DTPA violation by advertising a vehicle at a price (MSRP less dealer discount) that they would not sell it for? The old rule was better and recognized the reality that MSRP is not a constant from one manufacturer to the next.

Perhaps the staff member at the meeting did not intend to make as broad of a statement when it was represented that there would not be any substantive changes. Or perhaps several of us misheard the statement. It is also possible that these changes, while substantive, are not perceived by staff as being substantive. But I believe that it makes sense to have further discussions via conference call or otherwise with the persons who attended the June 15, 2016 meeting to discuss the proposed changes to Chapter 215.250. We should discuss changes that anyone feels are substantive. Otherwise, I think the public comments at the Board meeting regarding these rules could get lengthy and might end up with the Board directing that such a meeting occur.

**Proposed Rule 215.250(f):** Some manufacturers or distributors may offer a stack of discount offers, which may be available to all members of the public. However, a consumer may not be able to stack them all together. For example, if there \$3,500 in discounts offered to all and then a choice between an additional \$5,000 discount or no interest financing for 72 months, this rule appears to prevent an advertisement from pointing out that the consumer could save up to \$8,500 or could save \$3,500 plus no interest financing for 72 months.

Another example would be if the manufacturer offers a different range of discounts depending on which vehicle package the consumer buys. In other words, a base model might have \$500 discount and a fully loaded model might come with a \$2,500 discount.

Furthermore, these type of advertisements manufacturer and distributor advertisements are on regional or national TV advertisings all the time. I am not sure that applying this type of rule to a manufacturer or distributor is really accomplishing anything.



David Duncan  
October 10, 2016  
Page 3

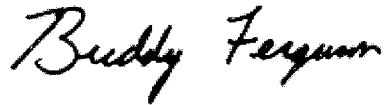
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**Proposed Change to Rule 215.250(I):** The proposed subsection of this rule would appear to prohibit a dealer from being able to advertise a savings claim on a vehicle where the dealer has added an option such as pin stripes that was not obtained from the manufacturer or distributor. As read, this literally means that if a manufacturer or distributor has monies offered to all dealers that are unrelated to the dealer added option, the dealer cannot advertise the unrelated savings claim provided by the manufacturer or distributor. It is our belief that the intent of this subsection was to prohibit the dealer from advertising a savings claim on the dealer added option and not to prohibit the dealer from advertising manufacturer or distributor saving claims that are unrelated to the dealer added option.

.If you have any questions, please do not hesitate to contact me.

Thank you.

Very truly yours,



cc: rules@txdmv.gov



**From:** [Ferguson, Buddy](#)  
**To:** [Duncan, David](#); [Zz - Resource - GCO Rules](#)  
**Subject:** RE: Proposed Changes to 43 TAC Chapter 215  
**Date:** Monday, October 10, 2016 5:57:54 PM

---

David,

As a follow-up to my previously submitted comments, let me add that I agree with many of Laird comments submitted on behalf of Gulf States Toyota.

-----Original Message-----

From: Doran, Laird (FCI) [<mailto:LDoran@friedkin.com>]  
Sent: Monday, October 10, 2016 5:00 PM  
To: kphillips@tada.org; Ferguson, Buddy; DBright@autoalliance.org; mark@borskeygr.com; Jeffrey.perry@gm.com  
Subject: FW: Proposed Changes to 43 TAC Chapter 215

All,

Attached please find comments submitted on behalf of Gulf States Toyota to TXDMV in response to the latest proposed rule changes to Chapter 215. If any of you or your respective clients/parties submitted comments, I would appreciate you forwarding the same to me. Thank you for the courtesy.

Best regards,

Laird

Laird M. Doran  
The Friedkin Group, Inc.  
1375 Enclave Parkway  
Houston, Texas 77077  
(713) 580-3635 (Office)  
(713) 416-7721 (Mobile)  
(713) 580-5608 (Fax)  
[ldoran@friedkin.com](mailto:ldoran@friedkin.com)<<mailto:ldoran@gstoyota.com>>  
From: Laird Doran <[ldoran@friedkin.com](mailto:ldoran@friedkin.com)<<mailto:ldoran@friedkin.com>>>  
Date: Monday, October 10, 2016 at 4:52 PM  
To: "David.Duncan@txdmv.gov"<<mailto:David.Duncan@txdmv.gov>>"  
<[David.Duncan@txdmv.gov](mailto:David.Duncan@txdmv.gov)<<mailto:David.Duncan@txdmv.gov>>>,"  
"rules@txdmv.gov"<<mailto:rules@txdmv.gov>>" <[rules@txdmv.gov](mailto:rules@txdmv.gov)<<mailto:rules@txdmv.gov>>>  
Subject: Proposed Changes to 43 TAC Chapter 215

Good afternoon David,

Attached please find comments submitted on behalf of Gulf States Toyota, Inc. ("GST") to the proposed rule amendments to Chapter 215, Motor Vehicle Distribution. We are very appreciative of the efforts by you and TXDMV staff who have worked extensively on preparing these proposed changes.

If you have any questions, or if we can be of any assistance, please do not hesitate to contact me.

Best regards,

Laird

Laird M. Doran



The Friedkin Group, Inc.  
1375 Enclave Parkway  
Houston, Texas 77077  
(713) 580-3635 (Office)  
(713) 416-7721 (Mobile)  
(713) 580-5608 (Fax)  
ldoran@friedkin.com<<mailto:ldoran@gstoyota.com>>

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*These rule excerpts reflect changes discussed in the stakeholder meeting held December 9, 2016.*

*Any language that is newly added to the proposal language, based on a comment, is shown in in bold and underlined. All language proposed for removal, based on a comment, is shown as bracketed, in bold and struck out.*

CHAPTER 215, MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS,  
AND CONVERTERS

§215.114. Sale of a Vehicle by a Manufacturer or Distributor at  
a Wholesale Motor Vehicle Auction.

A manufacturer or distributor licensed under Occupations Code,  
Chapter 2301[~~7~~] or a wholly owned subsidiary of a manufacturer  
or distributor, may sell motor vehicles it owns to dealers  
through a licensed Texas wholesale motor vehicle auction. A  
GDN **issued** to a licensed manufacturer, distributor, or wholly  
owned subsidiary of a manufacturer or distributor shall be  
canceled, unless otherwise allowed under Occupations Code,  
Chapter 2301.

SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

§215.144. Records. [~~Records of Sales and Inventory.~~]

(k) Electronic records. A license holder may maintain a  
record in an electronic format if the license holder can print  
the record at the licensed location upon request by a  
representative of the department. A license holder does not have



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1 to maintain a copy of a vehicle title if the title is submitted  
2 through the electronic title system. **Original hard copy titles**  
3 **are not required to be kept at the licensed location, but must**  
4 **be made available to the department upon request.**

5  
6 §215.160. Duty to Identify Motor Vehicles Offered for Sale as  
7 Rebuilt.

8 (a) For each motor vehicle a dealer displays or offers for  
9 retail sale and which **the dealer knows** has been a salvage motor  
10 vehicle as defined by Transportation Code, §501.091(15) and a  
11 regular title subsequently issued under Transportation Code,  
12 §501.100, a dealer shall disclose in writing that the motor  
13 vehicle has been repaired, rebuilt, or reconstructed and issued  
14 a title under Transportation Code, §501.100. The written  
15 disclosure must...

16  
17 SUBCHAPTER H. ADVERTISING

18 §215.244. Definitions.

19 **(9) Distributor Suggested Retail Price (DSRP)-- means**  
20 **the total price shown on the Monroney Label as specified by sub-**



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1 **paragraph (D) of paragraph (13) of this section.**

2 (13) Monroney label--The label required by the  
3 Automobile Information Disclosure Act, 15 U.S.C. §§ 1231-1233, to  
4 be affixed to the windshield or side window of certain new motor  
5 vehicles delivered to the dealer and that contains information  
6 about the motor vehicle, including, but not limited to:

7 (A) the retail price of the motor vehicle  
8 suggested by the manufacturer **or distributor as applicable;**

9 (B) the retail delivered price suggested by the  
10 manufacturer **or distributor as applicable** for each accessory or  
11 item of optional equipment, physically attached to the motor  
12 vehicle at the time of its delivery to a dealer, which is not  
13 included within the price of the motor vehicle as stated in sub-  
14 paragraph (A) of this paragraph;

15 (C) the amount charged, if any, to a dealer for  
16 the transportation of the motor vehicle to the location at which  
17 it is delivered to the dealer; and

18 (D) the total of the amounts specified pursuant  
19 to subparagraphs (A), (B), and (C) of this paragraph.

20 **(14) Manufacturer's Suggested Retail Price (MSRP)--**



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1 means the total price shown on the Monroney Label as specified  
2 by sub-paragraph (D) of paragraph (13) of this section.

3 (17) Savings claim or discount--An offer to sell or  
4 lease a motor vehicle at a reduced price, including but not  
5 limited to a manufacturer's or distributor's customer rebate, a  
6 dealer discount, or a limited rebate.

7  
8 §215.249. Manufacturer's/Distributor's Suggested Retail Price.

9  
10 §215.250. Dealer Price Advertising; Savings Claims;  
11 Discounts. [~~Internet or E Pricing.~~]

12 (f) Statements such as "up to," "as much as," and "from"  
13 shall not be used by a dealer in connection with savings claims  
14 or discount offers[~~on a new motor vehicle~~].

15 (g) The savings claim or discount offer for a new motor  
16 vehicle, when advertised by a dealer, must be the savings claim  
17 or discount available to any and all members of the buying  
18 public.

19 (h) If an advertisement includes a savings claim or  
20 discount offer, the amount and type of each incentive that makes



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1 up the total amount of the savings claim or discount offer must  
2 be disclosed.

3 (1) If a savings claim or discount offer includes only  
4 a dealer discount, that incentive must be disclosed as a  
5 deduction from the MSRP/**DSRP, as applicable**. The following are  
6 acceptable formats for advertising a dealer discount with and  
7 without a sales price.

8 . . .

9 (1) If a dealer has added an option that was not obtained  
10 from the manufacturer or distributor of the motor vehicle, a  
11 **dealer discount** [~~**savings claim**~~] may not be advertised for that  
12 vehicle. If a dealer has added an option obtained from the  
13 manufacturer or distributor and disclosed that option and its  
14 suggested retail price on a dealership addendum, the dealer may  
15 advertise a savings claim for that motor vehicle if the option  
16 is listed, and the difference is shown between the dealer's  
17 sales price and the MSRP/**DSRP as applicable** of the vehicle  
18 including the option obtained from the manufacturer or  
19 distributor.

20



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*Any language that is newly added to the proposal language, based on a comment, is shown in in bold and underlined. All language proposed for removal, based on a comment, is shown as bracketed, in bold and struck out.*

1 Figure: 43 TAC §215.250(1)

2        [~~(m) If a distributor physically installs a factory~~  
3 ~~available option on a new motor vehicle, a savings claim may be~~  
4 ~~advertised for that vehicle if the option is disclosed on a~~  
5 ~~vehicle label along with the suggested retail price for the~~  
6 ~~option. A dealer may advertise a savings claim for that motor~~  
7 ~~vehicle if the dealer discloses the total MSRP and the total of~~  
8 ~~the distributor installed options and the difference is shown~~  
9 ~~between the dealer's sales price and the total of the MSRP and~~  
10 ~~distributor installed options for that vehicle.~~

11 ~~Figure: 43 TAC §215.250(m)}~~



DATE: January 5, 2017  
Action Requested: APPROVAL

To: Texas Department of Motor Vehicles Board(TxDMV)  
From: William P. Harbeson, Enforcement Division Director; and Jimmy Archer, Motor Carrier Division  
Agenda Item: 10  
Subject: **Adoption 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 adoption in the *Texas Register*.

### 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 four times.

### FINANCIAL IMPACT

There are no major fiscal implications related to the amendments. An amendment requires household goods carriers to include their name on their Internet website and to list the required information on the page that is specific to Texas intrastate household goods operations. To the extent a household goods carrier does not currently list its name on its website or does not list the required information on the webpage that is specific to Texas intrastate household goods operations, the carrier may incur minimal costs to modify its website.

A second amendment will require household goods carriers that lease vehicles under a short-term lease to display their name and certificate of registration number on the leased power units. These motor carriers can comply with this requirement with minimal cost by placing printed magnets on the sides of these leased vehicles or by creating their own markings with stickers or with a marker and cardboard.

A third amendment will require household goods carriers to add "TxDMV No." prior to the certificate of registration number on both sides of their power units. To the extent a household goods carrier needs to add "TxDMV No." on both sides of their power units, they can comply with this requirement with minimal cost by placing printed magnets on both sides of their power units or by using stickers or a marker to add "TxDMV No." directly to the surface of the vehicle.

### BACKGROUND AND DISCUSSION

Amendments:

- 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.





The proposal was published in the *Texas Register* on November 25, 2016. The comment period closed on December 26, 2016. A comment was submitted by John D. Esparza on behalf of Southwest Movers Association (SMA) and Texas Trucking Association (TXTA), which is included with these materials. Mr. Esparza stated that SMA and TXTA represent approximately 800 motor carriers. SMA and TXTA are in full support of the department's proposed amendments to Chapter 218 and urge the department to adopt them at its earliest convenience.

If the board adopts the amendments during its January 5, 2017, open meeting, staff anticipates:

- publication of the adoption in the January 27, 2017 issue of the *Texas Register*;
- an effective date of February 2, 2017; and
- implementation by the department immediately thereafter.



**RECEIVED**

DEC 13 2016

TxDMV  
OFFICE OF GENERAL COUNSEL

December 8, 2016

Mr. David D. Duncan  
General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, Texas 78731

RE: Proposed Amendments to Chapter 218 of Motor Carriers

Dear Mr. Duncan:

Southwest Movers Association (SMA) and Texas Trucking Association (TXTA) are trade associations which collectively represent approximately 800 motor carriers. All of these motor carriers, located throughout the State, are subject to DMV's proposed amendments to Chapter 218.

SMA and TXTA are in full support of the Department's proposed amendments to Chapter 218.

Therefore, SMA and TXTA respectfully urge the Department of Motor Vehicles Board to adopt the proposed amendments, as published, at its earliest convenience.

Respectfully submitted,



John D. Esparza  
Executive Director, SMA

President, TXTA



## BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING ADOPTION OF AMENDMENTS TO  
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 adopt amendments to 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; and §218.32, Motor Carrier Records; and 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 preamble and the amendments 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 rules are adopted.

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: January 5, 2017



Texas Department of Motor Vehicles  
Chapter 218, Motor Carriers

Adoption Preamble

The Texas Department of Motor Vehicles (department) adopts amendments to 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; and §218.32, Motor Carrier Records; and 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, without changes to the proposed text as published in the November 25, 2016, issue of the *Texas Register* (41 TexReg 9246). The rules will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Transportation Code, §643.155, requires the department to appoint a rules advisory committee (advisory committee) consisting of representatives of the public, the department, and motor carriers transporting household goods. The rules advisory committee is required to examine rules adopted by the department under §§643.153(a) and (b) and make recommendations to the department on modernizing and streamlining the rules. The advisory committee made recommendations to the department after



Texas Department of Motor Vehicles  
Chapter 218, Motor Carriers

1 meeting four times to discuss and examine the rules. The  
2 majority of the amendments resulted from the advisory  
3 committee's recommendations to the department.

4  
5 Amendments to §218.2 add definitions for the terms  
6 "advertisement" and "print advertisement," which are regulated  
7 to protect the shippers (consumers). Amendments renumber the  
8 remaining terms. Also, an amendment to the existing term  
9 "household goods carrier" clarifies that the term applies to all  
10 motor carriers that transport household goods for compensation,  
11 regardless of the size of the vehicle. Further, the definition  
12 for the term "manager" was deleted because the amendments delete  
13 this term from Chapter 218.

14  
15 An amendment to §218.13 requires an application for registration  
16 by a household goods carrier to include a tariff. This  
17 amendment helps to protect the consumers by ensuring a tariff is  
18 on file before the household goods carrier begins to transport  
19 household goods for compensation. The tariff lists the maximum  
20 rates the household goods carrier can charge the consumer.

21 According to the Better Business Bureau (BBB) representative on  
22 the advisory committee, the second most frequent complaint they  
23 receive from consumers regarding household goods carriers is



Texas Department of Motor Vehicles  
Chapter 218, Motor Carriers

1 that the price at the end of the move is different than the  
2 verbal quote. The BBB representative also stated they will not  
3 accredit a household goods carrier until the carrier is  
4 registered with the department. If the BBB has not accredited a  
5 household goods carrier, a consumer may be less likely to do  
6 business with that carrier.

7  
8 An amendment to §218.13 clarifies that the director's  
9 conditional acceptance of an application does not authorize the  
10 applicant to operate as a motor carrier. This amendment helps  
11 protect consumers from motor carriers that may incorrectly think  
12 they can operate as a motor carrier if the director has  
13 conditionally accepted an application.

14  
15 Amendments to §218.31 clarify that employees of the department  
16 are certified as department investigators and may conduct  
17 investigations and inspect records under Transportation Code,  
18 Chapters 643 and 645. Amendments further specify the time,  
19 location, and notification requirements for the investigations  
20 and inspections. Conforming amendments throughout Chapter 218  
21 use the term "department investigator."



Texas Department of Motor Vehicles  
Chapter 218, Motor Carriers

1 Amendments to §218.32 delete unnecessary language regarding  
2 household goods carrier's records and clarify that all records  
3 must be prepared and maintained in a complete and accurate  
4 manner. Also, an amendment clarifies that an out-of-state motor  
5 carrier may maintain the required records at a business location  
6 in Texas, rather than at its principal place of business in  
7 Texas because an out-of-state motor carrier might not have a  
8 principal place of business in Texas.

9  
10 Amendments to §218.52 modify the requirements for household  
11 goods carrier advertisements, including the specific  
12 requirements for print advertisements and websites. Amendments  
13 also delete outdated language and modify the requirements  
14 regarding the identifying markings on household goods carrier's  
15 vehicles. The amendments require a household goods carrier that  
16 is operating vehicles under a short-term lease to display the  
17 name of the carrier and the carrier's certificate of  
18 registration number on both sides of the vehicle. The markings  
19 help to protect consumers by enabling law enforcement officers  
20 and the department's investigators to quickly identify vehicles  
21 involved in the transportation of household goods. In addition,  
22 the markings help the consumer identify the household goods  
23 carrier.



Texas Department of Motor Vehicles  
Chapter 218, Motor Carriers

1

2 Amendments to §218.53 clarify the amount of and the method of  
3 calculating a carrier's liability for loss or damage of cargo.  
4 According to the BBB representative on the advisory committee,  
5 the third most frequent complaint they receive from consumers  
6 regarding household goods carriers is that the consumer does not  
7 understand how the liability works.

8

9 An amendment to §218.56 removes the language that prohibits a  
10 motor carrier from including the following in a proposal because  
11 this language is inconsistent with current practice: the name,  
12 logo, or motor carrier registration number of any other motor  
13 carrier. An amendment also clarifies that proposals based on  
14 hourly rates are required to state the maximum amount the  
15 consumer could be required to pay for the listed transportation  
16 and related services. According to one of the household goods  
17 carrier representatives on the advisory committee, some  
18 household goods carriers believe the current rules do not  
19 require a proposal based on hourly rates to state the maximum  
20 amount the consumer could be required to pay. According to the  
21 BBB representative on the advisory committee, the second most  
22 frequent complaint they receive from consumers regarding  
23 household goods carriers is the price at the end of the move is



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different than the verbal quote. This clarification helps to protect consumers by making it clear that any proposal must state the maximum amount the consumer could be required to pay.

Amendments to §218.59 modify the requirements regarding inventories prepared by agreement between the motor carrier and the consumer to give the parties the flexibility they need for each move. Amendments clarify that a consumer's agent may sign an inventory for the consumer at origin and designation.

Amendments to §§218.59, 218.60, and 218.61, respectively, allow the inventory to be prepared in an electronic format, allow weight tickets to be in an electronic format, and allow a claim and an acknowledgment of a claim to be filed in an electronic format. These amendments expressly allow the consumer and the household goods carrier to benefit from the convenience of modern technology.

Amendments to §218.61 also add clarifying language.

Amendments are made throughout Chapter 218 to revise terminology for consistency with other department rules and with current



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department practice. Nonsubstantive amendments correct grammar throughout the amended sections.

COMMENTS

The department received a comment from John D. Esparza on behalf of Southwest Movers Association (SMA) and Texas Trucking Association (TXTA) stating that these trade associations represent approximately 800 motor carriers. SMA and TXTA are in full support of the department's proposed amendments to Chapter 218 and urge the department to adopt the amendments at its earliest convenience.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; and more specifically, Transportation Code, §643.153(a), which requires the department to adopt rules to protect a consumer using the service of a motor carrier who is transporting household goods



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1 for compensation; and Transportation Code, §643.153(b), which  
2 requires the department to adopt rules necessary to ensure that  
3 a customer of a motor carrier transporting household goods is  
4 protected from deceptive or unfair practices and unreasonably  
5 hazardous activities.

6

7 CROSS REFERENCE TO STATUTE

8 Transportation Code, Chapters 643 and 645.



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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) Internet websites;
- 14                   (D) listings not paid for by the household  
15 goods carrier or its household goods carrier's agent; and
- 16                   (E) listings of a household goods carrier's  
17 business name or assumed name as it appears on the motor  
18 carrier certificate of registration, and the household goods  
19 carrier's address, and contact information in a directory or  
20 similar publication.
- 21                   (35)[+34+] Public highway--Any publicly owned and  
22 maintained street, road, or highway in this state.
- 23                   (36)[+35+] Reasonable dispatch--The performance of  
24 transportation, other than transportation provided under



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1 guaranteed service dates, during the period of time agreed on  
2 by the carrier and the shipper and shown on the shipment  
3 documentation. This definition does not affect the  
4 availability to the carrier of the defense of force majeure.

5           (37)~~(+36+)~~ Replacement vehicle--A vehicle that takes  
6 the place of another vehicle that has been removed from  
7 service.

8           (38)~~(+37+)~~ Revocation--The withdrawal of  
9 registration and privileges by the department or a  
10 registration state.

11           (39)~~(+38+)~~ Shipper--The owner of household goods or  
12 the owner's representative.

13           (40)~~(+39+)~~ Short-term lease--A lease of 30 days or  
14 less.

15           (41)~~(+40+)~~ SOAH--The State Office of Administrative  
16 Hearings.

17           (42)~~(+41+)~~ Substitute vehicle--A vehicle that is  
18 leased from a leasing business and that is used as a temporary  
19 replacement for a vehicle that has been taken out of service  
20 for maintenance, repair, or any other reason causing the  
21 temporary unavailability of the permanent vehicle.

22           (43)~~(+42+)~~ Suspension--Temporary removal of  
23 privileges granted to a registrant by the department or a  
24 registration state.



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1                    (44)~~(43)~~ Unified Carrier Registration System or  
2     UCR--A motor vehicle registration system established under 49  
3     U.S.C. §14504a or a successor federal registration program.

4                    (45)~~(44)~~ USDOT--United States Department of  
5     Transportation.

6                    (46)~~(45)~~ USDOT number--An identification number  
7     issued by or under the authority of the FMCSA or its  
8     successor.

9

10                   SUBCHAPTER B. MOTOR CARRIER REGISTRATION

11     §218.13. Application for Motor Carrier Registration.

12                   (a) Form of application. An application for motor carrier  
13     registration must be filed with the department's Motor Carrier  
14     Division and must be in the form prescribed by the director  
15     and must contain, at a minimum, the following information.

16                   (1) USDOT number. A valid USDOT number.

17                   (2) Business or trade name. The applicant must  
18     designate the business or trade name of the motor carrier.

19                   (3) Owner name. If the motor carrier is a sole  
20     proprietorship, the owner must indicate the name and social  
21     security number of the owner. A partnership must indicate the  
22     partners' names, and a corporation must indicate principal  
23     officers and titles.

24                   (4) Principal place of business. A motor carrier



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1 must disclose the motor carrier's principal business address.

2 If the mailing address is different from the principal  
3 business address, the mailing address must also be disclosed.

4 (5) Legal agent.

5 (A) A Texas-domiciled motor carrier must  
6 provide the name and address of a legal agent for service of  
7 process if the agent is different from the motor carrier.

8 (B) A motor carrier domiciled outside Texas  
9 must provide the name and Texas address of the legal agent for  
10 service of process.

11 (C) A legal agent for service of process shall  
12 be a Texas resident, a domestic corporation, or a foreign  
13 corporation authorized to transact business in Texas with a  
14 Texas address for service of process.

15 (6) Description of vehicles. An application must  
16 include a motor carrier equipment report identifying each  
17 commercial motor vehicle that requires registration and that  
18 the carrier proposes to operate. Each commercial motor vehicle  
19 must be identified by its motor vehicle identification number,  
20 make, model year, and type of cargo and by the unit number  
21 assigned to the commercial motor vehicle by the motor carrier.  
22 Any subsequent registration of vehicles must be made under  
23 subsection (e) of this section.

24 (7) Type of motor carrier operations. An applicant



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1 must state if the applicant:

2 (A) proposes to transport passengers, household  
3 goods, or hazardous materials; or

4 (B) is domiciled in a foreign country.

5 (8) Insurance coverage. An applicant must indicate  
6 insurance coverage as required by §218.16 of this title  
7 (relating to Insurance Requirements).

8 (9) Safety affidavit. Each motor carrier must  
9 complete, as part of the application, an affidavit stating  
10 that the motor carrier knows and will conduct operations in  
11 accordance with all federal and state safety regulations.

12 (10) Drug-testing certification. Each motor carrier  
13 must certify, as part of the application, that the motor  
14 carrier is in compliance with the drug-testing requirements of  
15 49 C.F.R. Part 382. If the motor carrier belongs to a  
16 consortium, as defined by 49 C.F.R. Part 382, the applicant  
17 must provide the names of the persons operating the  
18 consortium.

19 (11) Duration of registration.

20 (A) An applicant must indicate the duration of  
21 the desired registration. Registration may be for seven  
22 calendar days or for 90 days, one year, or two years. The  
23 duration of registration chosen by the applicant will be  
24 applied to all vehicles. Household goods carriers may not



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1 obtain seven day or 90 day certificates of registration.

2 (B) Interstate motor carriers that operate in  
3 intrastate commerce and meet the requirements under §218.14(c)  
4 of this title (relating to Expiration and Renewal of  
5 Commercial Motor Vehicles Registration) are not required to  
6 renew a certificate of registration issued under this section.

7 (12) Additional requirements. The following fees and  
8 information must be submitted with all applications.

9 (A) An application must be accompanied by an  
10 application fee of:

11 (i) \$100 for annual and biennial  
12 registrations;

13 (ii) \$25 for 90 day registrations; or

14 (iii) \$5 for seven day registrations.

15 (B) An application must be accompanied by a  
16 vehicle registration fee of:

17 (i) \$10 for each vehicle that the motor  
18 carrier proposes to operate under a seven day, 90 day, or  
19 annual registration; or

20 (ii) \$20 for each vehicle that the motor  
21 carrier proposes to operate under a biennial registration.

22 (C) An application must be accompanied by proof  
23 of insurance or financial responsibility and insurance filing  
24 fee as required by §218.16.



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1                    (D) An application for registration by a  
2 household goods carrier must include a tariff that sets out  
3 the maximum charges for transportation of household goods  
4 between two or more municipalities, or a copy of the tariff  
5 governing interstate transportation services on a highway  
6 between two or more municipalities.

7                    (E)[(D)] An application must be accompanied by  
8 any other information required by law.

9            (b) Conditional acceptance of application. If an  
10 application has been conditionally accepted by the director  
11 pursuant to Transportation Code, §643.055, the applicant may  
12 not operate the following until the department has issued a  
13 certificate under Transportation Code, §643.054:

14                    (1) a commercial motor vehicle or any other motor  
15 vehicle to transport household goods for compensation, or

16                    (2) a commercial motor vehicle to transport persons  
17 or cargo. [The director may conditionally accept an  
18 application if it is accompanied by all fees and by proof of  
19 insurance or financial responsibility, but is not accompanied  
20 by all required information. Conditional acceptance in no way  
21 constitutes approval of the application. The director will  
22 notify the applicant of any information necessary to complete  
23 the application. If the applicant does not supply all  
24 necessary information within 45 days from notification by the



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1 ~~director, the application will be considered withdrawn and all~~  
2 ~~fees will be retained.]~~

3 (c) Approved application. An applicant meeting the  
4 requirements of this section and whose registration is  
5 approved will be issued the following documents:

6 (1) Certificate of registration. The department will  
7 issue a certificate of registration. The certificate of  
8 registration will contain the name and address of the motor  
9 carrier and a single registration number, regardless of the  
10 number of vehicles requiring registration that the carrier  
11 operates.

12 (2) Insurance cab card. The department will issue an  
13 insurance cab card listing all vehicles to be operated under  
14 the carrier's certificate of registration. The insurance cab  
15 card shall be continuously maintained at the registrant's  
16 principal place of business. The insurance cab card will be  
17 valid for the same period as the motor carrier's certificate  
18 of registration and will contain information regarding each  
19 vehicle registered by the motor carrier.

20 (A) A current copy of the page of the insurance  
21 cab card on which the vehicle is shown shall be maintained in  
22 each vehicle listed, unless the motor carrier chooses to  
23 maintain a legible and accurate image of the insurance cab  
24 card on a wireless communication device in the vehicle or



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1 chooses to display such information on a wireless  
2 communication device by accessing the department's online  
3 system from the vehicle. The appropriate information  
4 concerning that vehicle shall be highlighted if the motor  
5 carrier chooses to maintain a hard copy of the insurance cab  
6 card or chooses to display an image of the insurance cab card  
7 on a wireless communication device in the vehicle. The  
8 insurance cab card or the display of such information on a  
9 wireless communications device will serve as proof of  
10 insurance as long as the motor carrier has continuous  
11 insurance or financial responsibility on file with the  
12 department.

13 (B) On demand by a department  
14 investigator~~[department-certified inspector]~~ or any other  
15 authorized government personnel, the driver shall present the  
16 highlighted page of the insurance cab card that is maintained  
17 in the vehicle or that is displayed on a wireless  
18 communication device in the vehicle. If the motor carrier  
19 chooses to display the information on a wireless communication  
20 device by accessing the department's online system, the driver  
21 must locate the vehicle in the department's online system upon  
22 request by the department-certified inspector or other  
23 authorized government personnel.

24 (C) The motor carrier shall notify the



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1 department in writing if it discontinues use of a registered  
2 commercial motor vehicle before the expiration of its  
3 insurance cab card.

4 (D) Any erasure or alteration of an insurance  
5 cab card that the department printed out for the motor carrier  
6 renders it void.

7 (E) If an insurance cab card is lost, stolen,  
8 destroyed, or mutilated; if it becomes illegible; or if it  
9 otherwise needs to be replaced, the department will print out  
10 a new insurance cab card at the request of the motor carrier.  
11 Motor carriers are authorized to print out a copy of a new  
12 insurance cab card using the department's online system.

13 (F) The department is not responsible for a  
14 motor carrier's inability to access the insurance information  
15 using the department's online system.

16 (G) The display of an image of the insurance  
17 cab card or the display of insurance information from the  
18 department's online system via a wireless communication device  
19 by the motor carrier does not constitute effective consent for  
20 a law enforcement officer, the department investigator  
21 [~~department-certified inspector~~], or any other person to  
22 access any other content of the wireless communication device.

23 (d) Additional and replacement vehicles. A motor carrier  
24 required to obtain a certificate of registration under this



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1 section shall not operate additional vehicles unless the  
2 carrier identifies the vehicles on a form prescribed by the  
3 director and pays applicable fees as described in this  
4 subsection.

5 (1) Additional vehicles. To add a vehicle, a motor  
6 carrier must pay a fee of \$10 for each additional vehicle that  
7 the motor carrier proposes to operate under a seven day, 90  
8 day, or annual registration. To add a vehicle during the first  
9 year of a biennial registration, a motor carrier must pay a  
10 fee of \$20 for each vehicle. To add a vehicle during the  
11 second year of a biennial registration, a motor carrier must  
12 pay a fee of \$10 for each vehicle.

13 (2) Replacement vehicles. No fee is required for a  
14 vehicle that is replacing a vehicle for which the fee was  
15 previously paid. Before the replacement vehicle is put into  
16 operation, the motor carrier shall notify the department,  
17 identify the vehicle being taken out of service, and identify  
18 the replacement vehicle on a form prescribed by the  
19 department. A motor carrier registered under seven day  
20 registration may not replace vehicles.

21 (e) Supplement to original application. A motor carrier  
22 required to register under this section shall submit a  
23 supplemental application under the following circumstances.

24 (1) Change of cargo. A registered motor carrier may



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1 not begin transporting household goods or hazardous materials  
2 unless the carrier submits a supplemental application to the  
3 department and shows the department evidence of insurance or  
4 financial responsibility in the amounts specified by §218.16.

5 (2) Change of name. A motor carrier that changes its  
6 name shall file a supplemental application for registration no  
7 later than the effective date of the change. The motor carrier  
8 shall include evidence of insurance or financial  
9 responsibility in the new name and in the amounts specified by  
10 §218.16. A motor carrier that is a corporation must have its  
11 name change approved by the Texas Secretary of State before  
12 filing a supplemental application. A motor carrier  
13 incorporated outside the state of Texas must complete the name  
14 change under the law of its state of incorporation before  
15 filing a supplemental application.

16 (3) Change of address or legal agent for service of  
17 process. A motor carrier shall file a supplemental application  
18 for any change of address or any change of its legal agent for  
19 service of process no later than the effective date of the  
20 change. The address most recently filed will be presumed  
21 conclusively to be the current address.

22 (4) Change in principal officers and titles. A motor  
23 carrier that is a corporation shall file a supplemental  
24 application for any change in the principal officers and



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1 titles no later than the effective date of the change.

2 (5) Conversion of corporate structure. A motor  
3 carrier that has successfully completed a corporate conversion  
4 involving a change in the name of the corporation shall file a  
5 supplemental application for registration and evidence of  
6 insurance or financial responsibility reflecting the new  
7 company name. The conversion must be approved by the Office of  
8 the Secretary of State before the supplemental application is  
9 filed.

10 (6) Change in drug-testing consortium status. A  
11 motor carrier that changes consortium status shall file a  
12 supplemental application that includes the names of the  
13 persons operating the consortium.

14 (7) Retaining a revoked or suspended certificate of  
15 registration number. A motor carrier may retain a prior  
16 certificate of registration number by:

17 (A) filing a supplemental application to re-  
18 register instead of filing an original application; and

19 (B) providing adequate evidence that the  
20 carrier has satisfactorily resolved the facts that gave rise  
21 to the suspension or revocation.

22 (f) Change of ownership. A motor carrier must file an  
23 original application for registration when there is a  
24 corporate merger or a change in the ownership of a sole



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1 proprietorship or of a partnership.

2 (g) Alternative vehicle registration for household goods  
3 agents. To avoid multiple registrations of a commercial motor  
4 vehicle, a household goods agent's vehicles may be registered  
5 under the motor carrier's certificate of registration under  
6 this subsection.

7 (1) The carrier must notify the department on a form  
8 approved by the director of its intent to register its agent's  
9 vehicles under this subsection.

10 (2) When a carrier registers vehicles under this  
11 subsection, the carrier's certificate will include all  
12 vehicles registered under its agent's certificates of  
13 registration. The carrier must register under its certificate  
14 of registration all vehicles operated on its behalf that do  
15 not appear on its agent's certificate of registration.

16 (3) The department may send the carrier a copy of  
17 any notification sent to the agent concerning circumstances  
18 that could lead to denial, suspension, or revocation of the  
19 agent's certificate.

20 (h) Substitute vehicles leased from leasing businesses. A  
21 registered motor carrier is not required to comply with the  
22 provisions of subsection (e) of this section for a substitute  
23 vehicle leased from a business registered under §218.18 of  
24 this title (relating to Short-term Lease and Substitute



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Vehicles). A motor carrier is not required to carry proof of registration as described in subsection (d) of this section if a copy of the lease agreement for the originally leased vehicle is carried in the cab of the temporary replacement vehicle.

SUBCHAPTER C. RECORDS AND INSPECTIONS

§218.31. Investigations and Inspections of Motor Carrier Records.

(a) Certification of department investigators ~~[inspectors]~~. In accordance with Transportation Code, Chapter 643, the executive director or designee will designate department employees as certified ~~[inspectors]~~ for the purpose of entering the premises of a motor carrier to copy or verify documents the motor carrier is required to maintain according to this chapter ~~[by this section to be maintained by the motor carrier]~~. The executive director or designee shall provide credentials to department investigators ~~[certified inspectors]~~ identifying them as department employees and as certified to conduct investigations and inspect records on behalf of the department ~~[inspectors]~~.

(b) Investigations and Inspections.

(1) A motor carrier shall grant a department investigator certified under this section ~~[inspector]~~ access



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1 to the carrier's premises to conduct inspections or  
2 investigations of alleged violations of this chapter and of  
3 Transportation Code, Chapters 643 and 645. The motor carrier  
4 shall provide adequate work space with reasonable working  
5 conditions and allow the department investigators [~~certified-~~  
6 ~~inspector~~] to copy and verify records and documents the motor  
7 carrier is required to maintain according to this chapter [~~be-~~  
8 ~~maintained by the carrier under §218.32 of this title~~  
9 ~~(relating to Motor Carrier Records)~~].

10 (2) The department investigator [~~certified-~~  
11 ~~inspector~~] may conduct inspections and investigations during  
12 normal business hours unless mutual arrangements have been  
13 made otherwise.

14 (3) The department investigator [~~certified-~~  
15 ~~inspector~~] will present his or her credentials [~~and a written~~  
16 ~~statement from the department~~] to the motor carrier prior to  
17 conducting an investigation or inspection [~~indicating the~~  
18 ~~inspector's authority to inspect and investigate the motor~~  
19 ~~carrier~~].

20 (c) Access. A motor carrier shall provide access to  
21 requested records and documents at:

22 (1) the motor carrier's principal place of business;  
23 or

24 (2) a location agreed to by the department and the



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1 motor carrier.

2 (d) Designation of meeting time. If the motor carrier's  
3 normal business hours do not provide the access necessary for  
4 the investigator to conduct the investigation and the parties  
5 cannot reach an agreement as to a time to meet to access the  
6 records, the department shall designate the time of the  
7 meeting and provide written notice via the business address,  
8 facsimile number, or email address on file with the department  
9 ~~[by certified mail or facsimile]~~.

10

11 §218.32. Motor Carrier Records.

12 (a) General records to be maintained. Every motor carrier  
13 shall prepare and maintain in a complete and accurate manner:

14 (1) operational logs, insurance certificates,  
15 documents to verify the carrier's operations, and proof of  
16 registration fee payments;

17 (2) ~~[complete and accurate]~~ records of services  
18 performed;

19 (3) all certificate of title documents, weight  
20 tickets, permits for oversize or overweight vehicles and  
21 loads, dispatch records, or any other document that would  
22 verify the operations of the vehicle to determine the actual  
23 weight, insurance coverage, size, and/or capacity of the  
24 vehicle; and



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(4) the original certificate of registration and  
registration listing, if applicable.

~~[(b) Additional records for household goods carriers. In  
order to verify compliance with Subchapters B and E of this  
chapter (relating to Motor Carrier Registration and Consumer  
Protection), every household goods carrier shall retain  
complete and accurate records maintained in accordance with  
reasonable accounting procedures of all services performed in  
intrastate commerce. Household goods carriers shall retain all  
of the following information and documents:]~~

~~[(1) moving services contracts, such as bills of  
lading or receipts:]~~

~~[(2) proposals for moving services:]~~

~~[(3) inventories, if applicable:]~~

~~[(4) freight bills:]~~

~~[(5) time cards, trip sheets, or driver's logs:]~~

~~[(6) claim records:]~~

~~[(7) ledgers and journals:]~~

~~[(8) canceled checks:]~~

~~[(9) bank statements and deposit slips:]~~

~~[(10) invoices, vouchers, or statements supporting  
disbursements; and]~~

~~[(11) dispatch records.]~~

(b)~~[(e)]~~ Proof of motor carrier registration.



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1                   (1) Except as provided in paragraph (2) of this  
2 subsection and in §218.13(c)(2) of this title (relating to  
3 Application for Motor Carrier Registration), every motor  
4 carrier shall maintain a copy of its current registration  
5 listing in the cab of each registered vehicle at all times. A  
6 motor carrier shall make available to a department  
7 investigator [~~certified inspector~~] or any law enforcement  
8 officer a copy of the current registration listing upon  
9 request.

10                   (2) A registered motor carrier is not required to  
11 carry proof of registration in a vehicle leased from a leasing  
12 business that is registered under §218.18 of this title  
13 (relating to Short-term Lease and Substitute Vehicles), when  
14 leased as a temporary replacement due to maintenance, repair,  
15 or other unavailability of the originally leased vehicle. A  
16 copy of the lease agreement, or the lease for the originally  
17 leased vehicle, in the case of a substitute vehicle, must be  
18 carried in the cab of the vehicle.

19                   (3) A motor carrier is not required to carry proof  
20 of compliance with UCR or the UCR plan or agreement in its  
21 vehicle.

22                   [(c)][~~(d)~~] Location of files. Except as provided in this  
23 subsection, every motor carrier shall maintain at a principal  
24 place of business in Texas all records and information



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1 required by the department.

2 (1) Texas motor carriers~~[firms]~~. If a motor carrier  
3 wishes to maintain records at a specific location other than  
4 its principal place of business in Texas, the motor carrier  
5 shall make a written request to the director~~[manager]~~. A motor  
6 carrier may not begin maintaining records at an alternate  
7 location until the request is approved by the  
8 director~~[manager]~~.

9 (2) Out-of-state motor carriers~~[firms]~~. A motor  
10 carrier whose principal business address is located outside  
11 the state of Texas shall maintain records required under this  
12 section at its [~~principal place of~~] business location in  
13 Texas. Alternatively, a motor carrier may maintain such  
14 records at a specific out-of-state facility if the carrier  
15 reimburses the department for necessary travel expenses and  
16 per diem for any inspections or investigations conducted in  
17 accordance with §218.31 of this title (relating to  
18 Investigations and Inspections of Motor Carrier Records).

19 (3) Regional office or driver work-reporting  
20 location. All records and documents required by this  
21 subchapter which are maintained at a regional office or driver  
22 work-reporting location, whether or not maintained in  
23 compliance with paragraphs (1) and (2) of this subsection,  
24 shall be made available for inspection upon request at the



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1 motor carrier's principal place of business or other location  
2 specified by the Department within 48 hours after a request is  
3 made. Saturdays, Sundays, and federal and state holidays are  
4 excluded from the computation of the 48-hour period of time in  
5 accordance with 49 C.F.R. §390.29.

6 (d)~~[+e+]~~ Preservation and destruction of records. All  
7 books and records generated by a motor carrier, except  
8 driver's time cards and logs, must be maintained for not less  
9 than two years at the motor carrier's principal business  
10 address. A motor carrier must maintain driver's time cards and  
11 logs for not less than six months at the carrier's principal  
12 business address.

13  
14 SUBCHAPTER E. CONSUMER PROTECTION

15 §218.52. Advertising.

16 (a) False, misleading, or deceptive advertisements. A  
17 household goods carrier and its household goods agents may not  
18 use any false, misleading, or deceptive advertisements.

19 ~~[(a) Print advertising through August 4, 2015. A~~  
20 ~~household goods carrier shall include the following~~  
21 ~~information on print advertisements primarily addressing a~~  
22 ~~local market within this state:]~~

23 ~~[(1) the name of the household goods carrier as~~  
24 ~~shown on the certificate of registration:]~~



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1           ~~[(2) the street address of the household goods-~~  
2 ~~carrier's or its agent's place of business in this state; and]~~

3           ~~[(3) the household goods carrier's certificate of-~~  
4 ~~registration number in the following form, "DMV No. \_\_\_\_\_".]~~

5           (b) Print advertisements.~~[Print advertising on or after-~~  
6 ~~August 5, 2015.]~~ A household goods carrier shall include the  
7 following information on all print advertisements primarily  
8 addressing a local market within this state:

9           (1) the full business name or assumed name of the  
10 household goods carrier as shown on the certificate of  
11 registration;

12           (2) the street address of the household goods  
13 carrier's or its agent's place of business in this state; and

14           (3) the household goods carrier's certificate of  
15 registration number in the following form, "TxDMV No.  
16 \_\_\_\_\_".

17           (c) Use of household goods agent's name. A household  
18 goods carrier may include the name of its household goods  
19 agent as filed with the department in its print  
20 advertisements.

21           (d) Websites. A household goods carrier shall provide the  
22 following information on the home page or, in the case of a  
23 national household goods carrier, the page specific to Texas  
24 intrastate household goods operations, on any website operated



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1 by or for the household goods carrier:

2 (1) the household goods carrier's name;

3 (2) department's toll-free consumer help line as  
4 listed on the department's website; and

5 (3) the household goods carrier's certificate of  
6 registration number in the following form, "TxDMV No. \_\_\_\_\_".

7 [~~(d) Items not considered to be print advertisements~~  
8 ~~through August 4, 2015. For the purposes of this section,~~  
9 ~~print advertisement shall not include:~~]

10 [~~(1) promotional items of nominal value such as ball~~  
11 ~~caps, tee shirts, and pens;~~]

12 [~~(2) business cards;~~]

13 [~~(3) internet websites;~~]

14 [~~(4) listings not paid for by the household goods~~  
15 ~~carrier or its household goods carrier's agent;~~]

16 [~~(5) nationally placed billboards; and~~]

17 [~~(6) single line listings of a carrier name,~~  
18 ~~address, and telephone number in a directory or similar~~  
19 ~~publication.~~]

20 [~~(e) Items not considered to be print advertisements on~~  
21 ~~or after August 5, 2015. For the purposes of this section,~~  
22 ~~print advertisement shall not include:~~]

23 [~~(1) promotional items of nominal value such as ball~~  
24 ~~caps, tee shirts, and pens;~~]



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- 1                   [~~(2) business cards;~~]
- 2                   [~~(3) Internet websites;~~]
- 3                   [~~(4) listings not paid for by the household goods-~~  
4 ~~carrier or its household goods carrier's agent; and]~~
- 5                   [~~(5) single-line listings of a household goods-~~  
6 ~~carrier's name, address, and telephone number in a directory-~~  
7 ~~or similar publication.]~~
- 8                   [~~(f) Internet websites through August 4, 2015. A-~~  
9 ~~household goods carrier shall provide the department's toll-~~  
10 ~~free telephone number (1-888-368-4689) and the household goods-~~  
11 ~~carrier's certificate of registration number on any website-~~  
12 ~~operated by or for the household goods carrier.]~~
- 13                   [~~(g) Internet websites on or after August 5, 2015. A-~~  
14 ~~household goods carrier shall provide the following-~~  
15 ~~information on any website operated by or for the household-~~  
16 ~~goods carrier:]~~
- 17                   [~~(1) department's toll-free consumer helpline as-~~  
18 ~~listed on the department's website; and]~~
- 19                   [~~(2) the household goods carrier's certificate of-~~  
20 ~~registration number in the following form, "TxDMV No.-~~  
21 ~~\_\_\_\_\_".]~~
- 22                   (e)[~~(h)~~] Identifying markings on household goods  
23 carrier's vehicles.
- 24                   (1) A household goods carrier or its agent shall



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1 display the following information on both sides of ~~[either]~~  
2 the power unit, including power units operated under a short-  
3 term lease~~[or trailer]~~:

4 (A) the business name or assumed name of the  
5 household goods carrier as it appears on the motor carrier  
6 certificate of registration; and

7 (B) the household goods carrier's registration  
8 number as it appears on the motor carrier certificate of  
9 registration in the following form, "TxDMV No. \_\_\_\_\_".

10 (2) The markings required by ~~[paragraph (1) of]~~ this  
11 subsection shall have clearly legible letters and numbers at  
12 least two inches in height.

13 (3) This subsection does not apply to vehicles~~[+]~~

14 ~~[+A+]~~ required to comply with Transportation  
15 Code, Chapter 642.~~[+or]~~

16 ~~[(B) operated under a short term lease.]~~

17 ~~[(i) Prohibited advertisements. For the purposes of this~~  
18 ~~subsection, an advertisement is any communication to the~~  
19 ~~public in connection with an offer or sale of an intrastate~~  
20 ~~transportation service. A household goods carrier and its~~  
21 ~~household goods agents may not use any false, misleading, or~~  
22 ~~deceptive advertisements.]~~

23

24 §218.53. Household Goods Carrier Cargo Liability.



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1        (a) Unless the carrier and shipper agree in writing to a  
2 higher limit of carrier liability, a household goods carrier's  
3 liability for loss or damage of property shall be \$.60 per  
4 pound per article. Claims for loss or damage of property may  
5 be settled based on the weight of the article multiplied by  
6 \$.60.

7        (b) If the carrier and shipper have agreed in writing to  
8 a higher limit of liability, the carrier may charge the  
9 shipper for this higher limit of liability. If the agreement  
10 between the carrier and shipper to a higher limit of liability  
11 provides for a deductible, the carrier's liability to pay for  
12 loss or damage of property will be reduced by the amount of  
13 the deductible.

14        ~~[A household goods carrier shall be liable for \$.60 per-~~  
15 ~~pound per article, unless the carrier and shipper agree, in-~~  
16 ~~writing, to a higher limit of carrier liability. The household-~~  
17 ~~goods carrier shall not be liable for damages in an amount in-~~  
18 ~~excess of the agreed to higher limit of liability for the-~~  
19 ~~loss, destruction, or damage of the household goods.]~~

20  
21        §218.56. Proposals and Estimates for Moving Services.

22        (a) Written proposals. Prior to loading, a household  
23 goods carrier shall provide a written proposal, such as a bid  
24 or quote, to the shipper. A proposal shall state the maximum



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1 amount the shipper could be required to pay for the listed  
2 transportation and listed related services. This section does  
3 not apply if a pre-existing transportation contract sets out  
4 the maximum amount the shipper could be required to pay for  
5 the transportation services. Pre-existing transportation  
6 contracts include, but are not limited to, corporate contracts  
7 for the relocation of multiple employees.

8           (1) A proposal must contain the name and  
9 registration number of the household goods carrier as they  
10 appear on the motor carrier certificate of registration. If a  
11 proposal is prepared by the household goods carrier's agent,  
12 it shall include the name of the agent as listed on the  
13 carrier's agent filing with the department. A proposal shall  
14 also include the street address of the household goods carrier  
15 or its agent. ~~[A proposal may not include the name, logo, or~~  
16 ~~motor carrier registration number of any other motor carrier.]~~

17           (2) A proposal must clearly and conspicuously state  
18 whether it is a binding or not-to-exceed proposal.

19           (3) A proposal must completely describe the shipment  
20 and all services to be provided. A proposal must state, "This  
21 proposal is for listed items and services only. Additional  
22 items and services may result in additional costs."

23           (4) A proposal must specifically state when the  
24 shipper will be required to pay the transportation charges,



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1 such as if payment must be made before unloading at the final  
2 destination. A proposal must also state what form of payment  
3 is acceptable, such as a cashier's check.

4 (5) A proposal must conspicuously state that a  
5 household goods carrier's liability for loss or damage to  
6 cargo is limited to \$.60 per pound per article unless the  
7 household goods carrier and shipper agree, in writing, to a  
8 higher limit of carrier liability.

9 (b) Hourly rates. If a proposal is based on an hourly  
10 rate, then it is not required to provide the number of hours  
11 necessary to perform the transportation and related services.  
12 However, if the number of hours is not included in a proposal,  
13 then the carrier must secure a written acknowledgment from the  
14 shipper indicating the proposal is complete without the number  
15 of hours. Also, the proposal shall state the maximum amount  
16 the shipper could be required to pay for the listed  
17 transportation and listed related services.

18 (c) Proposal as addendum. If a proposal is accepted by  
19 the shipper and the carrier transports the shipment, then the  
20 proposal is considered an addendum to the moving services  
21 contract.

22 (d) Additional items and services. If the household goods  
23 carrier determines additional items are to be transported  
24 and/or additional services are required to load, transport, or



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1 deliver the shipment, then before the carrier transports the  
2 additional items or performs the additional services the  
3 carrier and shipper must agree, in writing, to:

4 (1) allow the original proposal to remain in effect;

5 (2) amend the original proposal or moving services  
6 contract; or

7 (3) substitute a new proposal for the original.

8 (e) Amendments and storage.

9 (1) An amendment to an original proposal or moving  
10 services contract, as allowed in subsection (d) of this  
11 section, must:

12 (A) be signed and dated by the household goods  
13 carrier and shipper; and

14 (B) clearly and specifically state the amended  
15 maximum price for the transportation of the household goods.

16 (2) If the household goods carrier fails to amend or  
17 substitute an original proposal as required by this subsection  
18 and subsection (d) of this section, only the charges stated on  
19 the original proposal for moving services may be assessed on  
20 the moving services contract. The carrier shall not attempt to  
21 amend or substitute the proposal to add items or services  
22 after the items or services have been provided or performed.

23 (3) If through no fault of the carrier, the shipment  
24 cannot be delivered during the agreed delivery period, then



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1 the household goods carrier may place the shipment in storage  
2 and assess fees relating to storage according to the terms in  
3 §218.58 of this title (relating to Moving Services Contract -  
4 Options for Carrier Limitation of Liability), without a  
5 written agreement with the shipper to amend or substitute the  
6 original proposal.

7 (f) Combination document. A proposal required by  
8 subsection (a) of this section may be combined with other  
9 shipping documents, such as the moving services contract, into  
10 a single document. If a proposal is combined with other  
11 shipping documents, the purpose of each signature line on the  
12 combination document must be clearly indicated. Each signature  
13 is independent and shall not be construed as an agreement to  
14 all portions and terms of the combination document.

15 (g) Telephone estimates. A household goods carrier may  
16 provide an estimate for the transportation services by  
17 telephone. If the household goods carrier provides the  
18 estimate by telephone, then the carrier must also furnish a  
19 written proposal for the transportation services to the  
20 shipper prior to loading the shipment.

21

22 §218.59. Inventories.

23 (a) Applicability. A household goods carrier has the  
24 option of preparing an inventory of the shipment.



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1 (b) Inventories prepared by the carrier. A household  
2 goods carrier may prepare a complete or partial inventory for  
3 its own use without an agreement between the carrier and  
4 shipper. The household goods carrier may not charge a fee for  
5 preparing an inventory for its own use.

6 (c) Inventories prepared by agreement between the carrier  
7 and shipper. If the household goods carrier and shipper agree  
8 to the preparation of an inventory by the carrier, the carrier  
9 may assess a fee for this service.

10 (1) Information contained in the inventory.

11 (A) The inventory must contain the shipper's  
12 name [~~and the household goods carrier's name as it appears on~~  
13 ~~its motor carrier certificate of registration. The inventory~~  
14 ~~may not include the name, logo, or motor carrier registration~~  
15 ~~number of any other motor carrier~~]. The inventory may include  
16 the name of the household goods carrier's agent as it is  
17 listed on the carrier's agent filing with the department.

18 (B) The inventory must describe each item in  
19 the shipment, unless the parties agree to a partial inventory.  
20 The shipper and the carrier may agree regarding the amount of  
21 detail that must be included in the inventory.

22 (C) If any charges are based on the size of the  
23 containers, the inventory must list the quantity and size of  
24 each container. [~~Additionally, if the household goods carrier~~



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1 ~~assesses handling charges for specific items, such as, pianos,~~  
2 ~~the inventory must show these items separately, if not already~~  
3 ~~shown on the moving services contract.]~~

4                   (D) [~~C~~] The inventory must describe and use  
5 the symbol "CP" for all containers packed or crated by the  
6 carrier. Additionally, the inventory must describe and use the  
7 symbol "PBO" for all containers packed or crated by the  
8 shipper.

9                   (E)[~~D~~] The inventory must include a key for  
10 any abbreviation used to describe the condition of the items.

11               (2) Inventory at origin. The inventory shall be  
12 signed by the household goods carrier and the shipper or  
13 shipper's agent at origin. The inventory must include a  
14 conspicuous statement that the shipper's signature is  
15 affirming the contents and condition of the items in the  
16 shipment.

17               (3) Inventory at destination. The carrier and the  
18 shipper or shipper's agent shall sign the inventory at  
19 destination. A legible copy of the inventory shall be given to  
20 the shipper. Signing the inventory does not waive a claimant's  
21 right to file a claim.~~[The inventory must include the~~  
22 ~~following statement adjacent to the shipper's signature line,~~  
23 ~~"Signing the inventory means:"]~~

24                   [~~A~~] ~~all items loaded have been received,~~



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1 ~~except as noted:]~~

2 ~~[(B) obvious loss or damage has been noted;~~

3 ~~and]~~

4 ~~[(C) signing the inventory does not waive a~~

5 ~~claimant's right to file a claim."]~~

6 (4) Combination document. The inventory may be  
7 combined with other shipping documents, such as the moving  
8 services contract, into a single document. If the inventory is  
9 combined with other shipping documents, the purpose of each  
10 signature line on the combination document must be clearly  
11 indicated. Each signature is independent and shall not be  
12 construed as an agreement to all portions and terms of the  
13 combination document.

14 (d) Electronic format. An inventory may be prepared in an  
15 electronic format.

16

17 §218.60. Determination of Weights.

18 (a) Shipment weights. A carrier transporting household  
19 goods on a not-to-exceed proposal using shipment weight as a  
20 factor in determining transportation charges shall determine  
21 the weight of each shipment transported prior to the  
22 assessment of any charges. Except as provided in this section,  
23 the weight shall be obtained on a certified scale.

24 (b) Weighing procedures.



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1                   (1) The weight of each shipment shall be obtained by  
2 determining the difference between the:

3                   (A) tare weight of the vehicle on which the  
4 shipment is to be loaded prior to the loading and the gross  
5 weight of the same vehicle after the shipment is loaded; or

6                   (B) gross weight of the vehicle with the  
7 shipment loaded and the tare weight of the same vehicle after  
8 the shipment is unloaded.

9                   (2) At the time of both weighings, all pads,  
10 dollies, handtrucks, ramps, and other equipment required in  
11 the transportation of a shipment shall be on the vehicle.  
12 Neither the driver nor any other person shall be on the  
13 vehicle at the time of the weighings.

14                  (3) The fuel tanks on the vehicle shall be full at  
15 the time of each weighing or, in the alternative, no fuel may  
16 be added between the two weighings when the tare weighing is  
17 the first weighing performed.

18                  (4) The trailer of a tractor-trailer vehicle  
19 combination may be detached from the tractor and weighed  
20 separately at each weighing providing the length of the scale  
21 platform is adequate to only accommodate and support the  
22 entire trailer at one time.

23                  (5) Shipments weighing 1,000 pounds or less may be  
24 weighed on a certified platform or warehouse scale prior to



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1 loading for transportation or subsequent to unloading.

2 (6) The net weight of shipments transported in  
3 containers shall be the difference between the tare weight of  
4 the container, including all pads, blocking and bracing used  
5 or to be used in the transportation of the shipment, and the  
6 gross weight of the container with the shipment loaded.

7 (7) The shipper or any other person responsible for  
8 the payment of the freight charges shall have the right to  
9 observe all weighings of the shipment. The household goods  
10 carrier must advise the shipper or any other person entitled  
11 to observe the weighings of the time and specific location  
12 where each weighing will be performed and must give that  
13 person a reasonable opportunity to be present to observe the  
14 weighings. Waiver by a shipper of the right to observe any  
15 weighing or reweighing is permitted and does not affect any  
16 rights of the shipper under this subchapter.

17 (c) Weight tickets.

18 (1) The carrier shall obtain a separate weight  
19 ticket for each weighing required under this subsection and  
20 the ticket shall be carried on the vehicle. However, if both  
21 weighings are performed on the same scale, one weight ticket  
22 may be used to record both weighings. Every weight ticket  
23 shall be signed by the person performing the weighing. Weight  
24 tickets or copies of weight tickets in an electronic format



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1 shall be maintained with [~~attached to~~] the carrier's copy of  
2 moving services contract covering the shipment. Weight tickets  
3 shall contain:

4 (A) the complete name and location of the  
5 scale;

6 (B) the date of each weighing;

7 (C) identification of the weight entries as  
8 being tare, gross, or net weights;

9 (D) the company or carrier identification of  
10 the vehicle; and

11 (E) the last name of the shipper as it appears  
12 on the moving services contract.

13 (2) This ticket must be retained by the carrier as  
14 part of the records for [~~file on~~] the shipment. A bill  
15 presented to collect any shipment charges dependent on the  
16 weight transported must be accompanied by true copies of all  
17 weight tickets in either a printed or electronic format  
18 obtained in the determination of the shipment weight.

19 (d) Reweighing of shipments. Before unloading a shipment  
20 weighed at origin and after the shipper is informed of the  
21 billing weight and total charges, the shipper may request a  
22 reweigh. The charges shall be based on the reweigh weight.

23 (e) Stored shipments. If a shipment is weighed and placed  
24 in storage in transit or delivered out of storage to



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1 destination by another vehicle, then no additional weighing  
2 shall be required unless the shipment has been decreased or  
3 increased in weight subsequent to the original weighing of the  
4 shipment.

5 (f) Constructive weight. Where no certified scale is  
6 available at origin, at a point en route, or at destination, a  
7 constructive weight, based on seven pounds per cubic foot of  
8 properly loaded space may be used to determine the weight of  
9 the household goods shipment.

10

11 §218.61. Claims.

12 (a) Filing of claims. A household goods carrier must act  
13 on all claims filed by a shipper on shipments of household  
14 goods according to this section.

15 (1) A claim must be filed in writing or by  
16 electronic format~~[document transfer]~~ with the household goods  
17 carrier or the household goods carrier's agent whose name  
18 appears on the moving services contract. A claim is considered  
19 filed on the date the claim is received by the household goods  
20 carrier. A shipper must file a ~~[written]~~ claim either in  
21 writing or by electronic format within 90 days:

22 (A) of delivery of the shipment to the final  
23 destination; or

24 (B) after a reasonable time for delivery has



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1 elapsed in the case of failure to make delivery.

2 (2) The claim must include enough facts to identify  
3 the shipment. The claim must also describe the type of claim  
4 and request a specific type of remedy.

5 (3) Shipping documents may be used as evidence to  
6 support a claim, but cannot be substituted for a written  
7 claim.

8 (4) A claim submitted by someone other than the  
9 owner of the household goods must be accompanied by a written  
10 explanation of the claimant's interest in the claim.

11 (b) Acknowledgment and disposition of filed claims.

12 (1) A household goods carrier shall send an~~a-~~  
13 ~~written~~ acknowledgment of the claim either in writing or by  
14 electronic format to the claimant within 20 days (excluding  
15 Sundays and nationally recognized holidays) after receipt of  
16 the claim by the carrier or his agent.

17 (A) The claim acknowledgment shall include the  
18 statement, "Household goods carriers have 90 days from receipt  
19 of a claim to pay, decline to pay, or make a firm settlement  
20 offer, in writing, to a claimant. Questions or complaints  
21 concerning the household goods carrier's claims handling  
22 should be directed to the Texas Department of Motor Vehicles  
23 (TxDMV), ~~[department's]~~ Enforcement Division, via the toll-free  
24 consumer helpline as listed on the department's website.



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1 Additionally, a claimant has the right to request mediation  
2 from TxDMV within 30 days (excluding Sundays and nationally  
3 recognized holidays) after any portion of the claim is denied  
4 by the carrier, the carrier makes a firm settlement offer that  
5 is not acceptable to the claimant, or 90 days has elapsed  
6 since the carrier received the claim and the claim has not  
7 been resolved."

8 (B) The household goods carrier is not required  
9 to issue the acknowledgment letter prescribed in this  
10 subsection if the claim has been resolved or the household  
11 goods carrier has initiated communication regarding the claim  
12 with the claimant within 20 days (excluding Sundays and  
13 nationally recognized holidays) after receipt of the claim.  
14 However, the burden of proof of the claim resolution or  
15 communication with the claimant is the responsibility of the  
16 household goods carrier.

17 (2) After a thorough investigation of the facts, the  
18 household goods carrier shall pay, decline to pay, or make a  
19 firm settlement offer in writing to the claimant within 90  
20 days after receipt of the claim by the household goods carrier  
21 or its household goods agent. The settlement offer or denial  
22 shall state, "A claimant has the right to seek mediation  
23 through the Texas Department of Motor Vehicles (TxDMV)~~[TxDMV]~~  
24 within 30 days (excluding Sundays and nationally recognized



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1 holidays) after any portion of the claim is denied by the  
2 carrier, the carrier makes a firm settlement offer that is not  
3 acceptable to the claimant, or 90 days has elapsed since the  
4 carrier received the claim and the claim has not been  
5 resolved."

6 (3) A household goods carrier must provide a copy of  
7 the shipping documents to the shipper's insurance company upon  
8 request. The carrier may assess a reasonable fee for this  
9 service.

10 (c) Documenting loss or damage to household goods.

11 (1) Inspection. If a loss or damage claim is filed  
12 and the household goods carrier wishes to inspect the items,  
13 the carrier must complete any inspection as soon as possible,  
14 but no later than 30 calendar days, after receipt of the  
15 claim.

16 (2) Payment of shipping charges. Payment of shipping  
17 charges and payment of claims shall be handled separately, and  
18 one shall not be used to offset the other unless otherwise  
19 agreed upon by both the household goods carrier and claimant.

20 (d) Claim records. A household goods carrier shall  
21 maintain a record of every claim filed. Claim records shall be  
22 retained for two years as required by §218.32 of this title  
23 (relating to Motor Carrier Records). At a minimum, the  
24 following information on each claim shall be maintained in a



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- 1 systematic, orderly and easily retrievable manner:
- 2                   (1) claim number (if assigned), date received, and
- 3 amount of money or the requested remedy;
- 4                   (2) number (if assigned) and date of the moving
- 5 services contract;
- 6                   (3) name of the claimant;
- 7                   (4) date the carrier issued its claim acknowledgment
- 8 letter;
- 9                   (5) date and total amount paid on the claim or date
- 10 and reasons for disallowing the claim; and
- 11                   (6) dates, time, and results of any mediation
- 12 coordinated by the department.



DATE: January 5, 2017  
Action Requested: APPROVAL

**To:** Texas Department of Motor Vehicles Board (TxDMV)  
**From:** David Duncan, General Counsel, Office of General Counsel  
**Agenda Item:** 11  
**Subject:** **Proposal of Rules under Title 43, Texas Administrative Code, Chapter 206, Management Amendments to §206.131**  
**Proposal of Rules under Title 43, Texas Administrative Code, Chapter 221, Salvage Vehicle Dealers, Salvage Pool Operators and Salvage Vehicle Rebuilders**  
**Amendments to §221.16, §221.53, and §221.73**

### **RECOMMENDATION**

Approval to publish the proposed amendments in the *Texas Register* for public comment.

### **PURPOSE AND EXECUTIVE SUMMARY**

The purpose of these amendments is to implement House Bill 2739, 84th Legislature, Regular Session, 2015, which added Business and Commerce Code, §506.001, Concealed Handgun License as Valid Proof of Identification.

### **FINANCIAL IMPACT**

There will be no fiscal implications related to the amendments.

### **BACKGROUND AND DISCUSSION**

House Bill 2739, added Business and Commerce Code, §506.001, which prohibits a person from denying the holder of a Texas concealed handgun license access to goods, services, or facilities because the holder presents a concealed handgun license, instead of a driver's license or other acceptable form of personal identification.

The proposed amendments add an unexpired concealed handgun license and a license to carry a handgun issued under Government Code, Chapter 411, Subchapter H, to the list of documents the department may use to verify the identity of an individual.

Additionally, the amendments modify the rules for consistency with other department rules, which state that a Texas driver's license or identification certificate must not be expired if the individual chooses to use one of these forms of identification. Other amendments renumber and reorganize some of the divisions within the rules, modify language for internal consistency, and modify language to improve the grammar within the rules.

If the proposed amendments are approved by the board, staff anticipates publication of the proposed amendments in the *Texas Register* on or about January 27, 2017. Comments on the proposed amendments will be accepted until 5:00 p.m. on February 27, 2017.



## BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING PUBLICATION OF PROPOSED AMENDMENTS TO  
43 TAC SECTION 206.131, DIGITAL CERTIFICATES

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to amend Chapter 206, Management, §206.131, Digital Certificates.

The preamble and the proposed amendments 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 amendments 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.

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Raymond Palacios, Jr., Chairman  
Board of the Texas Department of Motor Vehicles

Recommended by:

---

David Duncan, General Counsel  
Office of General Counsel

Order Number: \_\_\_\_\_

Date Passed: January 5, 2017



Texas Department of Motor Vehicles  
Chapter 206, Management

Proposed Preamble

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 206, Subchapter G, §206.131, Digital Certificates.

EXPLANATION OF PROPOSED AMENDMENTS

House Bill 2739, 84th Legislature, Regular Session, 2015, added Business and Commerce Code, §506.001, which prohibits a person from denying the holder of a Texas concealed handgun license access to goods, services, or facilities because the holder presents a concealed handgun license, instead of a driver's license or other acceptable form of personal identification.

An amendment is proposed to §206.131 to add an unexpired concealed handgun license and a license to carry a handgun issued under Government Code, Chapter 411, Subchapter H, to the list of documents the department may use to verify the identity of an individual regarding a digital certificate.

An amendment modifies §206.131 to be consistent with other department rules which state that a Texas driver's license or identification certificate must not be expired if the individual chooses to use one of these forms of identification. Other



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1 amendments renumber some of the subparagraphs and modify the  
2 language in §206.131 for internal consistency.

3  
4 FISCAL NOTE

5 Linda M. Flores, Chief Financial Officer, has determined that  
6 for each of the first five years the amendments as proposed are  
7 in effect, there will be no fiscal implications for state or  
8 local governments as a result of enforcing or administering the  
9 amendments.

10  
11 David D. Duncan, General Counsel, has determined that there will  
12 be no anticipated impact on local economies or overall  
13 employment as a result of enforcing or administering the  
14 amendments as proposed.

15  
16 PUBLIC BENEFIT AND COST

17 Mr. Duncan has also determined that for each year of the first  
18 five years the amendments are in effect, the public benefit  
19 anticipated as a result of enforcing or administering the  
20 amendments will be: 1) a rule that complies with Business and  
21 Commerce Code, §506.001; 2) a rule that is internally  
22 consistent; and 3) a rule that helps to protect the department  
23 and the public from potential fraud by requiring a current Texas



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1 driver's license or identification certificate to verify an  
2 individual's identity before granting a digital certificate.  
3 There are no anticipated economic costs for persons required to  
4 comply with the amendments as proposed. There will be no  
5 adverse economic effect on small businesses or micro-businesses.  
6

7 TAKINGS IMPACT ASSESSMENT

8 The department has determined that this proposal affects no  
9 private real property interests and that this proposal does not  
10 restrict or limit an owner's right to property that would  
11 otherwise exist in the absence of government action, and so does  
12 not constitute a taking or require a takings impact assessment  
13 under Government Code, §2007.043.  
14

15 SUBMITTAL OF COMMENTS

16 Written comments on the proposed amendments may be submitted to  
17 David D. Duncan, General Counsel, Texas Department of Motor  
18 Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email  
19 to *rules@txdmv.gov*. The deadline for receipt of comments is  
20 5:00 p.m. on February 27, 2017.  
21

22 STATUTORY AUTHORITY

23 The amendments are proposed under Transportation Code,



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1 §1002.001, which provides the board of the Texas Department of  
2 Motor Vehicles with the authority to establish rules to  
3 implement the powers and duties of the department under the  
4 Transportation Code and other laws of this state.

5

6 CROSS REFERENCE TO STATUTE

7 Business and Commerce Code, §506.001.



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1 SUBCHAPTER G. ELECRONIC SIGNATURES

2 §206.131. Digital Certificates.

3 (a) General. This section prescribes the requirements that  
4 govern the issuance, use, and revocation of digital certificates  
5 issued by the Texas Department of Motor Vehicles (department)  
6 for electronic commerce in eligible department programs. The  
7 provisions of 1 TAC Chapter 203, Subchapter B govern this  
8 section in the event of a conflict between that subchapter and a  
9 provision of this section.

10 (b) Definitions. The following words and terms, when used  
11 in this section, shall have the following meanings, unless the  
12 context clearly indicates otherwise.

13 (1) Business entity--An entity recognized by law  
14 through which business is conducted with the department,  
15 including a sole proprietorship, partnership, limited liability  
16 company, corporation, joint venture, educational institution,  
17 governmental agency, or non-profit organization.

18 (2) Certificate holder--An individual to whom a  
19 digital certificate is issued.

20 (3) Digital certificate--A certificate, as defined by  
21 1 TAC §203.1, issued by the department for purposes of  
22 electronic commerce.

23 (4) Digital signature--Has the same meaning assigned



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1 by 1 TAC §203.1.

2 (5) Division director--The chief administrative  
3 officer of a division of the department.

4 (c) Program authorization. A division director may  
5 authorize the use of digital signatures for a particular program  
6 based on whether the applicable industries or organizations are  
7 using such technology, the frequency of document submission, and  
8 the appropriateness for the program. The solicitation  
9 documentation for eligible programs will include the information  
10 that digital signatures may be used.

11 (d) Application and issuance of digital certificate.

12 (1) A request for a digital certificate shall be in  
13 writing and shall be signed by the individual authorized by the  
14 business entity to request a digital certificate.

15 (2) The department may request information necessary  
16 to verify the identity of the individual requestor or the  
17 identity of the individual to whom the certificate is to be  
18 issued. [~~business entity that has authorized the request.~~] To  
19 verify identity under this paragraph a person shall present:

20 (A) an unexpired [a] Texas driver's license or  
21 identification certificate with a photograph;

22 (B) an unexpired concealed handgun license or  
23 license to carry a handgun issued by the Texas Department of



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Public Safety under Government Code, Chapter 411, Subchapter H;

(C)~~(B)~~ an unexpired United States passport;

(D)~~(C)~~ a United States citizenship

(naturalization) certificate with identifiable photograph;

(E)~~(D)~~ an unexpired United States Bureau of

Citizenship and Immigration Services document that:

(i) was issued for a period of at least one

year;

(ii) is valid for not less than six months

from the date it is presented to the department with a completed

application; and

(iii) contains verifiable data and an

identifiable photograph;

(F)~~(E)~~ an unexpired United States military

identification card for active duty, reserve, or retired

personnel with an identifiable photograph; or

(G)~~(F)~~ a foreign passport with a valid or

expired visa issued by the United States Department of State

with an unexpired United States Bureau of Citizenship and

Immigration Services Form I-94:

(i) that was issued for a period of at least

one year, is marked valid for a fixed duration, and is valid for

not less than six months from the date it is presented to the



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1 department with a completed application; or

2 (ii) that is marked valid for the duration  
3 of the person's stay and is accompanied by appropriate  
4 documentation.

5 (3) The department may take actions necessary to  
6 confirm that the individual who signed the request is authorized  
7 to act on behalf of the business entity, including requiring the  
8 individual requestor or the person authorizing the request to  
9 personally appear at the department location responsible for the  
10 issuing of the certificate.

11 (4) The department shall issue a digital certificate  
12 only to an individual. Information identifying the business  
13 entity that authorized the issuance of the certificate may be  
14 embedded in the digital certificate.

15 (e) Refusal to issue a digital certificate. The department  
16 shall not issue a digital certificate if the identity of the  
17 individual to whom the certificate is to be issued, or the  
18 identity of the individual requesting the certificate on behalf  
19 of a business entity, cannot be established. The department will  
20 not issue a digital certificate if the business entity on whose  
21 behalf the request is allegedly being made does not authorize  
22 its issuance.

23 (f) Responsibilities of certificate holder. A certificate



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1 holder shall:

2 (1) maintain the security of the digital certificate;

3 (2) use the certificate solely for the purpose for

4 which it was issued; and

5 (3) renew the certificate in a timely manner, if

6 continued use is intended.

7 (g) Responsibilities of business entity. A business entity

8 is responsible for:

9 (1) determining what individual may request a

10 certificate for the business entity;

11 (2) determining to what individual a certificate is to

12 be issued; and

13 (3) requesting within a reasonable time the revocation

14 of the business entity's certificate if the security of the

15 certificate has been compromised or if the business entity is

16 changing its certificate holder.

17 (h) Revocation of certificate. The department shall revoke

18 a digital certificate:

19 (1) upon receipt of a written request for revocation

20 of the business entity's certificate, signed by an individual

21 authorized to act on behalf of the business entity for which it

22 was issued;

23 (2) for suspension or debarment of the individual or



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1 business entity; or

2 (3) if the department has reason to believe that  
3 continued use of the digital certificate would present a  
4 security risk.

5 (i) Use of digital certificate.

6 (1) A digital signature issued by the department shall  
7 only be used for the purpose of digitally signing electronic  
8 documents filed with the department. A digital signature is  
9 binding on the individual to whom the certificate was issued and  
10 the represented business entity, as if the document were signed  
11 manually.

12 (2) The department may use the digital certificate to  
13 identify the certificate holder when granting or verifying  
14 access to secure computer systems used for electronic commerce.

15 (j) Forms. The department may prescribe forms to request,  
16 modify, or revoke a digital certificate.



## BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING PUBLICATION OF PROPOSED AMENDMENTS TO  
43 TAC CHAPTER 221, SECTIONS 221.16, 221.53, And 221.73

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to amend Chapter 221; Salvage Vehicle Dealers, Salvage Pool Operators and Salvage Vehicle Rebuilders, §221.16, Required Attachments to the License Application; §221.53, Casual Sales; and §221.73, Content of Records.

The preamble and the proposed amendments are attached to this resolution as Exhibits A-D, 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 the Texas Department of Motor Vehicles

Recommended by:

---

David Duncan, General Counsel  
Office of General Counsel

Order Number: \_\_\_\_\_

Date Passed: January 5, 2017



Texas Department of Motor Vehicles  
Chapter 221, Salvage Vehicle Dealers, Salvage Pool Operators and  
Salvage Vehicle Rebuilders

Proposed Preamble

The Texas Department of Motor Vehicles (department) proposes amendments to §221.16, Required Attachments to the License Application; §221.53, Casual Sales; and §221.73, Content of Records.

EXPLANATION OF PROPOSED AMENDMENTS

House Bill 2739, 84th Legislature, Regular Session, 2015, added Business and Commerce Code §506.001, which prohibits a person from denying the holder of a Texas concealed handgun license access to goods, services, or facilities because the holder presents a concealed handgun license, instead of a driver's license or other acceptable form of personal identification.

An amendment is proposed to §§221.16, 221.53, and 221.73 to add a concealed handgun license and a license to carry a handgun issued under Government Code, Chapter 411, Subchapter H, to the list of documents the department may use to verify the identity of an individual. Other amendments renumber divisions within the rules, reorganize existing rule language, and improve the grammar within the rules.



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Chapter 221, Salvage Vehicle Dealers, Salvage Pool Operators and  
Salvage Vehicle Rebuilders

1 FISCAL NOTE

2 Linda M. Flores, Chief Financial Officer, has determined that  
3 for each of the first five years the amendments as proposed are  
4 in effect, there will be no fiscal implications for state or  
5 local governments as a result of enforcing or administering the  
6 amendments.

7

8 David Duncan, General Counsel, has determined that there will be  
9 no anticipated impact on local economies or overall employment  
10 as a result of enforcing or administering the amendments as  
11 proposed.

12

13 PUBLIC BENEFIT AND COST

14 Mr. Duncan has also determined that for each year of the first  
15 five years the amendments are in effect, the public benefit  
16 anticipated as a result of enforcing or administering the  
17 amendments will be rules that comply with Business and Commerce  
18 Code, §506.001. There are no anticipated economic costs for  
19 persons required to comply with the amendments as proposed.

20 There will be no adverse economic effect on small businesses or  
21 micro-businesses.

22



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Chapter 221, Salvage Vehicle Dealers, Salvage Pool Operators and  
Salvage Vehicle Rebuilders

1   TAKINGS IMPACT ASSESSMENT

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

8

9   SUBMITTAL OF COMMENTS

10   Written comments on the proposed amendments may be submitted to  
11   David D. Duncan, General Counsel, Texas Department of Motor  
12   Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email  
13   to *rules@txdmv.gov*. The deadline for receipt of comments is  
14   5:00 p.m. on February 27, 2017.

15

16   STATUTORY AUTHORITY

17   The amendments are proposed under Transportation Code,  
18   §1002.001, which provides the board of the Texas Department of  
19   Motor Vehicles (board) with the authority to establish rules to  
20   implement the powers and duties of the department under the  
21   Transportation Code and other laws of this state; and more  
22   specifically, Occupations Code, §2302.051, which requires the



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1 board to adopt rules as necessary to administer Chapter 2302;  
2 and Occupations Code, §2302.204(1), which requires the board to  
3 adopt rules as necessary to regulate casual sales by salvage  
4 vehicle dealers, insurance companies, and salvage pool  
5 operators.

6

7 CROSS REFERENCE TO STATUTE

8 Business and Commerce Code, §506.001.



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Salvage Vehicle Rebuilders

SUBCHAPTER B. LICENSING

§221.16. Required Attachments to the License Application.

(a) If the applicant is a sole proprietor or general partnership, in addition to the information required by §221.15 of this title (relating to Required License Application Information), the applicant must submit a legible copy of one of the following types of identification that is valid and active at the time of application for the sole proprietor and each of the general partners~~[partner's current]~~:

(1) driver's license, Department of Public Safety identification, or state identification certificate issued by a state or territory of the United States;

(2) concealed handgun license or license to carry a handgun issued by the Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(3)[+2] United States or foreign passport;

(4) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State Identification document;

(5)[+3] United States military identification card;  
or

(6)[+4] North Atlantic Treaty Organization



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1 identification or identification issued under a Status of Forces

2 Agreement; [~~or~~]

3 [~~(5) United States Department of Homeland Security,~~  
4 ~~United States Citizenship and Immigration Services, or United~~  
5 ~~States Department of State Identification document~~].

6 (b) If the applicant is a limited partnership, limited  
7 liability company, or a corporation, the applicant must submit a  
8 legible copy of one of the following current types of  
9 identification that is valid and active at the time of

10 application for each partner of the limited  
11 partnership, each member of the limited liability company, and  
12 for each officer of the corporation:

13 (1) driver's license, Department of Public Safety  
14 identification, or state identification certificate issued by a  
15 state or territory of the United States;

16 (2) concealed handgun license or license to carry a  
17 handgun issued by the Department of Public Safety under  
18 Government Code, Chapter 411, Subchapter H;

19 (3)[~~(2)~~] United States or foreign passport;

20 (4) United States Department of Homeland Security,  
21 United States Citizenship and Immigration Services, or United  
22 States Department of State Identification document;



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1           (5)[(+3)] United States military identification card;

2   or

3           (6)[(+4)] North Atlantic Treaty Organization

4   identification or identification issued under a Status of Forces

5   Agreement; [~~or~~]

6           [~~(5) United States Department of Homeland Security,~~

7   ~~United States Citizenship and Immigration Services, or United~~

8   ~~States Department of State Identification document~~].

9           (c) If the applicant is a corporation, the applicant must  
10   submit a copy of the certificate of incorporation issued by the  
11   secretary of state or a certificate issued by the jurisdiction  
12   where the applicant is incorporated, and a verification that, at  
13   the time the application is submitted, all business franchise  
14   taxes of the corporation have been paid.

15          (d) If the applicant is a limited partnership, the  
16   applicant must submit a copy of the certificate of partnership  
17   issued by the secretary of state or a certificate issued by the  
18   jurisdiction where the applicant is formed, and verification  
19   that, at the time the application is submitted, all business  
20   franchise taxes of the limited partnership have been paid.

21          (e) Upon request by the department, the applicant shall  
22   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 (f) If the applicant is a sole proprietor or general  
5 partnership, in addition to the information required by §221.15,  
6 the applicant must submit a legible copy of the Assumed Name  
7 Certificate (DBA) issued by the county clerk in which the  
8 business is located.

9 (g) If the applicant is a limited partnership, limited  
10 liability company, or a corporation, the applicant must submit a  
11 legible copy of the Assumed Name Certificate (DBA) as registered  
12 with the Texas Secretary of State's office.

13 (h) If the applicant is a sole proprietor or general  
14 partnership, in addition to the information required by §221.15,  
15 the applicant must submit a legible copy of the Texas Sales and  
16 Use Tax Permit.

17 (i) If the applicant is a limited partnership, limited  
18 liability company, or a corporation, the applicant must submit a  
19 legible copy of the Texas Sales and Use Tax Permit.



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Salvage Vehicle Rebuilders

SUBCHAPTER C. LICENSED OPERATIONS

§221.53. Casual Sales.

(a) A license holder may not make more than five (5) casual sales of salvage motor vehicles or non-repairable motor vehicles during a calendar year to the same person.

(b) A license holder must maintain records of each casual sale made during the previous 36 months, as provided by §221.72 of this title (relating to Record Retention). Such records must contain the following information regarding each casual sale:

(1) the complete name, address and phone number of the purchaser;

(2) a copy of one of the following current photo identification documents for the purchaser:

(A) driver's license, Department of Public Safety identification, or state identification certificate issued by a state or territory of the United States;

(B) concealed handgun license or license to carry a handgun issued by the Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(C)[(B)] United States or foreign passport;

(D) United States Department of Homeland Security, United States Citizenship and Immigration Services, or



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1 United States Department of State Identification document;

2                    (E)~~[(C)]~~ United States military identification  
3 card; or

4                    (F)~~[(D)]~~ North Atlantic Treaty Organization  
5 identification or identification issued under a Status of Forces  
6 Agreement; ~~[or]~~

7                    ~~[(E) United States Department of Homeland  
8 Security, United States Citizenship and Immigration Services, or  
9 United States Department of State Identification document]; and~~

10                    (3) the year, make, model, color and vehicle  
11 identification number for the salvage motor vehicle or non-  
12 repairable motor vehicle.

13                    (c) A person who~~[that]~~ purchases a salvage motor vehicle or  
14 a non-repairable motor vehicle through a casual sale may not  
15 sell that salvage motor vehicle or non-repairable motor vehicle  
16 until the salvage vehicle title, salvage record or title, non-  
17 repairable vehicle title or non-repairable record of title, as  
18 applicable, is in the person's name.



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SUBCHAPTER D. RECORDS

§221.73. Content of Records.

(a) The records of a salvage vehicle dealer for purchases  
and sales shall include:

(1) the date of purchase of the salvage motor vehicle,  
or non-repairable motor vehicle;

(2) the name and address of the person who~~[that]~~ sold  
the salvage motor vehicle or non-repairable motor vehicle to the  
salvage vehicle dealer;

(3) if the person who~~[that]~~ sold the salvage motor  
vehicle or non-repairable motor vehicle to the salvage motor  
vehicle dealer is not an insurance company or a salvage pool  
operator, a photocopy of one of the following current photo  
identification documents of the person who~~[that]~~ sold the  
salvage motor vehicle or non-repairable motor vehicle to the  
salvage vehicle dealer:

(A) driver's license, Department of Public Safety  
identification, or state identification certificate issued by a  
state or territory of the United States;

(B) concealed handgun license or license to carry  
a handgun issued by the Department of Public Safety under  
Government Code, Chapter 411, Subchapter H;



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1                    (C)~~[(B)]~~ United States or foreign passport;  
2                    (D) United States Department of Homeland  
3 Security, United States Citizenship and Immigration Services, or  
4 United States Department of State Identification document;

5                    (E)~~[(C)]~~ United States military identification  
6 card; or

7                    (F)~~[(D)]~~ North Atlantic Treaty Organization  
8 identification or identification issued under a Status of Forces  
9 Agreement; ~~[or]~~

10                   ~~[(E) United States Department of Homeland~~  
11 ~~Security, United States Citizenship and Immigration Services, or~~  
12 ~~United States Department of State Identification document;]~~

13                   (4) a description of the salvage motor vehicle or non-  
14 repairable motor vehicle, including the model, year, make, and  
15 vehicle identification number, if applicable;

16                   (5) the ownership document number and state of  
17 issuance of the salvage motor vehicle or non-repairable motor  
18 vehicle ownership document, if applicable;

19                   (6) a copy of the salvage record of title or non-  
20 repairable record of title, if applicable, or a copy of the  
21 front and back of the ownership document for the salvage motor  
22 vehicle or non-repairable motor vehicle;



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1                   (7) a copy of the form if the ownership document has  
2     been surrendered to the department; and

3                   (8) any evidence indicating that the motor vehicle was  
4     scrapped or destroyed.

5           (b) If the salvage motor vehicle has been rebuilt,  
6     repaired, or reconstructed by the salvage vehicle dealer the  
7     salvage vehicle dealer's records must also include a form  
8     prescribed by the department for "Rebuilt Vehicle Statement,"  
9     listing all repairs made to the motor vehicle, and, when  
10    required to be completed, a form prescribed by the department  
11    for "Component Part(s) Bill of Sale."



DATE: January 5, 2017  
Action Requested: APPROVAL

To: Texas Department of Motor Vehicles Board (TxDMV)  
From: Jimmy Archer, Motor Carrier Division; and William P. Harbeson, Director, Enforcement Division  
Agenda Item: 12  
Subject: **Proposal of Rules under Title 43, Texas Administrative Code, Chapter 218, Motor Carriers Amendments to §218.13, 218.17, 218.56, 218.57, 218.65, and 218.73**  
**New §218.75, Cost of Preparing Agency Record**  
**Repeal, §218.74, Settlement Agreement**

### **RECOMMENDATION**

Approval to publish the proposed amendments, new rule, and repeal in the *Texas Register* for public comment.

### **PURPOSE AND EXECUTIVE SUMMARY**

The purpose of the amendments is to protect consumers, improve public safety, incorporate the latest edition of the Unified Carrier Registration (UCR) Agreement, and allow shippers and household goods carriers to use electronic documents and signatures on certain documents.

The purpose of new §218.75 is to require the party who appeals a final decision to pay the costs of preparing the record the department is required to file with the reviewing court.

The purpose of repealing §218.74 is to consolidate the language with the language in §218.73 regarding administrative proceedings.

### **FINANCIAL IMPACT**

There will be minor fiscal implications related to the amendments and new rule because: 1) applicants will be required to provide the department with additional documents; and 2) parties who appeal final decisions may have to pay the costs to create the record that must be filed with the reviewing court.

### **BACKGROUND AND DISCUSSION**

Most of the proposed amendments resulted from over 16 meetings of the department's Motor Carrier Credentialing System (MCCS) Working Group. Most of the amendments improve the credentialing process to protect the consumer by requiring an applicant for motor carrier registration to provide the information and documents the department needs to identify the motor carrier in order to enforce Transportation Code, Chapter 643 and Chapter 218 regarding motor carriers. The amendments also help the department to identify chameleon carriers, which are motor carriers that attempt to reinvent themselves in order to avoid the consequences of prior violations of the laws, rules, and/or regulations.

An amendment requires motor carriers that obtain a certificate of registration to review certain information in MCCS every six months and to update the information that is no longer correct. Another amendment requires household goods carriers to certify that they have procedures that comply with a provision of the Code of Criminal Procedure, which prohibits certain people who are required to register as a sex offender from providing moving services in the residence of another person without supervision.

Other amendments update the rules to be consistent with current practice and to correct grammatical errors.





If the proposed amendments are approved by the board, staff anticipates publication of the proposed amendments in the *Texas Register* on or about February 17, 2017. Comments on the proposed amendments will be accepted until 5:00 p.m. on March 20, 2017.



## BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING PUBLICATION OF PROPOSED AMENDMENTS TO  
43 TAC SECTIONS 218.13, 218.17, 218.56, 218.57, 218.65, AND 218.73;  
NEW §218.75, AND REPEAL OF §218.74

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to amend Chapter 218, Motor Carriers.

The preamble, proposed amendments, new section, and repeal 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 proposed 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 the Texas Department of Motor Vehicles

Recommended by:

---

Jimmy Archer, Director  
Motor Carrier Division

Order Number: \_\_\_\_\_

Date Passed: January 5, 2017



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Proposed Preamble

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 218, Motor Carriers, Subchapter B: §218.13, Application for Motor Carrier Registration; and §218.17, Unified Carrier Registration System; and Subchapter E: §218.56, Proposals and Estimates for Moving Services; §218.57, Moving Services Contract; and §218.65 Tariff Registration. The department also proposes new Subchapter F, §218.75, Cost of Preparing Agency Record. In addition, the department proposes the repeal of Subchapter F, §218.74, Settlement Agreements.

EXPLANATION OF PROPOSED AMENDMENTS

Most of the proposed amendments resulted from over 16 meetings of department staff who are members of the Motor Carrier Credentialing System (MCCS) Working Group. The mission of the MCCS Working Group was to expand the web-enabling capabilities of MCCS and to facilitate certain enhancements to MCCS through an orderly and reasoned process. The overriding purposes of the MCCS Working Group meetings were to: 1) improve the credentialing process to protect the consumers who use the services of motor carriers; and 2) automate the credentialing process to ultimately enable all motor carriers to apply online through MCCS to obtain operating authority.



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1

2 The amendments to §218.13 require the motor carrier applicants  
3 to provide additional information and documents, which will  
4 protect the consumers and improve safety by helping the  
5 department and law enforcement to identify the motor carrier.

6 For example, applicants who are individuals will be required to  
7 provide information from a list of identification documents, so  
8 the department can verify the identity of the individual.

9 Applicants who are entities will be required to provide their  
10 Texas Comptroller's Taxpayer Number or their Federal Employer  
11 Identification Number, which will help the department identify  
12 the applicant and verify whether the entity is a valid legal  
13 entity by using databases from other state agencies, such as the  
14 Texas Secretary of State's Office.

15

16 The amendments also help the department administer and enforce  
17 Chapter 218 and Transportation Code, Chapter 643. For example,  
18 the amendments help the department determine whether the  
19 applicant is a chameleon carrier or reincarnated carrier, which  
20 is a carrier that attempts to reinvent itself or to operate  
21 affiliated companies to avoid the consequences of prior  
22 violations of the laws, rules, and/or regulations. The people  
23 who operate chameleon carriers will create a new business entity



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1 or operate affiliated companies because they would not qualify  
2 for a certificate of registration because of a prior revocation  
3 or unpaid penalties for prior violations. See Transportation  
4 Code, §§643.054(a-1) and 643.2525(k) and (l). One of the  
5 amendments requires all applicants to complete the New Applicant  
6 Questionnaire, which helps the department comply with  
7 Transportation Code, §643.054. Section 643.054 authorizes the  
8 department to deny registration if the applicant is a chameleon  
9 carrier.

10  
11 The Federal Motor Carrier Safety Administration (FMCSA) passed  
12 regulations to deal with chameleon carriers and cited to a fatal  
13 bus crash in Sherman, Texas in 2008, in which at least 17 people  
14 died and dozens of people were injured. The motor carrier  
15 involved in the bus crash was a reincarnation of another bus  
16 company that FMCSA had recently placed out of service. See 77  
17 Fed.Reg.24865 (April 26, 2012).

18  
19 The amendments help the department comply with Family Code,  
20 §231.302, which requires state agencies to require license  
21 applicants to provide their social security number if they are  
22 an individual. This information is available to the Texas  
23 Office of the Attorney General to use when a parent fails to pay



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1 child support. One amendment require entities to provide either  
2 their Texas Comptroller's Taxpayer Number or their Federal  
3 Employer Identification Number, which will help the department  
4 verify whether an applicant is really a legal entity or an  
5 individual. If the applicant is an individual, the department  
6 requires the individual to provide a social security number, as  
7 required by Family Code, §231.302.

8  
9 The amendments also require the motor carriers that obtain a  
10 certificate of registration to review certain information, such  
11 as their physical address, in MCCA every six months and to  
12 update the information if it is no longer correct. The  
13 department's Enforcement Division, as well as law enforcement,  
14 need certain current information to contact motor carriers to  
15 investigate, inspect records, and take any necessary enforcement  
16 action. Some motor carriers have had the same active  
17 certificate of registration for tens of years, and they may  
18 forget to update their contact information. The department's  
19 Enforcement Division has attempted to investigate certain motor  
20 carriers by going to the address on file with the department,  
21 only to find an empty parking lot at the address.

22  
23 The amendments require household goods carriers and passenger



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1 carriers to provide a copy of the lease and certain information  
2 about the lessor, so the department can link a vehicle to the  
3 motor carrier that is leasing the vehicle and so the department  
4 can verify that the vehicle is registered under Transportation  
5 Code, Chapter 643. Household goods carriers and passenger  
6 carriers have more opportunity to cause harm to their customers,  
7 so the department needs more information from these carriers to  
8 protect the customers, as well as the traveling public. For  
9 example, if a household goods carrier leases a U-Haul truck that  
10 is used to steal a consumer's household goods, the lease  
11 information will help the department, as well as law  
12 enforcement, link the leased vehicle to the motor carrier.

13  
14 An amendment requires household goods carriers to certify that  
15 they have procedures that comply with Code of Criminal  
16 Procedure, Article 62.063(b)(3), which prohibits certain people  
17 who are required to register as a sex offender from providing  
18 moving services in the residence of another person without  
19 supervision. This requirement helps to protect the consumers  
20 who use the services of a household goods carrier.

21  
22 An amendment denies a seven-day or 90-day certificate of  
23 registration to a passenger carrier, unless approved by the



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1 director of the Motor Carrier Division, because of the time and  
2 resources involved in processing applications for passenger  
3 carriers. The department spends more time reviewing  
4 applications for passenger carriers because of the potential  
5 harm to a large number of people. The fatal bus crash in  
6 Sherman, Texas in 2008 is just one example of a fatal passenger  
7 carrier accident. In response to several fatal passenger  
8 carrier accidents, the Texas Legislature amended Transportation  
9 Code, §643.252 in 2009 to require the department to deny  
10 registration to a for-hire passenger carrier if the carrier is  
11 required to register with FMCSA and the federal registration is  
12 denied, revoked, suspended, or otherwise terminated.

13  
14 An amendment to §218.17 incorporates the latest version of the  
15 Unified Carrier Registration Agreement (Agreement). The Unified  
16 Carrier Registration System plan and agreement is a federal  
17 motor carrier registration program authorized by 49 USC §14504a  
18 and 49 CFR Part 367. The participating states signed the  
19 Agreement, which implements the federal law and regulations.

20  
21 Amendments to §§218.56 and 218.57 authorize the household goods  
22 carriers and the consumers to use electronic documents and  
23 electronic signatures, so the parties can benefit from the



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1 convenience of modern technology.

2

3 Amendments to §218.65 delete language that conflicts with  
4 statute and update language because a new applicant might not  
5 have a certificate of registration.

6

7 Amendments to §218.73 include language from §218.74, which is  
8 proposed for repeal in order to consolidate the language  
9 regarding administrative proceedings into §218.73. Amendments  
10 to §218.73 also inform motor carriers of the current law and  
11 rules which govern any proceedings under Chapter 218 and  
12 Transportation Code, Chapter 643 at the State Office of  
13 Administrative Hearings.

14

15 New §218.75 requires the party who appeals a final decision to  
16 pay the costs of preparation of the record the department is  
17 required to file with the reviewing court, unless the department  
18 grants a waiver. It is equitable to make the party who appeals  
19 the decision pay the costs to prepare the record.

20

21 Other amendments update the rules to be consistent with current  
22 practice and to correct grammatical errors.

23



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1 FISCAL NOTE

2 Linda M. Flores, Chief Financial Officer, has determined that  
3 for each of the first five years the amendments, new section,  
4 and repeal as proposed are in effect, there will be no fiscal  
5 implications for state or local governments as a result of  
6 enforcing or administering the proposed amendments.

7

8 Jimmy Archer, Director of Motor Carrier Division has determined  
9 that there will be no anticipated impact on local economies or  
10 overall employment as a result of enforcing or administering the  
11 proposed amendments, new section, and repeal.

12

13 PUBLIC BENEFIT AND COST

14 Mr. Archer has also determined that for each year of the first  
15 five years the amendments, new section, and repeal are in  
16 effect, the public benefit anticipated as a result of enforcing  
17 or administering the amendments will be greater protection for  
18 the consumer, improved public safety, and convenience for the  
19 motor carrier and shipper. There are no anticipated economic  
20 costs for persons to comply with the proposed repeal. There are  
21 minor anticipated economic costs for persons required to comply  
22 with the amendments and new section because: 1) applicants will  
23 be required to provide the department with additional documents;



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1 and 2) parties who appeal final decisions may have to pay the  
2 costs to create the record that must be filed with the reviewing  
3 court. There will be no adverse economic effect on small  
4 businesses or micro-businesses because the costs to comply with  
5 the amendments and new section are minor, ordinary costs of  
6 doing business.

7  
8 TAKINGS IMPACT ASSESSMENT

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

15  
16 SUBMITTAL OF COMMENTS

17 Written comments on the proposed amendments, new section, and  
18 repeal may be submitted to David D. Duncan, General Counsel,  
19 Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin,  
20 Texas 78731 or by email to [rules@txdmv.gov](mailto:rules@txdmv.gov). The deadline for  
21 receipt of comments is 5:00 p.m. on March 20, 2017.

22  
23 STATUTORY AUTHORITY



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1 The amendments, new section, and repeal are proposed under  
2 Transportation Code, §1002.001, which provides the board of the  
3 Texas Department of Motor Vehicles with the authority to adopt  
4 rules that are necessary and appropriate to implement the powers  
5 and the duties of the department under the Transportation Code  
6 and other laws of this state; Government Code, §2001.004(1),  
7 which requires state agencies to adopt rules of practice stating  
8 the nature and requirements of all available formal and informal  
9 procedures; and more specifically Transportation Code, §643.003,  
10 which authorizes the department to adopt rules to administer  
11 Transportation Code, Chapter 643; Transportation Code,  
12 §643.052(8), which authorizes the department by rule to require  
13 an application to include any information the department  
14 determines is necessary for the safe operation of a motor  
15 carrier under Chapter 218; Transportation Code, §643.061(a),  
16 which authorizes the department to adopt rules that provide for  
17 an optional temporary registration that is valid for less than  
18 one year; Transportation Code, §643.153, which requires the  
19 department to adopt rules to protect a consumer using the  
20 service of a motor carrier transporting household goods for  
21 compensation; and Government Code, §2001.177, which authorizes a  
22 state agency by rule to require a party who appeals a final  
23 decision in a contested case to pay all or a part of the cost of



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- 1 preparing the original or a certified copy of the record.
- 2
- 3 CROSS REFERENCE TO STATUTE
- 4 Transportation Code, Chapters 643 and 645; Business and Commerce
- 5 Code, §506.001; and Family Code, §231.302.



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SUBCHAPTER B. MOTOR CARRIER REGISTRATION

§218.13. Application for Motor Carrier Registration.

(a) Form of application. An application for motor carrier registration must be filed with the department's Motor Carrier Division and must be in the form prescribed by the director and must contain, at a minimum, the following information.

(1) USDOT number. A valid USDOT number.

(2) Business or trade name. The applicant must designate the business or trade name of the motor carrier.

(3) Owner name. If the motor carrier is a sole proprietorship, the owner must indicate the name and social security number of the owner. A partnership must indicate the partners' names, and a corporation or other entity must indicate principal officers and titles.

(4) Physical address of principal [~~Principal~~] place of business. A motor carrier must disclose the motor carrier's principal business address. If the mailing address is different from the principal business address, the mailing address must also be disclosed.

(5) Legal agent.

(A) A Texas-domiciled motor carrier must provide the name, phone number, and address of a legal agent for service of process if the agent is different from the motor carrier.



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1 (B) A motor carrier domiciled outside Texas must  
2 provide the name, phone number, and Texas address of the legal  
3 agent for service of process.

4 (C) A legal agent for service of process shall be  
5 a Texas resident, a domestic corporation, or a foreign  
6 corporation authorized to transact business in Texas with a  
7 Texas physical address, rather than a post office box, for  
8 service of process.

9 (6) Description of vehicles. An application must  
10 include a motor carrier equipment report identifying each  
11 commercial motor vehicle that requires registration and that the  
12 carrier proposes to operate. Each commercial motor vehicle must  
13 be identified by its motor vehicle identification number, make,  
14 model year, and type of cargo and by the unit number assigned to  
15 the commercial motor vehicle by the motor carrier. Any  
16 subsequent registration of vehicles must be made under  
17 subsection (e) of this section.

18 (7) Type of motor carrier operations. An applicant  
19 must state if the applicant:

20 (A) proposes to transport passengers, household  
21 goods, or hazardous materials; or

22 (B) is domiciled in a foreign country.

23 (8) Insurance coverage. An applicant must indicate



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1 insurance coverage as required by §218.16 of this title  
2 (relating to Insurance Requirements).

3 (9) Safety certification~~[affidavit]~~. Each motor  
4 carrier must complete, as part of the application, a  
5 certification~~[an affidavit]~~ stating that the motor carrier knows  
6 and will conduct operations in accordance with all federal and  
7 state safety regulations.

8 (10) Drug-testing certification. Each motor carrier  
9 must certify, as part of the application, that the motor carrier  
10 is in compliance with the drug-testing requirements of 49 C.F.R.  
11 Part 382. If the motor carrier belongs to a consortium, as  
12 defined by 49 C.F.R. Part 382, the applicant must provide the  
13 names of the persons operating the consortium.

14 (11) Duration of registration.

15 (A) An applicant must indicate the duration of  
16 the desired registration. Except as provided otherwise in this  
17 section, registration~~[Registration]~~ may be for seven calendar  
18 days, ~~[or for]~~ 90 calendar days, one year, or two years. The  
19 duration of registration chosen by the applicant will be applied  
20 to all vehicles.

21 (i) Household goods carriers may not obtain  
22 seven-day ~~[seven-day]~~ or 90-day ~~[90-day]~~ certificates of  
23 registration.



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1                           (ii) Motor carriers that transport  
2 passengers in a commercial motor vehicle as defined by  
3 §218.2(7)(A)(ii) of this title (relating to Definitions) may not  
4 obtain seven-day or 90-day certificates of registration, unless  
5 approved by the director.

6                           (B) Interstate motor carriers that operate in  
7 intrastate commerce and meet the requirements under §218.14(c)  
8 of this title (relating to Expiration and Renewal of Commercial  
9 Motor Vehicles Registration) are not required to renew a  
10 certificate of registration issued under this section.

11                           (12) Additional requirements. The following fees,  
12 documents, and information must be submitted with all  
13 applications.

14                           (A) An application must be accompanied by an  
15 application fee of:

16                                   (i) \$100 for annual and biennial  
17 registrations;

18                                   (ii) \$25 for 90-day [~~90-day~~] registrations;  
19 or

20                                   (iii) \$5 for seven-day [~~seven-day~~]  
21 registrations.

22                           (B) An application must be accompanied by a  
23 vehicle registration fee of:



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(i) \$10 for each vehicle that the motor carrier proposes to operate under a seven-day [~~seven-day~~], 90-day [~~90-day~~], or annual registration; or

(ii) \$20 for each vehicle that the motor carrier proposes to operate under a biennial registration.

(C) An application must be accompanied by proof of insurance or financial responsibility and insurance filing fee as required by §218.16.

(D) An application must include the applicant's business phone number, cell phone number, facsimile number, and email address. [~~An application for registration by a household goods carrier must include a tariff that sets out the maximum charges for transportation of household goods between two or more municipalities, or a copy of the tariff governing interstate transportation services on a highway between two or more municipalities.~~]

(E) An application must include the completed New Applicant Questionnaire.

(F) An application submitted by an individual must include the number from one of the following forms of identification:

(i) an unexpired driver's license issued by a state or territory of the United States. If the driver's



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license is issued by the Department of Public Safety, the application must also include the audit number listed on the driver's license;

(ii) an unexpired identification certificate issued by a state or territory of the United States; or

(iii) an unexpired concealed handgun license or license to carry a handgun issued by the Department of Public Safety under Government Code, Chapter 411, Subchapter H.

(G) An application submitted by an individual or entity with an assumed name must be accompanied by supporting documents regarding the assumed name, such as an assumed name filing in the county of proposed operation.

(H) An application submitted by an entity, such as a corporation, general partnership, limited liability company, limited liability corporation, limited partnership, or partnership, must include the entity's Texas Comptroller's Taxpayer Number or the entity's Federal Employer Identification Number.

(I) An application must be accompanied by any other information required by law.

(13) Additional requirements for household goods carriers. The following information, documents, and certification must be submitted with all applications by



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1 household goods carriers:

2 (A) A copy of the tariff that sets out the  
3 maximum charges for transportation of household goods between  
4 two or more municipalities, or a copy of the tariff governing  
5 interstate transportation services on a highway between two or  
6 more municipalities. If an applicant is governed by a tariff  
7 that its association has already filed with the department under  
8 §218.65 of this title (relating to Tariff Registration), the  
9 applicant complies with the requirement in this subparagraph by  
10 checking the applicable box on the application to identify the  
11 association's tariff.

12 (B) If the motor vehicle is not titled in the  
13 name of the household goods carrier, the following lease  
14 information and documentation, notwithstanding §218.18(a) of  
15 this title (relating to Short-term Lease and Substitute  
16 Vehicles):

17 (i) a copy of a valid lease agreement for  
18 each motor vehicle that the household goods carrier will  
19 operate; and

20 (ii) the name of the lessor and their USDOT  
21 number for each motor vehicle leased to the household goods  
22 carrier under a short-term lease.

23 (C) A certification that the household goods



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carrier has procedures that comply with Code of Criminal Procedure, Article 62.063(b)(3), which prohibits certain people who are required to register as a sex offender from providing moving services in the residence of another person without supervision.

(14) Additional requirements for passenger carriers.

The following information and documents must be submitted with all applications for motor carriers that transport passengers in a commercial motor vehicle as defined by §218.2(7)(A)(ii) of this title:

(A) If the commercial motor vehicle is titled in the name of the motor carrier, a copy of the International Registration Plan registration receipt or a copy of the front and back of the title for each commercial motor vehicle; or

(B) If the commercial motor vehicle is not titled in the name of the motor carrier, the following lease information and documentation, notwithstanding §218.18(a) of this title:

(i) A copy of a valid lease agreement for each commercial motor vehicle; and

(ii) The name of the lessor and their USDOT number for each commercial motor vehicles leased to the motor carrier under a short-term lease.



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1 (b) Conditional acceptance of application. If an  
2 application has been conditionally accepted by the director  
3 pursuant to Transportation Code, §643.055, the applicant may not  
4 operate the following until the department has issued a  
5 certificate under Transportation Code, §643.054:

6 (1) a commercial motor vehicle or any other motor  
7 vehicle to transport household goods for compensation, or

8 (2) a commercial motor vehicle to transport persons or  
9 cargo.

10 (c) Approved application. An applicant meeting the  
11 requirements of this section and whose registration is approved  
12 will be issued the following documents:

13 (1) Certificate of registration. The department will  
14 issue a certificate of registration. The certificate of  
15 registration will contain the name and address of the motor  
16 carrier and a single registration number, regardless of the  
17 number of vehicles requiring registration that the carrier  
18 operates.

19 (2) Insurance cab card. The department will issue an  
20 insurance cab card listing all vehicles to be operated under the  
21 carrier's certificate of registration. The insurance cab card  
22 shall be continuously maintained at the registrant's principal  
23 place of business. The insurance cab card will be valid for the



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1 same period as the motor carrier's certificate of registration  
2 and will contain information regarding each vehicle registered  
3 by the motor carrier.

4 (A) A current copy of the page of the insurance  
5 cab card on which the vehicle is shown shall be maintained in  
6 each vehicle listed, unless the motor carrier chooses to  
7 maintain a legible and accurate image of the insurance cab card  
8 on a wireless communication device in the vehicle or chooses to  
9 display such information on a wireless communication device by  
10 accessing the department's online system from the vehicle. The  
11 appropriate information concerning that vehicle shall be  
12 highlighted if the motor carrier chooses to maintain a hard copy  
13 of the insurance cab card or chooses to display an image of the  
14 insurance cab card on a wireless communication device in the  
15 vehicle. The insurance cab card or the display of such  
16 information on a wireless communications device will serve as  
17 proof of insurance as long as the motor carrier has continuous  
18 insurance or financial responsibility on file with the  
19 department.

20 (B) On demand by a department investigator or any  
21 other authorized government personnel, the driver shall present  
22 the highlighted page of the insurance cab card that is  
23 maintained in the vehicle or that is displayed on a wireless



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1 communication device in the vehicle. If the motor carrier  
2 chooses to display the information on a wireless communication  
3 device by accessing the department's online system, the driver  
4 must locate the vehicle in the department's online system upon  
5 request by the department-certified inspector or other  
6 authorized government personnel.

7 (C) The motor carrier shall notify the department  
8 in writing if it discontinues use of a registered commercial  
9 motor vehicle before the expiration of its insurance cab card.

10 (D) Any erasure or alteration of an insurance cab  
11 card that the department printed out for the motor carrier  
12 renders it void.

13 (E) If an insurance cab card is lost, stolen,  
14 destroyed, or mutilated; if it becomes illegible; or if it  
15 otherwise needs to be replaced, the department will print out a  
16 new insurance cab card at the request of the motor carrier.

17 Motor carriers are authorized to print out a copy of a new  
18 insurance cab card using the department's online system.

19 (F) The department is not responsible for a motor  
20 carrier's inability to access the insurance information using  
21 the department's online system.

22 (G) The display of an image of the insurance cab  
23 card or the display of insurance information from the



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1 department's online system via a wireless communication device  
2 by the motor carrier does not constitute effective consent for a  
3 law enforcement officer, the department investigator, or any  
4 other person to access any other content of the wireless  
5 communication device.

6 (d) Additional and replacement vehicles. A motor carrier  
7 required to obtain a certificate of registration under this  
8 section shall not operate additional vehicles unless the carrier  
9 identifies the vehicles on a form prescribed by the director and  
10 pays applicable fees as described in this subsection.

11 (1) Additional vehicles. To add a vehicle, a motor  
12 carrier must pay a fee of \$10 for each additional vehicle that  
13 the motor carrier proposes to operate under a seven-day [~~seven~~  
14 ~~day~~], 90-day [~~90-day~~], or annual registration. To add a vehicle  
15 during the first year of a biennial registration, a motor  
16 carrier must pay a fee of \$20 for each vehicle. To add a vehicle  
17 during the second year of a biennial registration, a motor  
18 carrier must pay a fee of \$10 for each vehicle.

19 (2) Replacement vehicles. No fee is required for a  
20 vehicle that is replacing a vehicle for which the fee was  
21 previously paid. Before the replacement vehicle is put into  
22 operation, the motor carrier shall notify the department,  
23 identify the vehicle being taken out of service, and identify



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1 the replacement vehicle on a form prescribed by the department.

2 A motor carrier registered under seven-day [~~seven-day~~]

3 registration may not replace vehicles.

4 (e) Supplement to original application. A motor carrier

5 required to register under this section shall submit a

6 supplemental application under the following circumstances.

7 (1) Change of cargo. A registered motor carrier may

8 not begin transporting household goods or hazardous materials

9 unless the carrier submits a supplemental application to the

10 department and shows the department evidence of insurance or

11 financial responsibility in the amounts specified by §218.16.

12 (2) Change of name. A motor carrier that changes its

13 name shall file a supplemental application for registration no

14 later than the effective date of the change. The motor carrier

15 shall include evidence of insurance or financial responsibility

16 in the new name and in the amounts specified by §218.16. A motor

17 carrier that is a corporation must have its name change approved

18 by the Texas Secretary of State before filing a supplemental

19 application. A motor carrier incorporated outside the state of

20 Texas must complete the name change under the law of its state

21 of incorporation before filing a supplemental application.

22 (3) Change of address or legal agent for service of

23 process. A motor carrier shall file a supplemental application



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1 for any change of address or any change of its legal agent for  
2 service of process no later than the effective date of the  
3 change. The address most recently filed will be presumed  
4 conclusively to be the current address.

5 (4) Change in principal officers and titles. A motor  
6 carrier that is a corporation shall file a supplemental  
7 application for any change in the principal officers and titles  
8 no later than the effective date of the change.

9 (5) Conversion of corporate structure. A motor carrier  
10 that has successfully completed a corporate conversion involving  
11 a change in the name of the corporation shall file a  
12 supplemental application for registration and evidence of  
13 insurance or financial responsibility reflecting the new company  
14 name. The conversion must be approved by the Office of the  
15 Secretary of State before the supplemental application is filed.

16 (6) Change in drug-testing consortium status. A motor  
17 carrier that changes consortium status shall file a supplemental  
18 application that includes the names of the persons operating the  
19 consortium.

20 (7) Retaining a revoked or suspended certificate of  
21 registration number. A motor carrier may retain a prior  
22 certificate of registration number by:

23 (A) filing a supplemental application to re-



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1 register instead of filing an original application; and

2 (B) providing adequate evidence that the carrier  
3 has satisfactorily resolved the facts that gave rise to the  
4 suspension or revocation.

5 (f) Change of ownership. A motor carrier must file an  
6 original application for registration when there is a corporate  
7 merger or a change in the ownership of a sole proprietorship or  
8 of a partnership.

9 (g) Alternative vehicle registration for household goods  
10 agents. To avoid multiple registrations of a commercial motor  
11 vehicle, a household goods agent's vehicles may be registered  
12 under the motor carrier's certificate of registration under this  
13 subsection.

14 (1) The carrier must notify the department on a form  
15 approved by the director of its intent to register its agent's  
16 vehicles under this subsection.

17 (2) When a carrier registers vehicles under this  
18 subsection, the carrier's certificate will include all vehicles  
19 registered under its agent's certificates of registration. The  
20 carrier must register under its certificate of registration all  
21 vehicles operated on its behalf that do not appear on its  
22 agent's certificate of registration.

23 (3) The department may send the carrier a copy of any



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1 notification sent to the agent concerning circumstances that  
2 could lead to denial, suspension, or revocation of the agent's  
3 certificate.

4 (h) Substitute vehicles leased from leasing businesses. A  
5 registered motor carrier is not required to comply with the  
6 provisions of subsection (e) of this section for a substitute  
7 vehicle leased from a business registered under §218.18 of this  
8 title (relating to Short-term Lease and Substitute Vehicles). A  
9 motor carrier is not required to carry proof of registration as  
10 described in subsection (d) of this section if a copy of the  
11 lease agreement for the originally leased vehicle is carried in  
12 the cab of the temporary replacement vehicle.

13 (i) Once the motor carrier obtains a certificate of  
14 registration, the motor carrier must review its principal  
15 business address, mailing address, and email address in the  
16 department's online system every six months and shall update  
17 such information if it is no longer correct.

18  
19 §218.17. Unified Carrier Registration System.

20 (a) The State of Texas, through the department, shall  
21 participate in the federal motor carrier registration program  
22 under the Unified Carrier Registration System plan and  
23 agreement.



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1           (b) An interstate motor carrier operating in Texas, as well  
2 as a broker, freight forwarder, motor private carrier of  
3 property, and leasing company, must register and comply with the  
4 provisions of the Unified Carrier Registration System as  
5 required by 49 U.S.C. §14504a and the UCR plan and agreement.

6           (c) The department adopts by reference the March 17,  
7 2016~~[May 20, 2010]~~, version of the Unified Carrier Registration  
8 Agreement. A copy of the agreement is available for review in  
9 the Motor Carrier Division, Texas Department of Motor Vehicles.

10          (d) An application for UCR must be filed online as  
11 prescribed by the department, or an application must be filed  
12 with the department on a form prescribed by the department.



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SUBCHAPTER E. CONSUMER PROTECTION

§218.56 Proposals and Estimates for Moving Services.

(a) Written proposals. Prior to loading, a household goods carrier shall provide a written proposal, such as a bid or quote, to the shipper. A proposal shall state the maximum amount the shipper could be required to pay for the listed transportation and listed related services. This section does not apply if a pre-existing transportation contract sets out the maximum amount the shipper could be required to pay for the transportation services. Pre-existing transportation contracts include, but are not limited to, corporate contracts for the relocation of multiple employees.

(1) A proposal must contain the name and registration number of the household goods carrier as they appear on the motor carrier certificate of registration. If a proposal is prepared by the household goods carrier's agent, it shall include the name of the agent as listed on the carrier's agent filing with the department. A proposal shall also include the street address of the household goods carrier or its agent.

(2) A proposal must clearly and conspicuously state whether it is a binding or not-to-exceed proposal.

(3) A proposal must completely describe the shipment and all services to be provided. A proposal must state, "This



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1 proposal is for listed items and services only. Additional items  
2 and services may result in additional costs."

3 (4) A proposal must specifically state when the  
4 shipper will be required to pay the transportation charges, such  
5 as if payment must be made before unloading at the final  
6 destination. A proposal must also state what form of payment is  
7 acceptable, such as a cashier's check.

8 (5) A proposal must conspicuously state that a  
9 household goods carrier's liability for loss or damage to cargo  
10 is limited to \$.60 per pound per article unless the household  
11 goods carrier and shipper agree, in writing, to a higher limit  
12 of carrier liability.

13 (b) Hourly rates. If a proposal is based on an hourly rate,  
14 then it is not required to provide the number of hours necessary  
15 to perform the transportation and related services. However, if  
16 the number of hours is not included in a proposal, then the  
17 carrier must secure a written acknowledgment from the shipper  
18 indicating the proposal is complete without the number of hours.  
19 Also, the proposal shall state the maximum amount the shipper  
20 could be required to pay for the listed transportation and  
21 listed related services.

22 (c) Proposal as addendum. If a proposal is accepted by the  
23 shipper and the carrier transports the shipment, then the



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1 proposal is considered an addendum to the moving services  
2 contract.

3 (d) Additional items and services. If the household goods  
4 carrier determines additional items are to be transported and/or  
5 additional services are required to load, transport, or deliver  
6 the shipment, then before the carrier transports the additional  
7 items or performs the additional services the carrier and  
8 shipper must agree, in writing, to:

9 (1) allow the original proposal to remain in effect;

10 (2) amend the original proposal or moving services  
11 contract; or

12 (3) substitute a new proposal for the original.

13 (e) Amendments and storage.

14 (1) An amendment to an original proposal or moving  
15 services contract, as allowed in subsection (d) of this section,  
16 must:

17 (A) be signed and dated by the household goods  
18 carrier and shipper; and

19 (B) clearly and specifically state the amended  
20 maximum price for the transportation of the household goods.

21 (2) If the household goods carrier fails to amend or  
22 substitute an original proposal as required by this subsection  
23 and subsection (d) of this section, only the charges stated on



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1 the original proposal for moving services may be assessed on the  
2 moving services contract. The carrier shall not attempt to amend  
3 or substitute the proposal to add items or services after the  
4 items or services have been provided or performed.

5 (3) If through no fault of the carrier, the shipment  
6 cannot be delivered during the agreed delivery period, then the  
7 household goods carrier may place the shipment in storage and  
8 assess fees relating to storage according to the terms in  
9 §218.58 of this title (relating to Moving Services Contract -  
10 Options for Carrier Limitation of Liability), without a written  
11 agreement with the shipper to amend or substitute the original  
12 proposal.

13 (f) Combination document. A proposal required by subsection  
14 (a) of this section may be combined with other shipping  
15 documents, such as the moving services contract, into a single  
16 document. If a proposal is combined with other shipping  
17 documents, the purpose of each signature line on the combination  
18 document must be clearly indicated. Each signature is  
19 independent and shall not be construed as an agreement to all  
20 portions and terms of the combination document.

21 (g) Telephone estimates. A household goods carrier may  
22 provide an estimate for the transportation services by  
23 telephone. If the household goods carrier provides the estimate



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1 by telephone, then the carrier must also furnish a written  
2 proposal for the transportation services to the shipper prior to  
3 loading the shipment.

4 (h) Written document. To the extent this section requires a  
5 document or communication to be in writing, the document or  
6 communication may be in a printed or electronic format.

7 (i) Signatures. The signatures of the shipper and household  
8 goods carrier, as required by this section, may be transmitted  
9 by facsimile or other electronic means.

10  
11 §218.57 Moving Services Contract

12 (a) Requirements. A household goods carrier must give a  
13 copy of the moving services contract to the shipper prior to the  
14 loading of the shipment. This copy must include:

15 (1) the name and motor carrier registration number of  
16 the household goods carrier as they appear on the motor carrier  
17 certificate of registration, and the address and telephone  
18 number of the household goods carrier or the household goods  
19 agent that prepared the moving services contract;

20 (2) the date the shipment is loaded and a description  
21 of the shipment as household goods;

22 (3) the name and address of the shipper;

23 (4) the addresses of the:



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1 (A) origin;

2 (B) destination, if known; and

3 (C) any stops in transit, if known;

4 (5) the moving services to be performed;

5 (6) the conspicuous statement, "A household goods  
6 carrier's liability for loss or damage to any shipment is \$.60  
7 per pound per article, unless the carrier and shipper agree, in  
8 writing, to a greater level of liability.";

9 (7) a conspicuous explanation of any agreement for  
10 increased carrier liability limit, the amount of increased  
11 carrier liability, the cost of the increased limit, any  
12 deductible above the carrier's \$.60 per pound per article  
13 liability, and the statement, "This is not insurance.";

14 (8) a clear notice of the amount of any insurance for  
15 property that is transported or stored, the amount of insurance  
16 premiums, and the insurance policy number, if insurance for the  
17 shipment was purchased from or through the household goods  
18 carrier;

19 (9) the conspicuous statement, "This is a contract for  
20 moving services and is subject to the terms and conditions on  
21 the front and back of this document and any addendum.";

22 (10) a description of whether the proposal is a  
23 binding or not-to-exceed proposal, and the maximum price the



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1 shipper could be required to pay for the services listed;

2 (11) a statement authorizing performance of the listed  
3 services, signed and dated by the household goods carrier and  
4 the shipper; and

5 (12) a statement signed and dated by the shipper  
6 authorizing delivery of household goods at a destination where  
7 the shipper is not present if the shipper intends for the  
8 household goods carrier to deliver to a site where the shipper  
9 will not be present.

10 (b) Delivery. A household goods carrier must give a  
11 completed copy of the moving services contract to the shipper  
12 upon delivery of the shipment. The household goods carrier must  
13 release the household goods to the shipper at destination if the  
14 shipper pays the maximum price listed on the moving services  
15 contract. Except as provided by subsection (c) of this section,  
16 the moving services contract shall be signed and dated by the  
17 household goods carrier and the shipper confirming the shipment  
18 has been delivered. This signature only confirms delivery of the  
19 shipment. Except as provided in subsection (e) of this section,  
20 this copy must include the information listed in subsection (a)  
21 of this section and:

22 (1) the total charges for the shipment and the  
23 specific nature of each charge, including the method used to



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1 calculate the minimum and total charges if the shipment was not  
2 transported based on a binding proposal;

3 (2) an explanation of all additional moving services  
4 provided in accordance with §218.56(d) of this title (relating  
5 to Proposals and Estimates for Moving Services); and

6 (3) the addresses of the origin, destination, and any  
7 stops in transit if not previously provided on the moving  
8 services contract at the origin.

9 (c) Delivery to a destination where the shipper is not  
10 present. If a shipper authorizes the household goods carrier to  
11 deliver household goods to a destination where the shipper is  
12 not present, as allowed in subsection (a)(12) of this section,  
13 the moving services contract need not be signed and dated by the  
14 shipper at the time of delivery.

15 (d) Pre-existing transportation contracts. A household  
16 goods carrier is not required to comply with subsection (b)(1)  
17 and (2) of this section if a pre-existing transportation  
18 contract sets out the maximum amount the shipper could be  
19 required to pay for the transportation services. Pre-existing  
20 transportation contracts include, but are not limited to,  
21 corporate contracts for the relocation of multiple employees.

22 (e) Copies. To the extent this section requires a copy of a  
23 document or a written document, the document may be in a printed



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1 or electronic format.

2       (f) Signatures. The signatures of the shipper and the  
3 household goods carrier, as required by [~~subsections (a)(11) and~~  
4 ~~(b) of~~] this section, may be transmitted by facsimile or other  
5 electronic means. These signatures must be separate from any  
6 signatures required by the household goods carrier such as the  
7 acknowledgment of the statement of value of the shipment.

8

9 §218.65 Tariff Registration.

10       (a) Submission. In accordance with Transportation Code,  
11 §643.153, a household goods carrier and/or its household goods  
12 agent shall file a tariff with the department. [~~The tariff shall~~  
13 ~~establish maximum rates and charges for transportation services~~  
14 ~~when a highway between two or more incorporated cities, towns or~~  
15 ~~villages is traversed.] A household goods carrier who is not a  
16 member of an approved association under §218.64 of this title  
17 (relating to Rates) shall file a tariff individually. In lieu of  
18 filing individually, a household goods carrier or its household  
19 goods agent, that is a member of an approved association in  
20 accordance with §218.64, may designate a collective association  
21 as its ratemaking association. The association may file a  
22 tariff, as required by this subsection, for member carriers.~~

23       (1) Contents. The tariff:



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1 (A) shall set out all rates, charges, rules,  
2 regulations, or other provisions, in clear and concise terms,  
3 used to determine total transportation charges;

4 (B) may provide for the offering, selling, or  
5 procuring of insurance as provided in §218.54 of this title  
6 (relating to Selling Insurance to Shippers);

7 (C) may provide for the base transportation  
8 charge to include assumption by the household goods carrier for  
9 the full value of the shipment in the event a policy or other  
10 appropriate evidence of the insurance purchased by the shipper  
11 from the household goods carrier is not issued to the shipper at  
12 the time of purchase;

13 (D) shall describe the procedure for determining  
14 charges that are below the maximum rate for each service  
15 performed; and

16 (E) shall reference a specific mileage guide or  
17 source, if information on rates and charges based on mileage is  
18 included in the tariff (The referenced mileage guide shall be  
19 filed with the department as an addendum to the tariff. If the  
20 household goods carrier utilizes a computer database as a  
21 mileage guide, the household goods carrier shall allow  
22 department personnel free access to the system when conducting  
23 an inquiry regarding a specific movement performed by the



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1 household goods carrier).

2 (2) Interstate tariff. In accordance with  
3 Transportation Code, §643.153, a household goods carrier may  
4 satisfy the requirements of this subsection by filing a copy of  
5 its tariff governing interstate household goods transportation  
6 services.

7 (3) Transmittal letter. A transmittal letter shall  
8 accompany a tariff being filed. The transmittal letter shall  
9 provide:

10 (A) the name of the household goods carrier;

11 (B) the Texas mailing address and street address  
12 of the household goods carrier's principal office;

13 (C) the household goods carrier's registration  
14 number, if any;

15 (D) the name and title of the household goods  
16 carrier's representative authorizing the tariff filing; and

17 (E) whether the tariff is being filed on behalf  
18 of a member carrier.

19 (4) Format. Tariffs shall be filed:

20 (A) on 8 1/2" x 11" paper;

21 (B) with a cover sheet showing:

22 (i) the name of the issuing household goods  
23 carrier or collective ratemaking association;



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- 1 (ii) the Texas mailing and street address;
- 2 (iii) the issuance date of the tariff;
- 3 (iv) the effective date of the tariff; and
- 4 (v) the tariff number; and

5 (C) separated into the following sections:

- 6 (i) general rules;
- 7 (ii) accessorial services; and
- 8 (iii) rates.

9 (5) Item numbers. Individual items shall be titled and  
10 designated by item number.

11 (6) Amendments. Any amendment to a tariff shall be  
12 filed with the department not less than 10 days prior to the  
13 effective date of the amendment. The household goods carrier or  
14 collective ratemaking association filing on behalf of its member  
15 may either file an amended tariff in total or an amendment  
16 referencing the specific sections and items which are being  
17 amended. The amendment format shall be the same as required by  
18 paragraph (4) of this subsection. A transmittal letter providing  
19 the same information as required by paragraph (3) of this  
20 subsection shall accompany the amendment filing.

21 (7) Rejection. The department will reject a tariff or  
22 amendment filing if it is determined the tariff:

23 (A) fails to meet the requirements of this



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1 section; or

2 (B) fails to fully disclose, in clear and concise  
3 terms, all rates, charges, and rules.

4 (8) Electronic filings. A household goods carrier may  
5 file an electronic copy of its tariff provided that the document  
6 is consistent with the provision of this subsection and is  
7 formatted in Microsoft Word or other format approved by the  
8 director.

9 (b) Operations. The department will accept a tariff which  
10 is in substantial compliance with this section if the tariff was  
11 submitted prior to November 1, 1995.

12 (c) Access. In accordance with Transportation Code,  
13 §643.153, tariffs filed in accordance with this section will be  
14 made available for public inspection at the TxDMV Enforcement  
15 Division or by calling the department's toll-free consumer  
16 helpline as listed on the department's website.

17 (d) Conflicts. All provisions of household goods carriers'  
18 tariffs are superseded to the extent they may conflict with the  
19 provisions of this chapter.



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SUBCHAPTER F. ENFORCEMENT

§218.73 Administrative Proceedings.

(a) If the department decides to take an enforcement action under §218.71 of this title (relating to Administrative Penalties) or §218.72 of this title (relating to Administrative Sanctions), the department shall give written notice to the motor carrier by first class mail to the carrier's address as shown in the records of the department.

(b) The notice required by subsection (a) of this section must include:

(1) a brief summary of the alleged violation;

(2) a statement of each sanction and/or penalty;

(3) the effective date of each sanction and/or penalty;

(4) a statement informing the carrier of the carrier's right to request a hearing;

(5) a statement as to the procedure for requesting a hearing, including the period during which a request must be made; and

(6) a statement that the proposed penalties and sanctions will take effect on the date specified in the letter if the motor carrier fails to request a hearing.

(c) The motor carrier must submit a written request for a hearing to the address provided in the notice not later than the



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1 26th day after the date the notice is mailed.

2 (d) On receipt of the written request for a hearing the  
3 department will refer the matter to the State Office of  
4 Administrative Hearings. When the hearing is set, the department  
5 will give notice of the time and place of the hearing to the  
6 carrier.

7 (e) If the motor carrier does not make a written request  
8 for a hearing or enter into a settlement agreement [~~under~~  
9 ~~§218.74 of this title (relating to Settlement Agreements)]~~  
10 before the 27th day after the date the notice is mailed, the  
11 department's decision becomes final.

12 (f) Except as provided by Transportation Code, Chapter 643  
13 and this chapter, any proceeding at the State Office of  
14 Administrative Hearings is governed by Government Code, Chapter  
15 2001 and 1 TAC Chapter 155, including the authority to  
16 informally dispose of the contested case by stipulation, agreed  
17 settlement, consent order, or default.

18 (g) The department and the motor carrier may informally  
19 dispose of the enforcement action by entering into a settlement  
20 agreement or agreeing to stipulations at any time before the  
21 director issues a final order. However, the motor carrier must  
22 pay any penalty in full prior to the execution of a settlement  
23 agreement.



Texas Department of Motor Vehicles  
Chapter 218, Motor Carriers

SUBCHAPTER F. ENFORCEMENT

§218.75. Cost of Preparing Agency Record.

In the event that a final decision is appealed and the department is required to transmit to the court the original or a certified copy of the record, or any part thereof, the appealing party shall pay the costs of preparation of such record, unless waived by the department in whole or in part.



Texas Department of Motor Vehicles  
Chapter 218, Motor Carriers

SUBCHAPTER F. ENFORCEMENT

§218.74 Settlement Agreements

~~(a) The department and the alleged violator may enter into a compromise settlement agreement at any time before the issuance of a final decision. The compromise settlement agreement must provide that the alleged violator consents to the assessment of a specified administrative penalty or to other specified action by the department against the violator and must be signed by the alleged violator and the director. A compromise agreement is not an admission of the alleged violation.~~

~~(b) If the settlement agreement requires the payment of a penalty to the department, the alleged violator must submit a cashier's check or money order to the department in the agreed amount before the agreement may be executed.~~

~~(c) Upon the execution by the director of a settlement agreement, the administrative proceeding ends. The settlement is a department order that is final.~~





## **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.





- 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.



## 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.



## Key Performance Indicator Measures Adopted by TxDMV Board 9/12/14

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		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
	Implement appropriate best practices	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
	Continuous business process improvement and realignment	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 EPMD project management standards based upon internal quality assurance reviews	Baseline in development	100%		EPMD
	Executive ownership and accountability for results	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
	Organizational culture of continuous improvement and creativity	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
Strategic	Focus on the internal customer	39	Percent of favorable responses from customer satisfaction surveys	Baseline in development	90%		EPMD
		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 Centri	Excellent Service Delivery	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
		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.							