



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.



# TxDMV Board Meeting

8:00 a.m.

Thursday, February 6, 2020

**AGENDA**  
**BOARD MEETING**  
**TEXAS DEPARTMENT OF MOTOR VEHICLES**  
**4000 JACKSON AVE., BUILDING 1, LONE STAR ROOM**  
**AUSTIN, TEXAS 78731**  
**THURSDAY, FEBRUARY 6, 2020**  
**8:00 A.M.**

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

PAGE

- 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 - Joel Richardson
  - B. Chair's Annual Report to Governor on State of Affairs 2019

- 7      **4. Executive Director's Reports** - Whitney Brewster  
*Awards, Recognition of Years of Service, and Announcements*

- 8      **5. Memorandum of Understanding between Motor Vehicle Crime Prevention Authority (MVCPA) and Texas Department of Motor Vehicles** - MVCPA  
Chairman Hansen and Bryan Wilson

**CONTESTED CASE**

- 10      **6. Reversed and Remanded from the Third Court of Appeals to the Board for proceedings consistent with the appellate opinion (i.e. Reconsideration of the Board's August 17, 2017, Final Order) under Occupations Code, §§2301.467(a)(1), 2301.468, and 2301.478(b).** Third Court of Appeals No. 03-17-00761-CV, Removed from the 201st District Court of Travis County, Cause No. D-1-GN-17-005912, SOAH Docket No. 608-14-1208.LIC, MVD Docket No. 14-0006 LIC; *New World Car Nissan, Inc. d/b/a World Car Hyundai, World Car Nissan, and New World Car Imports, San Antonio, Inc., d/b/a World Car Hyundai, Complainants v. Hyundai Motor America, Respondent* - Daniel Avitia and Michelle Lingo

**RULES - ADOPTIONS**

- 79**     **7. Chapter 215, Motor Vehicle Distribution - Daniel Avitia**  
      **Amendments, §215.133**  
      **Repeal, §215.102**  
      **New, §215.161**  
      (Relating to:  
      • HB 1667, allowing independent motor vehicle general distinguishing number license holders to perform certain salvage related activities without holding a salvage dealer's license;  
      • HB 3842, requiring a separate general distinguishing number for most consignment locations; and  
      • SB 604, eliminating representative licenses and adding licensing education and training requirements for independent motor vehicle dealers)  
      (Proposal Published August 23, 2019 - 44 Tex. Reg. 4462)  
      (Review by the Office of the Governor, Regulatory Compliance Division;  
      submission November 22, 2019; comment period closed December 27, 2019)
- 109**    **8. Chapter 217, Vehicle Titles and Registration - Jeremiah Kuntz**  
      **Amendments, §§217.2, 217.45, and 217.46**  
      (Relating to:  
      • HB 1548, establishing procedure for issuance of license plates to golf carts and off-highway vehicles, charging a fee, and updating statutory citations;  
      • HB 1755, classification and operation of sand rails;  
      • HB 3068, use of certain license plates on classic motor vehicles and travel trailers, custom vehicles, street rods, and certain exhibition vehicles; use of embossed disabled veterans' license plates on certain vehicles; and  
      • HB 3171, classification and operation of mopeds)  
      (Proposal Published August 30, 2019 - 44 Tex. Reg. 4467)  
      (Review by the Office of the Governor, Regulatory Compliance Division;  
      submission November 22, 2019; comment period closed December 27, 2019)
- 151**    **9. Chapter 217, Vehicle Titles and Registration - Jeremiah Kuntz**  
      **Amendments, §217.40**  
      **New, §217.16**  
      (Relating to HB 3842, new Transportation Code, §501.0236, Issuance of Title and Permits When Dealer Goes Out of Business; waiving certain fees)  
      (Proposal Published August 30, 2019 - 44 Tex. Reg. 4680)  
      (Review by the Office of the Governor, Regulatory Compliance Division;  
      submission November 22, 2019; comment period closed December 27, 2019)
- 169**    **10. Chapter 217, Vehicle Titles and Registration - Jeremiah Kuntz and Tim Menke**  
      **New, §§217.76-217.78**  
      (Relating to suspension or denial of access to the Registration and Title System)  
      (Proposal Published October 18, 2019 - 44 Tex. Reg. 6018)

- 181     **11. New, Chapter 223, Compliance and Investigations Division** - Tim Menke  
(Relating to county tax assessor-collector reporting of suspected fraud, waste, or abuse and implementation of Sunset Advisory Commission's Recommendation 2.2)  
(Proposal Published October 18, 2019 - 44 Tex. Reg. 6021)

#### **BRIEFING AND ACTION ITEMS**

- 192     **12. Committee Appointments**  
A. Board Committee - Chairman Treviño  
B. **Advisory Committees** - Whitney Brewster
- 194     **13. Vehicle Titles and Registration Advisory Committee (VTRAC)**  
**Recommendations Regarding Digital License Plates Rules** - Vehicle Titles and Registration Division and First Vice Chair Shay Luedeke
- 14. Finance and Audit**  
A. February 5, 2020 Finance and Audit Committee Meeting  
Summary - Committee Chair Brett Graham (BRIEFING ONLY)  
199     B. **FY 2020 Six-Month Audit Plan** - Sandra Menjivar-Suddeath

#### **ASSEMBLED VEHICLES RULES - PUBLIC HEARING (1:00 P.M.)**

- 15. Public hearing to receive spoken and written comments on proposed amendments to 43 TAC §§217.3, 217.141-217.143 and new §§217.401-217.407.**
- The proposal was published in the December 20, 2019 issue of the *Texas Register* (44 Tex. Reg. 7866).
  - It is not necessary to attend or speak at the meeting to have your comments in the record. As part of the hearing, emailed comments will be accepted if received between 8:00 and 5:00 pm on February 6, 2020. Comments can be emailed to [rules@txdmv.gov](mailto:rules@txdmv.gov).
  - A person speaking before the board at the public hearing will be given an opportunity to speak for a maximum of three minutes. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible.

#### **EXECUTIVE SESSION**

- 16. 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.
- **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 Section 2059.055(b); or
  - the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices.

## **17. Action Items from Executive Session**

## **18. Public Comment**

## **19. 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. In accordance with 43 Texas Administrative Code §206.22, any person wishing to address the Board must complete a speaker's form at the registration table prior to the agenda item being taken up by the Board. Public comment will only be accepted in person. 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.

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

Any individual with a disability who plans to attend this meeting and requires auxiliary aids or services should notify the department as far in advance as possible, but no less than two days in advance, so that appropriate arrangements can be made. Contact 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 Date: 2/6/2020

**BRIEFING**

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

**RECOMMENDATION**

Board Chair and members offer 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 February 6, 2020, Board Meeting for retirements and state service awards include:

- DeLisa Dedeaux in Motor Carrier Division reached 25 years of state service.
- Melissa Bennett in Motor Carrier Division reached 30 years of state service

And, the following individuals recently retired from the agency:

- Antonia Knight – Motor Vehicle Division
- Idalia Illa- Lopez - Vehicle Titles & Registration Division
- Patricia Flores – Vehicle Titles & Registration Division
- Beverly Fisher – Enforcement Division
- Joyce Wendler - Office of General Counsel
- Michael Zalaznich - Motor Carrier Division

**FINANCIAL IMPACT**

No financial impact.

**BACKGROUND AND DISCUSSION**

No additional background and discussion.

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN THE TEXAS DEPARTMENT OF MOTOR VEHICLES AND**  
**THE TEXAS MOTOR VEHICLE CRIME PREVENTION AUTHORITY**

This Memorandum of Understanding (MOU) is entered into by the Texas Department of Motor Vehicles (TxDMV) and the Texas Motor Vehicle Crime Prevention Authority (MVCPA) pursuant to Texas Transportation Code Chapter 1006. Specifically, Transportation Code §1006.060 requires that the MVCPA, in coordination with TxDMV, develop and implement policies that clearly separate the policymaking responsibilities of the MVCPA and the management responsibilities of the TxDMV.

NOW, THEREFORE, the MVCPA and TxDMV enter into this MOU to set out their understanding and agreement of each agency's responsibilities under Transportation Code Chapter 1006.

IT IS AGREED THAT:

**I. AUTHORITY AND DUTIES**

**A.** TxDMV and the MVCPA shall exercise and fulfill all the powers and duties granted to them under Transportation Code Chapter 1006;

**B.** The MVCPA will promulgate and maintain its own rules as authorized in Transportation Code Chapter 1006;

**C.** The MVCPA shall establish written policies for issues relating to MVCPA programs, including:

- 1.** performing financial support to authorized entities, education programs, and providing equipment;
- 2.** collecting the required fee on any form of motor vehicle insurance;
- 3.** notifying the Texas Department of Insurance of insurers that fail to file or pay the required fee; and
- 4.** determining the validity of a request for refund of fees paid by insurers.

**D.** TxDMV through its Executive Director (ED) with advice and consent from the Authority, shall appoint a TxDMV employee to serve as MVCPA Director to perform all the



actions required by the statute and represent the MVCPA and the Authority on MVCPA matters before the legislature and stakeholders, as appropriate;

E. The ED will designate the MVCPA Director to provide members of the MVCPA information regarding the members' qualifications for office and their responsibilities relating to standards of conduct.

F. All TxDMV management policies apply to MVCPA unless explicitly exempted, any exempted policies will be clearly outlined and specify their applicability to the MVCPA. The TxDMV will provide MVCPA services by or through the department as needed to carry out the authority's purposes, powers, and duties. These services include legal services not provided by the attorney general, fiscal services, administrative services, and personnel services;

G. The MVCPA Director appointed by the ED under Transportation Code §1001.041 shall manage MVCPA staff operations including, managing money appropriated to the department for authority purposes, administering the MVCPA fee collection program, administering the process to determine refunds, implementing the grant program, and all other staff duties relating to the MVCPA, as appropriate.

## II. EFFECTIVE DATE AND TERMINATION

This MOU is effective upon the date of the last signatory to this MOU.

This MOU may be terminated upon thirty (30) days written notice by either party.

**TEXAS DEPARTMENT OF MOTOR VEHICLES**

**TEXAS MOTOR VEHICLE CRIME PREVENTION  
AUTHORITY**

\_\_\_\_\_  
Whitney Brewster, TxDMV Executive Director

\_\_\_\_\_  
Tommy Hansen, MVCPA Chairman

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_



**To:** Texas Department of Motor Vehicles Board  
**From:** Daniel Avitia, Motor Vehicle Division Director  
**Agenda Item:** 6  
**Subject:** Reversed and Remanded from the Third Court of Appeals to the Board for proceedings consistent with the appellate opinion (i.e., Reconsideration of the Board's August 17, 2017, Final Order) under Occupations Code, §§2301.467(a)(1), 2301.468, and 2301.478(b); Third Court of Appeals No. 03-17-00761-CV, Removed from the 201st District Court of Travis County, Cause No. D-1-GN-17-005912, SOAH Docket No. 608-14-1208.LIC, MVD Docket No. 14-0006 LIC, *New World Car Nissan, Inc. d/b/a World Car Hyundai, World Car Nissan; and New World Car Imports San Antonio, Inc., d/b/a World Car Hyundai, Complainants v. Hyundai Motor America, Respondent*

### **RECOMMENDATION**

The Board may enter a final order on remand from the Third Court of Appeals, consistent with that Court's July 3, 2019, opinion, and August 26, 2019, mandate.

### **PURPOSE AND EXECUTIVE SUMMARY**

This contested case matter involves the complaint by two World Car franchised dealerships (World Car) against the distributor, Hyundai Motor America (Hyundai). The Board's Order on Rehearing Nunc Pro Tunc dated August 17, 2017, was appealed. The Third Court of Appeals reversed the Board and remanded for further proceedings consistent with the Appellate Court's order and mandate.

The issue presented before the Board is whether World Car established that Hyundai's actions or programs violate the Texas Occupations Code.

### **FINANCIAL IMPACT**

No significant financial impact to TxDMV.

### **BACKGROUND AND DISCUSSION**

On November 20, 2013, New World Car Nissan, Inc. d/b/a World Car Hyundai and New World Car Imports San Antonio, Inc. d/b/a World Car Hyundai (World Car) filed a complaint against Hyundai Motor America (Hyundai). World Car complained that Hyundai discriminates against World Car, uses disparate treatment against World Car, does not supply cars requested by World Car, and requires unreasonable sales standards of World Car. World Car complained that Hyundai violated Texas Occupations Code §2301.467, §2301.468, and §2301.478.

Following the parties' appeals, the Third Court of Appeals issued an Opinion on July 3, 2019, finding there was reversible error in the Board's Order on Rehearing Nunc Pro Tunc. The Court of Appeals found the Board erred in reversing the Administrative Law Judge's (ALJ) Findings of Fact and Conclusions of Law, without providing written explanation of the specific reason for each change and citations to record evidence.

The Court reversed the Board's Order on Rehearing Nunc Pro Tunc, and remanded the case to the Board for further proceedings consistent with the Court's opinion.

As the Complainant, World Car has the burden of proof to establish—by a preponderance of the evidence<sup>1</sup>—that Hyundai violated:

- TEX. OCC. CODE §2301.467(a)(1), by requiring adherence to unreasonable sales or service standards;
- TEX. OCC. CODE §2301.468(1), by directly or indirectly discriminating against a franchised dealer or otherwise treating franchised dealers differently as a result of a formula or other computation or process intended to gauge the performance of a dealership;
- TEX. OCC. CODE §2301.468(2), by discriminating unreasonably between or among franchisees in the sale of a motor vehicle owned by the manufacturer or distributor; or
- TEX. OCC. CODE §2301.478(b), by failing its duty of good faith and fair dealing owed to its franchisee.

#### **SOAH ALJ's Recommendation**

The ALJ found that World Car failed to meet its burden of proof to show that Hyundai violated the Occupations Code, and recommended the Board deny World Car's complaint.

The SOAH ALJ's PFD contains harmless error of legal citation, the correction of which does not change the overall outcome of the hearing.

#### **Board Authority and the Administrative Procedure Act**

The Board has authority over these parties and the decision in this contested case matter in accordance with Texas Occupations Code Chapter 2301, specifically §2301.151.

The Administrative Procedure Act, TEX. GOVT CODE §2001.058(e), allows an agency to vacate or modify an order proposed by the ALJ only if the ALJ:

- (1) misapplied or misinterpreted applicable law, agency rules, or prior agency decisions;
- (2) relied on a prior agency decision that is incorrect or should be changed; or
- (3) made a technical error in a finding of fact.

The Board must state in writing the specific reason and legal basis for a change made to a finding or fact or conclusion of law.

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<sup>1</sup> Black's Law Dictionary defines "preponderance of the evidence" to mean the greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to include a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in a civil trial, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be. Also termed preponderance of proof or balance of probability.

**Attachments**

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

#	Date	Document Description
1.	March 10, 2016	SOAH ALJ's Proposal for Decision (PFD)
2.	May 31, 2016	SOAH ALJ's Exceptions Letter
3.	November 3, 2016	Board's Final Order
4.	August 17, 2017	Board's Order on Rehearing Nunc Pro Tunc
5.	October 4, 2017	Board's Decision and Order Denying Second Motion for Rehearing
6.	July 3, 2019	Third Court of Appeals Opinion reversing the Board's Order on Rehearing Nunc Pro Tunc and remanding to the Board for further proceedings
7.	August 26, 2019	Third Court of Appeals Mandate effectuating the Appellate Court's opinion

## State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

March 10, 2016

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

**VIA INTERAGENCY MAIL**

RE: **Docket No. 608-14-1208.LIC; MVD Docket No. 14-0006 LIC; New World Car Nissan, Inc., d/b/a World Car Hyundai and New World Car Imports, San Antonio, Inc., d/b/a World Car Hyundai**

Dear Mr. Avitia:

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Wendy K. L. Harvel".

Wendy K. L. Harvel  
Administrative Law Judge

WKLH/l  
Enclosure

cc: Dan Downey, Dan Downey, P.C., 1609 Shoal Creek Blvd., Ste. #100, Austin, TX 78701 – **VIA REGULAR MAIL**  
Lee L. Kaplan, Jarod R. Stewart, Smyser Kaplan & Veselka, L.L.P., 700 Louisiana, Ste. 2300, Houston, TX 77002 – **VIA REGULAR MAIL**  
Kevin M. Young, David Prichard, Prichard Hawkins Young, 10101 Reunion Place, Ste. 600, San Antonio, TX 78216 – **VIA REGULAR MAIL**  
Alice Carmona, Docket Clerk, Texas Department of Motor Vehicle, 4000 Jackson Avenue, Austin, Texas 78731 (with 1 - CD; Certified Evidentiary Record) - **VIA INTERAGENCY MAIL**

**SOAH DOCKET NO. 608-14-1208.LIC**  
**MVD DOCKET NO. 14-0006 LIC**

NEW WORLD CAR NISSAN, INC., § BEFORE THE STATE OFFICE  
D/B/A WORLD CAR HYUNDAI and §  
NEW WORLD CAR IMPORTS, SAN §  
ANTONIO, INC., D/B/A WORLD CAR §  
HYUNDAI, §  
Complainants § OF  
v. §  
HYUNDAI MOTOR AMERICA, §  
Respondent § ADMINISTRATIVE HEARINGS

## TABLE OF CONTENTS

<b>I. INTRODUCTION .....</b>	<b>1</b>
<b>II. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY .....</b>	<b>1</b>
<b>III. APPLICABLE LAW .....</b>	<b>2</b>
<b>IV. FACTUAL BACKGROUND .....</b>	<b>2</b>
<b>A. Allocation System.....</b>	<b>5</b>
<b>B. Sales Efficiency.....</b>	<b>7</b>
<b>C. Co-Op Advertising Funds .....</b>	<b>8</b>
<b>V. ALLEGED VIOLATIONS.....</b>	<b>8</b>
<b>A. Discriminatory Treatment (Occupations Code § 2301.468 (2003)).....</b>	<b>8</b>
<b>1. World Car’s Arguments.....</b>	<b>8</b>
<b>a. Discretionary allocation.....</b>	<b>8</b>
<b>i. Discrimination based on formula to gauge performance....</b>	<b>8</b>
<b>ii. Unreasonable discrimination in sale of a motor vehicle.....</b>	<b>9</b>
<b>b. Gaming the formula allocation system .....</b>	<b>9</b>
<b>c. Sales efficiency.....</b>	<b>10</b>
<b>d. Co-Op advertising.....</b>	<b>10</b>

2.	Hyundai's Response.....	11
a.	Allocation.....	11
b.	Sales efficiency.....	12
c.	Co-Op advertising.....	12
3.	Analysis.....	13
a.	Discretionary allocation.....	13
b.	Gaming the allocation system .....	14
c.	Sales efficiency.....	16
d.	Co-Op Advertising .....	18
B.	Unreasonable Sales Standards (Occupations Code § 2301.467(a)(1)) .....	19
C.	Duty of Good Faith and Fair Dealing (Occupations Code § 2301.478(b)) .....	21
VI.	CONCLUSION.....	22
VII.	FINDINGS OF FACT .....	23
VIII.	CONCLUSIONS OF LAW .....	27

SOAH DOCKET NO. 608-14-1208.LIC  
MVD DOCKET NO. 14-0006 LIC

NEW WORLD CAR NISSAN, INC., § BEFORE THE STATE OFFICE  
D/B/A WORLD CAR HYUNDAI and §  
NEW WORLD CAR IMPORTS, SAN §  
ANTONIO, INC., D/B/A WORLD CAR §  
HYUNDAI, §  
Complainants § OF  
v. §  
HYUNDAI MOTOR AMERICA, §  
Respondent § ADMINISTRATIVE HEARINGS

## PROPOSAL FOR DECISION

## I. INTRODUCTION

New World Car Nissan, Inc. and New World Car Imports, San Antonio, Inc. (together, World Car) contend that Hyundai Motor America's (Hyundai) allocation system, sales efficiency metric, and advertising subsidies violate the Texas Occupations Code (Occupations Code) because they are discriminatory, discriminate among dealers, require World Car to adhere to unreasonable sales standards, and violate the duty of good faith and fair dealing.

The Administrative Law Judge (ALJ) finds that World Car failed to meet its burden of proof to show that any of Hyundai's programs violate the Occupations Code. Therefore, the ALJ recommends that World Car's complaint be denied.

## II. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The parties do not dispute jurisdiction, notice, or procedural history. Therefore, those matters are addressed in the findings of fact and conclusions of law without discussion.



The hearing convened on September 21, 2015, at the State Office of Administrative Hearings in Austin, Texas, with ALJ Wendy Harvel presiding. The record closed on January 11, 2016, following the submission of post-hearing briefs and an agreed record.<sup>1</sup>

### III. APPLICABLE LAW

World Car alleges that Hyundai violated three sections of the Occupations Code. Under Section 2301.467, “a manufacturer or distributor . . . may not: (1) require adherence to unreasonable sale or service standards.” Under Section 2301.468 (2003):

A manufacturer, distributor, or representative may not:

- (1) notwithstanding the terms of any franchise, directly or indirectly discriminate against a franchised dealer or otherwise treat franchised dealers differently as a result of a formula or other computation or process intended to gauge the performance of a dealership; or
- (2) discriminate unreasonably between or among franchisees in the sale of a motor vehicle owned by the manufacturer or distributor.<sup>2</sup>

Texas Occupations Code § 2301.478 imposes on vehicle manufacturers and distributors a duty of good faith and fair dealing in their relationships with franchisees.

World Car, as the complainant, has the burden of proof.<sup>3</sup>

### IV. FACTUAL BACKGROUND

Ahmad Zabihian owns World Car in San Antonio, Texas. World Car has two Hyundai dealerships in San Antonio. One is in north San Antonio next to Interstate 35 (World Car

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<sup>1</sup> The ALJ commends the parties on their use of technology during and after the hearing and the professionalism exhibited by all participants in the case.

<sup>2</sup> The 2003 version of the statute applies to this case because the 2011 version applies only to an agreement entered into or renewed after the September 1, 2011 version of the statute was enacted. The franchise agreements between Hyundai and World Car were renewed in November 2010.

<sup>3</sup> 1 Tex. Admin. Code § 155.427.

North); the other is in south San Antonio (World Car South). They are part of the World Car Auto Group, which is comprised of 10 dealerships in the San Antonio area. Mr. Zabihian owns all of the World Car Auto Group dealerships. In addition to Hyundai, World Car Auto Group maintains Kia, Mazda, and Nissan dealerships.

World Car's primary Hyundai competitor is Red McCombs Hyundai (Red McCombs). Red McCombs owns two Hyundai dealerships in San Antonio – Red McCombs Superior and Red McCombs Northwest.

Prior to the 2008 recession, World Car North and Red McCombs Superior performed at approximately equal levels in terms of the number of vehicles sold. World Car South performed less well. It is in a lower-income area than World Car North. Red McCombs Northwest did not perform as well prior to the 2008 recession, but improved its sales during 2008-2009. The chart below illustrates the sales for the four dealerships.<sup>4</sup>

Dealer	2006	2007	2008	2009	2010 (Jan.-June)
World Car North	663	512	664	476	284
Red McCombs Superior	675	510	445	462	318
World Car South	304	373	429	174	90
Red McCombs Northwest	193	314	410	485	227

World Car notes that it sold the same volume or out-sold Red McCombs during most of these years. World Car contends its good sales were helped by Hyundai's regional general manager at the time (Rick Lueders), who provided World Car with sufficient inventory and Co-Op advertising assistance.<sup>5</sup>

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<sup>4</sup> World Car Exs. 10, 82.

<sup>5</sup> Co-Op advertising assistance is money provided from Hyundai to its dealers to cover part of the cost of dealership advertising.

In June 2010, Tom Hetrick replaced Mr. Lueders as Hyundai's regional general manager. World Car asserts that Mr. Hetrick did not provide inventory at the same level and was not as responsive to World Car as Mr. Lueders had been. Beginning in June 2010 through September 2013, World Car contends that Mr. Hetrick did not assist World Car with requests for additional inventory. World Car also contends that Mr. Hetrick provided substantially more assistance with Co-Op funds to the Red McCombs dealerships than to World Car. World Car alleges this practice continued from the beginning of Mr. Hetrick's tenure through the end of the third quarter of 2013, when World Car initiated litigation against Hyundai.<sup>6</sup>

World Car also alleges that Red McCombs dealerships were able to game Hyundai's allocation system, resulting in Red McCombs unfairly obtaining additional inventory even though it was not entitled to receive it.

Hyundai agrees with the sales numbers World Car presents. Hyundai argues that World Car's poor sales were not due to Mr. Hetrick's division of inventory, but rather to World Car voluntarily reducing inventory during the recession of 2008-2009 by turning down hundreds of cars offered to it through the allocation system. Additionally, Hyundai notes that World Car did not participate in many of the Hyundai programs that could have helped World Car increase its sales, including adding the Equus product, remodeling, becoming an exclusive Hyundai dealership, and using Hyundais as service loaner vehicles. Those practices allowed the Red McCombs dealerships to qualify for additional inventory.

Hyundai also notes that in March 2011, a large earthquake and tsunami hit Japan, which resulted in fewer Japanese cars being available on the market in the United States. As a result of the shortage of Japanese cars, Hyundais became more popular and were in short supply as the manufacturer had not and could not have anticipated the increased demand. Hyundai asserts that during the time of short supply, all dealers were asking for additional inventory, and Hyundai was unable to supply any of its dealers with as much inventory as requested.

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<sup>6</sup> The civil litigation is in Bexar County, Texas.

### A. Allocation System

Hyundai's allocation system consists of formula allocations, discretionary allocations, and manual allocations. Formula allocations make up approximately 85% of the vehicles allocated and are allocated through a formula and computer program.<sup>7</sup> Hyundai uses a balanced days' supply system for its formula allocations.<sup>8</sup> The same formula is used for all Hyundai dealers nationwide.<sup>9</sup> Hyundai used the same formula allocation system from 2006 through 2013.<sup>10</sup> Under the allocation algorithm, vehicles are offered to dealers based on each dealer's inventory and the average number of vehicles sold by the dealer in the previous 90 days. The system allocates vehicles, one at a time, to the dealer in the region with the lowest days' supply for each respective model.<sup>11</sup> This system is not a pure "turn and earn" system because the turn and earn system considers only the number of vehicles sold and reported by each dealer, while the balanced days' supply considers the dealers' available inventories.<sup>12</sup> World Car is not challenging the mechanics of the formula allocation system. Rather, as part of its complaint that it was subject to unreasonable discrimination, World Car asserts that Red McCombs' dealerships were able to cheat and game the allocation system, which resulted in those dealerships improperly receiving additional allocation. Because World Car did not use the same methods of gaming the system, World Car alleges it was subject to unreasonable discrimination.<sup>13</sup>

Discretionary allocations are made by Hyundai's regional general manager, who may distribute up to 15% of total allocation. Manual allocations include turn downs, which are

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<sup>7</sup> Tr. at 760, 1062-63, 1066.

<sup>8</sup> Tr. at 824-25.

<sup>9</sup> Tr. at 708, 1155.

<sup>10</sup> Tr. at 820-21. The formula used to determine allocation was changed after 2013, but the new formula is not the subject of this proceeding.

<sup>11</sup> Tr. at 819.

<sup>12</sup> Tr. at 825.

<sup>13</sup> World Car Initial Brief at 21-25.

vehicles allocated to a dealer under the formula that the dealer rejects that are then made available to other dealers in the region, and vehicles that have been re-customized or modified.<sup>14</sup>

It should be noted that the discretionary allocation does not always equal 15%. Particularly, during times of short supply, there may not be as much discretionary allocation.<sup>15</sup> Discretionary allocation can be, and usually is, provided for particular events or milestones at a dealership, such as facility renovations, grand openings, turning a multi-manufacturer dealership into a Hyundai-exclusive dealership, or agreeing to sell Hyundai's luxury vehicle, the Equus.<sup>16</sup>

Within the San Antonio market, when analyzing discretionary allocation among the dealerships, World Car received similar percentages of discretionary allocation when compared to Red McCombs.

Year <sup>17</sup>	McCombs Superior	McCombs NW	World North	Car	World South	Car
2008	2%	3%	15%		19%	
2009	2%	3%	5%		11%	
2010	6%	14%	3%		4%	
2011	16%	14%	12%		12%	
2012	13%	15%	13%		3%	
2013	1%	1%	1%		0%	

The parties agree that Hyundai offers 12 different models of vehicles, with distinct trim levels, which results in at least 96 different configurations before options and paint colors are chosen.<sup>18</sup> World Car asserts that it (and any other dealership) needs a certain minimum level of

<sup>14</sup> Tr. at 685, 1103-04, 1146.

<sup>15</sup> Tr. at 840-41.

<sup>16</sup> Tr. at 1060-60, 1080.

<sup>17</sup> Data in this chart is aggregated from information in Hyundai Ex. 99, which contains confidential information.

<sup>18</sup> World Car Ex. 130.

inventory to offer choice and selection to customers and to maintain or increase its sales rate.<sup>19</sup> Hyundai does not disagree.<sup>20</sup>

The inventory, sales, and allocation cycle can spiral downward as a result of poor sales and low inventory. If a dealership has low inventory, it will result in a lower sales rate because there is less selection. With fewer cars sold, the allocation system will not allocate as many new cars to the faltering dealership. World Car asserts that it needed a significant increase in its inventory in order to be able to sell more cars. With the low inventory, caused by reduced sales and lack of new inventory, World Car's sales rate declined.

Again, World Car does not challenge the formula that performs the 85% system allocations.<sup>21</sup> Rather, World Car challenges the 15% discretionary and manual allocations and the ability of dealerships to game the allocation system at the expense of other dealerships.

## **B. Sales Efficiency**

Sales efficiency is a metric that Hyundai uses to measure dealer sales performance.<sup>22</sup> Sales efficiency compares a dealer's total sales to sales the brand expects to achieve in the dealer's primary market area. Hyundai calculates expected sales by applying Hyundai's national average sales penetration in each vehicle segment in which Hyundai competes to the actual number of vehicles registered in that segment in the dealer's primary market area. Thus, if Hyundai sells 5% of the subcompact vehicles sold nationwide during a particular time period, then Hyundai would expect that 5% of the subcompacts sold in a dealer's primary market area during that same time period would be Hyundais.<sup>23</sup> Hyundai then compares the dealer's total

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<sup>19</sup> Tr. at 154, 650-51, 682-83.

<sup>20</sup> World Car Ex. 117 at 193; Tr. at 510, 512.

<sup>21</sup> World Car Initial Brief at 6.

<sup>22</sup> Almost every other car manufacturer uses the same or similar metric. Tr. at 73, 712, 453-54.

<sup>23</sup> Tr. at 1165-66.

sales to the expected sales number. So if expected sales are 200, and the dealer sold 200 cars, the dealer is 100% sales efficient.

### **C. Co-Op Advertising Funds**

Hyundai's Co-op Advertising Commitment Program provides funds (Co-Op advertising funds) to dealers to assist with advertising. The funds do not pay for the total cost of advertisements the dealer purchases, but provide partial reimbursements.<sup>24</sup> Eligibility for the program and the amount of reimbursement are determined by a formula that considers sales and customer services scores.<sup>25</sup> Regional general managers also have some discretionary funds they can provide to dealers.<sup>26</sup>

## **V. ALLEGED VIOLATIONS**

### **A. Discriminatory Treatment (Occupations Code § 2301.468 (2003))**

#### **1. World Car's Arguments**

##### **a. Discretionary allocation**

##### **i. Discrimination based on formula to gauge performance**

World Car asserts that Hyundai violated Occupations Code § 2301.468(1) (2003) by treating World Car differently than Red McCombs in the discretionary allocation of vehicle inventory. World Car notes that Mr. Hetrick gave 98 discretionary allocations to Red McCombs Northwest and 36 to Red McCombs Superior during the first six months of his tenure as regional general manager. During the same time, he provided 10 cars through discretionary allocation to

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<sup>24</sup> Tr. at 217-18.

<sup>25</sup> Tr. at 391.

<sup>26</sup> Tr. at 93.



each World Car dealership. Thus, Red McCombs two dealerships received a total of 134 discretionary cars, and World Car received a total of 20.<sup>27</sup> World Car further asserts that the large number of discretionary allocations to the Red McCombs dealerships allowed them to sell more cars because they had more inventory. Because they were able to sell more cars, they earned more through the 85% formula allocations. World Car characterizes the difference in allocation of vehicles by a comparative percentage. In other words, Hyundai allocated seven times more vehicles to the Red McCombs dealerships than it did to the World Car dealerships.<sup>28</sup>

**ii. Unreasonable discrimination in sale of a motor vehicle**

World Car contends that Hyundai unreasonably discriminated against World Car in violation of the second prong of Occupations Code § 2301.468(2) (2003) in the allocation of vehicle inventory. World Car alleges that the disparity in the discretionary allocation was unreasonable. World Car contends that it was not rational or fair for Mr. Hetrick to provide many more discretionary allocations to Red McCombs compared to World Car, particularly when World Car was making multiple requests for additional inventory from 2010 through 2013.<sup>29</sup> World Car also contends that Red McCombs received additional discretionary allocations when it renovated one of its facilities, whereas World Car did not receive discretionary allocation at its North Store when it was renovated.<sup>30</sup>

**b. Gaming the formula allocation system**

World Car argues that although the formula allocation system itself is not discriminatory, Red McCombs was able to game the system to its strategic advantage to improve formula allocations to its dealerships. World Car asserts that dealerships could game the allocation system by reporting vehicles as sold by submitting a Retail Delivery Report (RDR) even though

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<sup>27</sup> World Car Ex. 111.

<sup>28</sup> World Car Initial Brief at 37.

<sup>29</sup> World Car Initial Brief at 38.

<sup>30</sup> World Car Initial Brief at 39, citing Tr. at 495-97.



the vehicle had not been sold and by putting vehicles into the service loaner program and reporting them as sold without actually using the vehicles as loaners.<sup>31</sup>

**c. Sales efficiency**

World Car also alleges a violation of Occupations Code § 2301.458(1) (2003) through the use of sales efficiency. To support its allegation, World Car notes that Mr. Hetrick used sales efficiency to reward dealerships with discretionary allocation, but treated World Car differently than Red McCombs. World Car also notes that it did not have enough inventory to reach 100% sales efficiency in the market, and Hyundai did not help World Car with additional inventory. Secondly, World Car argues that Mr. Hetrick proposed the sale of the World Car Hyundai dealerships because of poor sales efficiency and performance. Because Mr. Hetrick did not attempt to have other dealers sell their dealerships, and because Mr. Hetrick did not give World Car any assistance or inventory to help World Car improve its sales, World Car alleges discrimination under Texas Occupations Code § 2301.458(1).

**d. Co-Op advertising**

World Car asserts an additional violation of Occupations Code § 2301.468 (2003) through distribution of discretionary Co-Op advertising funds.<sup>32</sup> World Car notes that Hyundai distributes approximately 85% of Co-Op advertising funds through a formula that is predicated on reported sales.<sup>33</sup> The remaining funds are distributed at the discretion of the regional general manager.<sup>34</sup>

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<sup>31</sup> World Car Initial Brief at 21.

<sup>32</sup> World Car Initial Brief at 40. World Car does not cite the specific subsection it is alleging was violated by the distribution of Co-Op advertising funds.

<sup>33</sup> World Car Ex. 120 at 19-20; Tr. at 93, 199-200.

<sup>34</sup> *Id.*

## 2. Hyundai's Response

### a. Allocation

Hyundai argues that World Car cannot maintain its claim that the alleged discriminatory allocation of vehicles is a violation of the Occupations Code. Hyundai reads the statute narrowly to include only the sale of a motor vehicle. Thus, according to Hyundai, to prove a violation, the discrimination must have occurred in the sale of the vehicle, and not the allocation, measurement of sales efficiency, or the distribution of Co-Op funds.<sup>35</sup> Hyundai asserts that simply because a vehicle is allocated to a dealer, the dealer does not necessarily purchase it. The dealer may choose to purchase it or may turn it down. Allocation simply determines the number of vehicles the distributor offers the dealer.

Hyundai notes that the statute prohibits unreasonable discrimination, not discrimination for which Hyundai had a reasonable basis. Hyundai argues that unreasonable discrimination must be arbitrary, capricious, without substantial cause or reason, or lacking a legitimate business justification.<sup>36</sup> Hyundai argues that the formula allocations did not discriminate unreasonably. The formula is applied the same way to each dealer. Hyundai asserts that Red McCombs took advantage of optional programs that improved its position in the allocation system. Those programs were available to all dealers, including World Car, and World Car simply chose not to take advantage of the programs.<sup>37</sup> Those programs included: using Hyundais as service loaners; adding the luxury Equus line; remodeling; and making dealerships exclusively Hyundai-branded.<sup>38</sup> Another strategy to increase allocation was to report sales quickly. Some dealers submitted an RDR report after a spot delivery of a car, even if financing

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<sup>35</sup> Hyundai Initial Brief at 36.

<sup>36</sup> Hyundai Initial Brief at 37, citing *Star Motorcars v. Mercedes-Benz USA*, SOAH Docket No. 601-09-3665, citing *Mitchell's Inc. v. Nelms*, 454 S.W.2d 809, 813-14 (Tex. App.—Dallas 1970, writ ref'd n.r.e.); *Burlington Northern & Santa Fe Ry. Co. v. South Plains Switching, Ltd. Co.*, 174 S.W.3d 349, 352-54 (Tex. App.—Fort Worth 2005, no writ); *Buddy Gregg Motor Homes, Inc. v. Marathon Coach, Inc.*, 320 S.W.3d 912, 924 (Tex. App.—Austin 2010, no pet.).

<sup>37</sup> Hyundai Initial Brief at 38.

<sup>38</sup> Tr. at 1182-83.

was not approved.<sup>39</sup> Reporting the sale quickly reduced the days' supply of that model and would show that the dealer might need additional formula allocation to maintain its supply. World Car did not submit RDR reports until financing was approved, which delayed the reported sale and slowed allocations.<sup>40</sup>

With respect to discretionary allocations, Hyundai argues that during the shortage following the tsunami, Mr. Hetrick focused the discretionary allocation on dealers that were committed to the Hyundai brand. Because Red McCombs maintained its inventory level during the recession, renovated one store, added the Equus line, and because its other store became a Hyundai-exclusive dealership, it received more discretionary allocation.<sup>41</sup>

**b. Sales efficiency**

Hyundai argues that measuring sales efficiency is not unreasonable discrimination. It is calculated the same way for all dealers. And it is used to identify dealers that perform below average so they can improve their performance.<sup>42</sup>

**c. Co-Op advertising**

Hyundai asserts that the use of Co-Op advertising funds cannot violate Occupations Code § 2301.468 because it does not relate to the sale of a motor vehicle. Rather, it is simply a mechanism to allow Hyundai as the manufacturer to contribute some money to the dealers to help the dealers purchase more advertising for the brand.

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<sup>39</sup> Tr. at 101, 367.

<sup>40</sup> Tr. at 867.

<sup>41</sup> Tr. at 167, 1050-61.

<sup>42</sup> Hyundai Initial Brief at 45, 46.

### 3. Analysis

#### a. Discretionary allocation

The ALJ finds that the use of discretionary allocation did not violate the Occupations Code. World Car notes that in a six-month period Mr. Hetrick offered 134 cars through discretionary allocation for Red McCombs versus 20 for World Car.<sup>43</sup> World Car then makes the comparison that Red McCombs did not sell nearly seven times as many vehicles as World Car Hyundai.<sup>44</sup> World Car notes that at the time of the additional allocation, all four San Antonio Hyundai dealerships were considered by Hyundai to be underperforming.<sup>45</sup>

World Car's argument fails to take into account the differences between the Red McCombs' dealerships and World Car's dealerships. In 2010, Red McCombs Superior became an exclusive Hyundai dealer, whereas World Car South shares a dealership with Kia. Red McCombs' Northwest store added the luxury Equus line that required a facility upgrade, and then renovated the store. Red McCombs Superior also renovated its dealership in 2011-2012. World Car dealerships were not renovated during this time. It was not until 2014 that World Car North renovated its store. Red McCombs also participated in Hyundai's service loaner program. World Car did not participate in Hyundai's service loaner program.

World Car could have participated in all of these Hyundai programs, which would most likely have increased the sales rate and reduced the daily supply of vehicles, resulting in additional allocation. World Car chose not to participate. All dealers that chose to participate in the programs would have increased allocation and would have been eligible for discretionary allocation that was given by regional general managers to reward dealers for facility upgrades, renovations, and exclusivity. World Car's choice not to engage in those programs worked to its detriment in terms of receiving discretionary allocation. But Mr. Hetrick's decision to reward

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<sup>43</sup> World Car Ex. 111.

<sup>44</sup> World Car Initial Brief at 37.

<sup>45</sup> World Car Initial Brief at 39.

Red McCombs was not unreasonably discriminatory. Rather, it was his reasonable business judgment to reward the Red McCombs dealerships for remodeling, becoming exclusive, adding the Equus line, and participating in the service loaner program. For these reasons, the ALJ finds that World Car failed to meet its burden of proof to show that Hyundai unreasonably discriminated against it in providing discretionary allocation.

World Car also reduced its inventory in 2009. Mr. Zabihian testified in his deposition that he pulled back in inventory in 2008-2009. At the hearing he agreed that he reduced inventory in 2009.<sup>46</sup> Mr. Zabihian also indicated that the Red McCombs stores kept their inventory at about the same levels during the 2008-2009 recession.<sup>47</sup>

In 2010, World Car turned down many vehicles offered by Hyundai. In the first six months of 2010, World Car North turned down 173 of 423 vehicles. World Car South turned down 32 of 100 offered vehicles.<sup>48</sup> Beginning in the second half of 2010 and continuing through mid-2013, there was a shortage of Hyundais. At that point, World Car had voluntarily reduced its inventory, resulting in a slower sales rate, and there were insufficient available cars to meet overall demand.

Although it was an unfortunate coincidence that the worldwide shortage of cars happened shortly after World Car had voluntarily reduced its inventory, World Car made the decision to do that. It was not the result of any discrimination on the part of Hyundai.

**b. Gaming the allocation system**

World Car alleges that submitting an RDR report for a spot delivery is a way for dealers to game the allocation system. A “spot delivery” refers to the practice of allowing a purchaser to take delivery of a vehicle after a sales contract is signed but before all final payment

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<sup>46</sup> Tr. at 223-224, 228.

<sup>47</sup> Tr. at 228.

<sup>48</sup> Hyundai Ex. 47.

arrangements have been finalized.<sup>49</sup> World Car has decided not to record an RDR after a spot delivery because World Car thinks it does not constitute a sale until the sale is completed with approved financing.<sup>50</sup>

Spot deliveries are a common industry practice.<sup>51</sup> World Car spot delivers cars but does not submit an RDR report until the financing is approved. Because World Car does not immediately submit the RDR, the sale is reported later, thereby affecting the balanced days' supply of vehicles on its lot, and slowing formula allocation. Hyundai encouraged World Car to speed up its sales reporting by promptly submitting RDRs, but World Car chose not to do so.<sup>52</sup> Hyundai's dealer agreement requires dealers to report the delivery of each new motor vehicle to a purchaser by the end of the day the vehicle is delivered.<sup>53</sup>

World Car does not submit the RDR prior to the completed sale because once the RDR is submitted the warranty begins. So if the financing falls through, and the car is returned, the next purchaser would not have a full warranty.<sup>54</sup> World Car asserts that spot deliveries in Texas do not transfer ownership of the car from the dealer to the consumer, and thus submitting an RDR would be inaccurate.

Because spot deliveries are not illegal, and Hyundai had counseled World Car to submit RDR reports quickly once the car was delivered to the customer, World Car cannot now complain that not doing so was unreasonable discrimination. World Car had the same tools available to it as every other Hyundai dealer. In the event a warranty has started and the car is returned, World Car could sell the car to another purchaser at a reduced price to account for the shorter warranty period.

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<sup>49</sup> Tr. at 967, 267, 520.

<sup>50</sup> Tr. at 103-05, 267-68, 566, 602.

<sup>51</sup> Tr. at 269.

<sup>52</sup> Tr. at 241-42.

<sup>53</sup> World Car Ex. 1.

<sup>54</sup> Tr. at 105, 108.

Importantly, although two expert witnesses testified about whether Red McCombs was gaming the allocation system by submitting RDR reports and then backing them out when the financing fell through, there was no evidence that this happened, only speculation.<sup>55</sup>

World Car also asserts that Red McCombs reported vehicles sold to the dealerships for use in the service loaner program even though the dealerships did not use the vehicles in the service loaner program.<sup>56</sup> World Car's evidence is that some of the service loaners came out of the service loaner program with "not too many miles on them."<sup>57</sup> The ALJ finds that there is insufficient evidence to show that Red McCombs gamed the allocation system by either falsely submitting RDR reports or not using service loaners. The ALJ finds that World Car failed to meet its burden of proof to show that any "gaming" of the allocation system violated the Occupations Code.

**c. Sales efficiency**

In 2008, both World Car North and South were over 100% sales efficient. In 2009, the north store dropped to 96.8% and continued to drop over time. In 2014, it was 65.7% sales efficient. The south store fared worse. It dropped to 17.9% sales efficient in 2013 but rebounded in 2014 to 31.2% sales efficient.<sup>58</sup>

World Car asserts that it did not have sufficient inventory to meet 100% sales efficiency. It argues that the sales efficiency expectation for World Car South was unreasonable because the south store saw a large drop in sales due to the opening of a Toyota manufacturing plant in the vicinity of the south store. Thus, it contends that Hyundai's sales efficiency calculation was

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<sup>55</sup> Tr. at 732-33 (World Car expert Mr. Roesner testifying that he did not have any way to check whether spot deliveries were improper.)

<sup>56</sup> World Car Initial Brief at 22.

<sup>57</sup> Tr. at 782.

<sup>58</sup> Tr. at 1174; World Car Exs. 3, 4.



unfair because to achieve 100% sales efficiency, World Car would have had to have sold more cars than it was allocated.<sup>59</sup>

In 2009, Toyota opened a manufacturing plant and new dealership close to World Car South.<sup>60</sup> The manufacturing plant employs about 6,000 people. Those employees had incentives to purchase Toyota products.<sup>61</sup> World Car suggests that Hyundai should have recalculated its sales efficiency measures to account for the opening of the Toyota manufacturing plant and the resulting significant increase in Toyota sales in the area.

Because World Car was selling fewer cars out of the south store, it was receiving fewer cars through formula allocation. Combined with the shortage in supply due to the tsunami, it was difficult for World Car to maintain high enough inventory levels to be able to show customers a large selection. Hyundai was aware of the limited supply and knew that there was not enough manufacturing volume to provide dealers with sufficient inventory to allow the dealers to meet their sales targets. Hyundai's President and CEO testified that "[s]ome of the most difficult conversations that we had in 2011 and 2010 and – and 2013 were with dealers that couldn't get to their stated sales volumes with the inventory we were giving them. That's a tough conversation to have. It's a legitimate conversation, and there just isn't enough available volume – production volume to get to those numbers."<sup>62</sup>

World Car suggests that Hyundai had two choices to correct the issue, either sell more discretionary allocations to World Car or adjust the sales efficiency standard. Hyundai did neither.

Hyundai responds that sales efficiency was calculated in the same manner for World Car as it was for every other Hyundai dealer. The tsunami affected all dealers equally. Hyundai

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<sup>59</sup> World Car Initial Brief at 29.

<sup>60</sup> Tr. at 438-40.

<sup>61</sup> Tr. at 442.

<sup>62</sup> World Car Ex. 20 at 243-44.



admits that in 2013, it sent World Car South a “Notice of Failure of Performance” based on the dealership’s poor sales efficiency.<sup>63</sup> The letter advised the dealership of its deficient sales efficiency and asked the dealership to reassess its commitment by either pursuing a sale of the dealership or providing a written plan to improve performance.<sup>64</sup> World Car has done neither, but Hyundai has not sought to terminate the World Car South store as a dealer.

The ALJ agrees with Hyundai that to find a violation, World Car must prove that Hyundai treated dealers differently by the use of a formula to gauge sales performance. World Car argues that Mr. Hetrick rewarded discretionary allocations by looking at sales efficiency but that Red McCombs received several times as many cars through discretionary allocation when compared to World Car, even though the sales difference between the two dealers was not that high.

World Car’s argument fails because all dealerships were in the same situation with regard to high demand and low supply. It is undisputed that following the Japanese tsunami, Hyundai manufacturing could not keep up with demand for the product. As a result, dealerships were unable to receive the number of cars they wanted. As discussed above, there were steps World Car could have taken to increase its sales numbers, but World Car made the business decision not to do so. The ALJ finds that World Car failed to meet its burden of proof to show that the use of a sales efficiency measure violates the Code.

#### **d. Co-Op Advertising**

The ALJ finds that Hyundai did not violate the Code through the discretionary use of Co-Op advertising funds. Co-Op advertising funds are sometimes provided to dealers by the manufacturer to increase the amount of money the dealer is able to spend on advertising.

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<sup>63</sup> World Car Ex. 67.

<sup>64</sup> Tr. at 1124.

The Co-Op advertising funds must be used exclusively for advertising. Eligibility and the amount of reimbursement are determined by a formula that considers several factors including sales and customer service scores.<sup>65</sup> That formula does not discriminate in the sale of a motor vehicle. Rather it discriminates in the amount of money a dealership receives from Hyundai for advertising. The formula is not intended to gauge the performance of a dealership. It simply calculates how much additional advertising funding a particular dealership will receive. And notwithstanding the formula, the regional general manager has discretion to award additional Co-Op advertising funds. For example, in 2010, World Car South was not eligible under the formula to receive Co-Op advertising funds. However, Mr. Hetrick provided the store with \$60,000 of discretionary Co-Op advertising funds over the third and fourth quarters of that year.<sup>66</sup> The Co-Op program formula is applied in the same manner to all dealers and is not intended as a way to gauge the dealer's performance. It is applied to determine which dealers are eligible for additional funding, and the amount of funding, but is unrelated to the sale of a motor vehicle. Above and beyond that funding, the regional general manager can award additional Co-Op dollars at his discretion. For these reasons, the ALJ finds that the Co-Op advertising program does not violate Occupations Code § 2301.468(1) or (2).

**B. Unreasonable Sales Standards (Occupations Code § 2301.467(a)(1))**

World Car alleges that Hyundai required World Car to adhere to unreasonable sales and service standards in violation of Occupations Code § 2301.467(a)(1). World Car asserts that the "sales efficiency requirements" for World Car South were unreasonable because World Car would have had to sell more cars than it was allocated. The facts that form the basis of this allegation are discussed above. World Car notes that Mr. Hetrick could have used his discretion to allocate more vehicles but chose not to do so.<sup>67</sup> Because Hyundai did not allocate additional inventory to World Car South or adjust the sales efficiency standard because of the increased

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<sup>65</sup> Tr. at 391.

<sup>66</sup> Tr. at 259-60.

<sup>67</sup> Tr. at 1079, 1101-02.

competition from Toyota, World Car argues that Hyundai required it to adhere to an unreasonable sales standard.

With respect to World Car North, World Car asserts that the sales efficiency requirements were also unreasonable. World Car asserts that it did not receive enough allocation to be able to reach 100% sales efficiency. Hyundai recognized that World Car North needed to add additional inventory to be able to achieve 100% sales efficiency. However, World Car asserts that Hyundai did not provide additional inventory and that at the same time, the Red McCombs dealerships had sufficient inventory because they were receiving discretionary allocation from Mr. Hetrick.<sup>68</sup> Because Hyundai did not provide additional inventory, World Car contends that Hyundai required adherence to an unreasonable sales efficiency requirement.

Hyundai responds that sales efficiency is not a standard that World Car (or any other dealer) is required to adhere to. Rather, it is a measurement to compare each dealer's performance to other dealers and to the national average. Hyundai argues it has no requirement that dealers be 100% sales efficient.

Hyundai further argues that World Car's allocations are lower than its expected sales because World Car had not sold vehicles at a sufficient rate to earn greater allocations. If World Car had maintained its rate from the time it was over 100% sales efficient in 2008, it would have continued to earn sufficient vehicles through the allocation system.<sup>69</sup> Neither World Car store has been 100% sales efficient for several years. Hyundai has not sought to terminate either dealership. Mr. Hetrick recommended a renewal of the Dealer Agreement with World Car South in 2010 when the store had an average sales efficiency of 42%.<sup>70</sup>

The ALJ finds that World Car failed to meet its burden to show that Hyundai required adherence to an unreasonable sales or service standard based on the sales efficiency calculation.

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<sup>68</sup> World Car Initial Brief at 45, *citing* World Car Ex. 109; at Tab 3; World Car Exs. 126, 127; Tr. at 1079.

<sup>69</sup> Hyundai Initial Brief at 50-51.

<sup>70</sup> Hyundai Ex. 41; Tr. at 261-62.

The word “require” is not defined in the statute. However, something is required when it is ordered or demanded as necessary.<sup>71</sup> There is no requirement in the Dealer Agreement between World Car and Hyundai that requires World Car to be 100% sales efficient.<sup>72</sup> There is a section in the standard provisions of the Dealer Agreement that identifies sales efficiency as a criterion that can be considered in evaluating dealer performance; it does not state that a dealer must be 100% sales efficient.<sup>73</sup> Thus, there is no requirement that World Car meet any standard for sales efficiency. Therefore, World Car failed to show that the sales efficiency metric requires it to meet an unreasonable sales standard.

**C. Duty of Good Faith and Fair Dealing (Occupations Code § 2301.478(b))**

World Car alleges that Hyundai violated the duty of good faith and fair dealing required by the Occupations Code by not supplying sufficient allocation and by evaluating World Car’s sales performance based on sales efficiency. The allegations with respect to these claims are the same as those discussed above, and World Car alleges they also support a violation of the duty of good faith and fair dealing.<sup>74</sup>

Hyundai argues that it did not breach its duty of good faith and fair dealing because it did not violate any section of the Occupations Code. Hyundai asserts that World Car could have increased its allocation in the same manner as any other dealer – by recording spot deliveries, by participating in the service loaner program, by adding the Equus line, by renovating its dealerships, or by becoming an exclusive Hyundai dealer. Because World Car made the business decisions not to participate in those programs, any detriment to the allocation was caused by World Car’s decisions.<sup>75</sup>

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<sup>71</sup> See Merriam-Webster Dictionary; Black’s Law Dictionary.

<sup>72</sup> Hyundai Exs. 28, 39; World Car Ex. 1.

<sup>73</sup> World Car Ex. 1.

<sup>74</sup> See Tex. Occ. Code § 2301.478(b).

<sup>75</sup> And the Japanese tsunami, which was outside of everyone’s control.

The sales efficiency standard is not a requirement, rather it is a measurement Hyundai uses to gauge dealer sales. Although World Car was not 100% sales efficient after 2009, Hyundai still allowed World Car's dealerships to remain Hyundai dealers. And both World Car dealerships are still in existence. Sales efficiency is determined the same way for all dealers. Treating some dealers differently, as World Car argues, could actually violate Hyundai's duty of good faith and fair dealing with respect to other dealers.

World Car argues that the duty of good faith and fair dealing should be defined as "requir[ing] the parties to deal fairly with one another."<sup>76</sup> Hyundai contends that a breach of the duty of good faith and fair dealing requires a showing of the "conscious doing of a wrong for a dishonest, discriminatory or malicious purpose."<sup>77</sup>

The ALJ finds that regardless of which standard is applied, Hyundai prevails. Even applying World Car's lower "not fair" standard, neither the allocation system nor the sales efficiency metric violate the provision in the Occupations Code that requires good faith and fair dealing. Although the discretionary allocation accounts for around 15% of the allocation any dealer receives, Hyundai informs dealers of how they can increase their allocation. World Car did not take advantage of many of those programs. Furthermore, Hyundai treats all dealers under the same sales efficiency formula and informs the dealers of how sales efficiency is calculated. There is no evidence Hyundai has any intent not to play fair with World Car or other dealers that did not meet 100% sales efficiency.

## VI. CONCLUSION

Based on the evidence presented, World Car failed to prove any of its alleged violations of the Occupations Code.

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<sup>76</sup> World Car Initial Brief at 46, citing *Humble Emergency Physicians, P.A. v. Mem'l Hermann Healthcare Sys., Inc.*, 01-09-00587-CV, 2011 WL 1584854, at \*7 (Tex. App.—Houston [1st dist.] Apr. 1, 2011, no pet.).

<sup>77</sup> Hyundai Initial Brief at 56, citing *Bray v. Tejas Toyota, Inc.*, 363 S.W.3d 777, 780 (Tex. App.—Austin 2012, no pet.).

## VII. FINDINGS OF FACT

1. New World Car Nissan, Inc. d/b/a World Car Hyundai and New World Car Imports, San Antonio, Inc., d/b/a World Car Hyundai (together, World Car) are licensed, franchised dealers for Hyundai products and services.
2. Hyundai Motor America (Hyundai) is the wholesale distributor for Hyundai products and services in the United States.
3. On December 6, 2013, the Texas Department of Motor Vehicles (Department) issued a Notice of Hearing advising that World Car had filed a formal complaint with the Department.
4. The hearing on the merits convened on September 21, 2015, and concluded on September 25, 2016. The record closed on January 11, 2016, following the submission of written closing briefs and an agreed record.

### *Background*

5. Ahmad Zabihian owns World Car in San Antonio, Texas. World Car owns two Hyundai dealerships in San Antonio.
6. World Car's primary Hyundai competitor is Red McCombs Hyundai. Red McCombs owns two Hyundai dealerships in San Antonio – Red McCombs Superior and Red McCombs Northwest.
7. Prior to the 2008 recession, World Car North and Red McCombs Superior performed at approximately equal levels in terms of the number of vehicles sold. World Car South performed less well. It is in a lower-income area than World Car North. Red McCombs Northwest did not perform as well prior to the 2008 recession, but improved its sales during 2008-2009.
8. Hyundai's allocation consists of formula allocations, discretionary allocations, and manual allocations.
9. Formula allocations make up approximately 85% of the vehicles allocated and are allocated through a formula and computer program.
10. Under the allocation algorithm, vehicles are offered to dealers based on each dealer's inventory and the average number of vehicles sold by the dealer in the previous 90 days. The system allocates vehicles, one at a time, to the dealer in the region with the lowest days' supply for each respective model.



11. Discretionary allocations are made by Hyundai's regional general manager, who may distribute up to 15%.
12. Manual allocations include turn downs, which are vehicles allocated to a dealer under the formula that the dealer rejects, which are then made available to other dealers in the region, and vehicles that have been re-customized or modified.
13. Sales efficiency is a metric that Hyundai uses to measure dealer sales performance.
14. Sales efficiency compares a dealer's total sales to sales the brand expects to achieve in the dealer's primary market area. Hyundai calculates expected sales by applying Hyundai's national average sales penetration in each vehicle segment in which Hyundai competes to the actual number of vehicles registered in that segment in the dealer's primary market area.
15. Hyundai's Co-Op Advertising Commitment Program (Co-Op) provides funds (Co-Op advertising funds) to dealers to assist with advertising. The funds do not pay for the total cost of advertisements the dealer purchases, but provide partial reimbursements.
16. Eligibility for Co-Op advertising funds and the amount of reimbursement are determined by a formula that considers sales and customer services scores. Regional general managers also have some discretionary funds they can provide to dealers.
17. In 2009, Hyundai's regional general manager responsible for the San Antonio region was Tom Hetrick, who replaced a different regional general manager that year.

***Discrimination and gauging the performance of a dealership***

***Discretionary allocation***

18. In 2009, during the first six months of Mr. Hetrick's tenure as regional general manager, he provided 134 cars through discretionary allocation to Red McCombs and 20 to World Car.
19. The differences in discretionary allocation between Red McCombs and World Car continued through 2013.
20. In 2009 and 2010, World Car voluntarily reduced its inventory.
21. Red McCombs dealerships maintained their high inventory levels during the 2008-2010 recession.
22. In 2010, Red McCombs Superior became an exclusive Hyundai dealership.
23. World Car South shares a dealership with the Kia brand.

24. Red McCombs Northwest added the luxury Equus line that required a facility upgrade and then renovated the store.
25. Red McCombs Superior renovated its dealership in 2011-2012.
26. Red McCombs participated in Hyundai's service loaner program.
27. World Car chose not to participate in the available programs provided by Hyundai that could have increased the allocation available to World Car.
28. World Car did not renovate a dealership until 2014, when it renovated World Car North.
29. World Car did not participate in Hyundai's service loaner program.
30. It was reasonable for Hyundai to reward dealers that participated in Hyundai-sponsored programs and renovated their facilities with extra discretionary allocation.

***Gaming the formula allocation system***

31. There was nothing improper or illegal about recording a Retail Delivery Report (RDR) for cars that had been spot delivered.
32. Hyundai encouraged World Car to speed up its sales reporting by promptly submitting RDRs once a car was delivered to a customer.
33. There was insufficient evidence to show that Red McCombs gamed the system by entering RDRs and then reversing them at a significantly higher rate than any other Hyundai dealership.
34. The service loaner program allowed dealerships to sell cars into the service loaner program, thereby reducing the inventory available for sale and increasing formula allocation.
35. The service loaner program was available to all Hyundai dealers.
36. World Car chose not to participate in the service loaner program.
37. Red McCombs participated in the service loaner program.
38. There was insufficient evidence to show that Red McCombs gamed the allocation system.



***Sales efficiency***

39. In 2008, both World Car North and South were over 100% sales efficient. In 2009, the north store dropped to 96.8% and continued to drop over time. In 2014, it was 65.7% sales efficient. The south store fared worse. It dropped to 17.9% sales efficient in 2013 but rebounded in 2014 to 31.2% sales efficient.
40. In 2009, Toyota opened a manufacturing plant and new dealership close to World Car South. The manufacturing plant employs about 6,000 people. Those employees had incentives to purchase Toyota products.
41. From 2010 until 2013, Hyundais were in short supply worldwide, primarily due to the high demand caused by the Japanese tsunami that devastated Japanese manufacturing.
42. Hyundai was aware that some dealers could not achieve 100% sales efficiency with the lower inventory.
43. Hyundai measured sales efficiency in the same manner for all dealers.

***Co-Op Advertising Funds***

44. Co-Op advertising funds must be used exclusively for advertising.
45. The distribution of Co-Op advertising funds is calculated by a formula that considers several factors including customer sales and service scores. The formula is not intended to gauge the performance of a dealership. It simply calculates how much additional advertising funding a particular dealership will receive.
46. The regional general manager has discretion to award additional Co-Op advertising funds.
47. In 2010, World Car South was not eligible under the formula to receive Co-Op advertising funds. Mr. Hetrick provided the store with \$60,000 in Co-Op advertising funds over the third and fourth quarters of that year.
48. The Co-Op program formula is applied in the same manner to all dealers.
49. Co-Op advertising funds are unrelated to the sale of a motor vehicle.

***Unreasonable Sales Standards***

50. Maintaining 100% sales efficiency is not a requirement to be or to remain a licensed Hyundai dealer.

51. World Car stores have not been 100% sales efficient for several years, and both are operating under valid dealer agreements.
52. Measuring sales efficiency does not require adherence to unreasonable sales or service standards.

***Duty of Good Faith and Fair Dealing***

53. The allocation system and sales efficiency metric do not treat World Car unfairly.

**VIII. CONCLUSIONS OF LAW**

1. The Texas Department of Motor Vehicles has jurisdiction over this case. Tex. Occ. Code § 2301.001.
2. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related to the contested case hearing in this case, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Occ. Code § 2301.704.
3. The hearing was conducted pursuant to the Administrative Procedure Act and SOAH's procedural rules. Tex. Gov't Code ch. 2011 and 1 Tex. Admin. Code ch. 155.
4. Proper and timely notice of the hearing was provided. Tex. Occ. Code § 2301.705.
5. World Car has the burden of proof by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427.
6. World Car failed to meet its burden of proof to show that Hyundai required adherence to unreasonable sales or service standards. Tex. Occ. Code § 2301.467(a)(1) (2003).
7. World Car failed to meet its burden of proof to show that Hyundai discriminated against World Car by treating them differently as a result of a formula or other process intended to gauge the performance of a dealership through allocation of vehicle inventory, sales efficiency calculations, or distribution of discretionary Co-Op advertising funds. Tex. Occ. Code § 2301.468(1) (2003).
8. World Car failed to meet its burden of proof to show that Hyundai engaged in unreasonable sales discrimination in the allocation of vehicle inventory because World Car did not participate in many of the programs that would have permitted additional discretionary allocation. Tex. Occ. Code § 2301.458(2).
9. World Car failed to meet its burden of proof to show that Hyundai violated its duty of good faith and fair dealing through allocations and sales efficiency because Hyundai

SOAH DOCKET NO. 608-14-1208.LIC

PROPOSAL FOR DECISION

PAGE 28

calculated sales efficiency in the same manner for all dealers, and World Car chose not to participate in many of the programs that could have led to additional discretionary allocation. Tex. Occ. Code § 2301.478(b).

**SIGNED March 10, 2016.**



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**WENDY K. L. HARVEL**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

AUSTIN OFFICE  
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DATE: 5/31/2016  
NUMBER OF PAGES INCLUDING THIS COVER SHEET: 5  
REGARDING: EXCEPTIONS LETTER (BY ALJ)  
DOCKET NUMBER: 608-14-1208.LIC

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# State Office of Administrative Hearings



Lesli G. Ginn  
Chief Administrative Law Judge

May 31, 2016

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

**VIA FACSIMILE NO. (512) 465-3666**

**RE: Docket No. 608-14-1208.LIC; New World Car Nissan, Inc. dba World Car Hyundai and New World Car Imports, San Antonio, Inc. dba World Car Hyundai v. Hyundai Motor America**

Dear Mr. Avitia:

On April 8, 2016, World Car Hyundai (World Car) filed exceptions to the Proposal for Decision (PFD). On May 9, 2016, Hyundai Motor America (Hyundai) filed replies to the exceptions. ON May 18, 2016, World Car filed a reply to Hyundai's reply.

I have reviewed the exceptions and replies and do not recommend any changes to the PFD. The arguments presented in the exceptions and replies address the same issues that are discussed in the PFD. Importantly, as noted in the replies, the applicable law in this case is not the 2011 version of Texas Occupations Code § 2301.468, but rather the 2003 version of the statute, because the dealer agreements between Hyundai and World Car were entered into prior to 2011. The facts in the record were analyzed under the 2003 statute.

Sincerely,

Wendy K. L. Harvel  
Administrative Law Judge

**SOAH Docket No. 608-14-1208.LIC**  
**ALJ's Response to Exceptions**  
**May 31, 2016**  
**Page 2**

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**STYLE/CASE:** NEW WORLD CAR NISSAN, INC. dba WORLD CAR HYUNDAI,  
WORLD CAR NISSAN AND NEW WORLD CAR IMPORTS SAN  
ANTONIO, INC.

**SOAH DOCKET NUMBER:** 608-14-1208.LIC

**REFERRING AGENCY CASE:** 14-0006 LIC

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

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**ADMINISTRATIVE LAW JUDGE  
ALJ WENDY KL. HARVEL**

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HYUNDAI MOTOR AMERICA

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**Melissa Ethridge**

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**From:** XMediusFAX@soah.state.tx.us  
**Sent:** Tuesday, May 31, 2016 1:30 PM  
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**TEXAS DEPARTMENT OF MOTOR VEHICLES  
MOTOR VEHICLE DIVISION**

**NEW WORLD CAR NISSAN, INC. D/B/A  
WORLD CAR HYUNDAI, WORLD CAR  
NISSAN; AND NEW WORLD CAR  
IMPORTS SAN ANTONIO, INC., D/B/A  
WORLD CAR HYUNDAI,**

**Complainants**

**v.**

**HYUNDAI MOTOR AMERICA,  
Respondent**

§  
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**MVD DOCKET NO. 14-0006 LIC  
SOAH DOCKET NO. 608-14-1208.LIC**

**FINAL ORDER**

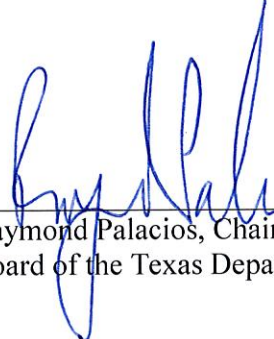
The referenced contested case matter is before the Board of the Texas Department of Motor Vehicles (TxDMV) in the form of a Proposal for Decision (PFD) from the State Office of Administrative Hearings (SOAH) and involves the complaint by two World Car franchised dealerships against the distributor, Hyundai Motor America.

**IT IS ORDERED:**


That the conclusion of the State Office of Administrative Hearings Judge (ALJ) is overturned.

The Board finds that the ALJ erred in interpretation of Texas Occupations Code § 2301.468.

Date: NOV 03 2016

  
\_\_\_\_\_  
Raymond Palacios, Chairman  
Board of the Texas Department of Motor Vehicles

ATTESTED:

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

**TEXAS DEPARTMENT OF MOTOR VEHICLES**  
**MOTOR VEHICLE DIVISION**

<b>NEW WORLD CAR NISSAN, INC.</b>	§	
<b>D/B/A WORLD CAR HYUNDAI,</b>	§	
<b>WORLD CAR NISSAN; AND NEW</b>	§	
<b>WORLD CAR IMPORTS SAN</b>	§	
<b>ANTONIO, INC., D/B/A WORLD CAR</b>	§	<b>MVD DOCKET NO. 14-0006 LIC</b>
<b>HYUNDAI,</b>	§	<b>SOAH DOCKET NO. 608-14-1208.LIC</b>
<b>Complainants</b>	§	
<b>v.</b>	§	
	§	
<b>HYUNDAI MOTOR AMERICA,</b>	§	
<b>Respondent</b>	§	

## ORDER ON REHEARING NUNC PRO TUNC

This Order on Rehearing Nunc Pro Tunc is issued for the sole purpose of correcting the clerical error in the date of issuance. The Order on Rehearing and Order on Rehearing Nunc Pro Tunc are issued on August 17, 2017.

The referenced contested case matter is before the Board of the Texas Department of Motor Vehicles (TxDMV) on Motion for Rehearing. On November 3, 2016, the Board considered the Proposal for Decision (PFD) by an administrative law judge (ALJ) of the State Office of Administrative Hearings (SOAH). On February 4, 2017, the Board granted rehearing. This contested case matter involves the complaint by two World Car franchised dealerships (World Car) against the distributor, Hyundai Motor America (Hyundai).

In accordance with Texas Government Code §2001.058(e), the specific reasons and legal basis for the Board's changes to the administrative law judge's (ALJ's) Findings of Fact and Conclusions of Law follow:

**Findings of Fact 2A and 2B** are added in accordance with Texas Government Code § 2001.058(e)(1) because the ALJ misapplied applicable law. In determining the applicable law in this proceeding, the date the complaint was filed and the date the parties renewed their agreement are necessary findings. New Finding 2A establishes the date World Car filed its complaint with TxDMV. New Finding 2B is quoted directly from the ALJ's PFD Footnote 2.

- **Finding of Fact 2A:** World Car filed its complaint on November 20, 2013.
- **Finding of Fact 2B:** The franchise agreements between Hyundai and World Car were renewed in November 2010.

**Finding of Fact 30 is amended and Finding of Fact 30A is added** in accordance with Texas Government Code § 2001.058(e)(1), because the ALJ misapplied applicable law. World Car dealerships received a total of 20 discretionary vehicles, while another franchisee's two dealerships received a total of 134 discretionary vehicles. With regard to allocation of the discretionary vehicle inventory (up to 15% of a franchise's total inventory), Hyundai treated franchisees differently. Hyundai discriminated unreasonably between franchisees in the sale of motor vehicles owned by Hyundai.

- ***Finding of Fact 30 is amended.*** The word “not” is added so that the finding now reads, “It was not reasonable for Hyundai to reward dealers that participated in Hyundai-sponsored programs and renovated their facilities with extra discretionary allocations.”
- ***Finding of Fact 30A:*** Hyundai discriminated unreasonably between franchisees in the sale of motor vehicles owned by the distributorship.

**Finding of Fact 52 is amended** in accordance with Texas Government Code § 2001.058(e)(1), because the ALJ misapplied the applicable law. World Car’s complaint was not that “measuring sales efficiency” was unreasonable, but that requiring 100% sales efficiency was unreasonable because Hyundai knew that World Car did not have sufficient inventory to meet 100% sales efficiency. World Car’s requests for additional inventory to meet the 100% Sales Efficiency were ignored.

- ***Finding of Fact 52 is amended.*** The finding now reads, “The requirement that World Car meet 100% sales efficiency requires adherence to unreasonable sales or service standards because Hyundai was aware that World Car did not have sufficient inventory to meet 100% sales efficiency.”

**Finding of Fact 53 is amended** in accordance with Texas Government Code § 2001.058(e)(1), because the ALJ misapplied the applicable law. Hyundai’s discretionary inventory allocations to a nearby dealer were nearly triple the amount provided to World Car and thus, unfair and not made in good faith. Additionally, despite repeated requests for additional inventory to meet 100% sales efficiency, World Car’s requests were either ignored or rejected by Hyundai.

- ***Finding of Fact 53 is amended.*** The finding now reads, “The discretionary allocations made to the San Antonio market during 2010 and 2013 were unfair, and Hyundai’s requirement that World Car meet 100% sales efficiency despite the dealership’s known lack of inventory was unfair.”

**Conclusion of Law 3 is modified** in accordance with Texas Government Code §2001.058(e)(1) because the ALJ misapplied applicable law. The modification merely corrects the typographical error in the Government Code chapter citation from 2011 to 2001 to correctly reflect the Texas Administrative Procedure Act.

- ***Conclusion of Law 3:*** The conclusion now reads, “The hearing was conducted pursuant to the Administrative Procedure Act and SOAH’s procedural rules. Tex. Gov’t Code ch. 2001 and 1 Tex. Admin. Code ch. 155.”

**Conclusion of Law 6 is modified** in accordance with Texas Government Code §2001.058(e)(1) because the ALJ misapplied applicable law. The modification clarifies that—although World Car did not meet 100% sales efficiency—World Car did not have sufficient inventory to meet 100% sales efficiency and requests for additional inventory were either rejected or ignored by Hyundai.

In addition the modification corrects the year of the applicable law from 2003 to 2009, through application of (a) Texas Occupations Code § 2301.263, (b) the date the complaint was filed, (c) the date the parties renewed their agreement, and (d) the nonamendatory provisions in Sections 10 and 11 of H.B. 2640, 81st Leg. R.S. (2009). This is harmless error. Although the 2009 version of Texas Occupations Code § 2301.467 applies, the text of § 2301.467(a)(1) and (a)(2) has not changed since 2003.

- **Conclusion of Law 6:** The conclusion now reads, “World Car met its burden of proof to show that Hyundai required adherence to unreasonable sales or service standards. Tex. Occ. Code § 2301.467(a)(1) (2009).”

**Conclusion of Law 8** is modified in accordance with Texas Government Code §2001.058(e)(1) because the ALJ misapplied applicable law. The modification clarifies that—although World Car did not participate in Hyundai’s programs that would have permitted World Car additional discretionary inventory—Hyundai’s discretionary allocations were unreasonably discriminatory.

In addition, the modification corrects the typographical error in the Occupation Code chapter citation from § 2301.458(2) (which is a section inapplicable to this proceeding because it applies to dealership transfers) to § 2301.468(2). The version of § 2301.468(2) applicable in this contested case proceeding provides that a “manufacturer, distributor, or representative may not: . . . (2) discriminate unreasonably between or among franchisees in the sale of a motor vehicle owned by the manufacturer or distributor.”

- **Conclusion of Law 8:** The conclusion now reads, “Hyundai discriminated unreasonably between franchisees in the sale of motor vehicles owned by the distributor, when Hyundai treated World Car differently in the discretionary allocation of vehicle inventory. Tex. Occ. Code § 2301.468(2).”

**Conclusion of Law 9** is modified in accordance with Texas Government Code §2001.058(e)(1), because the ALJ misapplied the applicable law. The modification clarifies that based on amended Finding of Fact 53, which shows that World Car had insufficient inventory to meet 100% sales efficiency despite requesting additional inventory, and that a certain dealer in World Car’s sales area received triple the number of discretionary inventory allocations than World Car.

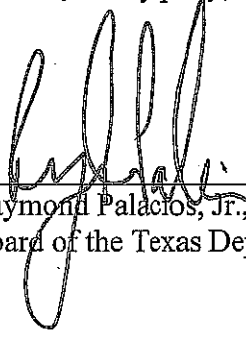
- **Conclusion of Law 9:** The conclusion now reads, “World Car met its burden of proof to show that Hyundai violated its duty of good faith and fair dealing through allocations and sales efficiency. Tex. Occ. Code §2301.478(b).”

The Board enters this Final Order, having considered the evidence, arguments, findings of fact and conclusions of law presented in the ALJ’s PFD, exceptions to the PFD, replies to the exceptions to the PFD, and the ALJ’s May 31, 2016, exceptions letter that makes no changes to the ALJ’s March 10, 2016, PFD.

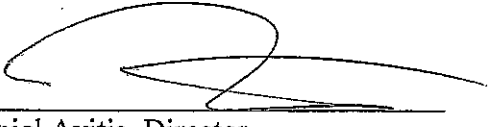
**ACCORDINGLY, IT IS ORDERED:**

1. That Findings of Fact 1-53 and Conclusions of Law 1-9 as set out in the ALJ's March 10, 2016, Proposal for Decision, as amended by this Order, are hereby adopted; and
2. That findings of fact and conclusions of law proposed by the parties that are not adopted in this Order are hereby rejected; and
3. That all remaining motions, exceptions, or objections, of any party, if any, are hereby denied.

Date: AUG 17 2017

  
\_\_\_\_\_  
Raymond Palacios, Jr., Chairman  
Board of the Texas Department of Motor Vehicles

ATTESTED:

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



**TEXAS DEPARTMENT OF MOTOR VEHICLES  
MOTOR VEHICLE DIVISION**

**NEW WORLD CAR NISSAN, INC.  
D/B/A WORLD CAR HYUNDAI,  
WORLD CAR NISSAN; AND NEW  
WORLD CAR IMPORTS SAN  
ANTONIO, INC., D/B/A WORLD CAR  
HYUNDAI,**

**Complainants**

**v.**

**HYUNDAI MOTOR AMERICA,  
Respondent**

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**MVD DOCKET NO. 14-0006 LIC  
SOAH DOCKET NO. 608-14-1208.LIC**

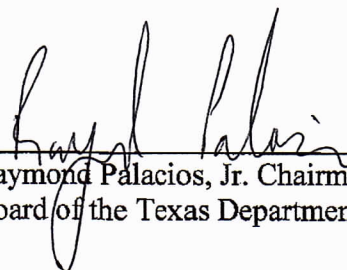
**DECISION AND ORDER  
DENYING THE MOTION FOR REHEARING**

The Board of the Texas Department of Motor Vehicles has considered the Motion for Rehearing filed in this case by the Respondent and the Reply filed by the Complainant.

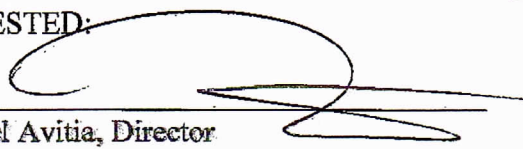
After considering the Respondent's Motion for Rehearing (the Motion) and the Complainant's Reply, the Board's Order, the Administrative Law Judge's findings, conclusions and proposal for decision, the exceptions to the proposal, and reply to the exceptions, the Board does not find a sufficient basis presented for granting the Motion.

Accordingly, **IT IS ORDERED** that the Motion for Rehearing is hereby denied.

Date: 10/4/17

  
\_\_\_\_\_  
Raymond Palacios, Jr. Chairman  
Board of the Texas Department of Motor Vehicles

ATTESTED:

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

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-17-00761-CV**

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**Hyundai Motor America, Appellant****v.**

**New World Car Nissan, Inc. d/b/a World Car Hyundai, World Car Nissan; New World Car Imports San Antonio, Inc. d/b/a World Car Hyundai; Texas Department of Motor Vehicles; Board of The Texas Department of Motor Vehicles; Guillermo “Memo” Trevino<sup>1</sup>, in His Official Capacity as Chair of the Board of The Texas Department of Motor Vehicles; and Whitney Brewster, in Her Official Capacity as Executive Director of the Texas Department of Motor Vehicles, Appellees**

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**FROM THE 201ST DISTRICT COURT OF TRAVIS COUNTY  
NO. D-1-GN-17-005912, THE HONORABLE AMY CLARK MEACHUM, JUDGE PRESIDING**

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**OPINION**

Hyundai Motor America filed a petition for judicial review of a final order of the Board of the Texas Department of Motor Vehicles determining that Hyundai violated the Texas Occupations Code in its transactions with its franchised dealers. Before any proceedings occurred in the district court, several defendants removed the case to this Court. *See* Tex. Occ. Code § 2301.751(b). For the following reasons, we reverse the Board’s order and remand this cause to the Board for further proceedings consistent with this opinion.

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<sup>1</sup> This suit was originally brought against Raymond Palacios, Jr., the former Chair of the Board of the Texas Department of Motor Vehicles. We substitute the name of the successor to this office, Guillermo “Memo” Trevino. *See* Tex. R. App. P. 7.2.



## BACKGROUND

Hyundai is the wholesale distributor for Hyundai products and services in the United States. New World Car Nissan, Inc. and New World Car Imports San Antonio, Inc. (collectively New World Car) are licensed, franchised Hyundai dealers in San Antonio. In November 2013, New World Car filed a formal complaint against Hyundai with the Department, alleging that between 2010 and 2013 Hyundai violated several provisions of Chapter 2301 of the Occupations Code. *See id.* §§ 2301.202–.203 (providing for filing and investigation of complaints of violations of Chapter 2301). Specifically, New World Car’s complaint alleged that Hyundai violated the following provisions of the Occupations Code: (1) section 2301.467(a)(1) by “requiring [New World Car] to sell more vehicles than [Hyundai] actually provided in order to be considered 100% sales efficient”; (2) section 2301.468 by treating New World Car “unfairly or inequitably in the application of a standard or guideline” and by providing “unfair and inequitable vehicle inventory allocations”; and (3) section 2301.478(b) by providing “unfair allocations of insufficient inventory” and “requiring [New World Car] to sell more inventory than it was provided.” *See id.* §§ 2301.467(a)(1), .468, .478(b).<sup>2</sup>

The Department referred the case to the State Office of Administrative Hearings (SOAH) for a contested-case hearing before an Administrative Law Judge (ALJ). *See id.* § 2301.704. After discovery and an evidentiary hearing, the ALJ issued a proposal for decision (PFD) concluding that New World Car had failed to prove that Hyundai violated the Occupations

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<sup>2</sup> The version of section 2301.468 that was in effect during the time of the applicable events provided, “A manufacturer, distributor, or representative may not . . . discriminate unreasonably between or among franchisees in the sale of a motor vehicle owned by the manufacturer or distributor.” Act of May 22, 2001, 77th Leg., R.S., ch. 1421, §5, 2001 Tex. Gen. Laws 4920, 4952 (codified at Tex. Occ. Code § 2301.468) (Former Section 2301.468). The ALJ and the Board properly made references to that version of the statute, and we review the Board’s order under that version.

Code. In November 2016, the Board rejected the ALJ's analysis and the Director's recommendation and issued a final order that "overturned" the ALJ's "conclusion." The final order did not include a supporting rationale, fact findings, or legal conclusions.

In February 2017, the Board granted Hyundai's motion for rehearing. In August 2017, the Board amended the final order with new and modified findings and conclusions to replace those of the ALJ that the Board had rejected. The new conclusions stated that Hyundai violated sections 2301.467(a)(1), 2301.468(2), and 2301.478(b) of the Occupations Code.

### STANDARD OF REVIEW

We review the Board's order under the "substantial evidence" rule. *See id.* § 2301.751(a)(2) ("A party to a proceeding affected by a final order, rule, or decision or other final action of the board with respect to a matter arising under this chapter . . . may seek judicial review of the action under the substantial evidence rule in . . . the court of appeals for the Third Court of Appeals District."); *Buddy Gregg Motor Homes, Inc. v. Motor Vehicle Bd. of Tex. Dep't of Transp.*, 156 S.W.3d 91, 98 (Tex. App.—Austin 2004, pet. denied) (applying substantial-evidence review in case removed from district court). This standard requires that we reverse or remand a case for further proceedings in the following circumstances:

[I]f substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (A) in violation of a constitutional or statutory provision;
- (B) in excess of the agency's statutory authority;
- (C) made through unlawful procedure;
- (D) affected by other error of law;

(E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or

(F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Tex. Gov't Code § 2001.174(2).

## DISCUSSION

### *Jurisdiction over State appellees other than the Board*

Before we reach the merits of Hyundai's issues, we address the Board's contention that the Court does not have subject-matter jurisdiction over any of the State appellees except the Board. The Board contends that because Hyundai seeks only judicial review of an order of the Board and asserts no other claim against any of the State defendants, those other defendant-appellees—the Department, the Chair of the Board, and the Department's Executive Director—should be dismissed from the case with prejudice.

The Occupations Code authorizes judicial review of “final action[s] of the [Department's] board” in matters arising under Chapter 2301. Tex. Occ. Code § 2301.751(a); *Keystone RV Co. v. Texas Dep't of Motor Vehicles*, 507 S.W.3d 829, 831 (Tex. App.—Austin 2016, no pet.). Chapter 2301's use of the term “board” refers to the nine-member governing board of the Department. *Keystone RV*, 507 S.W.3d at 834–35 & n.22 (citing Tex. Transp. Code § 1001.021, which creates Department's nine-member board). The Department, a statutorily created state agency responsible for administering and enforcing various statutory provisions, including Chapter 2301, *see* Tex. Transp. Code § 1001.002(a), (b)(3), “is composed of an executive director appointed by the board and other employees required to efficiently implement” applicable laws, *id.* § 1001.003.

The 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. Tex. Occ. Code § 2301.151(a). Among other duties, the Board “shall” “administer th[e] chapter; . . . ensure that the distribution, sale, and lease of motor vehicles is conducted as required by th[e] chapter and board rules; . . . [and] prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles.” *Id.* § 2301.152(a); *see also id.* § 2301.153(a) (listing powers and duties of Board). The Board is the entity charged with receiving, investigating, and resolving complaints of alleged violations of Chapter 2301, as it did here with respect to New World Car’s complaint. *See generally id.* §§ 2301.201–.205 (providing for Board’s receipt, investigation, and resolution of complaints).

Hyundai does not cite any authority supporting our jurisdiction over any of the State appellees other than the Board, and the only authority we have found leads us to conclude that besides the Board only the Executive Director is a proper State defendant. *See id.* § 2301.752(b) (“Citation for an appeal [of an order of the Board] must be served on the executive director or the executive director’s designee and each party of record in the matter.”); *see Texas Nat. Res. Conservation Comm’n v. Sierra Club*, 70 S.W.3d 809, 813–14 (Tex. 2002) (holding that in suit for judicial review, only agency “whose ruling is to be appealed” was “proper defendant to the district court proceeding” when neither APA nor enabling statute required service of citation on any other party). Accordingly, we conclude that we do not have subject-matter jurisdiction over the Department or the Chair of the Board, and we dismiss those parties from this suit.

### *Hyundai's issues on appeal*

In several issues, Hyundai raises three basic contentions: (1) the Board “usurped the ALJ’s role in the contested case process by acting as the finder of basic and adjudicative facts”; (2) the Board “failed to articulate a rational connection between an underlying agency policy and [its] altered findings of fact and conclusions of law”; and (3) the Board “engaged in improper, retroactive *ad hoc* rule-making.” Hyundai specifically takes issue with the Board’s following findings and conclusions that modified or reversed the ALJ’s findings and conclusions:

- The Board’s Findings of Fact 30 and 30A and Conclusion of Law 8 (the allocation findings and conclusion), which pertain to whether Hyundai’s discretionary allocation<sup>3</sup> of vehicles to its San Antonio dealers during the relevant time period constituted “unreasonable discrimination,” *see* Act of May 22, 2001, 77th Leg., R.S., ch. 1421, §5, 2001 Tex. Gen. Laws 4920, 4952 (codified at Tex. Occ. Code § 2301.468) (Former Section 2301.468);
- The Board’s Finding of Fact 52 and Conclusion of Law 6 (the sales-standard finding and conclusion), which pertain to whether Hyundai’s use of a particular sales-efficiency metric<sup>4</sup> “required adherence to an unreasonable sales standard,” *see* Tex. Occ. Code § 2301.467(a)(1); and
- The Board’s Finding of Fact 53 and Conclusion of Law 9 (the good-faith-and-fair dealing finding and conclusion), which pertain to whether Hyundai’s use of the sales-efficiency metric and discretionary allocations violated its duty to deal with its franchisees fairly and in good faith, *see id.* § 2301.478(b).

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<sup>3</sup> The ALJ’s findings, adopted by the Board, explain that Hyundai’s system for allocating vehicles to its franchised dealers “consists of formula allocations, discretionary allocations, and manual allocations” and that discretionary allocations are “made by Hyundai’s regional general manager, who may distribute up to 15%” of total available vehicles.

<sup>4</sup> The ALJ’s findings, adopted by the Board, explain that sales efficiency is a “metric that Hyundai uses to measure dealer sales performance.” The metric “compares a dealer’s total sales to sales the brand expects to achieve in the dealer’s primary market area. Hyundai calculates expected sales by applying Hyundai’s national average sales penetration in each vehicle segment in which Hyundai competes to the actual number of vehicles registered in that segment in the dealer’s primary market area.”

***Restrictions on the Board's authority to change the ALJ's findings and conclusions***

Because the gravamen of Hyundai's appellate issues is that the Board unlawfully changed the ALJ's findings and conclusions, we begin with a review of the Board's authority to do that. The Occupations Code requires hearings "arising under" Chapter 2301 "to be conducted in accordance with . . . Chapter 2001, Government Code [the APA]." *Id.* § 2301.703(a); *see id.* § 2301.704(a) ("[A] hearing under this chapter must be held by an [ALJ] of the [SOAH]."); Tex. Gov't Code § 2001.058 (outlining procedures of SOAH hearings). APA section 2001.058(e) limits an agency's ability to change an ALJ's findings and conclusions:

A state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines:

- (1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under Subsection (c), or prior administrative decisions;
- (2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or
- (3) that a technical error in a finding of fact should be changed.

The agency shall state in writing the specific reason and legal basis for a change made under this subsection.

Tex. Gov't Code § 2001.058(e); *see also* Tex. Occ. Code § 2301.711(b)(3) ("An order or decision under this chapter must . . . give the reasons for the particular actions taken . . .").

This Court has interpreted section 2001.058(e) as requiring an agency "to explain with particularity its specific reason and legal basis for each change made" pursuant to the section. *Sanchez v. Texas State Bd. of Med. Exam'rs*, 229 S.W.3d 498, 515 (Tex. App.—Austin 2007, no pet.); *see Garcia v. Texas Real Estate Comm'n*, No. 03-14-00349-CV, 2016 WL

3068408, at \*3 (Tex. App.—Austin May 27, 2016, no pet.) (mem. op.); *Granek v. Texas State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 780–81 (Tex. App.—Austin 2005, no pet.). To meet this requirement, the agency must “articulate a rational connection between an underlying agency policy and the altered finding of fact or conclusion of law.” *Sanchez*, 229 S.W.3d at 515 (quoting *Levy v. Texas State Bd. of Med. Exam'rs*, 966 S.W.2d 813, 815 (Tex. App.—Austin 1998, no pet.)). This Court has several times held an agency’s explanation for modifying an ALJ’s findings or conclusions to be inadequate and accordingly reversed the agency’s order and remanded the cause to the agency for compliance with section 2001.058(e)’s requirements. *See Garcia*, 2016 WL 3068408, at \*4, \*10; *Granek*, 172 S.W.3d at 782; *Levy*, 966 S.W.2d at 816.

Additionally, when an agency changes so-called “basic” or “adjudicative” facts, we review its justifications therefor under a “stricter standard” than we review an alteration to so-called “legislative” or “ultimate” facts. *See Texas State Bd. of Med. Exam'rs v. Dunn*, No. 03-03-00180-CV, 2003 WL 22721659, at \*4–5, \*11 (Tex. App.—Austin Nov. 20, 2003, no pet.) (mem. op.) (holding that board “failed to carry its burden to articulate a reasonable evidentiary basis for rejecting the ALJ’s [adjudicative] findings of fact”); *Flores v. Employees Ret. Sys.*, 74 S.W.3d 532, 540–41 (Tex. App.—Austin 2002, pet. denied) (holding that in making changes to adjudicative facts, board was not entitled to “reweigh” evidence or make findings that were “not supported by any evidence”). Adjudicative facts usually answer the questions of “who did what, when, how, why, with what motive or intent” and are “roughly the kind of facts that go to a jury in a jury case.” *Flores*, 74 S.W.3d at 539 (quoting 2 Kenneth Culp Davis & Richard J. Pierce, Jr., *Administrative Law Treatise* § 9.2 at 3 (3d ed. 1994)). The litigants may offer conflicting evidence as to adjudicative facts, which the fact-finder resolves by determining how much weight to give each side’s evidence. *Id.* The resolution of adjudicative facts often requires

making credibility determinations, which an ALJ is better suited to do than an agency or board reviewing a PFD. *Id.*

On the other hand, “legislative” or “ultimate” facts “do not usually concern the immediate parties but are the general facts that help the tribunal decide questions of law and policy and discretion.” *Id.* “A finding of ultimate fact is reached by inference from basic facts.” *West Tex. Utils. Co. v. Office of Pub. Util. Counsel*, 896 S.W.2d 261, 270 (Tex. App.—Austin 1995, no writ). A finding of ultimate fact “usually involves ‘a conclusion of law or at least a determination of a mixed question of law and fact.’” *Hunter Indus. Facilities, Inc. v. Texas Nat. Res. Conservation Comm’n*, 910 S.W.2d 96, 104 (Tex. App.—Austin 1995, writ denied) (quoting *Helvering v. Tex-Penn Oil Co.*, 300 U.S. 481, 491 (1937)). Therefore, an ultimate finding pertaining to compliance with a statutory standard, when that determination is committed by law to the discretion of an agency, has the same legal effect as a conclusion of law. *See id.* at 104–05. A finding that a utility rate is “reasonable” is an example of a finding of ultimate fact, *West Tex. Utils.*, 896 S.W.2d at 270, as is a finding about whether common carriers’ services and facilities are “inadequate,” *see Professional Mobile Home Transp. v. Railroad Comm’n*, 733 S.W.2d 892, 899 (Tex. App.—Austin 1987, writ ref’d n.r.e.); *see also Railroad Comm’n v. Broussard*, 755 S.W.2d 951, 955 (Tex. App.—Austin 1988, writ denied) (noting that whether oil-interest owner’s offer to pool interests with adjoining oil-interest owner is “fair and reasonable” as required by Natural Resources Code is mixed question of law and fact). When reviewing an agency’s findings of ultimate fact, a reviewing court is “limited to the inquiry of whether the agency’s findings of basic fact reasonably support its findings of ultimate fact.” *Professional Mobile Home Transp.*, 733 S.W.2d at 899.



With this background about the Board's authority to change the ALJ's findings and conclusions, we turn to the Board's modifications to the ALJ's fact findings and conclusions.

***Changes to the ALJ's allocation finding and conclusion***

The ALJ's Finding of Fact 30 reads, "It was reasonable for Hyundai to reward dealers that participated in Hyundai-sponsored programs and renovated their facilities with extra discretionary allocation."<sup>5</sup> The Board amended the finding solely by adding the word

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<sup>5</sup> With the exception of Finding of Fact 30, the Board adopted all of the ALJ's findings of fact on the topic of discretionary allocations:

18. In 2009, during the first six months of Mr. Hetrick's tenure as regional general manager, he provided 134 cars through discretionary allocation to Red McCombs and 20 to World Car.

19. The differences in discretionary allocation between Red McCombs and World Car continued through 2013.

20. In 2009 and 2010, World Car voluntarily reduced its inventory.

21. Red McCombs dealerships maintained their high inventory levels during the 2008-2010 recession.

22. In 2010, Red McCombs Superior became an exclusive Hyundai dealership.

23. World Car South shares a dealership with the Kia brand.

24. Red McCombs Northwest added the luxury Equus line that required a facility upgrade and then renovated the store.

25. Red McCombs Superior renovated its dealership in 2011-2012.

26. Red McCombs participated in Hyundai's service loaner program.

27. World Car chose not to participate in the available programs provided by Hyundai that could have increased the allocation available to World Car.

“not” before the word “reasonable”: “It was **not** reasonable for Hyundai to reward dealers that participated in Hyundai-sponsored programs and renovated their facilities with extra discretionary allocation.” (Emphasis added.) The Board also added new Finding of Fact 30A: “Hyundai discriminated unreasonably between franchisees in the sale of motor vehicles owned by the distributorship.”

These modifications constituted a 180-degree change to the ALJ’s finding as did the Board’s corresponding modification to Conclusion of Law 8. The ALJ’s Conclusion of Law 8 reads, “World Car failed to meet its burden of proof to show that Hyundai engaged in unreasonable sales discrimination in the allocation of vehicle inventory because World Car did not participate in many of the programs that would have permitted additional discretionary allocations.” In contrast, the Board’s modified Conclusion of Law 8 reads, “Hyundai discriminated unreasonably between franchisees in the sale of motor vehicles owned by the distributor, when Hyundai treated World Car differently in the discretionary allocation of vehicle inventory.” *See* Former Section 2301.468 (manufacturer or distributor “may not . . . discriminate unreasonably between or among franchisees in the sale of a motor vehicle”).

The entirety of the Board’s explanation for its change to Finding of Fact 30 and addition of Finding of Fact 30A reads

Finding of Fact 30 is amended and Finding of Fact 30A is added in accordance with Texas Government Code § 2001.058(e)(1), because the ALJ misapplied applicable law. World Car dealerships received a total of 20 discretionary vehicles, while another franchisee’s two dealerships received a total of 134 discretionary

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28. World Car did not renovate a dealership until 2014, when it renovated World Car North.

29. World Car did not participate in Hyundai’s service loaner program.

vehicles. With regard to allocation of the discretionary vehicle inventory (up to 15% of a franchise's total inventory), Hyundai treated franchisees differently. Hyundai discriminated unreasonably between franchisees in the sale of motor vehicles owned by Hyundai.

The first sentence of the explanation is a mere restatement of one of the permissible statutory bases for an agency's modification to a finding or conclusion: because an ALJ "did not properly apply or interpret applicable law." *See* Tex. Gov't Code § 2001.058(e). As such, it cannot meet the requirement of a statement in writing of "the specific reason" for the change. *See id.* The second sentence of the explanation is a summary of the same exact basic fact findings made in the ALJ's unmodified Finding of Fact 18, which reads: "In 2009, during the first six months of Mr. Hetrick's tenure as regional general manager, he provided 134 cars through discretionary allocation to Red McCombs and 20 to World Car." Restating a previous finding of fact also cannot meet section 2001.058(e)'s requirement that the agency state the "specific reason" for changing a finding of fact because it provides no basis upon which a court may review whether the agency's change was arbitrary and capricious.

The Board is left to rely, then, on the final two sentences of its explanation. Essentially, the Board's explanation (paraphrased) is: Hyundai treated its franchisees differently by allocating vehicles in the ratio of 134 to 20, and discretionary allocation of vehicles in that ratio constitutes unreasonable discrimination. That is the entirety of the Board's explanation of the specific reason for its opposite conclusion from the ALJ. However, such a conclusory statement simply cannot be what the legislature intended when it required an agency not only to determine that an ALJ improperly applied or interpreted applicable law but also to explain the specific reason and legal basis for such determination. The Board's explanation does not identify which applicable law the ALJ misapplied or misinterpreted, why that interpretation or

application was incorrect, or how the Board reached the opposite conclusion on the *same basic facts*.

The Board is charged with regulating the sale and distribution of motor vehicles, administering Chapter 2301, investigating and resolving complaints, and preventing unfair practices and discrimination in connection therewith. *See* Tex. Occ. Code §§ 2301.151–.153, .201–.205. We therefore agree with the Board that its Findings 30 and 30A are ultimate findings rather than basic findings because it has the discretion to make ultimate policy determinations—such as whether particular factual scenarios constitute unreasonable discrimination, a highly fact-specific inquiry constituting a mixed question of law and fact—in the course of carrying out its statutory duties. However, the Board’s modifications to ultimate fact findings and conclusions must nonetheless comply with the APA. The Board’s explanation here is akin to the parenting fiat, “Because I said so.” As this Court has recognized, the legislature requires more of agencies. *See Garcia*, 2016 WL 3068408, at \*3–4; *Granek*, 172 S.W.3d at 781–82; *Levy*, 966 S.W.2d at 815.

For the same reasons, we conclude that the Board’s explanation of its change to Conclusion of Law 8 fails to comply with section 2001.058(e) and applicable caselaw. In its entirety, the explanation reads

Conclusion of Law 8 is modified in accordance with Texas Government Code § 2001.058(e)(1) because the ALJ misapplied applicable law. The modification clarifies that—although World Car did not participate in Hyundai’s programs that would have permitted World Car additional discretionary inventory—Hyundai’s discretionary allocations were unreasonably discriminatory.

Again, this is insufficient under section 2001.058(e) to explain how the Board’s *opposite* ultimate findings and conclusion are reasonably supported by the ALJ’s twelve basic findings

that the Board adopted, and it does not articulate *any* rational connection between any underlying agency policy and the altered findings and conclusion, as it must. *See Sanchez*, 229 S.W.3d at 515.

***Changes to the ALJ's sales-standard finding and conclusion***

The ALJ's Finding of Fact 52 reads, "Measuring sales efficiency does not require adherence to unreasonable sales or service standards."<sup>6</sup> The Board's modified Finding of Fact 52 reads, "The requirement that World Car meet 100% sales efficiency requires adherence to unreasonable sales or service standards because Hyundai was aware that World Car did not

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<sup>6</sup> With the exception of Finding of Fact 52, the Board adopted all of the ALJ's basic findings of fact on the topic of the sales-efficiency standard:

39. In 2008, both World Car North and South were over 100% sales efficient. In 2009, the north store dropped to 96.8% and continued to drop over time. In 2014, it was 65.7% sales efficient. The south store fared worse. It dropped to 17.9% sales efficient in 2013 but rebounded in 2014 to 31.2% sales efficient.

40. In 2009, Toyota opened a manufacturing plant and new dealership close to World Car South. The manufacturing plant employs about 6,000 people. Those employees had incentives to purchase Toyota products.

41. From 2010 until 2013, Hyundais were in short supply worldwide, primarily due to the high demand caused by the Japanese tsunami that devastated Japanese manufacturing.

42. Hyundai was aware that some dealers could not achieve 100% sales efficiency with the lower inventory.

43. Hyundai measured sales efficiency in the same manner for all dealers.

50. Maintaining 100% sales efficiency is not a requirement to be or to remain a licensed Hyundai dealer.

51. World Car stores have not been 100% sales efficient for several years, and both are operating under valid dealer agreements.

have sufficient inventory to meet 100% sales efficiency.” *See* Tex. Occ. Code § 2301.467(a)(1) (“Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not . . . require adherence to unreasonable sales or service standards . . .”). The entirety of the Board’s explanation for its modification reads

Finding of Fact 52 is amended in accordance with Texas Government Code § 2001.058(e)(1), because the ALJ misapplied the applicable law. World Car’s complaint was not that “measuring sales efficiency” was unreasonable, but that requiring 100% sales efficiency was unreasonable because Hyundai knew that World Car did not have sufficient inventory to meet 100% sales efficiency. World Car’s requests for additional inventory to meet the 100% Sales Efficiency were ignored.

As previously noted, the first sentence of the explanation does not shed any light on the Board’s reasoning; it is merely a recap of the statutory requirement supporting a modification (i.e., that the agency determine, relevantly here, that the ALJ “did not properly apply applicable law”). *See* Tex. Gov’t Code § 2001.058(e)(1). The second sentence of the explanation constitutes a new finding of basic fact—that Hyundai “required” of World Car 100% sales efficiency. It is directly contrary to the ALJ’s Finding of Fact 50—adopted by the Board—which reads, “Maintaining 100% sales efficiency is *not a requirement* to be or to remain a licensed Hyundai dealer.” (Emphasis added.) The final sentence of the explanation—noting that World Car’s requests for additional inventory were ignored—also constitutes a new finding of basic fact.

An ALJ is a “disinterested hearings officer” to whom the legislature has delegated the duty of basic fact-finding. *See Flores*, 74 S.W.3d at 539–40. An agency cannot frustrate the delegation of the fact-finding role by ignoring an ALJ’s “findings with which it disagrees and substitut[ing] its own additional findings.” *Montgomery Indep. Sch. Dist. v. Davis*, 34 S.W.3d 559, 564 (Tex. 2000) (discussing school board’s authority under Education Code to change findings

of fact made by hearing examiner where statute did not specifically provide for board to find additional facts and permitted changes to findings only if supported by substantial evidence). When the APA or other applicable enabling statute does not specifically provide for an agency's board to find facts in addition to those found by the hearing examiner, the board exceeds its authority by so doing. *See id.* "If a board could find additional facts, resolving conflicts in the evidence and credibility disputes, it would then be serving as its own factfinder despite delegating the factfinding role to a hearing examiner, and the process of using an independent factfinder would be meaningless." *Id.*

Setting aside for now the issue of whether the sales-efficiency standard was "unreasonable," we note that section 2301.467 makes it unlawful to "require" adherence to an unreasonable standard. *See* Tex. Occ. Code § 2301.467. However, the ALJ made no finding of basic fact that Hyundai *required* adherence to its 100% sales-efficiency standard; to the contrary, the ALJ found that Hyundai did *not* require adherence to the sales standard. By modifying Finding of Fact 52—which constituted the making of an additional finding of basic fact in direct contravention of a basic finding of the ALJ—and failing to support its modification with citations to record evidence, the Board acted arbitrarily and capriciously, abused its discretion, and violated section 2002.058(e). *See Davis*, 34 S.W.3d at 564; *Dunn*, 2003 WL 22721659, at \*4–5; *see also* Tex. Gov't Code §§ 2001.058(e), .174(2)(F). The Board's corresponding Conclusion of Law 6—"World Car met its burden of proof to show that Hyundai required adherence to unreasonable sales or service standards"—was likewise the opposite conclusion from that of the ALJ and, for the same reasons, violates the APA.

*Changes to the ALJ's good-faith-and-fair-dealing finding and conclusion*

World Car alleged that Hyundai violated the statutory duty of good faith and fair dealing through its discretionary allocations and sales-standard “requirement.” *See* Tex. Occ. Code § 2301.478(b) (“Each party to a franchise owes to the other party a duty of good faith and fair dealing that is actionable in tort.”). The ALJ’s Finding of Fact 53 reads, “The allocation system and sales efficiency metric do not treat World Car unfairly.”<sup>7</sup> Again, the Board made the complete opposite finding. Its modified Finding of Fact 53 reads, “The discretionary allocations made to the San Antonio market during 2010 and 2013 were unfair, and Hyundai’s requirement that World Car meet 100% sales efficiency despite the dealership’s known lack of inventory was unfair.” We have already sustained Hyundai’s complaint with respect to the latter half of modified Finding 53 by determining that the Board abused its discretion in making a new basic fact finding that the sales standard was a “requirement.” The Board’s conclusion that the sales standard “requirement” was “unfair” must, accordingly, be reversed. We therefore consider only the propriety of the Board’s new Finding of Fact 53 and corresponding Conclusion of Law 9 as they pertain to the “unfairness” of Hyundai’s discretionary allocations.

The entirety of the Board’s explanation for the change to Finding 53 reads

Finding of Fact 53 is amended in accordance with Texas Government Code § 2001.058(e)(1), because the ALJ misapplied the applicable law. Hyundai’s discretionary inventory allocations to a nearby dealer were nearly triple the amount provided to World Car and thus, unfair and not made in good faith. Additionally, despite repeated requests for additional inventory to meet 100% sales efficiency, World Car’s requests were either ignored or rejected by Hyundai.

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<sup>7</sup> We have previously recited the ALJ’s basic fact findings relevant to the allocation and sales standard, all of which the Board adopted except for the few findings and conclusions challenged by Hyundai and addressed in this opinion.



As previously noted, the first sentence of the explanation is merely a restatement of the statutory requirement supporting a modification (i.e., that the ALJ “misapplied the applicable law”). *See* Tex. Gov’t Code § 2001.058(e). The first half of the second sentence (that Hyundai’s discretionary allocations to a nearby dealer were “nearly triple” the amount provided to World Car) appears to be a basic finding of fact, but the ALJ did not make such a finding, and the Board does not support the finding with any record citations. The Board may not make additional basic fact findings. *See Davis*, 34 S.W.3d at 564. Thus, the first half of the second sentence of the explanation is insufficient to support the Board’s modification of Finding of Fact 53. The second half of the second sentence is merely a statement that the ratio of discretionary allocations was “unfair and not made in good faith.” As to its conclusion that the ratio is “unfair,” the Board does not explain *why* that ratio is unfair or cite to any evidence supporting the opposite conclusion from that of the ALJ, which is supported by the adopted findings of fact. The Board’s explanation also does not explain how the ALJ allegedly “misapplied applicable law” or even which applicable law was misapplied. As to the Board’s conclusion that the allocations were not made in “good faith,” we note that the ALJ made no findings at all pertaining to Hyundai’s bad faith, and the Board’s new finding that Hyundai’s discretionary allocations were made in “bad faith” both exceeded its authority, *see Davis*, 34 S.W.3d at 564, and is not supported by any underlying fact findings.

We conclude that the Board’s explanation of its changes to Finding of Fact 53 and corresponding Conclusion of Law 9<sup>8</sup> are insufficient to meet section 2001.058(e)’s requirements

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<sup>8</sup> The Board’s Conclusion of Law 9—“World Car met its burden of proof to show that Hyundai violated its duty of good faith and fair dealing through allocations and sales efficiency”—was the exact opposite of the ALJ’s conclusion that World Car did not meet its burden on that issue.

to state the “specific reason” and “legal basis” for the changes. *See* Tex. Gov’t Code § 2001.058(e). The Board did not explain how its *opposite* ultimate findings and conclusion are reasonably supported by the ALJ’s numerous basic findings that the Board adopted, and it does not articulate *any* rational connection between any underlying agency policy and the altered findings and conclusion. *See Sanchez*, 229 S.W.3d at 515.

### CONCLUSION

Because the Board’s changes to the ALJ’s findings of fact and conclusions of law did not comply with the APA, we reverse the Board’s order and remand the cause to the Board for further proceedings consistent with this opinion.

---

Thomas J. Baker, Justice

Before Justices Goodwin, Baker, and Triana

Reversed and Remanded

Filed: July 3, 2019



# COURT OF APPEALS

## THIRD DISTRICT OF TEXAS

P.O. BOX 12547, AUSTIN, TEXAS 78711-2547

[www.txcourts.gov/3rdcoa.aspx](http://www.txcourts.gov/3rdcoa.aspx)

(512) 463-1733

JEFF L. ROSE, CHIEF JUSTICE  
MELISSA GOODWIN, JUSTICE  
THOMAS J. BAKER, JUSTICE  
GISELA D. TRIANA, JUSTICE  
CHARI L. KELLY, JUSTICE  
EDWARD SMITH, JUSTICE

JEFFREY D. KYLE, CLERK

August 26, 2019

The Honorable Velva L. Price  
Civil District Clerk  
Travis County Courthouse  
P. O. Box 1748  
Austin, TX 78767  
\* DELIVERED VIA E-MAIL \*

RE: Court of Appeals Number: 03-17-00761-CV  
Trial Court Case Number: D-1-GN-17-005912

Style: Hyundai Motor America  
v. New World Car Nissan, Inc. d/b/a World Car Hyundai; World Car Nissan; and New  
World Car Imports San Antonio, Inc. d/b/a World Car Hyundai; Texas Department of  
Motor Vehicles, Board of The Texas Department of Motor Vehicles; Guillermo  
"Memo" Trevino, et al.

Dear Ms. Price:

Enclosed, with reference to the above cause, is the mandate of this Court. Please file and execute in the usual manner. Your cooperation in this regard is appreciated.

In addition, as required by Texas Government Code, Sec. 51.204(d), the trial court clerk is notified that we will destroy all records filed in respect to this case with the exception of indexes, original opinions, minutes and general court dockets no earlier than six (6) years from the date final mandate is issued.

Very truly yours,

  
\_\_\_\_\_  
Jeffrey D. Kyle, Clerk

cc: Ms. Karen L. Watkins  
Mr. Lee L. Kaplan  
Mr. J. Bruce Bennett

Mr. Michael J. Murray  
Mr. Edward William Allred  
Mr. Jarod Stewart

**M A N D A T E**

THE STATE OF TEXAS

TO THE 201ST DISTRICT COURT OF TRAVIS COUNTY, GREETINGS:

Trial Court Cause No. D-1-GN-17-005912

Before our Court of Appeals for the Third District of Texas on July 3, 2019, the cause on appeal to revise or reverse your judgment between

Hyundai Motor America

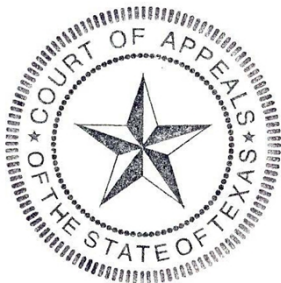
No. 03-17-00761-CV                      v.

New World Car Nissan, Inc. d/b/a World Car Hyundai; World Car Nissan; and New World Car Imports San Antonio, Inc. d/b/a World Car Hyundai; Texas Department of Motor Vehicles, Board of The Texas Department of Motor Vehicles; Guillermo "Memo" Trevino, et al.

Was determined, and therein our Court of Appeals made its order in these words

This is an appeal from the final order signed by the Board of the Texas Department of Motor Vehicles on August 17, 2017. Having reviewed the record and the parties' arguments, the Court holds that there was reversible error in the order. Therefore, the Court reverses the Board's order and remands the case to the Board for further proceedings consistent with the Court's opinion. Appellees shall pay all costs relating to this appeal, both in this Court and in the court below.

Wherefore, we command you to observe the order of our Court of Appeals in this behalf and in all things have the order duly recognized, obeyed, and executed.



Witness the Honorable Jeff L. Rose, Chief Justice of the Court of Appeals for the Third District of Texas, with the seal of the Court affixed in the City of Austin on August 26, 2019.

  
JEFFREY D. KYLE, CLERK

By: Courtland Crocker, Deputy Clerk

**BILL OF COSTS****TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

No. 03-17-00761-CV

**Hyundai Motor America**

v.

**New World Car Nissan, Inc. d/b/a World Car Hyundai; World Car Nissan; and New World Car Imports San Antonio, Inc. d/b/a World Car Hyundai; Texas Department of Motor Vehicles, Board of The Texas Department of Motor Vehicles; Guillermo "Memo" Trevino, et al.**

(No. D-1-GN-17-005912 IN 201ST DISTRICT COURT OF TRAVIS COUNTY)

Type of Fee	Charges	Paid	By
FILING	\$10.00	E-PAID	CHRISTINA BRIENT
FILING	\$25.00	E-PAID	J. BRUCE BENNETT
EXH. FOR ORAL ARGUMENT	\$25.00	E-PAID	MARY ADAMS
FILING	\$10.00	E-PAID	J. BRUCE BENNETT
FILING	\$10.00	E-PAID	MARGARET EVINS
FILING	\$10.00	E-PAID	MARGARET EVINS
FILING	\$10.00	E-PAID	MARGARET EVINS
FILING	\$10.00	E-PAID	J. BRUCE BENNETT
FILING	\$10.00	E-PAID	J. BRUCE BENNETT
FILING	\$100.00	E-PAID	AMANDA OSBORNE
INDIGENT	\$25.00	E-PAID	AMANDA OSBORNE
STATEWIDE EFILING FEE	\$30.00	E-PAID	AMANDA OSBORNE
SUPREME COURT CHAPTER 51 FEE	\$50.00	E-PAID	AMANDA OSBORNE

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**Balance of costs owing to the Third Court of Appeals, Austin, Texas: 0.00**

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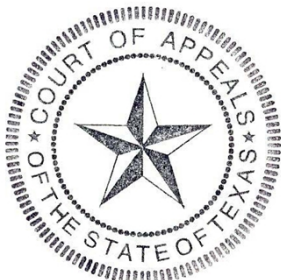


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*Court costs in this cause shall be paid as per the Judgment issued by this Court.*

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I, **JEFFREY D. KYLE**, CLERK OF THE THIRD COURT OF APPEALS OF THE STATE OF TEXAS, do hereby certify that the above and foregoing is a true and correct copy of the cost bill of THE COURT OF APPEALS FOR THE THIRD DISTRICT OF TEXAS, showing the charges and payments, in the above numbered and styled cause, as the same appears of record in this office.



**IN TESTIMONY WHEREOF**, witness my hand and the Seal of the **COURT OF APPEALS** for the Third District of Texas on August 26, 2019.

  
**JEFFREY D. KYLE, CLERK**

**By:** Courtland Crocker, Deputy Clerk



**To:** Texas Department of Motor Vehicles Board  
**From:** Daniel Avitia, Motor Vehicle Division Director  
**Agenda Item:** 7  
**Subject:** Adoption of Rules under Title 43, Texas Administrative Code  
Chapter 215, Motor Vehicle Distribution  
Amendments, §215.133  
Repeal, §215.102  
New, §215.161  
(Relating to:  
• HB 1667, allowing independent motor vehicle general distinguishing number license holders to perform certain salvage related activities without holding a salvage dealer's license;  
• HB 3842, requiring a separate general distinguishing number for most consignment locations; and  
• SB 604, eliminating representative licenses and adding licensing education and training requirements for independent motor vehicle dealers)  
(Proposal Published August 23, 2019 - 44 Tex. Reg. 4462)  
(Review by the Office of the Governor, Regulatory Compliance Division;  
submission November 22, 2019; comment period closed December 27, 2019)

**RECOMMENDATION**

Approval to publish the adoption of the rules in the *Texas Register*.

**PURPOSE AND EXECUTIVE SUMMARY**

These adopted rule changes implement is to implement House Bill 1667, House Bill 3842, and Senate Bill 604, 86<sup>th</sup> Legislative Session, Regular Session (2019).

**FINANCIAL IMPACT**

The department has determined that there may be an adverse economic effect or disproportionate economic impact on small or micro-businesses. SB 604 requires the department to develop or approve a web-based training for an independent motor vehicle dealer applicant. The department believes that adopting different standards than those included in this adoption would not provide a better option for small or micro-businesses, and would not conform to the requirements under SB 604. Offering education services prior to licensing helps ensure the licensees are knowledgeable in the laws and regulations meant to protect the public from deceptive business practices and other issues related to the motor vehicle industry. The department is adopting a reasonable maximum fee, and requiring trade association course providers to charge the same fee to non-members as members to minimize any potential adverse impact.

**BACKGROUND AND DISCUSSION**

Section	Action	Adopted Change	Change Reason
215.102	Repeal	<u>Representatives</u> Manufacturer, distributor, and converter representative licenses will be eliminated 9/1/19; this rule defined "representative" and can be repealed.	SB 604

Section	Action	Adopted Change	Change Reason
215.133	Amendment	<p><u>General Distinguishing Number</u> Amends one and adds two new provisions:</p> <ul style="list-style-type: none"> <li>• (a) amends to require dealer to get a separate GDN license for a consignment location (HB 3842)</li> <li>• (j) NEW allows the holder of an independent motor vehicle GDN to act as a salvage dealer (HB 1667)</li> <li>• (k) NEW requires web-based licensing training for independent motor vehicle GDN holders (SB 604):               <ol style="list-style-type: none"> <li>1. retake is not necessary for subsequent renewal</li> <li>2. license holders for more than 10 years are exempt</li> </ol> </li> </ul>	HB 3842 HB 1667 SB 604
215.161	New	<p><u>Licensing Education Course Requirements</u> New section with requirements for course providers:</p> <ul style="list-style-type: none"> <li>• (a) limits course providers to higher education institutions and Texas motor vehicle trade association</li> <li>• (b) requires course curriculum to be approved by the department and include information on laws and board rules relevant to motor vehicle dealers and the consequences of violating those rules</li> <li>• (c) requires the course to be offered online only and sets minimum training length of 6 hours for applicants and 3 hours for renewal applicants</li> <li>• (d) sets maximum cost per person at \$150; nonmembers cannot be charged a different rate</li> <li>• (e) requires course providers to issue a certificate of completion to each person successfully completing the course</li> </ul>	SB 604

The proposal was published in the *Texas Register* on August 23, 2019. The comment period closed on September 23, 2019. The department received 15 written comments on the rule proposal. Comments were received Dallas County Tax Assessor-Collector, Lubbock County Tax Assessor-Collector, Milam County Tax Assessor-Collector, Brewster County Tax Assessor-Collector, Denton County Tax Assessor-Collector, Lampasas County Tax Assessor-Collector, Zavala County Tax Assessor-Collector, El Paso County Tax Assessor-Collector, Scurry County Tax Assessor-Collector, Jackson County Tax Assessor-Collector, Lavaca County Tax Assessor-Collector, Comal County Tax Assessor-Collector, Grimes County Tax Assessor-Collector, the Tax Assessor-Collector Association of Texas, and the Texas Independent Automobile Dealers Association (TIADA).

If the board adopts the amendment, new section, and repeal during its February 6, 2020, open meeting, staff anticipates:

- publication in the February 28, 2020, issue of the *Texas Register*; and  
an effective date of March 5, 2020.





**DALLAS COUNTY TAX OFFICE**  
**JOHN R. AMES, PCC, CTA**  
**TAX ASSESSOR/COLLECTOR**

September 17, 2019

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

Via Email to: [rules@txdmv.gov](mailto:rules@txdmv.gov)

RE: Response to TxDMV Rules 215.161

DMV Board Members and Agency Leadership:

Please accept this letter as official notice of support for proposed rule 215.161 relating to dealer education. Pre-licensing training has been an item long supported by many different parties including County Tax Assessor-Collectors. By implementing this training, I believe you will see a drop off in the number of dealers that obtain licenses for one year or less and close their doors because they are not prepared for the regulatory compliance requirements and responsibilities.

Additionally, I encourage the Department to work with the Auto Dealer Trade Associations and Tax Assessor-Collector Association of Texas to develop meaningful training that provides the best content possible for services performed and required by an independent motor vehicle dealer. This training should include operations on how to work with County Tax Offices on processing title and initial registrations properly, accurately and timely.

This pre-licensing education will significantly benefit customers, dealers and the motoring public.

Respectfully,

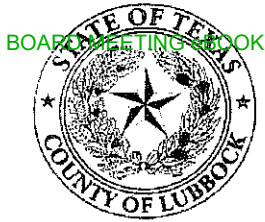
A handwritten signature in black ink, appearing to read "John R. Ames".

John R. Ames, PCC, CTA  
Tax Assessor/Collector

Mission Statement

Provide Dallas County Citizens with Excellent Service using Innovative Technology to Ensure Quality Collections.

Renaissance Tower ♦ 1201 Elm St., Ste. 2600 ♦ Dallas, TX 75270 ♦ 214-653-7811

**Ronnie Keister**

Lubbock County Tax Assessor-Collector  
916 Main Street, Suite 102  
PO Box 10536  
Lubbock, TX 79408-3536  
806.775.1344  
taxoffice@co.lubbock.tx.us

September 23, 2019

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

Via Email to: [rules@txdmv.gov](mailto:rules@txdmv.gov)

SUBJECT: Response to TxDMV Rules 215.161

DMV Board Members and Agency Leadership:

Please accept this letter as official notice of support for proposed rule 215.161 relating to dealer education. Pre-licensing training has been an item long supported by many different parties including County Tax Assessor-Collectors. By implementing this training, I believe you will see a drop in the number of dealers that obtain licenses for one year or less because they are not prepared for the regulatory compliance requirements and responsibilities currently defined in state law and agency rules.

Additionally, I encourage the Department to work with the Auto Dealer Trade Associations and Tax Assessor-Collector Association of Texas to develop meaningful training that provides the best content possible for services performed and required by an independent motor vehicle dealer. This training should include operations on how to work with County Tax Offices on processing title and initial registrations properly, accurately, and timely.

This pre-licensing education will significantly benefit customers, dealers, and the motoring public.

Respectfully,

Ronnie Keister  
Tax Assessor-Collector

Milam County Tax Office  
Sherry Mueck, Milam County Tax Assessor/Collector  
P O Box 551  
101 S. Fannin  
Cameron, TX 76520  
254-697-7017  
254-697-7020 fax

Cindy De La Rosa – Deputy Clerk IV  
Janie Mendoza – Deputy Clerk  
Heather Wall – Deputy Clerk

Alejandra Good – Deputy Clerk I  
Adrienne Zawadzke – Deputy Clerk  
Teresa Wanoreck – Temp Deputy Clerk

September 23, 2019

Office of General Counsel

Texas Department of Motor Vehicles

4000 Jackson Avenue

Austin, TX 78731

[rules@txdmv.gov](mailto:rules@txdmv.gov)

RE: Response to TxDMV Rules 215.161

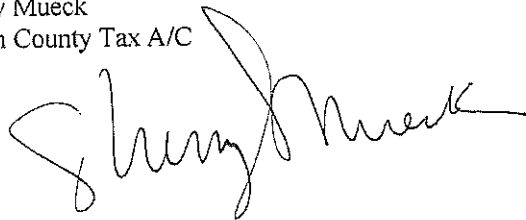
Dear DMV Board Members, General Council Tracy Beavers and DMV Agency Leadership,  
Pursuant to the new proposed rules as defined in 215.133(k) and 215.161, Licensing Education Course Requirements, Senate Bill 604, 86th Legislature, Regular Session, the department is required to develop or approve web-based training for an independent motor vehicle dealer applicant.

We support the department offering pre-licensing educational training prior to the issuance of dealer licensees to ensure a proper knowledge base in the laws and regulations governing the motor vehicle industry. Protecting the public from deceptive business practices and other issues related to the motor vehicle industry is in the best interest of the motoring public as well as the tax assessor-collectors of Texas.

Furthermore we believe training will enhance the services provided to our mutual constituents and will decrease the number of dealerships that fail due to inadequate knowledge of laws and rules.

We also encourage the partnership of the department with the Auto Dealer Trade Associations as well as the Tax Assessor-Collectors Association of Texas to ensure dealerships understand their responsibilities as it pertains to the motoring public and the county tax office.

Sherry Mueck  
Milam County Tax A/C



September 23, 2019

Office of General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, TX 78731  
Via Email to: [rules@txdmv.gov](mailto:rules@txdmv.gov)


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Betty Jo Rooney, PCC  
Brewster County Tax Office



**DENTON COUNTY**  
Office of  
**Michelle French, P.C.C.**  
Tax Assessor/Collector  
1505 E. McKinney St.  
Denton, TX 76209

September 23, 2019

Office of General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, TX 78731  
Via Email to: rules@txdmv.gov

RE: Response to TxDMV Rules 215.161

Dear DMV Board Members, General Council Tracy Beavers and DMV Agency Leadership,

Please accept this letter of support regarding new proposed rules as defined in 215.133(k) and 215.161, Licensing Education Course Requirements, Senate Bill 604 passed in the 86th Legislature, Regular Session. Pursuant to the new rules, the department is required to develop or approve training for an independent motor vehicle dealer applicant.

We support the department offering pre-licensing educational training prior to the issuance of dealer licensees to ensure current laws and regulations governing the motor vehicle industry are understood. It is in the best interest of our motoring public as well as the county tax office to protect the public from deceptive business practices and other issues related to the motor vehicle industry.

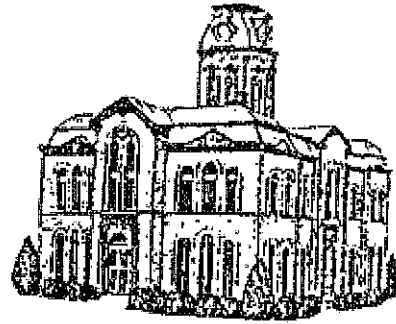
We believe training will enhance and improve the services provided to our mutual constituents as well as decrease the number of dealerships that may fail due to inadequate knowledge of laws and rules.

We also encourage the partnership of the department with the Auto Dealer Trade Associations and the Tax Assessor-Collectors Association of Texas to ensure dealerships understand their role and responsibility pertaining to the motor vehicle industry.

Sincerely,

A handwritten signature in black ink that reads "Michelle French".

Michelle French  
Denton County Tax Assessor-Collector



**BETTY SALINAS**  
Tax Assessor-Collector  
409 S. Pecan St. Ste 101

**LAMPASAS, TEXAS**  
Phone 512-556-8271 Ext. 104  
Fax 512-556-4825

September 23, 2019

Office of General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, TX 78731  
Via Email to: [rules@txdmv.gov](mailto:rules@txdmv.gov)

RE: Response to TxDMV Rules 215.161

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Betty Salinas Lampasas County Tax Assessor-Collector

**Beckley, Krystal**

---

**From:** Cindy Rivera <cindy44rivera@gmail.com>  
**Sent:** Monday, September 23, 2019 2:52 PM  
**To:** Zz - Resource - GCO\_Rules  
**Subject:** rules 215.61

Office of General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, TX 78731  
Via Email to: [rules@txdmv.gov](mailto:rules@txdmv.gov)

RE: Response to TxDMV Rules 215.161

Dear DMV Board Members, General Council Tracy Beavers and DMV Agency Leadership,  
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**RUBEN P. GONZALEZ**  
**OFFICE OF THE COUNTY TAX ASSESSOR-COLLECTOR**  
301 Manny Martinez Drive, 1<sup>st</sup> Floor • El Paso, Texas 79905  
(915) 771-2300 / (915) 771-2301 Fax

September 23, 2019

Office of General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, TX 78731  
Via Email to: [rules@txdmv.gov](mailto:rules@txdmv.gov)

RE: Response to TxDMV Rules 215.161

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Sincerely,

Ruben P. Gonzalez  
El Paso County Tax Assessor Collector



**Beckley, Krystal**

---

**From:** Jana Young <jana.young@co.scurry.tx.us>  
**Sent:** Monday, September 23, 2019 12:02 PM  
**To:** Zz - Resource - GCO\_Rules  
**Subject:** rule 215.161

RE: Response to TxDMV Rules 215.161

Dear DMV Board Members, General Council Tracy Beavers and DMV Agency Leadership, Pursuant to the new proposed rules as defined in 215.133(k) and 215.161, Licensing Education Course Requirements, Senate Bill 604, 86th Legislature, Regular Session, the department is required to develop or approve web-based training for an independent motor vehicle dealer applicant.

We support the department offering pre-licensing educational training prior to the issuance of dealer licensees to ensure a proper knowledge base in the laws and regulations governing the motor vehicle industry. Protecting the public from deceptive business practices and other issues related to the motor vehicle industry is in the best interest of the motoring public as well as the tax assessor-collectors of Texas.

Furthermore we believe training will enhance the services provided to our mutual constituents and will decrease the number of dealerships that fail due to inadequate knowledge of laws and rules.

We also encourage the partnership of the department with the Auto Dealer Trade Associations as well as the Tax Assessor-Collectors Association of Texas to ensure dealerships understand their responsibilities as it pertains to the motoring public and the county tax office.

Jana Young  
Scurry County Tax Assessor Collector  
1806 25<sup>th</sup> Street  
Suite 103  
Snyder, TX 79549  
325-573-9316  
325-574-1687 Fax

COURTHOUSE  
115 W MAIN, ROOM 102  
EDNA, TX 77957

Monica H. Foster  
Tax Assessor-Collector

361-782-3473  
FAX: 361-782-3645  
M.FOSTER@CO.JACKSON.TX.US

September 23, 2019

Office of General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, TX 78731  
Via Email to: [rules@txdmv.gov](mailto:rules@txdmv.gov)

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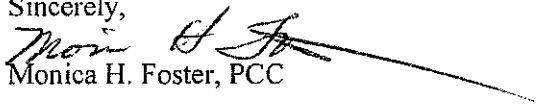
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One important transparency needs to be the processing of the VTR-136 Form that is presented to the buyer at sell. Coming from a rural county that has no dealers, I am trying to educate my county residents. This form clearly states it is not to be pre-populated and the buyers is supposed to fill in the County of Choice, WITHOUT input from the dealer representative. The dealer is REQUIRED by Transportation Code to register the vehicle in the county of choice of the buyer. It has been my experience over the past 4 years, every dealer that I have purchased from (3 plus) has either tried to get me to fill in the Dealer's county, leave it blank or I filled it in and they registered in the county they chose to register it in regardless of my written choice. I have turned in numerous dealers and will continue to do so as each county Commissioner's Court sets the road and bridge and child safety fees for THEIR county constituents, not other county constituents. These funds along with the prior year's 5% sales tax should be going to buyer's choice counties, not the dealer's county. This form needs to be explained to the buyer. WebDealer has made it so easy to process a transaction in another county.

Sincerely,

  
Monica H. Foster, PCC



**DEBORAH A. SEVCIK**  
**LAVACA COUNTY TAX ASSESSOR-COLLECTOR**

P.O. Box 293 • Hallettsville, Texas 77964  
404 N. Texana Street

Ph (361) 798-3601 • Fax (361) 798-5229



September 23, 2019

Office of General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, TX 78731  
Via Email to: rules@txdmv.gov

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I also encourage the partnership of the department with the Auto Dealer Trade Associations as well as the Tax Assessor-Collectors Association of Texas to ensure dealerships understand their responsibilities as it pertains to the motoring public and the county tax office.

Thank you for your time and consideration concerning this matter.

Best regards.

Deborah A. Sevcik, PCC  
Lavaca County Tax Assessor-Collector



# COMAL COUNTY

## TAX OFFICE

***Cathy C. Talcott, CTOP, PCC, PCAC***  
***Comal County Tax Assessor-Collector***

September 23, 2019

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

RE: Response to TxDMV Rules 215.161

The Comal County Tax Office wholeheartedly supports this rule regarding educational training prior to issuing dealer licenses.

Sincerely,

Cathy C. Talcott  
Comal County Tax Assessor

**Beckley, Krystal**

---

**From:** Mary Ann Waters <Maryann.Waters@grimescountytexas.gov>  
**Sent:** Monday, September 23, 2019 4:39 PM  
**To:** Zz - Resource - GCO\_Rules  
**Subject:** TxDMV Rule 215.161

Office of General Council  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, TX 78731  
[rules@txdmv.gov](mailto:rules@txdmv.gov)

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**ATTENTION: Please update my email address in your contacts to: [maryann.waters@grimescountytexas.gov](mailto:maryann.waters@grimescountytexas.gov)**

*Mary Ann Waters*

Grimes County Tax Assessor-Collector  
114 West Buffington  
P O Box 455  
Anderson, TX 77830  
936-873-4465



## THE TAX ASSESSOR-COLLECTORS ASSOCIATION OF TEXAS

An Association to secure the benefits of organized ideas and discussion of mutual problems that will advance and maintain proper efficiency and dignity of the County Tax Office.

[www.tacaofexas.org](http://www.tacaofexas.org)

### "2020 VISION: PREPARING FOR THE FUTURE"

September 23, 2019

Office of General Counsel  
Texas Department of Motor Vehicles  
4000 Jackson Avenue  
Austin, TX 78731  
Via Email to: [rules@txdmv.gov](mailto:rules@txdmv.gov)

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Sincerely,

Cathy Talcott

Comal County Tax Assessor-Collector  
President, Tax Assessor-Collectors Association of Texas

Michelle French  
Denton County Tax Assessor-Collector  
TxDMV Liaison, Tax Assessor-Collectors Association of Texas

#### OFFICERS

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[talcc@co.comal.tx.us](mailto:talcc@co.comal.tx.us)

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LARRY GADDES, PCAC, CTA  
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MICHELLE FRENCH, PCC  
IMMEDIATE PAST PRESIDENT  
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#### DIRECTORS

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DONNA WILLIS  
LYNN COUNTY  
[donna.willis@co.lynn.tx.us](mailto:donna.willis@co.lynn.tx.us)

SHAY LUEDEKE, CTO  
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[shay.luedeke@bellcounty.texas.gov](mailto:shay.luedeke@bellcounty.texas.gov)

ALBERT URESTI, CTO  
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[albert.uresti@bexar.org](mailto:albert.uresti@bexar.org)

September 23, 2019

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

*Sent via email: rules@txdmv.gov*

**Re: Proposed amendments to 43 TAC §215.133, §215.161, and §215.83 as published in the Texas Register August 23, 2019.**

Dear Ms. Beaver:

The Texas Independent Automobile Dealers Association (TIADA) thanks you for the opportunity to submit the following comment with regard to consignment locations, reciprocity of salvage licenses, pre-licensing education, and military licensing.

215.133

- (a) Consignment locations: TIADA supports the clarifying amendment in which “A dealer must also hold a GDN for a consignment location “unless the consignment location is a wholesale motor vehicle auction.”

And:

- (j) Reciprocity of General Distinguishing Number and salvage license. The association is supportive of the adoption of new section (j), which will allow an independent motor vehicle dealer to also act as a salvage dealer or rebuilder without the need for an additional license.
- (k) Pre-licensing and renewal education. The association is supportive of new section (k), relating to educational requirements for persons or entities seeking to obtain a motor vehicle general distinguishing number license.

TIADA respectfully asks for clarification regarding subsection (k)(2) for persons or independent auto dealerships seeking renewal of a GDN license, but are not otherwise exempt (10 year). We ask that a renewal license holder not be required to take the same class as a prospective licensee as it is redundant. We would also request that alternative curriculum be made available for approval by the Department that is narrower in scope and shorter in duration, ex 30 minutes to an hour. Lastly, we would also request that state motor vehicle trade associations be allowed to present renewal

education or training opportunities with classroom equivalent if such classroom sessions are approved by the Department in advance.

215.83

Military licensing. TIADA supports adoption of new section (j) relating to reciprocity of military spouses. TIADA appreciates the efforts of the Department to assist our country's military families.

We look forward to working with the Department on these programs.

Sincerely,

/s/

Christopher Bean  
Director of Dealer Compliance and  
Strategic Communications



## TITLE 43. TRANSPORTATION

## Repealed and Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 215 – Motor Vehicle Distribution

## ADOPTION OF

## SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

## 43 TAC §215.133 and §215.161

## REPEAL OF

SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS,  
DISTRIBUTORS, AND CONVERTERS

## 43 TAC §215.102

**INTRODUCTION.** The Texas Department of Motor Vehicles adopts amendments to 43 TAC §215.133, General Distinguishing Number; new §215.161, Licensing Education Course Requirements; and repeal of §215.102, Representatives. The department adopts amendments to §215.133 and the repeal of §215.102 without changes to the proposed text as published in the August 23, 2019 issue of the *Texas Register* (44 TexReg 4462). New §215.161 is adopted with changes to the proposed text. Section 215.161(c) has been amended to reduce the minimum number of training hours required to 3 for renewal applicants not exempted from the training requirement.

**REASONED JUSTIFICATION.** The amendments, new section, and repeal are necessary to implement statutory changes made by the 86th Legislature, Regular Session (2019) in House Bill (HB) 3842, HB 1667; and Senate Bill (SB) 604, 86th Legislature, Regular Session.

Amended §215.133(a) implements (a), as amended by HB 3842. House Bill 3842 removed the exception under Transportation Code, §503.027(a), that provided a dealer is not required to hold a general distinguishing number (GDN) for a location from which the dealer consigns five or fewer vehicles

## TITLE 43. TRANSPORTATION

## Repealed and Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 215 – Motor Vehicle Distribution

1 in a calendar year. The phrase "unless the consignment location is a wholesale motor vehicle auction" was  
2 added to conform to Transportation Code, §503.027(a).

3 New §215.133(j) implements HB 1667. House Bill 1667 added Occupations Code, §2302.009, and  
4 amended §2302.101, to provide that a person holding an independent motor vehicle GDN is exempt from  
5 the requirement that the person also hold a salvage dealer license to act as a salvage vehicle dealer or  
6 rebuilder, store or display a motor vehicle as an agent or escrow agent of an insurance company.

7 New §215.133(k) implements SB 604 that added new Transportation Code §503.0296 to require  
8 an applicant for an original or renewal general distinguishing number complete web-based education and  
9 training developed or approved by the department. New §215.133(k) requires that a person must  
10 complete licensing training developed or approved by the department to be eligible for an independent  
11 motor vehicle GDN. Persons who have completed the required training will not have to retake the training  
12 for subsequent renewals. Persons who have held an independent motor vehicle distinguishing number  
13 for at least ten years as of September 1, 2019, are exempt from the licensing training requirement.

14 New §215.161, Licensing Education Course Requirements, implements SB 604 by adding licensing  
15 education course requirements applicable to course providers.

16 The repeal of §215.102, Representatives, implements SB 604, which eliminates the  
17 "representative" license.

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.**

18 **Commenters:** The department received 15 written comments. Dallas County Tax Assessor-Collector,  
19 Lubbock County Tax Assessor-Collector, Milam County Tax Assessor-Collector, Brewster County Tax  
20 Assessor-Collector, Denton County Tax Assessor-Collector, Lampasas County Tax Assessor-Collector,  
21 Zavala County Tax Assessor-Collector, El Paso County Tax Assessor-Collector, Scurry County Tax Assessor-  
22 Collector, Jackson County Tax Assessor-Collector, Lavaca County Tax Assessor-Collector, Comal County  
23

## TITLE 43. TRANSPORTATION

## Repealed and Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 215 – Motor Vehicle Distribution

1 Tax Assessor-Collector, Grimes County Tax Assessor-Collector, the Tax Assessor-Collector Association of  
2 Texas, and the Texas Independent Automobile Dealers Association (TIADA) were in support of the  
3 proposal with changes.

**Comment on §215.133(a).**

5 One commenter supports the clarifying amendment in which “a dealer must also hold a GDN for  
6 a consignment location “unless the consignment location is a wholesale motor vehicle auction.”

**Agency Response.**

8 The department thanks the commenter for its support.

**Comment on §215.133(j).**

10 One commenter supports adoption of new section (j), which will allow an independent  
11 motor vehicle dealer to also act as a salvage dealer or rebuilder without the need for an  
12 additional license.

**Agency Response.**

14 The department thanks the commenter for its support.

**Comment on §215.133(k).**

16 One commenter supports new section (k), relating to educational requirements for  
17 persons or entities seeking to obtain a motor vehicle general distinguishing number license

**Agency Response.**

19 The department thanks the commenter for its support.

**Comment on §215.133(k)(2).**

21 One commenter asks for clarification regarding subsection (k)(2) for persons or  
22 independent auto dealerships seeking renewal of a GDN license, but are not otherwise

## TITLE 43. TRANSPORTATION

## Repealed and Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 215 – Motor Vehicle Distribution

1 exempt (10 year). The commenter asks that a renewal license holder not be required to take  
2 the same class as a prospective licensee as it is redundant. The commenter also requests that  
3 alternative curriculum be made available for approval by the Department that is narrower in  
4 scope and shorter in duration, ex 30 minutes to an hour.

**Agency Response.**

6 The department agrees that current license holders with established businesses do not need  
7 training on how to set up a new dealership and do not need the same number of training hours as new  
8 applicants, but disagrees with changing the duration to 30 minutes to an hour. The department amended  
9 §215.161(c) in response to the comment to reduce the minimum requirement to 3 hours of training for  
10 renewal applicants not exempted from the training requirement.

**Comment on §215.133(k)(2).**

12 One commenter requests that state motor vehicle trade associations be allowed to  
13 present renewal education or training opportunities with classroom equivalent if such  
14 classroom sessions are approved by the Department in advance

**Agency Response.**

16 The department declines to make the suggested change. Senate Bill 604, 86<sup>th</sup> Legislature, Regular  
17 Session (2019) provides that the department must require web-based education and training. Allowing  
18 renewal education or training opportunities to have a classroom equivalent would not be consistent with  
19 SB 604.

**Comment on §215.161.**

21 Commenters offer support for proposed section 215.161. Pre-licensing training has been an  
22 item long supported by many different parties including County Tax Assessor-Collectors. By  
23 implementing this training, commenters believe the department will see a drop off in the number of

## TITLE 43. TRANSPORTATION

## Repealed and Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 215 – Motor Vehicle Distribution

dealers that obtain licenses for one year or less and close their doors because they are not prepared for the regulatory compliance requirements and responsibilities.

**Agency Response.**

The department appreciates the supportive comment.

**Comment on §215.161.**

A commenter supports the department offering pre-licensing educational training prior to the issuance of dealer licenses to ensure a proper knowledge base in the laws and regulations governing the motor vehicle industry. Protecting the public from deceptive business practices and other issues related to the motor vehicle industry is in the best interest of the motoring public as well as the tax assessor-collectors of Texas.

**Agency Response.**

The department appreciates the supportive comment.

**Comment on §215.161.**

Commenters request that the department work with the Auto Dealer Trade Associations and Tax Assessor-Collector Association of Texas to develop meaningful training that provides the best content possible for services performed and required by an independent motor vehicle dealer. Commenters request that the training include content on how dealers can work effectively with the county offices to title and register vehicles properly, accurately, and timely.

**Agency Response.**

The department agrees that an important outcome of the training is educating potential and current license holders on how to work effectively with the county tax offices to efficiently and correctly process motor vehicle titles and registrations. The department will provide the County Tax Assessor-

## TITLE 43. TRANSPORTATION

## Repealed and Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 215 – Motor Vehicle Distribution

Collectors an opportunity to review the proposed training and provide feedback prior to department course approval.

**Comment on §215.161.**

One commenter requested that the training include the proper processing of VTR-136 forms to ensure county taxes go to the buyer's choice of county.

**Agency Response.**

The department agrees that this issue is an important one, especially to rural counties, and that topic will be included in the training.

**STATUTORY AUTHORITY.** The amendments, new section, and repeal are adopted under Transportation Code, §503.002, which authorizes the board of the Texas Department of Motor Vehicles to adopt rules for the administration of Transportation Code, Chapter 503; under Transportation Code, §1002.001, which requires and authorizes the department to administer and enforce the provisions of Occupations Code, Chapter 2301; under Transportation Code, §1002.001, which authorizes the board to adopt rules necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other Texas laws; under Occupations Code, §§2301.151 - 2301.153 and 2301.155, which provide the board's jurisdiction, require the board to ensure that the regulation of motor vehicles in Texas is conducted as required by board rules, empower, authorize, and require the board to adopt rules under Occupations Code, Chapter 2301, necessary or convenient to administer Chapter 2301, and govern practice and procedure before the board; and under Occupations Code §2301.351, which prohibits a dealer from violating a board rule.

**CROSS REFERENCE TO STATUTE.** Occupations Code §§2301.251, 2301.258, 2301.264, 2301.304, 2302.009 and §2302.101; and Transportation Code §503.027 and §503.0296.

## TITLE 43. TRANSPORTATION

## Repealed and Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 215 – Motor Vehicle Distribution

## TEXT.

## SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

## 43 TAC §215.133 and §215.161

## §215.133. General Distinguishing Number.

(a) No person may engage in business as a dealer unless that person has a currently valid general distinguishing number assigned by the department for each location from which the person engages in business. ~~A [If a dealer consigns more than five vehicles in a calendar year for sale from a location other than the location for which the dealer holds a general distinguishing number, the] dealer must also hold a general distinguishing number for a [the]consignment location, unless the consignment location is a~~ wholesale motor vehicle auction.

(b) The provisions of subsection (a) of this section do not apply to:

(1) a person who sells or offers for sale fewer than five vehicles of the same type as herein described in a calendar year and such vehicles are owned by him and registered and titled in his name;

(2) a person who sells or offers to sell a vehicle acquired for personal or business use if the person does not sell or offer to sell to a retail buyer and the transaction is not held for the purpose of avoiding the provisions of Transportation Code, §503.001 et seq., and this subchapter;

(3) an agency of the United States, this state, or local government;

(4) a financial institution or other secured party selling a vehicle in which it holds a security interest, in the manner provided by law for the forced sale of that vehicle;

(5) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;

## TITLE 43. TRANSPORTATION

## Repealed and Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 215 – Motor Vehicle Distribution

1 (6) an insurance company selling a vehicle acquired from the owner as the result of paying  
2 an insurance claim;

3 (7) a person selling an antique passenger car or truck that is at least 25 years old or a  
4 collector selling a special interest motor vehicle as defined in Transportation Code, §683.077, if the special  
5 interest vehicle is at least 12 years old;

6 (8) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest  
7 bidder at a bona fide auction if neither legal nor equitable title passes to the auctioneer and if the auction  
8 is not held for the purpose of avoiding another provision of Transportation Code, §503.001 et seq., and  
9 this subchapter; and provided that if an auction is conducted of vehicles owned, legally or equitably, by a  
10 person who holds a general distinguishing number, the auction may be conducted only at a location for  
11 which a general distinguishing number has been issued to that person or at a location approved by the  
12 department as provided in §215.135 of this subchapter (relating to More than One Location); and

13 (9) a person who is a domiciliary of another state and who holds a valid dealer license and  
14 bond, if applicable, issued by an agency of that state, when the person buys a vehicle from, sells a vehicle  
15 to, or exchanges vehicles with a person who:

16 (A) holds a current valid general distinguishing number issued by the department,  
17 if the transaction is not intended to avoid the terms of Transportation Code, §503.001 et seq.; or

18 (B) is a domiciliary of another state if the person holds a valid dealer license and  
19 bond, if applicable, issued by that state, and if the transaction is not intended to avoid the terms of  
20 Transportation Code, §503.001 et seq.

21 (c) Application for a general distinguishing number shall be on a form prescribed by the  
22 department properly completed by the applicant showing all information requested thereon and shall be  
23 submitted to the department accompanied by the following:



## TITLE 43. TRANSPORTATION

## Repealed and Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 215 – Motor Vehicle Distribution

1 (1) proof of a \$25,000 surety bond as provided in §215.137 of this title (relating to Surety  
2 Bond);

3 (2) the fee for the general distinguishing number as prescribed by law for each type of  
4 license requested;

5 (3) the fee as prescribed by law for each metal dealer plate requested as prescribed by  
6 law;

7 (4) a copy of each assumed name certificate on file with the Office of the Secretary of  
8 State or county clerk; and

9 (5) a photocopy of at least one of the following documents for the owner, president, or  
10 managing partner of the dealership:

11 (A) current driver's license;

12 (B) current Department of Public Safety identification;

13 (C) current concealed handgun license or license to carry a handgun issued by the  
14 Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

15 (D) current passport; or

16 (E) current United States armed forces identification.

17 (d) A person who applies for a general distinguishing number and will operate as a dealer under  
18 a name other than the name of that person shall use the name under which that person is authorized to  
19 do business, as filed with the Office of the Secretary of State or county clerk, and the assumed name of  
20 such legal entity shall be recorded on the application using the letters "DBA."

21 (e) If the general distinguishing number is issued to a corporation, the dealer's name and assumed  
22 name used by the dealer, as on file with the Office of the Secretary of State, shall be recorded on the  
23 application.

## TITLE 43. TRANSPORTATION

## Repealed and Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 215 – Motor Vehicle Distribution

(f) A wholesale dealer license holder may buy, sell, or exchange vehicles with licensed dealers. A wholesale dealer license holder may not sell or exchange vehicles at retail.

(g) An independent mobility motor vehicle dealer shall retain and produce for inspection all records relating to the license requirements under Occupations Code, §2301.002(17-a) and all information and records required under Transportation Code, §503.0295.

(h) An application for a general distinguishing number may be denied if an applicant for such license has committed any act that could result in license cancellation or revocation under Transportation Code, §503.001 et seq.; Occupations Code, §2301.001 et seq.; or any rule or regulation of the department.

(i) Upon request by the department, the applicant shall submit documents demonstrating that the applicant owns the real property on which the business is situated or has a written lease for the property that has a term of not less than the term of the license.

(j) A person holding an independent motor vehicle general distinguishing number license does not have to hold a salvage dealer license to:

(1) act as a salvage vehicle dealer or rebuilder, or

(2) store or display a motor vehicle as an agent or escrow agent of an insurance company.

(k) To be eligible for an independent motor vehicle general distinguishing number license, a person must complete licensing training specified by the department, except as provided herein:

(1) once a person has completed the required training, the person will not have to retake the training for subsequent license renewals, but may be required to provide proof of training completion as part of the license renewal process; and

(2) a person holding an independent motor vehicle general distinguishing number license for at least 10 years as of September 1, 2019, is exempt from the licensing training requirement.

## TITLE 43. TRANSPORTATION

## Repealed and Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 215 – Motor Vehicle Distribution

§215.161. Licensing Education Course Requirements.

(a) A motor vehicle dealer licensing education course provider must be a Texas institution of higher education, as defined by Education Code, §61.003, or a motor vehicle trade association domiciled in this state.

(b) The licensing education course must be approved by the department and must include information on the laws and rules applicable to motor vehicle dealers and the consequences of violating those laws and rules.

(c) The licensing education course must consist of at least 6 hours of online instruction for new applicants and 3 hours of online instruction for renewal applicants.

(d) The cost for the licensing education course must not exceed \$150 per person. A trade association course provider may not charge a different rate to a nonmember.

(e) The course provider must issue a certificate of completion to each person who successfully completes the licensing education course.

**SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS****REPEAL OF****43 TAC §215.102**

~~[§215.102. Representatives]~~

~~[(a) To effectuate Occupations Code, §2301.002(29), the definition of the term "representative" is construed to be sufficiently broad to include regional, zone, or district executive personnel whose area of responsibility includes Texas, and whose duties include contacting motor vehicle dealers or dealership personnel, and every other person employed by a motor vehicle manufacturer, distributor or converter,~~

## TITLE 43. TRANSPORTATION

## Repealed and Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 215 – Motor Vehicle Distribution

~~directly or indirectly, to call upon or contact motor vehicle dealers or dealership employees concerning new motor vehicle sales, advertising, service, parts, business management, used motor vehicle sales, and for any other purpose.]~~

~~[(b) The statutory definition is construed to not include office or clerical personnel, production personnel, etc., whose duties do not include contacting motor vehicle dealers or dealership employees.]~~

~~[(c) A "person" who meets the definition of representative can also be other than a natural person such as a corporation. Employees of an entity licensed as a representative that perform representative functions in the scope of their employment for the licensed representative are required to obtain a representative's license in their individual capacity, except for the president/chief executive officer of the corporation. A licensed representative may identify and perform representative functions for more than one manufacturer, distributor, or converter.]~~

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

Issued at Austin, Texas, on M DD, YYYY.

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Tracey Beaver, General Counsel



**To:** Texas Department of Motor Vehicles Board

**From:** Jeremiah Kuntz, Vehicle Titles & Registration Division Director

**Agenda Item:** 8

**Subject:** Adoption of Rules under Title 43, Texas Administrative Code Chapter 217, Vehicle Titles and Registration Amendments, §§217.2, 217.45 and 217.46  
(Relating to:

- HB 1548, establishing procedure for issuance of license plates to golf carts and off-highway vehicles, charging a fee, and updating statutory citations;
- HB 1755, classification and operation of sand rails;
- HB 3068, use of certain license plates on classic motor vehicles and travel trailers, custom vehicles, street rods, and certain exhibition vehicles; use of embossed disabled veterans' license plates on certain vehicles; and
- HB 3171, classification and operation of mopeds)

*(Proposal Published August 30, 2019 - 44 Tex. Reg. 4467)*  
*(Review by the Office of the Governor, Regulatory Compliance Division; submission November 22, 2019; comment period closed December 27, 2019)*

### **RECOMMENDATION**

Approval to publish the adoption of the amendments to §§217.2, 217.45, and 217.46 in the *Texas Register*.

### **PURPOSE AND EXECUTIVE SUMMARY**

The amendments implement House Bills 1548, 1755, 3068, and 3171, 86th Legislature, Regular Session (2019), which require updating existing definitions and citations, and updating and establishing processes concerning the issuance of off-highway vehicle and disabled veteran license plates.

### **FINANCIAL IMPACT**

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments will be in effect, there will be minimal fiscal implications for state or local governments as a result of enforcing or administering of the rules. The issuance of the off-highway vehicle plate will result in positive revenue for the state. In addition, the department is unable to determine how many off-highway vehicles will opt to receive an off-highway license plate and is unable to anticipate which counties or municipalities may or may not authorize operation of the off-highway vehicles. The amendment setting the fee for issuance of license plates for off-highway vehicles is authorized by statute and is only applicable if a person wishes to operate the off-highway vehicle on a highway or otherwise wishes to obtain a license plate.

### **BACKGROUND AND DISCUSSION**

The amendments implementing HB 1548 include:

- amending §217.2 to update the definitions of "all-terrain vehicle" and "recreational off-highway vehicle" and include a new definition of "off-highway vehicle," and "utility vehicle";
- amending §217.45 to add a reference to new Chapter 551A as added by the bill and add off-highway vehicle to: (1) the types of vehicles that are issued one license plate; (2) the categories of license plates for which personalized plates are not available; and (3) the types of license plates that are non-transferable between vehicles; and



## Texas Department of Motor Vehicles

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- adding new subsection §217.45(k) establishing the process by which a county tax assessor-collector may issue an off-highway vehicle license plate and setting the fee for an off-highway vehicle license plate at \$10, which is the same fee charged for a golf cart license plate under §217.45(j).

### The amendments implementing HB 1755 include:

- amending §217.2 to add the definitions of "sand rail";

### The amendments implementing HB 3068 include:

- amending §217.45 to authorize the use of disabled veteran embossed license plates on classic motor vehicles, custom vehicles, street rods, and certain exhibition vehicles under Transportation Code §504.202.

### The amendments implementing HB 3171 include:

- amending §217.2 to update the definition of "moped"; and
- adding a reference to moped in §217.46 for consistency with the statutes as amended.

The proposal was published in the *Texas Register* on August 30, 2019. The comment period closed on September 30, 2019. No comments were received.

If the board adopts the amendments during its February 6, 2019, open meeting, staff anticipates:

- publication in the February 28, 2020, issue of the *Texas Register*; and
- an effective date of March 5, 2020.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

**ADOPTION OF****SUBCHAPTER A. MOTOR VEHICLE TITLES****43 TAC §217.2****SUBCHAPTER B. MOTOR VEHICLE REGISTRATION****43 TAC §217.45 AND §217.46**

**INTRODUCTION.** The Texas Department of Motor Vehicles adopts amendments to 43 TAC §§217.2, 217.45, and 217.46 concerning the definitions of moped, off-highway vehicle, sand rail, and utility vehicle or UTV; unregistered off-highway vehicle license plates and the fee for the license plates; and disabled veteran and other license plates for custom vehicles, street rods and certain exhibition vehicles. The department adopts amendments to §§217.2, 217.45, and 217.46 without changes to the proposed text as published in the August 30, 2019 issue of the *Texas Register* (44 TexReg 4467).

**REASONED JUSTIFICATION.** The amendments to §§217.2, 217.45, and 217.46, are necessary to implement House Bill 1548 86th Legislature, Regular Session (2019); HB 1755, 86th Legislature, Regular Session (2019); HB 3068, 86th Legislature, Regular Session (2019); and HB 3171, 86th Legislature, Regular Session (2019).

**§217.2**

The amendments to §217.2 are necessary to implement HB 1548, HB 1755, and HB 3171. House Bill 1548 transferred Transportation Code Chapter 663, Subchapters A and B, to new Transportation Code Chapter 551A. House Bill 1548 amended the definition of “motor vehicle” in Transportation Code §501.002 by adding a reference to “off-highway vehicle” as defined by Transportation Code §551A.001 and eliminating the references to “all-terrain vehicle” and “recreational off-highway vehicle.”

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 Transportation Code §551A.001 as added by HB 1548 defines “off-highway vehicle” as an all-terrain  
2 vehicle, recreational off-highway vehicle, or utility vehicle.

3 House Bill 1755 amended Transportation Code §663.001 to add a definition of “sand rail,” and  
4 also amended the Transportation Code §663.001 definition of “off-highway vehicle” to include the term  
5 sand rail. The HB 1755 definition of sand rail and the amended definition of off-highway vehicle were also  
6 transferred by HB 1548 to Transportation Code §551A.001. As a result of HB 1548 and HB 1755, an off-  
7 highway vehicle under Transportation Code §551A.001 is defined as an all-terrain vehicle, recreational  
8 off-highway vehicle, utility vehicle, or sand rail.

9 In addition, HB 3171 amended the Transportation Code §541.201 definition of “moped” to state  
10 that a moped is a motor vehicle.

11 Because of the described statutory changes in HB 1548, HB 1755, and HB 3171, the amendments  
12 to §217.2 make necessary updates to statutory references in the definitions of “all-terrain vehicle” and  
13 “recreational off-highway vehicle,” and add new definitions of “off-highway vehicle,” “utility vehicle,” and  
14 “sand rail” by reference to the definitions in Transportation Code §551A.001. In addition, the phrase “a  
15 motor vehicle as defined by” is added to the definitions of moped, off-highway vehicle, sand rail, and  
16 utility vehicle or UTV, under amended §217.2(14), (18), (22), and (25), for consistency with existing  
17 definitions of “all-terrain vehicle or ATV” and “recreational off-highway vehicle or ROV” and because the  
18 statutory definition of “motor vehicle” under Transportation Code §501.002, as amended, includes a  
19 moped and an off-highway vehicle. The definition of utility vehicle or UTV also references definition of  
20 “golf cart,” which HB 1548 moved from Transportation Code §502.001 to Transportation Code §551.401.  
21 Amendments to §217.2 also renumber the paragraphs.

**§217.45**



## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1           The amendments to §217.45 are necessary to implement HB 1548 and HB 3068. House Bill 1548  
2           requires the department to establish, by rule, a procedure for issuance of license plates to golf carts and  
3           unregistered off-highway vehicles, and authorizes the department to charge a fee of up to \$10 to cover  
4           the costs of issuing the plates. The phrase “off-highway vehicle” is defined in Transportation Code  
5           §551A.001, under HB 1548 as discussed in this adoption.

6           House Bill 3068 provides, in part, that a person who qualifies for a disabled veteran license plate  
7           under Transportation Code §504.202 may use an embossed Texas disabled veteran license plate on a  
8           classic motor vehicle, custom vehicle, street rod, and on certain exhibition vehicles as defined by  
9           Transportation Code §504.501 and §504.502. The embossed disabled veteran license plate must have  
10          been issued in the same year as the model year of the vehicle and be approved for use by the department.  
11          House Bill 3068 also provides that any person may use a Texas license plate that is embossed with an  
12          alphanumeric pattern of a plate design that was issued the same year as the model year of the vehicle for  
13          vehicles that meet the requirements of the same two sections (Transportation Code §504.501 and  
14          §504.502).

15          The amendments to §217.45 make necessary updates to implement HB 1548. The amendment to  
16          §217.45(a) adds a reference to new Transportation Code Chapter 551A as added by HB 1548.

17          The amendment to §217.45(c)(3)(B) adds the phrase “off-highway vehicle,” because  
18          Transportation Code §551A.052 authorizes the department to establish a procedure to issue license plates  
19          to unregistered off-highway vehicles by rule. In addition, Transportation Code §551A.052(b) allows a  
20          person to operate an unregistered off-highway vehicle on a highway in a manner authorized by  
21          Transportation Code Chapter 551A, Subchapter D, only if the vehicle displays a license plate issued under  
22          Transportation Code §551A.052. The existing requirement in §217.27(b) that a vehicle display two license  
23          plates is applicable to vehicles registered under Transportation Code Chapter 502.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1           The amendment to §217.45(c)(7)(E) adds the phrase “off-highway vehicle,” because license plates  
2   for off-highway vehicles are authorized by Transportation Code Chapter 551. Personalized license plates  
3   are authorized by Transportation Code §504.0051 and §504.101. As such, license plates for off-highway  
4   vehicles are not eligible for personalization.

5           The amendment to §217.45(c)(7)(E) adds the phrase “off-highway vehicle,” because under  
6   Transportation Code §551A.052(d), off-highway vehicle license plates are only authorized for off-highway  
7   vehicles, do not expire, and may not be used by a subsequent owner of an off-highway vehicle. In addition,  
8   license plates are only eligible for transfer if the vehicle is a passenger vehicle with a gross weight of 6,000  
9   pounds or less or a light truck with a gross weight of 10,000 pounds or less. Passenger vehicles and light  
10   trucks are defined in Transportation Code §502.001 by reference to Transportation Code §541.201.

11          The amendments to §217.45 also add new §217.45(k) to establish the process by which a county  
12   tax assessor-collector may issue an off-highway vehicle license plate and sets the fee for an off-highway  
13   vehicle license plate. The fee for an off-highway license plate is \$10, which is the same fee charged for a  
14   license plate for a golf cart under existing §217.45(j). This fee is appropriate because the standard cost for  
15   the department to produce a license plate is \$8. However, this cost does not include programming and  
16   the cost of the receipt. Setting the fee at \$10 will account for all costs associated with issuance of the  
17   plate.

18          The amendments to §217.45 make necessary updates to implement HB 3068. The amendment to  
19   §217.45(c)(2)(A)(ii) creates an exception that will allow the use of disabled veteran embossed license  
20   plates on classic motor vehicles, custom vehicles, street rods, and certain exhibition vehicles by a disabled  
21   veteran as authorized in Transportation Code §504.202.

**§217.46**

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 The amendment to §217.46 is necessary to implement HB 3171, which amended the definition of  
2 “commercial motor vehicle” in Transportation Code §502.001(7) to exclude “moped.” The amendment to  
3 §217.46(a) adds a reference to moped for consistency with Transportation Code §502.001(7) as amended  
4 by House Bill 3171.

5 Additionally, the department proposes nonsubstantive changes throughout the text of §§217.2,  
6 217.45, and 217.46. These nonsubstantive changes include reformatting and updating citations.

7 In conjunction with amending these rules, the department is also reconfiguring its internal  
8 systems. Therefore, the effective dates of the rules may be extended to correspond with completion of  
9 the programming necessary to fully implement the rules.

#### 11 SUMMARY OF COMMENTS.

12 No comments on the proposed amendments were received.

#### 14 SUBCHAPTER A. MOTOR VEHICLE TITLES

##### 15 §217.2

16 **STATUTORY AUTHORITY.** The department adopts amendments to §217.2 under Transportation Code  
17 §§501.0041, 502.0021, 504.0011 and 1002.001.

18 Transportation Code §501.0041 authorizes the department to adopt rules to administer Chapter  
19 501.

20 Transportation Code §502.0021 authorizes the department to adopt rules to administer Chapter  
21 502.

22 Transportation Code §504.0011 authorizes the board of the Texas Department of Motor Vehicles  
23 to adopt rules to implement and administer Chapter 504.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

**CROSS REFERENCE TO STATUTE.** Transportation Code §§501.002, 502.001, 542.201, 551.401, and 551A.001.

**TEXT.**

**SUBCHAPTER A. MOTOR VEHICLE TITLES****43 TAC §217.2**

§217.2. Definitions.

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

(1) Alias--The name of a vehicle owner reflected on a title, when the name on the title is different from the name of the legal owner of the vehicle.

(2) Alias title--A title document issued by the department for a vehicle that is used by an exempt law enforcement agency in covert criminal investigations.

(3) All-terrain vehicle or ATV--A motor vehicle as defined by Transportation Code, §551A.001~~§502.001~~, and designed primarily for recreational use. The term does not include a "utility vehicle" as defined by Transportation Code, §551A.001~~§563.001~~, or a self-propelled, motor-driven vehicle designed or marketed by the manufacturer primarily for non-recreational uses.

(4) Bond release letter--Written notification from the United States Department of Transportation authorizing United States Customs to release the bond posted for a motor vehicle imported into the United States to ensure compliance with federal motor vehicle safety standards.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

(5) Date of sale--The date of the transfer of possession of a specific vehicle from a seller to a purchaser.

(6) Division director--The director of the department's Vehicle Titles and Registration Division.

(7) Executive administrator--The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city who by law possesses the authority to conduct covert criminal investigations.

(8) Exempt agency--A governmental body exempt by law from paying title or registration fees for motor vehicles.

(9) Federal motor vehicle safety standards--Motor vehicle safety requirements promulgated by the United States Department of Transportation, National Highway Traffic Safety Administration, set forth in Title 49, Code of Federal Regulations.

(10) House moving dolly--An apparatus consisting of metal beams and axles used to move houses. House moving dollies, by nature of their construction and use, actually form large semitrailers.

(11) Identification certificate--A form issued by an inspector of an authorized safety inspection station in accordance with Transportation Code, Chapter 548.

(12) Implements of husbandry--Farm implements, machinery, and tools used in tilling the soil, including self-propelled machinery specifically designed or especially adapted for applying plant food materials or agricultural chemicals. This term does not include an implement unless it is designed or adapted for the sole purpose of transporting farm materials or chemicals. This term does not include any passenger car or truck. This term does include a towed vehicle that transports to the field and spreads fertilizer or agricultural chemicals; or a motor vehicle designed and adapted to deliver feed to livestock.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

(13) Manufacturer's certificate of origin--A form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner, and when presented with an application for title, showing, on appropriate forms prescribed by the department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer and owner.

(14) Moped--A motor vehicle as defined by Transportation Code, §541.201 ~~[motor-driven cycle whose attainable speed is not more than 30 miles per hour and that is equipped with a motor that produces not more than two brake horsepower. If an internal combustion engine is used, the piston displacement may not exceed 50 cubic centimeters and the power drive system may not require the operator to shift gears].~~

(15) Motor vehicle importation form--A declaration form prescribed by the United States Department of Transportation and certified by United States Customs that relates to any motor vehicle being brought into the United States and the motor vehicle's compliance with federal motor vehicle safety standards.

(16) Non United States standard motor vehicle--A motor vehicle not manufactured in compliance with federal motor vehicle safety standards.

(17) Obligor--An individual who is required to make payments under the terms of a support order for a child.

(18) Off-highway vehicle--A motor vehicle as defined by Transportation Code, §551A.001.

~~(19)[18]~~ Person--An individual, firm, corporation, company, partnership, or other entity.

~~(20)[19]~~ Recreational off-highway vehicle or ROV--A motor vehicle as defined by Transportation Code, §551A.001 ~~[§502.001]~~, and designed primarily for recreational use. The term does not include a "utility vehicle" as defined by Transportation Code, §551A.001 ~~[§663.001]~~, or a self-

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

propelled, motor-driven vehicle designed or marketed by the manufacturer primarily for non-recreational uses.

(21) [(20)] Safety certification label--A label placed on a motor vehicle by a manufacturer certifying that the motor vehicle complies with all federal motor vehicle safety standards.

(22) Sand rail--A motor vehicle as defined by Transportation Code, §551A.001.

(23) [(21)] Statement of fact--A written declaration that supports an application for a title, that is executed by an involved party to a transaction involving a motor vehicle, and that clarifies an error made on a title or other negotiable evidence of ownership. An involved party is the seller or an agent of the seller involved in the motor vehicle transaction. When a written declaration is necessary to correct an odometer disclosure error, the signatures of both the seller and buyer when the error occurred are required.

(24) [(22)] Title application--A form prescribed by the division director that reflects the information required by the department to create a motor vehicle title record.

(25) Utility vehicle or UTV--A motor vehicle as defined by Transportation Code, §551A.001, and designed primarily for utility use. The term does not include a "golf cart" as defined by Transportation Code, §551.401, or a self-propelled, motor-driven vehicle designed or marketed by the manufacturer primarily for non-utility uses.

(26) [(23)] Verifiable proof--Additional documentation required of a vehicle owner, lienholder, or agent executing an application for a certified copy of a title.

(A) Individual applicant. If the applicant is an individual, verifiable proof consists of a copy of a current photo identification issued by this state or by the United States or foreign passport.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

(B) Business applicant. If the applicant is a business, verifiable proof consists of an original or copy of a letter of signature authority on letterhead, a business card, or employee identification and a copy of current photo identification issued by this state or by the United States or foreign passport.

(C) Power of attorney. If the applicant is a person in whose favor a power of attorney has been executed by the owner or lienholder, verifiable proof consists of the documentation required under subparagraph (A) or (B) of this paragraph both for the owner or lienholder and for the person in whose favor the power of attorney is executed.

**SUBCHAPTER B. MOTOR VEHICLE REGISTRATION****43 TAC §217.45 and §217.46**

**STATUTORY AUTHORITY.** The department adopts amendments to §217.45 and §217.46 under Transportation Code §§501.0041, 502.0021, 504.0011, 504.002, 551.402, 551A.052, and 1002.001.

Transportation Code §501.0041 authorizes the department to adopt rules to administer Chapter 501.

Transportation Code §502.0021 authorizes the department to adopt rules to administer Chapter 502.

Transportation Code §504.0011 authorizes the board of the Texas Department of Motor Vehicles to adopt rules to implement and administer Chapter 504.

Transportation Code §504.002 authorizes the department to charge a fee to cover the costs of issuing license plates for golf carts or off-highway vehicles in an amount established by rule.

Transportation Code §551.402 requires the department to adopt rules establishing a procedure to issue license plates for golf carts and charge a fee not to exceed \$10.



## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 Transportation Code §551A.052 requires the department to adopt rules establishing a procedure  
2 to issue license plates for unregistered off-highway vehicles and charge a fee not to exceed \$10.

3 Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and  
4 appropriate to implement the powers and the duties of the department.

5  
6 **CROSS REFERENCE TO STATUTE.** Transportation Code §§501.002, 502.001, 504.202, 504.202, 504.501,  
7 541.201, 542.201, 551.401, 551.402, and 551A.052.

8  
9 **TEXT.**

10 **Subchapter B. Motor Vehicle Registration**

11 **43 TAC §217.45 and §217.46**

12 §217.45. Specialty License Plates, Symbols, Tabs, and Other Devices.

13 (a) Purpose and Scope. Transportation Code, Chapters 504, ~~and~~ 551, and 551A charge the  
14 department with providing specialty license plates, symbols, tabs, and other devices. For the department  
15 to perform these duties efficiently and effectively, this section prescribes the policies and procedures for  
16 the application, issuance, and renewal of specialty license plates, symbols, tabs, and other devices,  
17 through the county tax assessor-collectors, and establishes application fees, expiration dates, and  
18 registration periods for certain specialty license plates. This section does not apply to military license  
19 plates except as provided by §217.43 of this title (relating to Military Specialty License Plates).

20 (b) Initial application for specialty license plates, symbols, tabs, or other devices.

21 (1) Application Process.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 (A) Procedure. An owner of a vehicle registered as specified in this subchapter  
2 who wishes to apply for a specialty license plate, symbol, tab, or other device must do so on a form  
3 prescribed by the director.

4 (B) Form requirements. The application form shall at a minimum require the  
5 name and complete address of the applicant.

6 (2) Fees and Documentation.

7 (A) The application must be accompanied by the prescribed registration fee,  
8 unless exempted by statute.

9 (B) The application must be accompanied by the statutorily prescribed specialty  
10 license plate fee. If a registration period is greater than 12 months, the expiration date of a specialty  
11 license plate, symbol, tab, or other device will be aligned with the registration period and the specialty  
12 plate fee will be adjusted to yield the appropriate fee. If the statutory annual fee for a specialty license  
13 plate is \$5 or less, it will not be prorated.

14 (C) Specialty license plate fees will not be refunded after an application is  
15 submitted and the department has approved issuance of the license plate.

16 (D) The application must be accompanied by prescribed local fees or other fees  
17 that are collected in conjunction with registering a vehicle, with the exception of vehicles bearing license  
18 plates that are exempt by statute from these fees.

19 (E) The application must include evidence of eligibility for any specialty license  
20 plates. The evidence of eligibility may include, but is not limited to:

21 (i) an official document issued by a governmental entity; or

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 (ii) a letter issued by a governmental entity on that agency's letterhead.

2 (F) Initial applications for license plates for display on Exhibition Vehicles must  
3 include a photograph of the completed vehicle.

4 (3) Place of application. Applications for specialty license plates may be made directly to  
5 the county tax assessor-collector, except that applications for the following license plates must be made  
6 directly to the department:

7 (A) County Judge;

8 (B) Federal Administrative Law Judge;

9 (C) State Judge;

10 (D) State Official;

11 (E) U.S. Congress--House;

12 (F) U.S. Congress--Senate; and

13 (G) U.S. Judge.

14 (4) Gift plates.

15 (A) A person may purchase general distribution specialty license plates as a gift  
16 for another person if the purchaser submits an application for the specialty license plates that provides:

17 (i) the name and address of the person who will receive the plates; and

18 (ii) the vehicle identification number of the vehicle on which the plates  
19 will be displayed.

20 (B) To be valid for use on a motor vehicle, the recipient of the plates must file an  
21 application with the county tax assessor-collector and pay the statutorily required registration fees in the  
22 amount as provided by Transportation Code, Chapter 502 and this subchapter.

23 (c) Initial issuance of specialty license plates, symbols, tabs, or other devices.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

(1) Issuance. On receipt of a completed initial application for registration, accompanied by the prescribed documentation and fees, the department will issue specialty license plates, symbols, tabs, or other devices to be displayed on the vehicle for which the license plates, symbols, tabs, or other devices were issued for the current registration period. If the vehicle for which the specialty license plates, symbols, tabs, or other devices are issued is currently registered, the owner must surrender the license plates currently displayed on the vehicle, along with the corresponding license receipt, before the specialty license plates may be issued.

(2) Classic Motor Vehicles, Classic Travel Trailers, Custom Vehicles, Street Rods, and Exhibition Vehicles.

(A) License plates. Texas license plates that were issued the same year as the model year of a Classic Motor Vehicle, Travel Trailer, Street Rod, or Exhibition Vehicle may be displayed on that vehicle under Transportation Code, §504.501 and §504.502, unless:

(i) the license plate's original use was restricted by statute to another vehicle type;

(ii) the license plate is a qualifying plate type that originally required the owner to meet one or more eligibility requirements, except for a plate issued under Transportation Code, §504.202; or

(iii) the alpha numeric pattern is already in use on another vehicle.

(B) Validation stickers and tabs. The department will issue validation stickers and tabs for display on license plates that are displayed as provided by subparagraph (A) of this paragraph.

(3) Number of plates issued.

(A) Two plates. Unless otherwise listed in subparagraph (B) of this paragraph, two specialty license plates, each bearing the same license plate number, will be issued per vehicle.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

(B) One plate. One license plate will be issued per vehicle for all motorcycles and for the following specialty license plates:

(i) Antique Vehicle (includes Antique Auto, Antique Truck, Antique Motorcycle, and Antique Bus);

(ii) Classic Travel Trailer;

(iii) Rental Trailer;

(iv) Travel Trailer;

(v) Cotton Vehicle;

(vi) Disaster Relief;

(vii) Forestry Vehicle;

(viii) Golf Cart;

(ix) Log Loader;

(x) Military Vehicle;

(xi) Package Delivery Vehicle; ~~and~~

(xii) Fertilizer; ~~and~~[-]

(xiii) Off-highway Vehicle.

(C) Registration number. The identification number assigned by the military may be approved as the registration number instead of displaying Military Vehicle license plates on a former military vehicle.

(4) Assignment of plates.

(A) Title holder. Unless otherwise exempted by law or this section, the vehicle on which specialty license plates, symbols, tabs, or other devices is to be displayed shall be titled in the name of the person to whom the specialty license plates, symbols, tabs, or other devices is assigned, or a title

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 application shall be filed in that person's name at the time the specialty license plates, symbols, tabs, or  
2 other devices are issued.

3 (B) Non-owner vehicle. If the vehicle is titled in a name other than that of the  
4 applicant, the applicant must provide evidence of having the legal right of possession and control of the  
5 vehicle.

6 (C) Leased vehicle. In the case of a leased vehicle, the applicant must provide a  
7 copy of the lease agreement verifying that the applicant currently leases the vehicle.

8 (5) Classification of neighborhood electric vehicles. The registration classification of a  
9 neighborhood electric vehicle, as defined by §217.3(3) of this title (relating to Motor Vehicle Titles) will  
10 be determined by whether it is designed as a 4-wheeled truck or a 4-wheeled passenger vehicle.

11 (6) Number of vehicles. An owner may obtain specialty license plates, symbols, tabs, or  
12 other devices for an unlimited number of vehicles, unless the statute limits the number of vehicles for  
13 which the specialty license plate may be issued.

14 (7) Personalized plate numbers.

15 (A) Issuance. The department will issue a personalized license plate number  
16 subject to the exceptions set forth in this paragraph.

17 (B) Character limit. A personalized license plate number may contain no more  
18 than six alpha or numeric characters or a combination of characters. Depending upon the specialty license  
19 plate design and vehicle class, the number of characters may vary. Spaces, hyphens, periods, hearts, stars,  
20 the International Symbol of Access, or silhouettes of the state of Texas may be used in conjunction with  
21 the license plate number.

22 (C) Personalized plates not approved. A personalized license plate number will  
23 not be approved by the executive director if the alpha-numeric pattern:

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 (i) conflicts with the department's current or proposed regular license  
2 plate numbering system;

3 (ii) would violate §217.27 of this title (relating to Vehicle Registration  
4 Insignia), as determined by the executive director; or

5 (iii) is currently issued to another owner.

6 (D) Classifications of vehicles eligible for personalized plates. Unless otherwise  
7 listed in subparagraph (E) of this paragraph, personalized plates are available for all classifications of  
8 vehicles.

9 (E) Categories of plates for which personalized plates are not available.  
10 Personalized license plate numbers are not available for display on the following specialty license plates:

11 (i) Amateur Radio (other than the official call letters of the vehicle owner);

12 (ii) Antique Motorcycle;

13 (iii) Antique Vehicle (includes Antique Auto, Antique Truck, and Antique  
14 Bus);

15 (iv) Apportioned;

16 (v) Cotton Vehicle;

17 (vi) Disaster Relief;

18 (vii) Farm Trailer (except Go Texan II);

19 (viii) Farm Truck (except Go Texan II);

20 (ix) Farm Truck Tractor (except Go Texan II);

21 (x) Fertilizer;

22 (xi) Forestry Vehicle;

23 (xii) Log Loader;

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

(xiii) Machinery;

(xiv) Permit;

(xv) Rental Trailer;

(xvi) Soil Conservation;

(xvii) Texas Guard;

(xviii) Golf Cart; ~~and~~

(xix) Package Delivery Vehicle; and[-]

(xx) Off-highway Vehicle.

(F) Fee. Unless specified by statute, a personalized license plate fee of \$40 will be charged in addition to any prescribed specialty license plate fee.

(G) Priority. Once a personalized license plate number has been assigned to an applicant, the owner shall have priority to that number for succeeding years if a timely renewal application is submitted to the county tax assessor-collector each year in accordance with subsection (d) of this section.

(d) Specialty license plate renewal.

(1) Renewal deadline. If a personalized license plate is not renewed within 60 days after its expiration date, a subsequent renewal application will be treated as an application for new personalized license plates.

(2) Length of validation. Except as provided by Transportation Code, §§504.401, 504.4061, or 504.502, all specialty license plates, symbols, tabs, or other devices shall be valid for 12 months from the month of issuance or for a prorated period of at least 12 months coinciding with the expiration of registration.

(3) Renewal.



## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 (A) Renewal notice. Approximately 60 days before the expiration date of a  
2 specialty license plate, symbol, tab, or other device, the department will send each owner a renewal  
3 notice that includes the amount of the specialty plate fee and the registration fee.

4 (B) Return of notice. The owner must return the fee and any prescribed  
5 documentation to the tax assessor-collector of the county in which the owner resides, except that the  
6 owner of a vehicle with one of the following license plates must return the documentation and specialty  
7 license plate fee, if applicable, directly to the department and submit the registration fee to the county  
8 tax assessor-collector:

9 (i) County Judge;

10 (ii) Federal Administrative Law Judge;

11 (iii) State Judge;

12 (iv) State Official;

13 (v) U.S. Congress--House;

14 (vi) U.S. Congress--Senate; and

15 (vii) U.S. Judge.

16 (C) Expired plate numbers. The department will retain a specialty license plate  
17 number for 60 days after the expiration date of the plates if the plates are not renewed on or before their  
18 expiration date. After 60 days the number may be reissued to a new applicant. All specialty license plate  
19 renewals received after the expiration of the 60 days will be treated as new applications.

20 (D) Issuance of validation insignia. On receipt of a completed license plate  
21 renewal application and prescribed documentation, the department will issue registration validation  
22 insignia as specified in §217.27 unless this section or other law requires the issuance of new license plates  
23 to the owner.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

(E) Lost or destroyed renewal notices. If a renewal notice is lost, destroyed, or not received by the vehicle owner, the specialty license plates, symbol, tab, or other device may be renewed if the owner provides acceptable personal identification along with the appropriate fees and documentation. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of specialty license plates.

(1) Transfer between vehicles.

(A) Transferable between vehicles. The owner of a vehicle with specialty license plates, symbols, tabs, or other devices may transfer the specialty plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(i) is titled or leased in the owner's name; and

(ii) meets the vehicle classification requirements for that particular specialty license plate, symbol, tab, or other device.

(B) Non-transferable between vehicles. The following specialty license plates, symbols, tabs, or other devices are non-transferable between vehicles:

(i) Antique Vehicle license plates (includes Antique Auto, Antique Truck, and Antique Bus), Antique Motorcycle license plates, and Antique tabs;

(ii) Classic Auto, Classic Truck, Classic Motorcycle, Classic Travel Trailer, Street Rod, and Custom Vehicle license plates;

(iii) Forestry Vehicle license plates;

(iv) Log Loader license plates;

(v) Golf Cart license plates; ~~and~~

(vi) Package Delivery Vehicle license plates; and[-]

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1                                    (vii) Off-highway Vehicle license plates.

2                                    (C) New specialty license plates. If the department creates a new specialty license

3 plate under Transportation Code, §504.801, the department will specify at the time of creation whether

4 the license plate may be transferred between vehicles.

5                                    (2) Transfer between owners.

6                                    (A) Non-transferable between owners. Specialty license plates, symbols, tabs, or

7 other devices issued under Transportation Code, Chapter 504, Subchapters C, E, and F are not transferable

8 from one person to another except as specifically permitted by statute.

9                                    (B) New specialty license plates. If the department creates a new specialty license

10 plate under Transportation Code, §504.801, the department will specify at the time of creation whether

11 the license plate may be transferred between owners.

12                                    (3) Simultaneous transfer between owners and vehicles. Specialty license plates, symbols,

13 tabs, or other devices are transferable between owners and vehicles simultaneously only if the owners

14 and vehicles meet all the requirements in both paragraphs (1) and (2) of this subsection.

15                                    (f) Replacement.

16                                    (1) Application. When specialty license plates, symbols, tabs, or other devices are lost,

17 stolen, or mutilated, the owner shall apply directly to the county tax assessor-collector for the issuance of

18 replacements, except that Log Loader license plates must be reapplied for and accompanied by the

19 prescribed fees and documentation.

20                                    (2) Temporary registration insignia. If the specialty license plate, symbol, tab, or other

21 device is lost, destroyed, or mutilated to such an extent that it is unusable, and if issuance of a replacement

22 license plate would require that it be remanufactured, the owner must pay the statutory replacement fee,

23 and the department will issue a temporary tag for interim use. The owner's new specialty license plate

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 number will be shown on the temporary tag unless it is a personalized license plate, in which case the  
2 same personalized license plate number will be shown.

3 (3) Stolen specialty license plates.

4 (A) The department or county tax assessor-collector will not approve the issuance  
5 of replacement license plates with the same personalized license plate number if the department's  
6 records indicate either the vehicle displaying the personalized license plates or the license plates are  
7 reported as stolen to law enforcement. The owner will be directed to contact the department for another  
8 personalized plate choice.

9 (B) The owner may select a different personalized number to be issued at no  
10 charge with the same expiration as the stolen specialty plate. On recovery of the stolen vehicle or license  
11 plates, the department will issue, at the owner's or applicant's request, replacement license plates,  
12 bearing the same personalized number as those that were stolen.

13 (g) License plates created after January 1, 1999. In accordance with Transportation Code,  
14 §504.702, the department will begin to issue specialty license plates authorized by a law enacted after  
15 January 1, 1999, only if the sponsoring entity for that license plate submits the following items before the  
16 fifth anniversary of the effective date of the law.

17 (1) The sponsoring entity must submit a written application. The application must be on  
18 a form approved by the director and include, at a minimum:

19 (A) the name of the license plate;

20 (B) the name and address of the sponsoring entity;

21 (C) the name and telephone number of a person authorized to act for the  
22 sponsoring entity; and

23 (D) the deposit.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

(2) A sponsoring entity is not an agent of the department and does not act for the department in any matter, and the department does not assume any responsibility for fees or applications collected by a sponsoring entity.

(h) Assignment procedures for state, federal, and county officials.

(1) State Officials. State Official license plates contain the distinguishing prefix "SO." Members of the state legislature may be issued up to three sets of State Official specialty license plates with the distinguishing prefix "SO," or up to three sets of State Official specialty license plates that depict the state capitol, and do not display the distinguishing prefix "SO." An application by a member of the state legislature, for a State Official specialty license plate, must specify the same specialty license plate design for each applicable vehicle. State Official license plates are assigned in the following order:

(A) Governor;

(B) Lieutenant Governor;

(C) Speaker of the House;

(D) Attorney General;

(E) Comptroller;

(F) Land Commissioner;

(G) Agriculture Commissioner;

(H) Secretary of State;

(I) Railroad Commission;

(J) Supreme Court Chief Justice followed by the remaining justices based on their seniority;

(K) Criminal Court of Appeals Presiding Judge followed by the remaining judges based on their seniority;

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 (L) Members of the State Legislature, with Senators assigned in order of district  
2 number followed by Representatives assigned in order of district number, except that in the event of  
3 redistricting, license plates will be reassigned; and

4 (M) Board of Education Presiding Officer followed by the remaining members  
5 assigned in district number order, except that in the event of redistricting, license plates will be  
6 reassigned.

7 (2) Members of the U.S. Congress.

8 (A) U.S. Senate license plates contain the prefix "Senate" and are assigned by  
9 seniority; and

10 (B) U.S. House license plates contain the prefix "House" and are assigned in order  
11 of district number, except that in the event of redistricting, license plates will be reassigned.

12 (3) Federal Judge.

13 (A) Federal Judge license plates contain the prefix "USA" and are assigned on a  
14 seniority basis within each court in the following order:

15 (i) Judges of the Fifth Circuit Court of Appeals;

16 (ii) Judges of the United States District Courts;

17 (iii) United States Bankruptcy Judges; and

18 (iv) United States Magistrates.

19 (B) Federal Administrative Law Judge plates contain the prefix "US" and are  
20 assigned in the order in which applications are received.

21 (C) A federal judge who retired on or before August 31, 2003, and who held  
22 license plates expiring in March 2004 may continue to receive federal judge plates. A federal judge who  
23 retired after August 31, 2003, is not eligible for U.S. Judge license plates.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 (4) State Judge.

2 (A) State Judge license plates contain the prefix "TX" and are assigned  
3 sequentially in the following order:

4 (i) Appellate District Courts;

5 (ii) Presiding Judges of Administrative Regions;

6 (iii) Judicial District Courts;

7 (iv) Criminal District Courts; and

8 (v) Family District Courts and County Statutory Courts.

9 (B) A particular alpha-numeric combination will always be assigned to a judge of  
10 the same court to which it was originally assigned.

11 (C) A state judge who retired on or before August 31, 2003, and who held license  
12 plates expiring in March 2004 may continue to receive state judge plates. A state judge who retired after  
13 August 31, 2003, is not eligible for State Judge license plates.

14 (5) County Judge license plates contain the prefix "CJ" and are assigned by county number.

15 (6) In the event of redistricting or other plate reallocation, the department may allow a  
16 state official to retain that official's plate number if the official has had the number for five or more  
17 consecutive years.

18 (i) Development of new specialty license plates.

19 (1) Procedure. The following procedure governs the process of authorizing new specialty  
20 license plates under Transportation Code, §504.801, whether the new license plate originated as a result  
21 of an application or as a department initiative.

22 (2) Applications for the creation of new specialty license plates. An applicant for the  
23 creation of a new specialty license plate, other than a vendor specialty plate under §217.52 of this title

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

(relating to Marketing of Specialty License Plates through a Private Vendor), must submit a written application on a form approved by the executive director. The application must include:

(A) the applicant's name, address, telephone number, and other identifying information as directed on the form;

(B) certification on Internal Revenue Service letterhead stating that the applicant is a not-for-profit entity;

(C) a draft design of the specialty license plate;

(D) projected sales of the plate, including an explanation of how the projected figure was established;

(E) a marketing plan for the plate, including a description of the target market;

(F) a licensing agreement from the appropriate third party for any intellectual property design or design element;

(G) a letter from the executive director of the sponsoring state agency stating that the agency agrees to receive and distribute revenue from the sale of the specialty license plate and that the use of the funds will not violate a statute or constitutional provision; and

(H) other information necessary for the board to reach a decision regarding approval of the requested specialty plate.

(3) Review process. The board:

(A) will not consider incomplete applications;

(B) may request additional information from an applicant if necessary for a decision; and



## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 (C) will consider specialty license plate applications that are restricted by law to  
2 certain individuals or groups of individuals (qualifying plates) using the same procedures as applications  
3 submitted for plates that are available to everyone (non-qualifying plates).

4 (4) Request for additional information. If the board determines that additional  
5 information is needed, the applicant must return the requested information not later than the requested  
6 due date. If the additional information is not received by that date, the board will return the application  
7 as incomplete unless the board:

8 (A) determines that the additional requested information is not critical for  
9 consideration and approval of the application; and

10 (B) approves the application, pending receipt of the additional information by a  
11 specified due date.

12 (5) Board decision. The board's decision will be based on:

13 (A) compliance with Transportation Code, §504.801;

14 (B) the proposed license plate design, including:

15 (i) whether the design appears to meet the legibility and reflectivity  
16 standards established by the department;

17 (ii) whether the design meets the standards established by the  
18 department for uniqueness;

19 (iii) other information provided during the application process;

20 (iv) the criteria designated in §217.27 as applied to the design; and

21 (v) whether a design is similar enough to an existing plate design that it  
22 may compete with the existing plate sales; and

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 (C) the applicant's ability to comply with Transportation Code, §504.702 relating  
2 to the required deposit or application that must be provided before the manufacture of a new specialty  
3 license plate.

4 (6) Public comment on proposed design. All proposed plate designs will be considered by  
5 the board as an agenda item at a regularly or specially called open meeting. Notice of consideration of  
6 proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice  
7 requirements. Notice of each license plate design will be posted on the department's Internet website to  
8 receive public comment at least 25 days in advance of the meeting at which it will be considered. The  
9 department will notify all other specialty plate organizations and the sponsoring agencies who administer  
10 specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the  
11 posting. A comment on the proposed design can be submitted in writing through the mechanism provided  
12 on the department's Internet website for submission of comments. Written comments are welcome and  
13 must be received by the department at least 10 days in advance of the meeting. Public comment will be  
14 received at the board's meeting.

15 (7) Final approval.

16 (A) Approval. The board will approve or disapprove the specialty license plate  
17 application based on all of the information provided pursuant to this subchapter at an open meeting.

18 (B) Application not approved. If the application is not approved under  
19 subparagraph (A) of this paragraph, the applicant may submit a new application and supporting  
20 documentation for the design to be considered again by the board if:

21 (i) the applicant has additional, required documentation; or

22 (ii) the design has been altered to an acceptable degree.

23 (8) Issuance of specialty plates.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 (A) If the specialty license plate is approved, the applicant must comply with  
2 Transportation Code, §504.702 before any further processing of the license plate.

3 (B) Approval of the plate does not guarantee that the submitted draft plate design  
4 will be used. The board has final approval authority of all specialty license plate designs and may adjust  
5 or reconfigure the submitted draft design to comply with the format or license plate specifications.

6 (C) If the board, in consultation with the applicant, adjusts or reconfigures the  
7 design, the adjusted or reconfigured design will not be posted on the department's website for additional  
8 comments.

9 (9) Redesign of specialty license plate.

10 (A) Upon receipt of a written request from the applicant, the department will  
11 allow redesign of a specialty license plate.

12 (B) A request for a redesign must meet all application requirements and proceed  
13 through the approval process of a new specialty plate as required by this subsection.

14 (C) An approved license plate redesign does not require the deposit required by  
15 Transportation Code, §504.702, but the applicant must pay a redesign cost to cover administrative  
16 expenses.

17 (j) Golf carts.

18 (1) A county tax assessor-collector may issue golf cart license plates as long as the  
19 requirements under Transportation Code, §551.403 or §551.404 are met.

20 (2) A county tax assessor-collector may only issue golf cart license plates to residents or  
21 property owners of the issuing county.

22 (3) A golf cart license plate may not be used as a registration insignia, and a golf cart may  
23 not be registered for operation on a public highway.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

(4) The license plate fee for a golf cart license plate is \$10.

(k) Off-highway vehicle.

(1) A county tax assessor-collector may issue off-highway vehicle license plates as long as the requirements under Transportation Code, §551A.053 or §551A.055 are met.

(2) An off-highway vehicle license plate may not be used as a registration insignia, and an off-highway vehicle may not be registered for operation on a public highway.

(3) The license plate fee for an off-highway vehicle license plate is \$10.

~~(l)~~~~(k)~~ Package delivery vehicle.

(1) A county tax assessor-collector may issue package delivery license plates as long as the requirements under Transportation Code, §§551.453, 551.454, and 551.455 are met.

(2) The license plate fee for a package delivery license plate is \$25 to be paid on an annual basis.

§217.46. Commercial Vehicle Registration.

(a) Eligibility. A motor vehicle, other than a motorcycle or moped, designed or used primarily for the transportation of property, including any passenger car that has been reconstructed to be used, and is being used, primarily for delivery purposes, with the exception of a passenger car used in the delivery of the United States mail, must be registered as a commercial vehicle.

(b) Commercial vehicle registration classifications.

(1) Apportioned license plates. Apportioned license plates are issued in lieu of Combination, Motor Bus, or Truck license plates to Texas carriers who proportionally register their fleets in other states, in conformity with §217.56 of this title (relating to Registration Reciprocity Agreements).

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 (2) City bus license plates. A street or suburban bus shall be registered with license plates  
2 bearing the legend "City Bus."

3 (3) Combination license plates.

4 (A) Specifications. A truck or truck-tractor with a gross weight in excess of 10,000  
5 pounds used or to be used in combination with a semitrailer having a gross weight in excess of 6,000  
6 pounds, may be registered with combination license plates. Such vehicles must be registered for a gross  
7 weight equal to the combined gross weight of all the vehicles in the combination, but not less than 18,000  
8 pounds. Only one combination license plate is required and must be displayed on the front of the truck  
9 or truck-tractor. When displaying a combination license plate, a truck or truck-tractor is not restricted to  
10 pulling a semitrailer licensed with a Token Trailer license plate and may legally pull semitrailers and full  
11 trailers displaying other types of Texas license plates or license plates issued out of state. The following  
12 vehicles may not be registered in combination:

13 (i) trucks or truck-tractors having a gross weight of less than 10,000  
14 pounds or trucks or truck-tractors to be used exclusively in combination with semitrailers having gross  
15 weights not exceeding 6,000 pounds;

16 (ii) semitrailers with gross weights of 6,000 pounds or less, or semitrailers  
17 that are to be operated exclusively with trucks or truck-tractors having gross weight of less than 10,000  
18 pounds;

19 (iii) trucks or truck-tractors used exclusively in combination with  
20 semitrailer-type vehicles displaying Machinery, Permit, or Farm Trailer license plates;

21 (iv) trucks or truck-tractors used exclusively in combination with travel  
22 trailers and manufactured housing;

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 (v) trucks or truck-tractors to be registered with Farm Truck or Farm Truck

2 Tractor license plates;

3 (vi) trucks or truck-tractors and semitrailers to be registered with disaster

4 relief license plates;

5 (vii) trucks or truck-tractors and semitrailers to be registered with Soil

6 Conservation license plates;

7 (viii) trucks or truck-tractors and semitrailers to be registered with U.S.

8 Government license plates or Exempt license plates issued by the State of Texas; and

9 (ix) vehicles that are to be issued temporary permits, such as 72-Hour

10 Permits, 144-Hour Permits, One Trip Permits, or 30-Day Permits in accordance with Transportation Code,

11 §502.094 and §502.095.

12 (B) Converted semitrailers. Semitrailers that are converted to full trailers by  
13 means of auxiliary axle assemblies will retain their semitrailer status, and such semitrailers are subject to  
14 the combination and token trailer registration requirements.

15 (C) Axle assemblies. Various types of axle assemblies that are specially designed  
16 for use in conjunction with other vehicles or combinations of vehicles may be used to increase the load  
17 capabilities of such vehicles or combinations.

18 (i) Auxiliary axle assemblies such as trailer axle converters, jeep axles, and  
19 drag axles, which are used in conjunction with truck-tractor and semitrailer combinations, are not  
20 required to be registered; however, the additional weight that is acquired by the use of such axle  
21 assemblies must be included in the combined gross weight of the combination.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 (ii) Ready-mixed concrete trucks that have an auxiliary axle assembly  
2 installed for the purpose of increasing a load capacity of such vehicles must be registered for a weight that  
3 includes the axle assembly.

4 (D) Exchange of Combination license plates. Combination license plates shall not  
5 be exchanged for another type of registration during the registration year, except that:

6 (i) if a major permanent reconstruction change occurs, Combination  
7 license plates may be exchanged for Truck license plates, provided that a corrected title is applied for;

8 (ii) if the department initially issues Combination license plates in error,  
9 the plates will be exchanged for license plates of the proper classification;

10 (iii) if the department initially issues Truck or Trailer license plates in error  
11 to vehicles that should have been registered in combination, such plates will be exchanged for  
12 Combination and Token Trailer license plates; or

13 (iv) if a Texas apportioned carrier acquires a combination license power  
14 unit, the Combination license plates will be exchanged for Apportioned license plates.

15 (4) Cotton Vehicle license plates. The department will issue Cotton Vehicle license plates  
16 in accordance with Transportation Code, §504.505 and §217.45 of this title (relating to Specialty License  
17 Plates, Symbols, Tabs, and Other Devices).

18 (5) Forestry Vehicle license plates. The department will issue Forestry Vehicle license  
19 plates in accordance with Transportation Code, §504.507 and §217.45 of this title.

20 (6) In Transit license plates. The department may issue an In Transit license plate annually  
21 to any person, firm, or corporation engaged in the primary business of transporting and delivering by  
22 means of the full mount, saddle mount, tow bar, or any other combination, new vehicles and other  
23 vehicles from the manufacturer or any other point of origin to any point of destination within the State.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

Each new vehicle being transported, delivered, or moved under its own power in accordance with this paragraph must display an In Transit license plate in accordance with Transportation Code, §503.035.

(7) Motor Bus license plates. A motor bus as well as a taxi and other vehicles that transport passengers for compensation or hire, must display Motor Bus license plates when operated outside the limits of a city or town, or adjacent suburb, in which its company is franchised to do business.

(8) Token Trailer license plates.

(A) Qualification. The department will issue Token Trailer license plates for semitrailers that are required to be registered in combination.

(B) Validity. A Token Trailer license plate is valid only when it is displayed on a semitrailer that is being pulled by a truck or a truck-tractor that has been properly registered with Forestry Vehicle (in accordance with Transportation Code, §504.507), Combination (in accordance with Transportation Code, §502.255), or Apportioned (in accordance with Transportation Code, §502.091) license plates for combined gross weights that include the weight of the semitrailer, unless exempted by Transportation Code, §502.094 and §623.011.

(C) House-moving dollies. House-moving dollies are to be registered with Token Trailer license plates and titled as semitrailers; however, only one such dolly in a combination is required to be registered and titled. The remaining dolly (or dollies) is permitted to operate unregistered, since by the nature of its construction, it is dependent upon another such vehicle in order to function. The pulling unit must display a Combination or Apportioned license plate.

(D) Full trailers. The department will not issue a Token Trailer license plate for a full trailer.

(9) Tow Truck license plates. A Tow Truck license plate must be obtained for all tow trucks operating and registered in this state. The department will not issue a Tow Truck license plate unless the



## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 Texas Department of Licensing and Regulation has issued a permit for the tow truck under Occupations  
2 Code, Chapter 2308, Subchapter C.

3 (c) Application for commercial vehicle registration.

4 (1) Application form. An applicant shall apply for commercial license plates through the  
5 appropriate county tax assessor-collector upon forms prescribed by the director and shall require, at a  
6 minimum, the following information:

7 (A) owner name and complete address;

8 (B) complete description of vehicle, including empty weight; and

9 (C) motor number or serial number.

10 (2) Empty weight determination.

11 (A) The weight of a Motor Bus shall be the empty weight plus carrying capacity,  
12 in accordance with Transportation Code, §502.055.

13 (B) The weight of a vehicle cannot be lowered below the weight indicated on a  
14 Manufacturer's Certificate of Origin unless a corrected Manufacturer's Certificate of Origin is obtained.

15 (C) In all cases where the department questions the empty weight of a particular  
16 vehicle, the applicant should present a weight certificate from a public weight scale or the Department of  
17 Public Safety.

18 (3) Gross weight.

19 (A) Determination of Weight. The combined gross weight of vehicles registering  
20 for combination license plates shall be determined by the empty weight of the truck or truck-tractor  
21 combined with the empty weight of the heaviest semitrailer or semitrailers used or to be used in  
22 combination therewith, plus the heaviest net load to be carried on such combination during the motor

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 vehicle registration year, provided that in no case may the combined gross weight be less than 18,000  
2 pounds.

3 (B) Restrictions. The following restrictions apply to combined gross weights.

4 (i) After a truck or truck-tractor is registered for a combined gross weight,  
5 such weight cannot be lowered at any subsequent date during the registration year. The owner may,  
6 however, lower the gross weight when registering the vehicle for the following registration year, provided  
7 that the registered combined gross weight is sufficient to cover the heaviest load to be transported during  
8 the year and provided that the combined gross weight is not less than 18,000 pounds.

9 (ii) A combination of vehicles is restricted to a total gross weight not to  
10 exceed 80,000 pounds; however, all combinations may not qualify for 80,000 pounds unless such weight  
11 can be properly distributed in accordance with axle load limitations, tire size, and distance between axles,  
12 in accordance with Transportation Code, §623.011.

13 (4) Motor number or serial number. Ownership must be established by a court order if no  
14 motor or serial number can be identified. Once ownership has been established, the department will  
15 assign a number upon payment of the fee.

16 (5) Accompanying documentation. Unless otherwise exempted by law, completed  
17 applications for commercial license plates shall be accompanied by:

18 (A) prescribed registration fees;

19 (B) prescribed local fees or other fees that are collected in conjunction with  
20 registering a vehicle;

21 (C) evidence of financial responsibility as required by Transportation Code,  
22 §502.046 if the applicant is a motor carrier as defined by §218.2 of this title (relating to Definitions), proof  
23 of financial responsibility may be in the form of a registration listing or an international stamp indicating

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 that the vehicle is registered in compliance with Chapter 218, Subchapter B of this title (relating to Motor  
2 Carrier Registration);

3 (D) an application for Texas Title in accordance with Subchapter A of this chapter,  
4 or other proof of ownership;

5 (E) proof of payment of the Federal Heavy Vehicle Use Tax, if applicable;

6 (F) an original or certified copy of the current permit issued in accordance with  
7 Occupations Code, Chapter 2308, Subchapter C, if application is being made for Tow Truck license plates;  
8 and

9 (G) other documents or fees required by law.

10 (6) Proof of payment required. Proof of payment of the Federal Heavy Vehicle Use Tax is  
11 required for vehicles with a gross registration weight of 55,000 pounds or more, or in cases where the  
12 vehicle's gross weight is voluntarily increased to 55,000 pounds or more. Proof of payment shall consist  
13 of an original or photocopy of the Schedule 1 portion of Form 2290 receipted by the Internal Revenue  
14 Service (IRS), or a copy of the Form 2290 with Schedule 1 attached as filed with the IRS, along with a  
15 photocopy of the front and back of the canceled check covering the payment to the IRS.

16 (7) Proof of payment not required. Proof of payment of the Federal Heavy Vehicle Use  
17 Tax is not required:

18 (A) for new vehicles when an application for title and registration is supported by  
19 a Manufacturer's Certificate of Origin;

20 (B) on used vehicles when an application for title and registration is filed within  
21 60 days from the date of transfer to the applicant as reflected on the assigned title, except that proof of  
22 payment will be required when an application for Texas title and registration is accompanied by an out-  
23 of-state title that is recorded in the name of the applicant;

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

(C) when a vehicle was previously wrecked, in storage, or otherwise out of service and, therefore, not registered or operated during the current registration year or during the current tax year, provided that a non-use affidavit is signed by the operator; and

(D) as a prerequisite to registration of vehicles apprehended for operating without registration or reciprocity or when an owner or operator purchases temporary operating permits or additional weight.

(d) Renewal of commercial license plates.

(1) Registration period. The department will establish the registration period for commercial vehicles, unless specified by statute. Commercial license plates are issued for established annual registration periods as follows.

(A) March expiration. If a fleet under §217.54 of this title (relating to Registration of Fleet Vehicles) contains a vehicle with a combination license plate, the established annual registration period for the fleet is April 1st through March 31st.

(B) Five-year registration with March 31st expiration. The following license plates are available with a five-year registration period. Registration fees for the license plates listed below may be paid on an annual basis, or may be paid up front for the entire five-year period:

(i) Five-year Rental Trailer license plates issued for rental trailers that are part of a rental fleet; and

(ii) Five-year Token Trailer license plates, available to owners of semitrailers to be used in combination with truck-tractors displaying Apportioned or Combination license plates.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 (2) License Plate Renewal Notice. The department will mail a License Plate Renewal  
2 Notice, indicating the proper registration fee and the month and year the registration expires, to each  
3 vehicle owner approximately six to eight weeks prior to the expiration of the vehicle's registration.

4 (3) Return of License Plate Renewal Notices. License Plate Renewal Notices should be  
5 returned by the vehicle owner to the department or the appropriate county tax assessor-collector, as  
6 indicated on the License Plate Renewal Notice. Unless otherwise exempted by law, License Plate Renewal  
7 Notices may be returned either in person or by mail, and shall be accompanied by:

8 (A) statutorily prescribed registration renewal fees;

9 (B) prescribed local fees or other fees that are collected in conjunction with  
10 registration renewal;

11 (C) evidence of financial responsibility as required by Transportation Code,  
12 §502.046; and

13 (D) other prescribed documents or fees.

14 (4) Lost or destroyed License Plate Renewal Notice. If a License Plate Renewal Notice is  
15 lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner presents  
16 personal identification acceptable to the county tax assessor-collector. Failure to receive the notice does  
17 not relieve the owner of the responsibility to renew the vehicle's registration.

18 (e) Transfer of commercial vehicle license plates.

19 (1) Transfer between persons. With the exceptions noted in paragraph (3) of this  
20 subsection, when ownership of a vehicle displaying commercial vehicle license plates is transferred,  
21 application for transfer of such license plates shall be made with the county tax assessor-collector in the  
22 county in which the purchaser resides. If the purchaser does not intend to use the vehicle in a manner

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 that would qualify it for the license plates issued to that vehicle, such plates must be exchanged for the  
2 appropriate license plates.

3 (2) Transfer between vehicles. Commercial vehicle license plates are non-transferable  
4 between vehicles.

5 (3) Transfer of Apportioned and Tow Truck license plates. Apportioned and Tow Truck  
6 license plates are non-transferable between persons or vehicles, and become void if the vehicle to which  
7 the license plates were issued is sold.

8 (f) Replacement of lost, stolen, or mutilated commercial vehicle license plates. An owner of lost,  
9 stolen, or mutilated commercial vehicle license plates may obtain replacement license plates by filing an  
10 Application for Replacement Plates and remitting the prescribed fee to the county tax assessor-collector  
11 of the county in which the owner resides.

12  
13 **CERTIFICATION.** The agency certifies that legal counsel has reviewed the adoption and found it to be a  
14 valid exercise of the agency's legal authority.

15 Issued at Austin, Texas, on M DD, YYYY.

16  
17  
18 \_\_\_\_\_  
Tracey Beaver, General Counsel



**To:** Texas Department of Motor Vehicles Board  
**From:** Jeremiah Kuntz, Vehicle Titles & Registration Division Director  
**Agenda Item:** 9  
**Subject:** Adoption of Rules under Title 43, Texas Administrative Code  
Chapter 217, Vehicle Titles and Registration  
Amendments, §217.40  
New, §217.16  
(Relating to HB 3842, new Transportation Code §501.0236, Issuance of Title and Permits When Dealer Goes Out of Business; waiving certain fees.)  
(Proposal Published August 30, 2019 - 44 Tex. Reg. 4680)  
(Review by the Office of the Governor, Regulatory Compliance Division;  
submission November 22, 2019; comment period closed December 27, 2019)

#### **RECOMMENDATION**

Approval to publish the adoption of new §217.16 and amendments to §217.40 in the *Texas Register*.

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

The new and amended sections implement House Bill 3842, 86th Legislature, Regular Session (2019). House Bill 3842 requires the department to adopt rules to permit a person to apply for title if an out of business dealer failed to apply for title as required by Transportation Code §501.0234. House Bill 3842 also authorizes the department to waive fees for a title if the purchaser can show that fees for a title were paid to the dealer and for one 30-day permit.

#### **FINANCIAL IMPACT**

None

#### **BACKGROUND AND DISCUSSION**

The new section and amendments include:

- §217.16(a) - establishing the process for a person to apply for a title if the person purchased a vehicle from a dealer who is required to apply for title, but did not because the dealer went out of business;
- §217.16(b) - providing that a dealer is considered out of business if the dealer's license has been closed or has expired, or if operations have ceased at the licensed location as determined by the department;
- §217.16(c) - allowing a person to obtain a letter on department letterhead stating the dealer has gone out of business;
- §217.16(d) - requiring an applicant to comply with all requirements for title application under §217.4, Initial Application for Title, except that an applicant may provide either the sales contract, retail installment agreement, or buyer's order in lieu of the assigned manufacturer's certificate of origin or title required under §217.5(a), Evidence of Motor Vehicle Ownership; and provide the letter stating the dealer has gone out of business. The new section also clarifies that release of lien is not required if the only recorded lienholder is the dealer that has gone out of business;
- §217.16(e) - providing that a title application must include a properly completed odometer disclosure statement, if applicable, or the odometer brand will be recorded as "NOT ACTUAL MILEAGE";
- §217.16(f) - providing that the department will waive the title application fee, the delinquent transfer penalty, all fees under Transportation Code Chapter 502, and the buyer's temporary tag fee if the applicant can provide evidence the fee was paid to the dealer; and

- §217.40(c) - allowing for waiver of the fee for one 30-day permit if the applicant is exempt from payment of fees under Transportation Code §501.0236, and provides the letter on department letterhead stating the dealer has gone out of business.

The proposal was published in the *Texas Register* on August 30, 2019. The comment period closed on September 30, 2019. No comments were received.

If the board adopts the new section and amendments during its February 6, 2020, open meeting, staff anticipates:

- publication in the February 28, 2020 issue of the *Texas Register*; and
- an effective date of March 5, 2020.



## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

**ADOPTION OF****SUBCHAPTER A. MOTOR VEHICLE TITLES****43 TAC §217.16****SUBCHAPTER B. MOTOR VEHICLE REGISTRATION****43 TAC §217.40**

**INTRODUCTION.** The Texas Department of Motor Vehicles adopts new 43 TAC §217.16 and an amendment to 43 TAC §217.40 concerning applications for title when a dealer goes out of business. The department adopts new §217.16 and the amendment to §217.40 without changes to proposed text as published in the August 30, 2019 issue of the *Texas Register* (44 TexReg 4680).

**REASONED JUSTIFICATION.** The new §217.16 and amendment to §217.40 are necessary to implement House Bill 3842, 86th Legislature, Regular Session (2019). House Bill 3842 requires the department to adopt rules to permit a person to apply for title if an out of business dealer failed to apply for title as required by Transportation Code §501.0234. House Bill 3842 also authorizes the department to waive fees for a title, if the purchaser can show that fees for a title were paid to the dealer, and the fee for one 30-day permit.

**§217.16**

The new §217.16 is necessary to implement HB 3842. Section 217.16(a) establishes the process for a person to apply for a title if the person purchased a vehicle from a dealer who is required to apply for title, but did not because the dealer went out of business. Section 217.16(b) provides that a dealer is considered out of business if the dealer's license has been closed or has expired, or if operations have ceased at the licensed location as determined by the department. Section 217.16(c) is necessary to allow a person to obtain a letter on department letterhead stating the dealer has gone out of business.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 The purpose of the letter is to confirm the dealer is out of business, regardless of whether the dealer's  
2 license has closed or expired or operations have ceased at the licensed location as determined by the  
3 department, and authorize a county tax assessor-collector to waive fees in accordance with §217.16(f).  
4 A purchaser may request the letter by contacting the department, including a Regional Service Center,  
5 or a county tax assessor-collector's office by email, phone, or in-person. The department also has an  
6 online complaint entry system for the public that provides status updates on the submitted complaint  
7 that may be used to request the letter. The department may be contacted directly weekdays between  
8 8:00 a.m. and 4:30 p.m. at 1-888-368-4689 for questions regarding a complaint submission, or a  
9 customer may go into the online system to find out the status of the submission. Additionally, once the  
10 department is made aware of a dealer closure through an initial customer's request for a letter,  
11 individuals requesting a letter could receive a letter very quickly as subsequent requests would not  
12 require additional research on the dealer. The department's Regional Service Center staff will  
13 coordinate issuance of the letter to the customer. Section 217.16(d) requires an applicant to comply  
14 with all requirements for title application under §217.4, Initial Application for Title, except that an  
15 applicant may provide either the sales contract, retail installment agreement, or buyer's order in lieu of  
16 the assigned manufacturer's certificate of origin or title required under §217.5(a), Evidence of Motor  
17 Vehicle Ownership. The applicant must also provide the letter stating the dealer has gone out of  
18 business, but is not required to provide a release of lien if the only recorded lienholder is the dealer that  
19 has gone out of business. The applicant will have their transaction completed at the county tax  
20 assessor-collector's office at the time they submit their application if the proper documentation is  
21 presented. Section 217.16(e) provides that a title application under the new section must include a  
22 properly completed odometer disclosure statement, if applicable, or the odometer brand will be  
23 recorded as "NOT ACTUAL MILEAGE." Lastly, §217.16(f) provides that the department will waive the

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 title application fee, the delinquent transfer penalty, all fees under Transportation Code Chapter 502,  
2 and the buyer's temporary tag fee.

**3 §217.40**

4 The amendment to §217.40 is necessary to implement HB 3842. The amendment to §217.40  
5 allows for waiver of the fee for one 30-day permit if the applicant is exempt from payment of fees under  
6 Transportation Code §501.0236, and provides the letter on department letterhead stating the dealer  
7 has gone out of business.

**9 SUMMARY OF COMMENTS.**

10 No comments were received.

**12 SUBCHAPTER A. MOTOR VEHICLE TITLES****13 §217.16**

14 **STATUTORY AUTHORITY.** The department adopts new §217.16 under Transportation Code  
15 §§501.0236(f), 502.401(g), 502.402(f), 520.003, and 1002.001.

16 Transportation Code §501.0236(f) requires the department to adopt rules necessary to  
17 implement the section.

18 Transportation Code §502.401(g) authorizes the department to adopt rules necessary to  
19 administer registration for a vehicle being registered in a county imposing a fee under the section.

20 Transportation Code §502.402(f) authorizes the department to adopt rules necessary to  
21 administer registration for a vehicle being registered in a county imposing a fee under the section.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

Transportation Code §520.003 allows the department to adopt rules to administer Transportation Code Chapter 520, including rules that waive the payment of fees if a dealer has gone out of business and the applicant can show that fees were paid to the dealer.

Transportation Code §1002.001 authorizes 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.

**CROSS REFERENCE TO STATUTE.** Transportation Code Chapters 501, 502, 503, and §520.003.

**TEXT.**

**Subchapter A. Motor Vehicle Titles**

**43 TAC §217.16**

§217.16. Application for Title When Dealer Goes Out of Business.

(a) A person who purchased a vehicle from a dealer who is required to apply for a title on the purchaser's behalf under Transportation Code, §501.0234 may apply for title as prescribed by this section if the dealer has gone out of business and did not apply for title.

(b) For purposes of this section, a dealer has gone out of business if:

(1) the dealer's license has been closed or has expired; or

(2) operations have ceased at the licensed location as determined by the department.

(c) For purposes of this section, a person must obtain a letter on department letterhead stating a dealer has gone out of business. A person may request the letter by contacting the department, including a Regional Service Center, or a county tax assessor-collector's office.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1           (d) An application under subsection (a) of this section must meet the requirements of §217.4 of  
2           this title (relating to Initial Application for Title) except the applicant:

3                     (1) must provide the sales contract, retail installment agreement, or buyer's order in lieu  
4           of evidence of vehicle ownership as described in §217.5(a) of this title (relating to Evidence of Motor  
5           Vehicle Ownership);

6                     (2) must provide the letter described by subsection (c) of this section; and

7                     (3) is not required to provide a release of lien if the only recorded lienholder is the  
8           dealer that has gone out of business.

9           (e) If a title application under this section does not include a properly completed odometer  
10          disclosure statement, as required by Transportation Code, §501.072, the odometer brand will be  
11          recorded as "NOT ACTUAL MILEAGE."

12           (f) The department will waive the payment of the following fees if the applicant can provide  
13          evidence showing the fee was paid to the dealer:

14                     (1) a title application fee under Transportation Code, §501.138;

15                     (2) delinquent transfer penalty under Transportation Code, §501.146;

16                     (3) all fees under Transportation Code, Chapter 502; and

17                     (4) the buyer's temporary tag fee under Transportation Code, §503.063.

18  
19           **SUBCHAPTER B. MOTOR VEHICLE REGISTRATION**

20           **§217.40**

21           **STATUTORY AUTHORITY.** The department adopts the amendment to §217.40 under Transportation  
22          Code §§501.0236(f), 502.401(g), 502.402(f), 520.003, and 1002.001.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

Transportation Code §501.0236(f) requires the department to adopt rules necessary to implement the section.

Transportation Code §502.401(g) authorizes the department to adopt rules necessary to administer registration for a vehicle being registered in a county imposing a fee under the section.

Transportation Code §502.402(f) authorizes the department to adopt rules necessary to administer registration for a vehicle being registered in a county imposing a fee under the section.; and

Transportation Code §520.003 allows the department to adopt rules to administer Transportation Code Chapter 520, including rules that waive the payment of fees if a dealer has gone out of business and the applicant can show that fees were paid to the dealer.

Transportation Code §1002.001 authorizes 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.

**CROSS REFERENCE TO STATUTE.** Transportation Code Chapters 501, 502, 503, and §520.003.

**TEXT.**

**Subchapter B. Motor Vehicle Registration****43 TAC §217.40**

§217.40. Special Registrations.

(a) Purpose and scope. Transportation Code, Chapter 502, Subchapters C and I, charge the department with the responsibility of issuing special registration permits which shall be recognized as legal registration for the movement of motor vehicles not authorized to travel on Texas public highways for lack of registration or for lack of reciprocity with the state or country in which the vehicles are

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 registered. For the department to efficiently and effectively perform these duties, this section prescribes  
2 the policies and procedures for the application and the issuance of temporary registration permits.

3 (b) Permit categories. The department will issue the following categories of special registration  
4 permits.

5 (1) Additional weight permits. The owner of a truck, truck tractor, trailer, or semitrailer  
6 may purchase temporary additional weight permits for the purpose of transporting the owner's own  
7 seasonal agricultural products to market or other points for sale or processing in accordance with  
8 Transportation Code, §502.434. In addition, such vehicles may be used for the transportation without  
9 charge of seasonal laborers from their place of residence, and materials, tools, equipment, and supplies  
10 from the place of purchase or storage, to a farm or ranch exclusively for use on such farm or ranch.

11 (A) Additional weight permits are valid for a limited period of less than one year.

12 (B) An additional weight permit will not be issued for a period of less than one  
13 month or extended beyond the expiration of a license plate issued under Transportation Code, Chapter  
14 502.

15 (C) The statutory fee for an additional weight permit is based on a percentage of  
16 the difference between the owner's annual registration fee and the annual fee for the desired gross  
17 vehicle weight computed as follows:

18 (i) one-month (or 30 consecutive days)--10%;

19 (ii) one-quarter (three consecutive months)--30%;

20 (iii) two-quarters (six consecutive months)--60%; or

21 (iv) three-quarters (nine consecutive months)--90%.

22 (D) Additional weight permits are issued for calendar quarters with the first  
23 quarter to begin on April 1st of each year.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 (E) A permit will not be issued unless the registration fee for hauling the  
2 additional weight has been paid prior to the actual hauling.

3 (F) An applicant must provide proof of the applicant's Texas Agriculture or  
4 Timber Exemption Registration Number issued by the Texas Comptroller of Public Accounts. Proof of the  
5 registration number must be:

- 6 (i) legible;  
7 (ii) current;  
8 (iii) in the name of the person or dba in which the vehicle is or will be  
9 registered; and  
10 (iv) verifiable through the online system established by the Comptroller.

11 (2) Annual permits.

12 (A) Transportation Code, §502.093 authorizes the department to issue annual  
13 permits to provide for the movement of foreign commercial vehicles that are not authorized to travel on  
14 Texas highways for lack of registration or for lack of reciprocity with the state or country in which the  
15 vehicles are registered. The department will issue annual permits:

16 (i) for a 12-month period designated by the department which begins  
17 on the first day of a calendar month and expires on the last day of the last calendar month in that  
18 annual registration period; and

19 (ii) to each vehicle or combination of vehicles for the registration fee  
20 prescribed by weight classification in Transportation Code, §502.253 and §502.255.

21 (B) The department will not issue annual permits for the importation of citrus  
22 fruit into Texas from a foreign country except for foreign export or processing for foreign export.

23 (C) The following exemptions apply to vehicles displaying annual permits.



## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

(i) Currently registered foreign semitrailers having a gross weight in excess of 6,000 pounds used or to be used in combination with commercial motor vehicles or truck tractors having a gross vehicle weight in excess of 10,000 pounds are exempted from the requirements to pay the token fee and display the associated distinguishing license plate provided for in Transportation Code, §502.255. An annual permit is required for the power unit only. For vehicles registered in combination, the combined gross weight may not be less than 18,000 pounds.

(ii) Vehicles registered with annual permits are not subject to the optional county registration fee under Transportation Code, §502.401; the optional county fee for transportation projects under Transportation Code, §502.402; or the optional registration fee for child safety under Transportation Code, §502.403.

(3) 72-hour permits and 144-hour permits.

(A) In accordance with Transportation Code, §502.094, the department will issue a permit valid for 72 hours or 144 hours for the movement of commercial motor vehicles, trailers, semitrailers, and motor buses owned by residents of the United States, Mexico, or Canada.

(B) A 72-hour permit or a 144-hour permit is valid for the period of time stated on the permit beginning with the effective day and time as shown on the permit registration receipt.

(C) Vehicles displaying 72-hour permits or 144-hour permits are subject to vehicle safety inspection in accordance with Transportation Code, §548.051, except for:

(i) vehicles currently registered in another state of the United States, Mexico, or Canada; and

(ii) mobile drilling and servicing equipment used in the production of gas, crude petroleum, or oil, including, but not limited to, mobile cranes and hoisting equipment, mobile lift equipment, forklifts, and tugs.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

(D) The department will not issue a 72-hour permit or a 144-hour permit to a commercial motor vehicle, trailer, semitrailer, or motor bus apprehended for violation of Texas registration laws. Apprehended vehicles must be registered under Transportation Code, Chapter 502.

(4) Temporary agricultural permits.

(A) Transportation Code, §502.092 authorizes the department to issue a 30-day temporary nonresident registration permit to a nonresident for any truck, truck tractor, trailer, or semitrailer to be used in the movement of all agriculture products produced in Texas:

(i) from the place of production to market, storage, or railhead not more than 75 miles from the place of production; or

(ii) to be used in the movement of machinery used to harvest Texas-produced agricultural products.

(B) The department will issue a 30-day temporary nonresident registration permit to a nonresident for any truck, truck tractor, trailer, or semitrailer used to move or harvest farm products, produced outside of Texas, but:

(i) marketed or processed in Texas; or

(ii) moved to points in Texas for shipment from the point of entry into Texas to market, storage, processing plant, railhead or seaport not more than 80 miles from such point of entry into Texas.

(C) The statutory fee for temporary agricultural permits is one-twelfth of the annual Texas registration fee prescribed for the vehicle for which the permit is issued.

(D) The department will issue a temporary agricultural permit only when the vehicle is legally registered in the nonresident's home state or country for the current registration year.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 (E) The number of temporary agricultural permits is limited to three permits per  
2 nonresident owner during any one vehicle registration year.

3 (F) Temporary agricultural permits may not be issued to farm licensed trailers or  
4 semitrailers.

5 (5) One-trip permits. Transportation Code, §502.095 authorizes the department to  
6 temporarily register any unladen vehicle upon application to provide for the movement of the vehicle  
7 for one trip, when the vehicle is subject to Texas registration and not authorized to travel on the public  
8 roadways for lack of registration or lack of registration reciprocity.

9 (A) Upon receipt of the \$5 fee, registration will be valid for one trip only  
10 between the points of origin and destination and intermediate points as may be set forth in the  
11 application and registration receipt.

12 (B) The department will issue a one-trip permit to a bus which is not covered by  
13 a reciprocity agreement with the state or country in which it is registered to allow for the transit of the  
14 vehicle only. The vehicle should not be used for the transportation of any passenger or property, for  
15 compensation or otherwise, unless such bus is operating under charter from another state or country.

16 (C) A one-trip permit is valid for a period up to 15 days from the effective date  
17 of registration.

18 (D) A one-trip permit may not be issued for a trip which both originates and  
19 terminates outside Texas.

20 (E) A laden motor vehicle or a laden commercial vehicle cannot display a one-  
21 trip permit. If the vehicle is unregistered, it must operate with a 72-hour or 144-hour permit.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

(6) 30-day temporary registration permits. Transportation Code, §502.095 authorizes the department to issue a temporary registration permit valid for 30 days for a \$25 fee. A vehicle operated on a 30-day temporary permit is not restricted to a specific route. The permit is available for:

(A) passenger vehicles;

(B) motorcycles;

(C) private buses;

(D) trailers and semitrailers with a gross weight not exceeding 10,000 pounds;

(E) light commercial vehicles not exceeding a gross weight of 10,000 pounds;

and

(F) a commercial vehicle exceeding 10,000 pounds, provided the vehicle is operated unladen.

(c) Application process.

(1) Procedure. An owner who wishes to apply for a temporary registration permit for a vehicle which is otherwise required to be registered in accordance with this subchapter, must do so on a form prescribed by the department.

(2) Form requirements. The application form will at a minimum require:

(A) the signature of the owner;

(B) the name and complete address of the applicant; and

(C) the vehicle description.

(3) Fees and documentation. The application must be accompanied by:

(A) statutorily prescribed fees, unless the applicant is exempt from fees under Transportation Code, §501.0236 and provides the letter specified in §217.16(c) of this title (relating to Application for Title When Dealer Goes Out of Business);

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1 (B) evidence of financial responsibility:

2 (i) as required by Transportation Code, Chapter 502, Subchapter B,

3 provided that all policies written for the operation of motor vehicles must be issued by an insurance

4 company or surety company authorized to write motor vehicle liability insurance in Texas; or

5 (ii) if the applicant is a motor carrier as defined by §218.2 of this title

6 (relating to Definitions), indicating that the vehicle is registered in compliance with Chapter 218,

7 Subchapter B of this title (relating to Motor Carrier Registration); and

8 (C) any other documents or fees required by law.

9 (4) Place of application.

10 (A) All applications for annual permits must be submitted directly to the

11 department for processing and issuance.

12 (B) Additional weight permits and temporary agricultural permits may be

13 obtained by making application with the department through the county tax assessor-collectors' offices.

14 (C) 72-hour and 144-hour permits, one-trip permits, and 30-day temporary

15 registration permits may be obtained by making application either with the department or the county

16 tax assessor-collectors' offices.

17 (d) Receipt for permit in lieu of registration. A receipt will be issued for each permit in lieu of

18 registration to be carried in the vehicle during the time the permit is valid. A one-trip or 30-day trip

19 permit must be displayed as required by Transportation Code, §502.095(f). If the receipt is lost or

20 destroyed, the owner must obtain a duplicate from the department or from the county office. The fee

21 for the duplicate receipt is the same as the fee required by Transportation Code, §502.058.

22 (e) Transfer of temporary permits.

23 (1) Temporary permits are non-transferable between vehicles and/or owners.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

(2) If the owner of a vehicle displaying a temporary permit disposes of the vehicle during the time the permit is valid, the permit must be returned to the county tax assessor-collector office or department immediately.

(f) Replacement permits. Vehicle owners displaying annual permits may obtain replacement permits if an annual permit is lost, stolen, or mutilated.

(1) The fee for a replacement annual permit is the same as for a replacement number plate, symbol, tab, or other device as provided by Transportation Code, §502.060.

(2) The owner shall apply directly to the department in writing for the issuance of a replacement annual permit. Such request should include a copy of the registration receipt and replacement fee.

(g) Agreements with other jurisdictions. In accordance with Transportation Code, §502.091, and Chapter 648, the executive director of the department may enter into a written agreement with an authorized officer of a state, province, territory, or possession of a foreign country to provide for the exemption from payment of registration fees by nonresidents, if residents of this state are granted reciprocal exemptions. The executive director may enter into such agreement only upon:

(1) the approval of the governor; and  
(2) making a determination that the economic benefits to the state outweigh all other factors considered.

(h) Border commercial zones.

(1) Texas registration required. A vehicle located in a border commercial zone must display a valid Texas registration if the vehicle is owned by a person who:

(A) owns a leasing facility or a leasing terminal located in Texas; and

(B) leases the vehicle to a foreign motor carrier.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

(2) Exemption for trips of short duration. Except as provided by paragraph (1) of this subsection, a foreign commercial vehicle operating in accordance with Transportation Code, Chapter 648 is exempt from the display of a temporary registration permit if:

(A) the vehicle is engaged solely in the transportation of cargo across the border into or from a border commercial zone;

(B) for each load of cargo transported the vehicle remains in this state for:

(i) not more than 24 hours; or

(ii) not more than 48 hours, if:

(I) the vehicle is unable to leave this state within 24 hours because of circumstances beyond the control of the motor carrier operating the vehicle; and

(II) all financial responsibility requirements applying to this vehicle are satisfied;

(C) the vehicle is registered and licensed as required by the country in which the person that owns the vehicle is domiciled or is a citizen as evidenced by a valid metal license plate attached to the front or rear exterior of the vehicle; and

(D) the country in which the person who owns the vehicle is domiciled or is a citizen provides a reciprocal exemption for commercial motor vehicles owned by residents of Texas.

(3) Exemption due to reciprocity agreement. Except as provided by paragraph (1) of this subsection, a foreign commercial motor vehicle in a border commercial zone in this state is exempt from the requirement of obtaining a Texas registration if the vehicle is currently registered in another state of the United States or a province of Canada with which this state has a reciprocity agreement that exempts a vehicle that is owned by a resident of this state and that is currently registered in this state from registration in the other state or province.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 – Vehicle Titles and Registration

1

2 **CERTIFICATION.** The department certifies that legal counsel has reviewed the adoption and found it to  
3 be a valid exercise of the agency's legal authority.

4 Issued at Austin, Texas, on Month Day, YYYY.

5

6

7

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Tracey Beaver, General Counsel





**To:** Texas Department of Motor Vehicles Board  
**From:** Jeremiah Kuntz, Vehicle Titles & Registration Division Director  
**Agenda Item:** 10  
**Subject:** Chapter 217, Vehicle Titles and Registration  
New, §§217.76-217.78  
(Relating to suspension or denial of access to the Registration and Title System)  
(Proposal Published October 18, 2019 - 44 Tex. Reg. 6018)

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**RECOMMENDATION**

Approval to publish the adopted new §§217.76-217.78 in the *Texas Register*.

**PURPOSE AND EXECUTIVE SUMMARY**

The purpose of the new sections is to implement Senate Bill (SB) 604, 86th Legislature, Regular Session (2019), which authorizes the department to adopt rules and policies for the maintenance and use of the registration and titling system (RTS). Senate Bill 604 also provides that the department has sole authority to determine access to RTS. Section 217.76 also implements SB 604, Section 4.07, which requires the department, not later than March 1, 2020, in coordination with county tax assessor-collectors (TACs), to develop, adopt, and implement rules that create clear criteria for the suspension.

**FINANCIAL IMPACT**

None

**BACKGROUND AND DISCUSSION**

The proposed new sections include:

- §217.76(a) - establishes that §§217.76-217.78 apply to individuals, other than department employees, and entities, with RTS access.
- §217.76(a)(1) - establishes criteria for the department to suspend or deny access to RTS.
- §217.76(a)(2) - provides that the department may suspend or deny access to RTS based on a demonstration of non-compliance with applicable statutes and rules.
- §217.76(c) - lists acceptable forms of Information that can support a reasonable suspicion.
- §217.77(a) - clarifies that the executive director or the executive director's designee has sole authority to determine access to RTS.
- §217.77(b) - provides that a TAC may request the executive director or the executive director's designee immediately suspend a county employee or full service deputy's access to RTS based on the same criteria.
- §217.77(c) - incorporates the existing notice provision in the addendum agreed upon between the TACs and the department into the rule, with modifications to refer to an exception for federal law enforcement, a request for immediate termination by the TAC and for differences in style between the proposal and the addendum.
- §217.78(a) - incorporates the existing addendum reinstatement process;
- §217.78(b) - provides that RTS may be reinstated if the TAC whose access has been suspended is not the subject of a pending investigation by a law enforcement entity and that access may be reinstated if the department determines no fraud, waste, or abuse was committed, the matter has been remedied to the satisfaction of the department; or the individual or entity is in compliance with applicable statutes or rules.

The proposal was published in the *Texas Register* on October 18, 2019. The comment period closed on November 18, 2019. The Tax Assessor-Collectors Association of Texas submitted comments.

If the board adopts the amendments during its February 6, 2019, open meeting, staff anticipates:

- publication in the February 28, 2020, issue of the *Texas Register*; and
- an effective date of March 5, 2020.



# THE TAX ASSESSOR-COLLECTORS ASSOCIATION OF TEXAS

An Association to secure the benefits of organized ideas and discussion of mutual problems  
that will advance and maintain proper efficiency and dignity of the County Tax Office.

[www.tacaoftexas.org](http://www.tacaoftexas.org)

## "2020 VISION: PREPARING FOR THE FUTURE"

November 18, 2019

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Re: Response to Rules 217.76, 217.78, 223.1-223.3

Dear TxDMV Board of Directors and TxDMV Staff,

The Tax Assessor-Collectors Association appreciates the opportunity to offer input regarding Rules 217.76, 217.78 and 223.1-223.3.

In reviewing the proposed rules 217.76 and 217.78, TACA does not oppose the rules, provided a county tax assessor-collector retains the ability to manage their employees/full service deputies pursuant to both department rules and county policies/provisions.

Furthermore, if the tax assessor-collector believes a violation has occurred, the department may be notified and requested that the access be denied. If a tax assessor-collector suspects, or finds, that an employee/full service deputy is acting against the statutes, rules or procedures set forth by the department or by the tax assessor collector, then a request for access to be denied may be submitted to the department.

Regarding Rule 223.3 – Submission of Request - the proposed rule states (a) – “A county tax-assessor-collector.....**“may”** submit a request to the CID for review...” - Because the word “may” indicates this is permissive, it does not imply a “must”. TACA strongly supports all measures to ensure the motoring public is protected while ensuring the county tax assessor-collector has management control of their employees and full service deputies.

In addition, we are requesting updated status from CID investigations every 60 days to the local tax office in order to combat the possibility of issuing titles erroneously.

On behalf of TACA's Board of Directors, TxDMV Liaison Michelle French and the rest of our membership, please accept our sincere appreciation for the opportunity to collaborate as partners for the ultimate goal of successfully serving the motoring public of Texas. We look forward to continued opportunities.

Respectfully yours,

Cathy C. Talcott, PCAC  
President, Tax Assessor-Collectors Association  
Comal County Tax Assessor-Collector  
205 N. Seguin Ave.  
New Braunfels, TX 78130

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 - Vehicle Titles and Registration

## ADOPTION OF

## SUBCHAPTER C. REGISTRATION AND TITLE SYSTEM

## 43 TAC §§217.76 - 217.78

**INTRODUCTION.** The Texas Department of Motor Vehicles adopts new sections to 43 TAC Subchapter C, Registration and Title Systems, §§217.76 - 217.78, concerning access to the department's automated registration and titling system (RTS), including suspension and denial. The new sections are necessary to implement Transportation Code, §520.021 and §520.022, as added by Senate Bill (SB) 604, 86th Legislature, Regular Session (2019). Transportation Code, §520.021, authorizes the department to adopt rules and policies for the maintenance and use of the RTS and Transportation Code, §520.022, provides that the department has sole authority to determine access to RTS. The department adopts the new sections with changes to the proposed text as published in the October 18, 2019 issue of the *Texas Register* (44 TexReg 6018). The department adopts §217.76 without changes to the proposed text. The department has revised typographical errors in §217.77 and §217.78.

The department has also adopted new 43 TAC §§223.1 - 223.3 concerning the department's "red flag" fraud reporting system in this issue of the *Texas Register*.

**REASONED JUSTIFICATION.** Transportation Code, §520.022, provides that the department has sole authority to determine access to RTS. The department interprets SB 604, Section 4.07, as requiring the department to identify the types of suspected activity that will result in suspension or denial. The types of suspected activity are stated in proposed §217.76. Suspension and denial are addressed in proposed §217.77. Reinstatement is addressed in §217.78.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 - Vehicle Titles and Registration

Section 217.76 is also necessary to implement SB 604, Section 4.07, which requires the department, not later than March 1, 2020, in coordination with county tax assessor-collectors, and in accordance with Subchapter C, Chapter 520, Transportation Code, as added, to develop, adopt, and implement rules that create clear criteria for the suspension or denial of access to RTS if a county tax assessor-collector suspects fraud, waste, or abuse relating to RTS by a county tax assessor-collector employee or a person deputized under Transportation Code, §520.0071. As part of the coordination process with county tax assessor-collectors, on August 20, 2019, the department provided draft language for proposed §217.76 to the Tax Assessor-Collectors Association of Texas (TACA) and the TxDMV county tax assessor-collector Liaison. The proposal incorporated comments received.

Proposed §217.76(a) establishes that §§217.76 - 217.78 apply to individuals, other than department employees, and entities, with RTS access. The sections do not apply to department employees because their access, and denial of access, is at the will of the department. Stating that the sections do not apply to them clarifies that the sections do not create procedures or requirements related to RTS access, suspension, or denial, for a department employee. The reference to entities includes only entities with RTS access.

Proposed §217.76(b) establishes the criteria for the department to suspend or deny access to RTS. As stated, prior to proposal the department provided draft criteria to TACA and county tax assessor-collectors as part of the SB 604, Section 4.07, coordination process. After reviewing comments received from TACA and county tax assessor-collectors, the department modified the draft text to require a reasonable suspicion and added the sources of information that could validate that suspicion. A reasonable suspicion standard is consistent with the "suspects" language in SB 604, Section 4.07. Requiring a final determination or knowing conduct would not be consistent with the legislative instruction.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 - Vehicle Titles and Registration

46 In addition, the department's draft of the criteria for the suspension or denial of access to RTS  
47 provided to TACA and county tax assessor-collectors for review listed "a crime of moral turpitude." The  
48 draft further defined "a crime of moral turpitude" to include reasonable suspicion of misappropriation of  
49 money, falsification of government records, or a crime involving fraud, theft, deceit, dishonesty,  
50 misrepresentation, or that otherwise reflects poorly on the person's honesty or trustworthiness. Based  
51 on feedback received from TACA and the county tax assessor-collector commenters, the department kept  
52 the listed types of criminal activity and removed the term "a crime of moral turpitude."

53 Section 217.76(b)(2) also provides that the department may suspend or deny access to RTS based  
54 on a demonstration of non-compliance with applicable statutes and rules, including Texas Administrative  
55 Code, Chapter 217 and Transportation Code, Chapters 501, 502, 504, or 520. Section 217.76(c) lists the  
56 types of acceptable forms of information that can be used to support a reasonable suspicion.

57 Proposed §217.77(a) clarifies that the executive director or the executive director's designee has  
58 sole authority to determine access to RTS, determine if information exists to support a reasonable  
59 suspicion, and may suspend or deny RTS access, based on the criteria in §217.76. This is based on  
60 Transportation Code, §520.022. Proposed §217.77(b) provides that a county tax assessor-collector may  
61 request the executive director or the executive director's designee immediately suspend a county  
62 employee or full service deputy's access to RTS based on the same criteria. Although not a criterion, TACA  
63 and county tax assessor-collector commenters in the SB 604, Section 4.07, coordination process suggested  
64 including a notice, such as the notice set forth in the current §217.163 addendum. Proposed §217.77(c)  
65 incorporates the existing notice provision from the addendum into the rule, with modifications to refer  
66 to an exception for federal law enforcement, a request for immediate termination by the county tax  
67 assessor-collector, and for differences in style between the proposal and the addendum.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 - Vehicle Titles and Registration

68           The department has changed §217.77(b) to correct a typographical error by changing the word  
69   “employee” to “employee’s” for consistency with other uses in the text. The change does not add  
70   additional costs or affect persons not on notice of the proposed rules.

71           TACA and county tax assessor-collector commenters in the coordination process also suggested  
72   the need for a reinstatement process. Proposed §217.78(a) incorporates the addendum reinstatement  
73   process which was agreed upon after negotiation between the county tax assessor-collectors and the  
74   department. The process has been modified to reflect that it applies to individuals in addition to entities,  
75   and to correct differences in style between the rule and the addendum. Proposed §217.78(b) provides  
76   that access to RTS may be reinstated if the person whose access has been suspended is not the subject of  
77   a pending criminal investigation by a law enforcement entity. Access may be reinstated if the department  
78   determines no fraud, waste, or abuse was committed; the matter has been remedied to the satisfaction  
79   of the department; or the person is in compliance with applicable statutes or rules.

80           The department has changed §217.78(b) to correct a typographical error by changing the word  
81   “individual” to “individual’s” for consistency with other uses in the text. The change does not add  
82   additional costs or affect persons not on notice of the proposed rules.

83  
84   **SUMMARY OF COMMENTS.**

85           The department received written comments on the proposal from the Tax Assessor-Collectors  
86   Association of Texas (TACA), on behalf of its board and 254 county tax assessor-collector members.

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 - Vehicle Titles and Registration

88 **General Comments**

89           The commenter supports the rules provided that a county tax assessor-collector retains the  
90 ability to manage their employees and full service deputies pursuant to both department rules and  
91 county policies/provisions.

92

93 **Response.** The department agrees with the comment. The rules address only suspension of employees  
94 and full service deputies from RTS system access based on suspicion of fraud, waste, or abuse as  
95 provided in the adopted sections.

96

97           The commenter also asks for confirmation that a county tax assessor-collector may submit a  
98 request to the department to deny an employee or full service deputy access to the RTS system if the  
99 county tax assessor-collector believes, suspects, or finds that the employee or full service deputy is in  
100 violation of or acting against the statutes, rules or procedures set forth by the department or by the tax  
101 assessor collector.

102

103 **Response.** The department agrees with the comment. The adopted sections do not impose a duty on a  
104 county tax assessor-collector to allow, or continue to allow, an employee or full service deputy to have  
105 access to the RTS system. A county tax assessor-collector may submit a request to the department to deny  
106 an employee or full service deputy access to the RTS system for any reason, including reasons of fraud,  
107 waste, and abuse set forth in §217.76. The purpose of the rules is to provide criteria and a procedure for  
108 the department to suspend a county tax assessor-collector employee's or full service deputy's access to  
109 the RTS system based on reasons of fraud, waste, and abuse.

110



## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 - Vehicle Titles and Registration

**STATUTORY AUTHORITY.** The department adopts new §§217.76 - 217.78 under SB 604, Section 4.06, and Transportation Code, §520.021 and §1002.001.

Senate Bill 604, Section 4.06, 86th Legislature, Regular Session (2019), provides that not later than March 1, 2020, the department shall, in coordination with county tax assessors-collectors and in accordance with Subchapter C, Chapter 520, Transportation Code, as added by this Act, develop, adopt, and implement rules that create clear criteria for the suspension or denial of access to the department's automated registration and titling system if a county tax assessor-collector suspects fraud, waste, or abuse relating to the system by an employee of the tax assessor-collector's or a person deputized under Transportation Code, §520.0071.

Transportation Code, §520.021, authorizes the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system.

Transportation Code, §1002.001, authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

**CROSS REFERENCE TO STATUTE.** Transportation Code, §520.021.

**TEXT.**

### SUBCHAPTER C. REGISTRATION AND TITLE SYSTEM

#### 43 TAC §§217.76-§217.78

##### §217.76. Criteria for Suspension or Denial of Access to RTS.

(a) Sections 217.77, 217.78, and this section apply to individuals, other than department employees, and entities, with RTS access.

(b) The department may suspend or deny any individual user's or entity's access to RTS if:

(1) information exists to support a reasonable suspicion that the individual or entity is

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 - Vehicle Titles and Registration

- 134 committing fraud, waste, or abuse related to RTS, including:
- 135 (A) misappropriation of money;
- 136 (B) falsification of government records; or
- 137 (C) a crime involving fraud, theft, deceit, dishonesty, misrepresentation, or that
- 138 otherwise reflects poorly on the individual's honesty or trustworthiness; or
- 139 (2) the individual or entity demonstrates non-compliance with applicable statutes and
- 140 rules, including Texas Administrative Code, Chapter 217 and Transportation Code, Chapters 501, 502, 504,
- 141 or 520.
- 142 (c) Acceptable forms of Information that can support a reasonable suspicion include:
- 143 (1) information gathered in an audit under Transportation Code, §520.010 or §520.011;
- 144 (2) a request to suspend or deny the individual or entity access from a county tax assessor-
- 145 collector;
- 146 (3) review of transactions processed by the individual or entity; and
- 147 (4) oral or written information or complaints from:
- 148 (A) a law enforcement agency;
- 149 (B) another government agency;
- 150 (C) an association or trade group;
- 151 (D) an entity; or
- 152 (E) an identifiable individual.
- 153 §217.77. Process for Suspension or Denial of Access to RTS.
- 154 (a) The executive director or the executive director's designee has sole authority to:
- 155 (1) determine access to RTS;
- 156 (2) determine that information exists to support a reasonable suspicion that the individual

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 - Vehicle Titles and Registration

157 or entity is committing fraud, waste, or abuse related to RTS; and

158 (3) suspend or deny the individual's or entity's access to RTS, based on the criteria in  
159 §217.76 of this title (relating to Criteria for Suspension or Denial of Access to RTS).

160 (b) A county tax assessor-collector may request the executive director or the executive director's  
161 designee immediately suspend a county employee's or full service deputy's access to RTS based on the  
162 criteria in §217.76 of this title.

163 (c) The department shall inform the county tax assessor-collector before taking action to suspend  
164 or deny the individual's or entity's access to RTS under subsection (a) of this section, unless:

165 (1) the action is as a result of a court order;

166 (2) time is of the essence;

167 (3) revealing this action would detrimentally interfere with or compromise an active  
168 investigation by the department or an enforcement agency of this state or the federal government; or

169 (4) the action is based on the county tax collector-assessor's request in subsection (b) of  
170 this section.

171  
172 §217.78. Reinstatement of Access to RTS.

173 (a) A county tax assessor-collector may request a review of a decision to suspend or terminate  
174 RTS access by submitting a request for reinstatement in writing to the department.

175 (1) The request for reinstatement should include all supporting information that is relevant to  
176 support reinstatement.

177 (2) A county tax assessor-collector may submit information in support of or relevant to a  
178 request for reinstatement to the department.

179 (3) The executive director shall make a final determination on reinstatement within 21

## TITLE 43. TRANSPORTATION

## Adopted Sections

## Part 10. Texas Department of Motor Vehicles

## Chapter 217 - Vehicle Titles and Registration

calendar days from the date the department receives the request for reinstatement. If the department requests additional information from the individual, entity, or county tax assessor-collector, the deadline for determination of the request for reinstatement is tolled until the additional information is received.

(b) Unless an individual or entity is the subject of a pending criminal investigation by a law enforcement entity, the individual's or entity's access to RTS will be reinstated if the department determines that:

(1) no fraud, waste, or abuse was committed;

(2) the matter has been remedied to the satisfaction of the department; or

(3) the individual or entity is in compliance with applicable statutes and rules.

**CERTIFICATION.** The agency certifies that legal counsel has reviewed the adoption and found it to be within the state agency's legal authority to adopt.

Issued at Austin, Texas, on \_\_\_\_\_.

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**Tracey Beaver, General Counsel**

Board Meeting Date: 2/6/2020  
ACTION ITEM

To: Texas Department of Motor Vehicles Board  
From: Timothy Menke, Compliance & Investigations Division Director  
Agenda Item: 11  
Subject: **Adoption of New, Chapter 223, Compliance and Investigations Division**  
(Relating to county tax assessor-collector reporting of suspected fraud, waste, or abuse and implementation of Sunset Advisory Commission's Recommendation 2.2)  
(Proposal Published October 18, 2019 - 44 Tex. Reg. 6021)

### **RECOMMENDATION**

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

### **PURPOSE AND EXECUTIVE SUMMARY**

The purpose of the new chapter is to implement the Sunset Advisory Commission's Recommendation 2.2, as stated in the Sunset Staff Report with Commission Decisions, 2018-2019, 86th Legislature (2019). The recommendation requires the department to adopt rules to:

- formalize the department's current "red flag" fraud warning system for county tax assessor-collectors (TACs) to report suspected fraud, waste, or abuse of the registration and title system (RTS) by an employee, a dealer, and a full service deputy (deputy); and
- provide an option for a county to request action for suspected fraud or abuse, such as immediately suspending access to RTS.

### **FINANCIAL IMPACT**

None

### **BACKGROUND AND DISCUSSION**

The new chapter adds Subchapter A, Fraud, Waste, or Abuse, which includes:

- §223.1, Purpose and Scope - outlines the purpose and scope of the subchapter, which is to establish procedures for TACs to report suspected fraud, waste, or abuse related to motor vehicle title or registration to the department's Compliance and Investigations Division (CID).
- §223.2, Definitions - defines key terms used in the new chapter, including CID, TAC, deputy, director, and RTS.
- §223.3, Submission of Request - establishes the process for TACs who wish to report suspected fraud, waste, or abuse to the CID. The rule:
  - explains that the CID may forward a submission to an appropriate law enforcement entity;
  - outlines the submission process that a TAC must follow, including:
    - where to submit the request (i.e. to a department regional service center),
    - how to submit the request (i.e. mail documents and information in an envelope marked "red flag"), and
    - what to include in the request (i.e. original transaction, detailed narrative, any video, employee or deputy information, and any other relevant information);
  - describes the reporting process for a deputy, which includes reporting to the TAC; and
  - clarifies that the CID will notify the TAC if the CID determines it will not conduct an investigation.

The proposal was published in the *Texas Register* on October 18, 2019. The comment period closed on November 18, 2019. The Tax Assessor-Collectors Association of Texas submitted comments.

If the board adopts the new chapter during its February 6, 2019, open meeting, staff anticipates:

- publication in the February 28, 2020, issue of the *Texas Register*; and
- an effective date of March 5, 2020.



# THE TAX ASSESSOR-COLLECTORS ASSOCIATION OF TEXAS

An Association to secure the benefits of organized ideas and discussion of mutual problems  
that will advance and maintain proper efficiency and dignity of the County Tax Office.

[www.tacaof texas.org](http://www.tacaof texas.org)

## "2020 VISION: PREPARING FOR THE FUTURE"

November 18, 2019

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Texas Department of Motor Vehicles  
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Re: Response to Rules 217.76, 217.78, 223.1-223.3

Dear TxDMV Board of Directors and TxDMV Staff,

The Tax Assessor-Collectors Association appreciates the opportunity to offer input regarding Rules 217.76, 217.78 and 223.1-223.3.

In reviewing the proposed rules 217.76 and 217.78, TACA does not oppose the rules, provided a county tax assessor-collector retains the ability to manage their employees/full service deputies pursuant to both department rules and county policies/provisions.

Furthermore, if the tax assessor-collector believes a violation has occurred, the department may be notified and requested that the access be denied. If a tax assessor-collector suspects, or finds, that an employee/full service deputy is acting against the statutes, rules or procedures set forth by the department or by the tax assessor collector, then a request for access to be denied may be submitted to the department.

Regarding Rule 223.3 – Submission of Request - the proposed rule states (a) – “A county tax-assessor-collector.....**"may"** submit a request to the CID for review...” - Because the word “may” indicates this is permissive, it does not imply a “must”. TACA strongly supports all measures to ensure the motoring public is protected while ensuring the county tax assessor-collector has management control of their employees and full service deputies.

In addition, we are requesting updated status from CID investigations every 60 days to the local tax office in order to combat the possibility of issuing titles erroneously.

On behalf of TACA's Board of Directors, TxDMV Liaison Michelle French and the rest of our membership, please accept our sincere appreciation for the opportunity to collaborate as partners for the ultimate goal of successfully serving the motoring public of Texas. We look forward to continued opportunities.

Respectfully yours,

Cathy C. Talcott, PCAC  
President, Tax Assessor-Collectors Association  
Comal County Tax Assessor-Collector  
205 N. Seguin Ave.  
New Braunfels, TX 78130

## TITLE 43. TRANSPORTATION

Adopted New Chapter

Part 10. Texas Department of Motor Vehicles

Chapter 223 - Compliance and Investigations Division

**ADOPTION OF****SUBCHAPTER A. FRAUD, WASTE, OR ABUSE****43 TAC §§223.1-223.3**

**INTRODUCTION.** The Texas Department of Motor Vehicles adopts new Chapter 223, Compliance and Investigations Division, Subchapter A., Fraud, Waste, or Abuse, 43 TAC §§223.1-223.3, concerning the department's "red flag" fraud reporting system. The new sections are necessary to formalize the department's current "red flag" fraud reporting system and implement a management action within the Sunset Advisory Commission's Recommendation 2.2, as stated in the Sunset Staff Report with Commission Decisions, 2018-2019, 86th Legislature (2019). The department adopts new Chapter 223 without changes to the proposed text as published in the October 18, 2019 issue of the *Texas Register* (44 TexReg 6021).

The department also adopts new 43 TAC §§217.76-217.78, concerning access to the department's automated registration and title system (RTS) in this issue of the *Texas Register*.

**REASONED JUSTIFICATION.** The department originally proposed new Chapter 223 in the March 1, 2019, issue of the *Texas Register* (44 TexReg 1114) and received comments from the Tax Assessor-Collector Association of Texas (TACA). The department did not adopt the proposal and it was withdrawn in the September 20, 2019 issue of the *Texas Register* (44 TexReg 5387). The department incorporated the prior comments received on the March 1, 2019 published proposal in the October 18, 2019 proposal.

Because the adopted sections were developed over two proposals, the department refers to comments received on each proposal in this Reasoned Justification section. Only comments received on the October 18, 2019 proposal are listed, addressed, and responded to in the Summary of Comments section.



## TITLE 43. TRANSPORTATION

## Adopted New Chapter

## Part 10. Texas Department of Motor Vehicles

## Chapter 223 - Compliance and Investigations Division

1           The Tax Assessor-Collectors Association of Texas (TACA) commented that the March 1, 2019  
2           proposal was inconsistent with the Sunset recommendation. TACA also suggested that the department's  
3           CID investigation and notification process mirror the dealer enforcement complaint process, because that  
4           process works well with cross communication and access to investigations. Some changes were made  
5           based on the comments received and to further improve the rules.

6           However, the adopted rules do not mirror the department's dealer enforcement complaint  
7           process. Throughout the dealer investigation and enforcement process, investigators and enforcement  
8           attorneys communicate with the complainant and respondent as necessary to work through allegations  
9           to either resolve the issues or assess civil penalties. The CID, on the other hand, is a unique division with  
10          no authority or duty to determine administrative violations or assess civil penalties.

11          As addressed in the response to comments, the CID will try to work in partnership with county tax  
12          assessor-collectors. However, the CID may not be able to provide status updates for ongoing  
13          investigations. The CID serves as a liaison with law enforcement entities on potential criminal law  
14          violations and has no authority to independently enforce or prosecute criminal law violations. Sharing  
15          information regarding an ongoing criminal investigation could jeopardize the investigation and damage  
16          the CID's working relationship with law enforcement.

17          Every person processing registration and title transactions in RTS has a duty to stop or prevent  
18          fraud, waste, or abuse. The adopted "red flag" rules provide a means for county tax assessor-collectors to  
19          flag and report suspected fraud, waste, or abuse to the CID. As addressed in the response to comments,  
20          the adopted sections are based on the county tax assessor-collectors having continued management and  
21          control of county employees and deputies, and do not limit or expand the exercise of statutory authority  
22          of a county tax assessor-collector or the department.

## TITLE 43. TRANSPORTATION

## Adopted New Chapter

## Part 10. Texas Department of Motor Vehicles

## Chapter 223 - Compliance and Investigations Division

1            Adopted §223.1 outlines the purpose and scope of the subchapter, which is to prescribe the  
2 policies and procedures for county tax assessor-collectors, including county tax assessor-collector  
3 employees and deputies, to report suspected fraud, waste, or abuse, related to motor vehicle titling and  
4 registration to the CID for investigation.

5            Adopted §223.2 establishes that the words and terms defined in Transportation Code Chapter  
6 501, have the same meaning when used in the subchapter, unless the context clearly indicates otherwise.  
7 The adopted section also defines terms specific to this subchapter.

8            Adopted §223.3 establishes the process for requesting rejection of a possible fraudulent  
9 transaction and reporting suspected possible fraud, waste, or abuse to the CID. The section does not  
10 require the county tax assessor-collector to make a request or submit information. However, submitting  
11 information to the CID is a means to work in partnership with the CID to stop or prevent fraud, waste, or  
12 abuse, and serve the motoring public.

13           Under §223.3, a county tax assessor-collector who suspects possible fraud, waste, or abuse by an  
14 employee, motor vehicle dealer, deputy, or any person transacting motor vehicle-related business for or  
15 with the county, may submit a request for rejection of the suspected fraudulent transaction. The county  
16 tax assessor-collector must submit the request through a department Regional Service Center and mail,  
17 or e-mail, certain information to the CID, including the original transaction, a detailed narrative, and any  
18 supporting documentation or evidence. Adopted §223.3 requires a full service deputy to report suspected  
19 fraud, waste, or abuse to the county tax assessor-collector. The county tax assessor-collector may then  
20 submit the full service deputy's information to the CID using the process in §223.3.

21           Section 223.3 also establishes that the CID will provide notification to the county tax assessor-  
22 collector if it determines it will not conduct an investigation. As addressed in response to comments and  
23 this Reasoned Justification section, the CID may not be able to provide additional information.

## TITLE 43. TRANSPORTATION

## Adopted New Chapter

## Part 10. Texas Department of Motor Vehicles

## Chapter 223 - Compliance and Investigations Division

1

2 **SUMMARY OF COMMENTS.** The department received written comments on the proposal from the Tax  
3 Assessor-Collectors Association of Texas (TACA), on behalf of its board and 254 county tax assessor-  
4 collector members.

5

6 **General Comment**

7 The commenter strongly supports all measures to ensure the motoring public is protected while  
8 ensuring the county tax assessor-collectors have management control of their employees and full  
9 service deputies.

10 **Response.** The department appreciates the commenter's support. The purpose of the adopted section is  
11 to provide a process for county tax assessor collectors to report suspected fraud, waste, or abuse to the  
12 CID so that county tax assessor-collectors and the CID can work together to stop or prevent it. The adopted  
13 sections are based on the county tax assessor-collector having continued management and control of  
14 their employees and deputies. It is the county tax assessor-collector's decision to make the report. The  
15 adopted sections do not limit or expand the exercise of statutory authority of a county tax assessor-  
16 collector or the department.

17

18 **Section 223.3 Comments**

19 The commenter requests confirmation that §223.3 does not require a county tax assessor  
20 collector to submit a request to the CID that a suspected fraudulent transaction be rejected or otherwise  
21 report on suspected fraud, waste, or abuse to the CID.

22 **Response.** The department agrees with the comment. Section 223.3 establishes the process for requesting  
23 rejection of a possible fraudulent transaction and reporting suspected possible fraud, waste, or abuse, to

## TITLE 43. TRANSPORTATION

Adopted New Chapter

## Part 10. Texas Department of Motor Vehicles

## Chapter 223 - Compliance and Investigations Division

the CID. The section does not require the county tax assessor-collector to make a request or report information. Submitting information to the CID is a means to work in partnership with the CID to stop or prevent fraud, waste, or abuse, and serve the motoring public as emphasized by the commenter.

The commenter requests that the CID provide county tax assessor-collectors updated status on investigations every 60 days in order to combat the possibility of issuing titles erroneously.

**Response.** The department agrees with the comment. The CID will try to work in partnership with county tax assessor-collectors. However, the CID may not be able to provide status updates for ongoing investigations. The CID serves as a liaison with law enforcement entities on potential criminal law violations and has no authority to independently enforce or prosecute criminal law violations. Sharing information regarding an ongoing criminal investigation could jeopardize the investigation and damage the CID's working relationship with law enforcement.

**STATUTORY AUTHORITY.** The department adopts new §§223.1-223.3 under Transportation Code §§501.0041, 502.0021, 520.021, and 1002.001.

Transportation Code §501.0041 authorizes the department to adopt rules to administer Chapter 501.

Transportation Code §502.0021 authorizes the department to adopt rules to administer Chapter 502.

Transportation Code §520.021 authorizes department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system.

Transportation Code §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

## TITLE 43. TRANSPORTATION

## Adopted New Chapter

## Part 10. Texas Department of Motor Vehicles

## Chapter 223 - Compliance and Investigations Division

1

2 **CROSS REFERENCE TO STATUTE.** Transportation Code Chapters 501, 502, and 520; and more specifically,

3 Transportation Code §501.003 and §520.022.

4

5 **TEXT.**

6

## Subchapter A. Fraud, Waste, or Abuse

7

## 43 TAC §§223.1 - 223.3

8

## §223.1. Purpose and Scope.

9

(a) The purpose of this subchapter is to establish procedures for county tax assessor-collectors to

10 report suspected fraud, waste, or abuse to the department.

11

(b) This subchapter applies to a county tax assessor-collector, an employee of a county tax

12 assessor-collector, or a deputy, who wishes to report suspected fraud, waste, or abuse to the Texas

13 Department of Motor Vehicles.

14

## 15 §223.2. Definitions.

16

(a) The words and terms defined in Transportation Code Chapter 501 have the same meaning

17 when used in this chapter, except as otherwise provided by this chapter, unless the context clearly

18 indicates otherwise.

19

(b) The following words and terms, when used in this chapter, shall have the following meanings,

20 unless the context clearly indicates otherwise:

21

(1) CID--the Compliance and Investigations Division of the Texas Department of Motor

22 Vehicles.

## TITLE 43. TRANSPORTATION

## Adopted New Chapter

## Part 10. Texas Department of Motor Vehicles

## Chapter 223 - Compliance and Investigations Division

(2) County tax assessor-collector--includes an employee of a county tax assessor-collector.

(3) Deputy--a full service deputy under Chapter 217, Subchapter H.

(4) Director--the director of the Compliance and Investigations Division.

(5) RTS--the Texas Department of Motor Vehicle's registration and title system.

§223.3. Submission of Request.

(a) A county tax assessor-collector who suspects possible fraud, waste, or abuse by an employee, motor vehicle dealer, deputy, or any person transacting motor vehicle-related business for or with the county may submit a request to the CID for review and possible investigation. The CID may forward a submission to an appropriate law enforcement entity.

(b) To submit a request to the CID for review and possible investigation, the county tax assessor-collector must:

(1) request a rejection of the suspected transaction through a department regional service center; and

(2) mail or e-mail the following documents and information, as applicable, to the CID in an envelope or e-mail message marked "Red Flag":

(A) the original transaction;

(B) a detailed narrative, including:

(i) a contact with the tax assessor-collector, including email address and phone number;

(ii) the name of the employee submitting the transaction to the CID;

(iii) a statement as to why the transaction was flagged;

## TITLE 43. TRANSPORTATION

## Adopted New Chapter

## Part 10. Texas Department of Motor Vehicles

## Chapter 223 - Compliance and Investigations Division

(iv) information about the employee or deputy if the employee or deputy is suspected of committing fraud, waste, or abuse;

(v) any statements made by the customer submitting the transaction;  
(C) any available video surveillance footage; and  
(D) any other relevant evidence or information pertaining to the transaction.

(c) If a deputy suspects fraud, waste, or abuse, by an employee, motor vehicle dealer, or any person transacting motor vehicle-related business for or with the deputy, the deputy must report the suspected fraud, waste, or abuse to the county tax assessor-collector. The county tax assessor-collector may then submit a request to the CID for review and possible investigation in accordance with subsection (b) of this section.

(d) If the CID determines it will not conduct an investigation after reviewing a request submitted by a county tax assessor-collector, the CID will provide a notification to the county tax assessor-collector.

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

Issued at Austin, Texas, on MM DD, YYYY.

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Tracey Beaver, General Counsel



To: Texas Department of Motor Vehicles Board  
From: Whitney Brewster, Executive Director  
Agenda Item: 12.B  
Subject: Advisory Committees

#### RECOMMENDATION

It is recommended that the Texas Department of Motor Vehicles Board (board) appoint the individuals from the list of potential members for the Consumer Protection Advisory Committee as presented by the executive director.

#### PURPOSE AND EXECUTIVE SUMMARY

Senate Bill (SB) 604 required that the TxDMV Board establish Advisory Committees by September 1, 2019. During the August 8, 2019 meeting, the TxDMV Board adopted rules establishing five new advisory committees: Consumer Protection, Customer Service, Motor Carrier Regulation, Motor Vehicle Industry and Vehicle Titles and Registration. Sufficient applications have been received and reviewed to bring forward the Consumer Protection Advisory Committee for the TxDMV Board's consideration.

#### FINANCIAL IMPACT

No financial impact.

#### BACKGROUND AND DISCUSSION

The Sunset Advisory Commission recommended (Recommendation 1.7) that the board "establish advisory committees to provide expertise for rulemaking and other issues and adopt rules regarding standard committee structure and operating criteria." Specifically, the board is directed to:

- establish, at a minimum, advisory committees related to motor vehicle industry regulation, motor carrier industry regulation, and vehicle titles and registration;
- adopt rules regarding the purpose, structure, and use of advisory committees, including a number of specified requirements (purpose and role of committees, size and quorum requirements, composition and representation of committees, etc.); and
- distinguish appropriate situations to use advisory committees versus working groups.

The rules establishing these Advisory Committees as well as their purpose, use and structure, were adopted by the TxDMV Board in the August 8, 2019 meeting. The adoption of the rules was published in the August 23, 2019 issue of the Texas Register. The TxDMV Board is required to "appoint members to an advisory committee by selecting them from a list of potential members provided by the executive director." Further, the board is required, to the extent practical, to consider the balance of the advisory committee to ensure representation of: industries or occupations regulated or indirectly regulated by the board, consumers of services provided by the board, and different geographical regions of the state.



**Consumer Protection Advisory Committee**  
**Names for Consideration by the TxDMV Board**

<b>Applicant</b>	<b>Residency</b>	<b>Employer</b>	<b>Area of Expertise</b>
Melissa Ann Colvin	Midlothian, Texas	Transportation Compliance Services - Certified Compliance Specialist	Consumer Issues; Vehicle Registration; Motor Carrier; Motor Vehicle Licensing; Vehicle Titles
Laird McGraw Doran	Houston, Texas	The Friedkin Group - Vice President & Senior Counsel	Consumer Issues; Vehicle Registration; Motor Vehicle Dealer; Motor Carrier; Motor Vehicle Licensing; Vehicle Titles
Donna Ferguson	Belton, Texas	Bell County Tax Assessor Collector Office - Web Dealer Clerk	Consumer Issues; Vehicle Registration; Motor Vehicle Dealer; Motor Vehicle Licensing; Vehicle Titles
Ruben P. Gonzalez	El Paso, Texas	El Paso County - Tax Assessor Collector	Consumer Issues; Vehicle Registration; Motor Vehicle Dealer; Motor Carrier; Salvage Dealer; Motor Vehicle Licensing; Vehicle Titles
Cheryl E. Johnson	Friendswood, Texas	Galveston County - Tax Assessor Collector	Consumer Issues; Other
Will D. Johnson	Arlington, Texas	Arlington Police Department - Police Chief	Consumer Issues
Raymond "Ray" George Olah	Austin, Texas	Office of the Attorney General - Assistant Attorney General	Consumer Issues
Robert E. Raney	Converse, Texas	Mesquite Holdings, LLC - Operations Manager	Consumer Issues; Vehicle Registration; Motor Vehicle Dealer; Salvage Dealer; Motor Vehicle Licensing; Vehicle Titles
Jeanette A. Rash	New Caney, Texas	Milam St Auto Storage, Inc./Cannino West, Inc. - President	Consumer Issues; Vehicle Registration; Motor Vehicle Dealer; Motor Carrier; Salvage Dealer; Motor Vehicle Licensing; Vehicle Titles
Michael S Rigby	Austin, Texas	Office of Consumer Credit Commissioner - General Counsel	Consumer Issues; Other
James Robert Snell	Dallas, Texas	Snell Motor Company, Inc. - President	Consumer Issues; Vehicle Registration; Motor Vehicle Dealer
Juan Alfredo Solis	Brownsville, Texas	Allstar Motors - Owner	Consumer Issues; Motor Vehicle Dealer; Motor Vehicle Licensing

**Vehicle Titles and Registration Advisory Committee  
Recommendations on Digital License Plates Rules**

The purpose of the Vehicle Titles and Registration Advisory Committee (VTRAC) is to provide advice and to make recommendations to the Board of the Texas Department of Motor Vehicles on topics related to vehicle titles and registration. The committee provides advice and recommendations only as requested by the Texas Department of Motor Vehicles or our board. You have been given the charge by the department to provide recommendations regarding the following issues on the digital license plate rules, even if your recommendation is different than the department's recommendation:

1. **What is an equitable administrative fee for obtaining a digital license plate, and when should the administrative fee be collected (one-time or annually)?**
  - A. An administrative fee may be established by statute to cover costs incurred for issuance of a digital license plate. If the fee amount may be based on the need to recoup costs spent on implementing a digital license plate program, what should the fee be?
  - B. How often should the administrative fee be collected with regard to a digital license plate?

**1.A.**

Transportation Code, §504.154, says the department must adopt rules to allow a vehicle to be equipped with a digital license plate, and may "establish a fee in an amount necessary to cover any administrative costs incurred that relate to the issuance of a digital license plate and exceed the administrative costs incurred for the issuance of a physical license plate."

In an effort to recoup the cost of implementing the digital license plate program within a reasonable period, one option is to do so in a five-year period since that provides time to launch and develop a mature program.

During the 86<sup>th</sup> session, an implementation cost of approximately \$1.8 million was estimated to get a digital license plate program operational in Texas. This total is from the cost of systems programming and hiring two program specialists to help administer the program, including review of electronic displays (including advertising) that are allowed under statute on a digital license plate but must have prior approval by the department.

Programming -- Registration and Title System	\$501,550
Programming -- Texas IRP System	<u>\$535,000</u>
Subtotal Programming – Information Technology	\$1,036,550 Subtotal
Program Specialists (two FTEs <sup>1</sup> )	<u>\$815,625</u>
<b>FIVE-YEAR IMPLEMENTATION COST</b>	<b>\$1,852,175 Total</b>

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<sup>1</sup> Full-Time Equivalents

**Vehicle Titles and Registration Advisory Committee  
Recommendations on Digital License Plates Rules**

To determine an administrative fee, the total implementation cost was divided by the number of digital license plates issued in California (1,300 plates total), since that is the only jurisdiction with a digital license plate program operational for several years (pilot started in 2017). That amount (\$1,425) was then divided by 5 with the goal of recouping the cost in five years, and finally the amount (\$285) was divided by 3, which assumes an average lifespan or replacement period of three years for electronic devices. See the following breakdown:

$\$1,852,175 \text{ total} / 1,300 \text{ (digital license plates)} = \$1,425 \text{ (rounded)}$

$\$1,425 / 5 \text{ (years)} = \$285 \text{ (rounded)}$

$\$285 / 3 \text{ (years)} = \$95 \text{ administrative fee (proposed)}$

**TxDMV Recommendation:**

Propose rule to collect an administrative fee of \$95.00 (or a different amount as recommended) for registration of a vehicle with a digital license plate.

**1.B.**

Administrative fees are currently collected for certain departmental actions. Transportation Code, §504.154, regarding digital license plates, says that departmental rules may establish a fee “in an amount necessary to cover any administrative costs incurred that relate to the issuance of a digital license plate and exceed the administrative costs incurred for the issuance of a physical license plate.”

Proposed Administrative Code rules allow for the collection of the administrative fee any time that a vehicle is to be equipped with a digital license plate (initial issuance), and at time of renewal of the registration (renewal). The methodology shown for setting the administrative fee in 1.A. includes annual fee collection to recoup the costs for implementing the digital license plate program.

**TxDMV Recommendation:**

Propose rule to collect the administrative fee for initial registration with a digital license plate and at time of renewal. Note that the digital plate customer may opt to remove their digital plate, attach their metal plate to the vehicle, and affix their windshield registration sticker (if applicable) at any time. If a digital plate customer switches back to using their metal plate, the customer will not be required to pay an additional administrative fee if they already paid the administrative fee for the digital plate for that registration period.

**Vehicle Titles and Registration Advisory Committee  
Recommendations on Digital License Plates Rules**

**2. Should a customer be able to opt out of digital license plate advertising that is proposed by the digital plate provider and approved by the department?**

Transportation Code, §504.155, states a rule adopted by the department may establish procedures to allow the following displays on a digital license plate:

- (A) an emergency alert or other public safety alert issued by a governmental entity, including an alert authorized under Subchapter L, M, or P, Chapter 411, Government Code;
- (B) vehicle manufacturer safety recall notices;
- (C) static logo displays, including unique displays for fleet vehicles; or
- (D) advertising approved by the department.

Chapter 411 of the Government Code, Subchapters L, M, and P are concerned with Amber Alerts for abducted children and certain missing persons; Silver Alerts for missing senior citizens and persons with Alzheimer's disease; and the Blue Alert System, which is activated to aid in the apprehension of a person suspected of killing or causing serious bodily injury to a law enforcement officer.

Static logo displays are currently available to commercial fleet vehicle owners under Transportation Code, §502.0023(d), and do not need further approval by a digital plate provider or the department.

Under Transportation Code, §504.155, certain advertising may be allowed on a digital license plate if the advertising is approved by the department.

While the department has statutory authority to approve non-registration information to be displayed on a digital license plate, some customers may not want any advertising, or certain advertising, to appear on their digital license plate. With this in mind, should a process be established in rule for customers to opt out of advertising on their digital license plate?

**TxDMV Recommendation:**

Customers with digital license plates should be able to opt out of approved advertising through a procedure established in administrative code rule, and developed by the department.

**Vehicle Titles and Registration Advisory Committee  
Recommendations on Digital License Plates Rules**

**3. Should the department adopt a rule on what a digital plate provider may do with Global Positioning System (GPS) data collected from a customer's digital license plate?**

Some digital license plates contain GPS technology to assist with locating the motor vehicle, trip navigation, and mileage tracking. While this can provide benefits to the motorist, such data could also be maintained and used for other purposes by a digital plate provider. The department does not anticipate having or requesting access to this data.

For any GPS data gathered by a digital plate provider, what is the responsibility for the protection and the use of such information?

Should administrative code rule provide guidelines for the protection and use of GPS data retrieved from a digital license plate?

**TxDMV Recommendation:**

Administrative code rules should be proposed that establish guidelines for the protection and use of GPS data retrieved from a digital license plate.

## Vehicle Titles and Registration Advisory Committee Recommendations

Good Morning Board, my name is Shay Luedeke. I serve as 1<sup>st</sup> Vice Chair of the Vehicle Titles and Registration Advisory Committee (VTRAC).

The VTRAC Committee would like to take a moment to Thank you for giving us an opportunity to voice our group advice. We understand that VTRAC is a new part of the process and each of us is excited to take part.

Our Committee met in December to discuss the rules on Digital License Plates and I would like to present our recommendations to you.

In the packet we received there were several questions with possible solutions we reviewed and discussed as a committee.

The first question we discussed was concerning what is a reasonable administration fee for obtaining a digital license plate and when should the administration fee be collected.

We looked at formulas given for the development costs to integrate digital license plates into DMVs systems, with some values from California to get an idea of how much it will cost for the program. The department's recommendation was to charge \$95 administration fee. VTRAC agrees with this amount.

It was also recommended the department collect the administration fee for the initial registration and at time of renewal. VTRAC also agreed with this recommendation from the department.

The next question we received for digital license plates was should a customer be able to opt out of digital license plate advertising that is proposed by the digital plate provider and approved by the department?

There are 4 types of advertising options: emergency alerts and public safety alerts, vehicle manufacture recalls, static logos, and advertising approved by the department.

Our recommendation is to allow the customer the option to "opt-in" for any advertising. The customer will not have these advertising options displayed unless they expressly say "Yes, I do choose to opt-in for advertising" with the following two exceptions which would automatically display when the vehicle is stopped. Manufacturing safety recall notices and emergency alerts or public safety alerts issued by a governmental entity will be displayed regardless if the customer would "opt-in".

The final question we discussed was should the department adopt a rule on what a digital plate provider may do with the GPS data collected from a customer's digital license plate.

We recommended Administrative code should be proposed to protect a person's personal information as well as GPS data retrieved from the digital license plate. If the vendor discloses to the customer the manner the data will be used, a customer may allow for disclosure of personal information and GPS data by the digital license plate provider.

This concludes VTRAC's recommendations for digital license plates and would like to thank you for the opportunity share them before you today.

Board Meeting Date: 2/6/2020  
ACTION ITEM

To: Texas Department of Motor Vehicles Board  
From: Sandra Menjivar-Suddeath, Internal Audit Division Director  
Agenda Item: 14.B  
Subject: FY 2020 Six-Month Audit Plan

#### RECOMMENDATION

For the Texas Department of Motor Vehicles Board to approve the FY 2020 Internal Audit Plan for the second six months.

#### PURPOSE AND EXECUTIVE SUMMARY

The Texas Department of Motor Vehicles Board approves the Internal Audit plan. The FY 2020 Internal Audit Plan for the second half provides information on the four proposed engagements, divisional initiatives, added-value services, and a contingency engagement. It also provides information on the engagements that were deferred from the first half.

#### FINANCIAL IMPACT

None.

#### BACKGROUND AND DISCUSSION

The TxDMV Board approves the Internal Audit Plan each year to be in compliance with the Texas Internal Auditing Act (Texas Government Code 2102.008). In FY 2020, IAD split their audit plan into two six-month plans. IAD moved to a six-month audit plan to allow for flexibility and deal with emerging risks. The audit plan for the second half of the fiscal year includes two risk-based engagements, two required engagements, division initiatives, added-value services, and a contingency engagement.

##### *Engagement Information*

IAD identified four engagements that it will conduct during the last six months of the fiscal year: a Law Enforcement Information Request Advisory Service, a Payment Card Industry (PCI) – Requirement 2 Audit, an Audit Recommendation Implementation Status Follow-Up, and the FY 2021 Internal Audit Risk Assessment and Plan. A contingency audit on change management is also proposed if additional resources become available.

##### *Divisional Initiatives and Added-Value Services*

In addition to the engagements, IAD conducts other value-added services and works on divisional initiatives to improve IAD's effectiveness and efficiency. IAD plans on working and conducting 10 items in these areas.

##### *Deferred Engagements*

In the FY 2020 First Half Internal Audit Plan, IAD anticipated conducting two engagements related to Application Services Section and Temporary Tags, but has deferred them. Risks associated with these engagements will be reviewed as part of the FY 2021 Risk Assessment and Internal Audit Plan.



Texas Department  
*of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

## Fiscal Year (FY) 2020 Second Half Internal Audit Plan

Internal Audit Division

February 2020



## Contents

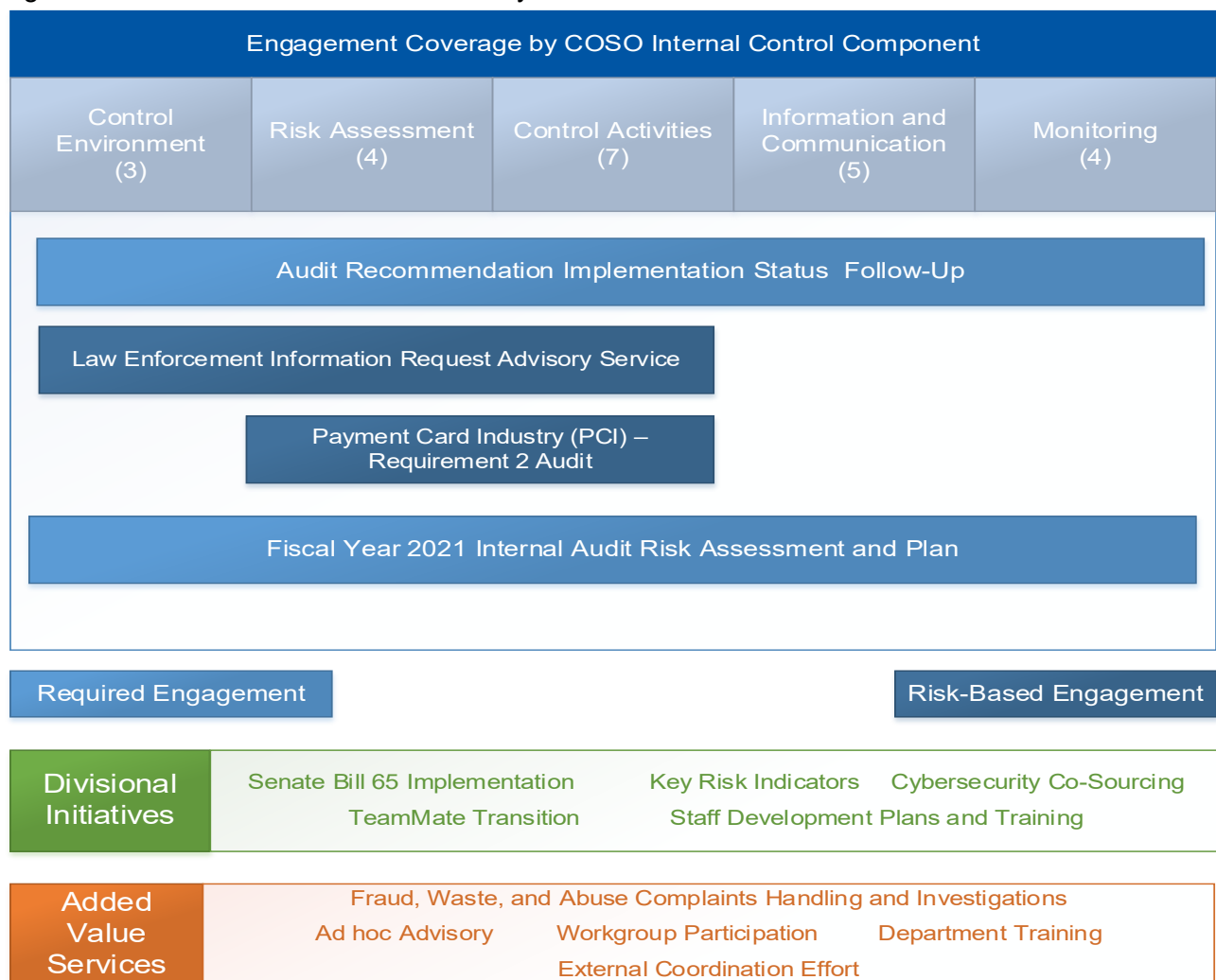
<b>FY 2020 Second Half Summary .....</b>	<b>1</b>
<b>Engagement and Services Information .....</b>	<b>2</b>
<b>Detailed Engagement Information .....</b>	<b>4</b>
FY 2020 Second Half Engagements.....	4
FY 2020 First Half Engagements Deferment .....	4
Contingency Engagements.....	5
<b>Scope and Methodology .....</b>	<b>6</b>
Scope .....	6
Risk Assessment.....	6
Hour Analysis .....	8

## FY 2020 Second Half Summary

The Internal Audit Division (IAD) annual audit plan for fiscal year (FY) 2020 is divided into two six-month plans. IAD moved to a six-month audit plan to allow for flexibility as Texas Department of Motor Vehicles' (TxDMV) risks change rapidly. The audit plan for the second half of the fiscal year includes two risk-based engagements, two required engagements, division initiatives, and added-value services. The second half summary is depicted in Figure 1 and it includes information on how each engagement relates to the Committee of Sponsoring Organizations of the Treadway Commission (COSO) – Integrated Control Framework.

The COSO Framework was designed to help organizations improve business and operating environments by establishing effective internal control, enterprise risk management, and fraud deterrence. More information on the COSO Framework, including the five components of internal controls, can be found in the Scope and Methodology section of the plan: [COSO Framework Information](#).

Figure 1. Second Half Audit Plan Summary



## Engagement and Services Information



### Risk-Based Engagements

- Law Enforcement Information Request Advisory Service:** The Department supports criminal investigations by providing information to law enforcement. The information provided may contain information that is subject to Drivers' Privacy Protection Act (DPPA) and Public Information Act (PIA). This advisory service will review law enforcement information request processes used in the Department.
- Payment Card Industry (PCI) – Requirement 2 Audit:** When a network device is delivered to the Department, default passwords and settings are programmed by the vendor. The default passwords and settings are known to many. It is the responsibility of the Department to change those default passwords and settings as required by best practices and PCI Standards. This audit will evaluate the Department's compliance with PCI Requirement 2, which relates to default passwords and configurations. This audit was identified as an area of review in the Cybersecurity roadmap.

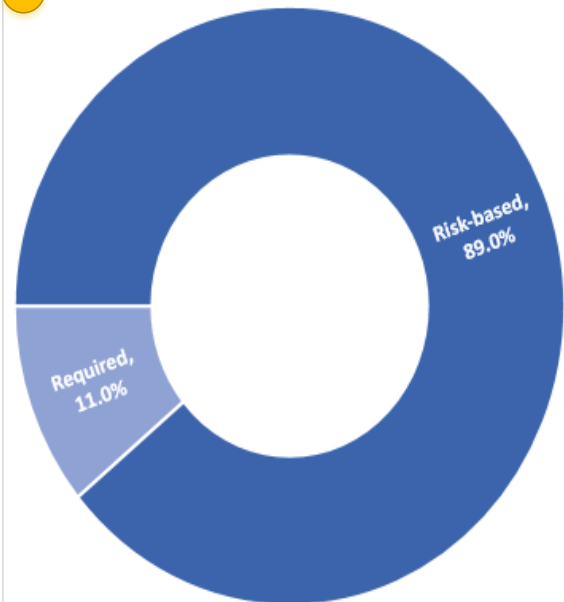


### Required Engagements

- Audit Recommendation Implementation Status Follow-Up:** IAD verifies the implementation status of internal audit recommendation by fiscal year quarter.
- FY 2021 Internal Audit Risk Assessment and Plan:** An enterprise-wide risk assessment to identify the high – risk engagement areas for the upcoming fiscal year.



### Resource Allocation





### Divisional Initiatives

- **Senate Bill 65 Implementation:** IAD will identify how to implement statutorily required monitoring of procurement and contract functions.
- **Key Risk Indicators:** IAD will be finalizing processes to conduct continuous risk evaluation for the following items:
  - *Fraud Indicators:* IAD will monitor TxDMV leave balances and payment information.
  - *Regional Service Center (RSC) Transactions:* IAD will be monitoring RSC transactions to identify potential fraud or inefficiencies.
  - *Procurement and Contract Management Monitoring:* IAD will monitor procurement and contracts to identify potential high-risk procurements that might warrant additional review.
  - *ITS Division Monitoring:* IAD will evaluate how to monitor ITS Division workload.
- **Cybersecurity Co-Sourcing:** IAD will be evaluating and reviewing bids received for its co-sourcing Request for Proposal (RFP).
- **TeamMate Transition:** The audit software used has reached end of life and an upgrade to the new software and platform is needed. IAD manages its own software and will be required to work with the vendor to implement and test the software as well as train the Department.
- **Staff Development Plans and Training:** IAD staff take training and create development plans to obtain required knowledge, skills, and abilities.



### Added – Value Services

- **Fraud, Waste, and Abuse (FWA) Items:** IAD is responsible for reviewing, tracking, and investigating any internal FWA allegations, including those received through the State Auditor's Office Hotline.
- **External Coordination Efforts:** IAD coordinates and facilitates any external audits. External coordination efforts include providing audit status update and coordinating responses.
- **Ad hoc Advisory:** IAD sets aside 150 hours to address any short-term assessment or information requests by TxDMV staff during the first half of the fiscal year.
- **Workgroup Participation:** IAD participates in TxDMV work groups to help identify any unforeseen risk in enterprise projects or activities.
- **Department Training:** IAD provides training to help TxDMV staff understand their responsibilities for audits, recommendation implementation, and preventing fraud, waste, and abuse.

## Detailed Engagement Information

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### FY 2020 Second Half Engagements

The two risk-based engagements identified for the second half both align to strategic goals *Performance Driven* and *Optimized Services and Innovation*. Both engagements focus on processes conducted by several different divisions, including the following:

- Compliance and Investigations Division
- Enforcement Division
- Information Technology Services Division
- Vehicle Titles and Registration Division

The two required engagements align to all three strategic goals as it includes a risk assessment that review the entire organization to identify high-risk areas for the internal audit plan and a review of audit recommendations.

### Estimated Hours

IAD anticipates the following hours for each engagement:

- **Law Enforcement Information Request:** 2,000 hours
- **PCI – Requirement 2:** 675 hours
- **Audit Recommendation Implementation Status Follow-Up:** 175 hours
- **Internal Audit Plan:** 150 hours

### FY 2020 First Half Engagements Deferment

In the FY 2020 First Half Internal Audit Plan, IAD anticipated conducting two engagements:

- **Applications Services Section Audit:** Application Services Section supports Department applications. The audit was to evaluate how the section prioritizes and balances support needs.
- **Temporary Tags Advisory Service:** TxDMV issues temporary tags for vehicles subject to Texas registration laws, but not authorized to travel on Texas highways. This advisory service was to provide strategies to further combat temporary tag fraud.

These engagements have been deferred and the risks identified will be reviewed as part of the FY 2021 Internal Audit Risk Assessment and Plan. The engagements were deferred due to the

request to review the Law Enforcement Information Request. Due to the nature of the request, IAD anticipates the engagement will require reviewing processes agency-wide and conducting substantial testing to provide advice and information.

## Contingency Engagements

The IAD has alternate, or contingency, engagements if additional resources or hours are identified. These engagements were identified through the annual risk assessment process and a review of the Cybersecurity roadmap.

- **Change Management Audit:** The main purpose of change management is to enable fast and reliable delivery of change to the business and mitigation of the risk of negatively impacting the stability or integrity of the changed environment. Change management is the process that ensures that all changes are processed in a controlled manner, including standard changes and emergency maintenance relating to information technology. Change management sets up a set of rules and administrative guidelines to manage changes in a rational and predictable manner. In addition, it provides for the necessary documentation of any changes made to reduce any possible negative impact. Changes include, but are not limited to implementation of new functionality, interruption of service, repair of existing functionality, and the removal of existing functionality. IAD will establish objectives and hours if the engagement occurs.

This engagement would be aligned to strategic goal, *Performance Driven*.

## Scope and Methodology

---

### Scope

The Internal Audit Plan covers the period of February to August 2020.

### Risk Assessment

#### Risk Methodology

The audit plan was developed using a risk-based methodology, which incorporated input from TxDMV board members, executive management, division management, and risks identified by audit staff through previous fiscal year engagements and observations. IAD also analyzed TxDMV information and reviewed internal audit and industry publications to identify and rank potential audit topics by risk. Projects' risk rankings were developed using the following factors and risk guidelines reviewed and discussed with TxDMV executive management:

- Revenue or expense impact
- Asset or liability impact
- Operational effectiveness and efficiency impact
- Legal or regulatory impact
- Brand or reputational impact
- Degree of change in the program, function, or process
- Degree of complexity
- Degree of centralization
- Control design strength

In total, 165 Department risks were identified through the risk assessment. Each risk was scored using the above factors. The risk scores ranged from zero, which is the lowest risk score, to six, which is the highest risk score. An inherent risk score of four or higher is considered high risk for the Department. Low and medium risk scores range from 0 to 4, as depicted below.

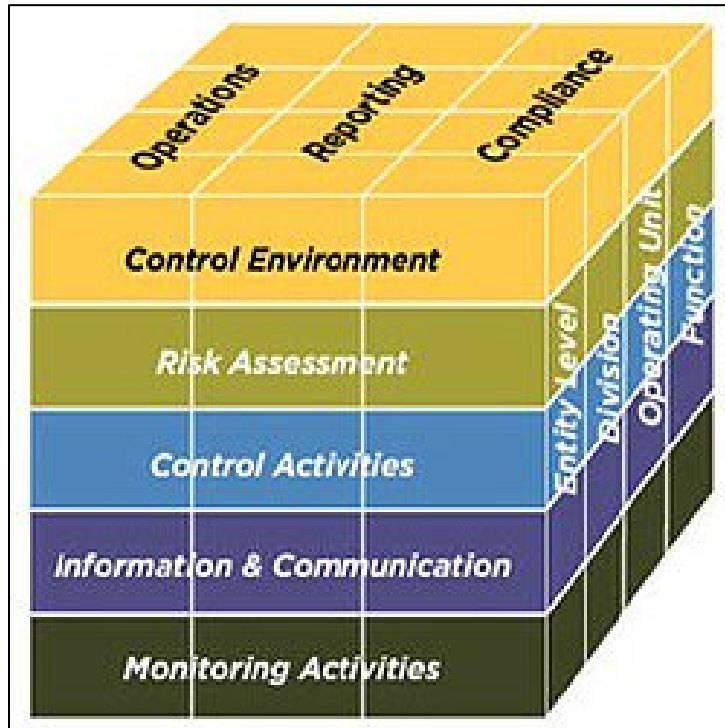
Low Risk	Medium Risk	High Risk
0 – 2.00	2.01 – 4	4.01 - 6

#### Committee of Sponsoring Organizations of the Treadway Commission (COSO) Methodology

Once all risks were reviewed and ranked, the audit team evaluated each risk using the COSO *Internal Control – Integrated Framework*. The framework integrates three broad objectives (Operations, Reporting, and Compliance) and ties those objectives to risks and controls through

five internal control components and four structural levels as depicted in Figure 2, COSO cube. The COSO cube depicts how the internal controls framework has a direct relationship between objectives, the components needed to achieve objectives, and a typical organizational structure.

Figure 2. COSO Cube



The definition for the COSO Internal Control Components are as follows:

- **Control Environment:** The foundation for an internal control system. The Control Environment is a set of standards, processes, and structures that provide the basis for carrying out internal control across the organization. It provides the discipline and structure to help an entity achieve its objectives. The TxDMV Board and executive management establish the tone at the top regarding the importance of internal control including expected standards of conduct.
- **Risk Assessment:** The processes used to determine how risk is to be managed. TxDMV management assesses the risks facing the entity as it seeks to achieve its objectives.
- **Control Activities:** The actions TxDMV management established through policies and procedures to achieve objectives and respond to risks in the internal control system, which includes information systems.
- **Information and Communication:** The quality of information TxDMV management and staff generate and use to communicate and support the internal control system on an ongoing and iterative basis.



- **Monitoring:** The activities TxDMV management established to assess the quality of performance over time. The activities include ongoing evaluations, separate evaluations, or some combination of the two. The activities are used to ascertain whether each of the five components of internal control, are present and functioning.

## Hour Analysis

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

**Board Policy Documents**

Governance Process (10/13/11)

Strategic Planning (10/13/11)

Board Vision (4/7/16)

Agency Boundaries (9/13/12)

KPIs (9/12/14)

## **Texas Department of Motor Vehicles TxDMV Board Governance Policy**

### **1. PURPOSE**

The directives presented in this policy address board governance of the Texas Department of Motor Vehicles (TxDMV).

### **2. SCOPE**

The directives presented in this policy apply to the TxDMV Board and TxDMV agency personnel who interact with the Board. The TxDMV Board Governance Policy shall be one that is comprehensive and pioneering in its scope.

### **3. POLICY**

#### **3.1. TxDMV Board Governing Style**

The Board shall govern according to the following general principles: (a) a vision for the agency, (b) diversity in points of view, (c) strategic leadership, providing day-to-day detail as necessary to achieve the agency vision, (d) clear distinction of Board and Executive Director roles, (e) collective decision making, (f) react proactively rather than reactively and with a strategic approach. Accordingly:

3.1.1. The Board shall provide strategic leadership to TxDMV. In order to do this, the Board shall:

3.1.1.1. Be proactive and visionary in its thinking.

3.1.1.2. Encourage thoughtful deliberation, incorporating a diversity of viewpoints.

3.1.1.3. Work together as colleagues, encouraging mutual support and good humor.

3.1.1.4. Have the courage to lead and make difficult decisions.

3.1.1.5. Listen to the customers and stakeholders needs and objectives.

3.1.1.6. Anticipate the future, keeping informed of issues and trends that may affect the mission and organizational health of the TxDMV.

3.1.1.7. Make decisions based on an understanding that is developed by appropriate and complete stakeholder participation in the process of identifying the needs of the motoring public, motor vehicle industries,

and best practices in accordance with the mission and vision of the agency.

- 3.1.1.8. Commit to excellence in governance, including periodic monitoring, assessing and improving its own performance.
- 3.1.2. The Board shall create the linkage between the Board and the operations of the agency, via the Executive Director when policy or a directive is in order.
- 3.1.3. The Board shall cultivate a sense of group responsibility, accepting responsibility for excellence in governance. The Board shall be the initiator of policy, not merely respond to staff initiatives. The Board shall not use the expertise of individual members to substitute for the judgment of the board, although the expertise of individual members may be used to enhance the understanding of the Board as a body.
- 3.1.4. The Board shall govern the agency through the careful establishment of policies reflecting the board's values and perspectives, always focusing on the goals to be achieved and not the day-to-day administrative functions.
- 3.1.5. Continual Board development shall include orientation of new Board members in the board's governance process and periodic board discussion of how to improve its governance process.
- 3.1.6. The Board members shall fulfill group obligations, encouraging member involvement.
- 3.1.7. The Board shall evaluate its processes and performances periodically and make improvements as necessary to achieve premier governance standards.
- 3.1.8. Members shall respect confidentiality as is appropriate to issues of a sensitive nature.

## **3.2. TxDMV Board Primary Functions/Characteristics**

TxDMV Board Governance can be seen as evolving over time. The system must be flexible and evolutionary. The functions and characteristics of the TxDMV governance system are:

- 3.2.1. Outreach
  - 3.2.1.1. Monitoring emerging trends, needs, expectations, and problems from the motoring public and the motor vehicle industries.
  - 3.2.1.2. Soliciting input from a broad base of stakeholders.

### 3.2.2. Stewardship

3.2.2.1. Challenging the framework and vision of the agency.

3.2.2.2. Maintaining a forward looking perspective.

3.2.2.3. Ensuring the evolution, capacity and robustness of the agency so it remains flexible and nimble.

### 3.2.3. Oversight of Operational Structure and Operations

3.2.3.1. Accountability functions.

3.2.3.2. Fiduciary responsibility.

3.2.3.3. Checks and balances on operations from a policy perspective.

3.2.3.4. Protecting the integrity of the agency.

### 3.2.4. Ambassadorial and Legitimizing

3.2.4.1. Promotion of the organization to the external stakeholders, including the Texas Legislature, based on the vision of the agency.

3.2.4.2. Ensuring the interests of a broad network of stakeholders are represented.

3.2.4.3. Board members lend their positional, professional and personal credibility to the organization through their position on the board.

### 3.2.5. Self-reflection and Assessment

3.2.5.1. Regular reviews of the functions and effectiveness of the Board itself.

3.2.5.2. Assessing the level of trust within the Board and the effectiveness of the group processes.

## 3.3. Board Governance Investment

Because poor governance costs more than learning to govern well, the Board shall invest in its governance capacity. Accordingly:

3.3.1. Board skills, methods, and supports shall be sufficient to ensure governing with excellence.

- 3.3.1.1. Training and retraining shall be used liberally to orient new members, as well as maintain and increase existing member skills and understanding.
  - 3.3.1.2. Outside monitoring assistance shall be arranged so that the board can exercise confident control over agency performance. This includes, but is not limited to, financial audits.
  - 3.3.1.3. Outreach mechanisms shall be used as needed to ensure the Board's ability to listen to stakeholder viewpoints and values.
  - 3.3.1.4. Other activities as needed to ensure the Board's ability to fulfill its ethical and legal obligations and to represent and link to the motoring public and the various motor vehicle industries.
- 3.3.2. The Board shall establish its cost of governance and it will be integrated into strategic planning and the agency's annual budgeting process.

### **3.4. Practice Discipline and Assess Performance**

The Board shall ensure the integrity of the board's process by practicing discipline in Board behavior and continuously working to improve its performance. Accordingly:

- 3.4.1. The assigned result is that the Board operates consistently with its own rules and those legitimately imposed on it from outside the organization.
  - 3.4.1.1. Meeting discussion content shall consist solely of issues that clearly belong to the Board to decide or to monitor according to policy, rule and law. Meeting discussion shall be focused on performance targets, performance boundaries, action on items of Board authority such as conduct of administrative hearings, proposal, discussion and approval of administrative rule-making and discussion and approval of all strategic planning and fiscal matters of the agency.
  - 3.4.1.2. Board discussion during meetings shall be limited to topics posted on the agenda.
  - 3.4.1.3. Adequate time shall be given for deliberation which shall be respectful, brief, and to the point.
- 3.4.2. The Board shall strengthen its governing capacity by periodically assessing its own performance with respect to its governance model. Possible areas of assessment include, but are not limited to, the following:
  - 3.4.2.1. Are we clear and in agreement about mission and purpose?

- 
- 3.4.2.2. Are values shared?
  - 3.4.2.3. Do we have a strong orientation for our new members?
  - 3.4.2.4. What goals have we set and how well are we accomplishing them?
  - 3.4.2.5. What can we do as a board to improve our performance in these areas?
  - 3.4.2.6. Are we providing clear and relevant direction to the Executive Director, stakeholders and partners of the TxDMV?
- 3.4.3. The Board Chair shall periodically promote regular evaluation and feedback to the whole Board on the level of its effectiveness.

## **Texas Department of Motor Vehicles Strategic Planning Policy**

### **1. PURPOSE**

The directives presented in this policy address the annual Strategic Planning process at the Texas Department of Motor Vehicles (TxDMV).

### **2. SCOPE**

The directives presented in this policy apply to the TxDMV Board and TxDMV agency personnel who interact with the Board. TxDMV Strategic Planning Policy attempts to develop, document and expand its policy that is comprehensive in its scope in regards to the strategic planning process of the Board and the Department beyond that of the state strategic planning process.

### **3. POLICY**

#### **3.1. TxDMV Board Strategic Planning**

This policy describes the context for strategic planning at TxDMV and the way in which the strategic plan shall be developed and communicated.

- 3.1.1. The Board is responsible for the strategic direction of the organization, which includes the vision, mission, values, strategic goals, and strategic objectives.
- 3.1.2. TxDMV shall use a 5-year strategic planning cycle, which shall be reviewed and updated annually, or as needed.
- 3.1.3. The 5-year strategic plan shall be informed by but not confined by requirements and directions of state and other funding bodies.
- 3.1.4. In developing strategic directions, the Board shall seek input from stakeholders, the industries served, and the public.
- 3.1.5. The Board shall:
  - 3.1.5.1. Ensure that it reviews the identification of and communication with its stakeholders at least annually.
  - 3.1.5.2. Discuss with agency staff, representatives of the industries served, and the public before determining or substantially changing strategic directions.



- 
- 3.1.5.3. Ensure it receives continuous input about strategic directions and agency performance through periodic reporting processes.
  - 3.1.6. The Board is responsible for a 5-year strategic plan that shall identify the key priorities and objectives of the organization, including but not limited to:
    - 3.1.6.1. The creation of meaningful vision, mission, and values statements.
    - 3.1.6.2. The establishment of a Customer Value Proposition that clearly articulates essential customer expectations.
    - 3.1.6.3. A Strengths, Weaknesses, Opportunities and Threats (SWOT) Analysis, to be updated annually.
    - 3.1.6.4. An assessment of external factors or trends (i.e., customer needs, political factors, economic factors, industry trends, technology factors, uncertainties, etc.)
    - 3.1.6.5. Development of the specific goals and objectives the Department must achieve and a timeline for action.
    - 3.1.6.6. Identification of the key performance indicators to measure success and the initiatives that shall drive results.
    - 3.1.6.7. Engage staff at all levels of the organization, through the executive director, in the development of the strategic plan through surveys, interviews, focus groups, and regular communication.
    - 3.1.6.8. Ensure the strategic planning process produces the data necessary for LBB/GOBPP state required compliance while expanding and enhancing the strategic plan to support the needs of the TxDMV. The overall strategic plan shall be used as a tool for strategic management.
  - 3.1.7. The Board delegates to the Executive Director the responsibility for **implementing** the agency's strategic direction through the development of agency wide and divisional operational plans.
-

## Texas Department of Motor Vehicles TxDMV Goals and Objectives

### 1. PURPOSE

The information presented in this policy addresses the goals and key objectives of the Board of the Texas Department of Motor Vehicles (TxDMV) as they relate to the mission, vision, and values of the TxDMV.

### 2. SCOPE

The scope of this policy is to define the desired state the TxDMV Board is working to achieve. This policy is designed to be inspirational in outlining the desired state of the agency that supports the TxDMV Board vision and meeting agency goals.

### 3. TxDMV MISSION

To serve, protect and advance the citizens and industries in the state with quality motor vehicle related services.

### 4. TxDMV VISION

The Texas Department of Motor Vehicles sets the standard as the premier provider of customer service in the nation.

### 5. TxDMV VALUES

To earn the trust and faith of all citizens of Texas with transparency, efficiency, excellence, accountability, and putting stakeholders first.

- 5.1. **Transparency** – Being open and inclusive in all we do.
- 5.2. **Efficiency** – Being good stewards of state resources by providing products and services in the most cost-effective manner possible.
- 5.3. **Excellence** – Working diligently to achieve the highest standards.
- 5.4. **Accountability** – Accepting responsibility for all we do, collectively and as individuals.
- 5.5. **Stakeholders** – Putting customers and stakeholders first, always.

### 6. TxDMV GOALS

#### 6.1. GOAL 1 – Performance Driven

The TxDMV shall be a performance driven agency in its operations whether it is in customer service, licensing, permitting, enforcement or rule-making. At all times the TxDMV shall mirror in its performance the expectations of its customers and stakeholder by effective, efficient, customer-focused, on-time, fair, predictable and thorough service or decisions.

#### 6.1.1. Key Objective 1

The TxDMV shall be an agency that is retail-oriented in its approach. To accomplish this orientation TxDMV shall concentrate the focus of the agency on:

- 6.1.1.1. Delivering its products and services to all of its customers and stakeholders in a manner that recognizes that their needs come first. These needs must be positively and proactively met. TxDMV works for and with its customers and stakeholders, not the other way around.
- 6.1.1.2. Operating the agency's licensing and registration functions in a manner akin to how a private, for-profit business. As a private, for-profit business, TxDMV would have to listen to its customers and stakeholders and implement best practices to meet their needs or its services would no longer be profitable or necessary. Act and react in a manner that understands how to perform without a government safety net and going out of business.
- 6.1.1.3. Simplify the production and distribution processes and ease of doing business with the TxDMV. Adapting and maintaining a business value of continuous improvement is central to TxDMV operations and processes.
- 6.1.1.4. All operations of the TxDMV shall stand on their own merits operationally and financially. If a current process does not make sense then TxDMV shall work within legislative and legal constraints to redesign or discard it. If a current process does not make or save money for the state and/or its customers or stakeholders then TxDMV shall work within legislative and legal constraints to redesign or discard it. TxDMV shall operate as efficiently and effective as possible in terms of financial and personnel needs. Divisions should focus on cost savings without sacrificing performance. Division directors are accountable for meeting these needs and applicable measures. All division directors are collectively responsible for the performance of TxDMV as a whole.
- 6.1.1.5. Focus on revenue generation for transportation needs as well as the needs of its customers.
- 6.1.1.6. Decisions regarding the TxDMV divisions should be based on the overriding business need of each division to meet or provide a specific service demand, with the understanding and coordination of overarching agency-wide needs.

- 6.1.1.7. Developing and regularly updating a long-range Statewide Plan describing total system needs, establishing overarching statewide goals, and ensuring progress toward those goals.
- 6.1.1.8. The TxDMV shall establish a transparent, well-defined, and understandable system of project management within the TxDMV that integrates project milestones, forecasts, and priorities.
- 6.1.1.9. The TxDMV shall develop detailed work programs driven by milestones for major projects and other statewide goals for all TxDMV divisions.
- 6.1.1.10. The TxDMV, with input from stakeholders and policymakers, shall measure and report on progress in meeting goals and milestones for major projects and other statewide goals.

## **6.2. GOAL 2 – Optimized Services and Innovation**

The TxDMV shall be an innovative, forward thinking agency that looks for ways to promote the economic well-being and development of the industries it serves as well as the State of Texas within the legislative boundaries that have been established for the agency.

### **6.2.1. Key Objective 1**

The TxDMV shall achieve operational, cultural, structural and financial independence from other state agencies.

- 6.2.1.1. Build the TxDMV identity. This means that TxDMV shall make customers aware of what services we offer and how they can take advantage of those services.
- 6.2.1.2. Build the TxDMV brand. This means that TxDMV shall reach out to the stakeholders, industries we serve and the public, being proactive in addressing and anticipating their needs.
- 6.2.1.3. Determine immediate, future, and long term facility and capital needs. TxDMV needs its own stand-alone facility and IT system as soon as possible. In connection with these needs, TxDMV shall identify efficient and effective ways to pay for them without unduly burdening either the state, its customers or stakeholders.
- 6.2.1.4. All regulations, enforcement actions and decision at TxDMV shall be made in a timely, fair and predictable manner.

### **6.2.2. Key Objective 2**

Provide continuous education training on business trends in the industry with a particular emphasis on activities in Texas.

6.2.3. Key Objective 3

Provide continuous outreach services to all customers and stakeholders to access their respective needs and wants. This includes helping frame legislative or regulatory issues for consideration by other bodies including the legislature.

6.2.4. Key Objective 4

Examine all fees to determine their individual worth and reasonableness of amount. No fee shall be charged that cannot be defended financially and operationally.

**6.3. GOAL 3 – Customer-centric**

The TxDMV shall be a customer-centric agency that delivers today's services and decisions in a positive, solution-seeking manner while ensuring continuous, consistent and meaningful public and stakeholder involvement in shaping the TxDMV of tomorrow.

6.3.1. Key Objective 1

The TxDMV shall seek to serve its customer base through a creative and retail oriented approach to support the needs of its industries and customers.

6.3.2. Key Objective 2

The TxDMV shall develop and implement a public involvement policy that guides and encourages meaningful public involvement efforts agency-wide.

6.3.3. Key Objective 3

The TxDMV shall develop standard procedures for documenting, tracking, and analyzing customer complaint data. Successful problem resolution metrics should be monitored to support continuous improvement activities that shall permanently improve customer facing processes.

6.3.4. Key Objective 4

The TxDMV shall provide a formal process for staff with similar responsibilities to share best practices information.

6.3.5. Key Objective 5



The TxDMV shall provide central coordination of the Department's outreach campaigns.

6.3.6. Key Objective 6

The TxDMV shall develop and expand user friendly, convenient, and efficient website applications.

6.3.7. Key Objective 7

TxDMV shall timely meet all legislative requests and mandates.

## **Agency Operational Boundaries as Defined by Department Policies of the TxDMV Board (Board)**

The Board is responsible for the policy direction of the agency. The Board's official connection to the day-to-day operation of the Texas Department of Motor Vehicles (TxDMV) and the conduct of its business is through the Executive Director of the TxDMV (ED) who is appointed by the Board and serves at its pleasure. The authority and accountability for the day-to-day operations of the agency and all members of the staff, except those members who report directly to the Board, is the sole responsibility of the ED.

In accordance with its policy-making authority the Board has established the following policy boundaries for the agency. The intent of the boundaries is not to limit the ability of the ED and agency staff to manage the day-to-day operations of the agency. To the contrary, the intent of the boundaries is to more clearly define the roles and responsibilities of the Board and the ED so as to liberate the staff from any uncertainty as to limitations on their authority to act in the best interest of the agency. The ED and staff should have certainty that they can operate on a daily basis as they see fit without having to worry about prior Board consultation or subsequent Board reversal of their acts.

The ED and all agency employees shall act at all times in an exemplary manner consistent with the responsibilities and expectations vested in their positions. The ED and all agency employees shall act in a manner consistent with Board policies as well as with those practices, activities, decisions, and organizational circumstances that are legal, prudent, and ethical. It is the responsibility of the ED to ensure that all agency employees adhere to these boundaries.

Accordingly, the TxDMV boundaries are as follows:

1. The day-to-day operations of the agency should be conducted in a manner consistent with the vision, mission, values, strategic framework, and performance metrics as established by the Board. These elements must not be disregarded or jeopardized in any way.
2. A team-oriented approach must be followed on all enterprise-wide decisions to ensure openness and transparency both internally and externally.
3. The agency must guard against allowing any financial conditions and decision which risk adverse fiscal consequences, compromise Board financial priorities, or fail to

show an acceptable level of foresight as related to the needs and benefits of agency initiatives.

4. The agency must provide timely, accurate, and honest information that will afford the Board, public, stakeholders, executive branch and the legislature the best ability to evaluate all sides of an issue or opportunity before forming an opinion or taking action on it. Any information provided that is intentionally untimely, inaccurate, misleading or one-sided will not be tolerated.
5. The agency must take all reasonable care to avoid or identify in a timely manner all conflicts of interest or even the appearance of impropriety in awarding purchases, negotiating contracts or in hiring employees.
6. The agency must maintain adequate administrative policies and procedures that are understandable and aid in staff recruitment, development and retention.
7. The agency must maintain an organizational structure that develops and promotes the program areas from an enterprise-wide perspective. No organizational silos or sub-agencies will be allowed. We are the TxDMV.
8. The agency must empower its entire staff to deliver a positive customer experience to every TxDMV customer, stakeholder or vendor to reduce their effort and make it easier for them to do business with the TxDMV.
9. The agency must at all times look to flattening its organizational structure to reduce cost as technology advances allow.
10. Agency staff shall anticipate and resolve all issues timely.
11. The agency must maximize the deployment and utilization of all of its assets – people, processes and capital equipment – in order to fully succeed.
12. The agency must not waste the goodwill and respect of our customers, stakeholders, executive branch and legislature. All communication shall be proper, honest, and transparent with timely follow-up when appropriate.
13. The agency should focus its work efforts to create value, make sure that processes, programs, or projects are properly designed, budgeted and vetted as appropriate with outside stakeholders to ensure our assumptions are correct so positive value continues to be created by the actions of the TxDMV.
14. The ED through his or her staff is responsible for the ongoing monitoring of all program and fiscal authorities and providing information to the Board to keep it apprised of all program progress and fiscal activities. This self-assessment must result in a product that adequately describes the accomplishment of all program



goals, objectives and outcomes as well as proposals to correct any identified problems.

15. In advance of all policy decisions that the Board is expected to make, the ED will provide pertinent information and ensure board members understand issues/matters related to the pending policy decision. Additionally, the ED or designee will develop a process for planning activities to be performed leading up to that particular policy decision and the timeframe for conducting these planning activities. It is imperative that the planning process describes not only when Board consideration will be expected but also when prior Board consultation and involvement in each planning activity will occur.
16. In seeking clarification on informational items Board members may directly approach the ED or his or her designee to obtain information to supplement, upgrade or enhance their knowledge and improve the Board's decision-making. Any Board member requests that require substantive work should come to the Board or Committee Chairs for direction.
17. The agency must seek stakeholder input as appropriate on matters that might affect them prior to public presentation of same to the Board.
18. The agency must measure results, track progress, and report out timely and consistently.
19. The ED and staff shall have the courage to admit a mistake or failure.
20. The ED and staff shall celebrate successes!

The Board expects the ED to work with agency staff to develop their written interpretation of each of the boundaries. The ED will then present this written interpretation to the Board prior to discussion between the Board and ED on the interpretation. The Board reserves the right to accept, reject or modify any interpretation. The intent is that the Board and the ED will come to a mutually agreeable interpretation of agency boundaries that will then form the basis of additional written thought on the part of the ED and staff as to how these boundaries will influence the actions of the agency.

GOAL	STRATEGY	#	MEASURE	Baseline	Target	Actual	OWNER
Performance Driven	Effective and efficient services	1	Average processing time for new franchise license applications	45 days	35 days		MVD
		2	Average processing time for franchise renewals	11 days	5 days		MVD
		3	Average processing time of franchise license amendments	20 days	8 days		MVD
		4	Average processing time for new Dealer's General Distinguishing Number (GDN) license applications	35 days	17 days		MVD
		5	Average processing time for GDN renewals	14 days	7 days		MVD
		6	Average processing time for GDN license amendments	19 days	7 days		MVD
		7	Average turnaround time for single-trip routed permits	33.88 mins	32 mins		MCD
		8	Average turnaround time for intrastate authority application processing	1.47 days	1.4 days		MCD
		9	Average turnaround time for apportioned registration renewal applications processing	2 days	2 days		MCD
		10	Average turnaround time to issue salvage or non-repairable vehicle titles	5 days	4 days		VTR
		11	Average time to complete motor vehicle complaints with no contested case proceeding	131 days	120 days		ENF
		12	Average time to complete motor vehicle complaints with contested case proceeding	434 days	400 days		ENF
		13	Average time to complete salvage complaints with no contested case proceeding	131 days	120 days		ENF
		14	Average time to complete salvage complaints with contested case proceeding	434 days	400 days		ENF
		15	Average time to complete motor carrier complaints with no contested case proceeding	297 days	145 days		ENF
		16	Average time to complete motor carrier complaints with contested case proceeding	133 days	120 days		ENF
		17	Average time to complete household goods complaints with no contested case proceeding	432 days	145 days		ENF
		18	Average time to complete household goods complaints with contested case proceeding	371 days	180 days		ENF
		19	Average time to complete Oversize/Overweight (OS/OW) complaints with no contested case proceeding	40 days	35 days		ENF
		20	Average time to complete OS/OW complaints with contested case proceeding	265 days	250 days		ENF
		21	Percent of lemon law cases resolved prior to referral for hearing	76%	60%		ENF
		22	Average time to complete lemon law cases where no hearing is held	147 days	65 days		ENF
		23	Average time to complete lemon law cases where hearing is held	222 days	150 days		ENF
		24	Percent of total renewals and net cost of registration renewal: A. Online B. Mail C. In Person	A. 15% B. 5% C. 80%	A. 16% B. 5% C. 79%		VTR
		25	Total dealer title applications: A. Through Webdealer B. Tax Office	Baseline in development	A. 5% B. 95%		VTR

GOAL	STRATEGY	#	MEASURE	Baseline	Target	Actual	OWNER
Optimized Services and Innovation		26	Percent of total lien titles issued: A. Electronic Lien Title B. Standard Lien Title	A. 16% B. 84%	A. 20% B. 80%		VTR
		27	Percent of total OS/OW permits: A. Online (self-issued) B. Online (MCD-issued) C. Phone D. Mail E. Fax	A. 57.47% B. 23.03% C. 11.33% D. 1.76% E. 6.4%	A. 58% or greater B. 25% or greater C. 10% or less D. 1.7% or less E. 5.3% or less		MCD
		28	Average time to complete lemon law and warranty performance cases after referral	Baseline in development	25 days		OAH
		29	Average time to issue a decision after closing the record of hearing	Baseline in development	30 days		OAH
	Implement appropriate best practices	30	Percent of audit recommendations implemented	Baseline in development	90% annual goal for these recommendations which Internal Audit included in a follow-up audit		IAD
	Continuous business process improvement and realignment	31	Percent of projects approved by the agency's governance team that finish within originally estimated time (annual)	57%	100%		EPMO
		32	Percent of projects approved by the agency's governance team that finish within originally estimated budget (annual)	71%	100%		EPMO/ FAS
		33	Percent of monitoring reports submitted to Texas Quality Assurance Team (TXQAT) by or before the due date	79%	100%		EPMO
		34	Percent of project manager compliance with EPMD project management standards based upon internal quality assurance reviews	Baseline in development	100%		EPMD
	Executive ownership and accountability for results	35	Percent of employees due a performance evaluation during the month that were completed on time by division.	Baseline in development	100%		HR
		36	Percent of goals accomplished as stated in the directors performance evaluation	Baseline in development	Measure annually at the end of the fiscal year		EXEC
	Organizational culture of continuous improvement and creativity	37	Employees who rate job satisfaction as above average as scored by the Survey of Employee Engagement (SEE)	3.47 (SEE 2012)	3.65	3.60 (SEE 2013)	HR
		38	Increase in the overall SEE score	337 (SEE 2012)	360	351 (SEE 2013)	HR
Focus on the internal customer	Focus on the internal customer	39	Percent of favorable responses from customer satisfaction surveys	Baseline in development	90%		EPMD
		40	Annual agency voluntary turnover rate	6.5% (FY 2013)	5.0%		HR
	Increase transparency with external customers	41	Number of education programs conducted and number of stakeholders/customers attending education programs	4.48/80.61	4/80		MCD
		42	Number of education programs conducted and number of stakeholders/customers attending education programs	36/335	42/390		VTR
		43	Number of eLearning training modules available online through the Learning Management System and number of modules completed by stakeholders/customers	eLearning Modules Available - 28 Completed - 735	Available - 31 Completed - 814		VTR

GOAL	STRATEGY	#	MEASURE	Baseline	Target	Actual	OWNER
Customer Center	Excellent Service Delivery	44	Number of Shows and Exhibits attended to educate stakeholders/customers about TxDMV services and programs	6	7		MVD
		45	Number of education programs conducted and number of stakeholders/customers attending education programs	3/250	3/250		ENF
		46	Number of education programs conducted and number of stakeholders/customers attending education programs	3/150	4/300		ABTPA
		47	Percent of customers and stakeholders who express above average satisfaction with communications to and from TxDMV	Baseline in development	80%		All Divisions
		48	Average hold time	9 min	9 min		CRD
		49	Abandoned call rate	22%	20%		CRD
		50	Average hold time	Baseline in development	1 min		ITS
		51	Abandoned call rate	Baseline in development	5%		ITS
		52	Average hold time	Credentialing - 1.6 minutes Permits - 2.08 minutes CFS - 54.38 seconds	Credentialing - 1.5 minutes Permits - 2 minutes CFS - 50 seconds		MCD
		53	Abandoned call rate	Credentialing - 7% Permits - 6.42% CFS - 5.63%	Credentialing - 6% Permits - 5% CFS - 5%		MCD
Key:		Critical	Off Target		On target		Not yet started
Vision: The Texas Department of Motor Vehicles sets the standard as the premier provider of customer service in the nation.							
Mission: To serve, protect, and advance the citizens and industries in the state with quality motor vehicle related services.							
Philosophy: The Texas Department of Motor Vehicles is customer-focused and performance driven. We are dedicated to providing services in an efficient, effective and progressive manner as good stewards of state resources. With feedback from our customers, stakeholders and employees, we work to continuously improve our operations, increase customer satisfaction and provide a consumer friendly atmosphere.							
Values: We at the Texas Department of Motor Vehicles are committed to: TEXAS-Transparency, Efficiency, EXcellence, Accountability, and Stakeholders.							