

# **TxDMV Board Meeting**

8:00 a.m. Thursday, December 10, 2020

#### AGENDA BOARD MEETING TEXAS DEPARTMENT OF MOTOR VEHICLES OPEN MEETING VIA TELEPHONE CONFERENCE CALL\* PURSUANT TO GOVERNOR'S MARCH 16, 2020, TEMPORARY SUSPENSION OF CERTAIN OPEN MEETING PROVISIONS\*\* THURSDAY, DECEMBER 10, 2020 8:00 A.M.

#### THIS MEETING WILL BE HELD REMOTELY VIA TELEPHONE CONFERENCE CALL\*

Instructions for accessing the meeting via Webex: <u>https://txdmv.webex.com/txdmv/onstage/g.php?MTID=ee65b56ce52a408760c4e324af2d849a2</u> Phone number for accessing the meeting via phone: United States Toll Free: 1-844-740-1264 Event number/Access code: 177 101 3604 Event Passcode: 121020

You are solely responsible for your system and the installation and use of WebEx software.

Link to December 10, 2020, TxDMV Board Meeting Documents: https://www.txdmv.gov/about-us/txdmv-board-meetings

\*The public can listen to the meeting via the WebEx link or the toll-free number listed above. If you have any technical questions about accessing the meeting, please send an email to <u>Board.Tech.Help@txdmv.gov</u>.

\*\*Action by Governor Greg Abbott pursuant to Texas Government Code Section 418.016

https://gov.texas.gov/news/post/governor-abbott-allows-virtual-and-telephonic-openmeetings-to-maintain-government-transparency

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. Pledges of Allegiance U.S. and Texas
- 3. Chair's Reports Chairman Treviño

- A. Introduction of New Board Member Manuel "Manny" Ramirez
- B. Committee Member Appointments

#### 4. Executive Director's Reports - Whitney Brewster

- A. Introduction of Ombudsman Leah Leone
  - B. State Employee Charitable Campaign (SECC) Awards and Results
- C. TxDMV Website Update
- D. Awards, Recognition of Years of Service, and Announcements

#### **RULES – ADOPTIONS**

7

9

 5. Chapter 215, Motor Vehicle Distribution - Corrie Thompson Amendments, §215.500 New, §215.504 Chapter 218, Motor Carriers Amendments, §218.72 (Relating to SB 604, clarifying the refund authority for motor vehicle buyers and

lessees; refund to a consumer who paid the motor carrier to transport household goods)

(Proposal Published - August 21, 2020 - 45 Tex Reg 5874) (Review by Office of the Governor, Regulatory Compliance Division; submission August 27, 2020; comment period closed September 30, 2020)

# 24 6. Chapter 221, Salvage Vehicle Dealers - Corrie Thompson New §221.96, Cease and Desist

(Relating to SB 604, establishing process under which board may issue a cease and desist order to prohibit a person from violating statutes, board rules, or board orders, after notice and an opportunity for a hearing) (Proposal Published - August 21, 2020 - 45 Tex Reg 5902)

(Review by Office of the Governor, Regulatory Compliance Division; submission August 24, 2020; comment period closed September 25, 2020)

7. Chapter 209, Finance - Jimmy Archer and Linda M. Flores
 Amendments, §209.23
 Chapter 219, Oversize and Overweight Vehicles and Loads

Amendments, §§219.2, 219.11, 219.13 - 219.15, 219.42, 219.43, and 219.61 - 219.63

(Relating to HB 61 and HB 2620, escort flag vehicles including the use of certain lighting equipment; removing escrow account payment) (Proposal Published - August 21, 2020 - 45 Tex Reg 5869)

## 105 8. Chapter 219, Oversize and Overweight Vehicles and Loads - Jimmy Archer Amendments, §219.31 and §219.126 Repeal, §219.83

(Relating to HB 2620, movement of oversize or overweight vehicles and enforcement of motor vehicle size and weight limitations) Proposal Published - August 21, 2020 - 45 Tex Reg 5899)

112	9.	<ul> <li>Chapter 206, Management - Timothy Menke and Sandra Menjivar-Suddeath New, §206.151</li> <li>Chapter 223, Compliance and Investigations Division New, §223.101</li> <li>(Relating to SB 604, risk-based monitoring and prevention of title and registration fraud)</li> </ul>
		(Proposal Published - August 21, 2020 - 45 Tex Reg 5867)
124	10.	Chapter 206, Management - Tracey Beaver Amendments, §206.22 Chapter 215, Motor Vehicle Distribution Amendments, §215.22 and §215.55 New, §§215.59 - 215.63 (Relating to SB 604, new Occupations Code §2301.709(d), contested cases; and a petition for rulemaking) (Informal Working Draft and Request for Informal Comments on Rules Relating to Contested Cases; and Petition for Rulemaking - Published on TxDMV website April 3, 2020 to May 4, 2020) (Proposal Published - August 21, 2020 - 45 Tex Reg 5866) (Review by Office of the Governor, Regulatory Compliance Division; submission August 24, 2020; comment period closed September 25, 2020)
193	11.	Chapter 217, Vehicle Titles and Registration - Tim Thompson Amendments, §217.3 (Relating to vehicle titling for mopeds) (Proposal Published - October 16, 2020 - 45 Tex Reg 7407)
	BRIE	FING AND ACTION ITEMS
199	12.	Specialty Plate Design - Tim Thompson Penn State - New Design proposed by My Plates under Transportation Code, §504.851
202	13.	<ul> <li>Legislative and Public Affairs Committee Update - Committee Chair Scott</li> <li>A. Alternatively Fueled Vehicles Study Update as Submitted to the Legislature under Senate Bill 604, 86th Legislature, Regular Session (2019) (BRIEFING ONLY)</li> </ul>
265		B. Agency Process for Legislative Session - Caroline Love (BRIEFING ONLY)
266		C. Recommended Legislation to the 87th Legislature under Transportation Code, §1001.025 - Caroline Love
269	14.	<ul> <li>Finance and Audit</li> <li>A. Internal Audit Division Status Update - Sandra Menjivar-Suddeath (BRIEFING ONLY)</li> <li>- FY 2020 Quality Assurance Improvement Program Report</li> </ul>

- B. Internal Audit Charter Sandra Menjivar-Suddeath
- 305 **15.** Amendment to the TxDMV Balanced Scorecard Tom Shindell
- **16.** Appointment of Ombudsman to Act as Civil Rights Officer under Transportation Code, §1001.023(b)(7) Chairman Treviño

#### **EXECUTIVE SESSION**

17. 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.

- Discussion relating to TxDMV dispute resolution process and recent EEOC complaints and internal Civil Rights Office complaints.

- Performance Plan of Executive Director

**Section 551.076** - Deliberation Regarding Security Devices or Security Audits; Closed Meeting.

- the deployment, or specific occasions for implementation, of security personnel or devices; or

- a security audit.

**Section 551.089** - Deliberation Regarding Security Devices or Security Audits Closed Meeting.

- security assessments or deployments relating to information resources technology;

- network security information as described by Government Code Section 2059.055(b); or

- the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices.

- **18.** Action Items from Executive Session Performance Plan of Executive Director
- **19.** Public Comment
- 20. 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.

If you want to comment on any agenda item (including an open comment under Item #19), you must send an email to GCO\_General@txdmv.gov or call (512) 465-5665 with one of the following prior to the agenda item being taken up by the Board:

1. a completed registration form (available on the TxDMV webpage for the Board and other public meetings: <u>https://www.txdmv.gov/about-us/txdmv-board-meetings</u>); or

- 2. the following information:
  - a. the agenda item you wish to comment on;
  - b. your name;
  - c. your address (optional), including your city, state, and zip code; and
  - d. who you are representing.

You must wait for the chairman to call on you before you verbally make your comment via the link or the toll-free number listed above. Each speaker will be limited to three minutes, and time allotted to one speaker may not be reassigned to another speaker.

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

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 David Richards by telephone at (512) 465-1423.

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

CERTIFYING OFFICIAL: Tracey Beaver, General Counsel, (512) 465-5665.

Board Meeting eBook

# Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

7

То:	Texas Department of Motor Vehicles Board
From:	Whitney Brewster, Executive Director
Agenda Item:	4.A
Subject:	Introduction of Employee Ombudsman Leah Leone

#### **BRIEFING ONLY**

Leah Leone joined the TxDMV team on November 1, 2020, as the Employee Ombudsman and Ethics Officer for the Texas Department of Motor Vehicles (TxDMV).

#### PURPOSE AND EXECUTIVE SUMMARY

Reporting to the Executive Director, the Employee Ombudsman and ethics advisor positively impacts the lives of TxDMV employees and agency culture by engaging with employees in effective conflict resolution. In addition to engaging directly in dispute resolution with employees, the Employee Ombudsman adds value to the TxDMV by educating both staff and managers on strategies and techniques for positive conflict management and dispute resolution. The Employee Ombudsman facilitates communication between employees, management and executive staff regarding agency policies, procedures, and practices for the Texas Department of Motor Vehicles. Work involves intake and triage of issues, performing internal fact finding and review, providing mediation and facilitation services on employment issues, counseling employees, and preparing final decisions or reports. Providing formalized training to TxDMV staff, identifying workplace trends and making recommendations to help support TxDMV's values are critical to furthering a positive culture for employees. Following in the trend of longstanding programs of employee ombudsman in Texas state agencies, TxDMV's Employee Ombudsman will meet and respond to the needs of our employees leading to improved retention as well as greater productivity of TxDMV's workforce. The Employee Ombudsman will help resolve issues before they escalate into adversarial, time consuming or formal disciplinary processes.

#### **FINANCIAL IMPACT**

None.

#### BACKGROUND AND DISCUSSION

Leah is an experienced high conflict mediator, teacher, and trainer with over 25 years of diverse experience managing and teaching conflict resolution as a law professor specializing in alternative dispute resolution, and as a mediator, mediating civil, criminal, and family law cases in district court along with EEOC and civil rights cases.



#### **Texas Department of Motor Vehicles Organization Chart**



Board Meeting eBook

# Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

То:	Texas Department of Motor Vehicles Board
From:	Whitney Brewster, Executive Director
Agenda Item:	4.D
Subject:	Executive Director's Report – Recognition of Years of Service

#### RECOMMENDATION

The Texas Department of Motor Vehicles Board offers congratulations to employees receiving recognition for an award, reaching a state service milestone, or retirement.

#### PURPOSE AND EXECUTIVE SUMMARY

The Executive Director announces the name of individuals who retired from the agency and recognizes employees who have reached a state service milestone of 20 years and every five-year increment thereafter. Recognition at the December 10, 2020 Board Meeting for state service awards and retirements include:

- Felicia Cantu in Information Technology reached 20 years of state service
- Marth Yancey in Human Resource Division reached 20 years of state service
- Karon Otte McRae in Motor Carrier Division reached 25 years of state service
- Matthew Levitt in Human Resource Division reached 25 years of state service
- Sergio Rey in Finance and Administrative Services reached 25 years of state service
- Stacey Cullen in Enforcement Division reached 30 years of state service
- Pamela Minnick in Vehicle Titles and Registration Division reached 35 years of state service

#### Retirements

- Cindy James Information Technology
- Tammera Parr-Lamb Vehicle Titles and Registration Division
- John Stewart Finance and Administrative Services

#### FINANCIAL IMPACT

No financial impact.

#### BACKGROUND AND DISCUSSION

No additional background and discussion.

Board Meeting eBook

# Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Board Meeting Date: 12/10/2020 ACTION ITEM

To: From:	Texas Department of Motor Vehicles Board Corrie Thompson, Enforcement Division Director
Agenda Item:	5
Subject:	Chapter 215, Motor Vehicle Distribution Amendments, §215.500 New, §215.504 Chapter 218, Motor Carriers Amendments, §218.72 (Relating to SB 604, clarifying the refund authority for motor vehicle buyers and lessees; refund to a consumer who paid the motor carrier to transport household goods)

#### **RECOMMENDATION**

Approval to publish the adopted new sections in the *Texas Register*.

#### PURPOSE AND EXECUTIVE SUMMARY

The purpose of the amendments to §215.500 and new §218.72 is to implement Senate Bill (SB) 604, 86th Legislature, Regular Session (2019), which amended Occupations Code Chapter 2301 by adding §2301.807 which allows the board to order a licensee under Chapter 2301 to pay a refund to a buyer or lessee of a motor vehicle and Transportation Code Chapter 643 by adding §643.257 authorizing the department to order a motor carrier that violates Chapter 643, or a department rule or order issued under that chapter, to pay a refund to a consumer who paid the motor carrier to transport household goods.

#### FINANCIAL IMPACT

None

#### BACKGROUND AND DISCUSSION

The amendment to §215.500 adds §215.500(a)(5) to the existing list of administrative sanctions available to the department. Department enforcement will employ the use of refunds within existing enforcement procedures outlined in Chapter 215.

New §215.504 permits the board to order a person licensed under Occupations Code Chapter 2301 to issue a refund if, after a proceeding under Chapter 215, it determines the person violated or has violated Occupations Code Chapter 2301 or department rules.

The amendment to §218.72 adds new subsection (d), which adds refunds to the existing list of administrative sanctions available to the department. Department enforcement may order a motor carrier that violates Transportation Code Chapter 643, department rules, or a department order adopted under Transportation Code Chapter 643 to issue a refund to a customer who paid the motor carrier to transport household goods.

#### COMMENTS

The proposed new section and amendments were published for comment in the August 21, 2020, issue of the Texas Register. The comment period closed on September 21, 2020. The department received written comments from the

Board Meeting eBook Texas Automobile Dealers Association on §215.504. All comments received were addressed in the preamble sections and rule text was amended in response to one comment.

If the board adopts the rules during its December 10, 2020, open meeting, staff anticipates:

- Publication in the December 25, 2020, issue of the Texas Register; and
- An effective date of December 30, 2020.



1108 Lavaca, Suite 800 Austin, Texas 78701 Phone: 512-476-2686 www.tada.org

September 18, 2020

Ms. Tracey Beaver General Counsel Office of General Counsel Texas Department of Motor Vehicles 4000 Jackson Avenue Austin, TX 78731

Sent via email: <u>rules@txdmv.gov</u>

Proposed New 43 TAC § 215.504. Buyer or Lessee Refund.

Dear Ms. Beaver:

On behalf of the Texas Automobile Dealers Association (TADA), please accept these comments with respect to the proposed rule, 43 TAC § 215.504. *Buyer or Lessee Refund.*, as published in the August 21, 2020, *Texas Register*, 45 *TexReg* 5874- 5876.

This proposal allows that the board may order a person to issue a refund whether those funds are documented as a separate line item or part of an overall amount paid by a *consumer*. As the statutory language in § 2301.807, Occupations Code,<sup>1</sup> discusses a refund to the buyer or lessee of the motor vehicle, TADA recommends that "consumer" be replaced with "buyer or lessee."

Tracking the statutory language and amending the proposed rule from "consumer" to "buyer or lessee" allows the rule to read as follows:

(b) Under this section, a refund is the return of any percentage ordered by the department of funds paid, or contracted to be paid, to a person, whether those funds are documented as a separate line item or part of the overall amount paid by a **buver or lessee** [consumer].

<sup>&</sup>lt;sup>1</sup>§ 2301.807: "If, after a proceeding under this chapter and board rules, the board determines that a person is violating or has violated this chapter or a rule adopted or order issued under this chapter, the <u>board may order the person to pay a refund to the buyer or lessee of the motor vehicle</u> that is the subject of the proceeding." (TEX. OCC. CODE ANN. § 2301.807 (Vernon Supp. 2020)). (Emphasis added.)

Ms. Tracey Beaver September 18, 2020 page 2

> Refund may include overpayments, fees paid for services not rendered, and payments made for products not delivered.

This requested change provides that the rule is in accord with the statute and thus provides clarity and consistency with the language as adopted by the Legislature.

On behalf of TADA, I appreciate the opportunity to comment and I am available to answer any question you may have.

Jaren Milias Sincerely,

Karen Phillips General Counsel/EVP

1	ADOPTION OF
2	SUBCHAPTER J. ADMINISTRATIVE SANCTIONS
3	43 TAC §215.500 and §215.504
4	INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC
5	§215.500, concerning administrative sanctions and procedures and adds new 43 TAC §215.504 concerning
6	buyer and lessee refunds. The adopted amended and new sections implement Senate Bill (SB) 604, 86th
7	Legislature, Regular Session (2019), which amended Occupations Code Chapter 2301 by adding §2301.807
8	which allows the board to order a licensee under Chapter 2301 to pay a refund to a buyer or lessee of a
9	motor vehicle.
10	The department adopts amended §215.500 without changes to the proposed text as published in the
11	August 21, 2020, issue of the <i>Texas Register</i> (45 <i>TexReg</i> 5874). The department adopts new §215.504 with
12	changes to the proposed text as published in the August 21, 2020, issue of the Texas Register (45 TexReg
13	5874). This section will be republished.
14	REASONED JUSTIFICATION. The amendment to §215.500 adds §215.500(a)(5) to the existing list of
15	administrative sanctions available to the department. The department's enforcement division will order
16	refunds within existing enforcement procedures outlined in Chapter 215. The board could order the
17	issuance of refunds through settlement negotiations undertaken under Chapter 215; as well as, the
18	adoption of a proposal for decision issued by an administrative law judge at the State Office of
19	Administrative Hearings. New §215.500(a)(5) is necessary to implement SB 604 and to clarify that refunds
20	will be ordered using the same procedures as existing sanctions under the rules.
21	New §215.504(a) permits the board to order a person to issue a refund if, after a proceeding
22	under Chapter 215, it determines the person violated or has violated Occupations Code Chapter 2301 or

23 department rules. New §215.504(a) is necessary to implement SB 604.

December 10, 2020

#### Board Meeting eBook D TITLE 43. TRANSPORTATION Part 10. Texas Department of Motor Vehicles Chapter 215 – Motor Vehicle Distribution

New §215.504(b) defines "refund" as the return of any percentage of funds paid, or contracted to be paid, to a person, whether those funds are documented as a separate line item or the overall amount paid by a buyer or lessee. Based on a comment received, the department considers it necessary to amend the proposed language to substitute the word "buyer or lessee" for "consumer" to better reflect the statutory language in Occupations Code §2301.807. This change does not affect persons not on notice of the proposal or add additional costs.

7 New §215.504(b) explains that a refund may include overpayments, fees paid for services not 8 rendered, and payments made for products not delivered. A refund does not include any consideration of 9 damages or harm over the amount paid by the buyer or lessee. Occupations Code §2301.807 did not 10 extend the department's sanction authority to order damages or restitution. New §215.504(b) is 11 necessary to explain the meaning of refund in the subsection and clarify that the refund is not a 12 mechanism for restitution or to make the consumer whole; such as, the dealer licensee reimbursing the buyer or lessee for the cost of third-party services in a situation where the buyer or lessee must engage a 13 14 third-party to complete services not rendered. A refund is a tool that may be used by the department's 15 enforcement division to order a person who has violated Occupations Code Chapter 2301 to refund the 16 buyer or lessee by giving back or returning money paid or contracted to be paid, if the buyer or lessee has 17 entered into a financing agreement, because the buyer or lessee did not receive a service or item. The refund is limited to funds paid or contracted to be paid to the dealer licensee. 18

- 19 SUMMARY OF COMMENTS.
- The department received written comments requesting a change in the proposed text from the
  Texas Automobile Dealers Association.
- 22 **§215.504.**
- 23 Comment.

	Part 10. Texas Department of Motor Vehicles Chapter 215 – Motor Vehicle Distribution
1	The commenter notes that the proposed language permits the board to order a person to issue a refund
2	whether those funds are documented as a separate line item or part of an overall amount paid by a
3	"consumer" and recommends that the language be amended to align with Occupations Code §2301.807,
4	which permits a refund to the "buyer or lessee of the motor vehicle."
5	Agency Response.
6	The department agrees with the commenter and did not intend to expand the universe of
7	individuals who may be entitled to a refund under Occupations Code §2301.807 with the use of
8	"consumer." To clarify department intent and better conform to the statutory language, §215.504(b) has
9	been changed to substitute " <u>buyer or lessee</u> " for " <u>consumer.</u> " The change does not affect persons not on
10	notice of the proposal or add additional costs.
11	STATUTORY AUTHORITY. The department adopts amended §215.500 and new §215.504 under
12	Occupations Code §2301.155 and Transportation Code §1002.001.
13	Occupations Code §2301.155 authorizes the board of the Texas Department of Motor Vehicles to
14	adopt rules as necessary or convenient to administer this chapter and to govern practice and procedure
15	before the board.
16	Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and
17	appropriate to implement the powers and the duties of the department.
18	CROSS REFERENCE TO STATUTE. Occupations Code §2301.807.
19	техт.
20	Subchapter J. Administrative Sanctions
21	43 TAC §215.500 and §215.504
22	§215.500. Administrative Sanctions and Procedures.
23	(a) An administrative sanction may include:

December 10, 2020

Board Meeting eBook

TITLE 43. TRANSPORTATION

16

**Adopted Sections** 

	Board Meeting eBookDecember 10, 202017TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesChapter 215 – Motor Vehicle Distribution
1	(1) denial of an application for a license;
2	(2) suspension of a license;
3	(3) revocation of a license; [ <del>or]</del>
4	(4) the imposition of civil penalties <u>; or</u>
5	(5) a refund under §215.504 of this title (concerning buyer or lessee refund).
6	(b) The department shall issue and mail a Notice of Department Decision to a license applicant,
7	license holder, or other person by certified mail, return receipt requested, to the last known address upon
8	a determination under Occupations Code, Chapters 2301 and 2302 or Transportation Code, Chapter 503
9	that:
10	(1) an application for a license should be denied; or
11	(2) administrative sanctions should be imposed.
12	(c) The last known address of a license applicant, license holder, or other person is the last mailing
13	address provided to the department when the license applicant applies for its license, when a license
14	holder renews its license, or when the license holder notifies the department of a change in the license
15	holder's mailing address.
16	(d) The Notice of Department Decision shall include:
17	(1) a statement describing the department decision and the effective date;
18	(2) a description of each alleged violation;
19	(3) a description of each administrative sanction being adopted;
20	(4) a statement regarding the legal basis for each administrative sanction;
21	(5) a statement regarding the license applicant, license holder, or other person's right to
22	request a hearing;
23	(6) the procedure to request a hearing, including the deadline for filing; and

	Part 10. Texas Department of Motor Vehicles Chapter 215 – Motor Vehicle Distribution
1	(7) notice to the license applicant, license holder, or other person that the adopted
2	decision and administrative sanctions in the Notice of Department Decision will become final on the date
3	specified if the license applicant, license holder, or other person fails to timely request a hearing.
4	(e) The license applicant, license holder, or other person must submit, in writing, a request for a
5	hearing under this section. The department must receive a request for a hearing within 26 days of the
6	date of the Notice of Department Decision.
7	(f) If the department receives a timely request for a hearing, the department will set a hearing
8	date and give notice to the license applicant, license holder, or other person of the date, time, and location
9	of the hearing.
10	(g) If the license applicant, license holder, or other person does not make a timely request for a
11	hearing or enter into a settlement agreement within 27 days of the date of the Notice of Department
12	Decision, the department decision becomes final.
13	
14	<u>§215. 504. Buyer or Lessee Refund.</u>
15	(a) The board may order a person to issue a refund if, after a proceeding under this chapter, it
16	determines the person violated or has violated Occupations Code Chapter 2301 or department rules.
17	(b) Under this section, a refund is the return of any percentage ordered by the department of
18	funds paid, or contracted to be paid, to a person, whether those funds are documented as a separate line
19	item or part of the overall amount paid by a buyer or lessee. Refund may include overpayments, fees paid
20	for services not rendered, and payments made for products not delivered.

Board Meeting eBook

12/10/20

TITLE 43. TRANSPORTATION

Adopted Sections

Board Meeting eBookDeTITLE 43. TRANSPORTATIONPart 10. Texas Department of Motor VehiclesChapter 215 – Motor Vehicle Distribution

- 1
- 2 **CERTIFICATION.** The agency certifies that legal counsel has reviewed the adoption and found it to be
- 3 within the state agency's legal authority to adopt.
- 4 Issued at Austin, Texas, on <u>MM DD, YYYY</u>.
- 5
- 6

Tracey Beaver, General Counsel

Part 10. Texas Department of Motor Vehicles Chapter 218 – Motor Carriers 1 **ADOPTION OF** 2 **SUBCHAPTER F. ENFORCEMENT** 3 43 TAC §218.72 4 INTRODUCTION. The Texas Department of Motor Vehicles adopts an amendment to 43 TAC §218.72 5 concerning administrative sanctions. The amendment implements Senate Bill (SB) 604, 86th Legislature, 6 Regular Session (2019). Senate Bill 604 amended Transportation Code Chapter 643 by adding §643.257, 7 authorizing the department to order a motor carrier that violates Transportation Code Chapter 643, or a 8 department rule or order issued under that chapter, to pay a refund to a consumer who paid the motor 9 carrier to transport household goods. The department adopts the amendments to §218.72 without 10 changes to the proposed text as published in the August 21, 2020 issue of the Texas Register (45 TexReg 5876). The rule will not be republished. 11 12 **REASONED JUSTIFICATION.** The amendment to §218.72 adds new subsection (d), which adds refunds to 13 the existing list of administrative sanctions available to the department. Department enforcement will 14 employ the use of refunds within existing enforcement procedures outlined in Chapter 218. 15 New §218.72(d)(1) permits the department to order a motor carrier that violates Transportation 16 Code Chapter 643, or a department rule or order issued under that chapter, to pay a refund to a consumer 17 who paid the motor carrier to transport household goods. New §218.72(d)(1) is necessary to implement SB 604. 18 19 New §218.72(d)(2) defines "refund" as the return of any percentage of funds paid, or contracted 20 to be paid, to a motor carrier transporting household goods, whether those funds are documented as a 21 separate line item or included in the overall amount paid by a customer. Adopted new §218.72(d)(2) is 22 necessary to explain the meaning of "refund" in the subsection.

Board Meeting eBook TITLE 43. TRANSPORTATION Board Meeting eBook De TITLE 43. TRANSPORTATION Part 10. Texas Department of Motor Vehicles Chapter 218 – Motor Carriers

1	New §218.72(d)(2)(A) clarifies that a refund includes overpayments, fees paid for services not
2	rendered, and fees paid for charges not listed on the household mover's tariff after the household mover
3	takes possession of the customer's property. Adopted new §218.72(d)(2)(B) clarifies that a refund does
4	not include any consideration of damages or harm over the amount paid by the customer. New
5	§218.72(d)(2)(A) and (B) are necessary to clarify that a refund is not a mechanism for restitution or to
6	make the consumer whole, such as a household good mover reimbursing the consumer for the cost of
7	third-party services to complete services not rendered by the mover. A refund is a tool that may be used
8	by the department's enforcement division to order a household good mover to refund the customer by
9	returning money paid, or contracted to be paid, because they did not receive a service or item. The refund
10	all circumstance would be limited to funds paid or contracted to be paid to the household goods mover.
11	SUMMARY OF COMMENTS. The department received no comments on the proposal.
12	STATUTORY AUTHORITY. The department adopts amended §218.72 under Transportation Code §643.003
13	and Transportation Code §1002.001.
14	Transportation Code §643.003, authorizes the department to adopt rules to administer Chapter
15	643.
16	Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and
17	appropriate to implement the powers and the duties of the department.
18	CROSS REFERENCE TO STATUTE. Transportation Code §643.257.
19	TEXT.
20	Subchapter F. Enforcement
21	43 TAC §218.72
22	

22 §218.72. Administrative Sanctions.

	Part 10. Texas Department of Motor Vehicles Chapter 218 – Motor Carriers
1	(a) Grounds for suspension and revocation. Transportation Code, §643.252 provides the grounds
2	for which the department can suspend or revoke a certificate of registration issued under Transportation
3	Code, Chapter 643.
4	(b) Department of Public Safety enforcement recommendations.
5	(1) The department may suspend or revoke a certificate of registration of a motor carrier
6	upon a written request by the Department of Public Safety, if a motor carrier:
7	(A) has an unsatisfactory safety rating under 49 C.F.R., Part 385; or
8	(B) has multiple violations of Transportation Code, Chapter 644, a rule adopted
9	under that chapter, or Transportation Code, Title 7, Subtitle C.
10	(2) A request under paragraph (1) of this subsection must include documentation showing
11	the violation.
12	(c) Probation.
13	(1) The department may probate any suspension ordered under this section.
14	(2) In determining whether to probate a suspension, the department will review:
15	(A) the seriousness of the violation;
16	(B) prior violations by the motor carrier;
17	(C) whether the department has previously probated a suspension for the motor
18	carrier;
19	(D) cooperation by the motor carrier in the investigation and enforcement
20	proceeding; and
21	(E) the ability of the motor carrier to correct the violations.
22	(3) The department shall set the length of the probation based on the seriousness of the

December 10, 2020

23 violation and previous violations by the motor carrier.

Board Meeting eBook

TITLE 43. TRANSPORTATION

22

**Adopted Section** 

1	(4) The department will require that the motor carrier report monthly to the department
2	any information necessary to determine compliance with the terms of the probation.
3	(5) The department may revoke the probation and order the initial suspension and
4	administrative penalty if the motor carrier fails to abide by any terms of the probation.
5	(d) Refund.
6	(1) The department may order a motor carrier that violates Transportation Code Chapter
7	643, department rules, or a department order adopted under Transportation Code Chapter 643 to issue
8	a refund to a customer who paid the motor carrier to transport household goods.
9	(2) Under this subsection, a refund is the return of any percentage of funds paid, or
10	contracted to be paid, to a motor carrier transporting household goods, whether those funds are
11	documented as a separate line item or included in the overall amount paid by a customer.
12	(A) A refund includes overpayments, fees paid for services not rendered, and fees
13	paid for charges not listed on the household mover's tariff after the household mover takes possession of
14	the customer's property.
15	(B) A refund does not include any consideration of damages or harm over the
16	amount paid by the customer.
17	CERTIFICATION. The agency certifies that legal counsel has reviewed the adoption and found it to be
18	within the state agency's legal authority to adopt.
19	Issued at Austin, Texas, on <u>MM DD, YYYY</u> .
20	
21	Tracey Beaver, General Counsel

Board Meeting eBook

# Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Board Meeting Date: 12/10/2020 ACTION ITEM

To:	Texas Department of Motor Vehicles Board
From:	Corrie Thompson, Enforcement Division Director
Agenda Item:	6
Subject:	Chapter 221, Salvage Vehicle Dealers
	New §221.96, Cease and Desist
	(Relating to SB 604, establishing process under which board may issue a cease
	and desist order to prohibit a person from violating statutes, board rules, or
	board orders, after notice and an opportunity for a hearing)

#### RECOMMENDATION

Approval to publish the adoption of new §221.96 in the *Texas Register*.

#### PURPOSE AND EXECUTIVE SUMMARY

New §221.96 implements Senate Bill (SB) 604, 86th Legislature, Regular Session (2019), which amended Occupations Code Chapter 2302 by adding §2302.355 authorizing the department's board (board) to issue cease and desist orders under the chapter.

#### FINANCIAL IMPACT

None

#### BACKGROUND AND DISCUSSION

The new section permits the board to issue cease and desist orders if it appears that a violation of Occupations Code Chapter 2302, the department's rules, or an order from the department under Occupations Code Chapter 2302 is occurring.

- New §221.96(a) clarifies that a cease and order may only be issued if the board reasonably believes a person who is not licensed under Occupations Code Chapter 2302 is violating that chapter or a rule or order adopted under that chapter.
- New §221.96(b) permits the board to require a person to cease and desist from committing a violation and requires that the order contain a notice that a request for a hearing may be filed.
- New §221.96(c) permits a person to whom a cease and desist order is issued to file a written request for a hearing before the board not later than the 10th day after the date of receipt of the order. Adopted new §221.96(c) clarifies that the order is final unless a request for hearing is timely filed. Adopted new §221.96(c) is necessary to provide an opportunity for hearing while balancing the need for quick resolution of the hearing and the finality of the order.

#### <u>COMMENTS</u>

The proposal was published in the Texas Register on August 21, 2020. The comment period closed on September 21, 2020. No comments were received.

If the board adopts the new section and amendments during its December 10, 2020, open meeting, staff anticipates:

- publication in the December 25, 2020 issue of the Texas Register; and
- an effective date of December 30, 2020.

1	ADOPTION OF
2	SUBCHAPTER E. ADMINISTRATIVE PROCEDURES
3	43 TAC §221.96
4	INTRODUCTION. The Texas Department of Motor Vehicles adopts new 43 TAC §221.96 concerning cease
5	and desist orders. The adopted new section implements Senate Bill (SB) 604, 86th Legislature, Regular
6	Session (2019), which amended Occupations Code Chapter 2302 by adding Occupations Code §2302.355
7	authorizing the department's board (board) to issue cease and desist orders under the chapter. The
8	department adopts the §221.96 with changes to the proposed text as published in the August 21, 2020
9	issue of the <i>Texas Register</i> (45 TexReg 5902). The rule will be republished.
10	REASONED JUSTIFICATION. New §221.96 permits the board to issue cease and desist orders if it appears
11	that a violation of Occupations Code Chapter 2302, the department's rules, or an order from the
12	department under Occupations Code Chapter 2302 is occurring. New §221.96(a) clarifies that a cease and
13	desist order may only be issued if the board reasonably believes a person who is not licensed under
14	Occupations Code Chapter 2302 is violating that chapter or a rule or order adopted under that chapter.
15	New §221.96(a) is necessary to clarify that license holders under Occupations Code Chapter 2302 cannot
16	be issued a cease and desist order and corresponds to the language in Occupations Code §2302.355.
17	License holders under Occupations Code Chapter 2302 include a general distinguishing number holder
18	acting under Occupations Code §2302.009.
19	New §221.96(b) permits the board to require a person to cease and desist from committing a
20	violation. The department considers it necessary to amend the proposed language of §221.96(b). The
21	proposed language differentiated between "committing a violation" and "engaging in any practice

regulated by the board as necessary to prevent the violation." However, the department does not intend

23 to prohibit legal behavior via a cease and desist order. To clarify department intent, §221.96(b) has been

changed to delete the phrase "or from engaging in any practice regulated by the board as necessary to
 prevent the violation." The change does not affect persons not on notice of the proposal or add additional
 costs.

4 New §221.96(c) permits a person to whom a cease and desist order is issued to file a written request for a hearing before the board not later than the 10th day after the date of receipt of the order. 5 6 The written request for a hearing may be filed with the department electronically, through the mail, or in 7 person. The request may be in any written form, but should state that a hearing is requested. New 8 §221.96(c) clarifies that the order is final unless a request for hearing is timely filed. New §221.96(c) is 9 necessary to provide an opportunity for hearing while balancing the need for quick resolution of the 10 hearing and the finality of the order. The 10-day deadline for request for hearing balances those needs 11 providing time to respond while providing a timeline for efficient and timely resolution.

12 **SUMMARY OF COMMENTS.** The department received no comments on the proposal.

**STATUTORY AUTHORITY.** The amendment is 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 the duties of the department; and more specifically, Occupations Code §2302.355 which provides the board authority to issue a cease and desist order prohibiting a person not licensed under Occupations Code Chapter 2302 from violating that chapter, an administrative rule, or an order adopted under that chapter.

19 **CROSS REFERENCE TO STATUTE.** Occupations Code §2302.355 and Transportation Code §1002.001.

20 **TEXT.** 

- 21 SUBCHAPTER E. ADMINISTRATIVE PROCEDURES
- 22

- 43 TAC §221.96
- 23 §221.96. Cease and Desist Order.



#### Board Meeting Date: 12/10/2020 ACTION ITEM

To: From:	Texas Department of Motor Vehicles Board Jimmy Archer, Motor Carrie Division Director Linda M. Flores, Chief Financial Officer
Agenda Item:	7
Subject:	Chapter 209, Finance Amendments, §209.23 Chapter 219, Oversize and Overweight §§219.2, 219.11, 219.13 - 219.15, 219.42, 219.43, and 219.61 - 219.63 (Relating to HB 61 and HB 2620, escort flag vehicles including the use of certain lighting equipment; removing escrow account payment)

#### RECOMMENDATION

Approval to publish the adopted amendments in the *Texas Register*.

#### PURPOSE AND EXECUTIVE SUMMARY

The purpose of amendments to Title 43 TAC Chapter 219, Subchapters A, B, D, and E is to conform the rules to House Bills (HB) 61 and HB 2620, 86th Legislature, Regular Session, effective September 1, 2019. HB 61 added a new definition for "escort flag vehicle" under Transportation Code §547.305 and provided the operator of an escort flag vehicle with the option of equipping the escort flag vehicle with alternating or flashing blue and amber lights. HB 2620 also added a new definition, consistent with the definition added by HB 61, for "escort flag vehicle" under Transportation Code §623.008(a)(1) pertaining to the authority to require an escort flag vehicle or escort flagger.

Amendments to Title 43 TAC §219.11(f) are necessary to streamline department processes to improve program efficiency by eliminating two escrow account payment methods for customers that purchase oversize or overweight permits. One of the escrow account payment methods requires department personnel to manually process payments, and the second escrow account payment method requires department personnel to reconcile the payment records.

Amendments to §209.23 conform to proposed amendments to Title 43 TAC §219.11 by deleting the reference to the use of escrow accounts for oversize overweight vehicle permits.

#### FINANCIAL IMPACT

None

#### BACKGROUND AND DISCUSSION

To implement HB 61 and HB 2620, the term, "escort vehicle" is changed to the term "escort flag vehicle" throughout Title 43 TAC Chapter 219.

Amendments to §219.15(f)(3)(C) track the statutory language in Transportation Code §547.305, which permits an escort flag vehicle to be equipped with alternating or flashing blue and amber lights. Transportation Code §547.305(e-3) is permissive, allowing escort flag vehicles to be equipped with alternating or flashing blue and amber lights. Transportation Code §623.099(c)(1) already required that escort flag vehicles have two lights flashing simultaneously or one rotating amber beacon of not less than eight inches when escorting a manufactured house. Transportation Code §623.129 already requires that escort flag vehicles have two lights flashing amber beacon of not less than eight inches when escorting a manufactured house.

eight inches when escorting a portable building and compatible cargo because the requirements under Transportation Code §623.099 apply to the movement of these vehicles. Transportation Code §623.008(b) allows the department to require a person operating under a permit issued under the subtitle to use one or more escort flag vehicles if required by the Texas Department of Transportation or for the safe movement over roads of an oversize or overweight vehicle. Transportation Code §547.305(e-3) adds that the flashing lights for an escort vehicle may be alternating flashing blue and amber lights, and it controls under Government Code §311.025(a) in the event of a conflict with §623.099 because §547.305(e-3) is the latest legislative enactment.

Amendments to §219.2 delete the term "permit account card" and renumber the remaining definitions because the department is proposing to eliminate this form of payment for an oversize or overweight permit.

Amendments to §219.11(f) eliminate both permit account cards and escrow accounts (together referred to as "escrow accounts") as methods of payment for oversize or overweight permits in order to improve efficiency by encouraging the use of electronic payment methods and reducing the amount of transactions that department personnel must manually process or reconcile.

The Amendment to §209.23 deletes the reference to the use of escrow accounts to conform to the proposed amendments to §219.11(f).

The proposal was published in the *Texas Register* on August 21, 2020. The comment period ended on September 21,2020. No comments were received.

If the board adopts the rules during its December 10, 2020, open meeting, staff anticipates:

- Publication in the December 25, 2020, issue of the Texas Register; and
- An effective date of December 30, 2020.

Board Meeting eBook December 10, 2020 TITLE 43. TRANSPORTATION Part 10. Texas Department of Motor Vehicles Chapter 209 – Finance

1	ADOPTION OF
2	SUBCHAPTER B. PAYMENT OF FEES FOR DEPARTMENT GOODS AND SERVICES
3	43 TAC §209.23
4	<b>INTRODUCTION.</b> The Texas Department of Motor Vehicles (department) adopts an amendment to 43
5	TAC §209.23, concerning payment of fees for department goods and services. The department adopts
6	§209.23 without changes to the proposed text as published in the August 21, 2020, issue of the Texas
7	Register (45 TexReg 5869). The amendment is necessary to conform §209.23 to proposed amendments
8	to 43 TAC §219.11, which is also published in this issue of the <i>Texas Register</i> .
9	
10	REASONED JUSTIFICATION. The adopted amendment to §209.23 is necessary to remove unnecessary
11	citations to statutes and to conform §209.23 to proposed amendments to Title 43 TAC §219.11, which is
12	also adopted in this issue of the Texas Register. Amendments to §219.11(f)(1)(A) and (B) are adopted to
13	remove two escrow account payment methods for purchasing oversize or overweight permits in order to
14	streamline department processes to improve program efficiency.
15	The adopted amendment to §209.23 deletes most of the language regarding the use of escrow
16	accounts, including use of permit account cards for payment for oversize overweight vehicle permits. The
17	amendment removes unnecessary citations to statutes and conforms §209.23 to the adopted
18	amendments to §219.11(f)(1)(A) and (B), which remove escrow accounts as an acceptable payment
19	method for oversize oroverweight permits.
20	

#### 21 SUMMARY OF COMMENTS.

22

No comments on the proposed amendments were received.

1	STATUTORY AUTHORITY. The department adopts an amendment to §209.23 under Transportation Code
2	§1001.009 and §1002.001.
3	Transportation Code §1001.009 authorizes the Board of the Texas Department of Motor Vehicles
4	(board) to adopt rules regarding the method of collection of a fee for any goods or services provided by
5	the department.
6	Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and
7	appropriate to implement the powers and the duties of the department under the Transportation Code.
8	CROSS REFERENCE TO STATUTE. Transportation Code Chapters 502, 621, 622, 623, 643, and 645.
9	
10	SUBCHAPTER B. PAYMENT OF FEES FOR DEPARTMENT GOODS AND SERVICES
11	43 TAC §209.23
12	TEXT.
13	§209.23. Methods of Payment.
14	(a) All fees for department goods and services and any fees required in the administration of any
15	department program shall be paid to the department with a method of payment accepted by the
16	department at the point of sale, which may be:
17	(1) a valid debit or credit card, approved by the department, and issued by a financial
18	institution chartered by a state or the United States, or a nationally recognized credit organization;
19	(2) electronic funds transfer;
20	(3) a personal check, business check, cashier's check, or money order, payable to the
21	Texas Department of Motor Vehicles, except that a personal or business check is not an acceptable
22	method of payment of fees under Transportation Code, §502.094;

1	(4) cash in United States currency, paid in person; or
2	(5) by an escrow account, established with the department for the specific purpose of
3	paying fees [ <del>required by Transportation Code, Chapters 502, 621, 622, 623, 643, or 645. Use of an</del>
4	escrow account includes use of a Permit Account Card (PAC) for payment of Oversize/Overweight
5	vehicle permit fees, as authorized by §219.11(f)(1)(A) of this title (relating to General
6	Oversize/Overweight Permit Requirements and Procedures)].
7	(b) Persons paying the department by credit card or Automated Clearing House (ACH) shall pay
8	any applicable service charge per transaction.
9	
10	<b>CERTIFICATION.</b> The agency certifies that legal counsel has reviewed the adoption and found it to be a
11	valid exercise of the agency's legal authority.
12	Issued at Austin, Texas, on <u>M DD, YYYY</u> .
13	
14	
15	Tracey Beaver, General Counsel

	TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesAdopted SectionsChapter 219 – Oversize and Overweight Vehicles and LoadsAdopted Sections
1	ADOPTION OF
2	SUBCHAPTER A. GENERAL PROVISIONS
3	43 TAC §219.2
4	
5	SUBCHAPTER B. GENERAL PERMIT
6	43 TAC §§219.11, 219.13-219.15
7	
8	SUBCHAPTER D. PERMITS FOR OVERSIZE AND OVERWEIGHT OIL WELL RELATED VEHICLES
9	43 TAC §219.42 and §219.43
10	
11	SUBCHAPTER E. PERMITS FOR OVERSIZE AND OVERWEIGHT UNLADEN LIFT EQUIPMENT MOTOR
12	VEHICLES
13	43 TAC §§219.61-219.63
14	<b>INTRODUCTION.</b> The Texas Department of Motor Vehicles (department) adopts amendments to Title 43
15	TAC §§219.2, 219.11, 219.13 - 219.15, 219.42, 219.43, and 219.61 - 219.63, concerning: 1) payment
16	methods for oversize or overweight permits to streamline department processes; and 2) escort flag
17	vehicles to conform the rules to Transportation Code §547.305(e-3) and (f)(1), as added by House Bill (HB)
18	61, 86th Legislature, Regular Session (2019) and Transportation Code §623.008(a)(1) as added by HB 2620,
19	86th Legislature, Regular Session (2019)
20	The department adopts §§219.2, 219.11, 219.13 - 219.15, 219.42, 219.43, and 219.61 - 219.63
21	with changes to the proposed text as published in the August 21, 2020, issue of the Texas Register (45
22	TexReg 5874). The department adopts nonsubstantive changes to §219.13(e)(6)(G) and §219.14(f)(3) by
23	adding the word "flag" between "escort" and "vehicle" to conform to the definition of escort flag vehicle

December 10, 2020

Board Meeting eBook

33

1 in Transportation Code §547.305(f)(1) and Transportation Code §623.008(a)(1) and to conform to the 2 other references of escort flag vehicle under §§219.2, 219.11, 219.13 - 219.15, 219.42, 219.43, and 219.61 3 - 219.63. The department also clarified §219.11(k) by adding "unless stated otherwise in this chapter" to 4 the end of the section because §219.11(k) doesn't apply to manufactured housing, portable building units, 5 or portable building compatible cargo. However, §219.11(k) does apply to existing §219.14 and §219.15 6 regarding manufactured housing, portable buildings, and portable building compatible cargo. The changes 7 to the proposed text as published do not affect persons not otherwise on notice or add additional costs. 8 **REASONED JUSTIFICATION**. The adopted amendments to Title 43 TAC Subchapters A, B, D, and E are 9 necessary to conform the rules to HB 61 and HB 2620, 86th Legislature, Regular Session (2019). House Bill 10 61 added a new definition for "escort flag vehicle" under Transportation Code §547.305 and provided the operator of an escort flag vehicle with the option of equipping the escort flag vehicle with alternating or 11 12 flashing blue and amber lights. HB 2620 also added a new definition, consistent with the definition added by HB 61, for "escort flag vehicle" under Transportation Code §623.008(a)(1) pertaining to the authority 13 14 to require an escort flag vehicle or escort flagger.

Adopted amendments to Title 43 TAC §219.11(f) are necessary to streamline department processes to improve program efficiency by eliminating two escrow account payment methods for customers that purchase oversize or overweight permits. One of the escrow account payment methods requires department personnel to manually process payments, and the second escrow account payment method requires department personnel to reconcile the payment records.

Transportation Code §547.305(f)(1) defines an "escort flag vehicle" as a vehicle that precedes or follows an oversize or overweight vehicle to facilitate the safe movement of the oversize or overweight vehicle over roads. To implement HB 61 and HB 2620, the term "escort vehicle" is changed to the term "escort flag vehicle" throughout Title 43 TAC Chapter 219.

#### Board Meeting eBook **TITLE 43. TRANSPORTATION** Part 10. Texas Department of Motor Vehicles Chapter 219 – Oversize and Overweight Vehicles and Loads

1 Transportation Code §547.305(e-3) is permissive, allowing escort flag vehicles to be equipped 2 with alternating or flashing blue and amber lights. Transportation Code §623.099(c)(1) already requires 3 that escort flag vehicles have two lights flashing simultaneously or one rotating amber beacon of not less 4 than eight inches when escorting a manufactured house. Transportation Code §623.129 already requires 5 that escort flag vehicles have two lights flashing simultaneously or one rotating amber beacon of not less 6 than eight inches when escorting a portable building and compatible cargo because the requirements 7 under Transportation Code §623.099 apply to the movement of these vehicles. Transportation Code 8 §623.008(b) allows the department to require a person operating under a permit issued under the subtitle 9 to use one or more escort flag vehicles if required by the Texas Department of Transportation or for the 10 safe movement over roads of an oversize or overweight vehicle. Transportation Code §547.305(e-3) adds 11 that the flashing lights for an escort flag vehicle may be alternating flashing blue and amber lights, and it 12 controls under Government Code §311.025(a) to the extent of a conflict with §623.099 because 13 §547.305(e-3) is the latest legislative enactment.

14 Adopted amendments to §219.2 add the word "flag" to the term "escort vehicle" to define "escort 15 flag vehicle" as a vehicle that precedes or follows an oversize or overweight vehicle to facilitate the safe 16 movement of the oversize or overweight vehicle over roads. This change is necessary to track the statutory 17 language in Transportation Code §547.305(f)(1) and clarify the use of the term throughout Title 43 TAC Chapter 219. Adopted amendments to §219.2 delete the term "permit account card" and renumber the 18 19 remaining definitions because the department is eliminating this form of payment for an oversize or 20 overweight permit.

21 Adopted amendments throughout §219.11 add the word "flag" to the term "escort vehicle" to 22 conform to the definition of the term "escort flag vehicle" under Transportation Code §547.305(f)(1).

1 Adopted amendments to §219.11(k)(7)(B) track the statutory language in Transportation Code §547.305, 2 which permits an escort flag vehicle to be equipped with alternating or flashing blue and amber lights. 3 Adopted amendments to §219.15(f)(3)(C) track the statutory language in Transportation Code 4 §547.305, which permits an escort flag vehicle to be equipped with alternating or flashing blue and amber 5 lights. Adopted amendments to §§219.13-219.15, 219.42, 219.43, 219.61-219.63 add the word "flag" to 6 7 the term "escort vehicle" to clarify that the use of the term throughout the chapter is as defined under 8 proposed amended §219.2 regarding an "escort flag vehicle." 9 Adopted amendments to §219.11(f) eliminate both permit account cards and escrow accounts 10 (together referred to as "escrow accounts") as methods of payment for oversize or overweight permits. 11 The department currently accepts the following methods of payment for oversize or overweight permits 12 for online purchases through the Texas Permitting and Routing Optimization System (TxPROS): credit card, ACH, check, money order, cashier's check, cash, escrow accounts administered by the department, and 13 14 the Permit Account Card (PAC), which is an escrow account administered by Frost Bank. The department 15 currently accepts these same methods of payment, except for the ACH, for purchases of oversize or 16 overweight permits by non-online methods, such as applications submitted by facsimile. Customers will 17 continue to have methods of payment that are cheaper than the two methods of payment that the department removed. 18 19 SUMMARY OF COMMENTS. 20

21 No comments on the proposed amendments were received.

STATUTORY AUTHORITY. The department adopts amendments under Transportation Code §§623.002,
 1001.009, and 1002.001.
	TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesChapter 219 – Oversize and Overweight Vehicles and Loads
1	Transportation Code §632.002 authorizes the board of the Texas Department of Motor Vehicles
2	(board) to adopt rules as necessary to implement Transportation Code Chapter 623.
3	Transportation Code §1001.009 authorizes the board to adopt rules regarding the method of
4	collection of a fee for any goods or services provided by the department.
5	Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and
6	appropriate to implement the powers and the duties of the department under the Transportation Code.
7	CROSS REFERENCE TO STATUTE. Transportation Code §547.305, Chapter 621, and Chapter 623.
8	
9	TEXT.
10	Subchapter A. General Provisions
11	43 TAC §219.2
12	§219.2. Definitions.
13	§219.2. Definitions.
14	(a) The definitions contained in Transportation Code, Chapters 621, 622, and 623 apply to this
15	chapter. In the event of a conflict with this chapter, the definitions contained in Transportation Code,
16	Chapters 621, 622, and 623 control.
17	(b)The following words and terms, when used in this chapter, will have the following meanings,
18	unless the context clearly indicates otherwise.
19	(1) Annual permitA permit that authorizes movement of an oversize and/or overweight
20	load for one year commencing with the effective date.
21	(2) ApplicantAny person, firm, or corporation requesting a permit.
22	(3) AxleThe common axis of rotation of one or more wheels whether power-driven or
23	freely rotating, and whether in one or more segments.

Board Meeting eBook

1	(4) Axle groupAn assemblage of two or more consecutive axles, with two or more wheels
2	per axle, spaced at least 40 inches from center of axle to center of axle, equipped with a weight-equalizing
3	suspension system that will not allow more than a 10% weight difference between any two axles in the
4	group.
5	(5) BoardThe Board of the Texas Department of Motor Vehicles.
6	(6) CloseoutThe procedure used by the department to terminate a permit, issued under
7	Transportation Code, §623.142 or §623.192 that will not be renewed by the applicant.
8	(7) Complete identification numberA unique and distinguishing number assigned to
9	equipment or a commodity for purposes of identification.
10	(8) Concrete pump truckA self-propelled vehicle designed to pump the concrete product
11	from a ready mix truck to the point of construction.
12	(9) CraneAny unladen lift equipment motor vehicle designed for the sole purpose of
13	raising, shifting, or lowering heavy weights by means of a projecting, swinging mast with an engine for
14	power on a chassis permanently constructed or assembled for such purpose.
15	(10) Credit cardA credit card approved by the department.
16	(11) DaylightThe period beginning one-half hour before sunrise and ending one-half
17	hour after sunset.
18	(12) DepartmentThe Texas Department of Motor Vehicles.
19	(13) Digital signatureAn electronic identifier intended by the person using it to have the
20	same force and effect as a manual signature. The digital signature shall be unique to the person using it.
21	(14) DirectorThe Executive Director of the Texas Department of Motor Vehicles or a
22	designee not below the level of division director.

1	(15) DistrictOne of the 25 geographical areas, managed by a district engineer of the
2	Texas Department of Transportation, in which the Texas Department of Transportation conducts its
3	primary work activities.
4	(16) District engineerThe chief executive officer in charge of a district of the Texas
5	Department of Transportation.
6	(17) Electronic identifierA unique identifier which is distinctive to the person using it, is
7	independently verifiable, is under the sole control of the person using it, and is transmitted in a manner
8	that makes it infeasible to change the data in the communication or digital signature without invalidating
9	the digital signature.
10	(18) Escort flag vehicle <u>A vehicle that precedes or follows an oversize or overweight</u>
11	vehicle to facilitate the safe movement of the oversize or overweight vehicle over roads [A motor vehicle
12	used to warn traffic of the presence of an oversize and/or overweight vehicle].
13	(19) Four-axle groupAny four consecutive axles, having at least 40 inches from center of
14	axle to center of axle, whose extreme centers are not more than 192 inches apart and are individually
15	attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.
16	(20) GaugeThe transverse spacing distance between tires on an axle, expressed in feet
17	and measured to the nearest inch, from center-of-tire to center-of-tire on an axle equipped with only two
18	tires, or measured to the nearest inch from the center of the dual wheels on one side of the axle to the
19	center of the dual wheels on the opposite side of the axle.
20	(21) Gross weightThe unladen weight of a vehicle or combination of vehicles plus the
21	weight of the load being transported.
22	(22) Height poleA device made of a non-conductive material, used to measure the height

23 of overhead obstructions.

	TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesChapter 219 – Oversize and Overweight Vehicles and Loads
1	(23) Highway maintenance feeA fee established by Transportation Code, §623.077,
2	based on gross weight, and paid by the permittee when the permit is issued.
3	(24) Highway use factorA mileage reduction figure used in the calculation of a permit
4	fee for a permit issued under Transportation Code, §623.142 and §623.192.
5	(25) HubometerA mechanical device attached to an axle on a unit or a crane for
6	recording mileage traveled.
7	(26) HUD numberA unique number assigned to a manufactured home by the U.S.
8	Department of Housing and Urban Development.
9	(27) Indirect cost shareA prorated share of administering department activities, other
10	than the direct cost of the activities, including the cost of providing statewide support services.
11	(28) Load-restricted bridgeA bridge that is restricted by the Texas Department of
12	Transportation, under the provisions of Transportation Code, §621.102, to a weight limit less than the
13	maximum amount allowed by Transportation Code, §621.101.
14	(29) Load-restricted roadA road that is restricted by the Texas Department of
15	Transportation, under the provisions of Transportation Code, §621.102, to a weight limit less than the
16	maximum amount allowed by Transportation Code, §621.101.
17	(30) Machinery plateA license plate issued under Transportation Code, §502.146.
18	(31)Manufactured homeManufactured housing, as defined in Occupations Code,
19	Chapter 1201, and industrialized housing and buildings, as defined in Occupations Code, §1202.002, and
20	temporary chassis systems, and returnable undercarriages used for the transportation of manufactured
21	housing and industrialized housing and buildings, and a transportable section which is transported on a
22	chassis system or returnable undercarriage that is constructed so that it cannot, without dismantling or
23	destruction, be transported within legal size limits for motor vehicles.

Board Meeting eBook

	Part 10. Texas Department of Motor Vehicles Chapter 219 – Oversize and Overweight Vehicles and Loads
1	(32) Motor carrierA person that controls, operates, or directs the operation of one or
2	more vehicles that transport persons or cargo over a public highway in this state, as defined by
3	Transportation Code, §643.001.
4	(33) Motor carrier registration (MCR)The registration issued by the department to
5	motor carriers moving intrastate, under authority of Transportation Code, Chapter 643.
6	(34) NighttimeThe period beginning one-half hour after sunset and ending one-half hour
7	before sunrise, as defined by Transportation Code, §541.401.
8	(35) Nondivisible load or vehicle
9	(A) Any load or vehicle exceeding applicable length or weight limits which, if
10	separated into smaller loads or vehicles, would:
11	(i) compromise the intended use of the vehicle, i.e., make it unable to
12	perform the function for which it was intended;
13	(ii) destroy the value of the load or vehicle, i.e., make it unusable for its
14	intended purpose; or
15	(iii) require more than eight workhours to dismantle using appropriate
16	equipment. The applicant for a nondivisible load permit has the burden of proof as to the number of
17	workhours required to dismantle the load.
18	(B) Emergency response vehicles, including those loaded with salt, sand,
19	chemicals or a combination thereof, with or without a plow or blade attached in front, and being used for
20	the purpose of spreading the material on highways that are or may become slick or icy.
21	(C) Casks designed for the transport of spent nuclear materials.
22	(D) Military vehicles transporting marked military equipment or materiel.
23	(36) Oil field rig-up truckAn unladen vehicle with an overweight single steering axle,

Board Meeting eBook

TITLE 43. TRANSPORTATION

41

Adopted Sections

equipped with a winch and set of gin poles used for lifting, erecting, and moving oil well equipment and

Board Meeting eBook **TITLE 43. TRANSPORTATION** Part 10. Texas Department of Motor Vehicles Chapter 219 – Oversize and Overweight Vehicles and Loads

1

2

machinery.

3 (37) Oil well servicing unit--An oil well clean-out unit, oil well drilling unit, or oil well 4 swabbing unit, which is mobile equipment, either self-propelled or trailer-mounted, constructed as a 5 machine used solely for cleaning-out, drilling, servicing, or swabbing oil wells, and consisting in general of, 6 but not limited to, a mast, an engine for power, a draw works, and a chassis permanently constructed or 7 assembled for this purpose. 8 (38) One trip registration--Temporary vehicle registration issued under Transportation 9 Code, §502.095. 10 (39) Overdimension load -- A vehicle, combination of vehicles, or vehicle and its load that exceeds maximum legal width, height, length, overhang, or weight as set forth by Transportation Code, 11 12 Chapter 621, Subchapters B and C. (40) Overhang--The portion of a load extending beyond the front or rear of a vehicle or 13 14 combination of vehicles. 15 (41) Overheight--A vehicle or load that exceeds the maximum height specified in 16 Transportation Code, §621.207. 17 (42) Overlength--A vehicle, combination of vehicles, or a vehicle or vehicle combination

and its load that exceed(s) the maximum length specified in Transportation Code, §§621.203, 621.204, 18 621.205, and 621.206. 19

- 20 (43) Oversize load--A vehicle, combination of vehicles, or a vehicle or vehicle combination 21 and its load that exceed(s) maximum legal width, height, length, or overhang, as set forth by 22 Transportation Code, Chapter 621, Subchapter C.
- 23 (44) Overweight--A vehicle, combination of vehicles, or a vehicle or vehicle combination

	Board Meeting eBookDecember 10, 202043TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesChapter 219 – Oversize and Overweight Vehicles and Loads
1	and its load that exceed(s) the maximum weight specified in Transportation Code, §621.101.
2	(45) OverwidthA vehicle or load that exceeds the maximum width specified in
3	Transportation Code, §621.201.
4	(46) PermitAuthority for the movement of an oversize and/or overweight vehicle,
5	combination of vehicles, or a vehicle or vehicle combination and its load, issued by the department under
6	Transportation Code, Chapter 623.
7	[ <del>{47} Permit account card (PAC) - A debit card that can only be used to purchase a permit</del>
8	and which is issued by a financial institution that is under contract to the department and the Comptroller
9	of Public Accounts.]
10	(47) [(48)] Permit officerAn employee of the department who is authorized to issue an
11	oversize/overweight permit.
12	(48) [ <del>(49)</del> ] Permit plateA license plate issued under Transportation Code, §502.146, to a
13	crane or an oil well servicing vehicle.
14	(49) [(50)] Permitted vehicleA vehicle, combination of vehicles, or vehicle and its load
15	operating under the provisions of a permit.
16	(50) [ <del>(51)</del> ] PermitteeAny person, firm, or corporation that is issued an
17	oversize/overweight permit by the department.
18	(51) [(52)] Pipe boxA container specifically constructed to safely transport and handle
19	oil field drill pipe and drill collars.
20	(52) [ <del>(53)</del> ] Portable building compatible cargoCargo, other than a portable building unit,
21	that is manufactured, assembled, or distributed by a portable building unit manufacturer and is
22	transported in combination with a portable building unit.
23	(53) [ <del>(54)</del> ] Portable building unitThe pre-fabricated structural and other components

1	incorporated and delivered by the manufacturer as a complete inspected unit with a distinct serial number
2	whether in fully assembled, partially assembled, or kit (unassembled) configuration when loaded for
3	transport.
4	(54) [ <del>(55)</del> ] PrincipalThe person, firm, or corporation that is insured by a surety bond
5	company.
6	(55) [ <del>(56)</del> ] Roll stability support safety systemAn electronic system that monitors vehicle
7	dynamics and estimates the stability of a vehicle based on its mass and velocity, and actively adjusts
8	vehicle systems including the throttle and/or brake(s) to maintain stability when a rollover risk is detected.
9	(56) [ <del>(57)</del> ] Shipper's certificate of weightA form approved by the department in which
10	the shipper certifies to the maximum weight of the shipment being transported.
11	(57) [(58)] Single axleAn assembly of two or more wheels whose centers are in one
12	transverse vertical plane or may be included between two parallel transverse planes 40 inches apart
13	extending across the full width of the vehicle.
14	(58) [(59)] Single-trip permitA permit issued for an overdimension load for a single
15	continuous movement over a specific route for an amount of time necessary to make the movement.
16	(59) [ <del>(60)</del> ] State highwayA highway or road under the jurisdiction of the Texas
17	Department of Transportation.
18	(60) [ <del>(61)</del> ] State highway systemA network of roads and highways as defined by
19	Transportation Code, §221.001.
20	(61) [ <del>(62)</del> ] Surety bondAn agreement issued by a surety bond company to a principal
21	that pledges to compensate the Texas Department of Transportation for any damage that might be
22	sustained to the highways and bridges by virtue of the operation of the equipment for which a permit was
23	issued. A surety bond is effective the day it is issued and expires at the end of the state fiscal year, which

- 1 is August 31st. For example, if you obtain a surety bond on August 30th, it will expire the next day at
- 2 midnight.
- 3 (62) [<del>63]</del> Tare weight--The empty weight of any vehicle transporting an overdimension
  4 load.
- 5 (63) [<del>64]</del> Temporary vehicle registration--A 72-hour temporary vehicle registration, 144-
- 6 hour temporary vehicle registration, or one-trip registration.
- 7 (64) [<del>(65)</del>] Three-axle group--Any three consecutive axles, having at least 40 inches from 8 center of axle to center of axle, whose extreme centers are not more than 144 inches apart, and are 9 individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension
- 10 system.
- 11 (65) [(66)] Time permit--A permit issued for a specified period of time under §219.13 of
- 12 this title (relating to Time Permits).
- 13 (66) [<del>(67)</del>] Tire size--The inches of lateral tread width.
- 14 (67) [(68)] Traffic control device--All traffic signals, signs, and markings, including their
   15 supports, used to regulate, warn, or control traffic.
- (68) [(69)] Trailer mounted unit--An oil well clean-out, drilling, servicing, or swabbing unit
   mounted on a trailer, constructed as a machine used for cleaning out, drilling, servicing, or swabbing oil
   wells, and consisting in general of, but not limited to, a mast, an engine for power, a draw works, and a
   chassis permanently constructed or assembled for this purpose.
- 20 (69) [<del>70]</del> Truck--A motor vehicle designed, used, or maintained primarily for the
   21 transportation of property.
- 22 (70) [<del>71</del>] Truck blind spot systems--Vehicle-based sensor devices that detect other
   23 vehicles or objects located in the vehicle's adjacent lanes. Warnings can be visual, audible, vibrating, or

1	tactile.
2	
3	with four tir

4

5

res on each axle, that are connected to a pivoting wrist pin that allows each individual axle to oscillate in a vertical plane to provide for constant and equal weight distribution on each individual axle at all times during movement.

(71) [<del>(72)</del>] Trunnion axle--Two individual axles mounted in the same transverse plane,

- 6 (72) [<del>(73)</del>] Trunnion axle group--Two or more consecutive trunnion axles whose centers 7 are at least 40 inches apart and which are individually attached to or articulated from, or both, to the
- 8 vehicle by a weight equalizing suspension system.
- 9 (73) [<del>73</del>] Two-axle group--Any two consecutive axles whose centers are at least 40 inches but not more than 96 inches apart and are individually attached to or articulated from, or both, to 10
- 11 the vehicle by a weight equalizing suspension system.
- 12 (74) [<del>(75)</del>] TxDOT--Texas Department of Transportation.
- 13 (75) [<del>(76)</del>] Unit-Oil well clean-out unit, oil well drilling unit, oil well servicing unit, and/or 14 oil well swabbing unit.
- 15 (76) [<del>(77)</del>] Unladen lift equipment motor vehicle--A motor vehicle designed for use as lift 16 equipment used solely to raise, shift, or lower heavy weights by means of a projecting, swinging mast with 17 an engine for power on a chassis permanently constructed or assembled for such purpose.
- (77) [<del>(78)</del>] USDOT Number--The United States Department of Transportation number. 18

19 (78) [<del>(79)</del>] Variable load suspension axles--Axles, whose controls must be located outside 20 of and be inaccessible from the driver's compartment, that can be regulated, through the use of hydraulic 21 and air suspension systems, mechanical systems, or a combination of these systems, for the purpose of 22 adding or decreasing the amount of weight to be carried by each axle during the movement of the vehicle. 23 (79) [<del>(80)</del>] Vehicle identification number--A unique and distinguishing number assigned

	Board Meeting eBookDecember 10, 202047TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesAdopted SectionsChapter 219 – Oversize and Overweight Vehicles and Loads47
1	to a vehicle by the manufacturer or by the department in accordance with Transportation Code, §501.032
2	and §501.033.
3	(80) [ <del>(81)</del> ] Water Well Drilling MachineryMachinery used exclusively for the purpose of
4	drilling water wells, including machinery that is a unit or a unit mounted on a conventional vehicle or
5	chassis.
6	(81) [ <del>(82)</del> ] Weight-equalizing suspension systemAn arrangement of parts designed to
7	attach two or more consecutive axles to the frame of a vehicle in a manner that will equalize the load
8	between the axles.
9	(82) [ <del>(83)</del> ] Windshield stickerIdentifying insignia indicating that a permit has been issued
10	in accordance with Subchapter C of this chapter.
11	(83) [ <del>(84)</del> ] YearA time period consisting of 12 consecutive months that commences with
12	the effective date stated in the permit.
13	(84) [ <del>(85)</del> ] 72-hour temporary vehicle registrationTemporary vehicle registration issued
14	by the department authorizing a vehicle to operate at maximum legal weight on a state highway for a
15	period not longer than 72 consecutive hours, as prescribed by Transportation Code, §502.094.
16	(85) [ <del>(86)</del> ] 144-hour temporary vehicle registrationTemporary vehicle registration
17	issued by the department authorizing a vehicle to operate at maximum legal weight on a state highway
18	for a period not longer than 144 consecutive hours, as prescribed by Transportation Code, §502.094.
19	
20	SUBCHAPTER B. GENERAL PERMITS
21	43 TAC §§219.11, 219.13-219-219.15
22	§219.11. General Oversize/Overweight Permit Requirements and Procedures.
23	(a) Purpose and scope. This section contains general requirements relating to

1	oversize/overweight permits, including single-trip permits. Specific requirements for each type of
2	specialty permit are provided for in this chapter.
3	(b) Prerequisites to obtaining an oversize/overweight permit. Unless exempted by law or this
4	chapter, the following requirements must be met prior to the issuance of an oversize/overweight permit.
5	(1) Commercial motor carrier registration or surety bond. Prior to obtaining an
6	oversize/overweight permit, an applicant permitted under the provisions of Transportation Code, Chapter
7	623, Subchapter D, must be registered as a commercial motor carrier under Chapter 218 of this title
8	(relating to Motor Carriers) or, if not required to obtain a motor carrier registration, file a surety bond
9	with the department as described in subsection (n) of this section.
10	(2) Vehicle registration. A vehicle registered with a permit plate will not be issued an
11	oversize/overweight permit under this subchapter. A permitted vehicle operating under this subchapter
12	must be registered with one of the following types of vehicle registration:
13	(A) current Texas license plates that indicate the permitted vehicle is registered
14	for maximum legal gross weight or the maximum weight the vehicle can transport;
15	(B) Texas temporary vehicle registration;
16	(C) current out of state license plates that are apportioned for travel in Texas; or
17	(D) foreign commercial vehicles registered under Texas annual registration.
18	(c) Permit application.
19	(1) An application for a permit shall be made in a form and by the method prescribed by
20	the department, and at a minimum shall include the following:
21	(A) name, address, telephone number, and email address (if requested) of the
22	applicant;
23	(B) applicant's customer identification number;

	Board Meeting eBookDecember 10, 202049TITLE 43. TRANSPORTATIONAdopted Sections
	Part 10. Texas Department of Motor Vehicles
	Chapter 219 – Oversize and Overweight Vehicles and Loads
1	(C) applicant's MCR number or USDOT Number, if applicable;
2	(D) complete load description, including maximum width, height, length,
3	overhang, and gross weight;
4	(E) complete description of vehicle, including truck year, make, license plate
5	number and state of issuance, and vehicle identification number, if required;
6	(F) vehicle axle and tire information including number of axles, distance between
7	axles, axle weights, number of tires, and tire size for overweight permit applications; and
8	(G) any other information required by law.
9	(2) Applications transmitted electronically are considered signed if a digital signature is
10	transmitted with the application and intended by the applicant to authenticate the application.
11	(A) The department may only accept a digital signature used to authenticate an
12	application under procedures that comply with any applicable rules adopted by the Department of
13	Information Resources regarding department use or acceptance of a digital signature.
14	(B) The department may only accept a digital signature to authenticate an
15	application if the digital signature is:
16	(i) unique to the person using it;
17	(ii) capable of independent verification;
18	(iii) under the sole control of the person using it; and
19	(iv) transmitted in a manner that will make it infeasible to change the
20	data in the communication or digital signature without invalidating the digital signature.
21	(d) Maximum permit weight limits.
22	(1) General. An overweight permitted vehicle will not be routed over a load-restricted
23	bridge when exceeding the posted capacity of the bridge, unless a special exception is granted by TxDOT,

## 1 based on an analysis of the bridge performed by a TxDOT approved licensed professional engineer or by 2 TxDOT. Any analysis by a non-TxDOT engineer must have final approval from TxDOT. 3 (A) An axle group must have a minimum spacing of four feet, measured from 4 center of axle to center of axle, between each axle in the group to achieve the maximum permit weight 5 for the group. 6 (B) The maximum permit weight for an axle group with spacing of five or more 7 feet between each axle will be based on an engineering study of the equipment conducted by TxDOT. 8 (C) A permitted vehicle will be allowed to have air suspension, hydraulic 9 suspension, and mechanical suspension axles in a common weight equalizing suspension system for any 10 axle group. (D) The department may permit axle weights greater than those specified in this 11 12 section, for a specific individual permit request, based on an engineering study of the route and hauling equipment performed by a TxDOT approved licensed professional engineer or by TxDOT. Any analysis by 13 14 a non-TxDOT engineer must have final approval from TxDOT. 15 (E) A permitted vehicle or combination of vehicles may not exceed the 16 manufacturer's rated tire carrying capacity, unless expressly authorized in the language on the permit 17 based on an analysis performed by a TxDOT approved licensed professional engineer or by TxDOT. Any analysis by a non-TxDOT engineer must have final approval from TxDOT. 18 19 (F) Two or more consecutive axle groups having an axle spacing of less than 12 20 feet, measured from the center of the last axle of the preceding group to the center of the first axle of the 21 following group, will be reduced by 2.5% for each foot less than 12 feet. 22 (2) Maximum axle weight limits. Maximum permit weight for an axle or axle group is

23 based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the

	TITLE 43. TRANSPORTATION Adopted Sections Part 10. Texas Department of Motor Vehicles Charter 210 - Querrise and Querrus into Vehicles
	Chapter 219 – Oversize and Overweight Vehicles and Loads
1	lesser amount:
2	(A) single axle25,000 pounds;
3	(B) two axle group46,000 pounds;
4	(C) three axle group60,000 pounds;
5	(D) four axle group70,000 pounds;
6	(E) five axle group81,400 pounds;
7	(F) axle group with six or more axlesdetermined by TxDOT based on an
8	engineering study of the equipment, which will include the type of steering system used, the type of axle
9	suspension, the spacing distance between each axle, the number of tires per axle, and the tire size on
10	each axle; or
11	(G) trunnion axles30,000 pounds per axle if the trunnion configuration has:
12	(i) two axles;
13	(ii) eight tires per axle;
14	(iii) axles a minimum of 10 feet in width; and
15	(iv) at least five feet of spacing between the axles, not to exceed six feet.
16	(3) Weight limits for load restricted roads. Maximum permit weight for an axle or axle
17	group, when traveling on a load restricted road, will be based on 650 pounds per inch of tire width or the
18	following axle or axle group weights, whichever is the lesser amount:
19	(A) single axle22,500 pounds;
20	(B) two axle group41,400 pounds;
21	(C) three axle group54,000 pounds;
22	(D) four axle group63,000 pounds;
23	(E) five axle group73,260 pounds;

Board Meeting eBook

1	(F) axle group with six or more axlesdetermined by TxDOT based on an
2	engineering study of the equipment, which will include the type of steering system used, the type of axle
3	suspension, the spacing distance between each axle, the number of tires per axle, and the tire size on
4	each axle;
5	(G) trunnion axles54,000 pounds; and
6	(H) two or more consecutive axle groups having an axle spacing of less than 12
7	feet, measured from the center of the last axle of the preceding group to the center of the first axle of the
8	following group will be reduced by 2.5% for each foot less than 12 feet.
9	(e) Permit issuance.
10	(1) General. Upon receiving an application in the form prescribed by the department, the
11	department will review the permit application for the appropriate information and will then determine
12	the most practical route based on information provided by TxDOT.
13	(2) Routing.
14	(A) A permitted vehicle will be routed over the most practical route available
15	taking into consideration:
16	(i) the size and weight of the overdimension load in relation to vertical
17	clearances, width restrictions, steep grades, and weak or load restricted bridges;
18	(ii) the geometrics of the roadway in comparison to the overdimension
19	load;
20	(iii) sections of highways restricted to specific load sizes and weights due
21	to construction, maintenance, and hazardous conditions;
22	(iv) traffic conditions, including traffic volume;
23	(v) route designations by municipalities in accordance with

1	Transportation Code, §623.072;
2	(vi) load restricted roads; and
3	(vii) other considerations for the safe transportation of the load.
4	(B) When a permit applicant desires a route other than the most practical, more
5	than one permit will be required for the trip unless an exception is granted by the department.
6	(3) Movement to and from point of origin or place of business. A permitted vehicle will
7	be allowed to:
8	(A) move empty oversize and overweight hauling equipment to and from the job
9	site; and
10	(B) move oversize and overweight hauling equipment with a load from the
11	permitted vehicle's point of origin to pick up a permitted load, and to the permitted vehicle's point of
12	origin or the permittee's place of business after dropping off a permitted load, as long as:
13	(i) the load does not exceed legal size and weight limits under
14	Transportation Code, Chapters 621 and 622; and
15	(ii) the transport complies with the permit, including the time period
16	stated on the permit.
17	(f) Payment of permit fees, refunds.
18	(1) Payment methods. All permit applications must be accompanied by the proper fee,
19	which shall be payable as provided by §209.23 of this title (relating to Methods of Payment).
20	[(A) Permit Account Card (PAC). Application for a PAC should be made directly to
21	the issuing institution. A PAC must be established and maintained according to the contract provisions
22	stipulated between the PAC holder and the financial institution under contract to the department and the
23	Comptroller of Public Accounts.]

1	[ <del>(B) Escrow accounts. A permit applicant may establish an escrow account with</del>
2	the department for the specific purpose of paying any fee that is related to the issuance of a permit under
3	this subchapter.]
4	[(i) A permit applicant who desires to establish an escrow account shall
5	complete and sign an escrow account agreement, and shall return the completed and signed agreement
6	to the department with a check in the minimum amount of \$305, which shall be deposited to the
7	appropriate fund by the department with the Comptroller of Public Accounts. In lieu of submitting a check
8	for the initial deposit to an applicant's escrow account, the applicant may transfer funds to the
9	department electronically.]
10	[(ii) Upon initial deposit, and each subsequent deposit made by the
11	escrow account holder, \$5 will be charged as an escrow account administrative fee.]
12	[(iii) The escrow account holder is responsible for monitoring of the
13	escrow account balance.]
14	[(iv)An escrow account holder must submit a written request to the
15	department to terminate the escrow account agreement. Any remaining balance will be returned to the
16	escrow account holder.]
17	(2) Refunds. A permit fee will not be refunded after the permit number has been issued
18	unless such refund is necessary to correct an error made by the permit officer.
19	(g) Amendments. A permit may be amended for the following reasons:
20	(1) vehicle breakdown;
21	(2) changing the intermediate points in an approved permit route;
22	(3) extending the expiration date due to conditions which would cause the move to be
23	delayed;

	TITLE 43. TRANSPORTATION       Adopted Sections         Part 10. Texas Department of Motor Vehicles       Chapter 219 – Oversize and Overweight Vehicles and Loads
1	(4) changing route origin or route destination prior to the start date as listed on the
2	permit;
3	(5) changing vehicle size limits prior to the permit start date as listed on the permit,
4	provided that changing the vehicle size limit does not necessitate a change in the approved route; and
5	(6) correcting any mistake that is made due to permit officer error.
6	(h) Requirements for overwidth loads.
7	(1) Unless stated otherwise on the permit, an overwidth load must travel in the outside
8	traffic lane on multi-lane highways, when the width of the load exceeds 12 feet.
9	(2) Overwidth loads are subject to the escort requirements of subsection (k) of this
10	section.
11	(3) A permitted vehicle exceeding 16 feet in width will not be routed on the main lanes of
12	a controlled access highway, unless an exception is granted by TxDOT, based on a route and traffic study.
13	The load may be permitted on the frontage roads when available, if the movement will not pose a safety
14	hazard to other highway users.
15	(4) An applicant requesting a permit to move a load exceeding 20 feet wide will be
16	furnished with a proposed route. The applicant must physically inspect the proposed route to determine
17	if the vehicle and load can safely negotiate it, unless an exception is granted based on a route and traffic
18	study conducted by TxDOT. A permit application and the appropriate fee are required for every route
19	inspection.
20	(A) The applicant must notify the department in writing whether the vehicle and
21	load can or cannot safely negotiate the proposed route.
22	(B) If any section of the proposed route is unacceptable, the applicant shall
23	provide the department with an alternate route around the unacceptable section.

Board Meeting eBook

	Part 10. Texas Department of Motor Vehicles Chapter 219 – Oversize and Overweight Vehicles and Loads
1	(C) Once a route is decided upon and a permit issued, the permit may not be
2	amended unless an exception is granted by the department.
3	(i) Requirements for overlength loads.
4	(1) Overlength loads are subject to the escort requirements stated in subsection (k) of this
5	section.
6	(2) A single vehicle, such as a motor crane, that has a permanently mounted boom is not
7	considered as having either front or rear overhang as a result of the boom because the boom is an integral
8	part of the vehicle.
9	(3) When a single vehicle with a permanently attached boom exceeds the maximum legal
10	length of 45 feet, a permit will not be issued if the boom projects more than 25 feet beyond the front
11	bumper of the vehicle, or when the boom projects more than 30 feet beyond the rear bumper of the
12	vehicle, unless an exception is granted by TxDOT, based on a route and traffic study.
13	(4) Maximum permit length for a single vehicle is 75 feet.
14	(5) A load extending more than 20 feet beyond the front or rearmost portion of the load
15	carrying surface of the permitted vehicle must have a rear escort <u>flag vehicle</u> , unless an exception is
16	granted by TxDOT, based on a route and traffic study.
17	(6) A permit will not be issued for an oversize vehicle and load with:
18	(A) more than 25 feet front overhang; or
19	(B) more than 30 feet rear overhang, unless an exception is granted by TxDOT,
20	based on a route and traffic study.
21	(7) An applicant requesting a permit to move an oversize vehicle and load exceeding 125
22	feet overall length will be furnished with a proposed route. The applicant must physically inspect the
23	proposed route to determine if the oversize vehicle and load can safely negotiate it, unless an exception

Board Meeting eBook

TITLE 43. TRANSPORTATION

56

Adopted Sections

is granted based on a route and traffic study conducted by TxDOT. A permit application and the 1 2 appropriate fee are required for every route inspection. 3 (A) The applicant must notify the department in writing whether the oversize 4 vehicle and load can or cannot safely negotiate the proposed route. 5 (B) If any section of the proposed route is unacceptable, the applicant shall 6 provide the department with an alternate route around the unacceptable section. 7 (C) Once a route is decided upon and a permit issued, the permit may not be 8 amended unless an exception is granted by the department. 9 (8) A permitted vehicle that is not overwidth or overheight, and does not exceed 150 feet 10 overall length, may be moved in a convoy consisting of not more than four overlength permitted vehicles. A permitted vehicle that is not overwidth or overheight that exceeds 150 feet, but does not exceed 180 11 12 feet overall length, may be moved in a convoy consisting of not more than two overlength permitted vehicles. Convoys are subject to the requirements of subsection (k) of this section. Each permitted vehicle 13 14 in the convoy must: (A) be spaced at least 1,000 feet, but not more than 2,000 feet, from any other 15 16 permitted vehicle in the convoy; and 17 (B) have a rotating amber beacon or an amber pulsating light, not less than eight inches in diameter, mounted at the rear top of the load being transported. 18 (j) Requirements for overheight loads. 19 20 (1) Overheight loads are subject to the escort requirements stated in subsection (k) of this 21 section. 22

1	(2) An applicant requesting a permit to move an oversize vehicle and load with an overall height of 19 feet
2	or greater will be furnished with a proposed route. The applicant must physically inspect the proposed
3	route to determine if the oversize vehicle and load can safely negotiate it, unless an exception is granted
4	based on a route and traffic study conducted by TxDOT. A permit application and the appropriate fee are
5	required for every route inspection.
6	(A) The applicant must notify the department in writing whether the oversize
7	vehicle and load can or cannot safely negotiate the proposed route.
8	(B) If any section of the proposed route is unacceptable, the applicant shall
9	provide the department with an alternate route around the unacceptable section.
10	(C) Once a route is decided upon and a permit issued, the permit may not be
11	amended unless an exception is granted by the department.
12	(k) Escort <u>flag</u> vehicle requirements. Escort <u>flag</u> vehicle requirements are provided to facilitate the
13	safe movement of permitted vehicles and to protect the traveling public during the movement of
14	permitted vehicles. A permittee must provide for escort flag vehicles and law enforcement assistance
15	when required by TxDOT. The requirements in this subsection do not apply to the movement of
16	manufactured housing, portable building units, or portable building compatible cargo, unless stated
17	otherwise in this chapter.
18	(1) General.
19	(A) Applicability. The operator of an escort flag vehicle shall, consistent with
20	applicable law, warn the traveling public when:
21	(i) a permitted vehicle must travel over the center line of a narrow bridge
22	or roadway;
23	(ii) a permitted vehicle makes any turning movement that will require the

Exhibit A

	Board Meeting eBook December 10, 2020 59
	TITLE 43. TRANSPORTATION Adopted Sections Part 10. Texas Department of Motor Vehicles
	Chapter 219 – Oversize and Overweight Vehicles and Loads
1	permitted vehicle to travel in the opposing traffic lanes;
2	(iii) a permitted vehicle reduces speed to cross under a low overhead
3	obstruction or over a bridge;
4	(iv) a permitted vehicle creates an abnormal and unusual traffic flow
5	pattern; or
6	(v) in the opinion of TxDOT, warning is required to ensure the safety of
7	the traveling public or safe movement of the permitted vehicle.
8	(B) Law enforcement assistance. Law enforcement assistance may be required by
9	TxDOT to control traffic when a permitted vehicle is being moved within the corporate limits of a city, or
10	at such times when law enforcement assistance would provide for the safe movement of the permitted
11	vehicle and the traveling public.
12	(C) Obstructions. It is the responsibility of the permittee to contact utility
13	companies, telephone companies, television cable companies, or other entities as they may require, when
14	it is necessary to raise or lower any overhead wire, traffic signal, street light, television cable, sign, or other
15	overhead obstruction. The permittee is responsible for providing the appropriate advance notice as
16	required by each entity.
17	(2) Escort requirements for overwidth loads. Unless an exception is granted based on a
18	route and traffic study conducted by TxDOT, an overwidth load must:
19	(A) have a front escort <u>flag</u> vehicle if the width of the load exceeds 14 feet, but
20	does not exceed 16 feet, when traveling on a two lane roadway;
21	(B) have a rear escort <u>flag</u> vehicle if the width of the load exceeds 14 feet, but
22	does not exceed 16 feet, when traveling on a roadway of four or more lanes; and
23	(C) have a front and a rear escort <u>flag</u> vehicle for all roads, when the width of the

	Board Meeting eBookDecember 10, 202060TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesEnable of the section
1	load exceeds 16 feet.
2	(3) Escort requirements for overlength loads. Unless an exception is granted by TxDOT,
3	based on a route and traffic study, overlength loads must have:
4	(A)a front escort <u>flag</u> vehicle when traveling on a two lane roadway if the vehicle exceeds 110 feet
5	overall length, but does not exceed 125 feet overall length;
6	(B) a rear escort <u>flag</u> vehicle when traveling on a multi-lane highway if the vehicle
7	exceeds 110 feet overall length, but does not exceed 125 feet overall length; and
8	(C) a front and rear escort <u>flag</u> vehicle at all times if the permitted vehicle exceeds
9	125 feet overall length.
10	(4) Escort requirements for overheight loads. Unless an exception is granted by TxDOT,
11	based on a route and traffic study, overheight loads must have:
12	(A) a front escort <u>flag</u> vehicle equipped with a height pole to ensure the vehicle
13	and load can clear all overhead obstructions for any permitted vehicle that exceeds 17 feet in height; and
14	(B) a front and rear escort <u>flag</u> vehicle for any permitted vehicle exceeding 18 feet
15	in height.
16	(5) Escort requirements for permitted vehicles exceeding legal limits in more than one
17	dimension. When a load exceeds more than one dimension that requires an escort under this subsection,
18	front and rear <u>escort flag vehicles</u> [escorts] will be required unless an exception is granted by TxDOT.
19	(6) Escort requirements for convoys. Convoys must have a front escort <u>flag</u> vehicle and a
20	rear escort <u>flag</u> vehicle on all highways at all times.
21	(7) General equipment requirements. The following special equipment requirements
22	apply to permitted vehicles and escort <u>flag</u> vehicles that are not motorcycles.
23	(A) An escort <u>flag</u> vehicle must be a single unit with a gross vehicle weight (GVW)

1	of not less than 1,000 pounds nor more than 10,000 pounds.
2	(B) An escort <u>flag</u> vehicle must be equipped with two flashing amber lights; [ <del>or</del> ]
3	one rotating amber beacon of not less than eight inches in diameter [ <del>,</del> ]; or alternating or flashing blue and
4	amber lights, each of which must be visible from all directions [affixed to the roof of the escort vehicle,
5	which must be visible to the front, sides, and rear of the escort vehicle] while actively engaged in escort
6	duties for the permitted vehicle.
7	(C) An escort <u>flag</u> vehicle must display a sign, on either the roof of the vehicle, or
8	the front and rear of the vehicle, with the words "OVERSIZE LOAD" or "WIDE LOAD." The sign must be
9	visible from the front and rear of the vehicle while escorting the permitted load. The sign must meet the
10	following specifications:
11	(i) at least five feet, but not more than seven feet in length, and at least
12	12 inches, but not more than 18 inches in height;
13	(ii) the sign must have a yellow background with black lettering;
14	(iii) letters must be at least eight inches, but not more than 10 inches high
15	with a brush stroke at least 1.41 inches wide; and
16	(iv) the sign must be visible from the front or rear of the vehicle while
17	escorting the permitted vehicle, and the signs must not be used at any other time.
18	(D) An escort flag vehicle must maintain two-way communications with the
19	permitted vehicle and other escort <u>flag</u> vehicles involved with the movement of the permitted vehicle.
20	(E) Warning flags must be either red or orange fluorescent material, at least 12
21	inches square, securely mounted on a staff or securely fastened by at least one corner to the widest
22	extremities of an overwidth permitted vehicle, and at the rear of an overlength permitted vehicle or a
23	permitted vehicle with a rear overhang in excess of four feet.

**TITLE 43. TRANSPORTATION** Adopted Sections Part 10. Texas Department of Motor Vehicles Chapter 219 – Oversize and Overweight Vehicles and Loads 1 (8) Equipment requirements for motorcycles. 2 (A) An official law enforcement motorcycle may be used as a primary escort flag 3 vehicle for a permitted vehicle traveling within the limits of an incorporated city, if the motorcycle is 4 operated by a highway patrol officer, sheriff, or duly authorized deputy, or municipal police officer. 5 (B) An escort flag vehicle must maintain two-way communications with the 6 permitted vehicle and other escort flag vehicles involved with the movement of the permitted vehicle. 7 (I) Restrictions. 8 (1) Restrictions pertaining to road conditions. Movement of a permitted vehicle is 9 prohibited when road conditions are hazardous based upon the judgment of the operator and law 10 enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited 11 12 to: (A) visibility of less than 2/10 of one mile; or 13 14 (B) weather conditions such as wind, rain, ice, sleet, or snow. 15 (2) Daylight and night movement restrictions. 16 (A) A permitted vehicle may be moved only during daylight hours unless: 17 (i) the permitted vehicle is overweight only; (ii) the permitted vehicle is traveling on an interstate highway and does 18 not exceed 10 feet wide and 100 feet long, with front and rear overhang that complies with legal 19 standards; or 20 21 (iii) the permitted vehicle meets the criteria of clause (ii) of this 22 subparagraph and is overweight. 23 (B) An exception may be granted allowing night movement, based on a route and

December 10, 2020

Board Meeting eBook

- traffic study conducted by TxDOT. <u>Escort flag vehicles</u> [Escorts] may be required when an exception
   allowing night movement is granted.
- (3) Holiday restrictions. The maximum size limits for a permit issued under Transportation
  Code, Chapter 623, Subchapter D, for holiday movement is 14 feet wide, 16 feet high, and 110 feet long,
  unless an exception is granted based on a route and traffic study conducted by TxDOT. The department
  may restrict holiday movement of specific loads based on a determination that the load could pose a
  hazard for the traveling public due to local road or traffic conditions.
  (4) Curfew restrictions. The operator of a permitted vehicle must observe the curfew
  movement restrictions of any city or county in which the vehicle is operated. However, only the curfew
- 10 restrictions listed on the permit apply to the permit.

## 11 (m) General provisions.

12 (1) Multiple commodities.

(A) Except as provided in subparagraph (B) of this paragraph, when a permitted commodity creates a single overdimension, two or more commodities may be hauled as one permit load, provided legal axle weight and gross weight are not exceeded, and provided an overdimension of width, length or height is not created or made greater by the additional commodities. For example, a permit issued for the movement of a 12 foot wide storage tank may also include a 10 foot wide storage tank loaded behind the 12 foot wide tank provided that legal axle weight and gross weight are not exceeded, and provided an overdimension of width, length or height is not created.

- (B) When the transport of more than one commodity in a single load creates or
   makes greater an illegal dimension of length, width, or height the department may issue an oversize
   permit for such load subject to each of the following conditions.
- 23

(i) The permit applicant or the shipper of the commodities files with the

1 department a written certification by the Texas Economic Development and Tourism Office, attesting that 2 issuing the permit will have a significant positive impact on the economy of Texas and that the proposed 3 load of multiple commodities therefore cannot be reasonably dismantled. As used in this clause the term 4 significant positive impact means the creation of not less than 100 new full-time jobs, the preservation of 5 not less than 100 existing full-time jobs, that would otherwise be eliminated if the permit is not issued, or 6 creates or retains not less than one percent of the employment base in the affected economic sector 7 identified in the certification. 8 (ii) Transport of the commodities does not exceed legal axle and gross

9 load limits.

10 (iii) The permit is issued in the same manner and under the same provisions as would be applicable to the transport of a single oversize commodity under this section; 11 12 provided, however, that the shipper and the permittee also must indemnify and hold harmless the department, its board members, officers, and employees from any and all liability for damages or claims 13 14 of damages including court costs and attorney fees, if any, which may arise from the transport of an 15 oversized load under a permit issued pursuant to this subparagraph.

16 (iv) The shipper and the permittee must file with the department a 17 certificate of insurance on a form prescribed by the department, or otherwise acceptable to the department, naming the department, its board members, officers, and employees as named or additional 18 19 insurers on its comprehensive general liability insurance policy for coverage in the amount of \$5 million 20 per occurrence, including court costs and attorney fees, if any, which may arise from the transport of an 21 oversized load under a permit issued pursuant to this subparagraph. The insurance policy is to be procured 22 from a company licensed to transact insurance business in the State of Texas.

23

(v) The shipper and the permittee must file with the department, in

addition to all insurance provided in clause (iv) of this subparagraph, a certificate of insurance on a form 1 2 prescribed by the department, or otherwise acceptable to the department, naming the department, its 3 board members, officers, and employees as insurers under an auto liability insurance policy for the benefit 4 of said insurers in an amount of \$5 million per accident. The insurance policy is to be procured from a 5 company licensed to transact insurance business in the State of Texas. If the shipper or the permittee is 6 self-insured with regard to automobile liability then that party must take all steps and perform all acts 7 necessary under the law to indemnify the department, its board members, officers, and employees as if 8 the party had contracted for insurance pursuant to, and in the amount set forth in, the preceding sentence 9 and shall agree to so indemnify the department, its board members, officers, and employees in a manner 10 acceptable to the department. (vi) Issuance of the permit is approved by written order of the board 11 12 which written order may be, among other things, specific as to duration and routes. 13 (C) An applicant requesting a permit to haul a dozer and its detached blade may 14 be issued a permit, as a non-dismantable load, if removal of the blade will decrease the overall width of 15 the load, thereby reducing the hazard to the traveling public. 16 (2) Oversize hauling equipment. A vehicle that exceeds the legal size limits, as set forth by 17 Transportation Code, Chapter 621, Subchapter C, may only haul a load that exceeds legal size limits unless otherwise noted in this subchapter, but such vehicle may haul an overweight load that does not exceed 18 19 legal size limits, except for the special exception granted in §219.13(c)(3) of this title (relating to Time 20 Permits). 21 (n) Surety bonds. 22 (1) General. The following conditions apply to surety bonds specified in Transportation

23 Code, §623.075.

Exhibit A

1	(A) The surety bond must:
2	(i) be made payable to the Texas Department of Transportation with the
3	condition that the applicant will pay the Texas Department of Transportation for any damage caused to
4	the highway by the operation of the equipment covered by the surety bond;
5	(ii) be effective the day it is issued and expires at the end of the state
6	fiscal year, which is August 31st. For example, if you obtain a surety bond on August 30th, it will expire
7	the next day at midnight.
8	(iii) include the complete mailing address and zip code of the principal;
9	(iv) be filed with the department and have an original signature of the
10	principal;
11	(v) have a single entity as principal with no other principal names listed;
12	and
13	(vi) A non-resident agent with a valid Texas insurance license may issue a
14	bond on behalf of an authorized insurance company when in compliance with Insurance Code, Chapter
15	4056.
16	(B) A certificate of continuation will not be accepted.
17	(C) The owner of a vehicle bonded under Transportation Code, §623.075 or
18	§623.163, that damages the state highway system as a result of the permitted vehicle's movement will be
19	notified by certified mail of the amount of damage and will be given 30 days to submit payment for such
20	damage. Failure to make payment within 30 days will result in TxDOT placing the claim with the attorney
21	general for collection.
22	(D) The venue of any suit for a claim against a surety bond for the movement of
23	a vehicle permitted under the provisions of Transportation Code, Chapter 623, Subchapter D, will be any

	Board Meeting eBookDecember 10, 202067TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesAdopted SectionsChapter 219 – Oversize and Overweight Vehicles and LoadsChapter 219 – Oversize and Overweight Vehicles
1	court of competent jurisdiction in Travis County.
2	(2) Permit surety bonds.
3	(A) A surety bond required under the provisions of Transportation Code, Chapter
4	623, Subchapter D, must be submitted on the department's standard surety bond form in the amount of
5	\$10,000.
6	(B) A facsimile or electronic copy of the surety bond is acceptable in lieu of the
7	original surety bond, for a period not to exceed 10 days from the date of its receipt in the department. If
8	the original surety bond has not arrived in the department by the end of the 10 days, the applicant will
9	not be issued a permit until the original surety bond has been received in the department.
10	(C) The surety bond requirement does apply to the delivery of farm equipment to
11	a farm equipment dealer.
12	(D) A surety bond is required when a dealer or transporter of farm equipment or
13	a manufacturer of farm equipment obtains a permit.
14	(E) The surety bond requirement does not apply to driving or transporting farm
15	equipment which is being used for agricultural purposes if it is driven or transported by or under the
16	authority of the owner of the equipment.
17	(F) The surety bond requirement does not apply to a vehicle or equipment
18	operated by a motor carrier registered with the department under Transportation Code, Chapters 643 or
19	645 as amended.
20	
21	§219.13. Time Permits.
22	(a)General information. Applications for time permits issued under Transportation Code, Chapter 623,
23	and this section shall be made in accordance with §219.11(b) and (c) of this title (relating to General

	Board Meeting eBookDecember 10, 202068TITLE 43. TRANSPORTATIONAdopted Sections
	Part 10. Texas Department of Motor Vehicles Chapter 219 – Oversize and Overweight Vehicles and Loads
	Chapter 219 – Oversize and Overweight Venicles and Loads
-	Oversize/Overweight Permit Requirements and Procedures). Permits issued under this section are
2	governed by the requirements of §219.11(e)(1) <u>of this title</u> .
}	(b) 30, 60, and 90 day permits. The following conditions apply to time permits issued for overwidth
Ļ	or overlength loads, or overlength vehicles, under this section.
, ,	(1) Fees. The fee for a 30-day permit is \$120; the fee for a 60-day permit is \$180; and the
5	fee for a 90-day permit is \$240. All fees are payable in accordance with §219.11(f) of this title. All fees are
,	non-refundable.
3	(2) Validity of Permit. Time permits are valid for a period of 30, 60, or 90 calendar days,
)	based on the request of the applicant, and will begin on the effective date stated on the permit.
)	(3) Weight/height limits. The permitted vehicle may not exceed the weight or height limits
-	set forth by Transportation Code, Chapter 621, Subchapters B and C.
<u>)</u>	(4) Registration requirements for permitted vehicles. Time permits will not be issued to a
5	vehicle or vehicle combination that is registered with temporary vehicle registration.
ļ	(5) Vehicle indicated on permit. The permit will indicate only the truck or truck-tractor
5	transporting the load; however, any properly registered trailer or semi-trailer is covered by the permit.
5	(6) Permit routes. The permit will allow travel on a statewide basis.
,	(7) Restrictions.
3	(A) The permitted vehicle must not cross a load restricted bridge or load restricted
)	road when exceeding the posted capacity of the road or bridge.
)	(B) The permitted vehicle may travel through highway construction or
<u>_</u>	maintenance areas if the dimensions do not exceed the construction restrictions as published by the

department.

	Board Meeting eBookDecember 10, 202069TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesAdopted SectionsChapter 219 – Oversize and Overweight Vehicles and Loads69
1	(C) The permitted vehicle is subject to the restrictions specified in §219.11(I) of
2	this title, and the permittee is responsible for obtaining from the department information concerning
3	current restrictions.
4	(8) Escort requirements. Permitted vehicles are subject to the escort requirements
5	specified in §219.11(k) <u>of this title</u> .
6	(9) Transfer of time permits. Time permits issued under this subsection are non-
7	transferable between permittees or vehicles.
8	(10) Amendments. With the exception of time permits issued under subsection (e)(4) of
9	this section, time permits issued under this subsection will not be amended except in the case of permit
10	officer error.
11	(c) Overwidth loads. An overwidth time permit may be issued for the movement of any load or
12	overwidth trailer, subject to subsection (a) of this section and the following conditions:
13	(1) Width requirements.
14	(A) A time permit will not be issued for a vehicle with a width exceeding 13 feet.
15	(B) When multiple items are hauled at the same time, the items may not be
16	loaded in a manner that creates a width greater than the width of the widest item being hauled.
17	(2) Weight, height, and length requirements.
18	(A) The permitted vehicle shall not exceed legal weight, height, or length
19	according to Transportation Code, Chapter 621, Subchapters B and C.
20	(B) When multiple items are hauled at the same time, the items may not be
21	loaded in a manner that creates:

- (i) a height greater than 14 feet; 22
- (ii) an overlength load; or 23

	TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesAdopted SectionsChapter 219 – Oversize and Overweight Vehicles and LoadsAdopted Sections
1	(iii)a gross weight exceeding the legal gross or axle weight of the vehicle
2	hauling the load.
3	(3) Movement of overwidth trailers. When the permitted vehicle is an overwidth trailer,
4	it will be allowed to:
5	(A) move empty to and from the job site; and
6	(B) haul a load from the permitted vehicle's point of origin to pick up a permitted
7	load, and to the permitted vehicle's point of origin or the permittee's place of business after dropping off
8	a permitted load, as long as:
9	(i) the load does not exceed legal size and weight limits under
10	Transportation Code, Chapters 621 and 622; and
11	(ii) the transport complies with the permit, including the time period
12	stated on the permit.
13	(4) Use in conjunction with other permits. An overwidth time permit may be used in
14	conjunction with an overlength time permit.
15	(d) Overlength loads. An overlength time permit may be issued for the transportation of
16	overlength loads or the movement of an overlength self-propelled vehicle, subject to subsection (a) of
17	this section and the following conditions:
18	(1) Length requirements.
19	(A) The maximum overall length for the permitted vehicle may not exceed 110
20	feet.
21	(B) The department may issue a permit under Transportation Code, §623.071(a)
22	for an overlength load or an overlength self-propelled vehicle that falls within the definition of a
23	nondivisible load or vehicle.

Board Meeting eBook

	Board Meeting eBookDecember 10, 202071TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesChapter 219 – Oversize and Overweight Vehicles and Loads
1	(2) Weight, height and width requirements.
2	(A) The permitted vehicle may not exceed legal weight, height, or width according
3	to Transportation Code, Chapter 621, Subchapters B and C.
4	(B) A permit will not be issued when the load has more than 25 feet front
5	overhang, or more than 30 feet rear overhang.
6	(3) Use in conjunction with other permits. An overlength time permit may be used in
7	conjunction with an overwidth time permit.
8	(4) Emergency movement. A permitted vehicle transporting utility poles will be allowed
9	emergency night movement for restoring electrical utility service, provided the permitted vehicle is
10	accompanied by a rear escort <u>flag</u> vehicle.
11	(e) Annual permits.
12	(1) General information. All permits issued under this subsection are subject to the
13	following conditions.
14	(A) Fees for permits issued under this subsection are payable as described in
15	§219.11(f) <u>of this title</u> .
16	(B) Permits issued under this subsection are not transferable.
17	(C) Vehicles permitted under this subsection shall be operated according to the
18	restrictions described in §219.11(I) of this title. The permittee is responsible for obtaining information
19	concerning current restrictions from the department.
20	(D) Vehicles permitted under this subsection may not travel over a load restricted
21	bridge or load restricted road when exceeding the posted capacity of the road or bridge.
22	(E) Vehicles permitted under this subsection may travel through any highway
23	construction or maintenance area provided the dimensions do not exceed the construction restrictions as

1 published by the department. 2 (F) With the exception of permits issued under paragraph (5) of this subsection, 3 vehicles permitted under this subsection shall be operated according to the escort requirements 4 described in §219.11(k) of this title. 5 (2) Implements of husbandry. An annual permit may be issued for an implement of 6 husbandry being moved by a dealer in those implements, and for harvesting equipment being moved as 7 part of an agricultural operation. Permits issued under this paragraph are subject to the conditions 8 described in paragraph (1) of this subsection. 9 (A) The fee for a permit issued under this paragraph is \$270, plus the highway maintenance fee specified in Transportation Code, §623.077. 10 (B) The time period will be for one year and will start on the effective date stated 11 12 on the permit. (C) The maximum width may not exceed 16 feet; maximum height may not 13 14 exceed 16 feet; maximum length may not exceed 110 feet; and maximum weight may not exceed the 15 limits stated in §219.11(d) of this title. 16 (D) Unless stated otherwise on the permit, the permitted vehicle must travel in 17 the outside traffic lane on multi-lane highways, when the width of the load exceeds 12 feet. (E) The permitted vehicle must be registered in accordance with Transportation 18 19 Code, Chapter 502, for maximum weight for the vehicle or vehicle combination, as set forth by Transportation Code, Chapter 621. 20 21 (3) Water well drilling machinery. The department may issue annual permits under 22 Transportation Code, §623.071, for water well drilling machinery and equipment that fall within the 23 definition of a nondivisible load or vehicle. Permits issued under this paragraph are subject to the
	Board Meeting eBookDecember 10, 202073TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesAdopted SectionsChapter 219 – Oversize and Overweight Vehicles and LoadsSections
1	conditions described in paragraph (1) of this subsection.
2	(A) The fee for a permit issued under this paragraph is \$270, plus the highway
3	maintenance fee specified in Transportation Code, §623.077 for an overweight load.
4	(B) A water well drilling machinery permit is valid for one year from the effective
5	date stated on the permit.
6	(C) The maximum dimensions may not exceed 16 feet wide, 14 feet 6 inches high,
7	110 feet long, and maximum weight may not exceed the limits stated in §219.11(d) of this title.
8	(D) The permitted vehicle must be registered in accordance with Transportation
9	Code, Chapter 502, for the maximum weight of the vehicle, as set forth by Transportation Code, Chapter
10	621.
11	(E) A permit issued under this section authorizes a permitted vehicle to operate
12	only on the state highway system.
13	(4) Envelope vehicle permits.
14	(A)The department may issue an annual permit under Transportation Code,
15	§623.071(c), to a specific vehicle, for the movement of superheavy or oversize equipment that falls within
16	the definition of a nondivisible load. This permit may not be used for a container, including a trailer or an
17	intermodal container, loaded with divisible cargo. Unless otherwise noted, permits issued under this
18	paragraph are subject to the conditions described in paragraph (1) of this subsection.
19	(i) Superheavy or oversize equipment operating under an annual
20	envelope vehicle permit may not exceed:
21	(I) 12 feet in width;
22	(II) 14 feet in height;
23	(III) 110 feet in length; or

	Board Meeting eBook TITLE 43. TRANSPORTATION Part 10. Texas Department of M Chapter 219 – Oversize and Ov			74 Adopted Sections
1		(IV) 120,000 p	oounds gross weight.	
2		(ii) Superheavy or o	oversize equipment operat	ing under an annual
3	envelope vehicle permit may	not transport a load th	at has more than 25 feet fro	ont overhang, or more
4	than 30 feet rear overhang.			
5		(iii) The fee for an an	nual envelope vehicle permi	t is \$4,000, and is non-
6	refundable.			
7		(iv) The time period	will be for one year and will	start on the effective
8	date stated on the permit.			
9		(v) This permit author	izes operation of the permit	ted vehicle only on the
10	state highway system.			
11		(vi) The permitted vel	nicle must comply with §219.	.11(d)(2) and (3) <u>of this</u>
12	<u>title</u> .			
13		(vii)The permitted ve	hicle or vehicle combination	must be registered in
14	accordance with Transportation	n Code, Chapter 502, f	or maximum weight as set f	orth by Transportation
15	Code, Chapter 621.			
16		(viii) A permit issued	under this paragraph is non	-transferable between
17	permittees.			
18		(ix) A permit issued u	nder this paragraph may be	e transferred from one
19	vehicle to another vehicle in th	e permittee's fleet prov	vided:	
20		(I) the permi	tted vehicle is destroyed o	or otherwise becomes
21	permanently inoperable, to an	extent that it will no lo	onger be utilized, and the pe	rmittee presents proof
22	that the negotiable certificate	of title or other qualif	ying documentation has be	en surrendered to the
23	department; or			

#### Board Meeting eBook TITLE 43. TRANSPORTATION Part 10. Texas Department of Motor Vehicles Chapter 219 – Oversize and Overweight Vehicles and Loads

1	(II) the certificate of title to the permitted vehicle is transferred
2	to someone other than the permittee, and the permittee presents proof that the negotiable certificate of
3	title or other qualifying documentation has been transferred from the permittee.
4	(x) A single-trip permit, as described in §219.12 of this title (relating to
5	Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D), may be used in
6	conjunction with an annual permit issued under this paragraph for the movement of vehicles or loads
7	exceeding the height or width limits established in subparagraph (A) of this paragraph. The department
8	will indicate the annual permit number on any single-trip permit to be used in conjunction with a permit
9	issued under this paragraph, and permittees will be assessed a fee of \$60 for the single-trip permit.
10	(B) The department may issue an annual permit under Transportation Code,
11	§623.071(d), to a specific motor carrier, for the movement of superheavy or oversize equipment that falls
12	within the definition of a nondivisible load. This permit may not be used for a container, including a trailer
13	or an intermodal container, loaded with divisible cargo. Unless otherwise noted, permits issued under this
14	paragraph are subject to the conditions described in paragraph (1) of this subsection and subparagraphs
15	(A)(i)-(viii) of this paragraph. A permit issued under this paragraph may be transferred from one vehicle
16	to another vehicle in the permittee's fleet provided:
17	(i) that no more than one vehicle is operated at a time; and
18	(ii) the original certified permit is carried in the vehicle that is being
19	operated under the terms of the permit.
20	(C) An annual envelope permit issued under subparagraph (B) of this paragraph
21	will be sent to the permittee via registered mail, or at the permittee's request and expense overnight
22	delivery service. This permit may not be duplicated. This permit will be replaced only if:
23	(i) the permittee did not receive the original permit within seven business

Exhibit A

1	days after its date of issuance;
2	(ii) a request for replacement is submitted to the department within 10
3	business days after the original permit's date of issuance; and
4	(iii) the request for replacement is accompanied by a notarized statement
5	signed by a principle or officer of the permittee acknowledging that the permittee understands the permit
6	may not be duplicated and that if the original permit is located, the permittee must return either the
7	original or replacement permit to the department.
8	(D) A request for replacement of a permit issued under subparagraph (B) of this
9	paragraph will be denied if the department can verify that the permittee received the original.
10	(E) Lost, misplaced, damaged, destroyed, or otherwise unusable permits will not
11	be replaced. A new permit will be required.
12	(5) Annual manufactured housing permit. The department may issue an annual permit for
13	the transportation of new manufactured homes from a manufacturing facility to a temporary storage
14	location, not to exceed 20 miles from the point of manufacture, in accordance with Transportation Code,
15	§623.094. Permits issued under this paragraph are subject to the requirements of paragraph (1),
16	subparagraphs (A), (B), (C), (D), (E), and (G), of this subsection.
17	(A) A permit shall contain the name of the company or person authorized to be
18	issued permits by Transportation Code, Chapter 623, Subchapter E.
19	(B) The fee for a permit issued under this paragraph is \$1,500. Fees are non-
20	refundable, and shall be paid in accordance with §219.11(f) of this title.
21	(C) The time period will be for one year from the effective date stated on the
22	permit.
23	(D) The permitted vehicle must travel in the outside traffic lane on multi-lane

	Part 10. Texas Department of Motor Vehicles Chapter 219 – Oversize and Overweight Vehicles and Loads
1	highways when the width of the load exceeds 12 feet.
2	(E) The permitted vehicle must be registered in accordance with Transportation
3	Code, Chapter 502.
4	(F) Authorized movement for a vehicle permitted under this section shall be valid
5	during daylight hours only as defined by Transportation Code, §541.401.
6	(G) The permitted vehicle must be operated in accordance with the escort
7	requirements described in §219.14(f) of this title (relating to Manufactured Housing, and Industrialized
8	Housing and Building Permits).
9	(H) Permits issued under this section are non-transferable between permittees.
10	(6) Power line poles. An annual permit will be issued under Transportation Code, Chapter
11	622, Subchapter E, for the movement of poles required for the maintenance of electric power
12	transmission and distribution lines. Permits issued under this paragraph are subject to the conditions
13	described in paragraph (1) of this subsection.
14	(A) The fee for the permit is \$120.
15	(B) The time period will be for one year and will start on the effective date stated
16	on the permit.
17	(C) The maximum length of the permitted vehicle may not exceed 75 feet.
18	(D) The width, height and gross weight of the permitted vehicle may not exceed
19	the limits set forth by Transportation Code, Chapter 621.
20	(E) Vehicles permitted under this paragraph may not travel over a load restricted
21	bridge or load zoned road when exceeding posted limits.
22	(F) The permitted vehicle must be registered in accordance with Transportation
23	Code, Chapter 502, for maximum weight as set forth by Transportation Code, Chapter 621.

Board Meeting eBook

TITLE 43. TRANSPORTATION

77

Adopted Sections

#### Board Meeting eBook TITLE 43. TRANSPORTATION Part 10. Texas Department of Motor Vehicles Chapter 219 – Oversize and Overweight Vehicles and Loads

1	(G)Movement will be between the hours of sunrise and sunset; however, the
2	limitation on hours of operation does not apply to a vehicle being operated to prevent interruption or
3	impairment of electric service, or to restore electric service that has been interrupted. When operated at
4	night, a vehicle permitted under this subsection must be accompanied by a rear escort flag <u>vehicle</u> .
5	(H) The permitted vehicle may not travel during hazardous road conditions as
6	stated in §219.11(I)(1)(A) and (B) of this title except to prevent interruption or impairment of electric
7	service, or to restore electric service that has been interrupted.
8	(I) The speed of the permitted vehicle may not exceed 50 miles per hour.
9	(J) The permitted vehicle must display on the extreme end of the load:
10	(i) two red lamps visible at a distance of at least 500 feet from the rear;
11	(ii) two red reflectors that indicate the maximum width and are visible,
12	when light is insufficient or atmospheric conditions are unfavorable, at all distances from 100 to 600 feet
13	from the rear when directly in front of lawful lower beams of headlamps; and
14	(iii)two red lamps, one on each side, that indicate the maximum
15	overhang, and are visible at a distance of at least 500 feet from the side of the vehicle.
16	(7) Cylindrically shaped bales of hay. An annual permit may be issued under
17	Transportation Code, §623.017, for the movement of vehicles transporting cylindrically shaped bales of
18	hay. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this
19	subsection.
20	(A) The permit fee is \$10.
21	(B) The time period will be for one year, and will start on the effective date stated
22	on the permit.
23	(C) The maximum width of the permitted vehicle may not exceed 12 feet.

	TITLE 43. TRANSPORTATION       Adopted Sections         Part 10. Texas Department of Motor Vehicles       Chapter 219 – Oversize and Overweight Vehicles and Loads
1	(D) The length, height, and gross weight of the permitted vehicle may not exceed
2	the limits set forth by Transportation Code, Chapter 621.
3	(E) Movement is restricted to daylight hours only.
4	(F) The permitted vehicle must be registered in accordance with Transportation
5	Code, Chapter 502, for maximum weight, as set forth by Transportation Code, Chapter 621.
6	(8) Overlength load or vehicles. An annual overlength permit may be issued for the
7	transportation of a nondivisible overlength load or the movement of a nondivisible overlength vehicle or
8	combination of vehicles under Transportation Code, §623.071(c-1). This permit is subject to the portions
9	of subsections (a), (b), and (d) of this section that are not limited to the fee or duration for the 30, 60, and
10	90 day permits.
11	
12	§219.14. Manufactured Housing, and Industrialized Housing and Building Permits.
13	(1) A manufactured home that exceeds size limits for motor vehicles as defined by
14	Transportation Code, Chapter 621, Subchapters B and C, must obtain a permit from the department.
15	(2) Pursuant to Transportation Code, Chapter 623, Subchapter E, a permit may be issued
16	to persons registered as manufacturers, installers, or retailers with the Texas Department of Housing and
17	Community Affairs or motor carriers registered with the department under Transportation Code, Chapter
18	643.
19	(3) The department may issue a permit to the owner of a manufactured home provided
20	that:
21	(A) the same owner is named on the title of the manufactured home and
22	towing vehicle;
23	(B) or the owner presents a lease showing that the owner of the

Board Meeting eBook

- 1 manufactured home is the lessee of the towing vehicle.
- 2 (b) Application for permit.

3	(1) The applicant must complete the application and shall include the manufactured
4	home's HUD label number, Texas seal number, or the complete identification number or serial number of
5	the manufactured home, and the overall width, height, and length of the home and the towing vehicle in
6	combination. If the manufactured home is being moved to or from a site in this state where it has been,
7	or will be, occupied as a dwelling, the permit must also show the name of the owner of the home, the
8	location from which the home is being moved, and the location to which the home is being delivered.
9	(2) A permit application for industrialized housing or industrialized building that does not
10	meet the definition in Occupations Code, §1202.002 and §1202.003 shall be submitted in accordance with
11	§219.11(c) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).
12	(c) Amendments to permit. Amendments can only be made to change intermediate points
13	between the origination and destination points listed on the permit.
14	(d) Payment of permit fee. The cost of the permit is \$40, payable in accordance with §219.11(f) <u>of</u>
15	<u>this title</u> .
16	(e) Permit provisions and conditions.
17	(1) The overall combined length of the manufactured home and the towing vehicle
18	includes the length of the hitch or towing device.
19	(2) The height is measured from the roadbed to the highest elevation of the manufactured
20	home.
21	(3) The width of a manufactured home includes any roof or eaves extension or overhang
22	on either side.
23	(4) A permit will be issued for a single continuous movement not to exceed five days.

1	(5) Movement must be made during daylight hours only and may be made on any day
2	except New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas
3	Day.
4	(6) The department may limit the hours for travel on certain routes because of heavy
5	traffic conditions.
6	(7) The department will publish any limitations on movements during the national
7	holidays listed in this subsection, or any limitations during certain hours of heavy traffic conditions, and
8	will make such publications available to the public prior to the limitations becoming effective.
9	(8) The permit will contain the route for the transportation of the manufactured home
10	from the point of origin to the point of destination.
11	(9) The route for the transportation must be the most practical route as described in
12	§219.11(e),) of this title, except where construction is in progress and the permitted vehicle's dimensions
13	exceed the construction restrictions as published by the department, or where bridge or overpass width
14	or height would create a safety hazard.
15	(10) The department will publish annually a map or list of all bridges or overpasses which,
16	due to height or width, require an escort <u>flag</u> vehicle to stop oncoming traffic while the manufactured
17	home crosses the bridge or overpass.
18	(11) A permittee may not transport a manufactured home with a void permit; a new
19	permit must be obtained.
20	(f) Escort requirements.
21	(1) A manufactured home exceeding 12 feet in width must have a rotating amber beacon
22	of not less than eight inches in diameter mounted somewhere on the roof at the rear of the manufactured
23	home, or may have two five-inch flashing amber lights mounted approximately six feet from ground level

	Part 10. Texas Department of Motor Vehicles Chapter 219 – Oversize and Overweight Vehicles and Loads
1	at the rear corners of the manufactured home. The towing vehicle must have one rotating amber beacon
2	of not less than eight inches in diameter mounted on top of the cab. These beacons or flashing lights must
3	be operational and luminiferous during any permitted move over the highways, roads, and streets of this
4	state.
5	(2) A manufactured home with a width exceeding 16 feet but not exceeding 18 feet must
6	have a front escort <u>flag</u> vehicle on two-lane roadways and a rear escort <u>flag</u> vehicle on roadways of four
7	or more lanes.
8	(3) A manufactured home exceeding 18 feet in width must have a front and a rear escort
9	flag vehicle on all roadways at all times.
10	(4) The escort <u>flag</u> vehicle must:
11	(A) have one red 16 inch square flag mounted on each of the four corners of the
12	vehicle;
13	(B) have a sign mounted on the front and rear of the vehicle displaying the words
14	"WIDE LOAD" in black letters at least eight inches high with a brush stroke at least 1.41 inches wide against
15	a yellow background;
16	(C) have [an amber light or lights, visible from both front and rear,] mounted on
17	top of the vehicle and visible from both the front and rear [in one of the following configurations]:
18	(i) two simultaneously flashing lights <u>;</u> [ <del>or</del> ]
19	(ii) one rotating <u>amber</u> beacon of not less than eight inches in diameter;
20	<u>or</u>
21	(iii) alternating or flashing blue and amber lights; and
22	(D) maintain two-way communications with the permitted vehicle and other
23	escort <u>flag</u> vehicles involved with the movement of the permitted vehicle.

Board Meeting eBook

TITLE 43. TRANSPORTATION

1	(5) Two transportable sections of a multi-section manufactured home, or two single
2	section manufactured homes, when towed together in convoy, may be considered one home for purposes
3	of the escort flag vehicle requirements, provided the distance between the two units does not exceed
4	1,000 feet.
5	(6) An escort <u>flag</u> vehicle must comply with the requirements in §219.11(k)(1) and
6	§219.11(k)(7)(A) <u>of this title</u> .
7	
8	§219.15. Portable Building Unit Permits.
9	(a)General information.
10	(1) A vehicle or vehicle combination transporting one or more portable building units and
11	portable building compatible cargo that exceed legal length or width limits set forth by Transportation
12	Code, Chapter 621, Subchapters B and C, may obtain a permit under Transportation Code, Chapter 623,
13	Subchapter F.
14	(2) In addition to the fee required by subsection (d), the department shall collect an
15	amount equal to any fee that would apply to the movement of cargo exceeding any applicable width
16	limits, if such cargo were moved in a manner not governed by this section.
17	(b) Application for permit. Applications shall be made in accordance with §219.11(c) of this title
18	(relating to General Oversize/Overweight Permit Requirements and Procedures).
19	(c) Permit issuance. Permit issuance is subject to the requirements of §219.11(b)(2),(e) and (g) of
20	this title.
21	(d) Payment of permit fee. The cost of the permit is \$15, with all fees payable in accordance with
22	§219.11(f) of this title. All fees are non-refundable.
23	(e) Permit provisions and conditions.

	Board Meeting eBookDecember 10, 202084TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesAdopted SectionsChapter 219 – Oversize and Overweight Vehicles and LoadsSections
1	(1) A portable building unit may only be issued a single-trip permit.
2	(2) Portable building units may be loaded end-to-end to create an overlength permit load,
3	provided the overall length does not exceed 80 feet.
4	(3) Portable building units must not be loaded side-by-side to create an overwidth load,
5	or loaded one on top of another to create an overheight load.
6	(4) Portable building units must be loaded in a manner that will create the narrowest
7	width for permit purposes and provide for greater safety to the traveling public.
8	(5) The permit will be issued for a single continuous movement from the origin to the
9	destination for an amount of time necessary to make the move, not to exceed 10 consecutive days.
10	(6) Movement of the permitted vehicle must be made during daylight hours only.
11	(7) A permittee may not transport portable building units or portable building compatible
12	cargo with a void permit; a new permit must be obtained.
13	(f) Escort requirements.
14	(1) A portable building unit or portable building compatible cargo with a width exceeding
15	16 feet but not exceeding 18 feet must have a front escort <u>flag</u> vehicle on two-lane roadways and a rear
16	escort <u>flag</u> vehicle on roadways of four or more lanes.
17	(2) A portable building unit or portable building compatible cargo exceeding 18 feet in
18	width must have a front and a rear escort <u>flag vehicle on all roadways at all times</u> .
19	(3) The escort <u>flag</u> vehicle must:
20	(A) have one red 16 inch square flag mounted on each of the four corners of the
21	vehicle;
22	(B) have a sign mounted on the front and rear of the vehicle displaying the words
23	"WIDE LOAD" in black letters at least eight inches high with a brush stroke at least 1.41 inches wide against

1 a yellow background;

2	(C) have [an amber light or lights, visible from both front and rear,] mounted on
3	top of the vehicle and visible from both front and rear, [and which must be] two simultaneously flashing
4	lights, [ <del>or]</del> one rotating <u>amber</u> beacon of not less than eight inches in diameter, or alternating or flashing
5	blue and amber lights; and
6	(D) maintain two-way communications with the permitted vehicle and other
7	escort <u>flag</u> vehicles involved with the movement of the permitted vehicle.
8	(4) An escort <u>flag</u> vehicle must comply with the requirements in §219.11(k)(1) and
9	§219.11(k)(7)(A) <u>of this title</u> .
10	
11	SUBCHAPTER D. Permits for Oversize and Overweight Oil Well Related Vehicles
12	43 TAC §219.42 and §219.43
13	§219.42. Single-Trip Mileage Permits.
14	(a) General information.
15	(1) Permits issued under this section are subject to the requirements of §219.41 of this
16	title (relating to General Requirements).
17	(2) A single-trip mileage permit:
18	(A) is limited to a maximum of seven consecutive days;
19	(B) routes the vehicle from the point of origin to the point of destination and has
20	the route listed on the permit; and
21	(C) allows the unit to be returned to the point of origin on the same permit,
22	provided the return trip is made within the time period stated in the permit.
23	

	Board Meeting eBook December 10, 2020	08 Adapted Cestiene
	TITLE 43. TRANSPORTATION	Adopted Sections
	Part 10. Texas Department of Motor Vehicles Chapter 219 – Oversize and Overweight Vehicles and Loads	
1	(A) have front and rear escort <u>flag</u> vehicles to prevent traffic	from traveling beside
2	the unit as it crosses a bridge;	
3	(B) cross all multi-lane bridges by centering the unit on a la	ne line;
4	(C) cross all two-lane bridges in the center of the bridge; an	ıd
5	(D) cross each bridge at a speed not greater than 20 miles p	ber hour.
6	(4) A unit exceeding 12 feet in width must be centered in the outs	ide traffic lane of any
7	highway that has paved shoulders.	
8	(b) Maximum permit weight limits.	
9	(1) The maximum permit weight for any single axle must not exce	ed 30,000 pounds or
10	850 pounds per inch of tire width, whichever is less.	
11	(2) The maximum permit weight for any group of axles on a unit w	will be determined by
12	calculating the "W" weight for the group, using the formulas shown in Figure 2: 43	TAC §219.42(f), titled
13	"Maximum Permit Weight Formulas," and comparing the calculated "W" weight w	ith the corresponding
14	"W" weight that is established in Figure 1: 43 TAC §219.42(f), titled "Maximum Perr	nit Weight Table."
15	(3) The maximum permit weight per inch of tire width for axles th	at are steerable must
16	not exceed 950 pounds, and the maximum permit weight per inch of tire width	for axles that are not
17	steerable must not exceed 850 pounds.	
18	(4) A unit that does not have any group of axles that exceeds the	e limits established in
19	Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §	219.42(f), "Maximum
20	Permit Weight Formulas" will be permitted with a single-trip mileage or quarterly h	nubometer permit for
21	travel on any route that does not include a load restricted bridge.	
22	(5) A unit that has any group of axles that exceeds the limits estab	lished by Figure 1: 43
23	TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(	f), "Maximum Permit

Board Meeting eBook

1	Weight Formulas" will be eligible, on an individual case-by-case basis, for a single-trip mileage permit only;
2	permit approval or denial will be based on a detailed route study and an analysis conducted by TxDOT of
3	each bridge on the proposed travel route to determine if the road(s) and bridge(s) are capable of
4	sustaining the movement.
5	(6) A road or bridge that has been analyzed and determined to be incapable of sustaining
6	the unit will be excluded from the permit route.
7	(c) Permit application and issuance.
8	(1) An application for a single-trip mileage permit under this section must be made in
9	accordance with §219.41(b) of this title and shall also include the origin and destination points of the unit.
10	(2) Upon receipt of the application, the department will review and verify unit size and
11	weight information, check route and mileage to be traveled, compute the permit fee, and advise the
12	applicant of the permit fee.
13	(3) Upon receipt of the permit fee, the department will advise the applicant of the permit
14	number, and will provide a copy of the permit to the applicant.
15	(d) Permit fees and refunds.
16	(1) Minimum fee. The minimum fee for a single-trip mileage permit is either the calculated
17	permit fee or \$31, whichever is the greater amount.
18	(2) Permit fee calculation. The fee for a single-trip mileage permit is calculated by
19	multiplying the number of miles traveled, the highway use factor, and the total rate per mile, and then
20	adding the indirect cost share to the product.
21	(A) Highway use factor. The highway use factor for a single trip mileage permit is
22	0.6.
23	(B) Total rate per mile. The total rate per mile is the combined mileage rates for

1	width, height, and weight for the unit. For a trailer mounted unit, the total rate per mile is based on the
2	overall width, overall height, and all axle weights, including the truck-tractor axles.
3	(i) The mileage rate for width is \$.06 per mile for each foot (or fraction
4	thereof) above legal width.
5	(ii) The mileage rate for height is \$.04 per mile for each foot (or fraction
6	thereof) above legal height.
7	(iii) The mileage rate for a single axle or any axle within a group that
8	exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045
9	times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle
10	group and dividing the resultant figure by 1,000 pounds.
11	(iv) The mileage rate for a single axle or any axle within a group that
12	exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying \$.055
13	times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle
14	group and dividing the resultant figure by 1,000 pounds.
15	(3) Permit fees for trailer mounted units.
16	(A) The permit fee for a trailer mounted unit is based on the overall width, overall
17	height, and all axle weights, including the truck-tractor axles.
18	(B) A unit with two or more axle groups that do not have a spacing of at least 12
19	feet between the closest axles of the opposing groups must have the permit fee calculated by the
20	following method.
21	(i) The axle group with the lowest weight will have the axle closest to the
22	next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet
23	between the two groups for fee calculation purposes.

	TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesAdopted SectionsChapter 219 – Oversize and Overweight Vehicles and LoadsAdopted Sections
1	(ii) An axle group will not have more than one axle disregarded.
2	(iii) The permit fee for the axle group with the temporarily disregarded
3	axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining
4	axles of the group.
5	(4) Refunds. Fees for permits issued under this section are non-refundable.
6	(e) Amendments. A single-trip mileage permit may not be amended unless an exception is granted
7	by the department.
8	(f) Weight table and formulas. The following table entitled "Maximum Permit Weight Table" is
9	Figure 1: 43 TAC §219.42(f), and the list of formulas entitled, "Maximum Permit Weight Formulas," is
10	Figure 2: 43 TAC §219.42(f).
11	
12	§219.43. Quarterly Hubometer Permits.
13	(a) General information.
14	(1) Permits issued under this section are subject to the requirements of §219.41 of this
15	title (relating to General Requirements).
16	(2) A quarterly hubometer permit:
17	(A) is effective for three consecutive months;
18	(B) allows the unit to travel on all state-maintained highways; and
19	(C) allows the unit to travel on a state-wide basis.
20	(3) A unit permitted under this subsection must not exceed any of the following
21	dimensions:
22	(A) 12 feet in width;
23	(B) 14 feet, 6 inches in height; and

Board Meeting eBook

1	(C) 95 feet in length.
2	(4) With the exception of units that are overlength only, a unit operated with a permit
3	issued under this section must be equipped with a hubometer. The permittee must maintain the
4	hubometer in good working condition.
5	(5) A unit exceeding 175,000 pounds gross weight must:
6	(A) have front and rear escort <u>flag</u> vehicles to prevent traffic from traveling beside
7	the unit as it crosses a bridge;
8	(B) cross all multi-lane bridges by centering the unit on a lane line;
9	(C) cross all two-lane bridges in the center of the bridge; and
10	(D) cross each bridge at a speed not greater than 20 miles per hour.
11	(b) Maximum permit weight limits.
12	(1) The maximum permit weight for any single axle must not exceed 30,000 pounds or
13	850 pounds per inch of tire width, whichever is less.
14	(2) The maximum permit weight for any group of axles on a unit will be determined by
15	calculating the "W" weight for the group, using the formulas in Figure 2: 43 TAC §219.42(f), "Maximum
16	Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight
17	that is established in Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table."
18	(3) The maximum permit weight per inch of tire width for axles that are steerable must
19	not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not
20	steerable must not exceed 850 pounds.
21	(4) A unit that does not have any group of axles that exceeds the limits established in
22	Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), "Maximum
23	Permit Weight Formulas" will be permitted with a single-trip mileage or quarterly hubometer permit for

- 1 travel on any route that does not include a load restricted bridge.
- 2 (5) A unit that has any group of axles that exceeds the limits established by Figure 1: 43 3 TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), "Maximum Permit 4 Weight Formulas" will be eligible, on an individual case-by-case basis, for a single-trip mileage permit only; permit approval or denial will be based on a detailed route study and an analysis conducted by TxDOT of 5 6 each bridge on the proposed travel route to determine if the road(s) and bridge(s) are capable of 7 sustaining the movement. (6) A bridge that has been analyzed and determined to be incapable of sustaining the unit 8 9 will be excluded from the permit route. 10 (c) Initial permit application and issuance. (1) An application for an initial quarterly hubometer permit under this section must be 11 12 made in accordance with §219.41(b) of this title. In addition, the applicant must provide the current 13 hubometer mileage reading and an initial \$31 processing fee. 14 (2) Upon verification of the unit information and receipt of the permit fee, the 15 department will provide a copy of the permit to the applicant, as well as a renewal application. 16 (d) Permit renewals and closeouts. (1) An application for a permit renewal or closeout must be made on a form and in the 17 manner prescribed by the department. 18 (2) Upon receipt of the renewal application, the department will verify unit information, 19 20 check mileage traveled on the last permit, calculate the new permit fee, and advise the applicant of the 21 permit fee. 22 (e) Permit fees. 23 (1) Minimum fee. The minimum fee for a guarterly hubometer permit is either the

	Board Meeting eBookDecember 10, 202092TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesAdopted SectionsChapter 219 – Oversize and Overweight Vehicles and LoadsSections
1	calculated permit fee or \$31, whichever is the greater amount.
2	(2) Fees for overlength units. A unit that is overlength only must obtain a quarterly
3	hubometer permit with a fee of \$31, but is not required to have a hubometer.
4	(3) Quarterly hubometer permit fee calculation. The permit fee for a quarterly hubometer
5	permit is calculated by multiplying the hubometer mileage, the highway use factor, and the total rate per
6	mile, and then adding the indirect cost share to the product.
7	(A) Hubometer mileage. Mileage for a quarterly hubometer permit is determined
8	by the unit's current hubometer mileage reading minus the unit's hubometer mileage reading from the
9	previous quarterly hubometer permit.
10	(B) Highway use factor. The highway use factor for a quarterly hubometer permit
11	is 0.3.
12	(C) Total rate per mile. The total rate per mile is the combined mileage rates for
13	width, height, and weight for the unit. The rate per mile for a trailer mounted unit is based on the overall
14	width, overall height, and all axle weights, including the truck-tractor axles.
15	(i) The mileage rate for width is \$.06 per mile for each foot (or fraction
16	thereof) above legal width.
17	(ii) The mileage rate for height is \$.04 per mile for each foot (or fraction
18	thereof) above legal height.
19	(iii) The mileage rate for a single axle or any axle within a group that
20	exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045
21	times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle
22	group and dividing the resultant figure by 1,000 pounds.
23	(iv) The mileage rate for a single axle or any axle within a group that

1	exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying \$.055
2	times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle
3	group and dividing the resultant figure by 1,000 pounds.
4	(4) Permit fees for trailer mounted units.
5	(A) The permit fee for a trailer mounted unit is based on the overall width, overall
6	height, and all axle weights, including the truck-tractor axles.
7	(B)A unit with two or more axle groups that does not have a spacing of at least 12
8	feet between the closest axles of the opposing groups must have the permit fee calculated by the
9	following method.
10	(i) The axle group with the lowest weight will have the axle closest to the
11	next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet
12	between the two groups for fee calculation purposes.
13	(ii) An axle group will not have more than one axle disregarded.
14	(iii) The permit fee for the axle group with the temporarily disregarded
15	axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining
16	axles of the group.
17	(f) Amendments. A quarterly hubometer permit may be amended only to indicate:
18	(1) a new hubometer serial number; or
19	(2) a new license plate number.
20	
21	SUBCHAPTER E. Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles.
22	43 TAC §§219.61-219.63
23	§219.61. General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor

Board Meeting eBook TITLE 43. TRANSPORTATION Part 10. Texas Department of Motor Vehicles Chapter 219 – Oversize and Overweight Vehicles and Loads

1	Vehicles.
2	(a) General information.
3	(1) Unless otherwise noted, permits issued under this subchapter are subject to the
4	requirements of this section.
5	(2) Cranes are eligible for an annual permit under this subchapter.
6	(3) Cranes are also eligible for the following permits under this subchapter at weights
7	above those established by §219.11(d)(2) of this title (relating to General Oversize/Overweight Permit
8	Requirements and Procedures):
9	(A) single-trip mileage permits; and
10	(B) quarterly hubometer permits.
11	(4) If a truck-tractor is used to transport a trailer-mounted crane, the combination of
12	vehicles is limited to the dimensions and weights listed in this subchapter.
13	(b) Permit application. An application shall be made on a form and in a manner prescribed by the
14	department. The applicant shall provide all applicable information, including:
15	(1) name, address, telephone number, and email address (if requested) of the applicant;
16	(2) year and make of the crane;
17	(3) vehicle identification number of the crane;
18	(4) width, height, and length of the crane;
19	(5) crane axle and tire information, including the number of axles, distance between axles,
20	gauge per axle, axle weights, number of tires, and tire size; and
21	(6) any other information required by law.
22	(c) Payment of permit fees. Fees for permits issued under this subchapter are payable as described
23	in §219.11(f) <u>of this title</u> .

	Board Meeting eBookDecember 10, 202095TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesAdopted SectionsChapter 219 – Oversize and Overweight Vehicles and LoadsSections
1	(d) Restrictions.
2	(1) A crane permitted under this subchapter is subject to the restrictions specified in
3	§219.11(I)(1), (3), and (4) of this title, and the permittee is responsible for obtaining information
4	concerning current restrictions from the department.
5	(2) A crane permitted under this subchapter may travel through highway construction or
6	maintenance areas provided the dimensions do not exceed the construction restrictions as published by
7	the department.
8	(3) A crane permitted under this subchapter may only be operated during daylight, unless:
9	(A) the crane is overweight only; or
10	(B) the crane complies with one of the following, regardless of whether the crane
11	is overweight:
12	(i) the crane does not exceed nine feet in width, 14 feet in height, or 65
13	feet in length; or
14	(ii) the crane is accompanied by a front and rear escort <u>flag</u> vehicle and
15	does not exceed:
16	(I) 10 feet, 6 inches in width;
17	(II) 14 feet in height; or
18	(III) 95 feet in length.
19	(e) Transferability. Unless otherwise noted, a permit issued under this subchapter may not be
20	transferred between cranes or between permittees.
21	(f) Escort requirements. In addition to any other escort requirements specified in this subchapter,
22	cranes permitted under this subchapter are subject to the escort requirements specified in §219.11(k) of
23	<u>this title</u> .

# Board Meeting eBookDecember 10, 2020TITLE 43. TRANSPORTATIONPart 10. Texas Department of Motor VehiclesChapter 219 – Oversize and Overweight Vehicles and Loads

1	(g) Properly secured equipment. A crane permitted under this subchapter may travel with
2	properly secured equipment, such as outriggers, booms, counterweights, jibs, blocks, balls, cribbing,
3	outrigger pads, and outrigger mats, in accordance with the manufacturer's specifications to the extent
4	the equipment is necessary for the crane to perform its intended function, provided the axle weights, axle
5	group weights, and gross weight do not exceed the maximum permit weights listed in this subchapter.
6	
7	§219.62. Single Trip Mileage Permits.
8	(a) General information.
9	(1) Permits issued under this section are subject to the requirements of §219.61 of this
10	title (relating to General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment
11	Motor Vehicles).
12	(2) A single-trip mileage permit:
13	(A) is limited to a maximum of seven consecutive days;
14	(B) is routed from the point of origin to the point of destination and has the route
15	listed on the permit; and
16	(C) allows the crane to be returned to the point of origin on the same permit,
17	provided the return trip is made within the time period stated in the permit.
18	(3) A crane exceeding 175,000 pounds gross weight must:
19	(A) have front and rear escort <u>flag</u> vehicles to prevent traffic from traveling beside
20	the crane as it crosses a bridge;
21	(B) cross all multi-lane bridges by centering the crane on a lane line;
22	(C) cross all two-lane bridges in the center of the bridge; and
23	(D) cross each bridge at a speed not greater than 20 miles per hour.

	Part 10. Texas Department of Motor Vehicles Chapter 219 – Oversize and Overweight Vehicles and Loads
1	(4) A crane exceeding 12 feet in width must be centered in the outside traffic lane of any
2	highway that has paved shoulders.
3	(5) Except as otherwise provided in this section, the permitted crane must not cross a
4	load-restricted bridge when exceeding the posted capacity of the bridge.
5	(b) Maximum permit weight limits.
6	(1) The maximum permit weight for any single axle must not exceed 30,000 pounds or
7	850 pounds per inch of tire width, whichever is less.
8	(2) The maximum permit weight for any group of axles on a crane is determined by
9	calculating the "W" weight for the group, using the formulas shown in Figure 2: 43 TAC §219.62(f),
10	"Maximum Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding
11	"W" weight that is established in Figure 1:43 TAC §219.62(f), "Maximum Permit Weight Table."
12	(3) The maximum permit weight per inch of tire width for axles that are steerable must
13	not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not
14	steerable must not exceed 850 pounds.
15	(4) An applicant with a crane that has any group of axles that exceeds the limits
16	established by Figure 1: 43 TAC §219.62(f),"Maximum Permit Weight Table," and Figure 2: 43 TAC
17	§219.62(f), "Maximum Permit Weight Formulas," must comply with the following process and
18	requirements:
19	(A) submit the following to the department to determine if a permit can be issued:
20	(i) a detailed diagram, on a form prescribed by the department, which
21	illustrates the required information listed in §219.61(b)(5) of this title;
22	(ii) the exact beginning and ending points relative to a state highway; and
23	(iii) the name and contact information of the applicant's TxDOT-approved

Board Meeting eBook

TITLE 43. TRANSPORTATION

97

Adopted Sections

**TITLE 43. TRANSPORTATION** Part 10. Texas Department of Motor Vehicles Chapter 219 – Oversize and Overweight Vehicles and Loads 1 licensed professional engineer. 2 (B) The department will select and provide the applicant with a tentative route 3 based on the size of the crane, excluding the weight. The applicant must inspect the tentative route and 4 advise the department, in writing, that the route is capable of accommodating the crane. 5 (C) Before the department will issue a permit, the applicant's TxDOT-approved 6 licensed professional engineer must submit to TxDOT a written certification that includes a detailed 7 structural analysis of the bridges on the proposed route demonstrating that the bridges and culverts on 8 the travel route are capable of sustaining the crane. The certification must be approved by TxDOT and 9 submitted to the department before the department will issue the permit. 10 (c) Permit application and issuance. (1) An application for a single-trip mileage permit under this section must be made in 11 12 accordance with §219.61(b) of this title and must also include the origin and destination points of the 13 crane. 14 (2) Upon receipt of the application, the department will review and verify size and weight 15 information, check the route and mileage to be traveled, compute the permit fee, and advise the applicant 16 of the permit fee. 17 (3) Upon receipt of the permit fee, the department will advise the applicant of the permit number and will provide a copy of the permit to the applicant. 18 (d) Permit fees and refunds. 19 20 (1) Minimum fee. The minimum fee for a single-trip mileage permit is either the calculated 21 permit fee or \$31, whichever is the greater amount. 22 (2) Permit fee calculation. The permit fee for a single-trip mileage permit is calculated by 23 multiplying the number of miles traveled, the highway use factor, and the total rate per mile, and then

Board Meeting eBook

	TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesChapter 219 – Oversize and Overweight Vehicles and Loads
1	adding the indirect cost share to the product.
2	(A) Highway use factor. The highway use factor for a single-trip mileage permit is
3	0.6.
4	(B) Total rate per mile. The total rate per mile is the combined mileage rates for
5	width, height, and weight for the crane. The rate per mile for a trailer-mounted crane is based on the
6	overall width, overall height, and all axle weights, including the truck-tractor axles.
7	(i) The mileage rate for width is \$.06 per mile for each foot (or fraction
8	thereof) above legal width.
9	(ii) The mileage rate for height is \$.04 per mile for each foot (or fraction
10	thereof) above legal height.
11	(iii) The mileage rate for a single axle or any axle within a group that
12	exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045
13	times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle
14	group and dividing the resultant figure by 1,000 pounds.
15	(iv) The mileage rate for a single axle or any axle within a group that
16	exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying \$.055
17	times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle
18	group and dividing the resultant figure by 1,000 pounds.
19	(3) Exceptions to fee computations. A crane with two or more axle groups that does not
20	have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit
21	fee calculated by the following method.
22	(A) The axle group with the lowest weight will have the axle closest to the next
23	axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between

Board Meeting eBook

	Board Meeting eBookDecember 10, 2020100TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesChapter 219 – Oversize and Overweight Vehicles and Loads
1	the two groups for fee calculation purposes.
2	(B) An axle group will not have more than one axle disregarded.
3	(C) The permit fee for the axle group with the temporarily disregarded axle must
4	be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of
5	the group.
6	(4) Refunds. Fees for permits issued under this section are non-refundable.
7	(e)Amendments. A single-trip mileage permit issued under this section may not be amended
8	unless an exception is granted by the department.
9	(f)Weight table and formulas. The following table entitled "Maximum Permit Weight Table" is
10	Figure 1: 43 TAC §219.62(f), and the list of formulas entitled "Maximum Permit Weight Formulas," is Figure
11	2: 43 TAC §219.62(f).
12	Figure 1: 43 TAC §219.63. Quarterly Hubometer Permits.62(f) (No Change.)
13	Figure 2: 43 TAC §219.62(f) (No Change.)
14	(a)General information.
15	(1) Permits issued under this section are subject to the requirements of §219.61 of this
16	title (relating to General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment
17	Motor Vehicles).
18	(2) A quarterly hubometer permit:
19	(A) is effective for three consecutive months;
20	(B) allows the crane to travel on all state-maintained highways; and
21	(C) allows the crane to travel on a state-wide basis.
22	(3) A crane permitted under this section must not exceed any of the following dimensions:
23	(A) 12 feet in width;

	Board Meeting eBookDecember 10, 2020101TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesChapter 219 – Oversize and Overweight Vehicles and Loads
1	(B) 14 feet, 6 inches in height; or
2	(C) 95 feet in length.
3	(4) With the exception of cranes that are overlength only, cranes operated with a
4	quarterly hubometer permit must be equipped with a hubometer. The permittee must maintain the
5	hubometer in good working condition.
6	(5) A crane exceeding 175,000 pounds gross weight must:
7	(A) have front and rear escort <u>flag</u> vehicles to prevent traffic from traveling beside
8	the crane as it crosses a bridge;
9	(B) cross all multi-lane bridges by centering the crane on a lane line;
10	(C) cross all two-lane bridges in the center of the bridge; and
11	(D) cross each bridge at a speed not greater than 20 miles per hour.
12	(6) The permitted crane must not cross a load-restricted bridge when exceeding the
13	posted capacity of the bridge.
14	(7) The permit may be amended only to indicate:
15	(A) a new hubometer serial number; or
16	(B) a new license plate number.
17	(b) Maximum permit weight limits.
18	(1) The maximum permit weight for any single axle must not exceed 30,000 pounds or
19	850 pounds per inch of tire width, whichever is less.
20	(2) The maximum permit weight for any group of axles on a crane will be determined by
21	calculating the "W" weight for the group, using the formulas in Figure 2: 43 TAC §219.62(f), "Maximum
22	Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight
23	that is established in Figure 1 :43 TAC §219.62(f), "Maximum Permit Weight Table."

	Board Meeting eBookDecember 10, 2020102TITLE 43. TRANSPORTATIONAdopted Sections
	Part 10. Texas Department of Motor Vehicles Chapter 219 – Oversize and Overweight Vehicles and Loads
1	(3) The maximum permit weight per inch of tire width for axles that are steerable must
2	not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not
3	steerable must not exceed 850 pounds.
4	(4) A crane that has any group of axles that exceeds the limits established by Figure 1 :43
5	TAC §219.62(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.62(f), "Maximum Permit
6	Weight Formulas," is not eligible for a permit under this section; however, it is eligible for a permit under
7	§219.62 of this title (relating to Single-Trip Mileage Permits).
8	(c) Initial permit application and issuance.
9	(1) An application for an initial quarterly hubometer permit must be made in accordance
10	with §219.61(b) of this title. In addition, the applicant must provide the current hubometer mileage
11	reading and an initial \$31 processing fee.
12	(2) Upon verification of the crane information and receipt of the permit fee, the
13	department will provide a copy of the permit to the applicant, and will also provide a renewal application
14	form to the applicant.
15	(d) Permit renewals and closeouts.
16	(1) An application for a permit renewal or closeout must be made on a form and in a
17	manner prescribed by the department.
18	(2) Upon receipt of the renewal application, the department will verify crane information,
19	check mileage traveled on the last permit, calculate the new permit fee, and advise the applicant of the
20	permit fee.
21	(e) Permit fees.
22	(1) Minimum fee. The minimum fee for a quarterly hubometer permit is either the
23	calculated permit fee or \$31, whichever is the greater amount.

	Board Meeting eBook December 10, 2020 103
	TITLE 43. TRANSPORTATION Adopted Sections Part 10. Texas Department of Motor Vehicles
	Chapter 219 – Oversize and Overweight Vehicles and Loads
1	(2) Fees for overlength cranes. A crane that is overlength only is not required to have a
2	hubometer. The fee for this permit is \$31.
3	(3) Quarterly hubometer permit fee calculation. The permit fee for a quarterly hubometer
4	permit is calculated by multiplying the hubometer mileage, the highway use factor, and the total rate per
5	mile, and then adding the indirect cost share to the product.
6	(A) Hubometer mileage. Mileage for a quarterly hubometer permit is determined
7	by the crane's current hubometer mileage reading minus the crane's hubometer mileage reading from
8	the previous quarterly hubometer permit.
9	(B) Highway use factor. The highway use factor for a quarterly hubometer permit
10	is 0.3.
11	(C) Total rate per mile. The total rate per mile is the combined mileage rates for
12	width, height, and weight for the crane.
13	(i) The mileage rate for width is \$.06 per mile for each foot (or fraction
14	thereof) above legal width.
15	(ii) The mileage rate for height is \$.04 per mile for each foot (or fraction
16	thereof) above legal height.
17	(iii) The mileage rate for a single axle or any axle within a group that
18	exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045
19	times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle
20	group and dividing the resultant figure by 1,000 pounds.
21	(iv) The mileage rate for a single axle or any axle within a group that
22	exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying \$.055
23	times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle

	TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesAdopted Sections
	Chapter 219 – Oversize and Overweight Vehicles and Loads
1	group and dividing the resultant figure by 1,000 pounds.
2	(4) Special fee provisions. A crane with two or more axle groups that do not have a spacing
3	of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated
4	by the following method.
5	(A) The axle group with the lowest weight will have the axle closest to the next
6	axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between
7	the two groups for fee calculation purposes.
8	(B) An axle group will not have more than one axle disregarded.
9	(C) The permit fee for the axle group with the temporarily disregarded axle must be based
10	on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.
11	
12	CERTIFICATION. The agency certifies that legal counsel has reviewed the adoption and found it to be a
13	valid exercise of the agency's legal authority.
14	Issued at Austin, Texas, on <u>M DD, YYYY</u> .
15	
16	
17	Tracey Beaver, General Counsel

Board Meeting eBook

Board Meeting eBook

## Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

### Board Meeting Date: 12/10/2020 ACTION ITEM

To: From:	Texas Department of Motor Vehicles Board Jimmy Archer, Motor Carrier Division Director
Agenda Item:	8
Subject:	Chapter 219, Oversize and Overweight Vehicles and Loads Amendments, §219.31 and §219.126 Repeal, §219.83 (Relating to HB 2620, movement of oversize or overweight vehicles and enforcement of motor vehicle size and weight limitations)

#### RECOMMENDATION

Approval to publish the adopted amendments and repeal in the *Texas Register*.

#### PURPOSE AND EXECUTIVE SUMMARY

The purpose of the amendments is to conform the rules to amendments to Transportation Code §623.272 and §623.321 added by House Bill 2620, 86th Legislature, Regular Session (2019) regarding the shipper's certificates of weight and the timber permit.

The adopted rule also repeals §219.83 because it duplicates language found in Transportation Code §623.271 and §623.274. Also, some of the language in §219.83 is inconsistent with Transportation Code §623.274, which was also amended by House Bill 2620.

#### FINANCIALIMPACT

None

#### BACKGROUND AND DISCUSSION

The proposal amends §219.31(a) to conform with Transportation Code §623.321 by authorizing the current timber permit to be used to transport equipment used to load timber on a vehicle.

The proposal amends §219.126 to conform with Transportation Code §623.272. The amendment says the department may also investigate and impose a fine on a shipper who does not provide a shipper's certificate of weight as required under Transportation Code §623.274(b).

#### COMMENTS

The proposal was published in the *Texas Register* on August 21, 2020. The comment period ended on September 21,2020. No comments were received.

If the board adopts the rules during its December 10, 2020, open meeting, staff anticipates:

- Publication in the December 25, 2020, issue of the Texas Register; and
- An effective date of December 30, 2020.

	Part 10. Texas Department of Motor Vehicles Chapter 219 - General Oversize/ Overweight Permit Requirements and Procedures
1	ADOPTION OF
2	SUBCHAPTER C. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES
3	43 TAC §219.31
4	
5	SUBCHAPTER H. ENFORCEMENT
6	43 TAC §219.126
7	
8	REPEAL OF
9	SUBCHAPTER F. COMPLIANCE
10	43 TAC §219.83
11	INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 TAC
12	§219.31 and §219.126, concerning the movement of oversize or overweight vehicles, including the
13	enforcement of motor vehicle size and weight limitations. The department adopts §219.31 and §219.126
14	without changes to the proposed text as published in the August 21, 2020, issue of the Texas Register (45
15	TexReg 5899). In conjunction with this adoption, the department is adopting the repeal of §219.83
16	concerning shipper's certificates of weight which is also published in this issue of the Texas Register.
17	REASONED JUSTIFICATION.
18	The adopted amendment amends §219.31(a) to conform with Transportation Code §623.321 by
19	authorizing the current timber permit to be used to transport equipment used to load timber on a vehicle.
20	The adopted amendment amends §219.126 to conform with Transportation Code §623.272
21	because it adds that the department may also investigate and impose a fine on a shipper who does not
22	provide a shipper's certificate of weight as required under Transportation Code §623.274(b).

Board Meeting eBook

TITLE 43. TRANSPORTATION

106

Adopted Sections

	Board Meeting eBookDecember 10, 2020107TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor Vehicles Chapter 219 - General Oversize/Overweight Permit Requirements and Procedures
1	The adopted amendment repeals §219.83 because it duplicates language found in Transportation
2	Code §623.271 and §623.274. Also, some of the language in §219.83 is inconsistent with Transportation
3	Code §623.274.
4	SUMMARY OF COMMENTS.
5	No comments on the proposed amendments were received.
6	STATUTORY AUTHORITY. The department adopts amendments under Transportation Code §623.002,
7	which authorizes the Texas Department of Motor Vehicles Board (board) to adopt rules for the
8	administration of Transportation Code Chapter 623; and Transportation Code §1002.001 which
9	authorizes the board to adopt rules that are necessary and appropriate to implement the powers and
10	the duties of the department.
11	CROSS REFERENCE TO STATUTE. Transportation Code §§623.272, 623.274, and 623.321.
12	TEXT.
13	SUBCHAPTER C. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES
14	§219.31. Timber Permits.
15	(a) Purpose. This section prescribes the requirements and procedures regarding the annual permit
16	for the operation of a vehicle or combination of vehicles that will be used to transport unrefined timber,
17	wood chips, [ <del>or</del> ] woody biomass, <u>or equipment used to load timber on a vehicle</u> under the provisions of
18	Transportation Code, Chapter 623, Subchapter Q.
19	(b) Application for permit.
20	(1) To qualify for a timber permit, a person must submit an application to the department.
21	(2) The application shall be in a form prescribed by the department and at a minimum,
22	will require the following:

	Board Meeting eBookDecember 10, 2020108TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor Vehicles Chapter 219 - General Oversize/Overweight Permit Requirements and Procedures
1 2	(A) name, address, telephone number, and email address (if requested) of the applicant;
3	(B) name of contact person and telephone number or email address;
4	(C) vehicle information, including vehicle year, make, license plate number and
5	state of issuance, and vehicle identification number; and
6	(D) a list of timber producing counties described in Transportation Code,
7	§623.321(a), in which the vehicle or combination of vehicles will be operated.
8	(3) The application shall be accompanied by:
9	(A) the total annual permit fee required by statute; and
10	(B) a blanket bond or irrevocable letter of credit as required by Transportation
11	Code, §623.012, unless the applicant has a current blanket bond or irrevocable letter of credit on file with
12	the department that complies with Transportation Code, §623.012.
13	(4) Fees for permits issued under this section are payable as required by §219.11(f) of this
14	title (relating to General Oversize/Overweight Permit Requirements and Procedures).
15	(c) Issuance and placement of permit and windshield sticker; restrictions.
16	(1) A permit and a windshield sticker will be issued once the application is approved, and
17	each will be mailed to the applicant at the address contained in the application.
18	(2) The windshield sticker shall be affixed to the inside of the windshield of the vehicle in
19	accordance with the diagram printed on the back of the sticker and in a manner that will not obstruct the
20	vision of the driver. Any attempt to remove the sticker from the windshield will render the sticker void
21	and will require a new permit and sticker.
22	(3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued,
23	provided that the permittee submits a request on a form approved by the department which shall include
	Board Meeting eBookDecember 10, 2020109TITLE 43. TRANSPORTATIONAdopted Sections
----	--
	Part 10. Texas Department of Motor Vehicles Chapter 219 - General Oversize/
	Overweight Permit Requirements and Procedures
1	a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The
2	replacement sticker shall only be valid for the permitted vehicle.
3	(d) Notification. The financially responsible party as defined in Transportation Code, §623.323(a),
4	shall electronically file the notification document described by §623.323(b) with the department via the
5	form on the department's website.
6	(e) Transfer of permit. An annual permit issued under this section is not transferable between
7	vehicles.
8	(f) Amendments. An annual permit issued under this section will not be amended except in the
9	case of department error.
10	(g) Termination of permit. An annual permit issued under this section will automatically
11	terminate, and the windshield sticker must be removed from the vehicle:
12	(1) on the expiration of the permit;
13	(2) when the lease of the vehicle expires;
14	(3) on the sale or other transfer of ownership of the vehicle for which the permit was
15	issued;
16	(4) on the dissolution or termination of the partnership, corporation, or other legal entity
17	to which the permit was issued; or
18	(5) if the permittee fails to timely replenish the bond or letter of credit as required by
19	Transportation Code, §623.012.
20	(h) Restrictions. Permits issued under this section are subject to the restrictions in §219.11(l) of
21	this title.
22	SUBCHAPTER H. ENFORCEMENT
23	43 TAC §219.126

109

	Board Meeting eBook December 10, 2020 110   TITLE 43. TRANSPORTATION Adopted Sections   Part 10. Texas Department of Motor Vehicles Chapter 219 - General Oversize/ Overweight Permit Requirements and Procedures
1	§219.126. Administrative Penalty for False Information on Certificate by a Shipper.
2	(a) The department may investigate and impose an administrative penalty on a shipper who <u>does</u>
3	not provide a shipper's certificate of weight as required under Transportation Code §623.274(b) or
4	provides false information on a shipper's certificate of weight that the shipper delivers to a person
5	transporting a shipment.
6	(b) The notice and hearing requirements of §219.124 of this title (relating to Administrative
7	Proceedings) apply to the imposition of an administrative penalty under this section.
8	(c) The amount of an administrative penalty imposed under this section is calculated in the same
9	manner as the amount of an administrative penalty imposed under §219.121 of this title (relating to
10	Administrative Penalties).
11	SUBCHAPTER F. COMPLIANCE
12	43 TAC §219.83
13	[( <del>a) For a shipper's certificate of weight to be valid, the shipper must:</del> ]
14	[ <del>(1) certify that the information contained on the form used for the shipper's certificate</del>
15	of weight is accurate; and]
16	[ <del>(2) deliver the certificate to the motor carrier or other person transporting the shipment</del>
17	before:]
18	(A) the motor carrier or person applies for an overweight permit under this chapter; or]
19	(B) the motor carrier or person begins to transport the shipment if the motor
20	carrier or person does not apply for an overweight permit because of the information in the certificate.]
21	[(b) A motor carrier who holds an annual envelope permit issued under this chapter may rely on
22	the shipper's certificate of weight to determine whether the shipment requires an additional overweight

	Board Meeting eBook TITLE 43. TRANSPORTATION Part 10. Texas Department of Mot Overweight Permit Requirements	December 10, 2020 tor Vehicles Chapter 219 - General Oversize/ and Procedures	111 Adopted Sections Page 6 of 6
1	[ <del>(c) It is an affirmative def</del>	ense to an administrative enforcement action unc	<del>ler this chapter for the</del>
2	failure of a person or the holder	of a permit to obtain the required overweight p	ermit that the person
3	relied on a valid shipper's certifica	ate of weight.]	

- 4
- 5 **CERTIFICATION.** The agency certifies that legal counsel has reviewed the adoption and found it to be a
- 6 valid exercise of the agency's legal authority.
- 7 Issued at Austin, Texas, on <u>M DD, YYYY</u>.
- 8
- 9 10

Tracey Beaver, General Counsel

Board Meeting eBook

# Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

### Board Meeting Date: 12/10/2020 ACTION ITEM

To: From:	Texas Department of Motor Vehicles Board Timothy Menke, Compliance & Investigations Division Director Sandra Menjivar-Suddeath, Internal Audit Division Director
Agenda Item:	9
Subject:	Chapter 206, Management
	New, §206.151
	Chapter 223, Compliance and Investigations Division
	New, §223.101
	(Relating to SB 604, risk-based monitoring and prevention of title and registration fraud)

### **RECOMMENDATION**

Approval to publish the adopted new sections in the *Texas Register*.

### PURPOSE AND EXECUTIVE SUMMARY

The purpose of new §206.151 and §223.101 is to implement Transportation Code §520.004(4), as enacted in Senate Bill 604, 86th Legislature, Regular Session (2019). Transportation Code §520.004(4), which requires the department, by rule, to establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel. The requirement is included within Sunset Advisory Commission's Change in Statute Recommendation 2.4, as stated in the Sunset Staff Report with Final Results, 2018-2019, 86th Legislature (2019).

### FINANCIAL IMPACT

None

### BACKGROUND AND DISCUSSION

New §206.151 and §223.101 outline the internal and external risk-based monitoring systems generally, to allow flexibility for change over time and because detailed disclosure of the means and methods that the department's system could be used to evade the monitoring. In addition, the department cannot always reveal the existence or substance of a fraud investigation, but will work with county tax assessor collectors to address and prevent fraudulent activity. The monitoring system does not add additional requirements or costs on any regulated person.

### <u>COMMENTS</u>

The proposed sections were published for comment in the August 21, 2020, issue of the *Texas Register*. The comment period closed on September 21, 2020. The department received written comments on §223.101 from the Lubbock County Tax Assessor Collectors and the Tax Collector Assessor Association of Texas. In response to a comment the text of §223.101(1) was amended to add "including procedures to notify county tax assessor collectors concerning routine and periodic review."

#### Board Meeting eBook

#### December 10, 2020

If the board adopts the rules during its December 10, 2020, board meeting, staff anticipates:

- Publication in the December 25, 2020, issue of the Texas Register; and
- An effective date of December 30, 2020.



Ronnie Keister

Lubbock County Tax Assessor-Collector 916 Main Street, Suite 102 PO Box 10536 Lubbock, TX 79408-3536 806.775.1344 taxoffice@lubbockcounty.gov

September 18, 2020

Office of General Counsel Texas Department of Motor Vehicles 4000 Jackson Avenue Austin, TX 78731

Via Email to: rules@txdmv.gov

SUBJECT: Response to TxDMV 43 TAC § 223.101 – Risk-Based Monitoring and Preventing Fraudulent Activity

TxDMV Board Members and Agency Leadership:

Please accept this letter as official notice of support for proposed rule for chapter 223 relating to the prevention of fraudulent activity.

I recommend language be added to the rule that clarifies the qualifying criteria used to determine when, and how, additional monitoring will be required.

The concern listed needs to be addressed prior to the approval of this rule. Please call me if you have any additional questions.

Respectfully,

Jon

Ronnie Keister Tax Assessor-Collector

www.lubbockcounty.gov



THE TAX ASSESSOR-COLLECTORS ASSOCIATION OF TEXAS

A dynamic association of innovative and resourceful professionals whose purpose is to educate, support and advance the office of County Tax Assessor-Collectors of Texas.

www.tacaoftexas.org

# **#BeTheDifference**

September 18, 2020

Office of General Counsel Texas Department of Motor Vehicles 4000 Jackson Avenue Austin, TX 78731 rules@txdmv.gov Attn: Tracey Beaver

Dear TxDMV Board, Executive Director and V.T.R. Director,

The Tax Assessor Collectors Association of Texas, representing all 254 county tax assessor collectors, seeks to provide input on Texas Administration Code draft rules.

We are always in favor of protecting our mutual constituents and ensure accountability of our offices and employees, our contractors and the process of motor vehicle titling and registration. We agree there should be monitoring and active prevention of fraudulent activity within our industry. We desire to partner with the department in all facets of detecting and preventing fraudulent activity. To that end, we respectfully submit the amended rule as follows:

TITLE 43 TAC §223.101 Proposed Section Part 10. Texas Department of Motor Vehicles Chapter 223-Compliance and Investigations Division

§223.101. External Risk-Based Monitoring System.

The department's Compliance and Investigations Division shall establish a riskbased system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel, including:

(1) establishing a risk-based system of monitoring counties and their contractors, including procedures to notify county tax assessor collectors concerning routine and periodic review and disclosure procedures concerning possible fraudulent activity;

(2) developing criteria to determine varying risk levels for the department's fraud monitoring functions to strategically allocate resources and personnel;

OFFICERS

TAMMY McRAE, PCAC PRESIDENT MONTGOMERY COUNTY tammy.mcrae@mctx.org

RANDYL RIGGS, CPA, PCC VICE-PRESIDENT EXTERNAL MCLENNAN COUNTY randy.riggs@co.mclennan.tx.us

BRUCE STIDHAM, PCAC VICE-PRESIDENT INTERNAL GRAYSON COUNTY stidhamb@co.grayson.tx.us

LARRY GADDES, PCAC, CTA SECRETARY-TREASURER WILLIAMSON COUNTY Igaddes@wilco.org

CATHY C. TALCOTT, PCAC IMMEDIATE PAST PRESIDENT COMAL COUNTY talcoc@co.comal.tx.us

#### DIRECTORS

KEVIN KIESCHNICK, PCC NUECES COUNTY kevin.kieschnick@co.nueces.tx.us

DONNA WILLIS LYNN COUNTY donna.willis@co.lynn.tx.us

SHAY LUEDEKE, CTOP BELL COUNTY shay.luedeke@bellcounty.texas.gov

ALBERT URESTI, CTOP BEXAR COUNTY albert.uresti@bexar.org



THE TAX ASSESSOR-COLLECTORS ASSOCIATION OF TEXAS

A dynamic association of innovative and resourceful professionals whose purpose is to educate, support and advance the office of County Tax Assessor-Collectors of Texas.

www.tacaoftexas.org

# **#BeTheDifference**

(3) reviewing the department's methods for collecting and evaluating related information, including the viability of incorporating more remote transaction review practices to supplement periodic, but less frequent, on-site visits to counties; and

(4) developing and providing training to fraud investigations staff.

We believe it to be necessary to partner with the department to ensure the safety and security of the motor vehicle titling and registration processes to serve with excellence our Texas motorists.

Thank you for the opportunity to provide comment on the proposed rules and for the service you provide to Texas.

Sincerely,

Michelle French TACA TxDMV Liaison Randy Riggs TACA Vice President External

1	ADOPTION OF
2	SUBCHAPTER H. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY
3	43 TAC §206.151
4	INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts new 43 TAC §206.151,
5	concerning an internal risk-based system of monitoring and preventing fraudulent activity related to
6	vehicle registration and titling in order to efficiently allocate resources and personnel. The new section is
7	necessary to implement Transportation Code §520.004(4) as added by Senate Bill (SB) 604, 86th
8	Legislature, Regular Session (2019). The department adopts §206.151 without changes to the proposed
9	text as published in the August 21, 2020, issue of the <i>Texas Register</i> (45 <i>TexReg</i> 5867).
10	This adoption addresses risk based monitoring of department operations, including regional
11	services centers. The department has also adopted new 43 TAC §223.101 concerning the risk based
12	monitoring of external persons in this issue of the <i>Texas Register</i> .
13	REASONED JUSTIFICATION. New §206.151 is necessary under Transportation Code §520.004(4), as
14	enacted in SB 604. Transportation Code §520.004(4) requires the department, by rule, to establish a risk-
15	based system of monitoring and preventing fraudulent activity related to vehicle registration and titling
16	in order to efficiently allocate resources and personnel. The requirement is included within Sunset
17	Advisory Commission's Change in Statute Recommendation 2.4, as stated in the Sunset Staff Report with
18	Final Results, 2018-2019, 86th Legislature (2019). The Sunset recommendation envisioned that the
19	department develop criteria to determine varying risk levels, such as transaction volume and past
20	violations, to strategically allocate resources and personnel. Further, monitoring and investigation would
21	extend both to counties and their contractors, dealers, and the department's regional service centers.
22	To implement Transportation Code §520.004(4) in line with the Sunset recommendation, the
23	department has developed internal and external risk-based monitoring systems. The internal system is

1	overseen through department management and the Internal Audit Division. The external system is
2	overseen through the department's Compliance and Investigations Division. Each system rule is placed in
3	its appropriate chapter based on its focus.
4	Section 206.151 outlines the program generally, to allow flexibility for change over time and
5	because detailed disclosure of the means and methods that the department's system could be used to
6	evade the monitoring. The monitoring system does not add additional requirements or costs on any
7	regulated person.
8	SUMMARY OF COMMENTS.
9	The department received no written comments on the proposed text.
10	STATUTORY AUTHORITY. The department adopts new section to §206.151 under Transportation Code
11	§§520.003, 520.004, and §1002.001.
12	Transportation Code §520.003 authorizes the department to adopt rules to administer
13	Transportation Code Chapter 520.
14	Transportation Code §520.004 requires the department to establish by rule a risk-based system
15	of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to
16	efficiently allocate resources and personnel.
17	Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and
18	appropriate to implement the powers and the duties of the department.
19	CROSS REFERENCE TO STATUTE. Transportation Code §520.004.
20	TEXT.
21	SUBCHAPTER H. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY
22	<u>43 TAC §206.151</u>
23	§206.151. Internal Risk-Based Monitoring System.

1	The department shall establish a risk-based system of monitoring and preventing fraudulent
2	activity related to vehicle registration and titling in order to efficiently allocate resources and personnel,
3	including:
4	(1) establishing a risk-based system of monitoring the department's regional service
5	<u>centers;</u>
6	(2) developing criteria to determine varying risk levels for the department's internal fraud
7	monitoring functions to strategically allocate resources and personnel;
8	(3) reviewing the department's methods for collecting and evaluating related
9	information; and
10	(4) developing and providing training to department staff.
11	CERTIFICATION. The agency certifies that legal counsel has reviewed the adoption and found it to be
12	within the state agency's legal authority to adopt.
13	Issued at Austin, Texas, on <u>Month Day, YYYY</u> .
14 15	Tracey Beaver, General Counsel

	Chapter 223 - Compliance and Investigations Division
1	ADOPTION OF
2	SUBCHAPTER B. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY
3	43 TAC §223.101
4	INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts new 43 TAC §223.101,
5	concerning an external risk-based system of monitoring and preventing fraudulent activity related to
6	vehicle registration and titling in order to efficiently allocate resources and personnel. The new section is
7	necessary to implement Transportation Code §520.004(4) as added by Senate Bill (SB) 604, 86th
8	Legislature, Regular Session (2019). The department adopts §223.101 with changes to the proposed text
9	as published in the August 21, 2020, issue of the <i>Texas Register</i> (45 <i>TexReg</i> 5903).
10	This adoption addresses risk based monitoring of regulated persons, including county tax assessor
11	collectors, deputies, and dealers. The department has also adopted new 43 TAC §206.151 concerning the
12	risk based monitoring of internal department operations in this issue of the Texas Register.
13	REASONED JUSTIFICATION. New §223.101 is necessary under Transportation Code §520.004(4), as
14	enacted in SB 604. Transportation Code §520.004(4) requires the department, by rule, to establish a risk-
15	based system of monitoring and preventing fraudulent activity related to vehicle registration and titling
16	in order to efficiently allocate resources and personnel. The requirement is included within the Sunset
17	Advisory Commission's Change in Statute Recommendation 2.4, as stated in the Sunset Staff Report with
18	Final Results, 2018-2019, 86th Legislature (2019). The Sunset recommendation envisioned that the
19	department develop criteria to determine varying risk levels, such as transaction volume and past
20	violations, to strategically allocate resources and personnel. Further, monitoring and investigation would
21	extend both to counties and their contractors, dealers, and the department's regional service centers.
22	To implement Transportation Code §520.004(4) in line with the Sunset recommendation, the
23	department has developed internal and external risk-based monitoring systems. The internal system is

Board Meeting eBook

TITLE 43. TRANSPORTATION

Part 10. Texas Department of Motor Vehicles

overseen through department management and the Internal Audit Division. The external system is 1 2 overseen through the department's Compliance and Investigations Division. Each system rule is placed in 3 its appropriate chapter based on its focus. 4 New §223.101 outlines the program generally, to allow flexibility for change over time and 5 because detailed disclosure of the means and methods that the department's system could be used to 6 evade the monitoring. In addition, the department cannot always reveal the existence or substance of a 7 fraud investigation, but will work with county tax assessor collectors to address and prevent fraudulent 8 activity. As such, in response to comments the department has amended §223.101 to add "including 9 procedures to notify county tax assessor collectors concerning routine and periodic review." The 10 monitoring system does not add additional requirements or costs on any regulated person. SUMMARY OF COMMENTS. 11 12 The department received written comments requesting a change in the proposed text from the Lubbock County Tax Assessor Collector and the Tax Assessor Collectors Association of Texas. 13 14 Comment: 15 A commenter recommends that language be added to the rule that clarifies the qualifying 16 criteria used to determine when, and how, additional monitoring will be required. 17 Agency Response: The department appreciates the comment, but will not make the change for reasons stated in the 18 19 preamble to the proposal and this adoption. As stated: New §223.101 outlines the program generally, to 20 allow flexibility for change over time and because detailed disclosure of the means and methods that the 21 department's system could be used to evade the monitoring. 22 Comment:

	Part 10. Texas Department of Motor Vehicles Chapter 223 - Compliance and Investigations Division
1	A commenter recommends that the addition of the following language to §223.101(1):
2	"including procedures to notify county tax assessor collectors concerning routine and periodic review
3	and disclosure procedures concerning possible fraudulent activity;"
4	Agency Response:
5	The department agrees with the proposed change in part. The department will add "including
6	procedures to notify county tax assessor collectors concerning routine and periodic review." The
7	department will not add the additional statement for the same reason stated in the prior response. In
8	addition, the department cannot always reveal the existence or substance of a fraud investigation, but
9	will work with county tax assessor collectors to address and prevent fraudulent activity. The change does
10	not affect any person not on notice of this proposal or add additional costs.
11	STATUTORY AUTHORITY. The department adopts new §223.101 under Transportation Code §§520.003,
12	520.004, and §1002.001.
13	Transportation Code §520.003 authorizes the department to adopt rules to administer
14	Transportation Code Chapter 520.
15	Transportation Code §520.004 requires the department to establish by rule a risk-based system
16	of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to
17	efficiently allocate resources and personnel.
18	Transportation Code §1002.001, authorizes the board to adopt rules that are necessary and
19	appropriate to implement the powers and the duties of the department.
20	CROSS REFERENCE TO STATUTE. Transportation Code §520.004.
21	TEXT.
22	SUBCHAPTER B. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY
23	<u>43 TAC §223.101</u>

December 10, 2020

Board Meeting eBook

TITLE 43. TRANSPORTATION

122

Adopted Sections

### 1 §223.101. External Risk-Based Monitoring System.

- 2 The department's Compliance and Investigations Division shall establish a risk-based system of
- 3 monitoring and preventing fraudulent activity related to vehicle registration and titling in order to
- 4 <u>efficiently allocate resources and personnel, including:</u>
- 5 (1) establishing a risk-based system of monitoring counties and their contractors,
- 6 including procedures to notify county tax assessor collectors concerning routine and periodic review;
- 7 (2) developing criteria to determine varying risk levels for the department's fraud
- 8 monitoring functions to strategically allocate resources and personnel;
- 9 (3) reviewing the department's methods for collecting and evaluating related

10 information, including the viability of incorporating more remote transaction review practices to

- 11 supplement periodic, but less frequent, on-site visits to counties; and
- 12 (4) developing and providing training to fraud investigations staff.
- 13 **CERTIFICATION.** The agency certifies that legal counsel has reviewed the adoption and found it to be
- 14 within the state agency's legal authority to adopt.
- 15 Issued at Austin, Texas, on Month Day, YYYY.
- 16
- 17

Tracey Beaver, General Counsel

Board Meeting eBook

# Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Board Meeting Date: 12/10/2020 ACTION ITEM

То:	Texas Department of Motor Vehicles Board
From:	Tracey Beaver, General Counsel
Agenda Item:	10
Subject:	Chapter 206, Management
	Amendments, §206.22
	Chapter 215, Motor Vehicle Distribution
	Amendments, §215.22 and §215.55
	New, §§215.59 - 215.63
	(Relating to SB 604, new Occupations Code §2301.709(d), contested cases; and a
	petition for rulemaking)

#### RECOMMENDATION

Approval to publish the adopted amendments and new sections in the *Texas Register*.

### PURPOSE AND EXECUTIVE SUMMARY

The proposed amendments and new sections implement Senate Bill 604, 86<sup>th</sup> Legislature, Regular Session (2019), which added subsection (d) to Occupations Code §2301.709. The amendments also respond, in part, to a petition for rulemaking. The amendments and new sections establish standards for the board's review of a contested case and specify the role of division personnel in managing contested cases before a person delegated power from the board under Occupations Code §2301.154.

### FINANCIAL IMPACT

There will be no fiscal implications related to the proposed amendments and new sections.

### BACKGROUND AND DISCUSSION

The proposed amendments and new sections include language:

- specifying the deadline for the parties to a contested case to request oral argument;
- specifying the requirements for submitting any written presentation aids;
- specifying the amount of time that parties to a contested case are allotted to make an oral presentation to the board;
- specifying the role of division personnel in managing contested cases before the board or a person delegated power from the board under Occupations Code §2301.154, including advising on procedural matters;
- specifying appropriate conduct and discussion by the board regarding proposals for decision issued by administrative law judges;

Board Meeting eBook

#### December 10, 2020

- setting forth clear expectations limiting arguments and discussion under Occupations Code §2301.709(b) to evidence in the record of the contested case hearing held by the administrative law judge;
- clarifying the prohibited communications, which are called *ex parte* communications;
- setting forth and clarifying circumstances to distinguish between using industry expertise and representing or advocating for an industry when reviewing a case under Occupations Code §2301, Subchapter O, Hearings Procedures; and
- responding, in part, to the petition for rulemaking.

The petition for rulemaking requested the department to make the following amendments to 43 TAC §206.22 regarding contested cases that are presented to the board for a final decision:

- 1. granting each party to a contested case a minimum of 20 minutes to make a presentation to the board, including time spent presenting a rebuttal and excluding time spent responding to questions;
- 2. only authorizing the board members and the executive director to question any person making a presentation to the board;
- 3. prohibiting any presentations, board discussions, and final decision from including or being based on information that is not in the administrative record from the State Office of Administrative Hearings (SOAH); and authorizing department staff to advise the board on the interpretation and application of any statute, regulation, or department procedure, but prohibiting department staff from recommending a final decision to the board.

### COMMENTS

On April 3, 2020, the department posted on its website an informal draft of the amendments and new sections for public comment. The department made changes to the rule text in response to the informal comments and published the proposed text in the *Texas Register* for comment on August 21, 2020.

The comment period closed on September 21, 2020. The department received eight written comments from an individual; Cardwell, Hart & Bennett, LLP; Barack Ferrazzano Kirschbaum & Nagelberg LLP; Coffey & Alaniz, PLLC (submitted separate comments for §206.22 and Chapter 215); the Texas Automobile Dealers Association (TADA); Padfield & Stout, LLP; and Shackelford, Bowen, McKinley & Norton, LLP.

The department made changes to the rule text in response to the comments.

If the board adopts the rules during its December 10, 2020, open meeting, staff anticipates:

- Publication in the December 25, 2020, issue of the Texas Register; and
- An effective date of December 30, 2020.

WM. R. CROCKER ATTORNEY AT LAW P. O. BOX 1418 AUSTIN, TEXAS 78767 WWW.WRCLAW.COM

TELEPHONE: 512-478-5611 FAX: 512-474-2540 E-MAIL: CROCKERLAW@EARTHLINK.NET

February 5, 2019

Ms. Whitney Brewster Executive Director Texas Department of Motor Vehicles 4000 Jackson Ave. Austin, TX 78731



Re: Suggested Rule for Protested Case Arguments, Presentations

Dear Ms. Brewster:

2i

As you know, through the last few years I have been involved in the presentation of several protested cases to the DMV Board. Sometimes the presenters have been allowed three minutes for and three minutes against the adoption of a Proposal for Decision from the State Office of Administrative Hearings (SOAH). Other times, the presenters have been allowed more time, presumably by suspension of rules.

Decisions of the Board in contested cases can affect both the lives and the fortunes of your licensees. In some instances, many millions of dollars are resting on the decision of the Board. In many contested cases, the parties will have spent hundreds of thousands of dollars in the course of preparing and trying the case to SOAH. Unfortunately, the SOAH judges normally do not have any expertise in the complex motor vehicle manufacturing and selling industries. The Board is presumed to have that expertise. But the Board cannot try the cases and cannot be present when they are tried. The Board's decision must be made on the SOAH recommendation and the presentations by the parties to the contested cases. It is unfair to the Board and to the parties to have the presentations to the Board limited to three minutes.

In order to remedy that unfairness to the degree possible, I have drafted the enclosed amendment to the existing DMV rules to allow a more complete presentation and a more fair presentation. My recommendations for changes to the existing rule are highlighted on the attached copy so they can be easily identified.

I have circulated this amendment among all of the practitioners I know who handle DMV contested cases affecting franchised dealers, both those who represent the manufacturers and those who represent the dealers. The only responses I have received have been favorable. I have received no negative responses.

I would appreciate it if you would initiate the necessary process for review and possible adoption of the amendment. I will make myself available to you and your staff at any time to discuss the proposed amendment and would appreciate the opportunity to so.

December 10, 2020

If you have any preliminary questions or concerns you want to discuss, please do not hesitate to let me know. Your thoughts will be welcomed.

Yours very truly. Vm. R. Crocker

WRC:tc

Enclosure

# **Texas Administrative Code**

<u>TITLE 43</u>	TRANSPORTATION
<u>PART 10</u>	TEXAS DEPARTMENT OF MOTOR VEHICLES
<u>CHAPTER 206</u>	MANAGEMENT
SUBCHAPTER B	PUBLIC MEETINGS AND HEARINGS
RULE §206.22	Public Access to Board Meetings

(a) Posted agenda items. A person may speak before the board on any matter on a posted agenda by submitting a request, in a form and manner as prescribed by the department, prior to the matter being taken up by the board. A person speaking before the board on an agenda item will be allowed an opportunity to speak:

(1) prior to a vote by the board on the item; and

(2) for a maximum of three minutes, except as provided in subsections (d)(6) and (f)(1) of this section.

(b) Open comment period.

(1) At the conclusion of the posted agenda of each regular business meeting, the board shall allow an open comment period, not to exceed one hour, to receive public comment on any other matter that is under the jurisdiction of the board.

(2) A person desiring to appear under this subsection shall complete a registration form, as provided by the department, prior to the beginning of the open comment period.

(3) Except as provided in subsection (d)(6) of this section, each person shall be allowed to speak for a maximum of three minutes for each presentation in the order in which the speaker is registered.

(c) Disability accommodation. Persons with disabilities, who have special communication or accommodation needs and who plan to attend a meeting, may contact the department in Austin to request auxiliary aids or services. Requests shall be made at least two days before a meeting. The department shall make every reasonable effort to accommodate these needs.

(d) Conduct and decorum. The board shall receive public input as authorized by this section, subject to the following guidelines.

(1) Questioning of those making presentations shall be reserved to board members and the department's administrative staff.

(2) Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible.

(3) Presentations shall remain pertinent to the issue being discussed.

(4) A person who disrupts a meeting shall leave the meeting room and the premises if ordered to do so by the chair.

(5) Time allotted to one speaker may not be reassigned to another speaker.

(6) The time allotted for presentations or comments under this section may be increased or decreased by the chair, or in the chair's absence, the vice chair, as may be appropriate to assure opportunity for the maximum number of persons to appear.

(e) Waiver. Subject to the approval of the chair, a requirement of this section may be waived in the public interest if necessary for the performance of the responsibilities of the board or the department.

Next Rule>>

(f) When contested cases are presented to the Board for final decision, the following rules shall be applicable:

(1) Each party shall be allowed a minimum of 20 minutes to make a presentation to the Board.

(2) Any party intervening in support of a party shall share that party's time for presentation.

(3) The party with the burden of proof in the contested case shall be first to make its presentation and may reserve a portion of its 20 minutes to present a rebuttal of the presentation of the other party and/or a closing statement.

(4) Only the members of the Board and the Executive Director may question any person making a presentation on behalf of a party and may do so while the presentation is being made or after the presentation has been made. The person making the presentation for an opposing party shall be given an opportunity to rebut an answer presented on behalf of a party. The time a person making a presentation on behalf of a party is being asked or is responding to a question shall not be counted as a part of that party's time to make its presentation to the Board. Presentations, Board discussions and final decisions may not include or be based on information not in the administrative record.

(5) The department staff may advise the Board on the interpretation and application of any statute, regulation or department procedure, but shall not recommend a final decision to the Board.

Board Meeting eBook WM. R. CROCKER AUSTIN, TEXAS 78767 ATTORNEY AT LAW Z P. O. BOX 1418 Texas Department of Motor Vehicles 4000 Jackson Ave. Austin, TX 78731 Ms. Whitney Brewster Executive Director ð EXECUTIVE DIRECTOR'S OFFICE RECEIVED FEB 0 5 2019

December 10, 2020

130



ATTORNEYS AT LAW 13810 FM 1826 AUSTIN, TEXAS 78737

WM. DAVID COFFEY, III BOARD CERTIFIED ADMINISTRATIVE LAW TEXAS BOARD OF LEGAL SPECIALIZATION

MARTIN ALANIZ

TELEPHONE: (512) 328-6612 FACSIMILE: (512) 328-7523

INFO@WDCOFFEYLAW.COM WWW.WDCOFFEYLAW.COM

September 21, 2020

Via Email (rules@txdmv.gov)

Tracey Beaver, General Counsel Office of General Counsel Texas Department of Motor Vehicles 4000 Jackson Avenue, Bldg. 1 Austin, TX 78731

### RE: Public Comments to TxDMV Proposed Rule for 43 TAC § 206.22

Dear Ms. Beaver

These comments by Coffey & Alaniz, PLLC on the Texas Department of Motor Vehicles (TxDMV) proposed Rule 43 TAC § 206.22 published in the Texas Register on August 21, 2020 and are offered in the interest of its clients.<sup>1</sup>

Mr. Coffey has been practicing as an attorney before this agency and its predecessors (TMVC, MVD) for over 30 years and Mr. Alaniz for over 12 years, representing franchised new motor vehicle dealers. Our comments are informed by our unique experience in the industry and a practical understanding of the unintended effects such rules may have on the parties and practitioners before this agency.

Under Tex. Occ. Code § 2301.153(a)(7) the TxDMV Board has the power to "specify and govern appearance, practice, and procedures before the board." Additionally, the agency is commanded to adopt certain standards for reviewing a case under Tex. Occ. Code § 2301.709(d), which states that "[t]he board shall adopt rules and policies that establish standards for reviewing a case under this subchapter...."

We support the TxDMV's proposed amendment of Rule § 206.22 to include subsection (f) "Contested Cases. The parties to a contested case under review by the board will be allowed an opportunity to provide oral argument to the board...." This clarification allowing the opportunity for oral argument is welcomed.

Additionally, we support the addition of subsections (f)(1) to include a minimum of 20 minutes for a party to make its initial presentation to the Board and (f)(2) to include a minimum of 5 minutes for rebuttal when a contested case is presented to the Board for final decision.

<sup>&</sup>lt;sup>1</sup> 45 TexReg 5866-5869.

Any time less than 20 minutes virtually ensures that there will be no serious consideration of SOAH's proposal for decision and that the Board's role as final decision maker will be minimized.

Finally, we also support the addition of subsection (f)(6) which states, "The board chairman is authorized to grant each party additional time." This allows the Board the discretion to increase the time allotted based on the circumstances of each individual case while preserving due process for the parties.

Many TxDMV contested cases involve hundreds of thousands of dollars of costs by the time the parties are before the board where issues such as facing the loss of a 50-year investment and a multimillion dollar motor vehicle franchise are on the line. Therefore, parties deserve the opportunity to present record evidence and argument to the Board. SOAH is not a final decision maker. The Board is. In order for the Board to best do its job, the parties must be allowed the opportunity to argue the importance of the evidence presented to SOAH so that the Board can make an informed decision.

Accordingly, we support the TxDMV's proposed amendments to Rule § 206.22 regarding "Public Access to Board Meetings" and urge that the TxDMV Board adopt the proposed Rule § 206.22 amendments.

Please let us know if you have any questions.

Sincerely,

By:

Wm. David Coffey, III Attorney at Law Coffey & Alaniz, PLLC

Martin Alaniz Attorney at Law Coffey & Alaniz, PLLC

## CARDWELL, HART & BENNETT, L.L.P.

ATTORNEYS AT LAW

807 BRAZOS SUITE IOOI AUSTIN, TEXAS 7870I-2553

TELEPHONE: (512) 322-0011 FAX: (512) 322-0808

September 18, 2020

Via Email (rules@txdmv.gov) Office of General Counsel ATTN: Ms. Tracey Beaver, General Counsel Texas Department of Motor Vehicles 4000 Jackson Avenue Austin, Texas 78731

# Re: Comments on Proposed Rules 43 T.A.C. § 215.60, § 215.61, and § 215.63, Relating to Contested Cases.

Dear Ms. Beaver:

Attached are requested modifications (in redline) to the following proposed rules published in the August 21, 2020 edition of the *Texas Register*.

### 1. 43 T.A.C. § 215.60 Presentation Aids

This proposed rule concerns the submission of "presentation aids" to the Board when it reviews a proposal for decision made by an administrative law judge with the State Office of Administrative Hearings ("SOAH").

Section 2001.062(a)(2) of the Texas Gov't Code ("APA") allows an adversely affected party in a contested case to "present briefs to the officials who are to render the (final) decision." In most cases under Chapter 2301 of the Texas Occupations Code, the Board members are "the officials" who render the final decision. Tex. Occ. Code §§ 2301.704, 2301.709. The APA makes no mention of "presentation aids." To be in harmony with the APA and consistent with its terminology, the proposed rule's definition of "presentation aids" should be modified to expressly include "briefs."

The proposed rule's 6-page limitation on presentation aids also should be modified. No other state agency places such constricting limits on the length of briefs or other materials presented to the agency's governing body when reviewing a SOAH proposal for decision.<sup>1</sup> Contested cases arising under Chapter 2301 of the Occupations Code and referred to SOAH often involve complex economic, financial, and market issues affecting the motor vehicle industry that require the taking of voluminous documentary evidence and oral testimony from numerous witnesses. SOAH proposals for decision often exceed 100 pages in cases concerning the establishment of a dealership, the termination of a dealership, or the transfer of ownership of a dealership. Limiting the length of presentation aids to 6 pages will have the unintended effect of giving undue weight to the SOAH ALJ's proposal for decision and of violating the adversely-affected party's right to due process and due course of law, especially if Board members are not provided with copies of an adversely-affected party's exceptions to the proposal for decision.

Like trial judges, SOAH ALJs can make legal errors that affect their proposed decision, supporting fact findings, and legal conclusions. They can misinterpret and misapply an agency's enabling act, its rules and policies, and its prior administrative decisions. They also can make fact findings that have no evidentiary support, which also constitutes legal error.

The Legislature created this agency to regulate the distribution and sale of motor vehicles, and the expertise in doing so resides in this agency, not in SOAH. Section 2001.058(e) of the APA does not compel the Board to accept a proposal for decision, fact findings, or legal conclusions when they are the product of a SOAH ALJ's legal errors. Asking the Board to address and correct such errors is not "retrying" the contested case. Analyzing legal errors, explaining their significance to the Board, and navigating the intricate process the Board must follow to take corrective action will take more than 6 total pages of briefing and other presentation aids in a complex case with a lengthy proposal for decision and underlying record. Board members are not required to read every page of a brief or other presentation aid submitted to them. But Board members should not be deprived of information they need to reach a legally correct final decision by an arbitrary, unduly-restrictive page limit. If the Board should decide to impose a page limit on presentation aids, then the proposed rule should be modified to allow each party to submit at least 35 total pages of presentation aids. A proposed final order, a prior agency decision, and preliminary and concluding pages of a brief should not be subject to any page limit.

In the "Explanation" to the proposed rule, a concern was expressed that "[t]he department does not want to impose any unnecessary burdens on the board under

<sup>&</sup>lt;sup>1</sup> The undersigned has found only one state agency that imposes page limitations, the Public Utility Commission. In major rate proceedings, the page limit is 100 pages, including attachments. 16 T.A.C. § 22.72(f). In all other cases, the page limit is 50 pages, excluding attachments. Copies of legal authorities are not subject to the page limit. *Id.* In interconnection agreement proceedings, the page limit is 50 pages, excluding exhibits. 16 T.A.C. § 21.33(f)(1).

Government Code §2001.141(e)." This concern appears to be directed to the submission of a brief or a proposed final order with proposed findings to the Board. No such burden exists.<sup>2</sup>

Section 2001.141(e) of the APA provides that "[i]f a party submits under a state agency rule proposed findings of fact, the decision shall include a ruling on each proposed finding." (Emphasis added). However, the Board has no rule providing for the submission of proposed findings of fact. See attached Exceptions Letter to Molly Cost, Motor Vehicle Division Director, from Administrative Law Judges Michael J. O'Malley and Sharon Cloninger, dated June 29, 2011, in MVD Docket No. 09-0014 LIC, SOAH Docket No. 601-09-1276.LIC, Rockwall Imports, LP et al. v. The Allen Corporation ("Such rulings are not required in this case . . . because the proposed findings of fact were not submitted under a state agency rule."). See also, Smith v. Houston Chemical Services, Inc., 872 S.W.2d 252, 274 (Tex. App. - Austin 1993, writ denied) (a ruling is not required on proposed findings when they were not submitted pursuant to an agency rule). Even if such a rule existed, the Board can dispose of any proposed findings set forth in a brief or a proposed order with a single sentence providing that such findings are denied or rejected. Jasinski v. Public Util. Comm'n, No. 03-16-00725-CV, 2017 WL 2628071, at \*6 (Tex. App. - Austin June 14, 2017, pet. denied) (order reciting that "[a]ll other motions, requests for entry of specific findings of fact and conclusions of law . . . are denied" complied with § 2001.141(e) of the APA).

The proposed rule also should be modified to make clear that the scope of the Board's authority to take action on a SOAH proposal for decision is not restricted to the actions authorized by §2001.058(e) of the APA. Sections 2301.709(c) and 2301.711 of the Occupations Code also authorize the Board to take certain actions when reviewing a SOAH proposal for decision. As presently written, the proposed rule could be construed to restrict the Board's actions solely to those permitted by § 2001.058(e) of the APA. An agency is bound by its own rules. *Rodriguez v. Service Lloyds Ins. Co.*, 997 S.W.2d 248, 255 (Tex. 1999). Failing to acknowledge the Board's powers under §§ 2301.709(c) and 2301.711 of the Occupations Code in the proposed rule could cause confusion and provide the basis for a contention that the Board has somehow surrendered or relinquished those powers when reviewing a SOAH proposal for decision. Any such contention will be avoided by making the requested modifications to the proposed rule.

<sup>&</sup>lt;sup>2</sup> Furthermore, at its August 6, 2020 meeting, the Board voted unanimously to remove from proposed rule 43 T.A.C. § 215.60 the prohibition on accepting proposed new findings of fact and conclusions of law from a party to the contested case. (Tr. 8/6/20 at pp. 89-91).

### 2. 43 T.A.C. § 215.61 Limiting Arguments and Discussion to Evidence in the Administrative Record

For the reasons stated above, this proposed rule should be modified to acknowledge the Board's authority to take action under §§ 2301.709(c) and 2301.711 of the Occupations Code when reviewing a SOAH proposal for decision in a contested case.

Section 2301.709(c) also should be referenced because the Board's power to remand a case to SOAH is within its broad language which authorizes the Board to take "any further action conducive to the issuance of a final order . . ."

The Explanation to the proposed rule seems to imply that SOAH has the power to determine if a remand is appropriate. The Board makes that decision. No provision in SOAH's enabling act or in its procedural rules authorizes SOAH to refuse to comply with a referring state agency's remand order.

### 3. 43 T.A.C. § 215.63 Board Conduct and Discussion When Reviewing a Contested Case

For the reasons stated above, this proposed rule should be modified to make clear that the Board conducts its review of a contested case referred to SOAH in compliance with Chapter 2301 of the Occupations Code as well as with the APA. The proposed rule also should state that the scope of the Board's authority to take action on SOAH proposal for decision is set forth in Occupations Code §§ 2301.709(c) and 2301.711 as well as in §2001.058(e) of the APA.

Thank you for your consideration of these comments,

Very truly yours. J. Bruce Bennett

Enclosures

### §215.60. Presentation Aids

(a) If a party wants to provide a presentation aid to the board, it must provide the presentation aid to the department and all other parties in accordance with §215.30 of this title (Relating to Filing of Documents) and §215.49 of this title (Relating to Service of Pleadings, Petitions, Briefs, and Other Documents) at least 21 days prior to the date of the board meeting. If a party wants to provide a rebuttal presentation aid to the board, it must provide the rebuttal presentation aid to the department and all other parties in accordance with §215.30 of this title and §215.49 of this title at least 14 days prior to the date of the board meeting. If a party wants to provide a presentation aid to the board meeting. If a party fails to timely provide a presentation aid to the board meeting. If a party fails to timely provide a presentation aid to the board and the party shall not provide the presentation aid to the board at the board meeting. A party may submit presentation aids to the board in accordance with this rule regardless of whether a party requests oral argument.

(b) For the purposes of this section, presentation aids are defined as written materials, such as a document brief. PowerPoint slides, or charts, which contain a party's arguments and discussion of evidence, laws, and rules regarding the contested case. <u>Presentation aids do not include proposed</u> orders or copies of prior administrative decisions. Presentation aids shall be limited to evidence contained in the SOAH administrative record and consistent with the scope of the board's authority to take action under Government Code §2001.058(e), <u>Occupations Code §2301.709(c)</u>, and <u>Occupations Code §2301.711</u>. However, any party may argue that the board should remand the case to SOAH.

(c) All <u>factual</u> information in the presentation aids shall include a cite to the SOAH administrative record on all points to specifically identify where the <u>such</u> information is located.

(d) Presentation aids shall be single-sided, double-spaced, 8.5 inches by 11 inches, and at least 12point type. Initial presentation aids are limited to four 25 pages, and rebuttal presentation aids are limited to two 10 pages for a total of six 35 pages. Pages containing the number and style of the case, the table of contents, the index of authorities, the signature, the certificate of service, a proposed order, or a prior administrative decision are not subject to the foregoing page limitations. If a party provides the department with a presentation aid that contains more pages than the maximum allowed, the department shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board at the board meeting. §215.61. Limiting Arguments and Discussion to Evidence in the Administrative Record.

(a) The parties to a contested case under review by the board shall limit their arguments and discussion to evidence in the SOAH administrative record, and their arguments and discussion shall be consistent with the scope of the board's authority to take action under Government Code §2001.058(e), Occupations Code §2301.709(c), and Occupation Code §2301.711. However, any party may argue that the board should remand the case to SOAH.

(b) Each party is responsible for objecting when another party attempts to make arguments or engage in discussion regarding evidence that is not contained in the SOAH administrative record.

§215.63. Board Conduct and Discussion When Reviewing a Contested Case.

(a) The board shall conduct its review of a contested case in compliance with Government Code Chapter 2001 and Occupations Code 2301, including the limitations on changing a finding of fact or conclusion of law made by the administrative law judge at SOAH, and the prohibition on considering evidence outside of the SOAH administrative record.

(b) Board members may question any party or the department on any matter that is relevant to the proposal for decision or the evidence contained in the SOAH administrative record; however, any questions shall be consistent with the scope of the board's authority to take action under Government Code §2001.058(e), <u>Occupations Code §2301.709</u>, and <u>Occupations Code §2301.711</u>. and tThe communication also must comply with §215.22 of this title (Relating to Prohibited Communications). In addition, board members are authorized to ask questions regarding arguments or a request to remand the case to SOAH.

(c) Board members may use their industry expertise to help them understand the case and make effective decisions, consistent with the scope of the board's authority to take action under Government Code §2001.058(e), <u>Occupations Code §2301.709</u>, and <u>Occupations Code §2301.711</u>. However, board members are not advocates for a particular industry. Board members are public servants who take an oath to preserve, protect, and defend the Constitution and laws of the United States and Texas.

#### December 10, 2020

# State Office of Administrative Hearings



### Cathleen Parsley Chief Administrative Law Judge

June 29, 2011

#### VIA FACSIMILE 416-4890

Molly Cost Division Director Motor Vehicle Division Texas Department of Motor Vehicles 200 E. Riverside Dr., Bldg. 150 Austin, TX 78768

### RE: Docket No. 601-09-1276.LIC; MVD Docket No. 09-0014 LIC; Rockwall Imports, LP d/b/a Honda Cars of Rockwall, American Honda Motor Co., Inc. v. The Allee Corporation d/b/a Rusty Wallis Honda

Dear Ms. Cost:

Having reviewed and considered the parties' exceptions and replies to the Proposal for Decision (PFD) in this case, the Administrative Law Judges (ALJs) recommend no changes to the PFD.

The Allee Corporation d/b/a Rusty Wallis Honda (Protestant) argued that the ALJs erred by not ruling on each of Protestant's proposed findings of fact. Such rulings are not required in this case, pursuant to TEX. GOV'T CODE ANN. § 2001.141(e), because the proposed findings of fact were not submitted under a state agency rule. *See Smith v. Houston Chemical Services, Inc.*, 872 S.W.2d 252, 274 (Tex.App.—Austin 1994, writ denied). The ALJs, therefore, will not rule on each of Protestant's proposed findings.

300 Wesl 15<sup>th</sup> Street Suite 502 Austin, Texas 78701 / P.O. Box 13025 Austin, Texas 78711-3025 512.475.4993 (Main) 512.475.3445 (Docketing) 512.475.4994 (Fax) www.soah.state.tx.us 140

SOAH DOCKET NO. 601-09-1276.LIC **Exceptions** Letter Page 2

Given the confidential nature of some of the information in the PFD, the ALJs requested that the parties, by the exceptions letter deadline, identify which parts of the PFD should be redacted prior to its posting on the public website of the State Office of Administrative Hearings (SOAH). The parties did not agree as to which portions of the PFD should be redacted; the ALJs decline to determine what information in the PFD should be treated as confidential. Therefore, the PFD will not be posted on SOAH's public website.

Sincerely,

Sharm Clouinger for Sharm Clouinger Michael J. O' Malley Sharon Cloninger

Administrative Law Judge

Administrative Law Judge

MJO/SC/lh

xc:

William R. Crocker, 807 Brazos, Suite 1014, P.O. Box 1418, Austin, TX 78767 - VIA FACSIMILE 474-2540 Mitchell Madden, The Law Offices of Mitchell Madden, 1755 Wittington Place, Suite 300, Dallas, TX 75234 - VIA FACSIMILE 972-484-7743

Billy Donley, Baker & Hostetler, LLP, 1000 Louisiana, Suite 2000, Houston, TX 77002-5018 - VIA FACSIMILE713-751-1717

MVD Docket Clerk, Texas Department of Motor Vehicles, Motor Vehicle Division, 200 East Riverside, Bldg. 150, Austin, Texas 78768 - VIA FACSIMILE 416-4890

### WM. R. CROCKER

ATTORNEY AT LAW P. O. BOX 1418 AUSTIN, TEXAS 78767 WWW.WRCLAW.COM

TELEPHONE: 512-478-5611 FAX: 512-474-2540 E-MAIL: CROCKERLAW@EARTHLINK.NET STE. 1014 807 BRAZOS AUSTIN, TEXAS 78701

September 18, 2020

For Email Transmission To: rules@txdmv.gov

Office of General Counsel Attn: Ms. Tracey Beaver Texas Department of Motor Vehicles 4000 Jackson Avenue Austin, Texas 78731

> In re: Comments on Proposed Rules 43 T. A. C. Secs. 215.60; 215.61 and 215.63 Relating to Contested Cases

Dear Ms. Beaver,

Having read the comments of J. Bruce Bennett regarding the above-referenced proposed rules, I whole-heartedly agree with his comments and urge the most serious consideration of his comments and the adoption of his suggested revisions of the proposed rules.

The proposed rules, as drafted, will not serve the best interests of the members of the board of the Texas Department of Motor Vehicles in their consideration of the issues presented in contested cases. They, and only they, can make final decisions on contested cases presented to them, and they deserve much more information in their decision-making process than the proposed rules will allow.

Yours yery truly,

### Board Meeting eBook December 10, 2020 BARACK FERRAZZANO

Barack Ferrazzano Kirschbaum & Nagelberg LLP

Lloyd "Buddy" Ferguson | T. 512.514.6906 | lloyd.ferguson@bfkn.com

September 21, 2020

### VIA EMAIL rules@txdmv.gov

Ms. Tracey Beaver Office of General Counsel Texas Department of Motor Vehicles 4000 Jackson Ave. Austin, Texas 78731

### Re: Proposed Rules for Texas Department of Motor Vehicles

Dear Ms. Beaver:

The following comments are in reference to the proposed rules as specified below.

**<u>Proposed Rule §215.61(b)</u>**: The proposal that each party is responsible for objecting when another party attempts to make arguments or engage in discussion regarding evidence that is not contained in the SOAH administrative record is problematic.

All parties are already admonished by Proposed Rule §215.61(a) to keep their arguments and discussion limited to the evidence in the SOAH administrative record. To now put the burden on the other party to object seems to change the requirements of §215.61(a) into a game of "catch me if you can".

If a party does not object, is the party that went outside the record now free from any consequences for violating the rule?

What if the non-objecting party wants to argue the evidence outside the administrative record that was raised by the other party? Can the original offending party object or have they opened the door by having been the original party to go outside the administrative record?

When does the objection need to be lodged--while the party is speaking or after their time is up?

What if it is a board member that asks the question that clearly calls for a response that is outside the record? I have seen well-intended board members ask questions to which no responsive evidence can be found in the administrative record. You are now putting a party in the precarious position of objecting to a question from a board member who in a short time will be Ms. Tracey Beaver September 21, 2020 Page 2

voting for or against the party that objects. What if the board member takes offense at the objection? This rule has put a party in a catch-22 situation when the issue arises based on a question by a board member.

Also, who is going to rule on the objections? The Chair of the board can clearly make a ruling, but the Chair has not read the record. Are we left with lawyers arguing what is in the record and what is not in the record? What if a lawyer says they are taking the evidence that is in the administrative record and arguing a logical extension of the same? The time to take up objections, look in the record and hear argument on the same could unduly lengthen the board meetings.

The party that wanders away from the record should bear the consequences and the burden should not be shifted to the other party to police them during oral argument.

**<u>Proposed Rule §215.62(c)</u>**: If two or more parties on the same side of a case can agree among themselves on the order of presentation, why do we need a rule that might contradict their proposed order of presentation?

The proposed rule to strictly follow alphabetical order based on the name of the parties could be used if the parties on the same side of a case cannot reach an agreement. But do we really need to have a rule that tells parties on the same side of a case in what order they must make their presentation?

In thirty-three years of appearing before this board or its processor boards, I have never seen this be a problem. I really do not think we need a solution where there is no problem.

Thank you.

Respectfully,

Buddy Fergum

LEF/


ATTORNEYS AT LAW 13810 FM 1826 AUSTIN, TEXAS 78737

WM. DAVID COFFEY, III BOARD CERTIFIED ADMINISTRATIVE LAW TEXAS BOARD OF LEGAL SPECIALIZATION

MARTIN ALANIZ

TELEPHONE: (512) 328-6612 FACSIMILE: (512) 328-7523

INFO@WDCOFFEYLAW.COM WWW.WDCOFFEYLAW.COM

September 21, 2020

Via Email (rules@txdmv.gov)

Tracey Beaver, General Counsel Office of General Counsel Texas Department of Motor Vehicles 4000 Jackson Avenue, Bldg. 1 Austin, TX 78731

# RE: Public Comments to TxDMV Proposed Rules for 43 TAC §§ 215.22, 215.55, 215.59-215.63

Dear Ms. Beaver

These comments by Coffey & Alaniz, PLLC on the Texas Department of Motor Vehicles (TxDMV) proposed Rules 43 TAC §§ 215.22, 215.55, 215.59-215.63 published in the Texas Register on August 21, 2020, to establish standards for reviewing a case under Texas Occupations Code § 2301.709(d), and are offered in the interest of its clients.<sup>1</sup>

The TxDMV's rules proposal includes the addition of prohibited communications ( $\S$  215.22); final decision ( $\S$  215.55); request for oral argument ( $\S$  215.59); presentation aids ( $\S$  215.60); limiting arguments an discussion to evidence in administrative record ( $\S$  215.61); order of presentation to the board for review of a contested case ( $\S$  215.62); and board conduct and discussion when reviewing a contested case ( $\S$  215.63).

Mr. Coffey has been practicing as an attorney before this agency and its predecessors (TMVC, MVD) for over 30 years and Mr. Alaniz for over 12 years, representing franchised new motor vehicle dealers. Our comments are informed by our unique experience in the industry and a practical understanding of the unintended effects such rules may have on the parties and practitioners before this agency.

Under Tex. Occ. Code § 2301.153(a)(7) the TxDMV Board has the power to "specify and govern appearance, practice, and procedures before the board." Additionally, the agency is commanded to adopt certain standards for reviewing a case under Tex. Occ. Code § 2301.709(d), which states that "[t]he board shall adopt rules and policies that establish standards for reviewing a case under this subchapter...." Section 2301.709(d) includes five subsections describing the specific types of rules and policies that the agency must specify and address.

<sup>&</sup>lt;sup>1</sup> 45 TexReg 5870-5874.

## Powers, Authority, and Responsibilities of TxDMV Board

The TxDMV Board is tasked with the duty and expertise of administering, enforcing, and interpreting Chapter 2301 of the Texas Occupations Code. Its powers are broad for executing that duty as follows:

- Under Tex. Occ. Code § 2301.151(a), "[t]he board has the exclusive original jurisdiction to regulate those aspects of the distribution, sale, or lease of motor vehicles that are governed by [Chapter 2301]...."<sup>2</sup>
- Under Tex. Occ. Code § 2301.151(b), "[t]he board may take any action that is • specifically designated or implied under this chapter or that is necessary or convenient to the exercise of the power and jurisdiction granted under [the board's exclusive original jurisdiction].<sup>3</sup>
- Under Tex. Occ. Code § 2301.152, the Board has the duty to "ensure that the distribution, • sale, and lease of motor vehicles is conducted as required by this chapter and board rules" and to "prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles."4
- The general powers of the Board are laid out in Tex. Occ. Code § 2301.153, which • includes "[n]otwithstanding any other provision of law, the board has all powers necessary, incidental, or convenient to perform a power or duty expressly granted under this chapter,...."

Therefore, we caution that any administrative rules that seek to undermine or reduce the Board's existing powers and duties would be in conflict with the chapter itself.

An understanding of the motor vehicle industry is necessary in exercising those powers and duties. The complexities of a franchised dealer's multi-faceted business are numerous and the public benefits from the Board's expertise. SOAH has no special expertise in this industry. The Board, with its industry participants, does.

Agencies are considered to have expertise over the matters that they regulate since, "[a]n administrative agency is created to centralize expertise in a certain regulatory area and, thus, is to be given a large degree of latitude by the courts in the methods by which it accomplishes its regulatory function."<sup>5</sup>

<sup>&</sup>lt;sup>2</sup> Tex. Occ. Code § 2301.151(a).

<sup>&</sup>lt;sup>3</sup> Tex. Occ. Code § 2301.151(b).

<sup>&</sup>lt;sup>4</sup> Tex. Occ. Code § 2301.152(a)(1), (3), and (5).

<sup>&</sup>lt;sup>5</sup> See Public Util. Comm'n v. GTE-Southwest, Inc., 901 S.W.2d 401, 409 (Tex. 1995) (quoting City of Corpus Christi v. Public Util. Comm'n, 572 S.W.2d 290, 297 (Tex. 1978)); See also e.g., Ford Motor Co. v. Butnaru, 157 S.W.3d 142, 147 (Tex. App.—Austin 2005) ("[t]he supreme court also determined that the Butnarus' claims raise issues within the Board's special competence and expertise.").

According to Professor Ronald Beal in Texas Administrative Practice and Procedure:

The [SOAH] ALJ is mandated to apply the existing legal standard to the underlying or basic facts and to propose an order to the agency. Ultimately, however, the agency is charged with the implementation and application of the policy and may substitute judgment for that of the ALJ as to the ultimate fact findings as long as it is set forth in a reasonable and legally correct manner.<sup>6</sup>

Consequently, the TxDMV Board is more than just a rubber stamp for SOAH proposals for decision or the legislature would have vested SOAH with the final order authority and creation of policy under Chapter 2301.

# Proposed Amendment to Rule § 215.22, Prohibited Communications

Under Tex. Occ. Code § 2301.709(d)(4), the rules must "address ex parte communications." Under Tex. Occ. Code § 2301.709(d)(1), the rules must "specify the role of division personnel in managing contested cases before the board or a person delegated power under Section 2301.154, including advising on procedural matters."

We do not have any specific objection to the proposed amendments to Rule § 215.22, Prohibited Communications, and believe it complies with the statutory mandate. We support the addition of the proposed language under Rule § 215.22(b) that "staff shall not recommend a final decision to the board unless the department is a party to the contested case." The Proposal for Decision from the SOAH Administrative Law Judge should be the only recommendation for a final order that the Board considers.

# Proposed Amendment to Rule § 215.55, Final Decision

We do not have any objection or opinion on the proposed amendments to Rule § 215.55, Final Decision.

# New Rule § 215.59, Request for Oral Argument

We support the proposed addition of Rule § 215.59, Request for Oral Argument, and urge its adoption with the following additions. First, it should include a provision to discuss how the department's staff is to give notice to a party. Second, it should include a provision to discuss how the written notice from a party requesting an oral argument is to be given to the Office of General Counsel.

# New Rule § 215.60, Presentation Aids

We support allowing the parties to use presentation aids in its oral argument, but object to having those aids limited to only a total of 6 pages. No other state agency has such a limit. The

<sup>&</sup>lt;sup>6</sup> RONALD L. BEAL, TEX. ADMIN. PRAC. & PROC. § 8.3.2[a] (2016).

#### December 10, 2020

# Trace Me Broaverok

TxDMV General Counsel September 21, 2020 Page 4

rule should also allow for the submission of proposed orders and proposed findings of fact and conclusions of law.

We believe that these presentation aids are necessary to assist the Board in understanding the complexities of these cases. Too often, SOAH ignores or downplays evidence that does not fit its narrative or support its proposed outcome. Without the opportunity to present important evidence in the form of presentation aids, the Board will make decisions based on a one-sided (SOAH's) view of the evidence. Any presentation aid, of course, would be limited to items in the administrative record such as exhibits and data admitted at SOAH.

### Suggested New Rule to Clarify the Allowance of Briefs to Board

Tex. Gov't Code ("APA") § 2001.062(a)(2) allows an adversely affected party in a contested case to "present briefs to the official who are to render the (final) decision." We suggest adding a rule to clarify that briefs are allowed and define the time frames for filing such briefs and responses.

Therefore, a rule that sets forth the timing and page limitations of the briefs to the TxDMV Board prior to the board meeting would be helpful to the parties and provide alignment with the APA.

## New Rule § 215.61, Limiting Arguments and Discussion to Evidence in the Admin Record

Under Tex. Occ. Code § 2301.709(d)(3), the rules must "specify clear expectations limiting arguments and discussion under Subsection (b) to evidence in the record of the contested case hearing held by the administrative law judge."

We do not have any specific objection to the current language in the addition of Rule § 215.61, Limiting Arguments and Discussion to Evidence in the Administrative Record, but believe the rule should be modified to acknowledge the Board's authority under Tex. Occ. Code §§ 2301.709(c) and 2301.711 to allow the Board to remand a case to SOAH under the language "any further action conducive to the issuance of a final order...."

We do note, however, that the rule doesn't account for, clarify, or address a circumstance where a party is arguing that the error under Tex. Gov't Code § 2001.058(e) is that the SOAH ALJ did not admit certain evidence presented. SOAH's evidentiary rulings should be allowed to be addressed and discussed at oral argument since they may be an issue on a motion for rehearing or a basis for remand on appeal.

### New Rule § 215.62, Order of Presentations to the Board for Review of a Contested Case

We do not have an objection to the addition of Rule § 215.62, Order of Presentations to the Board for Review of a Contested Case, and agree that a party that is adversely affected should have the opportunity to present its case first to the Board on oral argument with an opportunity for rebuttal.

Any time less than 20 minutes virtually ensures that there will be no serious consideration of SOAH's proposal for decision and that the Board's role as final decision maker will be minimized.

Finally, we also support the addition of subsection (f)(6) which states, "The board chairman is authorized to grant each party additional time." This allows the Board the discretion to increase the time allotted based on the circumstances of each individual case while preserving due process for the parties.

Many TxDMV contested cases involve hundreds of thousands of dollars of costs by the time the parties are before the board where issues such as facing the loss of a 50-year investment and a multimillion dollar motor vehicle franchise are on the line. Therefore, parties deserve the opportunity to present record evidence and argument to the Board. SOAH is not a final decision maker. The Board is. In order for the Board to best do its job, the parties must be allowed the opportunity to argue the importance of the evidence presented to SOAH so that the Board can make an informed decision.

Accordingly, we support the TxDMV's proposed amendments to Rule § 206.22 regarding "Public Access to Board Meetings" and urge that the TxDMV Board adopt the proposed Rule § 206.22 amendments.

Please let us know if you have any questions.

Sincerely,

By:

Wm. David Coffey, İII Attorney at Law Coffey & Alaniz, PLLC

Martin Alaniz Attorney at Law Coffey & Alaniz, PLLC



1108 Lavaca, Suite 800 Austin, Texas 78701 Phone: 512-476-2686 www.tada.org

September 21, 2020

Ms. Tracey Beaver General Counsel Office of General Counsel Texas Department of Motor Vehicles 4000 Jackson Avenue Austin, TX 78731

Sent via email: <u>rules@txdmv.gov</u>

RE: Proposed rules: 43 TAC Chapter 215. Subchapter B. Adjudicative Practice and Procedure

Dear Ms. Beaver:

Please accept the following comments from the Texas Automobile Dealers Association (TADA) regarding the proposed rules to Title 43, Chapter 215, Subchapter B. Adjudicative Practice and Procedure, 43 TAC §§ 215.22, 215.55, 215.59 - 215.63, specifically, §§ 215.59 and 215.60, as published in the August 21, 2020, *Texas Register*, 45 *TexReg* 5870, et seq.

TADA appreciates the amendments the Board made at its August 6, 2020, Board meeting and commends the Board for its reasonable revisions prior to the proposal's publication in the *Texas Register*.

As the Board is charged with making decisions that impact the lives and livelihoods of many individuals, to limit the Board's access to information, whether directly or indirectly, may preclude the Board from having the benefit of necessary information with which to make an informed decision.

In order to allow a party and their counsel to accommodate the Board in their decisionmaking for a cause of action that parties have expended time and treasure litigating and that may affect the public, the dealership and their employees, as well as the community and State, TADA offers the following concerns for discussion and amendment.

#### Proposed 43 TAC § 215.59. Request for Oral Argument.

This proposal states that the department staff shall notify the parties regarding their opportunity to provide oral argument concerning a PFD before the board. If a party fails to timely submit a written request for oral argument, that party shall not present oral argument at the board meeting.<sup>1</sup>

In order to avoid a misunderstanding and for clarification, TADA suggests that the Board consider including within the proposed rule, a provision that discusses how the department's staff is to give notice to a party as well as how the *written* notice from a party is to be given to the Office of General Counsel (OGC) with respect to a party's request to present oral argument.

For example, prior to a Board meeting, is the staff's notice to be given to parties in writing, as is required in the proposal by a party who requests oral argument before the Board? Can the staff's notice to be given orally? Is notice acceptable if given by telephone, certified mail, or email?

With respect to a party's required *written* notice to the OGC who requests oral argument, is the written notice to be sent certified, overnight, or does an email or facsimile satisfy the "written notice" to request oral argument per the proposed notice requirement?

In order to avoid a dispute as to whether a notice was satisfactorily sent or received by either the OGC or a party, TADA suggests the Board address these issues in the proposal so that there is no confusion regarding a compliant notice.

The proposal could state that notice is to be given to the department by a party as provided for in the document delivery provision in 43 TAC § 215.30 which allows delivery in person, by firstclass mail to the address of the department, or by electronic document transfer to a destination designated by the department. As an alternative, a reference to 43 TAC § 215.49 which provides for service upon all parties and the department regarding pleadings, petitions, briefs, and other documents, is to be sent by first-class mail, hand delivery, facsimile, or email, could be referenced.

Specifically providing the means for a notice within the proposal may avoid an issue as to whether notice to a party or a written notice to the Board was properly sent.

<sup>&</sup>lt;sup>1</sup><u>§ 215.59 (a) At least 30 days prior to the date of a board meeting during which the board</u> will review a contested case, department staff shall notify the parties regarding the opportunity to attend and provide oral argument concerning a proposal for decision before the board.

<sup>(</sup>b) If a party wants to provide oral argument at the board meeting, it must submit a written request for oral argument to the department's Office of General Counsel at least 14 days prior to the date of the board meeting at which the party's contested case will be considered.

<sup>(</sup>c) If a party timely submits a written request for oral argument, that pary may present oral argument at the board meeting. If a party fails to timely submit a written request for oral argument, that party shall not present oral argument at the board meeting.

#### Proposed 43 TAC § 215.60. Presentation Aids.

When a party and their counsel use charts, documents, PowerPoint, or other aids in their presentation to the Board, it is not to overwhelm or confuse the Board, it is to assist the Board in arriving at their Final Order decision.

The proposal defines a "presentation aid" as "written materials, such as a document or PowerPoint slides which contain a party's arguments and discussion of evidence, laws, and rules regarding the contested case."<sup>2</sup>

After defining a "presentation aid," the proposal states that this aid "shall be single-sided, double-spaced, 8.5 inches by 11 inches, and at least 12 point type."

The number of pages for "initial presentation" is limited to four (4) pages and a rebuttal presentation is limited to two (2) pages for a total of six (6) pages.

The penalty for providing more than the 4 and 2 limited number of pages gives the department the right NOT to provide the presentation aid to the Board and that same party is prevented from providing the presentation aid to the Board at the Board meeting.<sup>3</sup>

#### 1. Clearly define "presentation aid."

TADA requests that the definition of "presentation aid" specifically exclude a party's proposed order, a proposal for decision, new findings of fact or conclusions of law.

As the Board voted at the August 6<sup>th</sup> Board meeting not to include the proposed language that stated that "the department will not accept any written proposed orders, proposals for decision, new findings of fact or conclusions of law from a party to a contested case," a clarification in the rule's definition to exclude these documents from what is a "presentation aid" will avoid a future

<sup>&</sup>lt;sup>2</sup>(b) For the purposes of this section, presentation aids are defined as written materials, such as a document or PowerPoint slides which contain a party's arguments and discussion of evidence, laws, and rules regarding the contested case. Presentation aids shall be limited to evidence contained in the SOAH administrative record and consistent with the scope of the board's authority to take action under Government Code §2001.058(e). However, any party may argue that the board should remand the case to SOAH.

<sup>&</sup>lt;sup>3</sup>(d) Presentation aids shall be single-sided, double-spaced, 8.5 inches by 11 inches, and at least 12-point type. Initial presentation aids are limited to four pages, and rebuttal presentation aids are limited to two pages for a total of six pages. If a party provides the department with a presentation aid that contains more pages than the maximum allowed, the department shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board and the party shall not provide the presentation aid to the board meeting.

misunderstanding as to what is a "presentation aid."

TADA also requests that a party's filed briefs, replies, exceptions, and response to exceptions be given to the Board members and that the rule provide that these filings are not within the definition of "presentation aid" as they are provided to each Board member.

Although the Board and the proposal may not intend that these filings are a "presentation aid," in order to avoid future confusion, to clearly define a presentation aid will benefit the Board, staff, and parties. As a party is allowed to make such filings, the Board, as the final decision-maker in the TxDMV's administrative contested case process, should not be excluded from any party's filings.

# 2. The proposal should take account of different types of presentation aids.

A party should not be so limited in its "presentation aid" to the Board as proposed because not all presentation aids fit within the narrow confines allowed for a "presentation aid." For example, a PowerPoint, which is defined as a "presentation aid," neither lends itself to 8.5 inches by 11 inches in size, nor to a 4 or 2 page limitation. Another type of aid includes easel charts, which also do not lend itself to 8.5 inches by 11 inches.

If a limitation regarding a "presentation aid" is necessary, TADA suggests that the proposal should reasonably address the types of aids that may be used in a presentation.

# 3. Discussion of "presentation aid" proposal.

A "presentation aid" is intended by a party to assist the Board in its decision-making. If a party provides more information to the Board than a Board member reviews, that is the Board member's decision.

A Board member's understanding of the issues and their vote may impact hundreds of employees, millions of dollars, a specific community, as well as the entire State. The Board should not adopt a rule that confines and restricts potentially necessary information that a Board member needs in order to make a decision.

The use of a presentation aid as well as the information from a party to a Board member should be at the discretion of the party and their counsel. If the Board determines a limitation is in the best interests of the parties, then a rule should be narrowly defined; allow for reasonable limits; and, be based on the type of presentation aid.

A party and their counsel should be given the latitude to provide the Board with the necessary information for a Board member to reach a reasoned and thoughtful decision. Any limitation should account for what is reasonable with respect to the type of a presentation aid provided by a party and their counsel such as a PowerPoint, easel charts, photographs, or a paper aid.

TADA requests that this proposal be re-visited with respect to defining, for clarification purposes, what is and is not a presentation aid; the types of aids utilized; and, what is reasonable for a party and their counsel to provide while balancing the interests of counsel and their client in addition to the Board's need to have adequate information to make a decision.

#### **SUMMARY**

If the Board adopts a practice and procedure rule regarding information that is provided prior to the issuance of a Final Order, it should be designed to provide the Board with the necessary information for their deliberations—it should not be designed to limit information or to shield the Board from gratuitous information.

The August 6<sup>th</sup> board meeting discussion allowing a party to present a proposed order, a proposal for decision, and new findings of fact or conclusions of law, demonstrates that a party should be given the opportunity to provide such to the Board, as these filings can be useful during Board deliberations and elucidate facts and conclusions for a Board member.

The party-provided documentation and discussion to the Board should be the party's and counsel's decision. If counsel overwhelms the Board with extraneous information, this action may result to their disadvantage; however, if a rule limits the information so that it prevents the Board from understanding a party's arguments, applicable law, and facts, then the rule is not in the best interests of anyone-the Board, the parties, or the State.

Frequently cited and often repeated is when a finding of fact or conclusion of law made by an Administrative Law Judge (ALJ) may be changed or when an order may be vacated of modified.<sup>4</sup>

It should not be lost on the Board that the Legislature determined that there a times when a finding of fact or a conclusion of law needs to be changed or an order vacated or modified.

The Board's authority to amend an order or vacate or modify an ALJ's order should not be

<sup>&</sup>lt;sup>4</sup>Government Code §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 of the agency determines:

<sup>(1)</sup> 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;

<sup>(2)</sup> that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

<sup>(3)</sup> that a technical error in a finding of fact should be changed. The agency shall state I writing the specific reason and legal basis for a change made under this subsection.

<sup>(</sup>TEX. GOV'T CODE ANN. §2001.058(e) (Vernon Supp. 2019).

lightly dismissed. Incorrect applications or interpretations of laws, policies, rules or prior administrative decisions occur at the ALJ level. A prior administrative decision on which an ALJ relies may be determined to be incorrect or should be changed by the Board. Finally, a technical error in a finding of fact may need to be changed by the Board.

In order to comply with the Legislature's grant of authority to an agency and its Board to correct an order from an ALJ, the Board must have the benefit of the necessary information including an understanding of the case, the law, the facts, and prior decisions, so as to comply with the requirements laid out and conferred on it in Government Code §2001.058(e). The agency and Board are a check on the ALJ and must have the necessary information to perform this duty.

What is given or presented to the Board should be at the discretion of counsel. To strictly limit the Board to receive a total of 6 pages of presentation aids may prevent the Board from obtaining the necessary data as well as an understanding of the facts and arguments.

A practice and procedure rule regarding information provided to a decision-maker should give weighted consideration to party's counsel's experience and expertise. The proposal should be amended so as to allow a party to provide to the Board the necessary information for its deliberations and compliance with its responsibilities.

1

Respectfully submitted,

Karen Phillips

General Counse/EVP

Board Meeting eBook ALAN B. PADFIELD MARK W. STOUT CHRISTOPHER V. ARISCO JOSEPH D. AUSTIN OWEN C. BABCOCK JOHN T. EASTER MATTHEW B. FRONDA MATTHEW D. GIADROSICH BRANDON J. GIBBONS JEFFREY V. LEAVERTON



Padfield & Stout, LLP

Attorneys & Counselors at Law www.padfieldstout.com 156 \*George A. Pence Of Counsel \*John E. Johnson Of Counsel Dante' M. Doyle Of Counsel S. Gary Werley Of Counsel Richard W. Wiseman Senior Attorney Of Counsel

September 21, 2020

# Via Email (<u>rules@txdmv.gov</u>)

Office of General Counsel Attn: Tracey Beaver, Esq. – General Counsel Texas Department of Motor Vehicles 4000 Jackson Avenue Austin, Texas 78731

## RE: Comments on Proposed Rules 43 T.A.C. Sections 215.60, 215.61 and 215.63 Relating to Contested Cases

Dear Ms. Beaver:

I have represented franchised new motor vehicle dealers before this Agency for over 30 years and I had the privilege of working with the iconic Howard V. Rose, Jr. in many of those Agency proceedings, until his passing on March 29, 2017. Howard was still working at Hursch Blackwell (the successor to his firm Brown, Maroney, Rose, Baker & Barber) on a franchised dealer case with me until just a few weeks prior to his death.

I was provided a copy of Mr. Bennett's September 18, 2020 letter to you regarding his requested modifications to proposed rules 43 T.A.C. Sections 215.60, 215.61 and 215.63 related to contested cases. I reviewed his letter and proposed modifications carefully. I have attached a copy of that letter for your easy reference.

There is nothing further I could add to the precise and on point comments by Mr. Bennett and his recommended modifications. However, I want to emphasize the importance of Mr. Bennett's modifications to 43 T.A.C.§215.60 Presentation Aids (d). Those important modifications are necessary to give the Board a complete picture of the issues involved in any particular case. Those changes are: increasing the initial presentation aids from four to 25 pages, rebuttal presentation aids from two to 10 pages for a total of 35 pages rather than 6, and "Pages containing the number and style of the case, the table of contents, the index of authorities, the signature, the certificate of service, a proposed order, or a prior administrative decision are not subject to the foregoing page limitations." (emphasis added).

\*HOUSTON OFFICE: 1136 N. Kirkwood Road Houston, Texas 77043 TELEPHONE: (281) 556-0944 FACSIMILE: (281) 886-0349 FORT WORTH OFFICE: 420 Throckmorton Street, Suite 1210 Fort Worth, Texas 76102 TELEPHONE: (817) 338-1616 FACSIMILE: (817) 338-1610

<sup>+</sup>DALLAS OFFICE: 705 Ross Avenue Dallas, Texas 75202 TELEPHONE: (817) 338-1616 FACSIMILE: (817) 338-1610 Please accept this letter as my complete endorsement of Mr. Bennett's requested modifications to the proposed rules contained in his letter. To limit parties in their presentations as currently proposed on matters that are sometimes very complex, could have the adverse effect of denying parties their due process rights under the statutes the Board is charged with enforcing. These recommended modifications will greatly aid all attorneys to better work with the Board toward reaching the ultimate purpose of Texas Occupations Code Chapter 2301, which is to ensure a sound system of distributing and selling motor vehicles for the benefit of all Texas citizens.

I appreciate the opportunity of providing my thoughts on the proposed rules and I hope the requested modifications are carefully considered and accepted. Do not hesitate to contact me with any questions, and thank you for all your hard work for the Texas Department of Motor Vehicles.

Sincerely

Richard W. Wiseman Padfield & Stout, LLP Senior Attorney of Counsel

Enclosure





Susan G. White, Esq. 111 Congress Avenue, Suite 1070 Austin, Texas 78701 (512) 542-5103 (Direct) (512) 469-0930 (Fax) swhite@shackelford.law

September 18, 2020

Via Email (<u>rules@txdmv.gov</u>)

Office of General Counsel Attn: Tracey Beaver, Esq. – General Counsel Texas Department of Motor Vehicles 4000 Jackson Avenue Austin, Texas 78731

> RE: Comments on Proposed Rules 43 T.A.C. Sections 215.60, 215.61 and 215.63 Relating to Contested Cases

Dear Ms. Beaver:

I have had the privilege of representing franchised new motor vehicle dealers before this agency for 25 years. Mr. Bennett was kind enough to copy me with his September 18, 2020 letter you regarding his requested modifications to proposed rules 43 T.A.C. Sections 215.60, 215.61 and 215.63 related to contested cases, a copy of which is attached for your convenience.

Please accept this letter as my complete endorsement of Mr. Bennett's requested modifications to the proposed rules contained in his letter. To limit the parties in their presentation as currently proposed on matters that are sometimes very complex, could have the adverse effect of denying parties their due process rights under the statutes the Board is charged with enforcing.

Thank you for the opportunity to provide comments, and for your kind consideration of the requested modifications. If you have any questions for me, I would be happy to hear from you.

Best regards,

mute

Susan G. White

Enclosure

1	ADOPTION OF
2	SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS
3	43 TAC §206.22
4	INTRODUCTION. The Texas Department of Motor Vehicles adopts amendments to 43 TAC §206.22
5	concerning contested cases. The department adopts §206.22 with changes to the proposed text as
6	published in the August 21, 2020, issue of the <i>Texas Register</i> (45 <i>TexReg</i> 5866).
7	The department adopts nonsubstantive changes to §206.22(f)(5) to substitute "State Office of
8	Administrative Hearings" for "SOAH" because "SOAH" isn't defined in §206.22. Also, the department
9	clarified §206.22(f)(2) by stating a party may make a closing statement in addition to a rebuttal, which is
10	consistent with current practice.
11	<b>REASONED JUSTIFICATION.</b> The department adopts amendments to §206.22 in response to a petition for
12	rulemaking dated February 5, 2019, regarding minimum time limits for parties to a contested case to make
13	presentations to the board of the Texas Department of Motor Vehicles (board) when the board reviews a
14	contested case before issuing a final order. The department also adopts amendments in response to
15	informal comments to the informal working draft of the amendments that the department posted on its
16	website prior to publishing the proposed amendments in the Texas Register. Further, the department
17	adopts amendments to implement Occupations Code §2301.709(d). Lastly, the department adopts
18	amendments to add a reference in §206.22(a)(2) and (b)(3) to the current exception in subsection (e),
19	which authorizes the board chairman to grant a person more than three minutes to speak to the board
20	on an agenda item. The amendments provide the parties with an adequate amount of time to make their
21	initial presentation, rebuttal, and closing statement; authorize the board chairman to grant each party
22	additional time; require an intervening party in support of another party to share in that party's time; and
23	clarify that time spent by a party responding to any board questions is not counted against their time.

#### Board Meeting eBook D TITLE 43. TRANSPORTATION Part 10. Texas Department of Motor Vehicles Chapter 206 - Management

1 The chairman currently has the authority under §206.22(e) to grant each party more than three 2 minutes to present their contested case; however, the rulemaking petition and many informal 3 commenters who commented on the department's informal working draft of Title 43 TAC §215.61 4 requested the department to amend §206.22 to give each party a minimum of 20 minutes to present their 5 contested case to the board. The department adopts amendments to §206.22 to grant each party a 6 maximum of 20 minutes for their initial presentation, and five minutes for any rebuttal and closing 7 statement. However, the department reminds the parties that the board is not authorized to relitigate 8 contested cases. In the Sunset Advisory Commission Staff Report with Final Results, 2018 -2019, 86th 9 Legislature, the Sunset Advisory Commission warned the board that the board is not authorized to 10 relitigate contested cases. The State Office of Administrative Hearings (SOAH) proceedings provide the 11 parties to a contested case an opportunity to make arguments and produce evidence in accordance with 12 standard processes under the Texas Administrative Procedure Act, Government Code Chapter 2001. SOAH proceedings can last from hours to weeks, depending on the complexity of the case. 13 14 The amendments give each party an adequate amount of time to present their case to the board 15 for most cases, while providing the chairman with the authority to grant more time for cases that warrant 16 more time, consistent with the board's role under Government Code §2001.058(e) and Occupations Code 17 Chapter 2301 for cases that are governed by Chapter 2301. The parties aren't required to provide oral argument to the board. Also, the parties are authorized to file presentation aids under new 43 TAC 18 19 §215.60 for cases that are governed by Occupations Code Chapter 2301. New §215.60 is also published in 20 this issue of the *Texas Register*. The department will provide the party's presentation aids to the board if

21 the party complies with the requirements under §215.60, regardless of whether the party timely requests

an opportunity to provide oral argument to the board under new §215.59, which is also published in this

23 issue of the *Texas Register*. In addition, the board has access to the SOAH administrative record.

Board Meeting eBook De TITLE 43. TRANSPORTATION Part 10. Texas Department of Motor Vehicles Chapter 206 - Management

#### 1 SUMMARY OF COMMENTS.

- 2 The department received one written comment on the proposal.
- 3 **Comment.**
- 4 The department received a written comment from Coffey & Alaniz, PLLC in support of the 5 proposed amendments.
- 6 Agency Response.
- 7 The department appreciates the supportive comment.

8 STATUTORY AUTHORITY. The department adopts amendments under Occupations Code §2301.153(a)(8), 9 which authorizes the board to adopt rules; Occupations Code §2301.155, which authorizes the board to 10 adopt rules as necessary or convenient to administer Occupations Code Chapter 2301 and to govern practice and procedure before the board; Occupations Code §2301.709(d), which authorizes the board to 11 12 adopt rules that establish standards for reviewing a case under Occupations Code Chapter 2301, 13 Subchapter O; Occupations Code §2302.051, which authorizes the board to adopt rules as necessary to 14 administer Occupations Code Chapter 2302; Transportation Code §502.091, which authorizes the 15 department to adopt and enforce rules to carry out the International Registration Plan; Transportation 16 Code §623.002, which authorizes the board to adopt rules that are necessary to enforce Transportation 17 Code Chapter 623; Transportation Code §643.003, which authorizes the department to adopt rules to administer Transportation Code Chapter 643; Government Code §2001.004(1), which authorizes a state 18 19 agency to adopt rules of practice that state the nature and requirements of all available formal and 20 informal procedures; and Transportation Code §1002.001, which authorizes the board to adopt rules that 21 are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Occupations Code §§2301.001, 2301.153(a)(1) and (a)(7), and Chapter
 Subchapter O; Occupations Code §2302.354 and §2302.355; Transportation Code §§502.091,

	Board Meeting eBookDecember 10, 2020TITLE 43. TRANSPORTATIONAdoptedPart 10. Texas Department of Motor VehiclesChapter 206 - Management	162 d Section
1	623.271 -623.272, 643.251 -643.257, §1004.002; and Government Code Chapter 2001, Subchapter	ers C and
2	F	
3	TEXT.	
4	SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS	
5	43 TAC §206.22	
6	§206.22. Public Access to Board Meetings.	
7	(a) Posted agenda items. A person may speak before the board on any matter on a poster	d agenda
8	by submitting a request, in a form and manner as prescribed by the department, prior to the mat	ter being
9	taken up by the board. A person speaking before the board on an agenda item will be all	owed an
10	opportunity to speak:	
11	(1) prior to a vote by the board on the item; and	
12	(2) for a maximum of three minutes, except as provided in <u>subsections</u> [ <del>subsectio</del>	-n] (d)(6) <u>,</u>
13	(e), and (f) of this section.	
14	(b) Open comment period.	
15	(1) At the conclusion of the posted agenda of each regular business meeting, the	he board
16	shall allow an open comment period, not to exceed one hour, to receive public comment on a	ny other
17	matter that is under the jurisdiction of the board.	
18	(2) A person desiring to appear under this subsection shall complete a registrati	on form,
19	as provided by the department, prior to the beginning of the open comment period.	
20	(3) Except as provided in subsections [subsection] (d)(6) and (e) of this section	on, each
21	person shall be allowed to speak for a maximum of three minutes for each presentation in the	order in
22	which the speaker is registered.	

#### Board Meeting eBook De TITLE 43. TRANSPORTATION Part 10. Texas Department of Motor Vehicles Chapter 206 - Management

1	(c) Disability accommodation. Persons with disabilities, who have special communication or
2	accommodation needs and who plan to attend a meeting, may contact the department in Austin to
3	request auxiliary aids or services. Requests shall be made at least two days before a meeting. The
4	department shall make every reasonable effort to accommodate these needs.
5	(d) Conduct and decorum. The board shall receive public input as authorized by this section,
6	subject to the following guidelines.
7	(1) Questioning of those making presentations shall be reserved to board members and
8	the department's administrative staff.
9	(2) Organizations, associations, or groups are encouraged to present their commonly held
10	views, and same or similar comments, through a representative member where possible.
11	(3) Presentations shall remain pertinent to the issue being discussed.
12	(4) A person who disrupts a meeting shall leave the meeting room and the premises if
13	ordered to do so by the chair.
14	(5) Time allotted to one speaker may not be reassigned to another speaker.
15	(6) The time allotted for presentations or comments under this section may be increased
16	or decreased by the chair, or in the chair's absence, the vice chair, as may be appropriate to assure
17	opportunity for the maximum number of persons to appear.
18	(e) Waiver. Subject to the approval of the chair, a requirement of this section may be waived in
19	the public interest if necessary for the performance of the responsibilities of the board or the department.
20	(f) Contested Cases. The parties to a contested case under review by the board will be allowed an
21	opportunity to provide oral argument to the board, subject to the following limitations and conditions.
22	(1) Each party shall be allowed a maximum of 20 minutes for their initial presentation.

1	(2) Each party shall be allowed a maximum of 5 minutes for rebuttal and any closing
2	statement.
3	(3) Any party that is intervening in support of another party shall share that party's time.
4	(4) Time spent by a party responding to any board questions is not counted against their
5	<u>time.</u>
6	(5) Time spent objecting when another party allegedly attempts to make arguments or
7	discuss evidence that is not contained in the State Office of Administrative Hearings' administrative record
8	is not counted against the objecting party's time.
9	(6) The board chairman is authorized to grant each party additional time.
10	(7) A party must timely comply with the requirements of §215.59 of this title (relating to
11	Request for Oral Argument) before it is authorized to provide oral argument to the board.
12	CERTIFICATION. The agency certifies that legal counsel has reviewed the proposal and found it to be
13	within the state agency's legal authority to adopt.
14	Issued at Austin, Texas, on <u>MM DD, YYYY</u> .
15 16	Tracey Beaver, General

1	ADOPTION OF
2	SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE
3	43 TAC §215.22 and §215.55
4	SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE
5	<u>§§215.59 - 215.63</u>
6	INTRODUCTION. The Texas Department of Motor Vehicles adopts amendments to Title 43 TAC §215.22
7	and §215.55, and adopts new 43 TAC §§215.59 - 215.63, concerning contested cases. The department
8	adopts §§215.22 and 215.59 - 215.63 with changes to the proposed text as published in the August 21,
9	2020, issue of the Texas Register (45 TexReg 5870). The department adopts §215.55 without changes to
10	the proposed text as published in the August 21, 2020, issue of the <i>Texas Register</i> (45 TexReg 5870).
11	The department adopts nonsubstantive changes to §215.22 to add the word "department" to
12	make it clear that it is the department staff who may advise the board, the hearing officer, and a person
13	delegated power from the board under Occupations Code §2301.154 regarding the contested case and
14	any procedural matters. The department also deleted commas after the word "Code" in the citations to
15	statutes.
16	REASONED JUSTIFICATION. The amendments to §215.22 and §215.55 and new §§215.59 - 215.63 are
17	necessary to implement Occupations Code §2301.709(d). The department also adopts amendments to
18	§215.22 and §215.55 to conform to statute and existing rules. The department further adopts
19	amendments to §215.22(b) in response to a petition for rulemaking.
20	On April 3, 2020, the department posted on its website an informal draft of these rules for public
21	comment. The department considered the informal comments when drafting the proposed rules to
22	publish in the Texas Register for public comment. The department also published the proposed rules in

the *Texas Register* on August 21, 2020, and considered the comments that were timely submitted to the
department.

The department adopts amendments to §215.22(a) to be consistent with Government Code §2001.061 regarding ex parte communications and Occupations Code Chapter 2301. In response to an informal comment regarding §215.22(a), the department added the word "person," which is included in §2001.061. The department also adopts amendments to §215.22(a) to expand the scope of prohibited ex parte communications to be consistent with §2001.061. The department further adopts amendments to

8 §215.22(a) to correct grammatical errors.

9 The department adopts amendments to §215.22(b) to acknowledge the authority and limitations
10 under existing law for department staff to communicate regarding contested cases with board members,

11 the hearing officer, and a person delegated power from the board under Occupations Code §2301.154.

The department adopts amendments to §215.22(b) to implement Occupations Code §2301.709(d)(1) regarding the role of division personnel in advising the board or a person delegated power from the board under Occupations Code §2301.154. New §215.22(b) is further adopted in response to a petition for rulemaking dated February 5, 2019, requesting the department to prohibit department staff from providing any recommendations to the board on contested cases. However, when the department is a party to the contested case, department staff are authorized to recommend a final decision, just as any other party is authorized to recommend a final decision.

The department renumbered the current §215.22(b) to §215.22(c) and made a conforming amendment to §215.22(c) because not all cases under Occupations Code Chapter 2301 have a hearing officer.

The department adopts amendments to §215.55 to make the language consistent with §215.58
under which the board delegated final order authority in certain cases.

# Board Meeting eBookDeTITLE 43. TRANSPORTATIONPart 10. Texas Department of Motor VehiclesChapter 215 - Motor Vehicle Distribution

The department adopts new §§215.59 - 215.63 to implement Occupations Code §2301.709(d), 1 2 which requires the board to adopt rules that establish standards for reviewing a case under Occupations 3 Code Chapter 2301, Subchapter O regarding hearing procedures. Section 2301.709(d) requires the rules to: 1) specify the role of the department's personnel in managing contested cases before the board or a 4 5 person delegated power from the board under Occupations Code §2301.154, including advising on 6 procedural matters; 2) specify appropriate conduct and discussion by the board regarding proposals for 7 decisions issued by administrative law judges; 3) specify clear expectations limiting arguments and 8 discussion on contested cases to evidence in the record of the contested case hearing held by the 9 administrative law judge; 4) address ex parte communications; and 5) distinguish between using industry 10 expertise and representing or advocating for an industry when the board is reviewing a contested case under Occupations Code Chapter 2301, Subchapter O regarding hearing procedures. 11

At this time, the department declines to adopt rules under Occupations Code §2301.709(d)(2) to specify the appropriate conduct and discussion by a person delegated power from the board under Occupations Code §2301.154 regarding a Proposals for Decision (PFD) issued by an administrative law judge. Under 43 TAC §215.88, the board only delegated power under Occupations Code §2301.154 in cases in which there has not been a decision on the merits, so there will not be a PFD issued by an administrative law judge in the delegated cases.

Section 215.59 is consistent with the department's current practice of requiring a party to timely request oral argument before being granted the privilege of providing oral argument. The department adopts §215.59 with substantive changes. The first substantive change clarifies that the date of the board meeting is only a proposed date on which the board may review the contested case. Even though a board meeting may be tentatively scheduled 30 days out, there is no guarantee that the meeting will actually occur on that date. Board meetings have been canceled in the past. Also, circumstances might require the chairman to cancel or pass on a specific agenda item. This change to the proposed text as published does not affect persons not otherwise on notice or add additional costs. The board has the discretion on whether to allow oral arguments under Occupations Code §2301.709(b). The department and the board chairman need to know in advance whether a party wants to provide oral argument so the department and the chairman can efficiently organize and schedule the board meeting, including the order in which certain agenda items are heard.

7 In addition, the department adopts §215.59(b) with changes to require the parties to send their 8 request for oral argument to the contact listed in the department's notice to the parties, rather than to 9 the department's Office of General Counsel. The department modified its procedure, so a division other 10 than the Office of General Counsel will send the notice to the parties and receive the requests from the parties to provide oral argument. The department further adopts §215.59 with changes, which the 11 12 department made in response to comments that were timely submitted to the department. These changes to the proposed text as published do not affect persons not otherwise on notice or add additional 13 14 costs. Parties aren't required to provide oral argument to the board.

15 The department adopts §215.60 with changes. The department made changes in response to 16 comments that were timely submitted to the department. Section 215.60 authorize the parties to submit 17 written presentation aids to the department to provide to the board, regardless of whether the party requested the opportunity to provide oral argument. The department removed the word "PowerPoint" 18 19 from the definition of "presentation aids" and substituted the generic word "presentation" to make it 20 clear that any "presentation slides" are acceptable. The department also adopts §215.60 with 21 nonsubstantive changes for clarity and consistency. These changes to the proposed text as published do 22 not affect persons not otherwise on notice or add additional costs. Parties aren't required to provide 23 presentation aids.

December 10, 2020

# Board Meeting eBookDTITLE 43. TRANSPORTATIONPart 10. Texas Department of Motor VehiclesChapter 215 - Motor Vehicle Distribution

The page limit on the presentation aids strikes a balance between allowing parties to clearly and 1 2 concisely present their case to the board vs. allowing the parties to relitigate their case to the board. In 3 the Sunset Advisory Commission Staff Report with Final Results, 2018 - 2019, 86th Legislature, the Sunset 4 Advisory Commission warned the board that the board is not authorized to relitigate contested cases. The 5 State Office of Administrative Hearings (SOAH) proceedings provide the parties to a contested case an 6 opportunity to make arguments and produce evidence in accordance with standard processes under the 7 Texas Administrative Procedure Act, Government Code Chapter 2001. SOAH proceedings can last from 8 hours to weeks, depending on the complexity of the case.

9 Also, the department adopts uniform standards for the size and appearance of the presentation 10 aids so the aids will fit into the board book that the department provides to the board, so the board 11 members can easily read the presentation aids, so the parties have a clear understanding of what is 12 allowed, and so the parties can be held to the same standard to avoid an unfair advantage. There is no 13 guarantee that the presentation aids will be provided to the board members in a form other than the 14 board books that the department provides to the board prior to the board meeting. Our current board 15 meetings are being held via telephone conference call, rather than in person, due to the COVID-19 16 pandemic.

The board has authority to allow presentation aids that are consistent with the SOAH administrative record and the board's authority under Government Code §2001.058(e) and Occupations Code Chapter 2301. Section 215.60 requires the parties to timely provide their presentation aids to the department and all other parties. Occupations Code §2301.709(a) says the board may only consider materials that are timely submitted. The department needs the presentation aids in advance so the department can include them in the board book that the department provides to the board members and so the department can advise the board. The other parties need the presentation aids in advance so they

#### Board Meeting eBook De TITLE 43. TRANSPORTATION Part 10. Texas Department of Motor Vehicles Chapter 215 - Motor Vehicle Distribution

can provide a rebuttal presentation aid if needed, determine whether they want to request an oral
 argument, and prepare for any oral argument.

The department adopts §215.61 with a change. The department made a change in response to comments that were timely submitted to the department. The change to the proposed text as published does not affect persons not otherwise on notice or add additional costs. Parties aren't required to provide oral argument to the board.

7 Section 215.61 establishes the boundaries on the board's authority regarding review of contested 8 cases. Section 215.61(a) complies with Occupations Code Section 2301.709(d)(3), which requires the 9 board to adopt rules that specify clear expectations limiting oral arguments and discussion to evidence in 10 the record of the contested case hearing held by the Administrative Law Judge (ALJ). Section 215.61(a) 11 reminds the parties to a contested case that they must limit their arguments and discussion to evidence 12 that is contained in the SOAH administrative record. Section 215.61(b) also states each party is responsible for objecting when another party attempts to make arguments or engage in discussion regarding evidence 13 14 that is not contained in the SOAH administrative record. Timely objections to arguments or discussion 15 about evidence that is outside of the SOAH administrative record are necessary to allow board members 16 to appropriately and efficiently review and decide contested cases. Timely objections give our board the 17 opportunity to make a decision on the spot and to say on the record whether they did or didn't consider the evidence, which could avoid an unnecessary motion for rehearing or petition for judicial review. The 18 19 board chairman has the authority to preside over board meetings and to make rulings on motions and 20 points of order under Transportation Code §1001.023(b)(1).

In response to informal comments on the informal working draft of these rules, the department
 added language expressly authorizing a party to argue that the board should remand the case to SOAH.
 However, the language in §215.61(a) does not authorize the parties to make arguments about evidence

that is outside of the SOAH administrative record or to discuss evidence that is outside of the SOAH administrative record. Occupations Code §2301.709(d)(3) requires the board's rules to specify clear expectations limiting arguments and discussion " to evidence in the record of the contested case hearing held by the administrative law judge." Although Government Code §2001.058(e) and Occupations Code Chapter 2301 do not expressly authorize the board to remand a contested case to SOAH, SOAH's administrative rule (Title 1 TAC §155.153(b)(13)) contemplates remands, and SOAH decides how it will respond to the remand order.

8 The department adopts §215.62 with changes. Section 215.62 sets out the order of presentations 9 to the board for review of a contested case. The department made changes in response to a comment 10 that was timely submitted to the department. The department also made changes to be consistent with 11 the terminology used in 43 TAC §206.22, which is also published in this issue of the Texas Register. In 12 addition, the department clarified that each party has an opportunity to provide a closing statement in 13 addition to a rebuttal, which is consistent with current practice. Lastly, the department added a cross-14 reference to the time limits under §206.22. These changes to the proposed text as published do not affect 15 persons not otherwise on notice or add additional costs. Parties aren't required to provide oral argument 16 to the board.

Section 215.62 complies with Occupations Code Section 2301.709(d), which requires the board to adopt rules that establish standards for reviewing a case under Occupations Code Chapter 2301, Subchapter O, as well as Occupations Code Section 2301.709(d)(1), which requires the board to adopt rules that specify the role of division personnel in managing contested cases before the board. Also, the chairman of the board has the authority to preside over board meetings under Transportation Code §1001.023(b)(1), including the authority to determine who has the floor to speak during a board meeting. December 10, 2020

Board Meeting eBook D TITLE 43. TRANSPORTATION Part 10. Texas Department of Motor Vehicles Chapter 215 - Motor Vehicle Distribution

The department received informal comments on the informal working draft of the draft rule text. 1 2 An informal comment requested the department to modify the language to say the party with the burden 3 of proof shall have the opportunity to present oral argument first; however, the department also received 4 comments stating the party that is adversely affected should have the opportunity to present oral 5 argument first. The department adopts §215.62, which says the party that is adversely affected has the 6 opportunity to make its initial presentation first. By having the adversely affected party present first, it 7 helps to focus the board's review on issues the board is authorized to address, and it recognizes the SOAH 8 ALJ's role in assessing the evidence and making a recommendation in the PFD. Also, the Texas Rules of 9 Civil Procedure do not apply to the presentation before the board. In response to an informal comment 10 requesting a clarification that the board has the authority to decide the order if both parties lose on an 11 issue at SOAH, the department added the requested language.

An informal comment on the informal working draft of the rule text also requested an amendment that says only the party with the burden of proof should have the authority to make a rebuttal presentation. The department declined to make the requested change. The department adopts §215.62 to give all parties an equal opportunity to make a rebuttal presentation and any closing statement.

16 The department adopts §215.63 with changes. The department made changes in response to 17 comments that were timely submitted to the department regarding the proposal that was published in the Texas Register. These changes to the proposed text as published do not affect persons not otherwise 18 19 on notice or add additional costs. Section §215.63 complies with the requirement for the board to adopt rules under Occupations Code Section 2301.709(d)(2) and (5) by addressing appropriate board conduct 20 21 and discussion when reviewing a contested case, as well as distinguishing between using industry 22 expertise and representing or advocating for an industry when reviewing a case under Occupations Code 23 Chapter 2301, Subchapter O. Section 215.63, as published in the Texas Register, was previously modified

1 in response to informal comments that were submitted regarding the department's informal working 2 draft of the rule text. The department modified the language to strike a balance between the 3 requirements under Occupations Code §2301.709(d)(2) and (5); the limitations under Government Code 4 Section 2001.058(e); the warning from the Sunset Advisory Commission that the board is not authorized 5 to relitigate contested cases (Sunset Advisory Commission Staff Report with Final Results, 2018 - 2019, 6 86th Legislature); and the case law regarding contested cases. Board members are not advocates for a 7 particular industry. Transportation Code §1001.0221(b) requires the board to carry out its policy-making 8 functions in a manner that protects the interests of the public and industry, maintains a safe and sound 9 motor vehicle industry, and increases the economic prosperity of the state.

#### 10 SUMMARY OF COMMENTS.

The department received seven written comments on the proposal. The department received
written comments from an individual; Cardwell, Hart & Bennett, LLP; Barack Ferrazzano Kirschbaum &
Nagelberg LLP; Coffey & Alaniz, PLLC; the Texas Automobile Dealers Association (TADA); Padfield & Stout,
LLP; and Shackelford, Bowen, McKinley & Norton, LLP.

#### 15 General Comment.

One commenter requested the department to adopt a new rule to clarify that the parties are allowed to file briefs with the board, in addition to the timing and page limitations for briefs. The commenter cited to Government Code §2001.062(a)(2), which allows an adversely affected party an opportunity to file exceptions and present briefs to the officials who are to render the decision.

#### 20 Agency Response.

The department disagrees with the comment and declines to adopt a new rule to expressly authorize briefs to be filed with the board. A party is authorized to file presentation aids under §215.60, which the department will provide to the board if the party complies with the requirements under §215.60. The presentation aids enable each party to clearly and concisely present their case to the board, regardless of what documents they decide to include in their presentation aids. The parties have the discretion to decide how they will comply with the page limits. For a prior board meeting, the parties provided copies of the following as part of their presentation aids: photographs, excerpts from the PFD, a map, a chart, an architectural drawing, letters, and excerpts from depositions.

6 The parties have ample opportunity to submit briefs to SOAH prior to the issuance of the final 7 PFD. In addition, the parties have ample opportunity to provide oral argument to the board under 8 §215.59. The department provides each party a maximum of 20 minutes for their initial presentation and 9 a maximum of five minutes for rebuttal and any closing statement when providing oral argument to the 10 board under 43 TAC §206.22, which is also published in this issue of the Texas Register. Board members 11 are authorized to ask the parties to answer questions during the board meeting, and the time spent 12 answering board questions is not counted against the party's presentation time. Further, the board has 13 access to the SOAH administrative record, so there is no need for the parties to provide it to the board. 14 Lastly, in the Sunset Advisory Commission Staff Report with Final Results, 2018 - 2019, 86th Legislature, 15 the Sunset Advisory Commission warned the board that the board is not authorized to relitigate contested 16 cases.

17 **§215.22** 

18 Comment.

One commenter stated it does not have any specific objection to the proposed amendments, and
they believe the amendments comply with the statutory mandate.

- 21 Agency Response.
- 22 The department appreciates the comment.
- 23 **§215.55**

Board Meeting eBookDeTITLE 43. TRANSPORTATIONPart 10. Texas Department of Motor VehiclesChapter 215 - Motor Vehicle Distribution

#### 1 Comment.

2 One commenter stated it does not have any objection or opinion on the proposed amendments.

- 3 Agency Response.
- 4 The department appreciates the comment.
- 5 **§215.59**
- 6 Comment.
- 7 Two commenters requested the department to modify the language to state how the department
- 8 will give notice to a party regarding the opportunity to provide oral argument before the board. The
- 9 commenters also requested the department to modify the language to state how a party must submit a
- 10 written request for oral argument.

#### 11 Agency Response.

The department agrees with the comment. The department modified the language to state how the department will give notice to a party regarding an opportunity to provide oral argument before the board, as well as how a party must submit a written request for oral argument. The department further clarified that the department will deliver the notice using the last known address that the parties provided to the department. **§215.60** 

- 18 Comment.
- A commenter requested the department to modify the definition of presentation aids to expressly
   include briefs, and three commenters agreed with the comment.
- 21 Agency Response.

The department disagrees with the comment and declines to amend the rule to modify the definition of presentation aids to expressly include briefs. The parties have ample opportunity to submit briefs to SOAH prior to the issuance of the PFD. Also, the parties are authorized under §215.60 to provide
presentation aids in which they can clearly and concisely present their case to the board, regardless of
what documents they decide to include in their presentation aid. The parties have the discretion to decide
how they will comply with the page limits for presentation aids. For a prior board meeting, the parties
provided copies of the following: photographs, excerpts from the PFD, a map, a chart, an architectural
drawing, letters, and excerpts from depositions.

7 In addition, the parties have ample opportunity to provide oral argument to the board under 8 §215.59. The department provides each party a maximum of 20 minutes for their initial presentation and 9 a maximum of five minutes for rebuttal and any closing statement when providing oral argument to the 10 board under 43 TAC §206.22, which is also published in this issue of the Texas Register. Board members 11 are authorized to ask the parties to answer questions during the board meeting, and the time spent 12 answering board questions is not counted against the party's presentation time. Further, the board has 13 access to the SOAH administrative record, so there is no need for the parties to provide it to the board. 14 Lastly, in the Sunset Advisory Commission Staff Report with Final Results, 2018 - 2019, 86th Legislature, 15 the Sunset Advisory Commission warned the board that the board is not authorized to relitigate contested 16 cases.

- 17 **§215.60**
- 18 Comment.

A commenter requested the department to increase the page limit on presentation aids from a total of six pages to a total of 35 pages if the board wants a page limit. The commenter also requested the department to exclude from the page limit any proposed final order, prior agency decision, and preliminary and concluding pages of a brief. The commenter further requested the department to add the word "chart" to the definition of "presentation aid." The commenter argues that the proposed page limit

- will have the effect of giving undue weight to the SOAH ALJ's PFD and of violating the adversely-affected
   party's right to due process. Three commenters agreed with the comment.
- 3 Agency Response.

The department modified the language to increase the page limit from four pages to eight pages for the initial presentation aid for a total of ten pages, including two pages for a rebuttal presentation aid. The department also amended §215.60 to authorize the board chairman to increase the page limits for presentation aids for each party. In addition, the department amended the language to exclude from the page count any cover pages with certain general information. Further, the department added the word "chart" to the definition of "presentation aid."

10 The department disagrees with the portion of the comment requesting the department to exclude proposed final orders, prior agency decisions, and pages of a brief from the page limit. The department 11 12 declines to amend the rule to expressly allow proposed final orders, prior agency decisions, and briefs. 13 The parties have ample opportunity to submit prior agency decisions and briefs to SOAH prior to the 14 issuance of the final PFD. In addition, the parties have ample opportunity to provide oral argument to the 15 board under §215.59. The department provides each party a maximum of 20 minutes for their initial 16 presentation and a maximum of five minutes for rebuttal and any closing statement when providing oral 17 argument to the board under 43 TAC §206.22, which is also published in this issue of the Texas Register. Board members are authorized to ask the parties to answer questions during the board meeting, and the 18 19 time spent answering board questions is not counted against the party's presentation time. Further, the 20 board has access to the SOAH administrative record, so there is no need for the parties to provide it to 21 the board. Lastly, in the Sunset Advisory Commission Staff Report with Final Results, 2018 - 2019, 86th 22 Legislature, the Sunset Advisory Commission warned the board that the board is not authorized to 23 relitigate contested cases.

Board Meeting eBookDTITLE 43. TRANSPORTATIONPart 10. Texas Department of Motor VehiclesChapter 215 - Motor Vehicle Distribution

#### 1 **§215.60**

2 Comment.

3 Two commenters stated that there should be no limit on the number of pages for presentation 4 aids. One of these comments stated that the rule should also allow for the submission of proposed orders 5 and proposed findings of fact and conclusions of law. One of these commenters requested the 6 department to modify the definition of "presentation aid" to specifically exclude the following so it is clear 7 that they can be provided to the board: a party's proposed order, a PFD, and new findings of fact or 8 conclusions of law. One of the commenters stated that a limit to the board's access to information may 9 preclude the board from having the benefit of necessary information with which to make an informed 10 decision.

#### 11 Agency Response.

12 The department modified the language to increase the page limit from four pages to eight pages 13 for the initial presentation aid for a total of ten pages, including two pages for a rebuttal presentation aid. 14 The department disagrees with the portion of the comment requesting the department to exclude a 15 party's proposed order, a PFD, and new findings of fact or conclusions of law from the definition of 16 "presentation aid," which includes page limits. The department also declines to amend the rule to 17 expressly allow proposed final orders, a PFD, and new findings of fact or conclusions of law to be provided to the department to provide to the board. The parties have ample opportunity to submit final orders, a 18 19 PFD, and findings of fact or conclusions of law to SOAH prior to the issuance of the final PFD.

Also, the parties are authorized under §215.60 to provide presentation aids in which they can clearly and concisely present their case to the board, regardless of what documents they decide to include in their presentation aid. The parties have the discretion to decide how they will comply with the page limits for presentation aids. For a prior board meeting, the parties provided copies of the following:

# Board Meeting eBookDeTITLE 43. TRANSPORTATIONPart 10. Texas Department of Motor VehiclesChapter 215 - Motor Vehicle Distribution

1 photographs, excerpts from the PFD, a map, a chart, an architectural drawing, letters, and excerpts from 2 depositions. In addition, the parties have ample opportunity to provide oral argument to the board under 3 §215.59. The department provides each party a maximum of 20 minutes for their initial presentation and 4 a maximum of five minutes for rebuttal and any closing statement when providing oral argument to the 5 board under 43 TAC §206.22, which is also published in this issue of the *Texas Register*. Board members 6 are authorized to ask the parties to answer questions during the board meeting, and the time spent 7 answering board questions is not counted against the party's presentation time. Further, the board has 8 access to the SOAH administrative record, so there is no need for the parties to provide it to the board. 9 Lastly, in the Sunset Advisory Commission Staff Report with Final Results, 2018 - 2019, 86th Legislature, 10 the Sunset Advisory Commission warned the board that the board is not authorized to relitigate contested 11 cases. 12 §215.60

13 Comment.

One commenter requested an amendment to the language to say that a party's filed briefs, replies, exceptions, and response to exceptions must be given to board members and that these filed documents are excluded from the definition of "presentation aid."

17 Agency Response.

18 The department declines to amend the rule to expressly allow a party to file briefs, replies, 19 exceptions, and responses to exceptions. The department declines to amend the rule to expressly require 20 these documents to be provided to the board. The parties have ample opportunity to submit such 21 documents to SOAH prior to the issuance of the final PFD.

Also, the parties are authorized under §215.60 to provide presentation aids in which they can clearly and concisely present their case to the board, regardless of what documents they decide to include

# Board Meeting eBookDTITLE 43. TRANSPORTATIONPart 10. Texas Department of Motor VehiclesChapter 215 - Motor Vehicle Distribution

1 in their presentation aid. The parties have the discretion to decide how they will comply with the page 2 limits for presentation aids. For a prior board meeting, the parties provided copies of the following: 3 photographs, excerpts from the PFD, a map, a chart, an architectural drawing, letters, and excerpts from 4 depositions. In addition, the parties have ample opportunity to provide oral argument to the board under 5 §215.59. The department provides each party a maximum of 20 minutes for their initial presentation and 6 a maximum of five minutes for rebuttal and any closing statement when providing oral argument to the 7 board under 43 TAC §206.22, which is also published in this issue of the Texas Register. Board members 8 are authorized to ask the parties to answer questions during the board meeting, and the time spent 9 answering board questions is not counted against the party's presentation time. Further, the board has 10 access to the SOAH administrative record, so there is no need for the parties to provide it to the board. Lastly, in the Sunset Advisory Commission Staff Report with Final Results, 2018 - 2019, 86th Legislature, 11 12 the Sunset Advisory Commission warned the board that the board is not authorized to relitigate contested 13 cases.

14 **§215.60** 

#### 15 Comment.

One commenter requested the department to take into account the different types of presentation aids, such as easel charts, photographs, and PowerPoint slides. The commenter stated that not all presentation aids fit within the narrow confines of the rule language. For example, an easel chart would not comply with the size limit of 8.5 inches by 11 inches. Also, if the board determines that a limitation is in the best interest of the parties, then a rule should be narrowly defined, allow for reasonable limits, and be based on the type of presentation aid.

#### 22 Agency Response.
# Board Meeting eBookDTITLE 43. TRANSPORTATIONPart 10. Texas Department of Motor VehiclesChapter 215 - Motor Vehicle Distribution

1 The department disagrees with the comment and declines to amend the rule language. The 2 department must provide the presentation aids to the board in the board book materials that we provide 3 to our board members. We need to limit the size to 8.5 inches by 11 inches, so the materials will fit within 4 the board books. The parties have the discretion to decide how they will comply with the page limits. For 5 example, for a prior board meeting, the parties provided copies of the following in compliance with the 6 page limits that the department provided, as well as the 8.5-inch by 11-inch size limit: photographs, 7 excerpts from the PFD, a map, a chart, an architectural drawing, letters, and excerpts from depositions. 8 However, there is no guarantee that the presentation aids will be provided to the board members in a 9 form other than the board books that the department provides to the board prior to the meeting. Our 10 current board meetings are being held via telephone conference call, rather than in person, due to the COVID-19 pandemic. 11

12 **§215.60** 

13 Comment.

A commenter requested the department to add language that says a party may submit presentation aids to the board, regardless of whether the party requests oral argument. Three commenters agreed with the comment.

### 17 Agency Response.

The department agrees with the comment. The department added the requested language to clarify that a party may still submit presentation aids if they don't request oral argument. However, if the party does not timely request oral argument, they may not provide oral argument, even if they timely submit their presentation aids. The written presentation aids will be provided to the board prior to the board meeting. A party may decide that there is no need to provide oral argument in addition to the written presentation aids. Board Meeting eBook D TITLE 43. TRANSPORTATION Part 10. Texas Department of Motor Vehicles Chapter 215 - Motor Vehicle Distribution

### 1 **§215.60**

2 Comment.

A commenter requested the department to modify the language to make it clear that the scope of the board's authority to take action on a SOAH PFD isn't restricted to the actions authorized under Government Code §2001.058(e). The commenter stated the proposed rule could be construed as a relinquishment of the board's powers under Occupations Code §2301.709(c) and §2301.711. Three commenters agreed with the comment.

### 8 Agency Response.

9 The department agrees with the comment. The department modified the language to reference 10 the board's authority under Occupations Code Chapter 2301. However, the department reminds the 11 commenters of the court's opinion in *Hyundai Motor Am. v. New World Car Nissan, Inc.*, 581 S.W.3d 831 12 (Tex. App.-Austin 2019, no pet.) regarding the limits and requirements that apply to the board under 13 Government Code §2001.058(e). Also, §2001.058(e) is the more specific statute that tells the board how 14 they may change a finding of fact or conclusion of law made by the ALJ.

15 **§215.61** 

### 16 **Comment.**

A commenter requested the department to modify the language to make it clear that the scope of the board's authority to take action on a SOAH PFD isn't restricted to the actions authorized under Government Code §2001.058(e). The commenter stated the proposed rule could be construed as a relinquishment of the board's powers under Occupations Code §2301.709(c) and §2301.711. The commenter also stated that SOAH has no authority to refuse to comply with a referring state agency's remand order. Three commenters agreed with the comment. A fourth commenter agreed with the comment and added that the rule doesn't account for, clarify, or address a circumstance where a party is

- arguing that the error under Government Code §2001.058(e) is that the SOAH ALJ did not admit certain
   evidence presented.
- 3 Agency Response.

4 The department agrees with the comments in part. The department modified the language to 5 reference the board's authority under Occupations Code Chapter 2301. However, the department 6 reminds the commenters of the court's opinion in Hyundai Motor Am. v. New World Car Nissan, Inc., 581 7 S.W.3d 831 (Tex. App.-Austin 2019, no pet.) regarding the limits and requirements that apply to the board 8 under Government Code §2001.058(e). Also, §2001.058(e) is the more specific statute that tells the board 9 how they may change a finding of fact or conclusion of law made by the ALJ. The department agrees that 10 SOAH's administrative rule (Title 1 TAC §155.153(b)(13)) contemplates remands. If the board determines that the SOAH ALJ did not admit certain evidence, the board could remand the case to SOAH, depending 11 12 on the facts and issues. If the SOAH ALJ then admits the evidence, it may impact the ALJ's findings of fact 13 or conclusions of law.

14 **§215.61** 

### 15 Comment.

One commenter says the language in §215.61(b) is problematic. The rule says each party is responsible for objecting when another party attempts to make arguments or engage in discussion regarding evidence that is not in the SOAH administrative record. The rule text doesn't say what the consequence is for a party's failure to object. Also, the rule doesn't spell out the specifics, such as when the objection needs to be made or who will rule on the objections. Further, if a board member asks a question about something that isn't in the record, the party is put in the precarious position of objecting to a question from a board member who will vote for or against the party that objects. The burden should

- 1 be placed on the party who strays from the administrative record, rather than shifting the burden to the
- 2 other party to police them during oral argument.
- 3 Agency Response.

4 The department declines to amend §215.61 in response to the comment, and the department 5 won't provide legal advice regarding the impact of a failure to object. Timely objections to arguments or 6 discussion about evidence that is outside of the SOAH administrative record are necessary to allow board 7 members to appropriately and efficiently review and decide contested cases. Timely objections give our 8 board the opportunity to make a decision on the spot and to say on the record whether they did or didn't 9 consider the evidence, which could avoid an unnecessary motion for rehearing or petition for judicial 10 review. The board chairman has the authority to preside over board meetings and to make rulings on 11 motions and points of order under Transportation Code §1001.023(b)(1).

- 12 **§215.62**
- 13 Comment.

A commenter stated if two or more parties on the same side of a case can agree among themselves on the order of presentation, there is no need for a rule that might contradict their proposed order of presentation of their oral arguments. One commenter stated that they do not have an objection to §215.62.

### 18 Agency Response.

The department agrees with the comment requesting changes, and the department appreciates the comment regarding no objections to the language in §215.62. The department modified the language in §215.59(c) and §215.62(c), in response to the comment and limited the modified language to parties who are not adversely affected. If the parties who are not adversely affected reach an agreement on the order in which they want to provide oral argument, they must timely notify the department of the Board Meeting eBook De TITLE 43. TRANSPORTATION Part 10. Texas Department of Motor Vehicles Chapter 215 - Motor Vehicle Distribution

agreement. The department needs to know about such agreements so we can organize the board meeting
to help ensure it runs smoothly. If any parties are adversely affected, the chairman determines the order
in which such parties present oral argument under §215.62(b). In the event a party is intervening in
support of another party, it is probably helpful for such parties to consecutively present any oral
argument.

- 6 **§215.63**
- 7 Comment.

A commenter requested the department to modify the language to make it clear that the scope of the board's authority to take action on a SOAH PFD isn't restricted to the actions authorized under Government Code §2001.058(e). The commenter stated the proposed rule could be construed as a relinquishment of the board's powers under Occupations Code §2301.709(c) and §2301.711. Three commenters agreed with the comment.

### 13 Agency Response.

The department agrees with the comment. The department modified the language to reference the board's authority under Occupations Code Chapter 2301. However, the department reminds the commenters of the court's opinion in *Hyundai Motor Am. v. New World Car Nissan, Inc.*, 581 S.W.3d 831 (Tex. App.-Austin 2019, no pet.) regarding the limits and requirements that apply to the board under Government Code §2001.058(e). Also, §2001.058(e) is the more specific statute that tells the board how they may change a finding of fact or conclusion of law made by the ALJ.

STATUTORY AUTHORITY. The department adopts amendments and new sections under Occupations Code §§2301.153(a)(8), which authorizes the board to adopt rules; Occupations Code §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code Chapter 2301 and to govern practice and procedure before the board; Occupations Code §2301.709(d), which

	Board Meeting eBookDecember 10, 2020186TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesChapter 215 - Motor Vehicle Distribution
1	authorizes the board to adopt rules that establish standards for reviewing a case under Occupations Code
2	Chapter 2301, Subchapter O; Government Code §2001.004(1), which authorizes a state agency to adopt
3	rules of practice that state the nature and requirements of all available formal and informal procedures;
4	and Transportation Code §1002.001, which authorizes the board to adopt rules that are necessary and
5	appropriate to implement the powers and the duties of the department.
6	CROSS REFERENCE TO STATUTE. Occupations Code §§2301.001, 2301.151, 2301.152, 2301.153(a)(1),
7	(a)(7), (a)(8), and Chapter 2301, Subchapter O; and Government Code Chapter 2001, Subchapters C and
8	F.
9	
10	TEXT.
11	SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE
12	43 TAC §215.22 and §215.55
13	§215.22. Prohibited Communications.
14	(a) No person, party, attorney of record, or authorized representative in any contested case shall
15	engage in, [make,] directly or indirectly, any ex parte communication, in violation of Government Code,
16	§2001.061, concerning the [merits of the] contested case with [to] the board or hearing officer assigned
17	to render a decision or make findings of fact and conclusions of law in a contested case.
18	(b) Except as prohibited by Government Code §2001.061, department staff may advise the board,
19	the hearing officer, and a person delegated power from the board under Occupations Code §2301.154
20	regarding the contested case and any procedural matters. However, the department staff shall not
21	recommend a final decision to the board unless the department is a party to the contested case.
22	(c) [ <del>(b)</del> ] Violations of this section shall be promptly reported to the hearing officer, as applicable,
23	and the general counsel of the department. The general counsel shall ensure that a copy or summary of

	Board Meeting eBookDecember 10, 2020187TITLE 43. TRANSPORTATIONAdopted SectionsPart 10. Texas Department of Motor VehiclesAdopted SectionsChapter 215 - Motor Vehicle DistributionFrance	
1	the ex parte communication is included with the record of the contested case and that a copy is forwarded	
2	to all parties or their authorized representatives. The general counsel may take any other appropriate	
3	action otherwise provided by law.	
4		
5	§215.55. Final Decision.	
6	(a) Except as provided by §215.58 of this title (relating to Delegation of Final Order Authority), the	
7	[The] board has final order authority in a contested case initiated by a complaint filed before January 1,	
8	2014, under Occupations Code, §2301.204 or §§2301.601 - 2301.613.	
9	(b) The hearings examiner has final order authority in a contested case filed on or after January 1,	
10	2014, under Occupations Code, §2301.204 or §§2301.601 - 2301.613.	
11	(c) Except as provided by subsections (a) and (b) of this section and §215.58 of this title, the board	
12	has final order authority in a contested case filed under Occupations Code, Chapter 2301 or under	
13	Transportation Code, Chapter 503.	
14	(d) An order shall be deemed final and binding on all parties and all administrative remedies are	
15	deemed to be exhausted as of the effective date, unless a motion for rehearing is filed with the	
16	appropriate authority as provided by law.	
17	SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE	
18	<u>§§215.59 - §215.62</u>	
19	§215.59. Request for Oral Argument.	
20	(a) At least 30 days prior to the date of a proposed board meeting during which the board may	
21	review a contested case, department staff shall notify the parties regarding the opportunity to attend and	
22	provide oral argument concerning a proposal for decision before the board. The department will deliver	

1	notice in accordance with §215.30 of this title (relating to Filing of Documents), using the last known
2	address that the parties provided to the department.
3	(b) If a party wants to provide oral argument at the board meeting, it must submit a written
4	request for oral argument to the department's contact listed in the notice provided under subsection (a)
5	of this section and copy all other parties in accordance with §215.49 of this title (relating to Service of
6	Pleadings, Petitions, Briefs, and Other Documents) at least 14 days prior to the date of the board meeting
7	at which the party's contested case will be considered.
8	
9	(c) If there is more than one other party who was not adversely affected by the proposal for decision, such
10	parties may agree on the order of their presentations in lieu of the order prescribed under §215.62(c) of
11	this title (relating to Order of Presentations to the Board for Review of a Contested Case). If the parties
12	who were not adversely affected by the proposal for decision do not timely provide the department and
13	the other parties with notice under subsection (b) of this section regarding their agreed order of
14	presentation, their order of presentation will be determined under §215.62(c) of this title.
15	(d) If a party timely submits a written request for oral argument, that party may present oral
16	argument at the board meeting. If a party fails to timely submit a written request for oral argument, that
17	party shall not present oral argument at the board meeting.
18	
19	§215.60. Presentation Aids.
20	(a) If a party wants to provide a presentation aid to the board, it must provide the presentation
21	aid to the department and all other parties in accordance with §215.30 of this title (relating to Filing of

- 22 Documents) and §215.49 of this title (relating to Service of Pleadings, Petitions, Briefs, and Other
- 23 Documents) at least 21 days prior to the date of the board meeting. If a party wants to provide a rebuttal

Board Meeting eBook December 10, 2020 TITLE 43. TRANSPORTATION Part 10. Texas Department of Motor Vehicles Chapter 215 - Motor Vehicle Distribution

1	presentation aid to the board, it must provide the rebuttal presentation aid to the department and all
2	other parties in accordance with §215.30 of this title and §215.49 of this title at least 14 days prior to the
3	date of the board meeting. If a party fails to timely provide a presentation aid to the department or any
4	other party, the department shall not provide the presentation aid to the board and the party shall not
5	provide the presentation aid to the board at the board meeting. A party may submit presentation aids to
6	the board in accordance with this section, regardless of whether the party requests oral argument.
7	(b) For the purposes of this section, presentation aids are defined as written materials, such as a
8	document, chart, or presentation slides, which contain a party's arguments and discussion of evidence,
9	laws, and rules regarding the contested case. Presentation aids shall be limited to evidence contained in
10	the SOAH administrative record and consistent with the scope of the board's authority to take action
11	under Government Code §2001.058(e) and Occupations Code, Chapter 2301. However, any party may
12	argue that the board should remand the case to SOAH.
13	(c) All information in the presentation aids shall include a cite to the SOAH administrative record
14	on all points to specifically identify where such information is located in the administrative record.
15	(d) Presentation aids shall be single-sided, double-spaced, 8.5 inches by 11 inches, and at least
16	12-point type. Initial presentation aids are limited to eight pages, and rebuttal presentation aids are
17	limited to two pages for a total of ten pages, except as stated otherwise in this section. Cover pages that
18	only contain the case number, the style of the case, the date of the board meeting, the name of the party
19	submitting the presentation aides, and the names of the attorneys or representatives for the parties are
20	excluded from the page limit.
21	(e) The board chairman is authorized to increase the page limits for presentation aids for each
22	party. If the board chairman authorizes an increase in the page limits, the department shall notify the
23	parties under §215.59(a) of this title (relating to Request for Oral Argument).

1 (f) If a party provides the department with a presentation aid that contains more pages than the 2 maximum allowed, the department shall not provide the presentation aid to the board and the party shall 3 not provide the presentation aid to the board at the board meeting. 4 5 §215.61. Limiting Arguments and Discussion to Evidence in the Administrative Record. 6 (a) The parties to a contested case under review by the board shall limit their arguments and 7 discussion to evidence in the SOAH administrative record, and their arguments and discussion shall be 8 9 10 case to SOAH. (b) Each party is responsible for objecting when another party attempts to make arguments or 11 engage in discussion regarding evidence that is not contained in the SOAH administrative record. §215.62. Order of Presentations to the Board for Review of a Contested Case. 14 the event of the following: (1) it is not clear which party is adversely affected; (2) it appears as though more than one party is adversely affected; or 21 (3) different parties are adversely affected by different portions of the contested case 22 under review.

Board Meeting eBook

TITLE 43. TRANSPORTATION

Part 10. Texas Department of Motor Vehicles Chapter 215 - Motor Vehicle Distribution

- consistent with the scope of the board's authority to take action under Government Code §2001.058(e)
- and Occupations Code, Chapter 2301. However, any party may argue that the board should remand the
- 12
- 13
- (a) The department's staff will present the procedural history and summary of the contested case. 15
- (b) The party that is adversely affected has the opportunity to make its initial presentation first. 16
- 17 However, the board chairman is authorized to determine the order of each party's initial presentation in
- 18
- 19
- 20

Part 10. Texas Department of Motor Vehicles Chapter 215 - Motor Vehicle Distribution 1 (c) The other party or parties who were not adversely affected then have an opportunity to make 2 their initial presentation. If there is more than one other party, each party will have an opportunity to 3 respond in alphabetical order based on the name of the party in the pleadings in the SOAH administrative 4 record, except as stated otherwise in §215.59(c) of this title (relating to Request for Oral Argument). 5 (d) After each party makes its initial presentation, each party then has an opportunity to provide 6 a rebuttal and closing statement in the same order as the initial presentations. 7 (e) A party must timely comply with the requirements of §215.59 of this title before the party is 8 authorized to provide oral argument to the board. 9 (f) Each party is limited to the time allotted under §206.22 of this title (relating to Public Access 10 to Board Meetings). 11 12 §215.63. Board Conduct and Discussion When Reviewing a Contested Case. 13 (a) The board shall conduct its review of a contested case in compliance with Government Code 14 Chapter 2001 and Occupations Code, Chapter 2301, including the limitations on changing a finding of fact 15 or conclusion of law made by the administrative law judge at SOAH, and the prohibition on considering 16 evidence outside of the SOAH administrative record. 17 (b) Board members may question any party or the department on any matter that is relevant to the proposal for decision or the evidence contained in the SOAH administrative record; however, any 18 19 questions shall be consistent with the scope of the board's authority to take action under Government 20 Code §2001.058(e) and Occupations Code, Chapter 2301; the communication must comply with §215.22 21 of this title (relating to Prohibited Communications). In addition, board members are authorized to ask 22 questions regarding arguments or a request to remand the case to SOAH.

December 10, 2020

Board Meeting eBook

**TITLE 43. TRANSPORTATION** 

191

Adopted Sections

- 1 (c) Board members may use their industry expertise to help them understand the case and make
- 2 <u>effective decisions, consistent with the scope of the board's authority to take action under Government</u>
- 3 Code §2001.058(e) and Occupations Code, Chapter 2301. However, board members are not advocates for
- 4 <u>a particular industry. Board members are public servants who take an oath to preserve, protect, and</u>
- 5 defend the Constitution and laws of the United States and Texas.
- 6 **CERTIFICATION.** The agency certifies that legal counsel has reviewed the proposal and found it to be
- 7 within the state agency's legal authority to adopt.
- 8 Issued at Austin, Texas, on <u>MM DD, YYYY</u>.
- 9
- 10

Tracey Beaver, General Counsel

Board Meeting eBook

### Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

193

То:	Texas Department of Motor Vehicles Board
From:	Tim Thompson, Vehicle Titles & Registration Deputy Director
Agenda Item:	11
Subject:	Chapter 217, Vehicle Titles and Registration
	Amendments, §217.3
	(Relating to motor vehicle titling for mopeds)

### RECOMMENDATION

Approval to adopt and publish the amended section in the *Texas Register*.

### PURPOSE AND EXECUTIVE SUMMARY

The amended section removes the reference to the list of certified mopeds published by the Texas Department of Public Safety (DPS) because DPS will no longer maintain the list. DPS is no longer maintaining the list in response to House Bill (HB) 3171, 86th Legislature, Regular Session (2019), which repealed Transportation Code §521.225, which required DPS to maintain the list.

### FINANCIAL IMPACT

There will be no fiscal implications related to the proposed amendments.

### BACKGROUND AND DISCUSSION

The amendments to §217.3(1)(B) eliminate references to the list of certified mopeds published by DPS and clarify that determinations on whether a motor vehicle may be titled as a moped will be based on the definition of moped in Transportation Code §541.201. Previously, DPS provided a list of certified mopeds that was referenced when county tax assessor-collector offices processed title applications. Transportation Code §521.225, which required that the list be maintained, was repealed by HB 3171. Because that list is no longer maintained, determinations will be based on the statutory definition of moped.

### **COMMENTS**

The proposed amendments were published for comment in the October 16, 2020, issue of the Texas Register. The comment period closed on November 16, 2020. No comments were received.

If the board adopts the rules during its December 10, 2020, open meeting, staff anticipates:

- Publication in the December 25, 2020, issue of the Texas Register; and
- An effective date of December 30, 2020

	Board Meeting eBookDecember 10, 2020TITLE 43. TRANSPORTATIONPart 10. Texas Department of Motor VehiclesChapter 217 – Motor Vehicle Titles
1	ADOPTION OF
2	SUBCHAPTER A. MOTOR VEHI
3	43 TAC §217.3
4	INTRODUCTION. The Texas Department of Motor Vehicles add
5	concerning motor vehicle titles. The amended section removes
6	mopeds published by the Texas Department of Public Safety (DP
7	maintained. DPS is no longer maintaining the list in response to H
8	Regular Session (2019). House Bill 3171 repealed Transportation C
9	maintain the list. The department adopts the amendments to §21

1	ADOPTION OF
2	SUBCHAPTER A. MOTOR VEHICLE TITLES
3	43 TAC §217.3
4	INTRODUCTION. The Texas Department of Motor Vehicles adopts amendments to 43 TAC §217.3
5	concerning motor vehicle titles. The amended section removes the reference to the list of certified
6	mopeds published by the Texas Department of Public Safety (DPS) because that list will no longer be
7	maintained. DPS is no longer maintaining the list in response to House Bill (HB) 3171, 86th Legislature,
8	Regular Session (2019). House Bill 3171 repealed Transportation Code §521.225, which required DPS to
9	maintain the list. The department adopts the amendments to §217.3 without changes to the proposed
10	text as published in the October 16, 2020 issue of the Texas Register (45 TexReg 7407). The rule will not
11	be republished.
12	REASONED JUSTIFICATION. The amendment to §217.3(1)(B) eliminates the reference to the list of
13	certified mopeds published by DPS and clarify that determinations on whether a motor vehicle may be
14	titled as a moped will be based on the definition of moped in Transportation Code §541.201. Previously,
15	DPS provided a list of certified mopeds for use when county tax assessor-collector offices processed title
16	applications. Transportation Code §521.225, which required that the list be maintained, was repealed by
17	HB 3171. Because that list is no longer maintained, determinations will be based on the statutory
18	definition of moped. Transportation Code §541.201(8) defines moped as, "a motor vehicle that is
19	equipped with a rider's saddle and designed to have when propelled not more than three wheels on the
20	ground, that cannot attain a speed in one mile of more than 30 miles per hour, and the engine of which
21	cannot produce more than five-brake horsepower; and if an internal combustion engine, has a piston
22	displacement of 50 cubic centimeters or less and connects to a power drive system that does not require
23	the operator to shift gears." If the vehicle meets the definition, it will be titled as a moped. The

	Board Meeting eBookDecember 10, 20201TITLE 43. TRANSPORTATIONAdopted SectionPart 10. Texas Department of Motor VehiclesChapter 217 – Motor Vehicle Titles	195 ON
1	amendments are not changing or adding requirements for the definition of moped, but are removing the	
2	requirement that a motor vehicle be listed on the certified moped list before titling as a moped.	
3	SUMMARY OF COMMENTS. The department received no comments on the proposal.	
4	STATUTORY AUTHORITY. The department adopts amendments to §217.3 under Transportation Code	
5	§501.0041 and §1002.001.	
6	Transportation Code §501.0041 authorizes the department to adopt rules to administer Chapt	er
7	501.	
8	Transportation Code §1002.001 authorizes the board to adopt rules that are necessary ar	nd
9	appropriate to implement the powers and the duties of the department.	
10	CROSS REFERENCE TO STATUTE. Transportation Code §501.021 and §501.022.	
11	TEXT.	
12	SUBCHAPTER A. MOTOR VEHICLE TITLES	
13	43 TAC §217.3	
14	§217.3. Motor Vehicle Titles.	
15	Unless otherwise exempted by law or this chapter, the owner of any motor vehicle that is require	ed
16	to be titled, including any motor vehicle required to be registered in accordance with Transportation Coo	de
17	Chapter 502, shall apply for a Texas title in accordance with Transportation Code Chapter 501 or 731.	
18	(1) Motorcycles, autocycles, and mopeds.	
19	(A) The title requirements for a motorcycle, autocycle, and moped are the same	ne
20	requirements prescribed for any motor vehicle.	
21	(B) A vehicle that meets the criteria for a moped under Transportation Cod	<u>de</u>
22	§541.201(8) [and has been certified as a moped by the Department of Public Safety] will be registered ar	nd
23	titled as a moped. [If the vehicle does not appear on the list of certified mopeds published by that agence	<del>:у,</del>

Board Meeting eBookDecember 10, 2020TITLE 43. TRANSPORTATIONPart 10. Texas Department of Motor VehiclesChapter 217 – Motor Vehicle Titles

1 the vehicle will be treated as a motorcycle for title and registration purposes.] 2 (2) Farm vehicles. 3 (A) The term "motor vehicle" does not apply to implements of husbandry, which 4 may not be titled. 5 (B) Farm tractors owned by agencies exempt from registration fees in accordance 6 with Transportation Code §502.453, are required to be titled and registered with "Exempt" license plates 7 issued in accordance with Transportation Code §502.451. 8 (C) Farm tractors used as road tractors to mow rights of way or used to move 9 commodities over the highway for hire are required to be registered and titled. 10 (D) Owners of farm trailers and farm semitrailers with a gross weight of 34,000 11 pounds or less may apply for a Texas title. Owners of farm trailers and farm semitrailers with a gross 12 weight in excess of 34,000 pounds shall apply for a Texas title. If a farm trailer or farm semitrailer with a gross weight of 34,000 pounds or less has been titled previously, any subsequent owner shall apply for a 13 14 Texas title for the farm trailer or farm semitrailer. 15 (3) Neighborhood electric vehicles. The title requirements of a neighborhood electric 16 vehicle (NEV) are the same requirements prescribed for any motor vehicle. 17 (4) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers shall apply for a Texas title for any trailer or semitrailer with a gross weight in excess of 4,000 pounds. Owners of 18 19 trailers and semitrailers with a gross weight of 4,000 pounds or less may apply for a Texas title. If a trailer 20 or semitrailer with a gross weight of 4,000 pounds or less has been titled previously, any subsequent 21 owner shall apply for a Texas title for the trailer or semitrailer. House trailer-type vehicles must meet the 22 criteria outlined in subparagraph (C) of this paragraph to be titled: 23 (A) The rated carrying capacity will not be less than one-third of its empty weight.

### December 10, 2020

### Board Meeting eBook De TITLE 43. TRANSPORTATION Part 10. Texas Department of Motor Vehicles Chapter 217 – Motor Vehicle Titles

1	(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field		
2	bunkhouses are not designed as dwellings, but are classified as commercial semitrailers and must be		
3	registered and titled as commercial semitrailers if operated on the public streets and highways.		
4	(C) House trailer-type vehicles and camper trailers must meet the following		
5	criteria in order to be titled.		
6	(i) A house trailer-type vehicle that is less than eight feet six inches in		
7	width or less than 45 feet in length is classified as a travel trailer and shall be registered and titled.		
8	(ii) A camper trailer shall be titled as a house trailer and shall be registered		
9	with travel trailer license plates.		
10	(iii) A recreational park model type trailer that is primarily designed as		
11	temporary living quarters for recreational, camping or seasonal use, is built on a single chassis, and is 400		
12	square feet or less when measured at the largest horizontal projection when in the set up mode shall be		
13	titled as a house trailer and may be issued travel trailer license plates.		
14	(5) Assembled vehicles. The title requirements for assembled vehicles are prescribed in		
15	Subchapter L of this title (relating to Assembled Vehicles).		
16	(6) Not Eligible for Title. The following are not eligible for a Texas title regardless of the		
17	vehicle's previous title or registration in this or any other jurisdiction:		
18	(A) vehicles that are missing or are stripped of their motor, frame, or body, to the		
19	extent that the vehicle loses its original identity or makes the vehicle unsafe for on-road operation as		
20	determined by the department;		
21	(B) vehicles designed by the manufacturer for on-track racing only;		
22	(C) vehicles designed or determined by the department to be for off-highway use		
23	only, unless specifically defined as a "motor vehicle" in Transportation Code Chapter 501; or		

	Board Meeting eBookDecember 10, 2020198TITLE 43. TRANSPORTATIONAdopted SectionPart 10. Texas Department of Motor VehiclesAdopted SectionChapter 217 – Motor Vehicle TitlesImage: Chapter 217 – Motor Vehicle Titles	
1	(D) vehicles assembled, built, constructed, rebuilt, or reconstructed in any	
2	manner with:	
3	(i) a body or frame from a vehicle which is a "nonrepairable motor	
4	vehicle" as that term is defined in Transportation Code §501.091(9); or	
5	(ii) a motor or engine from a vehicle which is flood damaged, water	
6	damaged, or any other term which may reasonably establish the vehicle from which the motor or engine	
7	was obtained is a loss due to a water related event.	
8	CERTIFICATION. The agency certifies that legal counsel has reviewed the adoption and found it to be	
9	within the state agency's legal authority to adopt.	
10	Issued at Austin, Texas, on <u>M DD, YYYY.</u>	

Tracey Beaver, General Counsel

Board Meeting eBook



HELPING TEXANS GO. HELPING TEXAS GROW.

Board Meeting Date: 12/10/2020 ACTION ITEM

То:	Texas Department of Motor Vehicles Board
From:	Tim Thompson, Interim Division Director, Vehicle Titles & Registration Division
Agenda Item:	12
Subject:	Special Plate Designs

### RECOMMENDATION

The Vehicle Titles and Registration Division (VTR) seeks board approval or denial of one plate design submitted for your consideration. The plate design is from the marketing vendor, My Plates.

The Penn State plate is a new My Plates plate design and has never been sold before.

### 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 are in Texas Transportation Code Section 504.851 (g) and (g-1) (1). The board's approval criteria are clarified in Administrative Codes §217.45 *Specialty License Plates, Symbols, Tabs, and Other Devices* and §217.52 *Marketing of Specialty License Plates through a Private Vendor.* 

The renewed vendor contract (Statement of Work paragraph #2, *Marketing Services*) specifies that following the board's contingent approval of a plate, the vendor must get at least 200 commitments within six months of the approval for a plate to be produced. (Equally, existing plates must maintain 200 registered 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 March 2014, the board has contingently approved 33 vendor plates. Of the 33, nine 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 there are any unforeseen public concerns about a plate design. 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, for example, received thousands of eView "dislikes" in 2010 (presumably because of college football rivalry) and has since sold 939 plates.

The plate design was presented to the public in the October 2020 eView. No negative comments were received. The count of the public's "like/dislikes" are below with the design.

### Penn State

911 people liked this design and 91 did not





### Penn State (New)



#### TEXAS SPECIALTY PLATE BUSINESS 201 Interim VTR Director Vehicle and Titles and **DEC. 2020** \* **Registration Division** Tim Thompson Texas Department Special Plates Unit (5FTEs) 12/20 of Motor Vehicles TEXAS New EXA **Vendor** Plates Released December 2020 Zeta Phi Beta Sorority, Inc ONE STA Lone Star Carbon Fiber Zeta Phi Beta Sorority Inc. UNLINKED TOTAL LINKED **1. ANIMAL FRIENDLY** 8,438 389 8.827 2. CONSERVATION: HORNED LIZARD 6,817 262 7,079 3. STATE OF THE ARTS 4. CONSERVATION: BLUEBONNET 5,641 5,444 197 4,531 220 4,751 5. CONSERVATION: WHITE-TAILED DEER 3,274 3,430 ПOР 156 TEXAS 4 2,730 2,220 6. TEXAS A & M UNIVERSITY 2,668 62 7. BIG BEND 2,075 145 BBO 8. NATIVE TEXAN 1,949 100 2,049 9. TEXAS TECH UNIVERSITY 1,998 1,909 79 CHARITY NIMAL \* FRIENDLY 1,895 **10. CONSERVATION: LARGE MOUTH BASS** 113 2,008 **1. LARGE STAR WHITE/BLACK** 38,266 8,026 46,916 7,153 2. CLASSIC BLACK 36.209 43,362 3. TEXAS BLACK 1845 4. LONE STAR BLACK 20,307 13,367 16,282 4,025 TOP 3,181 EXAS 10,186 **5. CARBON FIBER** 5,918 1,147 7,065 6. LONE STAR BLK/SILV 4,105 1,193 5,298 7. TEXAS VINTAGE BLACK 3,812 975 4,787 8. T FOR TEXAS BLACK 9. TEXAS A&M (MAROON) 1,547 5,345 VENDOR 3,798 601 4,176 3,575 4,086 10. WHITE 3,246 840 **1. DISABLED VETERAN** 199,330 4,574 203,904 2. DV U.S. ARMY 3. DV U.S. MARINE CORPS 43,471 21,595 TEXAS 🖈 42,445 1,026 тор 21,136 459 DV+01BBB 4. DV U.S. AIR FORCE 405 18,667 19,072 5. DV U.S. NAVY 6. PURPLE HEART 15,726 303 16,029 14,703 412 15,115 MILITARY 12,414 11,988 7. DV BRONZE STAR MEDAL 239 12,653 8. U.S. MARINE CORPS 442 12,430 11,610 10,926 11,110 10,485 9. MERITORIOUS SERVICE MEDAL 500 10. U.S. ARMY 441

SLP AVAILABLE	496
MILITARY AND DV	190
RESTRICTED USE	51
STATE SPECIALTY	132
VENDOR SPECIALTY	123

5

### **SPECIAL PLATES UNIT CUSTOMER SERVICE FY 2021** 4.083

9.048 Personalized Plate Applications Reviewed (9% Declined)

all in the

0 Walk-in **Telephone Calls** Customers 2,516 327 Refunds Emails

**Public Information Open Records** 

769

Correspondence (Including Plate Applications)

Board Meeting eBook



HELPING TEXANS GO. HELPING TEXAS GROW.

Board Meeting Date: 12/10/2020 BRIEFING

То:	Texas Department of Motor Vehicles Board
From:	Caroline Love, Government & Strategic Communications Division Director
Agenda Item:	13.A
Subject:	Alternatively Fueled Vehicles Study Update as Submitted to the Legislature under Senate Bill 604, 86th
	Legislature, Regular Session (2019)

### **RECOMMENDATION**

Briefing Only.

### PURPOSE AND EXECUTIVE SUMMARY

The department's continuing legislation, Senate Bill 604 from the 86<sup>th</sup> Regular Session (2019), included a requirement for the Texas Department of Motor Vehicles to coordinate with several agencies to study the use of alternatively fueled vehicles. The study is to include a recommendation on assessing an equitable fee for vehicles using the roads and not paying into the traditional motor fuels tax model. The study was submitted to the Texas Legislature on December 1, 2020 as required by Senate Bill 604, and included research and information from the following state agencies:

- Texas Department of Motor Vehicles
- Texas Department of Transportation
- Texas Department of Public Safety
- Texas Commission on Environmental Quality
- Public Utility Commission

This briefing will provide an overview of the study and the department's coordination of this effort.

### FINANCIAL IMPACT

None.

### BACKGROUND AND DISCUSSION

The use of alternatively fueled vehicles, including hybrid gasoline and electric and fully electric vehicles, has grown in the past several years. In planning for future growth, the Texas Legislature requested this study to help with decision making on the potential assessment of road user fees in future legislative sessions.



# Study on Imposing Fees on Alternatively Fueled Vehicles

December 1, 2020

This page is intentionally left blank.

## **Table of Contents**

Executive Summary
Section 1: Impact of Alternatively Fueled Vehicles on the State Highway System
Section 2: Direct Environmental Benefit of Alternatively Fueled Vehicles
Scope of Analysis10
Maximum Environmental Benefit Analysis12
Section 3: Impact of Alternatively Fueled Vehicles on the State Power Grid and Markets
Market Adoption of Electric Vehicles17
Electric Vehicle Charging Technologies17
Projected Impact on the State's Power Grids: Utility Distribution Systems
Projected Impact on the State's Power Grids: Utility Transmission Systems
Projected Impact on the State's Electricity Markets24
Managing the Impact of Electric Vehicle Adoption24
Section 4: Current Texas Fees & Taxes on Vehicle Usage
Motor Fuel Taxes
Electricity Taxes & Fees from Alternatively Fueled Vehicles28
Vehicle Registration Fees
Vehicle Inspection Fees
Section 5: Vehicle Fees in Other States
Conventional Vehicle Registration Fees31
Alternatively Fueled Vehicle Registration Fees31
Section 6: Alternative Methods for Collecting Fees from Alternatively Fueled Vehicles
Electricity Usage Fee Alternatives
Vehicle Registration-based Alternatives
Vehicle Sale-based Alternatives40
Conclusion
References
AppendicesI
Appendix A. Article 6, Senate Bill 604, 86th Regular SessionI
Appendix B. Detailed Discussion of Direct Environmental Benefit
Appendix C. Texas Motor Vehicle Fee & Tax ExemptionsXIII

# **Table of Figures, Charts or Tables**

Chart 1-1: Texas Gasoline Tax and Registered Vehicles	3
Chart 1-2: Average Top Ten Miles Per Gallon	5
Chart 1-3: Average Weight by Vehicle Class	7
Figure 2-1: NOX, VOC, and CO2 Emission Rates by Model Year for Passenger Cars	12
Figure 2-2: Composition of Texas Light-Duty Fleets in 2016 and 2028	13
Figure 2-3: Texas Electric Vehicle Population Projections by Model Year Operating in 2028	14
Table 2-1: 2028 Maximum Annual Emissions Benefits from Light-Duty Electric Vehicles	15
Figure 3-1: Classes of Electric Vehicles	17
Figure 3-2: Charging Technologies for Electric Vehicles	18
Figure 3-3: Oncor Electric Delivery Company Service Territory	
Figure 3-4: CenterPoint Energy Houston Electric Service Territory	19
Figure 3-5: AEP Texas Service Territory (Left) and Texas-New Mexico Power Service Territory (Right)	20
Figure 3-6: El Paso Electric Company Service Territory	
Figure 3-7: Southwestern Public Service Company Service Territory	21
Figure 3-8: Service Territory of Entergy Texas, Inc. (L) and Southwestern Electric Power Company (R)	22
Figure 3-9: Map of the ERCOT Grid	22
Figure 3-10: Map of SPP	23
Figure 3-11: Map of MISO	23
Table 4-1: Fuel Taxes by Vehicle Fuel Type	27
Table 4-2: Current Texas Electric-related Taxes, Fees, & Surcharges	28
Table 4-4: Local Option Vehicle Registration Fees	29
Table 4-5: Vehicle Inspection Fees	30
Table 5-1: Annual AFV Fees in Other States	35
Table B-1: Summary of Tier 2 and Tier 3 Full Useful Life Emissions Standards	II
Table B-2: Distribution of 2020 Model Year Vehicles by Tier 3 Bin and Fuel Type	
Table B-3: Compliance Options Under Tier 3 Emissions Standards for 2025-and-Later Model Years	
Figure B-1: Passenger Car NOX, VOC, and Fuel Economy Rates by Model Year Operating in 2016	IV
Figure B-2: Passenger Car NOX, VOC, and Fuel Economy Rates by Model Year Operating in 2028	V
Figure B-3: Texas Light-Duty Fleet NO <sub>x</sub> and VOC by Emissions Standard	VI
Figure B-4: Texas Light-Duty Fleet CO2 Emissions in 2016 and 2028 by Model Year Groups	VII
Table B-4: Texas Statewide Electric Vehicle Registrations by Fiscal Year and Model Year	VII
Table B-5: Estimation of 2020-through-2028 Electric Passenger Car Sales for Texas	VIII
Table B-6: Estimation of 2020-through-2028 Electric Passenger Truck Sales for Texas	VIII
Table B-7: 2028 Maximum Daily Emissions Benefits from Light-Duty Electric Vehicles	IX
Table B-8: 2028 Summer Weekday Activity and Emissions Rates by Model Year for Electric Passenger Car	AnalysisX
Table B-9: 2028 Summer Weekday and Emissions Rates by Model Year for Electric Passenger Truck Analys	sisXI
Table B-10: 2028 Summer Weekday Emissions and Fuel Consumption by Model Year for Electric Passenge	r Car
Analysis	XII
Table B-11: 2028 Summer Weekday Emissions and Fuel Consumption by Model Year for Electric Passenge	r Truck
Analysis	XII
Table C-1: Texas License Plates with Non-standard Registration Fee.	XIII

### **Executive Summary**

Senate Bill 604, enacted during regular session of the 86<sup>th</sup> Texas Legislature, required the Texas Department of Motor Vehicles, in coordination with other specified state agencies, to organize a study on imposing fees on alternatively fueled vehicles (AFVs). The Public Utility Commission of Texas, the Texas Department of Transportation, the Texas Department of Public Safety, and the Texas Commission on Environmental Quality participated in the study and contributed to this report. The study examined the impact of the AFVs industry on the state, the options available to the state for collecting fees from owners of AFVs to replace the loss of revenue from motor fuel taxes, and the feasibility and desirability of establishing a fee for AFVs. The analysis included impacts on the state highway system, vehicle emissions and direct environmental benefits, the state's power grids and electricity markets, and state revenue related to vehicle use. The study examined potential fees on AFVs, including options related to electricity usage, vehicle registrations, and vehicle sales.

An alternatively fueled vehicle is a vehicle capable of using a fuel other than gasoline or diesel fuel. Those other fuel types include vehicles powered by electric and plug-in hybrid electric drives, compressed natural gas drives, and liquefied natural gas drives. The study focused heavily on electric vehicles due to the overall number of electric and hybrid vehicles and the growth in the numbers of such vehicles, especially electric ones. The large majority (almost 80%) of motor vehicles, including AFVs, registered in Texas are passenger vehicles and light trucks with less than 10,000 pounds gross weight. Medium-weight and heavy-weight vehicles are just becoming available as electric-type AFVs. Therefore, the data used in this analysis consists of AFVs in the lowest weight categories.

The Texas Department of Transportation examined the potential impacts of AFVs on the state highway system in terms of funding and road quality. The analysis estimates that for every conventional vehicle a consumer replaces with a hybrid-approximately \$80 per year less in state gasoline taxes will be collected. This is about an 80% decline per year per vehicle. That number increases to a 100% decline if the consumer replaces the conventional vehicle with a fully electric one which would represent approximately a \$100 reduction in state gasoline tax collections per year per vehicle, and similarly a \$95 reduction in federal gasoline tax collections per year per vehicle. However, until the AFV market matures further, it is difficult to reasonably project the impact to state highway funding. The physical impact of AFVs on the state highway system is expected to be proportional, as AFVs weigh roughly the same as other vehicles in their classes.

The Texas Commission on Environmental Quality assessed the projected direct environmental benefit of AFVs on vehicle emissions in the state. The assessment found minimal direct environmental benefits from projected sales of AFVs because federal regulations apply the same emissions and fuel economy standards to all fuel types. Because federal regulations require vehicle manufacturers to meet tailpipe emissions and fuel economy standards based on their fleet averages and not on individual vehicle sales, manufacturers have the option of producing electric vehicles to offset the sales of higher-emitting gasoline and diesel vehicles so that overall fleet average requirements are achieved. However, since emissions and fuel economy standards are very stringent for newer model years, it is expected that overall electric vehicle sales will allow manufacturers to achieve but not exceed their fleet average requirements. Also, manufacturers whose fleet averages exceed federal requirements in certain model years can sell "credits" to manufacturers whose averages do not meet federal requirements. Since manufacturers have a financial incentive to sell credits, it is not expected that sales from electric-only vehicle manufacturers will result in additional emissions reductions overall. Based on certain assumptions, if none of the electric vehicles operating in the state are needed to meet the fleet average requirements, emissions could be reduced by 0.8% for nitrogen oxides and volatile organic compounds, 1.1% for carbon monoxide, 1.3% for particulate matter, and 2.2% for carbon dioxide, sulfur dioxide, and ammonia. In addition, since fuel consumption and tailpipe carbon dioxide emissions are directly correlated, the gallons of fuel consumed could also be reduced by 2.2% under this scenario.

The Public Utility Commission of Texas examined the potential impact of AFVs on the state's electric grids and markets. The analysis considered the market adoption of electric vehicles and the continued development of new

207

charging technologies and their potential impact on the myriad electric utilities in Texas. While demand for electric vehicles has risen considerably and more types of electric vehicles are expected to be viable in coming years, most electric utilities do not anticipate difficulty managing the electricity demand from charging electric vehicles. However, the adoption of certain charging technologies may require utility system upgrades in localized areas.

As part of evaluating alternatives for levying fees on AFVs, the approaches used in other states were examined. As of early 2020, 29 states levy a registration fee specific to AFVs. Almost all levy a flat fee due at the time of vehicle registration. The average amount levied was approximately \$120 a year.

The examination also consisted of current motor fuel taxes, vehicle registration and inspection fees, and electricityrelated revenues collected in Texas. As mentioned above, the average amount of motor fuel tax collected from a hybrid vehicle is significantly less than the average amount collected for a conventional vehicle while the amount collected for an electric vehicle is zero. Vehicles registered in the state pay registration fees without regard to fuel type (except for large, diesel fueled vehicles which pay more but are less than 5% of vehicles registered). Therefore, there is no real difference in vehicle registration-related revenue if an AFV is registered versus a conventional vehicle. Gasoline and hybrid vehicles pay slightly more in inspection fees but only in non-attainment counties, while diesel and electric vehicles pay the same inspection fees. It is not possible to distinguish the amount AFVs currently pay in taxes, fees, and surcharges levied on the sale of electricity from the overall amounts collected.

The examined alternatives for levying a fee in Texas on AFVs included ones based on electricity usage, vehicle registration, and vehicle sales. The sales-based alternatives require larger assessments due to less frequent collection and may be a less consistent revenue source. The electricity usage alternatives have implementation issues but are similar to the motor fuel tax in being able to collect revenue from vehicles traveling through but not registered or based in the state. The registration-based alternatives would be a consistent source of revenue and align closely with existing collection methods.

The most straightforward alternative would be an increased vehicle registration fee. This is a similar approach used by almost every other state that has AFV fees and closely aligns with the current approach to vehicle registration in Texas. If the objective is to replace the average amount of state motor fuel tax that an equivalent conventional vehicle pays, the amount is estimated to be about \$100 a year for an electric vehicle and a somewhat lower amount for a hybrid. The Texas Department of Transportation notes that the increased vehicle registration fee, as is done in some states, can be indexed to the cost of inflation, and that would help keep pace with the rising cost of building and maintaining the state's transportation infrastructure.

### Section 1: Impact of Alternatively Fueled Vehicles on the State Highway System

### Note: This section was prepared by the Texas Department of Transportation (TxDOT).

As the availability of more models of AFVs from automobile manufacturers continues to increase, so does the number of AFVs on Texas highways. The potential impact of this increase on the state highway system can be found largely in two critical areas: 1) the fiscal impact to the State Highway Fund, and 2) the impacts these vehicles have on the lasting durability and quality of the physical infrastructure of the state highway system. This section of the report will dive into each topic and explore how it affects Texas.

### Fiscal Impact to the State Highway Fund

The Texas Comptroller of Public Accounts reports that in FY 2019, the net revenue for gasoline tax collections was just over \$2.789 billion.<sup>1</sup> This number has continued to increase annually, as have the number of registered vehicles on Texas' roadways.<sup>2</sup>



Sources: Texas Comptroller of Public Accounts and Texas Department of Motor Vehicles

### Chart 1-1: Texas Gasoline Tax and Registered Vehicles

This growth also applies to AFVs. The two main AFVs are hybrids (including plug-in versions) and electric vehicles. Hybrid vehicles use both electricity and gasoline to propel their vehicles. These vehicles contribute to gasoline tax collections at a much lower rate per vehicle due to the increased miles traveled per gallon of gasoline. For example, a leading hybrid has a combined fuel economy of 133 miles per gallon.<sup>3</sup> In FY 2019, there were 225,212 hybrid vehicles registered in Texas, or 0.90% of the total registered vehicles.<sup>3</sup>

According to market projections, both the number of AFV brands and models available for consumer purchase will significantly increase in the coming years. From 2018 to 2023, the number of car brands offering at least one electric vehicle option is forecasted to increase from 14 to 43.<sup>4</sup> The number of different models offering electric propulsion

<sup>&</sup>lt;sup>1</sup> Texas Comptroller of Public Accounts, FY 2019 Gasoline Tax

https://fmcpa.cpa.state.tx.us/cashdrill/servlet/CDTable12Trend?det=0&yearMonth=2019-8&key=16

<sup>&</sup>lt;sup>2</sup> Texas Department of Motor Vehicles FY01-18 Present Vehicles Registered by Registration Class

<sup>&</sup>lt;sup>3</sup> Fuel Economy.gov 2020 Toyota Prius Prime <u>https://www.fueleconomy.gov/feg/Find.do?action=sbs&id=41489</u>

<sup>&</sup>lt;sup>4</sup>"IHS Markit forecasts EV sales to reach US market share of 7.6% in 2026" <u>https://ihsmarkit.com/research-analysis/--ihs-</u> markit-forecasts-ev-sales-us.html

systems is projected to increase from 18 in 2018, to 38 by the end of 2020. By incorporating plug-in hybrids to the electric vehicle models, that number jumps to over 90 different models by 2022.<sup>5</sup> Consumers will have the ability to purchase a wide variety of vehicles ranging from sedans to sport utility vehicles and pickups.

Plug-in hybrid vehicles provide increased miles per gallon of fuel, or the complete removal of the need for fuel at all. This scenario creates the potential for a decrease in revenue collected by the state's motor fuel tax. The amount of decrease will be directly related to the actual number of AFVs on the roadway and the amount of replacement of conventional vehicles.

According to data collected by the Texas Department of Motor Vehicles in its FY 2019 Alternatively Fueled Vehicle Report,<sup>6</sup> the total number of AFVs registered in Texas at the end of FY 2019 was 259,800, which makes up 1.04% of the total number of vehicles registered in Texas. The number of AFVs on Texas' roads has increased every year since FY 2016, when the total number of AFVs registered in Texas was 212,420. The majority of these vehicles are hybrids, which have risen from 199,096 to 225,212 between FY 2016 and 2019, with a high of 233,645 in FY 2018.

In terms of percentage growth, according to the same report, the largest single category of AFVs to increase is electric vehicles. Those numbers have risen from 8,397 in FY 2016 to 29,540 in FY 2019<sup>3</sup>. The next closest category is natural gas vehicles, which have seen a fluctuation in the numbers of vehicles registered in Texas in the same timeframe from 3,889 in FY 2016 to 3,284 in FY 2019<sup>3</sup>. Due to their much higher numbers, this discussion will focus on electric vehicles and hybrids.

When considering the actual impact electric vehicles and hybrids have on the State Highway Fund, it is important to consider the average miles per gallon of these vehicles versus that of standard combustion engines. The top ten most fuel-efficient models of 2019 hybrid vehicles on the U.S. market averaged 108.1 miles per gallon of fuel.<sup>7</sup> If we apply the same criteria to the top ten most fuel-efficient electric vehicles on the U.S. market in 2019, that number increases to 124.3 miles per gallon of equivalent.<sup>8</sup>

The miles per gallon for conventional vehicles is substantially less for the same year of vehicle models. The top ten most fuel-efficient conventional vehicles - (gasoline, diesel and flex-fuel) on the U.S. market averaged 36.3 miles per gallon of fuel.<sup>9</sup> This reduction creates a disparity of 88 and 71.8 miles per gallon of fuel respectively between the models of electric and hybrid vehicles and those with combustion engines. However, electric vehicles require

<sup>5</sup> "Nearly 100 electrified models slated to arrive through 2022"

https://www.autonews.com/article/20181001/OEM04/181009990/nearly-100-electrified-models-slated-to-arrive-through-2022

<sup>6</sup> Texas Department of Motor Vehicles Annual Reports <u>https://www.txdmv.gov/node/3703</u>

<sup>7</sup> Fuel Economy.gov vehicle search

https://www.fueleconomy.gov/feg/PowerSearch.do?action=noform&year1=2019&year2=2019&minmsrpsel=0&maxmsrpsel =0&city=0&hwy=0&comb=0&cbvthybrid=Hybrid&cbvtplugin=Plug-

in+Hybrid&YearSel=2019&make=&mclass=&vfuel=&vtype=Hybrid%2C+Plug-

<sup>8</sup> Fuel Economy.gov vehicle search

<sup>9</sup> Fuel Economy.gov vehicle search

in+Hybrid&trany=&drive=&cyl=&MpgSel=000&sortBy=Comb&Units=&url=SearchServlet&opt=new&minmsrp=0&maxmsrp=0 &minmpg=&maxmpg=&rowLimit=25&pageno=1&tabView=0

https://www.fueleconomy.gov/feg/PowerSearch.do?action=noform&year1=2019&year2=2019&minmsrpsel=0&maxmsrpsel =0&city=0&hwy=0&comb=0&cbvtelectric=Electric&YearSel=2019&make=&mclass=&vfuel=&vtype=Electric&trany=&drive=&c yl=&MpgSel=000&sortBy=Comb&Units=&url=SearchServlet&opt=new&minmsrp=0&maxmsrp=0&minmpg=&maxmpg=&row Limit=25&pageno=1&tabView=0

https://www.fueleconomy.gov/feg/PowerSearch.do?action=noform&year1=2019&year2=2019&minmsrpsel=0&maxmsrpsel =0&city=0&hwy=0&comb=0&cbvtgasoline=Gasoline&cbvtdiesel=Diesel&cbvte85=E85&YearSel=2019&make=&mclass=&vfue l=&vtype=Gasoline%2C+Diesel%2C+E85&trany=&drive=&cyl=&MpgSel=000&sortBy=Comb&Units=&url=SearchServlet&opt= new&minmsrp=0&maxmsrp=0&minmpg=&maxmpg=&rowLimit=25&pageno=1&tabView=0

zero liquid fuel. This means that the difference in liquid fuel between an electric vehicle and a combustion engine when applied to revenue generated by the state motor fuels tax is 124.3 miles per gallon.



Source: Fuel Economy.gov

Chart 1-2: Average Top Ten Miles Per Gallon

This disparity is especially pronounced by performing a similar analysis as was completed previously (and maintaining all the same assumptions) and these miles per gallon numbers are applied to the average number of miles driven in the United States. In 2018, the average miles traveled per vehicle for all light duty vehicles in the United States was 11,484 miles.<sup>10</sup> If that number is divided by the top ten most fuel-efficient models of 2019 hybrid vehicles' average of 108.1 miles per gallon of fuel, it can be determined that these hybrids would need a total of 106.23 gallons of gasoline a year. If that number is multiplied by the state gasoline tax rate in Texas of \$0.20 a gallon, it can be determined that these hybrids potentially generate \$21.25 annually. The same equation applied to the top ten most fuel-efficient conventional vehicles available in the United States average of 36.3 miles per gallon generates \$63.27 annually. This creates a state gasoline tax difference of \$42.02 between the top ten most fuel-efficient hybrid and top ten most fuel-efficient conventional vehicles available vehicle classification averages.<sup>11</sup>

From a federal gasoline tax perspective, the hybrid vehicles' average need of 106.23 gallons of gasoline a year multiplied by the federal gasoline tax rate of \$0.184 would generate \$19.55 annually. Additionally, the federal gasoline tax rate of \$0.184 multiplied by the top ten most fuel efficient conventional vehicles average of 36.3 miles per gallon generates \$58.21 annually. This creates a federal gasoline tax difference of \$38.66 between the two top ten most fuel-efficient hybrid and top ten most fuel-efficient conventional vehicle classification averages.

These differences increase even more if we apply the same equations to the national light duty vehicle fleet average miles per gallon, rather than the average miles per gallon of the top ten most fuel-efficient conventional vehicles. According to the U.S. Department of Transportation's Bureau of Transportation Statistics, their most recent data states that the 2017 average fuel efficiency for a light duty vehicle in the United States was 22.3 miles per gallon.<sup>12</sup>

5

<sup>&</sup>lt;sup>10</sup> U.S. DOT Bureau of Transportation Statistics <u>https://www.fhwa.dot.gov/policyinformation/statistics/2018/pdf/vm1.pdf</u>

<sup>&</sup>lt;sup>11</sup> It should be noted that in the equation the average of the top ten vehicles on the market was used and not the top ten vehicles in Texas. This is largely responsible for the difference in annual motor fuel tax generation numbers in the different parts of the report.

<sup>&</sup>lt;sup>12</sup> U.S. DOT Bureau of Transportation Statistics <u>https://www.bts.gov/content/average-fuel-efficiency-us-light-duty-vehicles</u>

If we divide the average miles traveled of 11,484 by 22.3 miles per gallon of fuel it can be determined that the average conventional fueled vehicle needs a total of 514.98 gallons of fuel. This would generate \$103 in state taxes and \$94.76 in federal taxes annually, increasing the differences from state and federal taxes collected from the average of the top ten most fuel-efficient hybrids. As it relates to the top ten most fuel-efficient electric vehicles, regardless whether they are compared to the top ten most fuel-efficient conventional vehicle, the difference in revenue collected is the full amount of the state and federal taxes received from the conventional vehicles.

As the number of electric and plug-in hybrid models available to consumers continues to grow, there will potentially be a growing negative impact to the State Highway Fund. Simply put, using the same top ten comparison from this discussion, for every leading fuel-efficient conventional vehicle that a consumer replaces with a hybrid, the State Highway Fund will lose \$42.02, or 66 percent of the revenue a conventional vehicle would generate in state gasoline taxes, and \$38.66, or 66 percent of the revenue a conventional vehicle would generate in federal gasoline taxes. That number increases to a 100 percent decline if the consumer replaces their conventional vehicle with a fully electric automobile. Until the market matures further with more AFVs available, and their rate of adoption better understood, it is difficult to reasonably project the impact to the State Highway Fund, and to Federal Transportation Funds.

### Impact on the Quality of the State Highway System

As the number of AFVs grow in Texas, their impact on the overall infrastructure quality of the state highway system should be reviewed. The best method to determine this impact is by analyzing the weight of these vehicles compared to those with combustion engines as the weight of vehicles is generally recognized as a critical factor in determining wear and tear on a roadway.<sup>13</sup> For this discussion the weight of AFVs will be compared to different models of conventional vehicles.

The number one selling plug-in electric vehicle in the United States for 2019 was the Tesla Model 3<sup>14</sup>. According to the report, this solely electric vehicle sold 154,840 vehicles of a total 326,644 plug-ins purchased nationwide. Additionally, the report notes the second most popular was the plug-in hybrid Toyota Prius at 23,630 vehicles sold, followed by the electric Tesla Model X at 19,425 vehicles.

The weights for these vehicles differ between models. Their 2020 model curb weights are as follows (in pounds):

2020 Tesla Model 3: 3,554-4,036<sup>15</sup> 2020 Toyota Prius: 3,010-3,075<sup>16</sup> 2020 Tesla Model X: 5,421-5,531<sup>17</sup>

According to Edmunds.com, the top selling conventional new vehicles in Texas in 2019 were the Ford F-Series, Dodge Ram 1500/2500/3500, Chevrolet Silverado, Toyota RAV4, and GMC Sierra.<sup>18</sup> Nationwide, their top 10 list also included the Honda CR-V, Chevrolet Equinox, Toyota Tacoma, Honda Civic, Toyota Corolla, and Nissan Rogue. (The GMC Sierra is not included in the listed top 10 selling vehicles.)

Their 2020 model curb weights are as follows (in pounds):

<sup>&</sup>lt;sup>13</sup> State Smart Transportation Initiative <u>https://ssti.us/wp/wp-</u>

content/uploads/2011/11/Trucks%20and%20Infrastructure%20Maintenance%20Costs.pdf

<sup>&</sup>lt;sup>14</sup> U.S. Department of Energy Alternative Fuels Data Center <u>https://afdc.energy.gov/data/10567</u>

<sup>&</sup>lt;sup>15</sup> Tesla Model 3 Website <u>https://www.tesla.com/model3</u>

<sup>&</sup>lt;sup>16</sup> Toyota Prius Website <u>https://www.toyota.com/prius/features/exterior/1221/1223/1225</u>

<sup>&</sup>lt;sup>17</sup> Tesla Model X Website <u>https://www.tesla.com/modelX</u>

<sup>&</sup>lt;sup>18</sup> Edumnds.com <u>https://www.edmunds.com/most-popular-cars/</u>

2020 Ford F150 XL: 4,415-5,320<sup>19</sup> 2020 Dodge Ram 1500 Tradesman: 4,798<sup>20</sup> 2020 Chevrolet Silverado LT Train Boss: 4,815<sup>21</sup> 2020 Toyota RAV4: 3,370-3,710<sup>22</sup> 2020 GMC Sierra SLE: 4,622<sup>23</sup> 2020 Honda CR-V: 3,337-3,455<sup>24</sup> 2020 Chevrolet Equinox LT: 3,325<sup>25</sup> 2020 Toyota Tacoma: 4,445-4,505<sup>26</sup> 2020 Honda Civic: 2,771-2,963<sup>27</sup> 2021 Toyota Corolla: 2,850-3,150<sup>28</sup> 2020 Nissan Rogue: 3,464-3,551<sup>29</sup>

A comparison of vehicle weights demonstrates that in Texas the weights between the top five conventional vehicles averages at 4,528.5 pounds. To maintain consistency with earlier calculations in this report, this number does not take into consideration the larger versions of the Ford and Dodge trucks. By incorporating the rest of the national top 10, and excluding the GMC Sierra, the average is 3,859.1 pounds.



Chart 1-3: Average Weight by Vehicle Class

- price/features/trims/table?section=Mechanical&section=Dimensions&styleOne=406485
- <sup>22</sup> Toyota RAV4 https://www.toyota.com/rav4/features/exterior/4430/4435/4440
- <sup>23</sup> GMC Sierra <u>https://www.gmc.com/trucks/sierra/1500/sle-elevation-slt/build-and-</u>

price/features/trims/table?section=Highlights&section=Exterior&section=Dimensions&styleOne=406625

- <sup>24</sup> Honda CR-V <u>https://automobiles.honda.com/cr-v/specs-features-trim-comparison</u>
- <sup>25</sup> Chevrolet Equinox <u>https://www.chevrolet.com/suvs/equinox/build-and-</u>
- price/trim/compare/trims/table?section=Highlights&section=Dimensions&styleOne=406418
- <sup>26</sup> Toyota Tacoma <u>https://www.toyota.com/tacoma/features/mpg/7594/7544/7582</u>

<sup>28</sup> Toyota Corolla <u>https://www.toyota.com/corolla/features/mileage\_estimates/1882/1856/1866</u>

<sup>29</sup> Nissan Rogue <u>https://www.nissanusa.com/vehicles/crossovers-suvs/rogue/specs/compare-specs.html#modelName=S|FWD,SL|FWD,SV|FWD</u>

<sup>&</sup>lt;sup>19</sup> Ford.com https://www.ford.com/trucks/f150/models/f150-xl/

<sup>&</sup>lt;sup>20</sup> Dodge Ram <u>https://www.ramtrucks.com/ram-1500/specs.html</u>

<sup>&</sup>lt;sup>21</sup> Chevrolet Silverado <u>https://www.chevrolet.com/trucks/silverado/1500/build-and-</u>

<sup>&</sup>lt;sup>27</sup> Honda Civic <u>https://automobiles.honda.com/civic-sedan/specs-features-trim-comparison</u>

Comparing the weights of the electric and hybrid vehicles, there is very little difference between vehicle classifications. This leads to the conclusion that there will be minimal decrease to the quality of the state highway system by any physical characteristic of AFVs. As the hybrid and electric vehicle market continues to mature further with an expanding rate of adoption and usage of the transportation system, their lower rate of fuel tax contribution will have more negative impacts to the State Highway Fund. This impact will be compounded with growing fuel efficiency of conventional vehicles.

It should be noted that in addition to the wear and tear on the state highway system, AFVs, as do all vehicles, contribute to the operational needs of the state highway system, such as the maintenance of signs, signals and markings, along with congestion levels that are experienced in many parts of the state. It is difficult to specifically quantify a per vehicle cost associated with these activities, but these costs comprise a major portion of the expenditures from the State Highway Fund and federal transportation funds. Additionally, it should be recognized that the costs required to address vehicle impacts on our transportation systems increase over time due to inflation. Revenue collections to account for these costs in the State Highway Fund and federal transportation funds should consider including provisions that allow for them to increase at a proportional rate.

### Section 2: Direct Environmental Benefit of Alternatively Fueled Vehicles

### Note: This section was prepared by the Texas Commission on Environmental Quality (TCEQ).

Article 6, Study on Imposing Fees on AFVs, Senate Bill 604 (SB 604) from the 86th Legislative Session (2019) requires the TCEQ to assess "the projected direct environmental benefit of AFVs on vehicle emissions in this state." The Texas Transportation Code defines an AFV as one that is "capable of using a fuel other than gasoline or diesel fuel." For the purposes of this analysis, TCEQ defined direct environmental impacts as emissions occurring from vehicles during operation and refueling. This analysis found minimal direct environmental benefits from projected sales of alternatively fueled light-duty vehicles because federal regulations apply the same emissions and fuel economy standards to all fuel types.

Federal regulations require vehicle manufacturers to meet tailpipe emissions and fuel economy standards based on their fleet averages and not on individual vehicle sales. These requirements are referred to as "fleet average requirements" (see *Vehicle Emissions Under Federal Regulations* below for more details). Manufacturers have the option of producing electric vehicles<sup>30</sup> to offset the sales of higher-emitting gasoline and diesel vehicles so that overall fleet average requirements are achieved. Since the tailpipe emissions and fuel economy standards are very stringent for newer model years, it is expected that overall electric vehicle sales will allow manufacturers to achieve but not exceed their fleet average requirements.

Under credit averaging, banking, and trading (ABT) programs, manufacturers whose fleet averages exceed federal requirements in certain model years have the option of obtaining credits for the difference between their fleet average and the required fleet average. These manufacturers can then sell their credits to other manufacturers whose fleet averages do not meet federal requirements and need additional credits for compliance purposes. Since manufacturers have a financial incentive to sell ABT credits, it is not expected that sales from electric-only vehicle manufacturers will result in additional emissions reductions from the overall fleet.

Using the most recent federal regulations for tailpipe emissions<sup>31</sup> and fuel economy<sup>32</sup>, the TCEQ quantified the maximum possible reductions in emissions if all light-duty electric vehicles operating on Texas roads in 2028 are not needed by manufacturers to meet fleet average requirements. These maximum possible reductions for the 2028 light-duty fleet were calculated by taking the difference between two scenarios: one where all electric vehicles are needed to meet fleet average requirements, and one where no electric vehicles are needed to meet fleet average requirements. While these scenarios are based on the regulatory standards, the calculations used are based on in-use emissions rates, which typically differ from the fleet average requirements.

In 2028, 486,811 light-duty electric vehicles are projected to be operating throughout Texas. If none of these vehicles are needed to meet fleet average requirements, light-duty emissions would be reduced by 0.8% for nitrogen oxides (NOX) and volatile organic compounds (VOC), 1.1% for carbon monoxide (CO), 1.3% for particulate matter (PM), and 2.2% for carbon dioxide (CO2), sulfur dioxide (SO2), and ammonia (NH3). In addition, since fuel consumption and tailpipe CO2 emissions are directly correlated, the gallons of fuel consumed would also be reduced by 2.2% under this scenario.

<sup>&</sup>lt;sup>30</sup> For the purposes of this analysis, electric vehicles include battery electric vehicles (BEVs) and plug-in hybrid electric vehicles (PHEVs) that can be powered exclusively by electricity. Hybrid electric vehicles (HEVs) that can only be powered by gasoline are not included per the definition in the Texas Transportation Code.

<sup>&</sup>lt;sup>31</sup> Final Rule for Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards, U.S. Environmental Protection Agency, <u>https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-control-air-pollution-motor-vehicles-tier-3</u>.

<sup>&</sup>lt;sup>32</sup> The Safer Affordable Fuel-Efficient 'SAFE' Vehicles Rule, U.S. National Highway Transportation Safety Administration, <u>https://www.nhtsa.gov/corporate-average-fuel-economy/safe</u>.

Electric options are starting to become available for medium-duty and heavy-duty vehicles. Since future electric vehicle sales projections for these categories are not yet available, this analysis focused on impacts to the light-duty portion of the fleet.

### Scope of Analysis

Article 6.02(c)(8) of Senate Bill 604 (SB 604) from the 86th Texas Legislature (2019) requires the TCEQ to examine "the projected direct environmental benefit of AFVs on vehicle emissions in this state." Section 502.004 of the Texas Transportation Code defines an alternatively fueled vehicle as one that "is capable of using a fuel other than gasoline or diesel fuel." Although multiple types of vehicles exist on roadways, this report focuses on light-duty cars and trucks, which account for the majority of on-road vehicles and over 98% of current alternatively fueled vehicle registrations in the state (Texas Department of Motor Vehicles [TxDMV], 2019).

The TCEQ compared the emissions of conventional vehicles versus AFVs in the context of the regulatory environment that influences overall vehicle emissions. The U.S. Environmental Protection Agency (EPA)'s fleet average requirements are fuel neutral, which means the emissions limits contained in these requirements "are applicable regardless of the type of fuel that the vehicle is designed to use" and "vehicles certified to operate on any fuel (e.g., gasoline, diesel fuel, E85, compressed natural gas, liquefied natural gas, hydrogen, and methanol) are all subject to the same standards" (EPA, 2014).

The TCEQ assessed the impacts of AFVs on tailpipe and refueling emissions in 2028. The TCEQ did not focus on impacts upstream of the primary energy source (e.g., gas station pump or electric charging station) as any upstream impacts are not direct environmental benefits. For gasoline and diesel fuel, the upstream impacts include extraction of crude oil, refining, and transport by pipeline and/or truck. For generating electricity, the upstream impacts include power plant operation along with the extraction and transport of natural gas and coal. Fully accounting for the upstream impacts would significantly change the methods employed in this analysis and could alter the results. In addition, air quality benefits from pollutant reductions (e.g., reductions in ozone or haze) are also not included in this analysis because such benefits are not a direct benefit on vehicle emissions.

In agreement with the partner agencies, the TCEQ chose 2028 as the future year for analysis. The TCEQ chose to limit the future year to within 10 years due to the inherent uncertainty associated with all future year analyses. The 2028 future year coincides with a vehicle emissions study recently developed for TCEQ air quality modeling applications (Texas A&M Transportation Institute [TTI], 2019). Additionally, all current federal vehicle emissions standards will be phased in by 2026, and therefore a 2028 projection year allows full implementation of these standards to be included.

TCEQ's analysis focuses on electric vehicles since all other vehicles that use a hydrocarbon fuel have tailpipe emissions that must be controlled by some type of exhaust after-treatment. In contrast, electric vehicles do not have tailpipe emissions and are therefore the primary alternatively fueled category that has the potential for achieving emissions reductions from the light-duty fleet beyond what would occur due to fleet average requirements. In this analysis, electric vehicles encompass both battery electric vehicles (BEVs) and plug-in hybrid electric vehicles (PHEVs) that can be powered by either gasoline or electricity, as PHEVs also have zero emissions when powered exclusively by electricity. For the purposes of this analysis, hybrid electric vehicles (HEVs) powered exclusively by gasoline were not defined as alternatively fueled because the statutory definition referenced above requires "a fuel other than gasoline or diesel."
This analysis quantifies the maximum possible emissions reductions that could be achieved if all the light-duty electric vehicles projected to be operating in 2028 were not needed by manufacturers to meet current federal fleet average requirements. The relevant federal regulations are further explained below in *Vehicle Emissions Under Federal Regulations*, and the logic behind the assessment of maximum possible emissions reductions is detailed below in *Framework for Projected Environmental Benefits Analysis*.

## Vehicle Emissions Under Federal Regulations

The National Emissions Standards Act of 1965 established the first set of vehicle emissions requirements starting with the 1968 model year. These standards have been periodically tightened, with the most recent Tier 3 emissions standards phasing in from the 2017 through 2025 model years (EPA, 2014) for the pollutants of nitrogen oxides (NO<sub>X</sub>), non-methane organic gases (NMOG)<sup>33</sup>, carbon monoxide (CO), and particulate matter (PM). When the Tier 3 emissions standards are fully implemented, the light-duty fleet average requirement will be 30 milligrams per mile of NO<sub>X</sub> and NMOG combined. More information on Tier 3 emissions standards is provided in Appendix B: *Detailed Discussion of Direct Environmental Benefit*.

The Energy Policy and Conservation Act of 1975 established the first set of Corporate Average Fuel Economy (CAFE) standards starting with the 1978 model year. These standards have been periodically revised, with the most recent changes applying to the 2021 through 2026 model years (EPA/National Highway Traffic Safety Administration [NHTSA], 2020). Tailpipe emissions of carbon dioxide (CO<sub>2</sub>) are directly correlated with fuel consumption because the amount of CO<sub>2</sub> emitted per gallon of gasoline and diesel fuel is constant. Tailpipe emissions of sulfur dioxide (SO<sub>2</sub>) and evaporative emissions of volatile organic compounds (VOC) from refueling also directly correlate with fuel consumption, as SO<sub>2</sub> is released as a byproduct of the sulfur content in gasoline, and VOC refueling emissions correspond to the gallons of gasoline pumped.

For 2026-and-later model years, the most recent CAFE standards specify an average fuel economy for the light-duty fleet of 40.4 miles per gallon (mpg) and 199 grams per mile of CO<sub>2</sub>. The CAFE rules note that in-use fuel economy is typically 20% lower and in-use CO<sub>2</sub> emissions are typically 25% higher than these compliance standards. This results in actual light-duty fleet averages closer to 32 mpg and 249 grams per mile of CO<sub>2</sub>.

As shown in Figure 2-1: *NO<sub>x</sub>, VOC, and CO<sub>2</sub> Emission Rates in 2028 by Model Year for Passenger Cars*, the Tier 3 emissions standards that phase in from 2017 through 2025 are more stringent than the Tier 2 emissions standards from 2004 through 2016, which in turn are more stringent than earlier standards. Fuel economy rates were relatively constant through the 2011 model year and then started to steadily increase based on rules for the 2012 through 2016 model years (EPA/NHTSA, 2010), the 2017 through 2020 model years (EPA/NHTSA, 2012), and the 2021 through 2026 model years (EPA/NHTSA, 2020). As fuel economy increases, CO<sub>2</sub> emissions decrease, leveling off for passenger cars around 212 grams per mile for 2026-and-later model years. Emission rates in 2028 by model year for CO, PM, SO<sub>2</sub>, and ammonia (NH<sub>3</sub>) are provided in Appendix B.

<sup>&</sup>lt;sup>33</sup> NMOG is equivalent to volatile organic compounds (VOC) plus ethane.



Figure 2-1: NOX, VOC, and CO2 Emission Rates by Model Year for Passenger Cars

## Maximum Environmental Benefit Analysis

#### Framework for Projected Environmental Benefits Analysis

In its most recent rulemaking related to tailpipe emissions standards (EPA, 2014), the EPA acknowledged that manufacturers will likely produce a significant number of zero-emitting electric vehicles to comply with the very stringent fleet average requirements. The current light-duty fleet is comprised of vehicles that, taken as a whole by model year, meet but do not exceed the federal fleet average requirements. Therefore, it is likely that most manufacturers will use electric vehicles to offset their production of higher-emitting vehicles. However, if manufacturers meet their fleet average requirements without using any electric vehicle sales, then electric vehicles could potentially supply emission reduction benefits beyond those currently needed for fleet average requirements.

The TCEQ conducted an analysis to determine what the maximum possible emissions reductions would be if none of the electric vehicles projected to be operating in 2028 were needed to meet fleet average requirements. These maximum possible emissions reductions were calculated by taking the difference between two scenarios for the 2028 light-duty fleet: one where all electric vehicles are needed to meet fleet average requirements, and one where no electric vehicles are needed to meet fleet average requirements. TCEQ staff estimated the total emissions per day of each pollutant for both scenarios using projections of the Texas vehicle fleet composition in 2028 (including the projected number of electric vehicles), vehicle emissions rates, and the vehicle miles traveled (VMT). These elements are discussed in more detail below in *Vehicle Fleet Composition, Emissions Rates, and VMT Estimations*.

The estimated maximum possible emissions reductions from electric vehicles calculated for this study could not be used to take additional emissions credit in the Texas State Implementation Plan (SIP) required under the 1990 Federal Clean Air Act (FCAA) Amendments because the TCEQ SIP air quality modeling follows the EPA assumption that all AFVs will be used to meet federal fleet average requirements. The EPA noted in its rulemaking for the Tier 3 emissions standards that manufacturers have "a very limited ability to offset sales of vehicles certified above the 30 milligrams per mile fleet average emission standard" since the fleet average limit is so stringent (EPA, 2014).

#### Vehicle Fleet Composition, Emissions Rates, and VMT Estimations

The TCEQ used emissions estimates by TTI that included vehicle population, emission rates, and VMT for Texas for both a 2016 historical year and a 2028 future year (TTI, 2019). At any given time, the light-duty vehicle fleet is made up of a mix of vehicles of different ages with different emission rates due to changing fleet average requirements and vehicle deterioration over time. Older model year vehicles may have a higher emission rate than they would have had the year the car was manufactured due to vehicle deterioration over time.

Over time, consumers replace older vehicles with newer vehicles, continuously phasing out older vehicle models from the light-duty vehicle fleet; this is called fleet turnover. As shown in Figure 2-2: *Composition of Texas Light-Duty Fleets in 2016 and 2028*, roughly 75% of the light-duty vehicles that operated in 2016 were manufactured after 2004, meaning they met Tier 2 emissions standards. By 2028, roughly 71% of the fleet is expected to be comprised of very low-emitting vehicles that meet Tier 3 emissions standards (2017-and-later model years).



\* NLEV refers to the National Low Emissions Vehicle program.

Figure 2-2: Composition of Texas Light-Duty Fleets in 2016 and 2028

## **Electric Vehicle Population Projections**

Manufacturers are not required by any state or federal regulation to produce a minimum number or percentage of electric vehicles in any given model year. As a result, this analysis relies on predictions of the number of electric vehicles that will be operating in Texas during any particular future year.

Since 2016, TxDMV has annually reported the number of AFVs registered in the state. As of September 2019, 29,540 BEV registrations were reported (TxDMV, 2019). The hybrid registrations reported combine the HEV and PHEV categories, so only the BEV registrations were used in this analysis. The 2020 Annual Energy Outlook (AEO) from the U.S. Energy Information Administration (EIA) provides light-duty electric vehicle sales projections by model year for multiple areas of the U.S., and separate estimates for BEV and PHEV sales are included. At this time, medium-duty and heavy-duty electric vehicle sales projections are not available from the EIA.

Figure 2-3: *Texas Electric Vehicle Population Projections by Model Year* presents TxDMV electric vehicle registrations and the Texas portion of the AEO projections for the 2020 through 2028 model years. Combining the historical TxDMV registrations with the AEO projections results in a predicted 2028 electric vehicle population of 486,811 for Texas. More details about how the specific values by model year were derived are provided in Appendix B.

The sharp increase between TxDMV registrations in 2019 and the AEO projections for the 2020 model year indicates that the EIA methodologies may overestimate the future electric vehicle population. Excluding PHEVs from the 2019 TxDMV registrations may also contribute to this sharp increase from 2019 to 2020. Despite these discrepancies, the TCEQ determined that combining the TxDMV data with the AEO projections provided the best available projection of the 2028 electric vehicle population at the time this analysis was performed.



*Figure 2-13: Texas Electric Vehicle Population Projections by Model Year Operating in 2028* 

### Maximum Potential Emissions Reductions in 2028

The maximum possible emissions reductions that could be achieved if all the predicted 486,811 light-duty electric vehicles in 2028 are not needed by manufacturers to meet fleet average requirements are presented in Table 2-1: *2028 Maximum Annual Emissions Benefits from Light-Duty Electric Vehicles*. Results are provided for NO<sub>x</sub>, VOC, CO, CO<sub>2</sub>, SO<sub>2</sub>, NH<sub>3</sub>, and PM at thresholds of both 2.5 microns (PM<sub>2.5</sub>) and 10 microns (PM<sub>10</sub>), reported in tons per year. This approach is based on the assumption that each electric vehicle replaced a gasoline or diesel vehicle of the same type that met the fleet average requirements per model year.

Pollutant or Vehicle Data	2028 Light-Duty Fleet Totals	2028 Maximum Electric Vehicle Impacts	2028 Maximum Electric Vehicle Impact Portion
Vehicle Population	21,844,307	486,811	2.2%
Annual Vehicle Miles Traveled	266,935,091,907	6,859,346,184	2.6%
NO <sub>x</sub> (tons per year)	29,354.43	238.11	0.8%
VOC from Vehicles (tons per year)	41,671.52	324.65	0.8%
CO (tons per year)	566,668.22	6,175.61	1.1%
CO <sub>2</sub> (tons per year)	76,572,720.80	1,713,238.74	2.2%
SO <sub>2</sub> (tons per year)	507.83	11.36	2.2%
NH₃ (tons per year)	5,692.66	125.73	2.2%
PM <sub>2.5</sub> (tons per year)	1,004.20	12.78	1.3%
PM10 (tons per year)	1,134.20	14.44	1.3%
VOC from Refueling (tons per year)	2,796.75	52.79	1.9%
Fuel Consumption (gallons per year)	8,128,923,443	181,899,225	2.2%

Table 2-1: 2028 Maximum Annual Emissions Benefits from Light-Duty Electric Vehicles

To provide context for these results, the second column contains the light-duty fleet emissions and fuel consumption totals from the TTI analysis for 21.8 million light-duty vehicles projected to be traveling approximately 267 billion miles in 2028. The third column summarizes the possible emissions and fuel consumption reductions from 486,811 of these 21.8 million vehicles being operated by electricity instead of gasoline or diesel fuel. The fourth column provides the relative reductions that could be achieved from the 2028 light-duty fleet totals.

To obtain these results, the electric vehicle population projections from Figure 2-3 were multiplied by fleet average emissions rates per model year from the 2014a version of the Motor Vehicle Emissions Simulator (MOVES2014a) model (EPA, 2018) that was used in the TTI analysis. Maximum daily emissions benefits and an example calculation are available in Appendix B. These daily emissions benefits were converted to the annual totals presented in Table 2-1.

The emissions reductions achieved in the maximum environmental benefits scenario may be lower than expected in comparison to the environmental impacts reported in media and other scientific analyses. Studies that report larger reductions in emissions due to electric vehicles often include indirect sources of emissions, upstream from tailpipe emissions, which are outside the scope of the present study (Nichols, Kockelman, and Reiter, 2015; Nopmongcol et. al, 2017). These upstream emissions sources are also frequently the focus of news and media articles on electric vehicle benefits (Harvey, 2020; Scott, 2020; Union of Concerned Scientists, 2020). Another prominent narrative in the media presents electric vehicles as replacing emissions from conventional vehicles, an argument which does not acknowledge the incorporation of electric vehicles in meeting fleet average tailpipe emissions standards (Pabst, 2019; Stevens, 2019; Leinert, White, and Klayman, 2020).

Moreover, other studies investigating future vehicle emissions assume greater electric vehicle market penetration (17% to 70% of fleet population, depending on the timeframe for the projections<sup>34</sup>) than the AEO projections used in the present study (2.2% of vehicle population by 2028). The TCEQ believes that the 2028 electric vehicle population projection presented here represents a best-case scenario, as it assumes that no electric vehicles bought between 2016 and 2028 leave the vehicle fleet. Furthermore, as discussed above in *Electric Vehicle Population Projections*, the discrepancy between registered electric vehicles and projected sales in Texas shown in Figure 2-3 indicates a possible over-prediction in the 2028 electric vehicle population.

### **Data Source Updates**

Appendix B contains further explanation of the relevant federal regulations and detailed emissions calculation tables. The electronic files used in the analysis are available for interested readers at ftp://amdaftp.tceq.texas.gov/El/onroad/sb604/ (TCEQ, 2020). This analysis incorporated updated fuel economy and CO2 regulations for the 2021 through 2026 model years (EPA/NHTSA, 2020). Should there be changes to electric vehicle sales projections and/or relevant federal rules, this analysis could be updated to account for those situations.

<sup>&</sup>lt;sup>34</sup> 20% by 2018, Thompson et al., 2011; 17% by 2030, Nopmongcol et. al, 2017; 35% - 70% by 2040, Public Citizen/University of Houston, 2018

# Section 3: Impact of Alternatively Fueled Vehicles on the State Power Grid and Markets

## Note: This section was prepared by the Public Utility Commission of Texas (PUCT).

This section of the report addresses the projected impact of AFVs to the state's power grids and electricity markets. As electric vehicles will have the greatest impact to these, this section of the report analyzes electric vehicles specifically. The PUCT posed questions to its stakeholder community about this topic. Municipally owned utilities, electric cooperatives, transmission and distribution utilities, investor-owned vertically integrated utilities, and retail electric providers submitted comments. Interest groups such as charging station companies, advanced technology groups, and electric vehicle manufacturers also participated.

## Market Adoption of Electric Vehicles

Electric vehicles come in three vehicle classes: light-duty, medium-duty, and heavy-duty. The market for light-duty personal electric vehicles has grown in recent years, with sales in Texas increasing 117% from 2017 to 2018.<sup>35</sup> Medium-duty vehicles include buses, package delivery fleets, and refuse trucks. Growth in this category has been encouraged by corporate sustainability goals, decreasing battery costs, and efforts to meet local emissions reduction



goals. Heavy-duty vehicles for long-haul Figure 3-1: Classes of Electric Vehicles

trucking are not yet on the market, but are expected to be commercially available within the next three to five years.<sup>36</sup>

## Electric Vehicle Charging Technologies

There are three electric vehicle charging categories: Level 1, Level 2, and Direct Current Fast Charging ("DC Fast," sometimes called Level 3). Each technology has different impacts on a utility's distribution system. The power draw and energy usage are different for each technology. The types of charging stations installed and the charging patterns for different types of electric vehicles will have varied effects on Texas's electric grid.

Level 1 charging equipment uses a 120 Volt wall outlet common in homes. The power requirements of Level 1 chargers are similar to common household appliances.<sup>37</sup> Depending on the battery, Level 1 charging typically takes between eight and 12 hours to charge when fully depleted. Small amounts of power are used over a longer time period. Level 1 charging is not expected to have significant impacts on the utility's distribution system.

Level 2 charging requires 240 Volt electric service. At a home, this might be a power outlet like that used by an electric clothes dryer. Depending on the electric vehicle's battery range, Level 2 charging typically takes between

<sup>&</sup>lt;sup>35</sup> "EV Market Share by State," EVAdoption.com. Available at: <u>https://evadoption.com/ev-market-share/ev-market-share-state/</u>.

<sup>&</sup>lt;sup>36</sup> PUCT Project No. 49125, *Review of Issues Relating to Electric Vehicles,* Comments of TechNet at 2 (Feb. 3, 2020). <sup>37</sup> PUCT Project No. 49125, Comments of ChargePoint, Inc. at 6 (Feb 3. 2020).

four and six hours to fully charge.<sup>38</sup> Residential customers will do most Level 2 charging at night but may "top off" their battery while parked at a commercial site or workplace during the day. Commercial customers are still in the early stages of electrifying their fleets. However, most Level 2 charging is expected to occur at night for commercial vehicles.<sup>39</sup>

DC Fast charging equipment uses a 480 Volt direct current ("DC") plug enabling a vehicle to charge its battery to 80% of capacity within 30 minutes.<sup>40</sup> To charge a battery this quickly, a DC Fast charger requires a large power draw (electric demand, or kilowatts) and a high rate of charge (electric energy, or kilowatt-hours). This means that DC Fast chargers have the greatest potential impact on the local electric system. Typically, multiple DC Fast chargers, each with a high demand, are installed together at one site.<sup>41</sup> Because DC Fast charging is expected to be



Figure 3-2: Charging Technologies for Electric Vehicles

used for long-haul freight trucks and long-distance personal travel, most DC Fast chargers will likely be placed along highways that connect major cities. DC Fast charging is expected to occur primarily during the day and be a small portion of overall charging needs.

## Projected Impact on the State's Power Grids: Utility Distribution Systems

Generally, a utility's system is designed to accommodate an expected "peak" demand. This is the time that the simultaneous use of the electric system by customers is highest, such as when air conditioning load comes on during a hot summer afternoon. If charging station load increases beyond what the utility's systems were originally designed to support, reliability problems could result. Utilities have well-established processes for accommodating new electric load like charging stations. Therefore, most utilities do not anticipate difficulty managing the load from charging for electric vehicles on their distribution system. However, high DC Fast charging penetration and significant on-peak daytime charging could affect specific areas and require the utility to upgrade parts of its distribution system.

## Investor-Owned Transmission and Distribution Utilities

Investor-owned transmission and distribution utilities are responsible for evaluating the growth of electric demand in their service territories and managing the reliability of their distribution system. An investor-owned transmission and distribution utility delivers electric power to the end-use customer but does not have a retail electric provider relationship with that customer. This means an investor-owned transmission and distribution utility may not have specific insight into whether a residential or commercial customer is using their electric service to charge an electric vehicle. For this reason, the utility may need to make more assumptions about electric vehicle adoption in its service area and the effect that adoption may have on its systems.

<sup>&</sup>lt;sup>38</sup> PUCT Project No. 49125, Comments of Texas Advanced Energy Business Alliance at 6 (Feb 3. 2020).

<sup>&</sup>lt;sup>39</sup> PUCT Project No. 49125, Comments of Austin Energy at 2 (Feb. 3, 2020).

<sup>&</sup>lt;sup>40</sup> *Id.* at 3.

<sup>&</sup>lt;sup>41</sup> *Id*.

The Dallas-Fort Worth area, the fourth largest metroplex in the United States with a population of over 7.5 million, is a potential hub for electric vehicle adoption. Oncor Electric Delivery Company (Oncor), the local transmission and distribution utility, expects most growth to occur in clusters, led by electric short-haul fleets. Oncor pointed to a data source that identifies more than 20,000 fleets in its service territory. Together, growth in clustered areas, extensive fleet electrification, and a resulting increase in DC Fast charging are expected to lead to an increase in overall electric load on its system.

Oncor expects most electric vehicle adoption to occur over the next five to 10 years, which will give the utility time to plan for needed changes. Oncor commissioned a study that forecasted an increase from 224 to 2,193 DC Fast charging stations in its service territory by the year 2030. The amount of load that will trigger a need for system upgrades will vary based on how close the load is to critical



Figure 3-3: Oncor Electric Delivery Company Service Territory

distribution infrastructure and how much capacity is being used by other customers.<sup>42</sup>

The Houston metroplex is another area that may see rapid electric vehicle adoption for both commercial and personal use. CenterPoint Energy Houston Electric, LLC (CenterPoint) is the transmission and distribution utility serving most of the Houston area.

CenterPoint anticipates residential charging impacts to be manageable unless the electric vehicle adoption rate increases significantly. If commercial charging consistently overlaps with the peak demand, modifications to the distribution system would be required. CenterPoint expects more than 163,000 light-duty vehicles in its service territory by 2030 given a likely scenario for adoption.<sup>43</sup>



The state's two other investor-owned transmission and distribution utilities, AEP Texas and Texas-New Mexico Power, also anticipate being able to absorb electric vehicle growth into the distribution system within their current planning processes.

Figure 3-4: CenterPoint Energy Houston Electric Service Territory

<sup>&</sup>lt;sup>42</sup> PUCT Project No. 49125, Comments of Oncor Electric Delivery Company (Feb. 3, 2020).

<sup>&</sup>lt;sup>43</sup> PUCT Project No. 49125, Comments of CenterPoint Energy Houston Electric, LLC (Feb. 3, 2020).



Figure 3-5: AEP Texas Service Territory (Left) and Texas-New Mexico Power Service Territory (Right)

## **Municipally Owned Utilities**

A municipally owned utility provides transmission or distribution service and makes retail sales to the end-use customer. Many also own power plants. Municipally owned utilities are primarily governed by the city council of the municipality or its designated independent board, with the PUCT having limited regulatory authority. The municipally owned utilities CPS Energy in San Antonio and Austin Energy respectively serve the third and fourth largest metropolitan statistical areas in Texas and provide power to over 1.3 million customers. The San Antonio and Austin areas may also see growth in vehicle electrification for the same reasons seen in Dallas-Ft. Worth and Houston.

CPS Energy has not experienced any issues to date in integrating electric vehicles into its system. CPS Energy is piloting a program to incentivize a shift in DC Fast charging from peak to off-peak periods and will also launch additional product offerings for customers with electric vehicles. System upgrades will likely be required in certain areas. However, the lead time should be sufficient to factor growth projections into system planning. For medium-and heavy-duty vehicles, these loads are expected to charge in clusters that could necessitate transformer upgrades or even an entirely new substation. Current projections for light-duty electric vehicle adoption in CPS Energy's service territory are not expected to have a significant impact on distribution system infrastructure and tailored product offerings to customers will help manage any impacts.<sup>44</sup>

Austin Energy anticipates a need to expand its distribution system in areas of higher electric vehicle penetration in both commercial and residential areas. Like CenterPoint, Austin Energy expects electric vehicle charging in commercial areas at peak demand. However, this impact should be manageable when considered in the planning of new commercial developments. Austin Energy also anticipates its distribution system will be impacted by charging stations along major transit corridors during peak times.<sup>45</sup>

## **Electric Cooperatives**

Much like a municipally owned utility, an electric cooperative owns wires and poles and makes retail sales of electricity to the end-use customer. Some cooperatives also own power plants. Electric cooperatives are member-owned. A board of directors provides policy direction for the electric cooperative, including infrastructure build-out. Electric cooperative service areas are typically rural and have not seen a significant adoption of electric vehicles.

20

<sup>&</sup>lt;sup>44</sup> PUCT Project No. 49125, Comments of CPS Energy (Feb. 3, 2020).

<sup>&</sup>lt;sup>45</sup> PUCT Project No. 49125, Comments of Austin Energy (Feb. 3, 2020).

In higher density areas, certain cooperatives have deployed charging stations and work with commercial developers to ensure visibility into planned charging stations. Current practices to manage new load additions are expected to be adequate to incorporate electric vehicle charging stations.<sup>46</sup>

### Investor-Owned Vertically Integrated Utilities

Over 1.2 million customers receive their electricity from one of the four vertically integrated investor-owned utilities in Texas. These utilities generate electric power, provide transmission and distribution service, and make retail sales to the end-use customer. The four investor-owned vertically integrated utilities in Texas generally expect to manage the impact of electric vehicle charging on their distribution system through incentivizing customers to charge at off-peak times. Shifting use of the system to off-peak times will improve overall utilization of the distribution system and reduce the need for the utility to build additional infrastructure. Existing processes should be sufficient to incorporate charging stations into these distribution systems and identify any needed upgrades.



Of these four investor-owned vertically integrated utilities, El Figure 3-6: El Paso Electric Company Service Territory Paso Electric (EPE) serves the most densely populated area, with

332,000 customers in Texas. EPE expects that public electric vehicle charging stations will have a higher on-peak charging pattern during the day compared to commercial fleet charging stations. While some distribution upgrades may be required, these improvements are not currently anticipated to be problematic. However, with the advent of long-haul trucking, EPE may be uniquely positioned for DC Fast charging because El Paso is a transportation and warehousing hub.<sup>47</sup>



The state's other vertically integrated utilities serve less densely populated areas. These utilities generally expect to accommodate electric vehicle adoption in their service areas without substantial impacts to their system with existing processes.

Southwestern Public Service Company (SPS<sup>48</sup>), which serves the Texas Panhandle, does not forecast significant electric vehicle load growth in its service territory. SPS expects any impacts to be clustered and anticipates that some older facilities on its distribution system will need to be replaced.

Figure 3-7: Southwestern Public Service Company Service Territory The southeast Texas area is served by Entergy Texas, Inc.,

and northeast Texas along with a small portion of the Panhandle is served by Southwestern Electric Power Company (SWEPCO). Neither Entergy Texas nor SWEPCO anticipate any unmanageable distribution grid impacts and will account for increased electric vehicle adoption into its planning.<sup>49</sup>

<sup>&</sup>lt;sup>46</sup> PUCT Project No. 49125, Comments of Texas Electric Cooperatives (Feb. 3, 2020).

<sup>&</sup>lt;sup>47</sup> PUCT Project No. 49125, Comments of El Paso Electric Company (Feb. 3, 2020).

<sup>&</sup>lt;sup>48</sup> PUCT Project No. 49125, Comments of Southwestern Public Service Company (Feb. 3, 2020).

<sup>&</sup>lt;sup>49</sup> PUCT Project No. 49125, Comments of Entergy Texas, Inc. (Feb. 3, 2020).



Figure 3-8: Service Territory of Entergy Texas, Inc. (L) and Southwestern Electric Power Company (R)

# Projected Impact on the State's Power Grids: Utility Transmission Systems

Power plants are in geographic locations that allow ready access to a fuel source but may be some distance from the population centers. A utility must build and maintain a transmission system that can deliver these large power flows from power plant to end-use customer. These transmission systems are interconnected and share responsibility to manage the demand for electric power across a state or region. Transmission systems are generally built to accommodate the peak demand for electricity.

Three separate grid operators serve Texas: the Electric Reliability Council of Texas (ERCOT), the Southwest Power Pool (SPP), and the Midcontinent Independent System Operator (MISO). Each of these grid operators helps manage the transmission system. When there is growth in demand for electricity, especially near the peak demand for electricity, changes to the transmission system may be needed. These changes require careful coordination among utilities, the grid operators, and regulators.

#### ERCOT

ERCOT is the grid operator responsible for ensuring reliable electric power for approximately 85% of the land area in Texas and serves approximately 90% of the state's electricity demand. The ERCOT grid is fully contained within the state and therefore is under the oversight of the PUCT.

All utilities in ERCOT, including transmission and distribution utilities, municipally owned utilities, and electric cooperatives, collaborate with ERCOT on transmission planning. Transmission build-out in ERCOT is generally evaluated through the stakeholder process at ERCOT. ERCOT staff works with each transmission utility to better understand load forecasts and evaluates the need for the additional infrastructure. The PUCT approves the utilities' request for transmission infrastructure through Certificate of Convenience and Necessity (CCN) proceedings when a new CCN is needed by the utility.



Figure 3-9: Map of the ERCOT Grid

ERCOT develops a Long-Term System Assessment (LTSA) every two years. To help develop this study, ERCOT engages with its stakeholders to determine what scenarios may change the need for future transmission build-out. ERCOT incorporated a widespread electric vehicle adoption scenario in its 2018 LTSA and created a load forecast

228

that included an assumed accelerated electric vehicle adoption rate.<sup>50</sup> ERCOT's 2018 LTSA found that increased adoption of electric vehicles could result in a significant shift in electric use patterns, while increasing demand on the system.<sup>51</sup> ERCOT's 2020 LTSA will be published in December 2020, with a widespread electric vehicle adoption scenario.

#### SPP



SPS and SWEPCO and three electric cooperatives in Texas are part of SPP. SPP oversees the bulk electric grid and wholesale power market over fourteen states. SPP coordinates transmission build-out in its footprint.

In January 2020, SPP released its 2021 Integrated Transmission Plan. For the first time, this annual analysis includes a scenario for widespread electric vehicle adoption.<sup>52</sup> The scenario reflects electric vehicles primarily charging off-peak in the evening and overnight. Therefore, SPP expects few long-term transmission issues from electric vehicle adoption.



Figure 3-10: Map of SPP

### MISO

MISO is the regional transmission operator for 15 states in the United States and the Canadian province of Manitoba. In Texas, MISO is the regional transmission operator for the vertically integrated investor-owned utility Entergy Texas, in southeast Texas.

In 2019, MISO commissioned a report to quantify the potential of electric vehicles to provide grid benefits to Figure 3-11: Map of MISO

MISO.<sup>53</sup> This report noted that the MISO region can expect significant electric vehicle penetration reaching over a million vehicles by 2039. However, significant adoption is not expected in the Entergy Texas service territory at this time.

<sup>&</sup>lt;sup>50</sup> PUCT Project No. 49125, Comments of the Electric Reliability Council of Texas, Inc. at 2 (Feb. 3, 2020).

<sup>&</sup>lt;sup>51</sup> "2018 Long-term System Assessment for the ERCOT Region: December 2018" at 11. Available at:

http://www.ercot.com/content/wcm/lists/144927/2018 LTSA Report.pdf.

<sup>&</sup>lt;sup>52</sup> "2021 ITP Future Drivers: Electric Vehicles (EV)," Jason Speer and Jake Pannell, Southwest Power Pool (Jan. 8, 2020).

<sup>&</sup>lt;sup>53</sup> "Quantifying the Potential of Electric Vehicles to Provide Electric Grid Benefits in the MISO Area: Final Report to the Midcontinent Independent System Operator, Inc.," Jeffrey Greenblatt, Cong Zhang, and Samveg Saxena. MISO. Available at: https://cdn.misoenergy.org/Quantifying%20the%20Potential%20of%20Electric%20Vehicles%20to%20Provide%20Electric%20 Grid%20Benefits%20in%20the%20MISO%20Area354192.pdf.

### El Paso Electric (EPE)

EPE is a member of the Western Electric Coordinating Council (WECC). WECC is responsible for ensuring compliance monitoring for reliability standards but does not manage an electricity market or coordinate transmission systems operation, investment, or build-out. EPE is solely responsible for its transmission planning, subject to the oversight of the PUCT and the Federal Energy Regulatory Commission (FERC). EPE does not expect electric vehicle charging to have a significant impact on its transmission system planning.

## Projected Impact on the State's Electricity Markets

#### **Retail Market**

The service areas of investor-owned transmission and distribution utilities are open to competition. Texans in these areas choose electricity products from a variety of retail electric providers. The retail electric provider buys power at wholesale and handles the retail relationship with the customer, including billing and service. These retail electric providers are incentivized to optimize customer experience by providing services and pricing packages that meet customer expectations. Retail electric providers are already offering programs tailored to electric vehicle owners and pairing these programs with other incentives to encourage customers to charge during off-peak hours. Outside the competitive market, municipally owned utilities and electric cooperatives, such as Austin Energy, CPS Energy, and Pedernales Electric Cooperative are also engaging customers in this way in response to customer interest.

Customer engagement will continue as electric vehicle adoption grows and the surrounding industries gain more experience with the effect of electric vehicles on the grid. Incentivizing off-peak charging is a priority for these retail electric providers and municipally owned utilities, and businesses and customers will become more sophisticated as the market evolves. Smart charging technologies include hardware and software that enable customers to respond to both time-varying rates and participate in load management programs that utilities may offer. These smart charging technologies may become increasingly commercially available.

#### Wholesale Markets

Most stakeholders agree that available electric vehicle technology does not have meaningful impacts on the wholesale power markets in Texas. There is potential for electric vehicles to sell electricity back into the grid, for example, but deployment of this technology is not imminent. If technologies develop to couple energy storage with electric vehicle charging stations, charging stations could theoretically provide benefits by returning electricity to the grid when it is most needed. As electrification of commercial fleets, mass transit buses, school buses, and long-haul interstate trucking becomes more widespread, new opportunities and challenges could arise for integration into a wholesale marketplace.

## Managing the Impact of Electric Vehicle Adoption

#### Load "Hot Spots"

Many stakeholders noted the likelihood that electric vehicle adoption and associated charging may occur in clustered areas or load "hot spots." A utility must identify potential hot spots so that demand in these clusters can be carefully managed to avoid adversely impacting reliability.

Hot spots are often a result of commercial fleets that are already located near each other. As these companies electrify their fleets, the utility may expect a significant increase in demand on its distribution systems in the hot spot. Hot spots can also develop in densely populated urban and suburban centers. Hot spots for commercial electric vehicle deployment include distribution centers, airports, rail yards, ports, bus hubs, truck stops, highway rest areas, commercial centers such as big box stores, large grocery stores, and super centers. Hot spots for personal

## Time of Use

A utility builds its transmission and distribution infrastructure to accommodate times of peak demand. In Texas, peak demand tends to occur in the summer afternoons, as air-conditioning load comes on from the hours of 4 p.m. to 7 p.m. More demand for electricity at the same time as the utility's peak will typically require more infrastructure to be built. A utility can reduce this need for additional infrastructure build-out by encouraging electric vehicle customers to charge at a different time rather than at peak. Rate designs that align with utility cost causation incent charging behaviors that optimize the use of the grid and ensure that customers can manage their energy usage and energy costs. These incentives will influence customer charging pattern behavior.

## **Emerging Technology**

Electric vehicle charging technologies continue to evolve, with changing impacts on the distribution system. Some anticipated changes include increased charging speed and voltage, wireless charging, storage use for ultra-high-speed charging, or inductive charging. All these changes will have an impact on the distribution grid.

# Section 4: Current Texas Fees & Taxes on Vehicle Usage

This section examines the current motor fuel taxes, electricity-related fees and taxes, and vehicle registration and inspection fees levied in the state. The levies (except for the electricity-related ones) are examined on a per vehicle basis.

## Motor Fuel Taxes

## Note: This subsection was prepared by TxDOT.

The State of Texas is responsible for the collection of a tax on fuels. In Texas, motor fuel taxes are paid and collected at the point of sale at the bulk transfer/terminal distribution terminals. It is then remitted to the state by the gasoline suppliers. However, state law requires the amount of tax paid by a supplier to be added to the selling price so that the tax is ultimately paid by the person using or consuming the gasoline. Motorists pay this when they refuel at a pump.<sup>54</sup>

This collection applies to vehicles that use gasoline, diesel, and/or liquefied and compressed natural gas. According to the *Texas Department of Motor Vehicles Fiscal Year (FY) 2019 Alternatively Fueled Vehicle Report*, most vehicles registered in Texas are either gasoline or flexible fuel operated. Flexible fueled vehicles are designed to run on either gasoline or gasoline-ethanol blends of up to 85% ethanol.<sup>55</sup> In FY 2019, gasoline and flexible fuel-run vehicles accounted for 19,013,716 vehicles or approximately 76% of all registered vehicles in the state.<sup>56</sup> Further, this number may even be under-reported, when considering that according to the Texas Department of Motor Vehicles, the fuel type of over 18% of registered vehicles are undisclosed or unknown, and could be a vehicle that is not-self-propelled, such as a trailer.

To determine the amount that these gasoline and flexible fuel-run vehicles pay in fuel taxes for each mile driven, the following assumptions are made to determine the estimated calculation. First, the U.S. Department of Transportation's Bureau of Transportation Statistics estimates that in 2018, the average miles traveled per vehicle for all light duty vehicles in the United States was 11,484 miles.<sup>57</sup> Additionally, the most recent data available by the same federal agency states that in 2017, the average fuel efficiency for a light duty vehicle in the United States was 22.3 miles per gallon.<sup>58</sup>

If the 11,484 average miles traveled per vehicle for all light duty vehicles in the United States is divided by 22.3 miles per gallon of gasoline, it can be determined that the average light duty vehicle needs a total of 514.98 gallons of gasoline a year. To determine what that means in gasoline tax revenue, 514.98 gallons of gasoline need to be multiplied by the Texas state gasoline tax rate of \$0.20 a gallon. This calculation determines that the average light duty vehicle pays an average of nearly \$103 in state gasoline tax revenue per vehicle.<sup>59</sup> If 514.98 gallons of gasoline is multiplied by the federal tax rate of \$0.184, the average light duty vehicle pays an average of \$94.76 in federal gasoline tax revenue per vehicle.<sup>60</sup> It is worth noting, that Texas does not receive an equal return in gasoline taxes submitted to the federal government, but for purposes of analysis, we will assume a 100% return on federal gasoline taxes to the state.

<sup>&</sup>lt;sup>54</sup> In Texas, gasoline and diesel fuel are subject to a 20-cent tax per gallon. In addition, the federal government imposes taxes of 18.4 cents per gallon on gasoline and 24.4 cents per gallon on diesel fuel.

<sup>&</sup>lt;sup>55</sup> Fuel Economy.gov https://www.fueleconomy.gov/feg/flextech.shtml

<sup>&</sup>lt;sup>56</sup> Texas Department of Motor Vehicles Annual Reports, https://www.txdmv.gov/node/3703

<sup>&</sup>lt;sup>57</sup> U.S. DOT Bureau of Transportation Statistics <u>https://www.fhwa.dot.gov/policyinformation/statistics/2018/pdf/vm1.pdf</u>

<sup>&</sup>lt;sup>58</sup> U.S. DOT Bureau of Transportation Statistics <u>https://www.bts.gov/content/average-fuel-efficiency-us-light-duty-vehicles</u>

<sup>&</sup>lt;sup>59</sup> 514.98 gallons multiplied by \$0.20 equals \$102.996.

<sup>&</sup>lt;sup>60</sup> 514.98 gallons multiplied by \$0.184 equals \$94.75632.

To narrow that number down to a per-mile basis, when the estimated annual state gas tax collected amount of \$103 is divided by the average annual miles driven per light duty vehicle of 11,484, it is estimated that the average gasoline-powered vehicle pays slightly less than \$0.01 per mile driven in state gasoline tax, and similarly less than \$0.01 per mile driven in federal gasoline tax.<sup>61</sup>

The average fuel consumption of the top ten most fuel-efficient models of 2019 hybrid vehicles on the U.S. market is 108.1 miles per gallon of fuel.<sup>62</sup> Using the same 11,484 average miles for all light duty vehicles as the previous section, it is estimated that the 2019 top ten most fuel-efficient models of hybrid-vehicles pay an average of just under \$0.002 per mile driven in state gasoline tax, and similarly less than \$0.002 per mile driven in federal gasoline tax.<sup>63</sup> (This is explained in more detail in *Section 1*. It should be noted that 2019 hybrid models were used as that is more current data and is consistent with data points used later in this report.)

Fully electric vehicles in Texas do not contribute to the gasoline tax as they do not require the use of gasoline to operate.

	Light Duty Vehicles				
	Conventional Gas <sup>1</sup>	Hybrid <sup>2</sup>	Electric <sup>2</sup>		
Estimated Average Annual Mileage	11,484	11,484	11,484		
Average MPG	22.3	108.1	0		
Gallons of gas per year	515	106	0		
State Fuel Tax/Gallon <sup>3</sup>	\$0.20	\$0.20	\$0.20		
Federal Fuel Tax/Gallon	\$0.184	\$0.184	\$0.184		
State Fuel Taxes/Year	\$103	\$21	\$0		
Federal Fuel Taxes/Year	\$95	\$20	\$0		
Total Fuel Taxes/Year	\$198	\$41	\$0		

Table 4-1: Fuel Taxes by Vehicle Fuel Type

Note: Data represents current estimates based on 2017-2019 national rates for mileage, fuel efficiency and vehicle mixes.

1. Numbers provided for conventional gas vehicles are based on the 2017 national average for all light duty vehicles.

2. Numbers provided for hybrid and electric vehicles are based on the 2019 average of the top ten most fuel-efficient vehicles for each class.

3. Of the State Motor Fuel Tax, 15 cents per gallon goes to the Highway Trust Fund and 5 cents per gallon goes to education in Texas.

<sup>61</sup> \$103 divided by 11,484 miles equals \$0.008969; \$94.76 divided by 11,484 miles equals \$0.00825148.

<sup>62</sup> Fuel Economy.gov vehicle search

https://www.fueleconomy.gov/feg/PowerSearch.do?action=noform&year1=2019&year2=2019&minmsrpsel=0&maxmsrpsel =0&city=0&hwy=0&comb=0&cbvthybrid=Hybrid&cbvtplugin=Plug-

in+Hybrid&YearSel=2019&make=&mclass=&vfuel=&vtype=Hybrid%2C+Plug-

in+Hybrid&trany=&drive=&cyl=&MpgSel=000&sortBy=Comb&Units=&url=SearchServlet&opt=new&minmsrp=0&maxmsrp=0 &minmpg=&maxmpg=&rowLimit=25&pageno=1&tabView=0

<sup>&</sup>lt;sup>63</sup> \$21.25 annual state taxes divided by 11,484 miles equals \$0.00185; \$19.55 annual federal taxes divided by 11,484 miles equals \$0.00170.

## Electricity Taxes & Fees from Alternatively Fueled Vehicles

#### Note: This subsection was prepared by the PUCT.

It is not currently possible to distinguish the amount AFVs currently pay in taxes, fees, and surcharges levied on the sale of electricity from the overall amounts collected. However, the below table summarizes the current sources of state revenue from the sale of electricity.

Assessment	Party Responsible	Rate	Exemptions
Miscellaneous Gross Receipts Tax	Each company in Texas that sells electricity within an incorporated city or town with a population greater than 1,000	Varies from 0.581% to 1.997% of gross receipts by population of the city	<ul> <li>Some electricity surcharges, such as nuclear decommissioning fees and transition charges</li> </ul>
Public Utility Gross Receipts Assessment	On each electric utility, retail electric provider, and cooperative that serves the end-use customer in Texas.	.001667% of the gross receipts from rates charged to the ultimate customer in the state	<ul> <li>Some electricity surcharges, such as nuclear decommissioning fees and transition charges</li> </ul>
Sales Tax (State Portion)	On each electric utility, retail electric provider, and cooperative that serves the end-use customer in Texas.	6.25% of the sales price of electricity	<ul> <li>Some electricity surcharges, such as nuclear decommissioning fees and transition charges</li> <li>Residential electric customers are generally exempt from the state portion of the sales tax</li> <li>Non-residential customers (such as a small business or electric vehicle charging station) must submit a tax exemption certificate to their retailer to be exempt</li> </ul>

Table 4-2: Current Texas Electric-related Taxes, Fees, & Surcharges

## Vehicle Registration Fees

#### Note: This subsection was prepared by TxDMV.

In general, motor vehicles operated on Texas public roads must pay annual registration fees. With very few exceptions, motor vehicle registration transactions are performed by local county tax assessor-collectors. The county tax assessor-collectors remit the registration fees to the state. The registration fee due varies by gross vehicle weight and certain vehicle characteristics. Some vehicle types and uses do not require registration (see Appendix C).

Motor vehicles with a gross weight of 6,000 lbs. or less have an annual registration fee of \$50.75. This weight category includes nearly all passenger vehicles and light trucks and accounts for more than 75% of registered vehicles. The registration fee for motor vehicles classified as motorcycles and mopeds is \$30.00.

Motor vehicles with gross weights of more than 6,000 lbs. pay higher fees according to the following schedule:

Vehicle Gross Weight	Fee
6,001 to 10,000 lbs.	\$54.00
10,001 to 18,000 lbs.	\$110.00
18,001 to 25,999 lbs.	\$205.00
26,000 to 40,000 lbs.	\$340.00
40,001 to 54,999 lbs.	\$535.00
55,000 to 70,000 lbs.	\$740.00
70,001 to 80,000 lbs.	\$840.00

Table 4-3: Vehicle Registration Fees by Gross Weight

Except passenger cars, trucks with gross weights of 18,000 lbs. or less, and vehicles with combination registration, motor vehicles with diesel motors pay an 11% surcharge on the above registration fee. Vehicles with combination registration pay a 10% surcharge for deposit to the Texas Emissions Reduction Plan (TERP).

Customers pay a \$4.75 processing and handling fee along with the registration fee to cover the cost associated with processing the transaction by the counties and the Texas Department of Motor Vehicles, except that the fee is only \$3.75 for online registration renewals. Additionally, most motor vehicle registrations also pay a \$1.00 fee to cover the costs of the state's electronic liability insurance verification program.

A county may assess on vehicles registered in it the following fees to be collected at the time of registration. Revenue from these fees is retained by the assessing county.

Fee Type	Amount Allowed
Road & Bridge	\$0 to \$10.00
Child Safety	\$0 to \$1.50
Regional Mobility <sup>64</sup>	\$0 to \$10.00
Table 1 1. Local Option Vali	ala Danistration Fran

Table 4-4: Local Option Vehicle Registration Fees

Current law does not charge registration fees based on the fuel type of the vehicle. Therefore, owners of alternatively fueled and conventional vehicles pay the same amount. The exceptions to this are the 10% and 11% registration fee surcharges paid for vehicles with diesel motors. This extra fee applies to less than 4% of all registered vehicles and does not apply to any light duty vehicles including passenger vehicles and light trucks as noted above.



## Vehicle Inspection Fees

*Note: This subsection was prepared by TxDMV.* 

Motor vehicles must pass an annual vehicle safety inspection to be registered. Certain vehicles registered in selected counties must also pass a vehicle air emissions inspection. Before the registration-based enforcement system for

<sup>&</sup>lt;sup>64</sup> Only allowed in Bexar, Cameron, El Paso, Hidalgo, and Webb counties. Cameron and Webb counties may levy up to \$20.

the inspection program, customers paid a fee to the inspection station for the inspection. The station kept a portion of the fee as compensation for performing the inspection and then remitted the other portion of the fee to the state. Now the customer still pays the station's portion of the fee at the time of inspection but pays the state's portion of the fee at the time of registration. Depending on the type of inspection, the state's portion of the inspection fee ranges from \$2.75 to \$24.75 and is divided among the Texas Mobility Fund, Clean Air Fund, TERP, and the Texas Online program.

Type of Inspection	Applicable Counties	State Fee	Fee Distribution
Safety only	Statewide	\$7.50	Texas Online \$2.00 Mobility Fund \$3.50 Clear Air Fund \$2.00
2-year Safety only (new vehicles)	Statewide	\$16.75	Texas Online \$2.00 Mobility Fund \$10.75 Clear Air Fund \$4.00
Commercial Safety only	Statewide	\$22.00	Texas Online \$2.00 Mobility Fund \$10.00 TERP \$10.00
Emissions only	Brazoria, El Paso, Fort Bend, Galveston, Harris, Montgomery, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, Travis, Williamson	\$2.75	Texas Online \$0.25 Mobility Fund \$2.00 Clear Air Fund \$0.50
Safety & Emissions (TSI & OBD, all model vears)	Brazoria, El Paso, Fort Bend, Galveston, Harris, Montgomery, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, Travis, Williamson	\$8.25	Texas Online \$0.25 Mobility Fund \$5.50 Clear Air Fund \$2.50
Commercial Safety & Emissions	Brazoria, El Paso, Fort Bend, Galveston, Harris, Montgomery, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, Travis, Williamson	\$24.75	Texas Online \$2.25 Mobility Fund \$12.00 Clear Air Fund \$0.50 TERP \$10.00

Table 4-5: Vehicle Inspection Fees

Generally, motor vehicles, regardless of fuel type, pay a safety-type inspection fee. Almost all gasoline-fueled vehicles registered in selected counties also pay an emissions-type inspection fee. This means in those counties, for conventional vehicles, those using gasoline pay an emissions fee while those using diesel do not. For AFVs, hybrids pay an emissions fee in selected counties, but all others do not.

# Section 5: Vehicle Fees in Other States

## Note: This section was prepared by TxDMV.

This section examines the type and amount of fees by which other states generate revenue from AFVs and conventional vehicles. The focus is on those states that levy a specific fee on AFVs.

In this section, AFVs are the following:

- **Electric** vehicles powered by an electric motor which uses energy stored in a battery and must be plugged into an electric power source to charge. Electric vehicles do not rely on internal combustion or conventional fuels.
- **Plug-In Hybrid Electric** vehicles powered by an internal combustion engine and an electric motor that uses energy stored in a battery but can also be plugged in to an electric power source to charge the battery. Plug-in hybrid electric vehicles can operate using only electric power, only internal combustion or through a combination of the two and can rely on conventional fuels.
- **Hybrid Electric** vehicles powered by an internal combustion engine and an electric motor that uses energy stored in a battery. The battery is charged by the internal combustion engine as well as through regenerative braking. Hybrid electric vehicles do not plug in to charge and must use conventional fuels.
- Natural or Petroleum Gases vehicles specifically designed or converted to use some form of either gaseous or liquid hydrocarbons to drive internal combustion engines. The hydrocarbons can be categorized as: liquefied petroleum gas (LPG) which liquifies when compressed for storage in pressurized tanks, compressed natural gas (CNG) consisting primarily of methane which is compressed for storage in pressurized tanks, and liquefied natural gas (LNG) consisting primarily of methane but, rather than being compressed, is cooled to temperatures below negative 250 degrees Fahrenheit turning the gas into a liquid for storage.

## **Conventional Vehicle Registration Fees**

Every state requires motor vehicle owners to pay some form of vehicle use fee, and the fees differ significantly by jurisdiction. Approaches range from charging flat fees per vehicle to fees determined by a vehicle's Manufacturer's Suggested Retail Price or MSRP, purchase price, current value, gross weight, carrying capacity, model year, age, horsepower, fuel type, fuel efficiency rating, the number of years the vehicle has been previously registered and/or whether the vehicle is used for commercial purposes; even the number of vehicles registered to a single owner can affect fees assessed.

Because this report focuses on AFVs, details on registration fees other states levy on conventional vehicles is not discussed. However, information on these fees can be found at the website for the <u>National Conference of State</u> <u>Legislatures.<sup>65</sup></u>

# Alternatively Fueled Vehicle Registration Fees

As of early 2020, 29 states levy a registration fee specific to electric-type vehicles. Nine states levy a fee on electric vehicles but not hybrid or plug-in hybrid electric vehicles: California, Georgia, Illinois, Minnesota, North Carolina, Oregon, Tennessee, Virginia and Wyoming. Thirteen states levy a fee on electric and plug-in hybrid electric vehicles but not hybrid electric vehicles: Alabama, Arkansas, Colorado, Hawaii, Idaho, Iowa, Michigan, Missouri, Nebraska,

<sup>&</sup>lt;sup>65</sup> https://www.ncsl.org/research/transportation/registration-and-title-fees-by-state.aspx

North Dakota, Oklahoma, West Virginia and Wisconsin. Seven states levy a fee on electric, plug-in hybrid, and hybrid electric vehicles: Indiana, Kansas, Mississippi, Ohio, South Carolina, Utah and Washington. Ten states levy some type of fee specific to vehicles powered by LPG, CNG and/or LNG: Alabama, Arkansas, California, Hawaii, Indiana, Mississippi, Missouri, Oklahoma, Oregon and Washington.

Twenty-one states do not levy a fee specific to AFVs: Alaska, Arizona, Connecticut, Delaware, Florida, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, South Dakota, Texas and Vermont.

## Alabama

In addition to other registration fees, electric vehicles pay an annual fee of \$200 and plug-in hybrid electric vehicles pay an annual fee of \$100. Beginning July 1, 2023, these fees increase by \$3 every four years. Vehicles fueled by LPG, CNG or LNG pay annual fees between \$80 and \$180 based on gross weight. Vehicles registered out-of-state refueling with LPG, CNG or LNG in Alabama may purchase the annual fee decal or must pay state motor fuel taxes.

## Arkansas

In addition to other registration fees, electric vehicles pay an annual fee of \$200 and plug-in hybrid electric vehicles pay an annual fee of \$100. LPG and LNG used as motor fuel must purchase on a per vehicle basis an annual special fuel user's permit. The permit costs between \$130 and \$609 based on vehicle gross weight.

## California

In addition to other registration fees, zero-emission vehicles pay an annual road improvement fee of \$100 at the time of registration for model years 2020 and later. This fee increases annually as determined by the California Consumer Price Index. State excise taxes on LPG, CNG and LNG may be paid on a gallon equivalency basis or with the purchase of an annual sticker tax that costs between \$36 and \$168 based on vehicle gross weight.

## Colorado

In addition to other registration fees, plug-in electric and plug-in hybrid electric vehicles pay an annual fee of \$50.

## Georgia

In addition to other registration fees, plug-in electric vehicles used for non-commercial purposes pay an annual fee of \$213.69 and if used for commercial purposes pay \$320.54. These fees adjust annually and do not apply to plug-in hybrid electric vehicles.

## Hawaii

In addition to other registration fees, plug-in electric vehicles or AFVs pay an annual fee of \$50.

## Idaho

In addition to other registration fees, electric vehicles pay an annual fee of \$140 and plug-in hybrid electric vehicles pay an annual fee of \$75.

## Illinois

In addition to other registration fees, electric vehicles pay an annual fee of \$100.

## Indiana

In addition to other registration fees, battery electric vehicles pay an annual fee of \$150 and hybrid and plug-in hybrid electric vehicles pay an annual fee of \$50. The Indiana Bureau of Motor Vehicles determines new fee amounts every five years. Vehicles fueled by LPG must purchase an alternative fuel decal that costs between \$150 and \$750 based on vehicle type and gross weight. Vehicles fueled by LPG that are registered out-of-state must purchase a temporary trip permit.

#### lowa

In addition to other registration fees, electric vehicles pay an annual fee of \$65 and plug-in hybrid electric vehicles pay an annual fee of \$32.50. These fees increase to \$97.50 and \$48.75 in 2021 and to \$130 and \$65 in 2022 respectively.

#### Kansas

The annual registration fee for electric passenger vehicles is \$100 and \$50 for hybrid and plug-in hybrid electric vehicles, respectively. The standard registration fee for other vehicles weighing 4,500 lbs. or less is \$30 and \$40 for vehicles weighing 4,501 lbs. or more. This results in electrics paying either \$60 or \$70 more than equivalent weight conventional vehicles and hybrids paying either \$10 or \$20 more. Vehicles fueled by LPG, CNG or LNG may pay fuel taxes on a gallon equivalency basis or per an estimate of the number of gallons used on Kansas highways as determined by vehicle gross weight.

### Michigan

In addition to other registration fees, vehicles with a minimum battery capacity of four kilowatt-hours pay a gross weight based annual fee of \$100 or \$200 for electric vehicles and \$30 or \$100 for hybrid and plug-in hybrid electric vehicles. The electric vehicle fees increase by \$5 and the plug-in hybrid electric vehicle fees increase by \$2.50 per \$0.01 that the state motor fuel tax exceeds \$0.19 per gallon.

### Minnesota

In addition to other registration fees, electric vehicles pay an annual fee of \$75.

#### Mississippi

In addition to other registration fees, electric vehicles pay an annual fee of \$150 and hybrid and plug-in hybrid electric vehicles pay an annual fee of \$75. Beginning July 1, 2021, these fees will increase annually based on the Consumer Price Index for urban consumers for the prior year. Vehicles fueled by natural gas with a gross weight of 10,000 lbs. or less pay an annual flat rate privilege tax of \$165. Vehicles fueled by natural gas with a gross weight greater than 10,000 lbs. pay privilege taxes on a gallon equivalency basis.

## Missouri

State motor fuel taxes do not apply to alternatively fueled passenger vehicles and certain buses or commercial vehicles if an alternative fuel vehicle decal is purchased. The decal cost is between \$37.50 and \$1,000 based on vehicle type and gross weight.

#### Nebraska

In addition to other registration fees, vehicles powered by any energy source not taxed as a motor fuel pay an annual alternative fuel fee of \$75. This fee applies to plug-in and plug-in hybrid electric vehicles.

## North Carolina

In addition to other registration fees, plug-in electric vehicles weighing 8,500 lbs. or less with a maximum speed of at least 65 miles per hour and at least a four kilowatt-house battery capacity pay an annual fee of \$130.

#### North Dakota

In addition to other registration fees, electric vehicles, plug-in hybrid electric vehicles and plug-in electric motorcycles pay annual fees of \$120, \$50 and \$20 respectively.

### Ohio

In addition to other registration fees, electric and plug-in hybrid electric vehicles pay an annual fee of \$200 and hybrid electric vehicles pay an annual fee of \$100.

33

### Oklahoma

In 2017, Oklahoma enacted a \$100 fee on electric vehicles and a \$30 fee on plug-in hybrid electric vehicles, both in addition to other registration fees. However, the Oklahoma Supreme Court ruled those fees to be unconstitutional. In lieu of state motor fuel taxes, vehicles fueled by LPG or natural gas pay an annual fee of \$50 and vehicles fueled by methanol or blends of 85% methanol and 15% gasoline pay an annual fee of \$100 when the vehicle's carrying capacity does not exceed 2,000 lbs. Vehicles fueled by LPG, methanol, or blends of 85% methanol and 15% gasoline with a carrying capacity greater than 2,000 lbs. pay an annual fee of \$150.

### Oregon

Electric vehicles pay an annual fee of \$110 while registration fees for conventional vehicles range from \$18 to \$33 as determined by the vehicle's average miles per gallon. Beginning January 1, 2022, the electric fee increases to \$115. In lieu of state fuel taxes, vehicles fueled by natural gas or LPG pay an annual special use fuel license fee between \$170 and \$1,333 based on vehicle gross weight.

### South Carolina

In addition to other registration fees, fuel cell and plug-in electric vehicles pay a biennial fee of \$120 and hybrid and plug-in hybrid electric vehicles pay a biennial fee of \$60.

### Tennessee

In addition to other registration fees, plug-in electric vehicles pay an annual fee of \$100 unless it is a low- or mediumspeed vehicle. This fee does not apply to plug-in hybrid electric vehicles.

### Utah

In addition to other registration fees, battery electric, plug-in hybrid electric, and hybrid electric vehicles pay annual fees of \$90, \$39 and \$15 respectively. These increase to \$120, \$52 and \$20 in 2021. The vehicle may instead be enrolled in a mileage-based fee program in lieu of paying the annual fee.

#### Virginia

In addition to other registration fees, electric vehicles pay an annual license tax of \$64.

#### Washington

In addition to other registration fees, plug-in electric vehicles pay an annual fee of \$150 and plug-in hybrid vehicles with an electric range of at least 30 miles and hybrid electric vehicles pay an annual fee of \$75. In lieu of state motor fuel taxes, vehicles fueled by natural gas or LPG pay an annual license fee between \$185.25 and \$1,029.17 based on vehicle gross weight.

#### West Virginia

In addition to other registration fees, vehicles fueled by electricity, natural gas or hydrogen pay an annual fee of \$200, and plug-in hybrid electric vehicles pay an annual fee of \$100.

#### Wisconsin

In addition to other registration fees, electric vehicles pay an annual fee of \$100, and plug-in hybrid electric vehicles pay an annual fee of \$75.

#### Wyoming

In addition to other registration fees, plug-in electric vehicles pay an annual decal fee of \$200.

	Hybrid Electric	Plug-in Hybrid	Electric	LPG - CNG - LNG
Alabama		\$100	\$200	\$80 - \$180
Arkansas		\$100	\$200	\$130 - \$609
California			\$100 <sup>66</sup>	\$36 - \$168
Colorado		\$50	\$50	
Georgia			\$213.69 or \$320.54	
Hawaii		\$50	\$50	\$50
ldaho		\$75	\$140	
Illinois			\$100	
Indiana	\$50	\$50	\$150	\$150 - \$750
lowa		\$32.50	\$65	
Kansas <sup>*</sup>	\$10 or \$20	\$10 or \$20	\$60 or \$70	
Michigan**		\$30 or \$100	\$100 or \$200	
Minnesota			\$75	
Mississippi	\$75	\$75	\$150	\$165
Missouri		\$37.50 - \$500	\$75 - \$1000	\$75 - \$1000
Nebraska		\$75	\$75	
North Carolina <sup>**</sup>			\$130	
North Dakota		\$50	\$120	
Ohio	\$100	\$200	\$200	
Oklahoma		\$30 <sup>65</sup>	\$100 <sup>67</sup>	\$50 - \$150
Oregon*			\$77 - \$92	\$170 - \$1,333
South Carolina <sup>68</sup>	\$30	\$30	\$60	
Tennessee			\$100	
Utah	\$15	\$39	\$90	
Virginia			\$64	
Washington	\$75	\$75	\$150	\$185.25 - \$1,029.17
West Virginia		\$100	\$200	
Wisconsin		\$75	\$100	
Wyoming			\$200	
AVERAGE <sup>69</sup>	\$59	\$70.97	\$119.54	

## Annual Fees Specific to Alternatively Fueled Vehicles and Alternative Fuels

Table 5-1: Annual AFV Fees in Other States

<sup>&</sup>lt;sup>66</sup> Fee applicable only to vehicle model years 2020 and later.

<sup>\*</sup> Adjusted to indicate amount of fee more than equivalent conventional vehicle fees.

<sup>\*\*</sup> Fee applicable only to vehicles with a minimum battery capacity of 4 kilowatt-hours or more.

<sup>&</sup>lt;sup>67</sup> Fee enacted by Oklahoma State Legislature but struck down by Supreme Court of Oklahoma.

<sup>&</sup>lt;sup>68</sup> Fee assessed biennially; amount adjusted to show an annual average.

<sup>&</sup>lt;sup>69</sup> Does not include Georgia, Kansas, Michigan, Missouri or Oregon as their assessments are not directly comparable with the other listed states.

## Section 6: Alternative Methods for Collecting Fees from Alternatively Fueled Vehicles

Levying a fee on AFVs consists of determining the amount of the fee and the actual collection of the fee. While the fee amount can be determined in many ways, in Texas there are currently few feasible fee collection methods. Available collection methods include fee collection as part of the sale of a good or service, or direct fee collection from consumers. An example of the former is the state's current sales and excise tax system, and an example of the latter is the current vehicle registration program. Creating a new collection method can be an expensive proposition, especially when used a relatively small number of times. Therefore, the alternatives examined assume any fee will be collected using an existing collection method. To also avoid further implementation and administration costs, as well as limit demands placed on customers, it is also assumed that the frequency of collection of any fee remains the same. For example, vehicle registrations are currently due annually (except that a brand new vehicle may be initially registered for two years) so it is assumed that any fee using the vehicle registration process as its collection method will be due once a year at the time of registration. The same assumption is made for the frequency of any fee using a sales-based collection method.

An issue with imposing a fee on owners of AFVs will be determining when a vehicle is alternatively fueled. Currently the state does not track alternative fuel types as part of a vehicle's record. Because the state does track when a vehicle has a diesel motor, the framework for fuel types being part of a vehicle's record exists. For a vehicle entering state records for the first time (e.g. a new purchase or titling a vehicle from out of state in Texas), gathering the fuel type can be a part of issuing the vehicle a Texas title. This would allow assessment of a fee going forward since the alternative fuel type will become part of the vehicle's record.

For vehicles currently registered or titled in Texas, identifying the corresponding fuel type will be more difficult, which could create challenges when levying a fee. The Texas Department of Motor Vehicles produces an annual report on the number of registered AFVs in the state).<sup>70</sup> Software "decodes" the vehicle identification numbers of registered vehicles in TxDMV records to determine the number of vehicles by fuel type. However, the decoding process is imperfect and not all vehicles are easily identifiable through this process. Once the possible AFVs are identified and verified, the registration records of the vehicles can be updated to reflect any new fee. However, the current owners would need to be informed their vehicles will be assessed the new fee.

State motor fuel taxes are not collected in many instances. These instances include when a vehicle is used by the federal government, public school districts, commercial transportation companies or metropolitan rapid transit authorities transporting students under a contract with a public school district, volunteer fire departments or nonprofit entities whose sole purpose is providing emergency medical services. Diesel used by certain commercial motor vehicles transporting passengers is tax exempt, as are natural and petroleum gases used to power vehicles owned by nonprofit electrical or telephone co-ops, municipalities, counties or regional transportation or metropolitan rapid transit authorities when use for transportation services. Since a conventional vehicle does not pay motor fuel taxes if it qualifies for a motor fuel tax exemption, it would need to be decided if any AFV fee would be assessed on an AFV qualifying for the same exemption.

## **Electricity Usage Fee Alternatives**

#### Note: This subsection was prepared by the PUCT.

This subsection evaluates options for levying fees on the electricity used to charge electric vehicles.

<sup>&</sup>lt;sup>70</sup> Texas Department of Motor Vehicles Annual Reports <u>https://www.txdmv.gov/node/3703</u>

## Taxing Electricity Used by Electric Vehicles

Like the current assessment levied on gasoline purchases, a tax could be levied on the vehicle's fuel: in this case, electricity. Assessing electricity fees at an easily identifiable point of sale, like public charging stations, would be relatively simple, like taxes charged at a gasoline pump. Electric vehicles that use these sites pay the assessment at the point of sale. This assessment would also be paid by vehicles traveling through the state but not registered or based in the state. This feature of the assessment would align with the way motor fuel taxes are also paid by such vehicles.

However, public charging stations do not account for electric vehicle charging behavior. Most personal use electric vehicle charging takes place at a residence. To successfully levy assessments on this electricity use, the in-home charging stations would need to be separately metered to account for the electricity used. Even when a charging outlet is separately metered, the assessment could be avoided by connecting the electric vehicle to an ordinary 120-Volt wall outlet. Given that a direct assessment on electricity to compensate for the loss of motor fuel tax could be up to 50% of the cost of the electricity, the customer may have an incentive to avoid the assessment.<sup>71</sup> Such customer behavior, if adopted on a widespread scale, could reduce the assessment paid to the state.

### Directing Existing Electricity Assessments to Highway Funding

Another alternative would be to direct existing assessments on electricity usage to roadway funds. This would have the benefit of being easy to estimate and administratively simple to complete. Additionally, directing existing electricity assessments to roadway funds could not be evaded by changes in customer charging behavior like a direct assessment on electricity usage by electric vehicles.<sup>72</sup> However, this approach would result in all users of electricity paying a tax intended for electric vehicle use.

## Vehicle Registration-based Alternatives

#### Note: This subsection was prepared by TxDMV.

The alternatives examined here all assume an AFV fee will be in addition to, not in lieu of, all registration-related fees currently in law. The alternatives also assume payment occurs once per year at the same time as regular registration. Setting up a system that allows multiple payments/transactions in a year will be much more difficult and costly to administer. Also, unless limited to online transactions only, multiple transactions will result in more foot-traffic at county tax assessor-collector offices. Multiple transactions, even online only, will also incur service charges for each transaction which will result in increased costs for customers. To do otherwise would require online registration transactions to either be exempt from Texas.gov or receive new treatment under that program. If multiple payments throughout the year occur, the current registration sticker could not serve as evidence of payment as it does today unless multiple stickers are created and affixed to the vehicle throughout the year. This would increase costs to the state and be an inconvenience to customers. Also, equity concerns can be raised about allowing a different payment approach to an additional fee on AFVs while not also allowing such an approach for the payment of regular registration fees for all customers.

There are more than a dozen exemptions to paying vehicle registration fees. Examples of such exemptions include: government-owned vehicles, certain agricultural uses, antique, specialty and service vehicles, and vehicles registered with certain specialty license plates, including many that are military-related. Many of these vehicles

<sup>&</sup>lt;sup>71</sup> "Funding Roadway Infrastructure in an Electrified World," Glitman, Karen, LeBel, Mark, and Lazar, Jim. Regulatory Assistance Project (Jul. 16, 2019). Available at: <u>https://www.raponline.org/knowledge-center/funding-roadway-infrastructure-in-an-electrified-world/.</u>

<sup>&</sup>lt;sup>72</sup> Id.

would pay motor fuel taxes. Therefore, it would need to be decided whether a registration-based AFV fee would apply to an AFV that is exempt from current registration fees.

Registration-based fees tend to generate relatively stable revenue streams when compared to sales-based taxes and fees. However, the more expensive a registration-based fee becomes, the more likely compliance issues are to arise.

The numbers in Table 4-1 provide an estimate of possible fee amounts if the objective is to replace lost motor fuel tax revenue from the use of an AFV instead of a conventional one.

#### Flat Fee

Levying a flat fee in addition to current vehicle registration fees is the most common type of alternately fueled vehicle fee levied in other states. This approach is used by 24 of the 29 states with fees specific to AFVs. The fees for electric vehicles range from \$50 to \$200 and from \$26 to \$200 on plug-in hybrid electric vehicles. A rough average from other states is \$70 for plug-in hybrids and \$120 for electric vehicles.

## Feasibility & Desirability

A flat fee is a straightforward, easy to administer and understandable approach to levying a fee on AFVs. There already are flat-fees assessed on most vehicles at the time of registration, such as the Financial Responsibility Verification Program fee (see *Transportation Code 502.357*) and local fees (see *Transportation Code 502 Subchapter H*).

A flat fee does not reflect the impact a vehicle has on the roads. With a flat fee, a vehicle that uses roads only rarely or only short distances still pays the same amount as a vehicle that uses roads more frequently or drives long distances. Similarly, a large heavy vehicle that puts more wear and tear on the roadway pays the same amount as a small light vehicle that has little to no impact on the roadway.

#### Weight-based Fee

A fee based on the weight of an AFV is the method used by three states. This approach to a fee is also how registration fees in Texas are currently assessed.

## Feasibility & Desirability

A fee schedule based on vehicle weight could easily align with the weight categories used for vehicle registration fees currently. There currently are eight different weight categories with registration fees ranging from \$50.75 for the most common category (up to 6,000 lbs.) to \$840 for vehicles in the category of vehicles weighing more than 70,000 lbs. The weights are based on the gross weight of the vehicle which is the vehicle's empty weight plus its carrying capacity.

A weight-based fee could be a fixed amount for each weight category or a percentage of the current fee for each category. The state already uses the second method for certain vehicles with a diesel motor. Such an approach could be used for AFVs (see *Transportation Code Section 502.359*). However, to replace the estimated amount of a vehicle's motor fuel taxes, a percentage approach for the lower weight levels, which account for more than 80% of all registrations, could require a high percentage rate (more than 200%).

Because of the current AFV options available on the market, assessing a fee only on the less than 10,000 lbs. vehicle weight categories would likely cover almost all AFVs. However, as technology and the market changes, assessing a fee on heavier weight categories may need to be considered.

### Miles-based Fee

A fee based on the miles traveled by a motor vehicle corresponds with the use of roadways. Unlike other fee alternatives, nothing like this fee exists in the state except for certain interstate motor carriers. Very few other states have a miles-based fee program but those that do focus on electric-type vehicles.

### *Feasibility & Desirability*

A miles-based fee would closely align with a vehicle's actual usage of roads. However, the fee amount would not be known until the actual time of registration since the miles traveled in the prior year would not be known until the time of inspection or registration. This would result in customers not knowing exactly how much they owe until the time of registration. It also would result in inaccurate fee information on the registration renewal notices sent by the Texas Department of Motor Vehicles and make renewing registration by mail difficult. (Mail-in registrations represent less than 4% of registrations). To make estimating fees more feasible, the fee structure could be determined based on larger increments than per mile (i.e. per hundreds or thousands of miles driven).

Collecting the miles traveled from customers is the key element of a miles-based fee, and there are several options for doing so. Customers can self-report their miles at the time of registration. This option requires the customer to track and report this information and there is not currently a verification method for the information reported resulting in possible so avoidance of paying the full and accurate amount. Miles can be tracked electronically through the vehicle's onboard diagnostic systems which, once set up, would require little action on the part of the customer. This option may require additional equipment and software for the vehicle and for state systems and may raise privacy concerns with some customers. Lastly, miles traveled can be reported by an independent, third-party. For example, vehicle inspection stations currently record and report to the Texas Department of Public Safety odometer readings taken during inspections. This information could be used by Texas Department of Motor Vehicles systems to determine the miles traveled for levying a fee. However, the odometer reading would usually be captured after the registration renewal notice has been created. A miles-based fee calculated based upon mileage data captured by inspection stations would result in customers not knowing exactly how much they owe until the time of registration.

Several states are testing and implementing a miles-based fee system as an alternative or supplement to motor fuel taxes. The U.S. Department of Transportation's Surface Transportation System Funding Alternatives grant program has encouraged the development of such programs.

In Oregon, electric (and vehicles with a fuel rating of 40+ mpg) can enroll in the Oregon road usage charge program. The program allows the option of paying a fee of 1.8¢ per-mile driven in-state in lieu of paying increased registration fees. Instead, program participants pay an annual registration fee of \$43 plus any per-mile charges. Participating vehicles electronically report mileage to the program's vendor who keeps the personal information of participants secure and private.

In January 2020, Utah began an optional miles-based fee program for certain AFVs. The program is in lieu of paying the additional AFV registration flat fee. A third-party vendor collects and reports miles driven using technology in the vehicle. Mileage fees are deducted periodically from a credit card on file or a pre-paid wallet with the vendor. Collection of the 1.5¢ per-mile fee stops when the total paid for the year equals the applicable additional registration flat fee.

## **Combination Fee**

A fee based on some combination of the prior three alternatives could be implemented. This approach would have the advantages and disadvantages of each of the analyzed alternatives.

### Feasibility & Desirability

This approach could allow policy makers to craft a fee that meets multiple objectives, but such a fee does not eliminate the disadvantages of any of the other fees; it would simply mitigate their impact. Regardless, there would be the same set-up and administrative costs associated with any combination of fees. Also, a combination fee could also prove more difficult for customers to understand.

## Vehicle Sale-based Alternatives

#### Note: This subsection was prepared by TxDMV.

The alternatives examined here are based on a transaction of some sort occurring and would generally not be collected on the same fixed schedule as the registration-based alternatives.

#### Motor Vehicle Sales Tax

A sales tax is levied on motor vehicles purchased or brought into the state. The tax is 6.25% of the vehicle's value. There are some exemptions to the tax and some instances where the tax is not 6.25%. Though the tax is generally paid at the time a vehicle is titled, the program is administered by the Comptroller of Public Accounts rather than the Texas Department of Motor Vehicles. However, the systems used to collect the tax are the same ones used for vehicle titling and registration. A sales tax surcharge or a separate, higher sales tax could be charged to owners of AFVs.

### Feasibility & Desirability

The state currently charges a motor vehicle sales tax surcharge of between 1% and 2.5% for certain heavy diesel motor vehicles (see *Tax Code Section 152.0215*) so the model of charging more sales tax based on vehicle fuel-type already exists.

Revenue from a sales tax will possibly be more volatile than other alternatives. Sales tax revenue will likely move in the same direction of the economy as people make vehicle purchase decisions in response to economic conditions.

To achieve similar overall revenues, a sales tax surcharge would need to collect more revenue at the time of collection than a fee that is collected on a regular schedule (such as a registration-based fee). The average age of a U.S. vehicle is approximately 12 years old. It is estimated that ownership will change an average of two times during that 12-year period, which would result in a motor vehicle sales tax-based surcharge/fee being collected only twice on a vehicle. This could result in the sales-tax based surcharge needing to be up to six times more than an annual registration-based fee would need to be to achieve the same overall impact to state revenue. While many customers might be able to finance this amount as part of the vehicle purchase, the surcharge amount could be a sizable expense.

There are several exemptions from the current motor vehicle sales tax. These largely relate to how the vehicle will be used and include use by a child care facility or religious organization and for driver training, fire/ambulance, or agriculture. Also, certain owners like government agencies do not pay motor vehicle sales taxes. Off-highway vehicles are not subject to the motor vehicle sales tax but are subject to the general sales and use tax. Interstate motor carriers are also exempt and any change to that could encourage such customers to purchase their vehicles in another state. New residents, gifted vehicles, and even trades pay a fixed sales tax amount. It would need to be decided how to treat such transactions if an AFV sales tax surcharge is adopted.

A sales tax surcharge, unless structured in a very different way than the current tax, would bear little relation to vehicle characteristics or use, such as weight or size or mileage, that affect roads.

### Vehicle Title Fee

Motor vehicles are required to be titled whenever ownership of the vehicle changes. The current fee for a title is \$28 (or \$33 if titled in a county with an air quality non-attainment status). The title fee is currently a flat one and not based on vehicle type or characteristics. A higher title fee could be charged to owners of AFVs.

### Feasibility & Desirability

A higher title fee for AFVs would function much the same as the motor vehicle sales tax alternative.

The revenue volatility will be similar to the motor vehicle sales tax alternative as people may be less likely to buy a car during a downturn in the economy and the need to set the title fee at a higher rate due to less frequent/fewer transactions may be necessary. The frequency with which a title fee-based alternative fee would be paid would most likely be the same as the motor vehicle sales tax-based alternative and therefore require a larger amount to be collected at the time the vehicle is titled versus annually at time of registration. Also, a higher title fee, unless structured in a very different way than the current fee, would bear little relation to vehicle characteristics or use, such as weight or size or mileage, that affect roads.

Some vehicles are exempt from title fees (see Appendix C). Many of these vehicles may pay motor fuel taxes. Therefore, it would need to be decided whether a title-based AFV fee would apply to an AFV that is exempt from current title fees. Also, a title-based fee could discourage owners from applying for title as part of a private sale or to remove a paid-off lien.

A higher title fee could encourage interstate motor carriers (e.g. commercial trucks) to not use Texas as their base jurisdiction when operating under the International Registration Plan (a vehicle registration reciprocity program that allows interstate carriers to pay registration fees based on their usage of each state's roads). This would not affect their actual usage or operations in Texas but would result in a county not receiving its local option fees and reduce the amount of business property subject to ad valorem taxation in the state.

## Conclusion

The use of alternatively fueled vehicles continues to grow in Texas, the nation and throughout the world. Other states, countries and the vehicle industry continue to explore various possibilities to traditional vehicle fueling methods for many reasons, including mobility efficiency and environmental benefits. It is important to consider all opportunities to ensure funds are available to continue to build and maintain Texas' transportation network. This report provides a basis for which the Texas Legislature can continue to consider options for collecting road use fees from various sources to help keep pace with the rising cost of building and maintaining the state's transportation infrastructure.

## References

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

U.S. Department of Energy, Alternative Fuels Data Center, <u>State Laws and Incentives, retrieved from</u> <u>https://afdc.energy.gov/laws/state</u>

*U.S. Department of Energy*, Alternative Fuels Data Center, <u>State Fees as Transportation Funding Alternatives, retrieved from</u> <u>https://afdc.energy.gov/bulletins/technology\_bulletin\_2014\_03\_10.html</u>

*National Conference of State Legislatures*, Kristy Hartman and Kevin Pula, <u>New Fees on Hybrid and Electric Vehicles</u>, 2019, retrieved from http://www.ncsl.org/research/energy/new-fees-on-hybrid-and-electric-vehicles.aspx

*Texas A&M Transportation Institute*, Richard "Trey" Baker, Lauren Cochran, Nick Norboge, Maarit Moran, Jason Wagner, and Beverly Storey, <u>Alternative Fuel Vehicle Forecasts</u>, 2016, retrieved from https://static.tti.tamu.edu/tti.tamu.edu/documents/PRC-14-28F.pdf

*Texas A&M Transportation Institute*, Ginger Goodin and Richard "Trey" Baker, <u>EXPLORATORY STUDY: VEHICLE MILEAGE FEES</u> <u>IN TEXAS</u>, 2011, retrieved from <u>https://static.tti.tamu.edu/tti.tamu.edu/documents/0-6660-1.pdf</u>

#### Texas Commission on Environmental Quality

Harvey, Fiona, 2020, *Electric cars produce less CO2 than petrol vehicles, study confirms*, <u>The Guardian</u>, <u>https://www.theguardian.com/environment/2020/mar/23/electric-cars-produce-less-co2-than-petrol-vehicles-study-confirms</u>

Leinert, Paul, Joseph White, and Ben Klayman, 2020, *Detroit's near future based on SUVs, not EVs, production plans show*, <u>Reuters, https://www.reuters.com/article/us-autos-emissions-suvs-insight/detroits-near-future-based-on-suvs-not-evs-production-plans-show-idUSKBN21D1KW</u>

Nichols, Brice G., Kara M. Kockelman, and Matthew Reither, 2015, *Air quality impacts of electric vehicle adoption in Texas*, Transportation Research Part D: Transport and Environment, 34, 208-218. <u>Doi: 10.1016/j.trd.2014.10.016</u>

Nopmongcol, Uarporn, John Grant, Eladio Knipping, Mark Alexander, Rob Schurhoff, David Young, Jaegun Jung, Tejas Shah, and Greg Yarwood., 2017, *Air quality impacts of electrifying vehicles and equipment across the United States*, Environmental science & technology, 51(5), 2830-2837. <u>Doi: 10.1021/acs.est.6b04868</u>

Pabst, Emma, 2019, *Electric vehicles are making Texas healthier and cleaner*, Environment Texas Blog, <u>https://environmenttexas.org/blogs/blog/txe/electric-vehicles-are-making-texas-healthier-and-cleaner</u>

Public Citizen and the University of Houston, 2018, *Evaluation of the air quality impacts of clean combustion technologies, emissions controls and fleet electrification in the Houston Metropolitan Area for the year 2040*, <u>https://www.citizen.org/wp-content/uploads/migration/public-citizen-air-quality-transportation-houston-report-october-2018.pdf</u>

Scott, Mike, 2020, Yes, Electric Cars Are Cleaner, Even When The Power Comes From Coal, Forbes, https://www.forbes.com/sites/mikescott/2020/03/30/yes-electric-cars-are-cleaner-even-when-the-power-comes-fromcoal/#1053f3542320

Stevens, Pippa, 2019, Surging SUV Demand is Canceling Out the Environmental Benefit from Electric Cars, CNBC, <a href="https://www.cnbc.com/2019/10/17/surging-suv-demand-is-canceling-out-the-environmental-benefit-from-electric-cars.html">https://www.cnbc.com/2019/10/17/surging-suv-demand-is-canceling-out-the-environmental-benefit-from-electric-cars.html</a>

Texas A&M Transportation Institute (TTI), 2019, *Production of Statewide Non-Link On-road Emissions Inventories with MOVES2014a for 2016 and 2028*, July 2019, <u>ftp://amdaftp.tceq.texas.gov/El/onroad/sb604/</u>

Texas Commission on Environmental Quality (TCEQ), 2020, Analysis of Senate Bill #604, <a href="http://amdaftp.tceq.texas.gov/El/onroad/sb604/">http://amdaftp.tceq.texas.gov/El/onroad/sb604/</a>

Texas Constitution and Statutes, 2019, Section 502.004, *Information on Alternatively Fueled Vehicles*, <u>https://statutes.capitol.texas.gov/Docs/TN/htm/TN.502.htm#502.004</u>

Texas Department of Motor Vehicles (TxDMV), 2019, 2019 Alternatively Fueled Vehicle Report, https://www.txdmv.gov/reports-and-data?field\_publication\_category\_target\_id=609

Texas Legislature Online, 2019, Senate Bill 604, *Relating to the continuation and functions of the Texas Department of Motor Vehicles and to the operations of certain other entities performing functions associated with the department*, <u>https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=SB604</u>

Thompson, Tammy M., Carey W. King, David T. Allen, and Michael E. Webber, 2011, *Air quality impacts of plug-in hybrid electric vehicles in Texas: evaluating three battery charging scenarios*, Environmental Research Letters, 6(2). Doi: 10.1088/1748-9326/6/2/024004

Union of Concerned Scientists, 2020, *Are Electric Vehicles Really Better for the Climate? Yes. Here's Why*, Union of Concerned Scientists Blog, <u>https://blog.ucsusa.org/dave-reichmuth/are-electric-vehicles-really-better-for-the-climate-yes-heres-why</u>

U.S. Department of Transportation (DOT) Federal Highway Administration (FHWA), 2019, Policy and Governmental Affairs, Office of Highway Policy Information, *Highway Statistics 2018, Table MV-1, State Motor Vehicle Registrations - 2018,* December 2019, <u>https://www.fhwa.dot.gov/policyinformation/statistics/2018/mv1.cfm</u>

U.S. Energy Information Administration (EIA), 2020, Annual Energy Outlook (AEO) 2020, Reference Case, Table 38.7, Light-Duty Vehicle Sales by Technology Type, West South Central Region, January 2020, https://www.eia.gov/outlooks/aeo/tables\_ref.php

U.S. Environmental Protection Agency (EPA), 2000, 40 CFR Parts 80, 85, and 86, *Control of Air Pollution From New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements; Final Rule*, February 10, 2000, <u>https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-control-air-pollution-new-motor-vehicles-tier</u>

U.S. EPA, 40 CFR Parts 85, 86, and 600, U.S. Department of Transportation (DOT) National Highway Traffic Safety Administration (NHTSA), 2010, 49 CFR Parts 531, 533, 536, 537, and 538, *Light-Duty Vehicle Greenhouse Gas Emissions Standards and Corporate Average Fuel Economy Standards; Final Rule,* April 1, 2010, <u>https://www.nhtsa.gov/corporate-average-fuel-economy/documents-associated-mys-2012-2016-rulemaking</u>

U.S. EPA, 40 CFR Parts 85, 86, and 600, U.S. DOT NHTSA, 49 CFR Parts 523, 531, 533, et al. and 600, 2012, 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards; Final Rule, October 15, 2012, <u>https://www.nhtsa.gov/laws-regulations/corporate-average-fuel-economy</u>

U.S. EPA, 2014, 40 CFR Parts 79, 80, 85, et al., *Control of Air Pollution From New Motor Vehicles: Tier 3 Motor Vehicle Emissions and Fuel Standards; Final Rule*, April 28, 2014, <u>https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-control-air-pollution-motor-vehicles-tier-3</u>

U.S. EPA, 40 CFR Parts 85 and 600, U.S. DOT NHTSA, 49 CFR Parts 523, 531, 533, 536, and 537, 2020 The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks, April 30, 2020, https://www.nhtsa.gov/corporate-average-fuel-economy/safe

U.S. EPA, 2018, Latest Version of Motor Vehicle Emissions Simulator (MOVES), December 2018, https://www.epa.gov/moves/latest-version-motor-vehicle-emission-simulator-moves

U.S. EPA and U.S. Department of Energy (DOE) Office of Energy Efficiency & Renewable Energy, 2020, *Green Vehicle Guide*, <u>https://www.fueleconomy.gov/feg/download.shtml</u>

## Appendices

## Appendix A. Article 6, Senate Bill 604, 86th Regular Session

ARTICLE 6. STUDY ON IMPOSING FEES ON ALTERNATIVELY FUELED VEHICLES

SECTION 6.01. DEFINITIONS. In this article:

(1) "Alternatively fueled vehicle" has the meaning assigned by Section 502.004, Transportation Code.

(2) "Conventional vehicle" means a vehicle, as defined by Section 502.001, Transportation Code, that is exclusively powered by gasoline or diesel fuel.

(3) "Motor fuel taxes" means the motor fuel taxes imposed under Chapter 162, Tax Code.

SECTION 6.02. STUDY AND REPORT. (a) Using existing funds, the Texas Department of Motor Vehicles shall organize a study on:

(1) the impact of the alternatively fueled vehicles industry on the state;

(2) the options available to the state for collecting fees from owners of alternatively fueled vehicles to replace the loss of revenue from motor fuel taxes; and

(3) the feasibility and desirability of establishing a fee for alternatively fueled vehicles.

(b) The study organized under Subsection (a) of this section shall be conducted by:

- (1) the Texas Department of Motor Vehicles;
  - (2) the Public Utility Commission of Texas;

(3) the Texas Department of Transportation;

(4) the Department of Public Safety of the State of Texas; and

(5) the Texas Commission on Environmental Quality.

(c) The study must examine:

(1) the current revenue generated from motor fuel taxes imposed on a conventional vehicle and each type of alternatively fueled vehicle for each mile the vehicle is operated;

(2) the net revenue generated by fees and taxes paid by owners of alternatively fueled vehicles and conventional vehicles for the use of the vehicle, including motor vehicle registration fees under Chapter 502, Transportation Code, motor fuel taxes, and taxes, fees, and surcharges on the retail sale of electricity consumed by alternatively fueled vehicles;

(3) the methods to determine the average number of miles traveled in this state by alternatively fueled vehicles and conventional vehicles each year;

(4) the type and amount of fees by which other states generate revenue from alternatively fueled vehicles and conventional vehicles;

(5) alternative methods for determining and collecting road use fees from owners of alternatively fueled vehicles, including methods that consider the weight of and the number of miles traveled by an alternatively fueled vehicle;

(6) the projected revenue to the state for each method examined under Subdivision (5) of this subsection;

(7) the projected impact of alternatively fueled vehicles on the state highway system, including the maintenance required because of the impact;

(8) the projected direct environmental benefit of alternatively fueled vehicles on vehicle emissions in this state; and

(9) the projected impact of alternatively fueled vehicles to the state's power grids and electricity markets.

(d) Not later than December 1, 2020, the Texas Department of Motor Vehicles shall prepare and submit to the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature a written report that includes a summary of the results of the study conducted under this section and any legislative recommendations based on the study. SECTION 6.03. EXPIRATION DATE. This article expires September 1, 2021.

# Appendix B. Detailed Discussion of Direct Environmental Benefit

This appendix presents the data, procedures, and assumptions used in the analysis conducted as required by Senate Bill 604 (SB 604). It provides a detailed explanation of the components used to calculate the potential maximum direct emissions benefits of AFVs, including the federal fleet average requirements (emissions limits), electric vehicle population projections, and vehicle emissions estimates.

## Overview of Tier 2 and Tier 3 Emissions Standards for the Light-Duty Fleet

Vehicle manufacturers are required to meet U.S. Environmental Protection Agency (EPA) fleet average requirements based on the mix of vehicles in their manufactured fleet per model year. Vehicles are classified in certification bins that correspond to emissions limits. These certification bins play a key role in this analysis.

Under the Tier 2 emissions standards that applied from the 2004 through 2016 model years, vehicles were certified to Bins 1 through 8 with Bin 5 representing the fleet average requirements of 0.07 grams per mile of nitrogen oxides (NO<sub>x</sub>) and 0.09 grams per mile of non-methane organic gases (NMOG). The NO<sub>x</sub> and NMOG grams per mile rates for the other Tier 2 bins are provided in Table B-1: *Summary of Tier 2 and Tier 3 Full Useful Life Emissions Standards*.

Tier 2 Certification Bin	NOx (grams per mile)	NMOG (grams per mile)	NOx + NMOG (milligrams per mile)	Tier 3 Certification Bin
Bin 1 (Electric Vehicles)	0.000	0.000	0	Bin 0 (Electric Vehicles)
			20	Bin 20
Bin 2	0.020	0.010	30	Bin 30 (Tier 3 Average)
			50	Bin 50
			70	Bin 70
Bin 3	0.030	0.055	85	
Bin 4	0.040	0.070	110	
			125	Bin 125
Bin 5 (Tier 2 Average)	0.070	0.090	160	Bin 160 (Tier 3 Maximum)
Bin 6	0.100	0.090	190	
Bin 7	0.150	0.090	240	
Bin 8 (Tier 2 Maximum)	0.200	0.125	325	

Table B-1: Summary of Tier 2 and Tier 3 Full Useful Life Emissions Standards

Under the Tier 3 emissions standards that phase in from the 2017 through 2025 model years, the NO<sub>x</sub> and NMOG rates are converted from units of grams per mile to milligrams per mile and combined into a NO<sub>x</sub> + NMOG total for certification purposes. Vehicles that would have been certified to Bins 6, 7, and 8 under Tier 2 emissions standards can no longer be manufactured under Tier 3 emissions standards.

For each model year, the EPA *Green Vehicle Guide* provides a comprehensive list of how various makes and models are certified. For the most recent 2020 model year (EPA/DOE, 2020), summaries of 1,200 makes and models are provided in Table B-2: *Distribution of 2020 Model Year Vehicles by Tier 3 Bin and Fuel Type*. Of the 1,200 various make and model combinations available in 2020, 3% are in Bin 0, 19% are in Bin 30, 6% are in Bin 160, and the remaining 72% are from Bins 20, 50, 70, and 125. The electricity category is for battery electric vehicles (BEVs), the combination fuel type of gasoline/electricity is for plug-in hybrid electric vehicles (PHEVs), and the remaining hybrid electric vehicles (HEVs) are included in the gasoline category.

Tier 3 Bin	Gasoline	Gasoline/ Electricity	Electricity	Diesel Fuel	Ethanol/ Gasoline	Hydrogen	Total	Distribution
Bin 0			33			4	37	3.1%
Bin 20		1					1	0.1%
Bin 30	207	20					227	18.9%
Bin 50	116	1					117	9.8%
Bin 70	383	3			6		392	32.7%
Bin 125	328	9		5	16		358	29.8%
Bin 160	51			15	2		68	5.7%
Total	1,085	34	33	20	24	4	1,200	100.0%

 Table B-2: Distribution of 2020 Model Year Vehicles by Tier 3 Bin and Fuel Type

The federal rulemaking for Tier 3 emissions standards states that "compliance with the more stringent Tier 3 fleet average standards will require vehicle manufacturers to certify a significant amount of vehicles to bin standards that are below the Bin 30 fleet average standard to offset other vehicles that are certified to bin standards that remain somewhat above the Bin 30 fleet average even after significantly reducing their emissions. [...] There is also very limited ability for vehicle manufacturers to certify vehicles below the stringent Tier 3 fleet average exhaust emissions standard since Bin 20 and Bin 30 standards for individual vehicle certification test groups are approaching the engineering limits of what can be achieved for vehicles using an internal combustion engine and Bin 0 can only be achieved by electric-only vehicle operation. The result is that there is a very limited ability to offset sales of vehicles certified above the 30 milligrams per mile fleet average emission standard." (EPA, 2014).

Based on how the Tier 3 emissions standards are structured, a manufacturer will have the option of providing 100% of its 2025-and-later vehicles in Bin 30, or providing up to 81% of its vehicles in the Bin 0 category for electric vehicles while certifying the remaining 19% in the Bin 160 maximum category. These and other certification scenarios are summarized in Table B-3: *Compliance Options Under Tier 3 Emissions Standards for 2025-and-Later Model Years*.

Tier 3 Certification Bin	Gasoline Vehicle Sales	Bin 0 Electric Vehicle Sales	Gasoline and Electric Vehicle Sales	Total Emissions (milligrams per mile)	Fleet Average (milligrams per mile)	Gasoline Portion	Electric Portion
Bin 30	1	0	1	30	30	100%	0%
Bin 50	3	2	5	150	30	60%	40%
Bin 70	3	4	7	210	30	43%	57%
Bin 125	6	19	25	750	30	24%	76%
Bin 160	3	13	16	480	30	19%	81%

 Table B-3: Compliance Options Under Tier 3 Emissions Standards for 2025-and-Later Model Years

## On-Road Emissions Inventories for 2016 and 2028

Under a grant agreement with the Texas Commission on Environmental Quality (TCEQ), the Texas A&M Transportation Institute (TTI) developed on-road emissions inventories for all 254 Texas counties for both a 2016 historical year and a 2028 future year (TTI, 2019) using the 2014a version of the Motor Vehicle Emissions Simulator (MOVES2014a) model (EPA, 2018). For a given calendar year, the MOVES2014a model provides emissions rates for
31 model years in operation. For this TTI study, the vehicle miles traveled (VMT) projections were based on Highway Performance Monitoring System (HPMS) data from the Texas Department of Transportation (TxDOT), and the vehicle population projections were based on registration database queries from the Texas Department of Motor Vehicles (TxDMV).

Emissions and fuel consumption rates for the 1986 through 2016 model years are presented in Figure B-1: *Passenger Car NOx, VOC, and Fuel Economy Rates by Model Year Operating in 2016.* As shown, the Tier 2 emissions standards that phased in from 2004 through 2007 have lower emissions for NO<sub>x</sub> and volatile organic compounds (VOC) than the standards that applied for Tier 1 in the 1990s and for the National Low Emissions Vehicle (NLEV) program from 2001 through 2003. The Tier 2 and Tier 3 emissions standards specify NMOG, but VOC is provided here because it is more commonly used and reported for air quality modeling purposes. NMOG are total organic gases excluding methane, while VOC are total organic gases excluding methane and ethane. The 2011-and-older model year passenger cars operating in 2016 have roughly similar average fuel economy rates because the Corporate Average Fuel Economy (CAFE) standards affecting the 2012 through 2016 model years did not yet apply (EPA/NHTSA, 2010).



#### Figure B-1: Passenger Car NOX, VOC, and Fuel Economy Rates by Model Year Operating in 2016

Emissions and fuel consumption rates for the 1998 through 2028 model years are presented in Figure B-2: *Passenger Car NOx, VOC, and Fuel Economy Rates by Model Year Operating in 2028.* Under the *2020 Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule,* fuel economy standards phase in from the 2021 through 2026 model years, resulting in an average in-use fuel consumption rate for passenger cars of roughly 40 miles per gallon (mpg) after 2026 (EPA/NHTSA, 2020). Emission rates in 2028 by model year for carbon monoxide (CO), particulate matter (PM), sulfur dioxide (SO<sub>2</sub>), and ammonia (NH<sub>3</sub>) are provided in Table B-8: *2028 Summer Weekday Activity and Emissions Rates by Model Year for Electric Passenger Car Analysis* and Table B-9: *2028 Summer Weekday Activity and Emissions Rates by Model Year for Electric Passenger Truck Analysis*.



Figure B-2: Passenger Car NOX, VOC, and Fuel Economy Rates by Model Year Operating in 2028

In 2028, the majority of Tier 1, NLEV, and Tier 2 vehicles that operated in 2016 are expected to have left the fleet due to attrition, and roughly 71% of the fleet is expected to be comprised of very low-emitting vehicles that meet the Tier 3 emissions standards. The expected impact of this fleet turnover is presented in Figure B-3: *Texas Light-Duty Fleet NOx and VOC in 2016 and 2028 by Emissions Standard*.

The 18.8 million light-duty vehicles operating in 2016 are estimated to have emitted 282 tons of NO<sub>x</sub> per day, while the 21.8 million light-duty vehicles projected to be operating in 2028 are estimated to emit 78 tons of NO<sub>x</sub> per day, which is a reduction of 72% even though the overall fleet is expected to grow by 16%. The VOC emissions from the light-duty fleet are expected to decline by roughly 50% during this period, from 247 tons per day in 2016 to 123 tons per day in 2028.

V



#### Figure B-3: Texas Light-Duty Fleet NO<sub>X</sub> and VOC by Emissions Standard

Due to the increasing stringency of fuel economy standards that must be met after the 2016 model year, total carbon dioxide (CO<sub>2</sub>) emissions from 2016 to 2028 are expected to decline by 16% even though the light-duty vehicle population is expected to increase by 16%. This is shown in Figure B-4: *Texas Light-Duty Fleet CO<sub>2</sub> Emissions in 2016 and 2028 by Model Year Groups*. The tailpipe emissions standards affecting pollutants such as NO<sub>x</sub> and VOC have typically not phased in simultaneously with standards for fuel economy and CO<sub>2</sub>. To be consistent with Figure B-3, the same model year groups are used in Figure B-4 to shows the fleet turnover effects for CO<sub>2</sub>.



Figure B-4: Texas Light-Duty Fleet CO2 Emissions in 2016 and 2028 by Model Year Groups

#### Electric Vehicle Population Projections for 2028

The TxDMV is required to annually report the number of AFVs operating in the state. The number of electric vehicle registrations for the 2016 through 2019 fiscal years are available in Appendix E of the 2019 Alternatively Fueled Vehicle Report. The differences between the fiscal year registrations were used to obtain incremental model year assignments for electric vehicles that were needed for this analysis. The results are presented in Table B-4: *Texas Statewide Electric Vehicle Registrations by Fiscal Year and Model Year*.

Texas Statewide Electric Vehicle Registrations	2016	2017	2018	2019
Texas Registrations by Fiscal Year	8,397	11,724	18,990	29,540
Percent Increase in Registrations		39.6%	62.0%	56.0%
Incremental Model Year Assignment	8,397	3,327	7,266	10,550

Table B-4: Texas Statewide Electric Vehicle Registrations by Fiscal Year and Model Year

The U.S. Energy Information Administration (EIA) typically updates its Annual Energy Outlook (AEO) in January of each year. The TCEQ obtained data from the 2020 AEO, Table 38.7, *Light Duty Vehicle Sales by Technology Type: West South Central Region* (EIA, 2020). This table contains vehicle sales projections from 2019 through 2050 for the region encompassing Arkansas, Louisiana, Oklahoma, and Texas.

The U.S. Department of Transportation (DOT) Federal Highway Administration (FHWA) annually publishes its Highway Statistics Series (FHWA, 2019). For the most recently available 2018 data set, Texas automobile registrations comprised 69.6% of the total from all four West South Central states. This percentage was applied to the BEV and PHEV projections from the 2020 AEO. Separate projections were provided by the 2020 AEO for

passenger cars and light trucks, with the latter category covering most minivans, pickups, and sport utility vehicles (SUVs).

These general categories align with the passenger car and passenger truck source use types (SUTs) in the MOVES2014a model used for this analysis (EPA, 2018). Summaries of this work are presented in Table B-5: *Estimation of 2020-through-2028 Electric Passenger Car Sales for Texas* and Table B-6: *Estimation of 2020-through-2028 Electric Passenger Truck Sales for Texas*.

2020 AEO Passenger Car Projections	2020	2021	2022	2023	2024	2025	2026	2027	2028
BEVs	36,408	47,854	47,711	49,346	53,393	58,569	60,409	62,605	65,585
PHEVs	8,318	6,989	6,008	5,648	5,369	4,533	4,710	5,090	5,596
West South Central Total	44,726	54,843	53,719	54,994	58,762	63,102	65,118	67,695	71,181
Texas Portion (69.6%)	31,119	38,158	37,376	38,263	40,885	43,904	45,307	47,100	49,526

Table B-5: Estimation of 2020-through-2028 Electric Passenger Car Sales for Texas

2020 AEO Minivan/Pickup/SUV Projections	2020	2021	2022	2023	2024	2025	2026	2027	2028
BEVs	6,475	7,256	7,983	8,515	9,383	9,695	9,812	10,050	10,462
PHEVs	3,340	3,379	3,153	2,985	2,866	3,449	7,188	8,494	8,594
West South Central Total	9,815	10,635	11,136	11,500	12,249	13,144	17,001	18,544	19,056
Texas Portion (69.6%)	6,829	7,399	7,748	8,001	8,522	9,145	11,828	12,902	13,259

Table B-6: Estimation of 2020-through-2028 Electric Passenger Truck Sales for TexasEstimation of Maximum Environmental Benefits in 2028

The TCEQ conducted an analysis to determine what the maximum possible additional direct emissions reductions would be if all the 486,811 light-duty electric vehicles projected to be operating in 2028 were not used to meet fleet average requirements. Under such a hypothetical scenario, all the gasoline and diesel vehicle sales from 2016 through 2028 would average out to the fleet average requirements, thus leaving electric vehicle sales to provide

additional direct environmental benefits. The potential additional reductions that could be achieved daily if none of the 486,811 light-duty electric vehicles in 2028 are needed by manufacturers to meet fleet average requirements are presented in Table B-7: *2028 Maximum* 

Daily Emissions Benefits from Light-Duty Electric Vehicles. To obtain these results, the MOVES2014a model was run for a summer weekday scenario in 2028 for all 254 Texas counties to obtain fleet average emissions rates by model year.

Pollutant or Vehicle Data	2028 Light-Duty Fleet Totals	2028 Maximum Electric Vehicle Impacts	2028 Maximum Electric Vehicle Impact Portion
Vehicle Population	21,844,307	486,811	2.2%
Daily Vehicle Miles Traveled	737,198,139	18,945,921	2.6%
NO <sub>x</sub> (tons per day)	77.65	0.63	0.8%

Board Meeting eBook

Pollutant or Vehicle Data	2028 Light-Duty Fleet Totals	2028 Maximum Electric Vehicle Impacts	2028 Maximum Electric Vehicle Impact Portion
VOC from Vehicles (tons per day)	122.67	0.95	0.8%
CO (tons per day)	1,811.19	19.70	1.1%
CO <sub>2</sub> (tons per day)	220,966.51	4,945.73	2.2%
SO <sub>2</sub> (tons per day)	1.47	0.03	2.2%
NH <sub>3</sub> (tons per day)	15.71	0.35	2.2%
PM <sub>2.5</sub> (tons per day)	2.72	0.03	1.3%
PM <sub>10</sub> (tons per day)	3.07	0.04	1.3%
VOC from Refueling (tons per day)	8.14	0.15	1.9%
Fuel Consumption (gallons per day)	23,457,278	525,093	2.2%

Table B-7: 2028 Maximum Daily Emissions Benefits from Light-Duty Electric Vehicles

Light-duty passenger vehicles comprise the majority of the vehicles on roadways and are the focus of this analysis. The TCEQ separately analyzed gasoline passenger cars, diesel passenger cars, gasoline passenger trucks, and diesel passenger trucks, which are collectively considered the light-duty fleet. These results were aggregated to obtain fleet average emissions rates by model year for passenger cars and passenger trucks. Summaries are provided in Table B-8: 2028 Summer Weekday Activity and Emissions Rates by Model Year for Electric Passenger Car Analysis. To estimate the maximum possible benefits that could be obtained from electric vehicles, the fleet average emissions rates by model year for passenger for each electric vehicle.

This approach presumes that each electric vehicle would have been a gasoline or diesel vehicle from the same model year that meets the fleet average requirements. For example, Table B-8 shows that 49,526 electric passenger cars from the 2028 model year are projected to operate an average of 42.7 miles per day, which totals 2,114,760 miles. When multiplied by a fleet average emissions rate of 0.014 grams per mile of NO<sub>x</sub>, a maximum possible benefit of 65 pounds is obtained. Similar calculations were done for different pollutants, model years, and vehicle types as presented in Table B-10: 2028 Summer Weekday Emissions and Fuel Consumption by Model Year for Electric Passenger Car Analysis and Table B-11: 2028 Summer Weekday Emissions and Fuel Consumption by Model Year for Electric Passenger Truck Analysis. All of the electronic files used in the analysis are available for download at ftp://amdaftp.tceq.texas.gov/El/onroad/sb604/ (TCEQ, 2020).

Inventory Parameter	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	Total/ Average
Electric Vehicle Miles Traveled	254,209	104,711	237,255	356,935	1,087,383	1,377,945	1,391,800	1,464,688	1,610,083	1,775,132	1,875,066	1,988,781	2,115,847	15,639,834
Electric Vehicle Population	8,397	3,327	7,266	10,550	31,119	38,158	37,376	38,263	40,885	43,904	45,307	47,100	49,526	401,178
Daily Accumulation (miles per vehicle)	30.3	31.5	32.7	33.8	34.9	36.1	37.2	38.3	39.4	40.4	41.4	42.2	42.7	39.0
NO <sub>x</sub> (grams per mile)	0.1228	0.0852	0.0783	0.0617	0.0560	0.0420	0.0378	0.0281	0.0252	0.0142	0.0140	0.0141	0.0140	0.0283
VOC from Vehicles (grams per mile)	0.2204	0.1597	0.1375	0.0911	0.0760	0.0613	0.0497	0.0406	0.0379	0.0300	0.0294	0.0304	0.0301	0.0465
CO (grams per mile)	4.3413	2.2765	2.1379	1.6225	1.5142	1.3670	1.2720	1.0348	0.9670	0.4958	0.4926	0.5049	0.5028	0.9382
CO₂ (grams per mile)	290.40	273.95	262.16	250.97	240.50	228.92	225.07	219.92	216.06	214.78	212.21	212.21	212.21	221.53
SO₂ (grams per mile)	0.0019	0.0018	0.0017	0.0017	0.0016	0.0015	0.0015	0.0015	0.0014	0.0014	0.0014	0.0014	0.0014	0.0015
NH₃ (grams per mile)	0.0228	0.0228	0.0228	0.0185	0.0185	0.0185	0.0185	0.0152	0.0152	0.0153	0.0152	0.0152	0.0152	0.0164
PM <sub>2.5</sub> (grams per mile)	0.0049	0.0040	0.0038	0.0027	0.0023	0.0017	0.0017	0.0015	0.0014	0.0012	0.0012	0.0012	0.0012	0.0016
PM <sub>10</sub> (grams per mile)	0.0056	0.0045	0.0043	0.0031	0.0026	0.0019	0.0019	0.0016	0.0016	0.0013	0.0013	0.0013	0.0013	0.0018
VOC from Refueling (grams per gallon)	0.27	0.27	0.27	0.27	0.27	0.27	0.27	0.26	0.27	0.27	0.27	0.27	0.26	0.27
Total Energy Consumption (kilojoules per mile)	4,039	3,811	3,647	3,491	3,345	3,184	3,131	3,059	3,005	2,988	2,952	2,952	2,952	3,081
Fuel Economy (miles per gallon)	29.4	31.2	32.6	34.0	35.5	37.3	37.9	38.8	39.5	39.8	40.2	40.2	40.2	38.5
CO <sub>2</sub> (grams per gallon)	8,538	8,538	8,538	8,538	8,538	8,538	8,538	8,538	8,538	8,538	8,538	8,538	8,538	8,538
SO₂ (grams per gallon)	0.0567	0.0567	0.0567	0.0567	0.0567	0.0567	0.0567	0.0567	0.0567	0.0567	0.0567	0.0567	0.0567	0.0567

 Table B-8: 2028 Summer Weekday Activity and Emissions Rates by Model Year for Electric Passenger Car Analysis

Inventory Parameter	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	Total/ Average
Electric Vehicle Miles Traveled		•			227,108	254,975	277,200	295,474	325,054	359,924	478,435	531,256	556,663	3,306,087
Electric Vehicle Population	Ī				6,829	7,399	7,748	8,001	8,522	9,145	11,828	12,902	13,259	85,633
Daily Accumulation (miles per vehicle)	1				33.3	34.5	35.8	36.9	38.1	39.4	40.4	41.2	42.0	38.6
NOx (grams per mile)	1				0.0970	0.0714	0.0615	0.0440	0.0376	0.0221	0.0219	0.0219	0.0218	0.0377
VOC from Vehicles (grams per mile)	1				0.0864	0.0686	0.0558	0.0441	0.0404	0.0307	0.0300	0.0306	0.0301	0.0415
CO (grams per mile)					1.9703	1.7459	1.5781	1.2623	1.1420	0.5799	0.5772	0.5888	0.5870	0.9675
CO <sub>2</sub> (grams per mile)					336.02	322.23	317.21	313.45	310.94	307.18	300.91	300.91	300.92	309.1243
SO <sub>2</sub> (grams per mile)	1				0.0022	0.0021	0.0021	0.0021	0.0021	0.0020	0.0020	0.0020	0.0020	0.0020
NH <sub>3</sub> (grams per mile)	1				0.0202	0.0202	0.0202	0.0169	0.0169	0.0169	0.0169	0.0169	0.0169	0.0176
PM <sub>2.5</sub> (grams per mile)	1				0.0037	0.0028	0.0028	0.0026	0.0025	0.0017	0.0017	0.0017	0.0017	0.0022
PM <sub>10</sub> (grams per mile)					0.0041	0.0032	0.0031	0.0029	0.0029	0.0019	0.0019	0.0019	0.0019	0.0024
VOC from Refueling (grams per gallon)	1				0.27	0.27	0.27	0.27	0.27	0.27	0.27	0.27	0.27	0.27
Total Energy Consumption (kilojoules per mile)	1				4,671	4,479	4,410	4,357	4,323	4,270	4,183	4,183	4,183	4,297
Fuel Economy (miles per gallon)	1				25.5	26.6	27.0	27.3	27.6	27.9	28.5	28.5	28.5	27.7
CO <sub>2</sub> (grams per gallon)	1				8,568	8,568	8,568	8,568	8,568	8,568	8,568	8,568	8,568	8,568
SO <sub>2</sub> (grams per gallon)					0.0567	0.0567	0.0567	0.0567	0.0567	0.0567	0.0567	0.0567	0.0567	0.0567

Table B-9: 2028 Summer Weekday and Emissions Rates by Model Year for Electric Passenger Truck Analysis

Inventory Parameter	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	Total
NOx (pounds per day)	69	20	41	49	134	128	116	91	90	55	58	62	65	977
VOC from Vehicles (pounds per day)	124	37	72	72	182	186	152	131	135	118	121	133	140	1,603
CO (pounds per day)	2,433	526	1,118	1,277	3,630	4,153	3,903	3,341	3,433	1,940	2,036	2,214	2,346	32,350
CO <sub>2</sub> (pounds per day)	162,752	63,241	137,126	197,490	576,545	695,442	690,596	710,150	766,949	840,536	877,222	930,422	989,868	7,638,338
SO <sub>2</sub> (pounds per day)	1	0	1	1	4	5	5	5	5	6	6	6	7	51
NH₃ (pounds per day)	13	5	12	15	44	56	57	49	54	60	63	67	71	565
PM <sub>2.5</sub> (pounds per day)	3	1	2	2	6	5	5	5	5	5	5	5	5	54
PM <sub>10</sub> (pounds per day)	3	1	2	2	6	6	6	5	6	5	6	6	6	61
VOC from Refueling (pounds per day)	5	2	4	6	18	22	21	22	24	26	27	29	31	237
Fuel Consumption (gallons per day)	8,647	3,360	7,285	10,492	30,631	36,948	36,691	37,729	40,747	44,657	46,606	49,432	52,590	405,816

Table B-10: 2028 Summer Weekday Emissions and Fuel Consumption by Model Year for Electric Passenger Car Analysis

Inventory Parameter	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	Total
NO <sub>x</sub> (pounds per day)					49	40	38	29	27	18	23	26	27	275
VOC from Vehicles (pounds per day)	1				43	39	34	29	29	24	32	36	37	302
CO (pounds per day)					987	981	964	822	818	460	609	690	720	7,052
CO <sub>2</sub> (pounds per day)					168,240	181,132	193,855	204,185	222,830	243,749	317,394	352,435	369,298	2,253,118
SO <sub>2</sub> (pounds per day)					1	1	1	1	1	2	2	2	2	15
NH <sub>3</sub> (pounds per day)					10	11	12	11	12	13	18	20	21	129
PM <sub>2.5</sub> (pounds per day)					2	2	2	2	2	1	2	2	2	16
PM <sub>10</sub> (pounds per day)					2	2	2	2	2	2	2	2	2	18
VOC from Refueling (pounds per day)	1				5	6	6	6	7	8	10	11	11	70
Fuel Consumption (gallons per day)					8,906	9,589	10,262	10,809	11,796	12,904	16,802	18,657	19,550	119,276

Table B-11: 2028 Summer Weekday Emissions and Fuel Consumption by Model Year for Electric Passenger Truck Analysis

## Appendix C. Texas Motor Vehicle Fee & Tax Exemptions

#### Registration Fee Exemptions

Vehicles registered with the following license plates are exempt from registration fees:

License Plate	License Plate Fee	Reference
Air Medal & Air Medal with Valor, first set	N/A	Sections 504.3015 & 504.315(a-1), Transportation Code
Airman's Medal, first set	N/A	Sections 504.3015 & 504.315(m), Transportation Code
Antique Auto, Bus, Motorcycle, or Truck (manufactured 1921 or later)	\$10.00	Section 504.502, Transportation Code
Antique Auto, Bus, Motorcycle, or Truck (manufactured before 1921)	\$8.00	Section 504.502, Transportation Code
Bronze Star Medal & Bronze Star Medal with Valor	N/A	Sections 504.3015 & 504.315(a), Transportation Code
Coast Guard Medal, first set	N/A	Sections 504.3015 & 504.315(I), Transportation Code
Congressional Medal of Honor, first set	N/A	Sections 504.3015 & 504.315(e), Transportation Code
Cotton Vehicle	N/A	Section 504.505, Transportation Code
Defense Meritorious Service Medal, first set	N/A	Sections 504.3015 & 504.315(j), Transportation Code
Defense Superior Service Medal, first set	N/A	Sections 504.3015 & 504.319, Transportation Code
Disabled Veteran, first set	\$3.00	Section 504.202, Transportation Code
Disaster Relief	\$5.00	Section 502.454, Transportation Code
Distinguished Flying Cross Medal & Distinguished Flying Cross Medal with Valor, first set	N/A	Sections 504.3015 & 504.308, Transportation Code
Distinguished Service Medal, first set	N/A	Sections 504.3015 & 504.315(b), Transportation Code
Foreign Organization License Plate	N/A	Section 504.4061, Transportation Code
Golf Cart License Plate	\$10.00	Sections 551.402 & 504.002(b), Transportation Code
Legion of Merit, first set	N/A	Section 504.316, Transportation Code
Legion of Valor, first set	N/A	Sections 504.3015 & 504.315(f), Transportation Code
Log Loader License Plate	\$62.50	Section 504.506, Transportation Code
Machinery License Plate	\$5.00	Section 502.146, Transportation Code
Meritorious Service Medal, first set	N/A	Sections 504.3015 & 504.315(k), Transportation Code
Navy and Marine Corps Medal, first set	N/A	Sections 504.3015 & 504.315(o), Transportation Code
Off-Highway Vehicle License Plate	\$10.00	Section 551A.052, Transportation Code
Package Delivery License Plate	\$25.00	Section 551.452, Transportation Code
Peace Officer Purple Heart	\$3.00	Section 504.5115, Transportation Code
Pearl Harbor Survivor, first set	\$3.00	Sections 504.3015 & 504.315(d), Transportation Code
Prisoner of War, first set	N/A	Sections 504.3015 & 504.315(p), Transportation Code
Purple Heart, first set	N/A	Sections 504.3015 & 504.315(g), Transportation Code
Silver Star Medal, first set	N/A	Sections 504.3015 & 504.315(h), Transportation Code
Soldier's Medal, first set	N/A	Sections 504.3015 & 504.315(n), Transportation Code
Surviving Spouse of a Disabled Veteran, first set	\$3.00	Section 504.317, Transportation Code

Table C-1: Texas License Plates with Non-standard Registration Fee.

#### Title Transfer Fee Exemptions

The following title transactions are exempt from the title application fee:

- 1. Title transfers for vehicles owned by state agencies, Section 501.138, Transportation Code
- 2. Title transfers for vehicles owned by political subdivisions of the state, Section 501.138, Transportation Code
- 3. Title corrections when a county tax office error is confirmed for original title transaction
- 4. Non-title transactions

#### Motor Vehicle Sales Tax Exemptions

The following are exempt from the motor vehicle sales tax:

- 1. Motor vehicles purchased, rented, or used by child care facilities, Section 152.093, Tax Code
- 2. Motor vehicles used for religious purposes, Section 152.088, Tax Code
- 3. Community Property/Divorce
- 4. Dealer Resale
- 5. Driver training motor vehicles, Section 152.081, Tax Code
- 6. Vehicles for farm or timber use, Section 152.091, Tax Code
- 7. Fire trucks and emergency medical services vehicles, Section 152.087, Tax Code
- 8. Heirship
- 9. Interstate motor vehicle (motor carrier), Section 152.089, Tax Code

- 10. Minor
- 11. Motor vehicles used by foreign consular officers, 34 Texas Administrative Code § 3.63
- 12. Motor vehicles used by NATO personnel stationed in Texas, 34 Texas Administrative Code § 3.68
- 13. Off-Highway
- 14. Motor vehicles driven by orthopedically handicapped persons, Section 152.086, Tax Code
- 15. Motor vehicles sold to or used by a public agency, Section 152.082, Tax Code
- 16. Hydrogen-powered vehicles that meet the Phase II standards established by the California Air Resources Board as of September 1, 2007, for an ultra low-emission vehicle II or stricter Phase II emission standards established by that board and is either hydrogen power capable and has a fuel economy rating of at least 45 miles per gallon or is fully hydrogen-powered.
- 17. Rental
- 18. Seller-Financed Sale

#### Motor Fuel Tax Exemptions

#### Gasoline Tax

Section 162.104, Tax Code, provides that the gasoline tax does not apply to gasoline:

- 1. Sold to the United States for its exclusive use, provided that the exemption does not apply with respect to fuel sold or delivered to a person operating under a contract with the United States
- 2. Sold to a public school district in this state for the district's exclusive use
- 3. Sold to a commercial transportation company or a metropolitan rapid transit authority that provides public school transportation services to a school and that uses the gasoline only to provide those services
- 4. Exported by either a licensed supplier or a licensed exporter from this state to any other state, provided that the bill of lading indicates the destination state and the supplier collects the destination state tax

Note: Does not apply to gasoline that is transported and delivered outside this state in the motor fuel supply tank of a motor vehicle other than an interstate trucker

Note: Applies only if the destination state recognizes, by agreement with this state or by statute or rule, a supplier in this state as a valid taxpayer for the motor fuel being exported to that state from this state

Note: Does not apply to a sale by a distributor

- 5. Moved by truck or railcar between licensed suppliers or licensed permissive suppliers and in which the gasoline removed from the first terminal comes to rest in the second terminal, provided that the removal from the second terminal rack is subject to the gasoline tax
- 6. Delivered or sold into a storage facility of a licensed aviation fuel dealer from which gasoline will be delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment, or sold from one licensed aviation fuel dealer to another licensed aviation fuel dealer who will deliver the aviation fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment
- 7. Exported to a foreign country if the bill of lading or shipping documents indicate the foreign destination and the fuel is actually exported to the foreign country
- 8. Sold to a volunteer fire department in this state for the department's exclusive use
- 9. Sold to a nonprofit entity that is organized for the sole purpose of and engages exclusively in providing emergency medical services and that uses the gasoline exclusively to provide emergency medical services, including rescue and ambulance services

#### Diesel Fuel Tax

Section 162.204, Tax Code, provides that the diesel fuel tax does not apply to:

- 1. Diesel fuel sold to the United States for its exclusive use, provided that the exemption does not apply to diesel fuel sold or delivered to a person operating under a contract with the United States
- 2. Diesel fuel sold to a public school district in this state for the district's exclusive use
- 3. Diesel fuel sold to a commercial transportation company or a metropolitan rapid transit authority operating and that uses the diesel fuel only to provide those services
- 4. Diesel fuel exported by either a licensed supplier or a licensed exporter from this state to any other state, provided that the bill of lading indicates the destination state and the supplier collects the destination state tax

Note: does not apply to diesel fuel that is transported and delivered outside this state in the motor fuel supply tank of a motor vehicle other than an interstate trucker

Note: applies only if the destination state recognizes, by agreement with this state or by statute or rule, a supplier in this state as a valid taxpayer for the motor fuel being exported to that state from this state

Note: does not apply to a sale by a distributor

- 5. Diesel fuel moved by truck or railcar between licensed suppliers or licensed permissive suppliers and in which the diesel fuel removed from the first terminal comes to rest in the second terminal, provided that the removal from the second terminal rack is subject to the diesel fuel tax
- 6. Diesel fuel delivered or sold into a storage facility of a licensed aviation fuel dealer from which the diesel fuel will be delivered solely into the fuel supply tanks of aircraft or aircraft servicing equipment, or sold from one licensed aviation fuel dealer to

another licensed aviation fuel dealer who will deliver the diesel fuel exclusively into the fuel supply tanks of aircraft or aircraft servicing equipment

- 7. Diesel fuel exported to a foreign country if the bill of lading or shipping documents indicate the foreign destination and the fuel is actually exported to the foreign country
- Dyed diesel fuel sold or delivered by a supplier to another supplier and dyed diesel fuel sold or delivered by a supplier or distributor into the bulk storage facility of a dyed diesel fuel bonded user or to a purchaser who provides a signed statement as provided by Section 162.206
- 9. The volume of water, fuel ethanol, renewable diesel, biodiesel, or mixtures thereof that are blended together with taxable diesel fuel when the finished product sold or used is clearly identified on the retail pump, storage tank, and sales invoice as a combination of diesel fuel and water, fuel ethanol, renewable diesel, biodiesel, or mixtures thereof
- 10. Dyed diesel fuel sold by a supplier or permissive supplier to a distributor, or by a distributor to another distributor
- 11. Dyed diesel fuel delivered by a license holder into the fuel supply tanks of railway engines, motorboats, or refrigeration units or other stationary equipment powered by a separate motor from a separate fuel supply tank
- 12. Dyed kerosene when delivered by a supplier, distributor, or importer into a storage facility at a retail business from which all deliveries are exclusively for heating, cooking, lighting, or similar nonhighway use
- 13. Diesel fuel used by a person, other than a political subdivision, who owns, controls, operates, or manages a commercial motor vehicle if the fuel:
  - a. is delivered exclusively into the fuel supply tank of the commercial motor vehicle and
  - b. is used exclusively to transport passengers for compensation or hire between points in this state on a fixed route or schedule
- 14. Diesel fuel sold to a volunteer fire department in this state for the department's exclusive use
- 15. Diesel fuel sold to a nonprofit entity that is organized for the sole purpose of and engages exclusively in providing emergency medical services and that uses the diesel fuel exclusively to provide emergency medical services, including rescue and ambulance services

#### Compressed Natural Gas and Liquefied Natural Gas Tax

Section 162.356, Tax Code, provides that the compressed natural gas and liquefied natural gas tax does not apply to compressed natural gas or liquefied natural gas delivered into the fuel supply tank of:

- 1. A motor vehicle operated exclusively by the United States, provided that the exemption does not apply with respect to fuel delivered into the fuel supply tank of a motor vehicle of a person operating under a contract with the United States
- 2. A motor vehicle operated exclusively by a public school district in this state
- 3. A motor vehicle operated exclusively by a commercial transportation company or a metropolitan rapid transit authority that provides public school transportation services to a school district and that uses the fuel only to provide those services
- 4. A motor vehicle operated exclusively by a volunteer fire department in this state
- 5. A motor vehicle operated exclusively by a municipality or county in this state
- 6. A motor vehicle operated exclusively by a nonprofit electric cooperative corporation
- 7. A motor vehicle operated exclusively by a nonprofit telephone cooperative corporation
- 8. A motor vehicle that is not registered for use on the public highways of this state and that is used exclusively off-highway
- 9. A motor vehicle operated exclusively by a nonprofit entity that is organized for the sole purpose of and engages exclusively in providing emergency medical services and that uses the fuel exclusively to provide emergency medical services, including rescue and ambulance services
- 10. Off-highway equipment, a stationary engine, a motorboat, an aircraft, equipment used solely for servicing aircraft and used exclusively off-highway, a locomotive, or any device other than a motor vehicle operated or intended to be operated on the public highways
- 11. A motor vehicle used to provide the services of a transit company, including a metropolitan rapid transit authority or a regional transportation authority and operated by a person who on January 1, 2015, paid tax on compressed natural gas or liquefied natural gas as provided by Section 162.312, as that section existed on that date. *Note: Does not apply to compressed natural gas or liquefied natural gas delivered into the fuel supply tank of a motor vehicle from a refueling facility accessible to motor vehicles other than those described in the first sentence in this exemption*

Board Meeting eBook



HELPING TEXANS GO. HELPING TEXAS GROW.

Board Meeting Date: 12/10/2020 BRIEFING

То:	Texas Department of Motor Vehicles Board
From:	Caroline Love, Government & Strategic Communications Division Director
Agenda Item:	13.B
Subject:	Agency Process for Legislative Session

#### RECOMMENDATION

Briefing Only.

#### PURPOSE AND EXECUTIVE SUMMARY

This briefing will cover the key dates for the 87th Legislative Session, as well as the responsibilities of the Government & Strategic Communications Division as it relates to the department's review and analysis of legislation, coordination of the department in legislative hearings and meetings, and providing updates to department leadership and the TxDMV Board.

FINANCIAL IMPACT

None.

#### BACKGROUND AND DISCUSSION

The Government & Strategic Communications Division will be providing regular updates throughout the session on the status of legislation impacting the department.

Board Meeting eBook



HELPING TEXANS GO. HELPING TEXAS GROW.

То:	Texas Department of Motor Vehicles Board
From:	Caroline Love, Government & Strategic Communications Division Director
Agenda Item:	13.C
Subject:	Additional Recommended Legislation to the 87th Legislature Pursuant to Transportation Code, §1001.025

#### RECOMMENDATION

The supporting document outlines potential recommendations for adoption.

#### PURPOSE AND EXECUTIVE SUMMARY

The Texas Department of Motor Vehicles (TxDMV) Board is charged with considering ways in which to improve the operations of the department and may report potential statutory changes to the Texas Legislature under Texas Transportation Code, Section 1001.025.

Upon adoption, recommendations shall be submitted to the Governor, Lieutenant Governor, Speaker of the House, and the presiding officers of relevant legislative committees for further potential handling during the 87th Legislative Session.

FINANCIAL IMPACT None.

#### BACKGROUND AND DISCUSSION

Earlier this year TxDMV's Government and Strategic Communications Division worked with all the department's divisions and offices and external stakeholders to begin identifying potential statutory changes to bring for the board to consider.

Additionally, the TxDMV Board established advisory committees comprised of members from the public and stakeholder groups. It is noted where these committees have provided recommendations through this process.

Some recommendations were previously adopted by the Legislative & Public Affairs Committee on September 30, 2020; and subsequently by the TxDMV Board on October 1, 2020. These additional recommendations were presented to the Legislative & Public Affairs Committee on December 9, 2020 for discussion. Those recommendations adopted by the committee are now presented to the TxDMV Board for further consideration of adoption.

These additional recommendations have been fully developed by the department in consultation with stakeholders and advisory committees that are recommended for adoption.

#### 87<sup>th</sup> Proposed Statute Changes – Pending Items

1. Evaluate methods to help stop temporary tag abuse. Clarify the display of temporary permits methods to assist with tag identification. Evaluate feedback from the Consumer Protection Advisory Committee (CPAC).

To curtail egregious abuse of the eTAG system, create a two-step process that allows TxDMV to suspend access to the eTAG system while TxDMV investigates and pursues enforcement action for the ultimate sanction. TxDMV has been contacted by Texas law enforcement seeing a high volume of fraudulent temporary tags as well as law enforcement from other states regarding the temp tag misuse. Some license holders may be abusing their access to the eTAG system to sell large numbers of fraudulent temporary tags without selling actual vehicles. A statutory change would give TxDMV the ability to suspend a license holder's access to the eTAG system in instances where it has evidence of fraudulent misuse and where continued access would pose a risk to the public. The suspension would only affect the license holder's access to the eTAG system; the license holder would still be able to issue temporary tags through other means such as through a tax assessor-collector office. The statutory change creates a separate, preliminary litigation process, so a license holder can quickly contest (within 20 calendar days) the eTAG suspension in a hearing that would likely take less than a day at the State Office of Administrative Hearings (SOAH). This new expedited hearing gives SOAH the ability to decide only the question of whether TxDMV can keep the suspension in place while it is pursuing the ultimate sanction for the license holder. The statutory change would not affect the current process for the ultimate sanction; the final decision regarding sanctions would remain with the TxDMV Board. For example, a license holder may have their access to the eTAG system restored if no sanction is issued. Also, the statutory change would remove a reference to a specific department division managing the databases since the reference is no longer needed.

#### 2. Clarify the display of temporary permits methods to assist with tag identification.

The statutory change would require 72/144 temp permits to be carried in the vehicle (not currently required by statute), change 1-trip/30-day temporary permits to be displayed in the rear license plate area rather than the rear window to match with requirements for temporary tags and improve general visibility of the permit, and update wording to permit instead of tag (to avoid confusion with temporary tags under Transportation Code 503).

# 3. Consumer Protection Advisory Committee recommendation, in part, to identify statutory changes that would help consumers with title, financial, and other issues when a franchise or independent dealer goes out of business.

The statutory change would help TxDMV address issues when a dealer goes out of business including failure of a dealer to payoff trade in vehicle, submit title transfer documents, remit collected fees to the county, and interaction with bankruptcy proceedings. Statute currently waives certain fees if the consumer can show they were paid and requires independent dealers to maintain a \$25,000 surety bond. Consideration will be given to increasing the amount of the financial security to \$50,000, allowing dealers to obtain insurance in lieu of the bond, requiring notice of the surety bond or insurance policy and means of accessing surety be posted in office next to the dealer's license, and extending the financial requirement to franchise dealers. The notice information may also be maintained on the department's website, and such notices will include information on the licensee's surety bond or insurance coverage if needed. The department will update its website with information on how consumers can find out more information on making a claim on the dealer's surety bond or insurance policy, along with department contact information.

4. Consumer Protection Advisory Committee recommendations for managing data privacy and external access to confidential motor vehicle records at TxDMV.

Propose statutory change to Transportation Code Section 730.016 to require that individuals or entities who are no longer eligible to receive personal information within motor vehicle records may no longer retain that personal information received from TxDMV.

5. Updates to the Texas Title Act to allow for out-of-state titles to receive comparable Texas titles, clarify electronic titles and printed titles have the same statutory value and refine the use of a deficient ownership documentation process to assist with insurance company vehicle cases.

As the department continues to work with stakeholders on opportunities to streamline and provide for efficiencies, staff identified three areas of statute to be updated to assist with title transactions. This recommendation would allow a vehicle with an out-of-state title comparable to a salvage title to receive a rebuilt title in Texas without first having to retitle with a Texas salvage title. It would also ensure there is no difference statutorily between printed and electronic titles except when necessary and allow an auction sales receipt to serve as ownership proof for a vehicle being scrapped by a salvage vehicle dealer. Lastly, current statute requires a manufacturer's certificate of origin when insurance companies are providing ownership information in motor vehicles cases. This recommendation would allow for the use of the deficient ownership documentation title process which aligns closer to current practices.

Board Meeting eBook

HELPING TEXANS GO. HELPING TEXAS GROW.

То:	Texas Department of Motor Vehicles Board
From:	Sandra Menjivar-Suddeath, Internal Audit Division Director
Agenda Item:	
Subject:	Internal Audit Division Status

#### RECOMMENDATION

Briefing Only – No recommendation.

#### PURPOSE AND EXECUTIVE SUMMARY

The status update provides information on current Internal Audit Division (IAD) activities. The December 2020 update contains information on external coordination efforts, the fiscal year (FY) 2021 Internal Audit Plan status, and Quality Assurance and Improvement Program (QAIP) results.

#### FINANCIAL IMPACT

None.

#### BACKGROUND AND DISCUSSION

At every TxDMV Board meeting, IAD provides an update and status on current activities, including any recent reports issued, external coordination efforts, and other activities.

#### **External Coordination**

IAD worked on two external coordination efforts from the State Auditor's Office and the Texas Department of Public Safety. In addition, IAD reviewed the newly released report from Texas Comptroller Report on its audit of promotional items purchases. The audit found the Department was compliant with its promotional item purchases.

#### FY 2021 Internal Audit Plan

IAD began one new engagement while working on three other engagements. The new engagement is a co-sourced audit on Change Management. The audit is reviewing the change management process and evaluating access rights. The engagements that IAD continues to work on include the Procurement Measures Advisory Service, Employee Relations Audit, and the Internal Audit Follow-Up. The status document follows.

IAD completed its required annual internal assessment. The internal assessment reviewed IAD's compliance with applicable audit standards and evaluated its overall performance for the previous fiscal year (2020). The overall performance was measured and reviewed by determining whether Key Performance Indicators were met and whether progress was made on the Capability Model. The assessment also reviewed fraud, waste, and abuse allegation received and progress made on implementing external assessment recommendations. The internal assessment report with a one-pager detailing the results follows. The one-pager details **all key information** found in the report.



## **External Coordination**

- The Texas Department of Public Safety conducted an audit on the Department's use of the Criminal History Record Information (CHRI) system in November. The Department is reviewing the results.
- The State Auditor's Office (SAO) requested information on the implementation status of three recommendations issued in the 2019 *Classification Compliance Audit on Information Technology Positions at Business and Economic Development Agency*. The Department submitted a status of Fully Implemented for all three recommendations.
- The Texas Comptroller of Public Accounts released its audit report on the use of promotional items. The audit found the Department was compliant with state law for promotional items purchased and had implied authority to purchase promotional items. No recommendations were issued. The full report is available: <u>https://fmx.cpa.texas.gov/fm/desk\_audit/reports/2021-</u> <u>1q/Statewide\_Desk\_Audit-Promotional\_Items.pdf</u>

Engagement	Description	Status		
Procurement	An advisory service to review roles, responsibilities, and	Reporting		
Measures	timelines within the procurement process.			
Advisory		Expected Release: January		
Service		2021		
Employee	An audit to evaluate the employee relations process	Reporting		
<b>Relations Audit</b>	within the Department.			
		Expected Release: January		
		2021		
Change	A co-sourced audit to evaluate ITSD change management	Fieldwork		
Management	processes and procedures and review staff's access rights			
Audit	for personnel responsible for developing, testing, and	Expected Release:		
	publishing changes to Department systems.	February/March 2021		
FY 2021 Internal	An engagement to verify if audit recommendations have	Fieldwork		
Audit Follow Up	been fully implemented. Currently, IAD is finalizing the			
	First Quarter results and reviewing internal			
	recommendations that were due or completed in the	Two recommendations		
	Second Quarter (December 1 – February 28)	due in the first quarter.		
FY 2020 Quality	To assess if the Internal Audit Division is meeting auditing	Completed		
Assurance and	standards and provide information on the division's			
Improvement	performance.	See next page.		
Program (QAIP)				

## Fiscal Year (FY) 2021 Audit Plan Status





## Quality Assurance and Improvement Program Report 21–02

**Internal Audit Division** 

October 2020

Texas Department of Motor Vehicles

## Quality Assurance and Improvement Program, 21-02

## **Executive Summary**

#### BACKGROUND

Board Meting eBook

The Internal Audit Division (IAD) follows (1) the audit standards prescribed by the Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing (IIA Standards), the Definition of Internal Auditing, the Core Principles for the Professional Practice of Internal Auditing and the Code of Ethics; (2) U.S. Government Accountability Office's (GAO) Generally Accepted Government Auditing Standards (GAGAS); and (3) Texas Internal Auditing Act, Texas Government Code, Chapter 2102 (Act). These audit standards require IAD develop and maintain a Quality Assurance and Improvement Program (QAIP) that includes both internal and external assessments.

Internal assessments are ongoing monitoring of the performance of the internal audit activity, as well as annual self-assessment reviews. The IIA Standards require the results of internal assessments be communicated to the governing board at least annually.

This report provides a summary of Internal Audit Division's fiscal year 2020 activities and compliance with applicable audit standards, including information on which Key Performance Indicators were met, on its Capability Model progress, and fraud, waste, and abuse allegation handling. It also provided information on the progress made in implementing external assessment recommendations.

## RESULTS

For FY 2020, the division complied with all internal audit standards and a met many of its Key Performance Indicators. In addition, it maintained an overall *Level 3* in the Capability Model while improving in individual categories of the model.

While the division complied with all audit standards, two opportunities of improvement were identified in the review:

- Define the Finance & Audit Committee's role in the internal audit charter.
- Revise Board training to focus on the role of internal audit.

The division also tracked and handled a total of 74 fraud, waste, and abuse allegations and spent a total of 1098 hours. Of the 74 allegations, 24 allegations were related to internal fraud, waste, or abuse. To investigate those allegations, the division spent about 950 hours.

## Contents

Background	1
Internal Assessments	1
External Assessments	1
Audit Engagement Team	2
Internal Assessment Results	3
Overall Conclusion	3
Compliance Audit Standards	3
Performance Audit Standards	4
Key Performance Indicators	5
Internal Audit Capability Model for the Public Sector (Capability Model)	10
Fraud, Waste, and Abuse Allegations and Disposition	12
External assessment recommendations progress	14
Appendix 1: Objective, Scope, and Methodology	15
Objective	15
Scope and Methodology	15
Report Distribution	15

## Background

The Texas Department of Motor Vehicles (TxDMV) - Internal Audit Division (IAD) follows (1) the audit standards prescribed by the Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing (IIA Standards), the Definition of Internal Auditing, the Core Principles for the Professional Practice of Internal Auditing and the Code of Ethics; (2) U.S. Government Accountability Office's (GAO) Generally Accepted Government Auditing Standards (GAGAS); and (3) Texas Internal Auditing Act, Texas Government Code, Chapter 2102 (Act). These audit standards require IAD develop and maintain a Quality Assurance and Improvement Program (QAIP) that includes both internal and external assessments:

- Internal assessments are ongoing monitoring of the performance of the internal audit activity, as well as annual self-assessment reviews. The IIA Standards require the results of the internal assessments be communicated to the governing board at least annually.
- External assessment (Peer Review) is a review of the IAD conducted by a qualified, knowledgeable Peer Review team. The Peer Review team will determine if the division conforms with applicable standards and the external assessment may provide feedback on operational and strategic issues.

## **Internal Assessments**

The IAD internal assessments include ongoing monitoring as well as an annual self-assessment. The ongoing monitoring includes a review of all audit documentation, audit recommendations, and reports for each engagement conducted by the IAD in a fiscal year prior to finalizing an engagement file.

The annual self-assessment includes verifying IAD followed all required compliance and performance audit standards. In addition, IAD provides progress and result information on the following:

- Key Performance Indicators (KPIs)
- Institute of Internal Auditors (IIA) Internal Audit Capability Model for the Public Sector (Capability Model)
- Fraud, waste, and abuse allegations and disposition
- External assessment recommendations progress

## **External Assessments**

Every three years, the IAD Director begins the process to obtain a Peer Review team. The Peer Review team issues a public report rendering an overall opinion on whether IAD complied with the audit standards and whether QAIP provides reasonable assurance that internal audit complies with applicable professional standards in all material aspects. The IAD received its most recent Peer Review in May 2018. In 2021, IAD will undergo another external assessment. The IAD has begun External Assessment activities, including its self-assessment.

## Audit Engagement Team

The review was performed by Jacob Geray (Internal Auditor), Frances Barker (Internal Auditor), Jason Gonzalez (Senior Auditor), Derrick Miller (Senior Auditor), and Sandra Menjivar-Suddeath (Internal Audit Director).

#### **Internal Assessment Results**

IAD staff conducted the self-assessment review to determine if the IAD followed all required applicable compliance and performance audit standards during fiscal year (FY) 2020. In addition, IAD staff analyzed data collected throughout the fiscal year to report on the division's KPIs, Capability Model, and fraud, waste, and abuse resolution.

## **Overall Conclusion**

Based on the review, IAD complies with the IIA Standards, the Definition of Internal Auditing, the Core Principles for the Professional Practice of Internal Auditing, the IIA's Code of Ethics, GAGAS, and the Act. While IAD complied with the audit standards, IAD could enhance its audit charter to include the role of the Finance & Audit Committee and to improve Board training.

As for the effectiveness and efficiency of the activity, IAD did progress on the Capability Model but did not meet all their KPIs. For FY 2020, IAD met 60% of their KPIs. KPIs related to engagements within budget, customer satisfaction, audit knowledge, and audit recommendation implementations.

IAD also implemented its External Assessment recommendation and handled several internal fraud, waste, and abuse allegations.

## **Compliance Audit Standards**

A review of the IAD's audit charter, standard operating procedures, and engagement control programs was conducted to determine if the IAD followed all compliance audit standards. Compliance standards include the following items:

- Purpose, Authority, and Responsibility The internal audit function must be formally defined in an
  internal audit charter, consistent with the Mission of Internal Audit and the mandatory elements of
  the International Professional Practices Framework (the Core Principles for the Professional Practice
  of Internal Auditing, the Code of Ethics, the Institute of Internal Auditors (IIA) Standards, and the
  Definition of Internal Auditing).
- **Independence and Objectivity** The internal audit function must be independent and perform work in an objective manner.
- **Proficiency and Due Professional Care** Engagements must be performed by staff who are proficient and have due professional care.
- Quality Assurance and Improvement Program A quality assurance and improvement program must be established and must enable an evaluation of the internal audit function's conformance with the audit standards and any applicable other requirements. The program should, also, assess the efficiency and effectiveness of the internal audit function and identify opportunities for improvement for the function.

- **Managing the Internal Audit Activity** The internal audit function must be effectively managed to ensure it adds value to the organization.
- **Nature of Work** The internal audit function must evaluate and contribute to the improvement of the organization's governance, risk management, and control processes using a systematic, disciplined, and risk-based approach.
- **Monitoring Progress** A system to monitor the disposition of results must be established, maintained, and communicated.

#### Conclusion

Based on the review, IAD met the compliance standards but identified two opportunities of improvement related to additional information on the internal audit charter and updating Board training. The audit charter could be enhanced to provide more information on the roles and responsibilities of the Finance and Audit Committee for the internal audit activity. In addition, the training to TxDMV Board members could be enhanced to provide more information on the role of the internal audit activity within the Department instead of just providing information on the activity.

Both items are being addressed and scheduled for completion by January 2021.

## **Performance Audit Standards**

The IAD must also meet performance audit standards. To determine whether performance audit standards were met, the IAD Director selected one completed engagement (Patch Management Confidential Audit) for review. Specifically, a staff member not associated with the engagement determined whether the audit engagement complied with performance audit standards. IAD must comply with the following performance audit standards:

- Engagement Planning A plan must be developed and documented for each engagement.
- **Performing the Engagement** Internal auditors must identify, analyze, evaluate, and document sufficient information to achieve the engagement's objectives.
- **Communicating Results** Results from the audit engagements must be communicated to management and others in charge of governance.

## Conclusion

Based on the review, IAD complies with performance audit standards when planning, performing, and communicating the results of engagements.

## **Key Performance Indicators**

IAD has 10 Key Performance Indicators (KPIs) used to measure the function's effectiveness and efficiency. The KPIs and the overall performance for the year are documented below.

## Audit Recommendations Implemented

IAD monitors the Department's implementation rate for internal and external audit recommendations. In FY 2020, the Department's KPI was an implementation rate of 80% for internal and external audit recommendations.

## Conclusion

The Department had 66 internal and external recommendations that were due or completed in FY 2020. The Department implemented 49 (74%) of the internal and external audit recommendations as depicted in Chart 1.



Chart 1. Audit Recommendations Verified Status.

For external audit recommendations, 21 of 28 (75%) of the audit recommendation were Closed – Fully Implemented or Closed – External Entity Verification Needed as noted in Chart 2.



For internal audit recommendations, 28 of 38 (74%) of the recommendations were fully implemented. The 38 internal audit recommendations consisted of 24 that were a HIGH priority and 14 that were of a LOW priority. 17 of the 24 (71%) HIGH priority internal audit recommendations were Closed- Fully Implemented while 11 of the 14 (79%) LOW priority internal audit recommendations were Closed – Fully Implemented as depicted in Chart 3.



Chart 3. Internal Audit Recommendations Status and Priority

## Audit Plan Completion

IAD measures how well it tracked against the approved Internal Audit Plan. The IAD must complete at least 80% of the internal audit plan by the end of the fiscal year. Due to the nature of audit reporting, audit completion is defined by the number of engagements that were issued or in the reporting phase at the end of the fiscal year divided by the number of engagements listed on the audit plan.

## Conclusion

IAD met this KPI. For the seven engagements, all engagements were either in reporting or issued. Five (71%) engagements were issued by the end of the fiscal year while 2 (29%) were in the reporting phase. The last two reports were issued in September.

## **Engagement Budgets**

IAD measures the time spent on engagements and how well it estimates its engagement time. IAD's measure is that 90% of engagements are within 10% of the budgeted hours.

## Conclusion

IAD had seven engagements in FY 2020. Out of the 7 engagements, only one engagement (14%) was within 10% of the budgeted hours. However, most engagements were close to the budgeted hours as depicted below in Chart 4.



#### Survey

For four KPIs, IAD uses surveys to determine if the TxDMV division staff feel that the IAD possess sufficient knowledge to conduct engagements (audit knowledge); provides clear and timely communication (clear communication); are satisfied with the engagement (customer satisfaction); and, whether recommendations implemented were useful and beneficial after implementation (recommendation usefulness). The current KPI for each survey is at least 80% agreement.

#### Conclusion

Out of the four KPIs, IAD only met two. IAD met the KPIs related to the usefulness of audit recommendations and clear and timely communications. IAD did not meet the customer satisfaction or audit knowledge. Based on the customer feedback received, IAD believes these KPIs were not met because of the audit recommendations and results issued. Charts 4 and 5 depict the survey results.







## Staff Certification

To ensure IAD has staff that can perform the necessary audit work, the IAD measures staff certifications. The current KPI is that 80% of the recognized certifications must be present with audit staff.

#### Conclusion

In FY 2020, 80% of the recognized certification were present with audit staff. Audit staff had the following certification:

- Certified Internal Auditor
- Certified Information Systems Auditor
- Certified Government Auditing Professional
- Certified Fraud Examiner

The only certification not present was the Certified Public Accountant.

## Audit Educational Efforts

To ensure staff and stakeholders understand the role of the IAD, IAD measures how many educational efforts are done in a fiscal year. The IAD should perform at least two education efforts a year.

#### Conclusion

In FY 2020, IAD conducted eight internal audit educational efforts to the Department, including one training to the Institute of Internal Auditors – Houston Chapter. The eight events are documented in table 1.

#### Table 1. Educational Effort Name and Date

Date	Title
Sep-19	Audit 101
Sep-19	Audit 101
Sep-19	LBB Reporting - Audit Testing Demonstration
Feb-20	Internal Audit: Providing Value in a Small Shop
Apr-20	TeamCentral Training
May-20	Internal Audit Month
Aug-20	TeamMate+ Client Training
Aug-20	TeamMate+ Client Training
Total	8

## **Operational Initiatives**

IAD had several operational initiatives to improve its functions. During FY 2020, all staff led and participated in the operational plans.

## Internal Audit Capability Model for the Public Sector (Capability Model)

Since the 2018 Peer Review, IAD tracks its effectiveness progress through the *Capability Model for the Public Sector*. The goal for the division is to achieve *Level 5*, Optimizing. After the 2018 Peer Review, IAD was at a *Level 2*, Infrastructure. IAD improved to a *Level 3*, Integrated by the end of FY 2018. In FY 2020, IAD maintained its *Level 3*, Integrated.

While IAD maintained a *Level 3*, IAD did improve in four individual categories: Service and Role of Internal Audit, People Management, Performance Management and Accountability, and Organizational Relationships and Culture and has achieved a *Level 5* in these categories. IAD was able to achieve *Level 5* in these categories by conducting the following activities:

- Becoming more involved in professional organizations, such as the Institute of Internal Auditors Austin Chapter.
- Positioning the internal audit activity as a key player and an agent of change by contributing to the Department's objective and vision through its focus on client services, innovation, and value delivery.
- Strengthening the internal audit activity capacity to meet the needs of the Department by adding and modifying staff skillset and co-sourcing.
- Creating reports and dashboard that substantively describe the contribution and impact made by the internal audit activity.
- Developing communication plans to keep the Executive Office, TxDMV Board, and the Finance and Audit Committee informed of activities.

With those four categories, IAD has achieved a *Level 5* in five of the six categories. IAD continues to work towards a *Level 5* in the Professional Practice category. IAD has adopted a flexible audit approach and dynamic audit and services plan that aligns with the organization's strategic directions and addresses emerging and potential issues and risks. However, IAD will not be able to achieve a *Level 5* until the Department further organizes and manages its risk. The Department is working on further organizing and keeping up with its risks. The current progress on the Capability Model is denoted in Figure 1.

285

## Figure 1. FY 2020 TxDMV IAD Capability Model

	Services and Role of IA	People Management	Professional Practices	Performance Management and Accountability	Organizational Relationships and Culture	Governance Structures		
Level 5 - Optimizing	* IA Recognized as Key Agent of Change	Ceadership Involvement with Professional Bodies Workforce Projection	Continuous Improvement in Professional Practices Strategic IA Planning	★ Outcome Performance and Value to Organization Achieved	★ Effective and Ongoing Relationships	Independence, Power, and Authority of the IA Activity		
Level 4 – Managed	Overall Assurance on Governance, Risk Management, and Control	Contributes to Management Development IA Activity Supports Professional Bodies Workforce Planning	Audit Strategy Leverages Organization's Management of Risk	Integration of Qualitative and Quantitative Performance Measures	CAE Advises and Influences Top-level Management	Independent Oversight of the IA Activity CAE Reports to Top- level Authority		
Level 3 - Integrated	Advisory Services Performance/Value- for-Money Audits	Team Building and Competency Professionally Qualified Staff	Quality Management Framework Risk-based Audit Plans	Performance Measures Cost Information IA Management Reports	Coordination with Other Review Groups Integral Component of Management Team	Management Oversight of the IA Activity Funding Mechanism		
Level 2 – Infrastructure	Compliance Auditing	Individual Professional Development Skilled People Identified and Recruited	Professional Practices and Processes Framework Audit Plan Based on Management/ Stakeholder Priorities	IA Operating Budget IA Business Plan	Managing within the IA Activity	Full Access to the Organization's Information, Assets, and People Reporting Relationship Established		
Level 1 - Initial	Ad hoc and unstructured; isolated single audits or reviews of documents and transactions for accuracy and compliance; outputs dependent upon the skills of specific individuals holding the position; no specific professional practices established other than those provided by professional associations; funding approved by management, as needed; absence of infrastructure; auditors likely part of a larger organizational unit; no established capabilities; therefore, no specific key process areas							
Circle indicates current	Indicates the Internal Audit Division Desired State Indicates the activity has been fully institutionalized by the Internal Audit Division Indicates the activity is in progress by the Internal Audit Division Indicates the activity has not been started by the Internal Audit Division							

## Fraud, Waste, and Abuse Allegations and Disposition

As part of IAD's role, the division investigates and tracks fraud, waste, and abuse allegations. The allegations are received from multiple sources, including internal complaints, State Auditor's Office, and internal reviews. In this role, IAD dedicated 1098 hours to fraud, waste, and abuse in FY 2020. Most of those hours, about 950 hours, were spent investigating 24 internal fraud, waste, and abuse allegations. While only 24 allegations were related to internal fraud, waste, and abuse, IAD participated and tracked a total of 72 fraud, waste, and abuse allegations received from the State Auditor's Office, internal referral, or through IAD's detection methods. Most of these allegations dealt with external fraud and consumer issues, such as title transfers. Chart 6 documents the complaint type and where the complaint was received.



Chart 6. Fraud, Waste, and Abuse Referrals

For each complaint received, IAD, in consultation with the Office of General Counsel, triages the complaints to determine whether the complaint needs to be investigated by IAD, referred to a division, or referred externally. Chart 7 provides information on the final disposition of each complaint received.





#### For the 24 investigations IAD conducted, chart 8 provides information on the final disposition.



Chart 8. Complaint Disposition

## **External assessment recommendations progress**

IAD has implemented the audit recommendation from its External Assessment. The IAD obtained a Peer Review in early 2018 and released the Peer Review report in May 2018. The Peer Review team rated IAD as "pass". The following is an excerpt from the peer review report's overall opinion:

Based on the information received and evaluated during this external quality assurance review, it is our opinion that the Texas Department of Motor Vehicles Internal Audit Division receives a rating of "pass" and is in compliance with the Institute of Internal Auditors (IIA) <u>International Professional</u> <u>Practices Framework</u> and Code of Ethics, the United States Government Accountability Office (GAO) <u>Government Auditing Standards</u> and the Texas Internal Auditing Act (Texas Government Code, Chapter 2102). This opinion, which is the highest of the three possible ratings, means that policies, procedures, and practices are in place to implement the standards and requirements necessary for ensuring the independence, objectivity, and proficiency of the internal audit function.

The report noted one opportunity for improvement; the opportunity and the Internal Audit Director's response is as follows:

#### **Opportunity for Improvement:**

The Internal Audit Division should consider performing a periodic project related to the agency's ethics-related objectives, programs, and activities.

#### Director's Response:

The Internal Audit Division (IAD) will consider performing a project related to the agency's ethicsrelated objectives, programs, and activities. The Internal Audit Division is currently conducting a fraud, waste, and abuse risk assessment for the Department to determine if we have sufficient processes to mitigate current fraud, waste, and abuse risks. In addition, the Internal Audit Division plans on periodically performing informational campaigns on ethics for the Department.

IAD actively participated in an agency-wide work group to update the ethics policy. As an advisor on the work group, IAD provided input on the ethics policy and reporting structure and provides potential risk areas. The Department signed and adopted its new Ethics Policy in this past fiscal year. In addition, IAD plays an active role in the fraud, waste, and abuse program.

14
# Appendix 1: Objective, Scope, and Methodology

# Objective

The objective of the Quality Assurance and Improvement Program is to provide a summary of the Internal Audit Division activities and compliance with applicable audit standards.

# Scope and Methodology

The scope of the audit included FY 2020 Internal Audit Division Activities.

Information and documents reviewed in the audit included the following:

- Survey Results
- Audit Charter
- IAD Standard Operating Procedures
- IAD Engagement Control Programs
- Human Resource Records
- TxDMV IAD 2018 Peer Review Report
- TxDMV Operational Plan
- TeamCentral Reports
- IIA's Capability Model
- State Agency Internal Audit Form Peer Review Forms

# **Report Distribution**

This report is distributed to the Board of the Texas Department of Motor Vehicles and the executive management team.

289

Board Meeting eBook

HELPING TEXANS GO. HELPING TEXAS GROW.

То:	Texas Department of Motor Vehicles Board
From:	Sandra Menjivar-Suddeath, Internal Audit Division Director
Agenda Item:	14.B
Subject:	Internal Audit Charter

#### **RECOMMENDATION**

Recommendation to approve the TxDMV Internal Audit Charter

#### PURPOSE AND EXECUTIVE SUMMARY

The Texas Department of Motor Vehicles (TxDMV) Internal Audit Charter outlines the vision, mission, goals, purpose, authority, scope, and responsibilities of the internal audit function. It establishes the independence and objectivity of the internal audit function to provide assurance services (audits) and advisory services (consulting) to the TxDMV Board and TxDMV Management. It further gives authority to the internal audit function to have full access to records, personnel, and physical properties needed to conduct assurance and advisory services.

The Internal Audit Charter was revised to clarify roles and responsibilities and consolidate information. A tracked change and a clean version of the proposed Internal Audit Charter follows.

#### FINANCIAL IMPACT

None.

### BACKGROUND AND DISCUSSION

The Texas Internal Auditing Act (Govt Code 2102.008) requires that the internal audit function adhere to the International Standards for the Professional Practice of Internal Auditing (Standards). Those standards require the internal audit function have an internal audit charter that is periodically updated and outlines the purpose, mission, authority, independence/objectivity, and responsibilities for the internal audit function. The internal audit charter should also outline the board's and management's responsibilities related to the internal audit function.

The Internal Audit Charter is reviewed as part of the Quality Assurance and Improvement Program. The most recent Quality Assurance and Improvement Program review identified an opportunity of improvement related to clarifying roles and responsibilities for the TxDMV Board, Finance & Audit Committee, and Internal Audit Division (IAD). Information in the charter was also consolidated to reduce the size of the charter. Specifically, the audit charter was changed to include the following:

- Providing information on IAD's role in risk management and fraud, waste, and abuse.
- Documenting communication frequency to TxDMV Board and Executive Director.
- Clarifying TxDMV Board responsibilities related to IAD documents and performance.
- Adding Finance & Audit Committee responsibilities for IAD performance, Governance, and Risk Management.
- Consolidating IAD roles and responsibilities in one section.



# **Internal Audit Charter**

# Introduction

This charter sets forth the mission, purpose, authority, and responsibility of the internal audit activity (i.e., Internal Audit Division) at the Texas Department of Motor Vehicles (TxDMV). The charter establishes the Internal Audit Division's position within the TxDMV; authorizes access to records, personnel, and physical properties needed to conduct engagements; and defines the scope of the internal audit activities. The Internal Audit Division helps enhance and protect organizational value by providing risk-based and objective assurance, advice, and insight. The Internal Audit Division also helps TxDMV accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of governance, risk management, and control processes.

# Audit Standards

The Internal Audit Division will govern itself by adherence to the mandatory elements of the Institute of Internal Auditors' *International Professional Practices Framework,* including the Core Principles for the Professional Practice of Internal Auditing, the Code of Ethics, the International Standards for the Professional Practice of Internal Auditing, and the Definition of Internal Auditing. Internal Audit will also follow the *Generally Accepted Government Auditing* Standards (GAGAS) as promulgated by the U.S. Government Accountability Office (GAO). The Internal Audit Director will report annually to TxDMV executive management and the TxDMV Board regarding the Internal Audit Division's conformance to the auditing standards.

In addition, Internal Audit Division will adhere to the TxDMV's policies and procedures and the Internal Audit Division's standard operating procedures.

# Vision, Mission, and Goals

The Internal Audit Activity had established a vision, mission, and goal to achieve its objective:

- <u>Vision</u>: To be a future focused internal audit <u>function activity</u> protecting and serving the Department and its customers.
- •
- Mission: To identify emerging strategic risks, support adaptability in an evolving environment, and foster trusted relationships and an ethical environment.
- **Goals:** The Internal Audit Division will use a proactive future-based approach to provide opinions on industry risks, current events, and the anticipated impacts to the Department through audits and advisory services. The Internal Audit Division will also strategically assess its effectiveness and progressively improve roles through actively engaging in

outreach and providing opportunities for feedback. In addition, the Internal Audit Division will conduct informational campaigns, including training on detecting fraud, waste and abuse; and investigate internal fraud, waste, and abuse allegations.

### Purpose

The Internal Audit Division provides assurance services to the TxDMV Board by conducting audits of the Department's functions, operations, and information systems. Assurance services may include financial audits, complianceaudits, economy, and efficiency audits, efficiency, and effectiveness audits, and investigations. The Internal Audit Division also offers advisory services, the nature and scope of which may be agreed upon with TxDMV executive management or the Board. An advisory service is intended to add value and improve agency operations and may include, but are not limited to, advice and counsel, facilitation, and training. In addition, the Division will investigate suspected internal fraud, waste, or abuse allegations as necessary.

# Authority

The Internal Audit Division, with strict accountability for confidentiality and safeguarding records and information, is authorized full, free, and unrestricted access to all TxDMV records, physical properties, and personnel pertinent to carrying out any engagement. All employees are expected to assist the Internal Audit Division in any assessment, engagement, or audit, as appropriate. The Internal Audit Division will also have free and unrestricted access to the TxDMV Board and its members and any TxDMV related records they possess for assessments, engagements, or audits, as appropriate.

The Internal Audit Director is authorized to do the following:

- Access (unrestricted), in the performance of authorized audits and other engagements and with strict accountability for safekeeping and confidentiality, to all TxDMV activities, records, manual and automated systems, properties, and personnel, as appropriate.
- Audit or review any function, activity, or unit of the TxDMV, including vendors, contractors, and subcontractors (to the extent as related to the vendor/contractor/subcontractor deliverables and/or statements of work in applicable TxDMV contracts).
- Communicate and interact directly with the TxDMV Board and present any matter that may warrant immediate attention or action.
- Present any matter and have direct access to the TxDMV Executive Director and General Counsel that may warrant immediate attention or action.
- Allocate audit resources, set frequencies, select subjects, determine scopes of work, and apply the techniques required to accomplish the audit objectives, and issue reports.
- Obtain the necessary assistance of personnel in TxDMV units as appropriate, as well as other specialized services from within or outside of TxDMV that the Internal Audit Director engages

for consulting with internal audit or providing assurance services in accordance with departmental policies and procedures.

# Independence and Objectivity

To assure the independence of the internal audit function, the Internal Audit Director reports functionally to the TxDMV Board and administratively to the Executive Director.

In carrying out authorized assessments, engagements, or audits, the Internal Audit Division will remain independent and free from control on matters of audit selection, scope, procedures, frequency, timing, or final report content to permit maintenance of an independent and objective state of mind. The Internal Audit Division will also remain free from all restriction-s that threaten the ability of internal auditors to carry out their responsibilities in an unbiased manner.

The Internal Audit Division and its staff will exhibit the highest level of professional objectivity in gathering, evaluating, and communicating information about the activity or process being examined. Internal auditors will make a balanced assessment of all relevant circumstances and not be influenced by their own interests or by others in forming judgments.

The Internal Audit Division and its staff will have no direct operational responsibility or authority over any of the activities audited. Accordingly, they will not implement internal controls, develop procedures, install systems, prepare records, or engage in any other activity related to non-audit functions that may impair internal auditor's independence. Internal auditor<u>s</u> will not assess specific operations for which they had responsibility within the previous year.

The Internal Audit Division and its staffactivity will conduct the following:

- Disclose any impairment of independence or objectivity, in fact or appearance, to appropriate TxDMV staff, the board, or agencies as appropriate.
- Exhibit professional objectivity in gathering, evaluating, and communicating information about the activity or process being examined.
- Take necessary precautions to avoid being unduly influenced by their own interests or by others in forming judgments.
- Establish safeguards to limit impairments to independence or objectivity if the Internal Audit Director has or is expected to have roles and/or responsibilities that fall outside of internal auditing.

The Internal Audit Director will confirm to the TxDMV Board at least annually, the organizational independence of the Internal Audit Division.

The Internal Audit Director will disclose to the TxDMV Board any interference and related implications in determining the scope of internal auditing, performing work, and/or communicating results.

# Scope

The scope of Internal Audit Division encompasses, but is not limited to, objective examinations of information for the purpose of providing independent assessments to the TxDMV Board, management, and oversight entities on the adequacy and effectiveness of governance, risk management, and control processes for TxDMV and fraud, waste, and abuse activities. Internal audit assessments include collaborating with appropriate TxDMV legal staff and division employees in evaluating whether:

- Risks, relating to the achievement of TxDMV's strategic objectives, are appropriately identified and managed.
- Actions of TxDMV staff and contractors follow TxDMV's policies, procedures, and applicable laws, regulations, and governance standards.
- Results of operations or programs are consistent with established goals and objectives.
- Operations or programs are being carried out effectively and efficiently.
- Information and the means used to identify, measure, analyze, classify, and report such information are reliable and have integrity.
- Resources and assets are acquired economically, used efficiently, and protected adequately.
- Established processes and systems enable compliance with the policies, procedures, laws, and regulations that could significantly impact TxDMV
- Fraud, waste, and abuse may have occurred.

The Internal Audit Director will report periodically to TxDMV executive management and the TxDMV Board regarding:

The Internal Audit Division's purpose, authority, and responsibility. The Internal Audit Division's plan and performance relative to its plan. The Internal Audit Division's conformance with audit standards. Significant risk exposures and control issues, including fraud, waste, and abuse risks, governance issues, and other matters requiring the attention of, or requested by, the TxDMV Board. Results of audit engagements or other activities. Resource requirements.

Any risk accepted that may be unacceptable.

The Internal Audit Director will also coordinate activities, where possible, and considers relying upon the work of other internal and external assurance and consulting service providers as needed. Opportunities for improving the efficiency of governance, risk management, and control processes may be identified during engagements. These opportunities will be communicated to the appropriate level of management.

### Roles and Responsibilities

#### **Internal Audit Division**

The internal audit activity's responsibilities are defined by the Board as part of their oversight and include the following responsibilities-:

• Internal Audit Plan: The activity will

- The Internal Audit Director will perform the following duties:
- <u>s</u>Submit, at least annually, a risk-based internal audit plan for review and approval and monitor the progress of the plan to ensure its execution, including communicating the impact of resource limitations and resources needed on the internal audit plan. The activity will also review and adjust the internal audit plan, as necessary, in response to changes in TxDMV's business, risks, operations, programs, systems, and controls and communicate any significant interim changes to the internal audit plan to the TxDMV Board and executive management.
- Quality Assurance and Improvement Program: The Internal Audit Divisionactivity will maintain

   a quality assurance and improvement program. that covers all aspects of the Internal Audit
   Division. The program will include an evaluation of the Internal Audit Division's con
   conformance with audit standards and assess on an annual basis. The program will also assess
   the efficiency and effectiveness of the Internal Audit Divisionactivity on an annual basis. The
   program will-and identify opportunities for improvement, including reporting on key
   performance indicators. The Internal Audit Divector will communicate to TxDMV executive
   management and the TxDMV Board on the Internal Audit Division's quality assurance and
   improvement program, including results of internal assessments (both ongoing and periodic) on
   an annual basis and external assessment team from outside TxDMV.
- Internal Audit Standards and Requirements: The activity will ensure conformance with audit standards and Texas Government Code 2102, including submitting required reports, conducting economy, efficiency, and program results audits and carrying out advisory services that are not prohibited by statute or audit standards. The activity will also ensure it collectively possesses or obtains the knowledge, skills, and other competencies needed to meet the requirements of the internal audit charter, review resource needs, and keep an updated internal audit charter.
- Risk Management: The activity will work with the TxDMV management and the TxDMV Board to review and refine risk appetite for strategic, operational, and fraud, waste, and abuse risks.
   TxDMV management and Board will review and approve the risk appetite. The activity, however, will keep a list of risks and their scores as well as any additional information provided by management on risk mitigation and will alert the TxDMV Board of any risk accepted by management which may be unacceptable. In addition, the activity will keep abreast of trends and emerging issues, consider their that couldpotential impact to TxDMV, are considered and communicate them to TxDMV management and the TxDMV Board d as appropriate.

- Fraud, Waste, and Abuse: The activity will serve as a main contact for fraud, waste, and abuse allegations, including any complaints received from the State Auditor's Office, and take action as needed. The activity will also investigate internal fraud, waste, and abuse allegations and work with management in the prevention and detection of internal fraud, waste, abuse.
- External Liaison: The activity will aAct as an agency liaison for all external auditors and monitors external engagements, including the disposition of any external recommendations issued to the Department.--
- Communication: The activity will communicate at least monthly to the Finance and Audit
   Committee, the Board Chair, and TxDMV Executive Director and quarterly to the TxDMV Board
   on internal audit activities. In addition, the internal audit activity will communicate the results of
   any audit, advisory service, follow-up, or other activities to the TxDMV Board and the TxDMV
   management. Significant risk exposures and control issues, including fraud, waste, and abuse
   risks, governance issues, and other matters requiring the attention of, or requested by, the
   TxDMV Board will also be communicated. The activity will provide training to the Department
   and Board members on the role and purpose of the internal audit activity.

### **TxDMV Board**

The TxDMV Board, as part of their role in overseeing the internal audit activity, are responsible for the following:

- Internal Audit Documents: The Board will approve the activity's documents, such as the
- Establish a quality assurance program by which the Internal Auditor assures the TxDMV Board that operations of internal auditing activities are acceptable.
- Prepare final reports of findings and recommendations for review by the TxDMV Executive Director, the TxDMV Board, and subsequent distribution to the Office of the Governor, Legislative Budget TxDMV Board, Sunset Advisory Commission, and State Auditor's Office as specified by the Texas Internal Auditing Act.
- Prepare an annual report for review by the TxDMV Board and submission pursuant to the requirements of the Act.
- Conduct, annually, a Quality Assurance and Improvement Program (QAIP) and participate in comprehensive external peer reviews.
- Conduct economy and efficiency audits and program results audits as directed by the TxDMV Board.
- Serve as a contact for fraud, waste and abuse allegations.
- Investigates internal fraud, waste, and abuse allegations.
- Notify the TxDMV Board and management of the results for any fraud, waste, and abuse activities or investigations.
- Review State Auditor's Office Hotline complaints, taking appropriate action, and reporting out results.
- Carry out advisory services as may be requested by the TxDMV Board that are not prohibited by statute or professional standards.

- Carry out any advisory services as may be requested by management that are not prohibited by statute or professional standards and for which resources are available as determined by the Internal Audit Director.
- The TxDMV Board will perform the following duties: Approve the internal audit charter.
- Approve the risk-based internal audit plan(s), n.
- <u>Approve the and the annual internal audit budget and resource plan.</u>
- Internal Audit Director: The Board will approve decisions regarding the appointment and removal of the Internal Audit Director. The Board will also be responsible for providing an annual performance evaluation and approving the remuneration of the Internal Audit Director.
- Internal Audit Activity Performance: The Committee will review the resources dedicated to the internal audit program and determine if adequate resources exist to adequately cover the activity's scope.

#### Finance and Audit Committee

The TxDMV Board has charged the Finance and Audit Committee with more direct-oversight for monitoring of the internal audit function. As such, the Committee has the following responsibilities:

- Internal Audit Activity Performance: The Committee will Approve decisions regarding the appointment and removal of the Internal Audit Director.
- Provide an annual performance evaluation of the Internal Audit Director.
- Approve the remuneration of the Internal Audit Director.
- <u>Review the resources dedicated to the internal audit program and determine if adequate</u> resources exist to ensure that risks identified in the annual risk assessment are adequately covered within a reasonable time frame.monitor and assess the audit activity's performance.
- Governance: The Committee will review documents presented to them to stay abreast on all internal audit activities, including those that do not result in a report, and stay informed on all significant matters arising from work performed. The committee can make inquiries to determine whether there is inappropriate scope or resource limitation that impact the results of the internal audit activities.
- <u>Risk Management</u>: The committee will review risk information and use the information to
   <u>oversee the effectiveness of</u>
- Make appropriate inquiries of management and the Internal Audit Director to determine whether there is inappropriate scope or resource limitation.risk management and risk reporting.

#### **TxDMV** management

TxDMV management is responsible for the following activities:

- Establishing and maintaining effective controls to ensure that goals and objectives are met, services are provided effectively, and assets are safeguarded.
- Providing information to internal audit as requested.

- Maintaining a process to ensure timely management responses and that appropriate action is taken on audit recommendations.
- Informing the Internal Audit Director othe activity of reviews, evaluations, assessments, audits, or inspections scheduled by local, state, or national agencies and/or external consultants or auditors that evaluate evaluating TxDMV programs or controls.

### **Quality Assurance and Improvement Program**

The Internal Audit Division will maintain a quality assurance and improvement program that covers all aspects of the Internal Audit Division. The program will include an evaluation of the Internal Audit Division's conformance with audit standards on an annual basis. The program will also assess the efficiency and effectiveness of the Internal Audit Division and identify opportunities for improvement, including reporting on key performance indicators. The Internal Audit Division's quality assurance and improvement program, including results of internal assessments (both ongoing and periodic) on an annual basis and external assessment conducted at least once every three years by a qualified, independent assessor or assessment team from outside TxDMV.

# Approvals

Whitney H. Brewster Executive Director Sandra Menjivar-Suddeath, CIA, CISA, CGAP, <u>CFE</u> Internal Audit Director

The charter was approved by the Board of the Texas Department of Motor Vehicles on December 11, 2020.

Guillermo "Memo" Treviño, Chairman Board of Texas Department of Motor Vehicles

Brett Graham, Chair Finance and Audit Committee Board of Texas Department of Motor Vehicles



# **Internal Audit Charter**

# Introduction

This charter sets forth the mission, purpose, authority, and responsibility of the internal audit activity (i.e., Internal Audit Division) at the Texas Department of Motor Vehicles (TxDMV). The charter establishes the Internal Audit Division's position within the TxDMV; authorizes access to records, personnel, and physical properties needed to conduct engagements; and defines the scope of the internal audit activities. The Internal Audit Division helps enhance and protect organizational value by providing risk-based and objective assurance, advice, and insight. The Internal Audit Division also helps TxDMV accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of governance, risk management, and control processes.

# **Audit Standards**

The Internal Audit Division will govern itself by adherence to the mandatory elements of the Institute of Internal Auditors' *International Professional Practices Framework*, including the Core Principles for the Professional Practice of Internal Auditing, the Code of Ethics, the International Standards for the Professional Practice of Internal Auditing, and the Definition of Internal Auditing. Internal Audit will also follow the *Generally Accepted Government Auditing* Standards (GAGAS) as promulgated by the U.S. Government Accountability Office (GAO). The Internal Audit Director will report annually to TxDMV executive management and the TxDMV Board regarding the Internal Audit Division's conformance to the auditing standards.

In addition, Internal Audit Division will adhere to the TxDMV's policies and procedures and the Internal Audit Division's standard operating procedures.

# Vision, Mission, and Goals

The Internal Audit Activity had established a vision, mission, and goal to achieve its objective:

- **Vision**: To be a future focused internal audit activity protecting and serving the Department and its customers.
- **Mission**: To identify emerging strategic risks, support adaptability in an evolving environment, and foster trusted relationships and an ethical environment.
- Goals: The Internal Audit Division will use a proactive future-based approach to provide opinions on industry risks, current events, and the anticipated impacts to the Department through audits and advisory services. The Internal Audit Division will also strategically assess its effectiveness and progressively improve roles through actively engaging in outreach and providing opportunities for feedback. In addition, the Internal Audit Division will conduct informational campaigns, including training on detecting fraud, waste and abuse; and investigate internal fraud, waste, and abuse allegations.

### Purpose

The Internal Audit Division provides assurance services to the TxDMV Board by conducting audits of the Department's functions, operations, and information systems. Assurance services may include financial, compliance, economy, efficiency, and effectiveness audits. The Internal Audit Division also offers advisory services, the nature and scope of which may be agreed upon with TxDMV executive management or the Board. An advisory service is intended to add value and improve agency operations and may include, but are not limited to, advice and counsel, facilitation, and training. In addition, the Division will investigate suspected internal fraud, waste, or abuse allegations as necessary.

### Authority

The Internal Audit Division, with strict accountability for confidentiality and safeguarding records and information, is authorized full, free, and unrestricted access to all TxDMV records, physical properties, and personnel pertinent to carrying out any engagement. All employees are expected to assist the Internal Audit Division in any assessment, engagement, or audit, as appropriate. The Internal Audit Division will also have free and unrestricted access to the TxDMV Board and its members and any TxDMV related records they possess for assessments, engagements, or audits, as appropriate.

The Internal Audit Director is authorized to do the following:

- Access (unrestricted), in the performance of authorized audits and other engagements and with strict accountability for safekeeping and confidentiality, all TxDMV activities, records, manual and automated systems, properties, and personnel, as appropriate.
- Audit or review any function, activity, or unit of the TxDMV, including vendors, contractors, and subcontractors (to the extent as related to the vendor/contractor/subcontractor deliverables and/or statements of work in applicable TxDMV contracts).
- Communicate and interact directly with the TxDMV Board and present any matter that may warrant immediate attention or action.
- Present any matter and have direct access to the TxDMV Executive Director and General Counsel that may warrant immediate attention or action.
- Allocate audit resources, set frequencies, select subjects, determine scopes of work, and apply the techniques required to accomplish the audit objectives, and issue reports.
- Obtain the necessary assistance of personnel in TxDMV units as appropriate, as well as other specialized services from within or outside of TxDMV that the Internal Audit Director engages for consulting with internal audit or providing assurance services in accordance with departmental policies and procedures.

# Independence and Objectivity

To assure the independence of the internal audit function, the Internal Audit Director reports functionally to the TxDMV Board and administratively to the Executive Director.

In carrying out authorized assessments, engagements, or audits, the Internal Audit Division will remain independent and free from control on matters of audit selection, scope, procedures, frequency, timing, or final report content to permit maintenance of an independent and objective state of mind. The Internal Audit Division will also remain free from all restrictions that threaten the ability of internal auditors to carry out their responsibilities in an unbiased manner.

The Internal Audit Division and its staff will exhibit the highest level of professional objectivity in gathering, evaluating, and communicating information about the activity or process being examined. Internal auditors will make a balanced assessment of all relevant circumstances and not be influenced by their own interests or by others in forming judgments.

The Internal Audit Division and its staff will have no direct operational responsibility or authority over any of the activities audited. Accordingly, they will not implement internal controls, develop procedures, install systems, prepare records, or engage in any other activity related to non-audit functions that may impair internal auditor's independence. Internal auditors will not assess specific operations for which they had responsibility within the previous year.

The activity will conduct the following:

- Disclose any impairment of independence or objectivity, in fact or appearance, to appropriate TxDMV staff, the board, or agencies as appropriate.
- Exhibit professional objectivity in gathering, evaluating, and communicating information about the activity or process being examined.
- Take necessary precautions to avoid being unduly influenced by their own interests or by others in forming judgments.
- Establish safeguards to limit impairments to independence or objectivity if the Internal Audit Director has or is expected to have roles and/or responsibilities that fall outside of internal auditing.

The Internal Audit Director will confirm to the TxDMV Board at least annually, the organizational independence of the Internal Audit Division. The Internal Audit Director will disclose to the TxDMV Board any interference and related implications in determining the scope of internal auditing, performing work, and/or communicating results.

# Scope

The scope of Internal Audit Division encompasses, but is not limited to, objective examinations of information for the purpose of providing independent assessments to the TxDMV Board, management, and oversight entities on the adequacy and effectiveness of governance, risk management, and control processes for TxDMV and fraud, waste, and abuse activities. Internal audit assessments include collaborating with appropriate TxDMV legal staff and division employees in evaluating whether:

• Risks, relating to the achievement of TxDMV's strategic objectives, are appropriately identified and managed.

- Actions of TxDMV staff and contractors follow TxDMV's policies, procedures, and applicable laws, regulations, and governance standards.
- Results of operations or programs are consistent with established goals and objectives.
- Operations or programs are being carried out effectively and efficiently.
- Information and the means used to identify, measure, analyze, classify, and report such information are reliable and have integrity.
- Resources and assets are acquired economically, used efficiently, and protected adequately.
- Established processes and systems enable compliance with the policies, procedures, laws, and regulations that could significantly impact TxDMV
- Fraud, waste, and abuse may have occurred.

The Internal Audit Director will also coordinate activities, where possible, and consider relying upon the work of other internal and external assurance and consulting service providers as needed. Opportunities for improving the efficiency of governance, risk management, and control processes may be identified during engagements. These opportunities will be communicated to the appropriate level of management.

### **Roles and Responsibilities**

### Internal Audit Division

The internal audit activity's responsibilities are defined by the Board as part of their oversight and include the following responsibilities:

- Internal Audit Plan: The activity will submit, at least annually, a risk-based internal audit plan for review and approval and monitor the progress of the plan to ensure its execution, including communicating the impact of resource limitations and resources needed on the internal audit plan. The activity will also review and adjust the internal audit plan, as necessary, in response to changes in TxDMV's business, risks, operations, programs, systems, and controls and communicate any significant interim changes to the internal audit plan to the TxDMV Board and executive management.
- Quality Assurance and Improvement Program: The activity will maintain a quality assurance and improvement program. The program will include an evaluation on conformance with audit standards and assess the efficiency and effectiveness of the activity on an annual basis. The program will identify opportunities for improvement, including reporting on key performance indicators. The Internal Audit Director will communicate to TxDMV executive management and the TxDMV Board on the Internal Audit Division's quality assurance and improvement program, including results of internal assessments (both ongoing and periodic) on an annual basis and external assessments conducted at least once every three years by a qualified, independent assessor or assessment team from outside TxDMV.
- Internal Audit Standards and Requirements: The activity will ensure conformance with audit standards and Texas Government Code 2102, including submitting required reports, conducting

economy, efficiency, and program results audits and carrying out advisory services that are not prohibited by statute or audit standards. The activity will also ensure it collectively possesses or obtains the knowledge, skills, and other competencies needed to meet the requirements of the internal audit charter, review resource needs, and keep an updated internal audit charter.

- Risk Management: The activity will work with the TxDMV management and the TxDMV Board to review and refine risk appetite for strategic, operational, and fraud, waste, and abuse risks. TxDMV management and Board will review and approve the risk appetite. The activity, however, will keep a list of risks and their scores as well as any additional information provided by management on risk mitigation and will alert the TxDMV Board of any risk accepted by management which may be unacceptable. In addition, the activity will keep abreast of trends and emerging issues, consider their potential impact to TxDMV, and communicate them to TxDMV management and the TxDMV Board as appropriate.
- **Fraud, Waste, and Abuse**: The activity will serve as a main contact for fraud, waste, and abuse allegations, including any complaints received from the State Auditor's Office, and take action as needed. The activity will also investigate internal fraud, waste, and abuse allegations and work with management in the prevention and detection of internal fraud, waste, abuse.
- **External Liaison**: The activity will act as an agency liaison for all external auditors and monitors external engagements, including the disposition of any external recommendations issued to the Department.
- **Communication**: The activity will communicate at least monthly to the Finance and Audit Committee, the Board Chair, and TxDMV Executive Director and quarterly to the TxDMV Board on internal audit activities. In addition, the internal audit activity will communicate the results of any audit, advisory service, follow-up, or other activities to the TxDMV Board and the TxDMV management. Significant risk exposures and control issues, including fraud, waste, and abuse risks, governance issues, and other matters requiring the attention of, or requested by, the TxDMV Board will also be communicated. The activity will provide training to the Department and Board members on the role and purpose of the internal audit activity.

### **TxDMV Board**

The TxDMV Board, as part of their role in overseeing the internal audit activity, are responsible for the following:

- Internal Audit Documents: The Board will approve the activity's documents, such as the internal audit charter, risk-based internal audit plan(s), and the annual internal audit budget and resource plan.
- Internal Audit Director: The Board will approve decisions regarding the appointment and removal of the Internal Audit Director. The Board will also be responsible for providing an annual performance evaluation and approving the remuneration of the Internal Audit Director.
- Internal Audit Activity Performance: The Committee will review the resources dedicated to the internal audit program and determine if adequate resources exist to adequately cover the activity's scope.

#### Finance and Audit Committee

The TxDMV Board has charged the Finance and Audit Committee with oversight for monitoring of the internal audit function. As such, the Committee has the following responsibilities:

- Internal Audit Activity Performance: The Committee will monitor and assess the audit activity's performance.
- Governance: The Committee will review documents presented to them to stay abreast on all internal audit activities, including those that do not result in a report, and stay informed on all significant matters arising from work performed. The committee can make inquiries to determine whether there is inappropriate scope or resource limitation that impact the results of the internal audit activities.
- **Risk Management**: The committee will review risk information and use the information to oversee the effectiveness of risk management and risk reporting.

#### **TxDMV** management

TxDMV management is responsible for the following activities:

- Establishing and maintaining effective controls to ensure that goals and objectives are met, services are provided effectively, and assets are safeguarded.
- Providing information to internal audit as requested.
- Maintaining a process to ensure timely management responses and that appropriate action is taken on audit recommendations.
- Informing the activity of reviews, evaluations, assessments, audits, or inspections that evaluate TxDMV programs or controls.

# Approvals

Whitney H. Brewster Executive Director Sandra Menjivar-Suddeath, CIA, CISA, CGAP, CFE Internal Audit Director

The charter was approved by the Board of the Texas Department of Motor Vehicles on December 11, 2020.

Guillermo "Memo" Treviño, Chairman Board of Texas Department of Motor Vehicles

Brett Graham, Chair Finance and Audit Committee Board of Texas Department of Motor Vehicles Board Meeting eBook

# Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Board Meeting Date: 12/10/2020 ACTION ITEM

То:	Texas Department of Motor Vehicles Board
From:	Tom Shindell, Ph.D., Office of Innovation & Strategy
Agenda Item:	15
Subject:	Amendment to the TxDMV Balanced Scorecard

#### RECOMMENDATION

Approval of the changes to the department's Balanced Scorecard as proposed by staff and authorization for the executive director or her designee to approve future changes to the balanced scorecard as needed with periodic updates to the board.

#### PURPOSE AND EXECUTIVE SUMMARY

The addition of an Internal Process Objective 1 is proposed to be added to the department's Balanced Scorecard that provides that all employees work with a sense of urgency as a lead performance measure. Several of the department's relevant Key Performance Indicators regarding the timeliness of services provided by each office or division will be combined into a single measurement to show the TxDMV's overall service delivery performance.

#### **FINANCIAL IMPACT**

None.

### BACKGROUND AND DISCUSSION

TxDMV's Balanced Scorecard (a strategic performance management tool comprised of a strategy map, objectives for each of four organizational perspectives, lead and lag measures for each objective and strategic initiatives to reach specific goals) is continuously reviewed by staff to ensure accurate data collection, utilization by management and accurate reporting. The addition of a measure for the internal process portion of the Balanced Scorecard providing that all employees work with a sense of urgency will be measured by combining 33 separate Key Performance Indicators into a single TxDMV summary measure. All the Key Performance Indicators selected for inclusion in this measure are a reflection of TxDMV's goal of meeting timely service delivery expectations and working with a sense of urgency. This measure, if approved, will be collected and reported for all of FY 2021.

Staff are also requesting authorization from the TxDMV Board to change the Balanced Scorecard as needed and provide periodic updates to the board.

# Proposed Balanced Scorecard (BSC) Lead Measure

# Internal Process Objective 1 (IP1)

BSC IP1 Objective: All employees work with a sense of urgency.

Lead (actionable) Measure: Divisions will develop service delivery expectation KPIs. These KPI measures will be combined and rolled-up into a single KPI measure.

FY 2021 KPI	Measure
Number	
1	MVD: Avg. # of days to process new franchise license applications
2	MVD: Avg. # of days to process franchise renewal applications
3	MVD: Avg. # of days to process franchise license amendments
4	MVD: Avg. # of days to process GDN license applications
5	MVD: Avg. # of days to process GDN renewals
6	MVD: Avg. # of days to process GDB license amendments
7	MVD: Avg. # of days to process salvage dealer license applications
8	MVD: Avg. # of days to process salvage license renewals
9	MVD: Avg. # of days to process salvage license amendments
10	MCD: Avg. # of minutes/seconds to process single-trip routed permits
11	MCD: Avg. # of days to process intrastate authority application processing
12	MCD: Avg. # of days to process apportioned registration renewal applications
	processing
13	VTR: Avg. # of days to issue salvage or non-repairable vehicle titles
17	OAH: Avg. # of days to complete lemon law cases where hearing is held
22	OAH: Avg. # of days to complete lemon law and warranty cases after referral
23	OAH: Avg. # of days to issue a decision after closing the record of hearing
24	BDS: Avg. # of days meeting materials are sent to board members prior to a Board
	Meeting
25	BSD: Avg. schedule KPI/BSC Report is sent to executive leadership and board members
27	FAS: Avg. # of business days to provide resolution for facilities general maintenance requests under TxDMV control
28	ITSD: % of all remedy tickets closed based on the number opened/month
31	IAD: % of audit plan completed
43	FAS: Avg. # of business days to procure commodities from the date of receipt of an
	approved requisition to the date a purchase order is dispatched to the vendor
47	FAS: Avg. # of calendar days to post professional construction and consulting contracts
	to LBB ABEST website
49	FAS: Avg. # of business days from receipt of an approved requisition in Purchasing to
	the day of posting for competitive solicitations for contracts between \$25K -\$49K
63	ITSD: % of projects completed or forecasted to complete by the end date
66	HR: Avg. # of business days jobs posted from the time hiring supervisor provides
	complete information and job posting is approved by division
67	HR: Avg. # of business days to resolve classification requests, measured from the point
	of receiving initial request until delivery to Executive Director for review/signature

69	HR: % of notification letters send within five business days in response to FMLA
	eligibility determination requests
70	FAS: Avg. # of business days to provide initial response for facilities requests
92	GSC: Avg. # of business days required to produce an initial constituent response via letter
93	GSC: Avg. # of business days required to produce an initial constituent response via email/phone
94	GSC: Avg. # of business days required to produce an initial legislative response via letter
95	GSC: Avg. # of business days required to produce an initial legislative response via email/phone

Board Meeting eBook



HELPING TEXANS GO. HELPING TEXAS GROW.

Board Meeting Date: 12/10/2020 ACTION ITEM

То:	Texas Department of Motor Vehicles Board
From:	Whitney Brewster, Executive Director
Agenda Item:	16
Subject:	Appointment of Ombudsman to Act as Civil Rights Officer

#### **BRIEFING ONLY**

The Civil Rights officer is appointed by the Chair of the Texas Department of Motor Vehicles Board and oversees the Equal Employment Opportunity (EEO) process for the department as required by Transportation Code Chapter 1001 to help ensure compliance with civil rights laws and policies.

#### PURPOSE AND EXECUTIVE SUMMARY

Reporting to the Executive Director, the Civil Rights Officer will positively impact the lives of TxDMV employees and the culture of the department by promoting equality and upholding federal statutes prohibiting discrimination on the basis of race, color, sex, disability, religion, familial status, and national origin. The Civil Rights Officer will confer with the Human Resources Division and Office of General Counsel regarding revisions to agency policies related to civil rights functions and protections. In this role, the Civil Rights Officer will receive and investigate formally filed employee complaints of discrimination, harassment, and retaliation; and will perform investigations of accepted complaints. The Civil Rights Officer will also serve as the agency's Title VI Non-Discrimination Coordinator.

#### FINANCIAL IMPACT

None.

#### BACKGROUND AND DISCUSSION

Leah Leone joined the TxDMV team on November 1, 2020, as the Employee Ombudsman and Ethics Officer. In this role, she will provide dispute resolution and support for the entire agency and will also act as the TxDMV Board appointed Civil Rights Officer. Leah is an experienced high conflict mediator, teacher, and trainer with over 25 years of diverse experience managing and teaching conflict resolution as a law professor specializing in alternative dispute resolution, and as a mediator, mediating civil, criminal, and family law cases in district court along with EEOC and civil rights cases.

We extend special thanks with high regard and appreciation to David Richards, who has been a dedicated and committed employee acting in his role of Interim Civil Rights Officer.

# **Board Policy Documents**

Governance Process (10/13/11)

Strategic Planning (10/13/11)

Board Vision (4/7/16)

Agency Boundaries (9/13/12)

### 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 Legitimating
  - 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 **<u>implementing</u>** 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.** <u>**Transparency**</u> Being open and inclusive in all we do.
- **5.2.** <u>Efficiency</u> Being good stewards of state resources by providing products and services in the most cost-effective manner possible.
- **5.3.** <u>Excellence</u> Working diligently to achieve the highest standards.
- **5.4.** <u>Accountability</u> Accepting responsibility for all we do, collectively and as individuals.
- 5.5. <u>Stakeholders</u> 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. <u>Key Objective 3</u>

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.