



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.



# TxDMV Board Meeting

9:00 a.m.

Thursday, December 14, 2023

**AGENDA**  
**BOARD MEETING**  
**TEXAS DEPARTMENT OF MOTOR VEHICLES**  
**4000 JACKSON AVE., BUILDING 1, LONE STAR CONFERENCE ROOM**  
**AUSTIN, TEXAS 78731**  
**THURSDAY, DECEMBER 14, 2023**  
**9:00 A.M.**

The presiding officer of the Board will be physically present in the Lone Star Conference Room of Building 1, 4000 Jackson Avenue, Austin, Texas 78731. Some board members may attend via videoconferencing.

Link to December 14, 2023, TxDMV Board Meeting Documents:  
<https://www.txdmv.gov/about-us/txdmv-board-meetings>

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, Board member, or other personnel as needed. The Board reserves the right to discuss any items in closed 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 Bacarisse**

A. [Proposed 2024 Board Meeting Calendar](#)

**4. Executive Director's Reports - Daniel Avitia**

A. [Texas Independent Automobile Dealers Association \(TIADA\) Town Hall Meetings](#)

B. [V. G. Young School for County Tax Assessor Collectors Conference](#)

C. [State Employee Charitable Campaign \(SECC\) Results](#)

D. [Saluting Texas Lone Stars Recognition - Wendy Barron](#)

E. [Introduction of New MVCPA Director](#)

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

**CONTESTED CASE**

**5. Consideration and Approval of Proposed Final Order on Enforcement Case *Texas Department of Motor Vehicles v. JNC Auto, LLC*; [Enforcement Docket No. 22-0013983](#); [SOAH Docket No. 608-23-07192.ENF](#) - Damien Shores (ACTION ITEM)**

**RULE ADOPTION**

- 78      6.      **Chapter 219. Oversize and Overweight Vehicles and Loads** - Jimmy Archer  
(ACTION ITEM)  
**Amendments, §§219.11, 219.13, 219.14, 219.30-219.36, 219.41, 219.43,**  
**219.61, and 219.63**  
([Relating to Cleanup](#))  
(Published 9/1/23 - 48 TexReg 4810)

**ADVISORY COMMITTEE RECOMMENDATIONS**

- 176      7.      [Customer Service and Protection Advisory Committee \(CSPAC\) and Motor Vehicle Regulation Advisory Committee \(MVIRAC\) Recommendations to TxDMV Board](#) - David Richards, CSPAC, and MVIRAC Presiding Officers  
(BRIEFING ONLY)

**RULE PROPOSALS**

- 180      8.      **Rule Review**  
A.      [Rule Review Process Overview](#) - Laura Moriaty (BRIEFING ONLY)  
B.      Rule Review Proposals under Government Code §2001.039: Chapter 206, Management; Chapter 215, Motor Vehicle Distribution; and Chapter 221, Salvage Vehicle Dealers - Laura Moriaty (ACTION ITEM)
- 182      9.      **Chapter 206, Management** – David Richards (ACTION ITEM)  
**Amendments, Subchapters A, B, C, E, F, G, and H**  
**Repeal, Subchapter D**  
([Relating to Cleanup](#))
- 220      10.      **Chapter 215, Motor Vehicle Distribution** - Monique Johnston (ACTION ITEM)  
**Amendments, Subchapters A, C, D, E, F, H and J**  
**New §§215.102, 215.120, 215.121, 215.134, and 215.143**  
**Repeal, §§215.112, 215.146, 215.501, 215.502, and 215.505; and**  
**Subchapters B, G, and I**  
([Relating to SB 422, Fingerprinting, Legislative Implementation, and Cleanup](#))
- 476      11.      **Chapter 221, Salvage Vehicle Dealers** – Monique Johnston (ACTION ITEM)  
**Amendments, Subchapters A, B, C, D, and F**  
**Repeal, §221.48 and Subchapter E**  
([Relating to SB 422, Fingerprinting, and Cleanup](#))
- 546      12.      **Chapter 217, Vehicle Titles and Registration** - Jimmy Archer (ACTION ITEM)  
**Amendments, §217.56**  
([Relating to Cleanup](#))
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561      **13. Chapter 218, Motor Carriers** - Jimmy Archer (ACTION ITEM)  
**Amendments, §§218.10, 218.16, 218.33, 218.64, 218.70, 218.71, and 218.72**  
**Repeal, §§218.73, 218.75, 218.76, 218.77 and 218.78**  
(Relating to HB 2190 and Cleanup)

589      **14. Chapter 219. Oversize and Overweight Vehicles and Loads** - Jimmy Archer  
(ACTION ITEM)  
**Amendments, §§219.82, 219.120, 219.121 and 219.126**  
**Repeal, §§219.122, 219.124 and §219.127**  
(Relating to Cleanup)

604      **15. Chapter 217, Vehicle Titles and Registration** - Annette Quintero (ACTION  
ITEM)  
**Amendments, §217.63**  
(Relating to Digital License Plates)

610      **16. New Chapter 224, Adjudicative Practice and Procedure** – Corrie Thompson  
(ACTION ITEM)  
(Relating to Adjudicative Practice and Procedure, including Contested Cases)

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

721      **17. Board Governance Documents Update** - Chairman Bacarisse (ACTION ITEM)

747      **18. Specialty Plate Designs** - Annette Quintero (ACTION ITEMS)  
A. Florida A&M University-New Design Proposed under Transportation Code  
§504.851  
B. Premium Embossed Black and Yellow- New Design Proposed under  
Transportation Code §504.851  
C. Premium Embossed Black and Gold- New Design Proposed under  
Transportation Code §504.851  
D. Premium Embossed Blue and Gold- New Design Proposed under  
Transportation Code §504.851

752      **19. Appointment of Members to the Household Goods Rules Advisory  
Committee (HGRAC)** - David Richards (ACTION ITEM)

**20. Legislative and Public Affairs Committee Update** - Committee Chair Paul  
Scott (BRIEFINGS ONLY)

755      A. **Legislative Activity Update**  
756      B. **88th Texas Legislature Bill Implementation Status Report**  
i. Update on HB 718

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ii. Update on SB 224

C. [Proposed Development Schedule for Statutory Change  
Recommendations to the 89th Legislature](#)

D. [New Facilities Update](#)

E. [RTS Update](#)

**21. Finance and Audit**

A. [Delegation of Authority to the Executive Director to Approve and Execute  
the Contract for the Regional Service Centers' Queueing System](#) - Annette  
Quintero (ACTION ITEM)

B. [FY 2023 Annual Financial Report](#) - Eric Horn (BRIEFING ONLY)

C. [Internal Audit Division Status Update](#) - Salem Chuah and Jason Gonzalez  
(BRIEFING ONLY)

**CLOSED SESSION**

**22. The Board may enter into closed session under one or more provisions of  
the Texas Open Meetings Act, Government Code Chapter 551, including  
but not limited to:**

**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; or
- *Lucid Group USA, Inc. vs. Monique Johnston, in her official capacity as Director of the Motor Vehicle Division of the Texas Department of Motor Vehicles, et al.* Case No. 1:22-cv-01116; in the United States District Court for the Western District of Texas, Austin Division.

**Section 551.076** - Deliberation Regarding Security Devices or Security Audits.

- 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.

- security assessments or deployments relating to information resources technology;
- network security information as described by Government Code Section 2059.055(b); or
- the deployment, or specific occasions for implementation, of security personnel, critical infrastructure, or security devices.

**23. Action Items from Closed Session**

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## **24. Public Comment**

## **25. 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 §551.042 and consider the feasibility of placing the matter on the agenda for a future meeting.

If you would like to comment on any agenda item (including an open comment under the agenda item for Public Comment), you must complete a speaker's form at the registration table prior to the agenda item being taken up by the Board or send an email to [GCO\\_General@txdmv.gov](mailto:GCO_General@txdmv.gov) to register by providing the required information prior to the agenda item being taken up by the Board:

1. a completed [Public Comment Registration Form](#); or
2. the following information:
  - a. the agenda item you wish to comment on;
  - b. your name;
  - c. your address (optional), including your city, state, and zip code; and
  - d. who you are representing.

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

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 Carrie Fortner by telephone at (512) 465-3044.

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

CERTIFYING OFFICIAL: Laura Moriaty, General Counsel, (512) 465-5665.

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## Proposed 2024 Committee and Board Meeting Dates

Hold dates for full Board Meetings are second Thursdays of February, April, June, August, October and December; and at the call of the Board Chair.

Call to Order is 9:00 a.m., unless otherwise updated. Availability and quorum will be confirmed with all board members. See legend below.

January						
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DECEMBER						
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**Texas Department of Motor Vehicles**

HELPING TEXANS GO. HELPING TEXAS GROW.

**Board Meeting Date: 12/14/2023****BRIEFING ITEM**

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**To:** Texas Department of Motor Vehicles Board  
**From:** Daniel Avitia, Executive Director  
**Agenda Item:** 4.A  
**Subject:** Executive Director's Report - Texas Independent Automobile Dealers Association (TIADA) Town Hall Meetings

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**RECOMMENDATION**

Briefing Only.

**PURPOSE AND EXECUTIVE SUMMARY**

The TIADA hosted several Townhall events throughout Texas to discuss "Navigating the Future of Temporary Tags." Deputy Executive Director Roland D. Luna, Sr., and Vehicle Titles and Registration Director Annette Quintero, Enforcement Director Corrie Thompson, Motor Vehicle Director Monique Johnston, and Government and Strategic Communications Director Keith Yawn attended the events and provided information related to the implementation of HB 718. Deputy Division Directors Brian Ge and Clint Thompson also attended one of the Town Hall events and provided information regarding the agency's implementation of HB 718.

**FINANCIAL IMPACT**

N/A

**BACKGROUND AND DISCUSSION**

TIADA Executive Director John Frullo and Earl Cook, Director of Compliance and Business Development, coordinated several Town Hall Events in Abilene, Arlington, Corpus Christi and Donna, to discuss "Navigating the Future of Temporary Tags." The Town Hall Events were attended by many dealers in the region, various elected Tax Assessor-Collectors, and legislative staff members. Topics discussed during the town hall events included the tag types and permits that will be eliminated, webDEALER requirements and training opportunities, and the transition to metal plates. Agency staff also provided an overview of HB 718, an update on the work underway, and significant dates outlined in the bill.

The department received positive feedback from the dealer community, tax assessor-collectors, and legislative offices. TxDMV will continue to work closely with all stakeholder groups during the implementation of HB 718.

**Board Meeting Date: 12/14/2023**  
**BRIEFING ITEM**

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**To:** Texas Department of Motor Vehicles Board  
**From:** Daniel Avitia, Executive Director  
**Agenda Item:** 4.B  
**Subject:** Executive Director's Report - V.G. Young School for Tax Assessor-Collectors

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#### RECOMMENDATION

Briefing Only.

#### PURPOSE AND EXECUTIVE SUMMARY

TxDMV staff attended the 41<sup>st</sup> Annual V.G. Young School for Tax Assessor-Collectors Conference held November 14-16, 2023, in Waco, Texas.

TxDMV staff provided training and collaboration opportunities throughout the conference, shared information, and answered questions during the roundtables and at the TxDMV exhibition booth.

Deputy Executive Director Roland D. Luna, Sr. provided a TxDMV update and overview during the general session. The overview included items related to the upcoming legislative session, personnel recognition, and project updates. Mr. Luna's remarks also highlighted some of the department's major ongoing initiatives and plans to enhance agency operations. The department briefed attendees on the department's Legislative Appropriations Request (LAR) for the Registration and Title System (RTS) replacement, Regional Service Center (RSC) expansion, and increase in Full-Time Equivalents (FTE).

Conference attendees and TxDMV staff networked and engaged in collaborative discussions, which confidently built upon the ongoing partnerships between TxDMV and tax assessor-collectors and their staff.

#### FINANCIAL IMPACT

N/A

#### BACKGROUND AND DISCUSSION

N/A

**Texas Department of Motor Vehicles**

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**Board Meeting Date: 12/14/2023****BRIEFING ITEM**

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**To:** Texas Department of Motor Vehicles Board  
**From:** Daniel Avitia, Executive Director  
**Agenda Item:** 4.C  
**Subject:** Executive Director's Report - State Employee Charitable Campaign (SECC)

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**RECOMMENDATION**

Briefing Only.

**PURPOSE AND EXECUTIVE SUMMARY**

The annual State Employee Charitable Campaign (SECC) ran from September 1 - October 31, 2023.

The SECC is an annual event in which state employees can voluntarily donate to over 1,000 different charities to help fellow Texans.

Agency fundraising activities included a bake sale, luncheon event, gift basket raffle, and a Halloween costume contest.

The original campaign goal of \$3,500 was exceeded.

Fundraising Events - \$3,769

Individual Pledges - \$4,800

Grand Total raised - \$8,569

Funds were donated to the following charities: St. Jude's Children Hospital, Lonestar Circle of Care, and Assistance to Domestic Victims of Human Trafficking.

We are proud of our voluntary employee participation and exceeding our 2023 annual goal.

**FINANCIAL IMPACT**

N/A

**BACKGROUND AND DISCUSSION**

N/A



## Texas Department of Motor Vehicles

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**Board Meeting Date: 12/14/2023**  
**BRIEFING ITEM**

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**To:** Texas Department of Motor Vehicles Board  
**From:** Daniel Avitia, Executive Director  
**Agenda Item:** 4.D  
**Subject:** Executive Director's Report - Saluting Texas Lone Stars Recognition, Wendy Barron

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### RECOMMENDATION

Briefing Only.

### PURPOSE AND EXECUTIVE SUMMARY

Strategic Partnerships, Inc., *Texas Government Insider* featured TxDMV Chief Information Officer Wendy Barron in its Saluting Texas Lone Stars spotlight November 10, 2023. Spotlight highlighted Wendy's career, what she likes best about public service, the best advice she ever received, and more.

### FINANCIAL IMPACT

N/A

### BACKGROUND AND DISCUSSION

N/A

**To:** Texas Department of Motor Vehicles Board  
**From:** Daniel Avitia, Executive Director  
**Agenda Item:** 4.E  
**Subject:** Executive Director's Report - Introduction of New MVCPA Director

#### RECOMMENDATION

Briefing Only.

#### PURPOSE AND EXECUTIVE SUMMARY

TxDMV would like to proudly announce that William Diggs has been selected as the new Motor Vehicle Crime Prevention Authority (MVCPA) Director.

William joined the department in December 2015 as the Assistant Chief of the Regional Services Section and was later promoted to the Chief of Regional Services. In this capacity, he oversaw 16 Regional Service Centers (RSCs), 175 staff members, and more than two million motor vehicle transactions per year. He retired from the Texas Department of Public Safety (DPS) after 29 years serving as Texas State Trooper in McKinney, Sergeant in McAllen, Odessa and Dallas, Lieutenant at the Texas State Capitol, and Captain and Major in the Texas Highway Patrol Division Office. William's experience includes oversight of statewide grant projects, development of policy and procedure, evaluation of public safety equipment, bill analysis during legislative sessions, and management of disaster recovery reimbursement with the Texas Division of Emergency Management (TDEM). William also served as a law enforcement trainer and achieved a Master Peace Officer certification.

William is a veteran of the United States Marine Corps, and his last assignment was as a Presidential Guard stationed at Camp David in Thurmont, Maryland. He graduated from Midwestern State University with a Bachelor of Applied Arts and Sciences degree. He enjoys the outdoors and spending time on Lake LBJ with his children and 10 grandchildren.

The department is also very appreciative of Earl Pence who has managed the program as Interim Director since August 2023.

The vision of the MVCPA is to empower local law enforcement agencies and communities to combat and prevent motor vehicle theft, motor vehicle burglary, and fraud related-motor vehicle crime so that all Texans will be free from harm and loss caused by these types of crime. The MVCPA director work involves collecting a statewide fee from insurers selling motor vehicle insurance, establishing the biennial MVCPA Plan of Operation, managing a law enforcement grant program, coordinating a statewide crime prevention program, and meeting legislative reporting requirements.

#### FINANCIAL IMPACT

N/A

#### BACKGROUND AND DISCUSSION

N/A





## Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

**Board Meeting Date: 12/14/2023**  
**BRIEFING ITEM**

**To:** Texas Department of Motor Vehicles Board  
**From:** Daniel Avitia, Executive Director  
**Agenda Item:** 4.F  
**Subject:** Executive Director's Report – Awards, Recognition of Years of Service, Announcements

### RECOMMENDATION

Briefing Only. 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 December 14, 2023, Board Meeting for state service awards and retirements include:

- Annette Quintero – Vehicle Titles and Registration Division – achieved 20 years of state service.
- Carolyn Fallin – Motor Carrier Division Licensing and Registration – achieved 20 years of state service.
- Daniel Clark – Motor Carrier Division Licensing and Registration – achieved 20 years of state service.
- Lisa Samaniego – Consumer Relations Division – achieved 20 years of state service.
- Catherine Torres – Human Resources Division – achieved 20 years of state service.
- Donald Ogle – Enforcement Investigations – achieved 20 years of state service.
- Juan Luna – Enforcement Motor Carrier Investigations – achieved 25 years of state service.
- Lori Carr – Motor Vehicle Division – achieved 30 years of state service.
- Cynthia Turi – Motor Carrier Division – achieved 30 years of state service.

The following individual recently retired from the agency:

- Bradly Beaty – Vehicle Titles and Registration License Plate Manufacturing - achieved 31 years of state service.
- Lisa Cuellar – Enforcement Administration – achieved 30 years of state service.
- Melissia Rashell McClanahan – Vehicle Titles and Registration – achieved 25 years of state service.

### FINANCIAL IMPACT

N/A

### BACKGROUND AND DISCUSSION

N/A



**Board Meeting Date: 12/14/2023**  
**ACTION ITEM**

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To: Texas Department of Motor Vehicles Board  
From: Laura Moriarty, General Counsel  
Agenda Item: 5  
Subject: Consideration and Approval of Proposed Final Order on Enforcement Case  
*Texas Department of Motor Vehicles v. JNC Auto, LLC*; SOAH Docket No. 608-23-07192.ENF; Enforcement Docket 22-0013983

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### **RECOMMENDATION**

Action Item. For board consideration.

### **PURPOSE AND EXECUTIVE SUMMARY**

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision (PFD). The Board is required to issue a final order in this case.

JNC Auto, LLC (JNC) currently holds a general distinguishing number (GDN) issued by the Texas Department of Motor Vehicles (TxDMV). This contested case involves an enforcement action against JNC for alleged violations of the board's rules and statutes.

The issues before the board are whether to adopt the Findings of Fact and Conclusions of Law from the PFD, whether to revoke JNC's GDN, whether to deny JNC's access to the temporary tag database, and whether to assess a monetary penalty against JNC.

The Enforcement Division provided timely notice of their intent to make an oral presentation to the board. JNC did not provide timely notice of their intent to make an oral presentation and will not be making a presentation.

### **FINANCIAL IMPACT**

No significant financial impact.

### **BACKGROUND AND DISCUSSION**

On August 26, 2022, Enforcement staff issued both a Notice of Department Decision and a Notice of Denial of Access to Temporary Tag System to JNC. Both matters were referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing. On January 9, 2023, TxDMV staff issued a Notice of Hearing to JNC, incorporating the previously issued Notice of Denial of Access to Temporary Tag System and Notice of Department Decision. On February 28, 2023, TxDMV staff issued a First Amended Notice of Decision alleging that JNC:

- failed to remit motor vehicle sales tax and register and transfer title for a vehicle that it sold;
- misused buyer's temporary tags by repeatedly issuing additional buyer's tags after properly issuing initial buyer's tags for three different motor vehicles, for a total of six inappropriately issued buyer's tags;
- misused buyer's tags by issuing three buyer's tags on a single vehicle sold by another dealer;
- misused buyer's temporary tags and failed to comply with requirements for issuance or recordkeeping of buyer's

temporary tags for 99 motor vehicles between May 1, 2021 and April 30, 2022;

- issued nine buyer's temporary tags on three vehicles that did not receive a passing state inspection within the previous 180 days;
- failed to make records available for inspection by a TxDMV investigator;
- failed to file vehicle inventory tax statements (VITs) in 2021.

On May 23, 2023, a SOAH Administrative Law Judge (ALJ) conducted the hearing on the merits. The ALJ closed the record on May 30, 2023, and issued the PFD on July 17, 2023. The ALJ found that JNC violated statutes and TxDMV rules by:

- misusing buyer's temporary tags and failing to comply with the requirements for issuance or recordkeeping of buyer's temporary tags by issuing six additional buyer's tags on three vehicles after initial proper issuance of a buyer's tag;
- misusing buyer's tags by issuing three buyer's tags on a single vehicle sold by another dealer;
- misusing buyer's temporary tags by issuing nine buyer's tags on three vehicles despite the absence of a valid state inspection within 180 days;
- failing to initiate registration and title transfer of a vehicle within 30 days after the date of sale;
- failing to file monthly VITs with the Harris County Tax Assessor-Collector from May 2021 through December 2021; and
- failing to make records available for inspection by a TxDMV representative at its licensed location during posted business hours.

The ALJ recommended that the board assess a total penalty of \$11,500 against JNC. The ALJ also recommended that the board exercise its discretion not to revoke JNC's dealer license or continue denying JNC access to the temporary-tag database because JNC had not intentionally or deliberately misused or abused temporary tags, but incorrectly issued tags in an effort to respond to problems or complaints from customers who had encountered delays in receiving their vehicle registrations.

On July 25, 2023, TXDMV staff filed Exceptions to the PFD, requesting that the ALJ amend the PFD's Findings of Fact to show that Respondent misused buyer's temporary tags as alleged in violation number 11 of the First Amended Notice of Department Decision, and accordingly, modify Conclusion of Law 12 to indicate that the staff met its burden in proving that Respondent had misused all of the temporary tags reflected in the discrepancy between the TxDMV's temporary tag report for Respondent and the VITs that Respondent filed with Harris County for the same period. TxDMV staff further requested that the ALJ amend Conclusion of Law 18 to change penalty assessed against JNC for repeatedly reissuing buyer's tags for the same vehicles to \$6,000, based on the assessment of a penalty of \$1,000 per misused temporary tag, as opposed to the \$500 per violation assessed by the ALJ. TxDMV staff also requested that Conclusion of Law 20 should be amended to show a total penalty of \$3,000 for issuing buyer's tags for a vehicle sold by another dealer, based on an assessment of a penalty of \$1,000 per violation, as opposed to the \$500 per violation (\$1,500 total) assessed by the ALJ. Additionally, TxDMV staff requested that Conclusions of Law 24 and 25, in which the ALJ recommend that the board exercise its discretion not to revoke JNC's dealer license and to allow JNC access to the TxDMV temporary-tag database, should be amended to recommend the revocation of JNC's dealer license and continued denial of access to the temporary-tag database. Finally, TxDMV staff requested that the ALJ amend the Conclusions of Law to recommend a \$25,000 total civil penalty.

The ALJ considered the Exceptions and the Reply and issued an Exceptions Letter on August 7, 2023. The ALJ's Exceptions Letter did not recommend any changes to the Findings of Fact, Conclusions of Law, or the sanction recommendation in the PFD and stated that the PFD was ready for consideration by the board.

### **Board Authority**

- The board has jurisdiction to consider the contested case and enter a final order in accordance with Texas Occupations Code §2301.709.
- Under Texas Occupations Code §2301.651, the board may revoke a license for a violation of board rules and statutes, including the rules and statutes regarding the issuance and record keeping requirements for temporary buyer's tags.
- Texas Transportation Code §503.095 allows for a civil penalty of up to \$1,000 for each violation, or per day for a continuing violation, of Transportation Code, Chapter 503 and the related rules.
- Texas Occupations Code §2301.801 also authorizes civil penalties of up to \$10,000 per violation, or per day for a continuing violation, for violations of Occupations Code, Chapter 2301, the rules adopted under it, or Transportation Code §503.038(a), which includes misuse or allowing the misuse of temporary tags. In determining the amount of a penalty, Texas Occupations Code §2301.801(b) states:

...[T]he board shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public;
  - (2) the economic damage to the public caused by the violation;
  - (3) the history of previous violations;
  - (4) the amount necessary to deter a future violation;
  - (5) efforts to correct the violation; and
  - (6) any other matter that justice may require.
- Texas Government Code §2001.058(e) authorizes the board to change a finding of fact or a conclusion of law made by the ALJ in a PFD only if the ALJ:
  - a. misapplied or misinterpreted applicable law, agency rules, written policies provided to the ALJ by the agency, or prior administrative decisions,
  - b. relied on a prior administrative decision that is incorrect or should be changed, or
  - c. made a technical error in a finding of fact that should be changed.

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

### **Attachments**

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

- |                   |                               |
|-------------------|-------------------------------|
| 1. July 17, 2023  | SOAH ALJ's PFD                |
| 2. July 25, 2023  | TxDMV's Exceptions to the PFD |
| 3. August 7, 2023 | SOAH ALJ's Exceptions Letter  |

FILED  
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STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
April Bermea , CLERK

December 14, 2023

# State Office of Administrative Hearings

Kristofer S. Monson  
Chief Administrative Law Judge

July 17, 2023

Damien T. Shores, Attorney for Petitioner  
Texas Department of Motor Vehicles

VIA EFILE TEXAS

John Chilaka, Owner  
J N C Auto L.L.C., Respondent  
12500 Fondren Road, Suite D  
Houston, Texas 77035

VIA REGULAR MAIL

**RE: Docket Number 608-23-07192.ENF; Texas Department of Motor  
Vehicles No. 22-0013983; *Texas Department of Motor Vehicles v.  
JNC Auto LLC***

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas  
Administrative Code section 155.507(b), a SOAH rule which may be found at  
[www.soah.texas.gov](http://www.soah.texas.gov).

CC: Service List

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**SOAH Docket No. 608-23-07192****Suffix: ENF**

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# **BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**TEXAS DEPARTMENT OF MOTOR VEHICLES,  
PETITIONER  
v.  
JNC AUTO LLC,  
RESPONDENT**

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## **PROPOSAL FOR DECISION**

Alleging multiple violations of statutes and rules that the agency enforces, including misuse of buyer's temporary license tags, the staff (Staff) of the Texas Department of Motor Vehicles (DMV) has recommended that DMV's governing board (Board) revoke the dealer license of a Houston-area used-car dealer, JNC Auto LLC (Respondent), and impose \$25,000 in civil penalties. Further, under a statute that took effect in September 2021, Staff has also denied Respondent, and seeks to continue to deny it, access to the DMV database through which dealers issue buyer's temporary tags. Respondent is entitled to a hearing to contest both

sets of remedies and the underlying alleged violations, and the matters were referred to the State Office of Administrative Hearings (SOAH), where a contested-case hearing was held before the undersigned Administrative Law Judge (ALJ). Based on the evidence presented, the ALJ determines that Staff proved some of the violations it alleges, but not all, and recommends the remedy of \$11,500 in civil penalties.

## **I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY**

Jurisdiction and notice were not contested, so those matters are addressed in the Findings of Fact and Conclusions of Law, below, without further discussion here.

The hearing was convened on May 23, 2023, via Zoom videoconferencing, before SOAH ALJ Robert Pemberton. Staff was represented by Attorney Damien Shores of DMV's Enforcement Division, while Respondent appeared through its owner, John Chilaka. Before the parties began presenting testimony, Staff offered and the ALJ admitted, without objection, eighteen documentary exhibits consisting principally of records compiled and/or generated through an underlying DMV enforcement investigation.<sup>1</sup> Those exhibits also included an affidavit from Brian Ge, Managing Attorney for DMV's Enforcement Division, who set forth Staff's reasoning underlying the administrative sanctions it is seeking.<sup>2</sup> Staff then presented the live testimony of Michael Scott, the principal

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<sup>1</sup> Staff Exhibits 1-18.

<sup>2</sup> Staff Ex. 18.



DMV investigator involved with the case, and also called Mr. Chilaka adversely. Respondent's case consisted of Mr. Chinaka's further testimony. Staff then recalled Mr. Scott for brief rebuttal. The ALJ also took official notice of the SOAH case file and, in response to a "Request for Official Notice" Staff filed prior to the hearing, various statutes, rules, and agency policies listed in that document.

The hearing concluded that same day. The record closed on May 30, 2023, upon Staff's filing of the admitted exhibits.

## II. REGULATORY CONTEXT

A person may engage in business as a motor-vehicle "dealer" (one who "regularly and actively buys, sells, or exchanges vehicles at an established and permanent location") in Texas only if licensed to do so (termed a "general distinguishing number") by DMV.<sup>3</sup> The dealer's conduct of that business is also regulated under statutes that the Board and DMV are charged with implementing through rules, administering, and enforcing.<sup>4</sup> That body of statutes and rules impose requirements that include the following, summarized as they are material and applicable to this case:

- Under Texas Transportation Code § 501.0234 and Board rules, a dealer must, within 30 days of selling a motor vehicle to a purchaser,

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<sup>3</sup> See Tex. Transp. Code §§ 503.001(4), .021; *see also* Tex. Occ. Code §§ 2301.002(7), .251(a).

Some of the statutory provisions referenced in this PFD have been amended during the period in which the underlying facts arose, and the Legislature has made still more amendments to some provisions during its most recent (2023) regular session. Except where an intervening change is material, the ALJ has simply cited to the current version in effect as of the date of this PFD, and has done the same with rules.

<sup>4</sup> See Tex. Occ. Code §§ 2301.151-.155; Tex. Transp. Code § 503.002.

submit to a county tax assessor-collector the paperwork required to transfer title to the purchaser and to register the vehicle on the purchaser's behalf.<sup>5</sup>

- The dealer must also issue the purchaser a “buyer's temporary tag” that is valid until the earlier of the date the vehicle is registered or 60 days after the date of sale.<sup>6</sup> The dealer generally must generate the buyer's temporary tag by logging into and entering information through an Internet-based, real-time database (termed “webDEALER”<sup>7</sup>) that is maintained by DMV and to which a licensed dealer is ordinarily entitled to access.<sup>8</sup>
- However, per Board rule implementing requirements under Chapter 503 of the Transportation Code, the dealer may not affix a buyer's temporary tag to the motor vehicle unless the vehicle has passed a state inspection within the preceding 180 days.<sup>9</sup>
- Under Texas Transportation Code § 503.063(a), the dealer may issue only one buyer's temporary tag to the vehicle's purchaser.<sup>10</sup>
- Under Texas Tax Code § 23.122, a dealer must, on or before the 10th of each month, file with the county tax assessor-collector, on a Texas Comptroller-promulgated form, a “Dealer's Motor Vehicle Inventory Tax Statement” (also termed a “VIT” statement) reflecting any sales of motor vehicles made by the dealer during the preceding month or a statement that no such sales were made.<sup>11</sup>

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<sup>5</sup> See Tex. Transp. Code § 501.0234; 43 Tex. Admin. Code §§ 217.4, .23.

<sup>6</sup> See Tex. Transp. Code § 503.063.

<sup>7</sup> Per Mr. Scott's testimony and the ALJ's search of DMV's website to verify the correct spelling and capitalization.

<sup>8</sup> Tex. Transp. Code § 503.0631. *See also* 43 Tex. Admin. Code §§ 215.150, .152-.153, .155.

<sup>9</sup> 43 Tex. Admin. Code § 215.155(b); *see also* Tex. Transp. Code §§ 503.063(i)-(j), 548.101(2).

<sup>10</sup> See Tex. Transp. Code § 503.063(a).

<sup>11</sup> See Tex. Tax. Code § 23.122.

- Under Board rules implementing requirements of Transportation Code Chapter 503 and Occupations Code Chapter 2601, a dealer must “maintain a complete record of all vehicle purchases and sales for a minimum period of 48 months and make the record available for inspection and copying by a representative of [DMV] during business hours.”<sup>12</sup> Moreover, the dealer must keep such records for the preceding 13 months at the dealer’s licensed location.<sup>13</sup>

A dealer who violates these requirements is subject to administrative sanctions that can include license revocation, license suspension, and civil penalties.<sup>14</sup> Staff has pleaded two statutory authorizations for the latter, which largely overlap under the circumstances of this case—(1) Occupations Code Section 2301.801, which authorizes the Board to impose civil penalties of up to \$10,000 per violation, with each act of violation or day in which the violation continues deemed a separate violation, upon finding that a person has violated (a) Chapter 2301 of that code, (b) a rule adopted under it, or (c) Transportation Code Section 503.038(a), which includes “fail[ure] to demonstrate compliance” with the VIT statement-filing requirement, “misus[ing] or allow[ing] the misuse of a temporary tag authorized under this chapter,” and any other violation of Transportation Code Chapter 503 or rules adopted under that chapter<sup>15</sup>; and (2) Transportation Code Section 503.095, which authorizes civil penalties of no less than \$50 nor more than \$1,000 for violations of Chapter 503 or a rule adopted under it, also with each act of violation and each day the violation continues being

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<sup>12</sup> 43 Tex. Admin. Code § 215.144(a).

<sup>13</sup> 43 Tex. Admin. Code § 215.144(c).

<sup>14</sup> See Tex. Occ. Code §§ 2301.651(a), .801(a); Tex. Transp. Code §§ 503.038(a), .095; 43 Tex. Admin. Code § 215.141.

<sup>15</sup> See Tex. Occ. Code § 2301.801(a); Tex. Transp. Code § 503.038(a)(10), (12), (14).

deemed a separate violation.<sup>16</sup> In determining the specific penalty amount, the Board must consider the following factors:

- (1) The seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public;
- (2) The economic damage to the public caused by the violation;
- (3) The history of previous violations;
- (4) The amount necessary to deter a future violation;
- (5) Efforts to correct the violation; and
- (6) Any other matter that justice may require.<sup>17</sup>

Furthermore, DMV has published a “Disciplinary Matrix” that Staff cites as support for both the amount of civil penalties it recommends (\$25,000) and for imposing the further remedy of license revocation.<sup>18</sup> Simply described, the Disciplinary Matrix presents a non-exclusive list of violation categories and types and prescribes recommended “low” and “high” sanctions for each, although it emphasizes that the Department retains discretion to pursue sanctions either below or above the range. The Matrix further identifies “aggravating” and “mitigating”

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<sup>16</sup> See Tex. Transp. Code § 503.095.

<sup>17</sup> Tex. Occ. Code § 2301.801(b). Strictly speaking, these factors are explicitly addressed to “the penalty” imposed under Occupations Code Section 2301.801(a), not those under Transportation Code Section 503.095, but they would nonetheless appear to govern both by virtue of statutes and rules providing that Chapter 2301 provisions control over Chapter 503 provisions in the event of a conflict. See Tex. Occ. Code § 2301.004; 43 Tex. Admin. Code § 215.302. Staff seems to acknowledge that the factors would guide the imposition of civil penalties awarded under either statute. See Staff Ex. 18 at 2.

<sup>18</sup> As explained below, the record presents some uncertainty as to which of two versions of the Disciplinary Matrix would apply in this case. The ALJ addresses that question as it becomes relevant to the analysis. In the meantime, the above summary refers to features of the Disciplinary Matrix that would be common to either version.

factors to be considered in determining the amount of any civil penalty and whether revocation is appropriate, which incorporate but also elaborate upon the statutory penalty factors.

Before revoking or suspending a license, imposing an administrative penalty, or taking other disciplinary action against a dealer, the Board must afford the dealer the opportunity for a contested-case hearing before a SOAH ALJ.<sup>19</sup> Procedurally, Staff issues and mails to the dealer a “Notice of Department Decision” that is to include a description of each alleged violation; a description of each proposed administrative sanction; a statement of the legal basis for each sanction; and information explaining the person’s right to a hearing, how to request one, and the deadline for doing so.<sup>20</sup>

In addition to these more general enforcement powers, remedies, and procedures, the Texas Legislature has authorized DMV, effective September 1, 2021, to deny a dealer access to the temporary tag database if it determines that the dealer is “fraudulently obtaining temporary tags” from it.<sup>21</sup> By Board rule, “fraudulently obtained temporary tags from the temporary tag database” has been construed to include, as pertinent here, “misusing” the database to obtain either “an excessive number of temporary tags relative to dealer sales” or “temporary tags for a vehicle or vehicles not in the dealer’s . . .

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<sup>19</sup> See Tex. Occ. Code §§ 2301.651(d), .701-.705, .707-.711, .801; *see also id.* § 2301.004; 43 Tex. Admin. Code § 215.302.

<sup>20</sup> 43 Tex. Admin. Code § 215.500(d)-(g).

<sup>21</sup> Tex. Occ. Code § 503.0632(f); *see* Acts 2021, 87th Leg., R.S., ch. 729 (H.B. 3927), §§ 4, 6-7.

inventory.”<sup>22</sup> For purposes of the latter ground, “a vehicle is presumed not to be in the dealer’s . . . inventory if the vehicle is not listed in the relevant monthly [VIT statement].”<sup>23</sup> The same statute requires DMV to “monitor the number of temporary tags obtained by a dealer” and authorizes it to limit by rule the number of such tags a dealer may obtain in a calendar year.<sup>24</sup>

If Staff determines to deny a dealer access to the temporary tag database, it issues notice to that effect (termed a “Notice of Denial of Access to Temporary Tag System”), which is effective upon issuance.<sup>25</sup> The dealer then has the opportunity to request a SOAH contested-case hearing to challenge the continued denial of access in the same manner as with proposed administrative sanctions, although the denial continues in effect unless and until set aside.<sup>26</sup> Staff may issue a Notice of Denial of Access concurrently with a Notice of Department Decision, and the two may be predicated on common underlying alleged violations.<sup>27</sup>

Assuming a dealer requests a hearing in response to a Notice of Department Decision, Notice of Denial of Access, or both, Staff has the burden of proving the alleged underlying violations and the appropriate sanction(s), although the dealer

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<sup>22</sup> 43 Tex. Admin. Code § 215.505(a).

<sup>23</sup> 43 Tex. Admin. Code § 215.505(a)(2).

<sup>24</sup> Tex. Transp. Code § 503.0632(a), (e).

<sup>25</sup> Tex. Transp. Code § 503.0632(f); 43 Tex. Admin. Code § 215.505(b)-(c).

<sup>26</sup> 43 Tex. Admin. Code § 215.505(d).

<sup>27</sup> 43 Tex. Admin. Code § 215.505(e).

would have the burden as to any mitigating factors.<sup>28</sup> The standard of proof is by a preponderance of the evidence.<sup>29</sup>

### III. EVIDENCE

The basic circumstances framing the issues at the hearing were materially undisputed. Respondent has held a dealer's general distinguishing number since December 2019, engaging in the business of used car sales at a licensed location on Fondren Road in Houston, Harris County.<sup>30</sup> In August 2022, following a DMV investigation conducted by Mr. Scott, Staff concurrently issued Respondent a Notice of Denial of Access to Temporary Tag System and a Notice of Department Decision, the latter of which it would eventually amend prior to the hearing.<sup>31</sup> The Notice of Denial of Access is predicated on allegations that Respondent issued an excessive number of buyer's temporary tags relative to its vehicle sales and issued them for vehicles not in its inventory. Concerning the latter ground, Staff invokes the presumption that a vehicle is not in a dealer's inventory if it does not appear in the corresponding monthly VIT statement. In that regard, Staff alleges the existence of discrepancies between Respondent's issuance of buyer's temporary tags from September 2021 (when the statute creating the denial-of-access remedy took effect) through April 2022 versus the motor-vehicle sales Respondent had reported in VIT statements filed with the Harris County tax assessor-collector for

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<sup>28</sup> 1 Tex. Admin. Code § 155.427.

<sup>29</sup> *Granek v. Texas St. Bd. of Med. Examin'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.); *Southwestern Pub. Servs. Co. v. Pub. Util. Comm'n of Tex.*, 962 S.W.2d 207, 213-14 (Tex. App.—Austin 1998, pet. denied).

<sup>30</sup> Staff Ex. 1.

<sup>31</sup> Staff Ex. 2 at 6-22; Staff Ex. 3.

each corresponding month (which should match if both sets of tasks are done properly). More specifically, Staff alleges that (1) Respondent issued temporary tags between September and December 2021 while not filing any VIT statements that year; and (2) although Respondent did file VIT statements monthly between January through April 2022, the vehicle sales it reported did not include all of the vehicles for which it had issued buyer's temporary tags each month.<sup>32</sup>

Staff's amended Notice of Department Decision includes materially the same allegations of discrepancies between Respondent's VIT statements and its issuance of buyer's temporary tags, but also complains of the same discrepancies during each of the months extending back to May 2021 (again premised on an underlying assertion that Respondent did not file any VIT statements in 2021).<sup>33</sup> In total, Staff alleges that Respondent issued a total of 99 buyer's temporary tags between May 2021 and April 2022 for which there was no VIT statement on file reporting that the vehicle had been sold, with 38 of those tags being issued in September 2021 or later (and thus also relevant to the denial of database access).<sup>34</sup> It also pleads Respondent's alleged failure to file VIT statements in 2021 as an

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<sup>32</sup> Staff Ex. 2 at 7-8.

<sup>33</sup> Staff Ex. 3 at 5-6 (numbered as violation 11).

<sup>34</sup> Staff Ex. 3 at 5-6. To be precise, the amended Notice of Department Decision alleges that Respondent issued a slightly lower number of buyer's temporary tags during September through December 2021 and during March through April 2022 than is alleged in the Notice of Denial of Access. *Compare* Staff Ex. 3 at 5-6 *with* Staff Ex. 2 at 7-8. This discrepancy is evidently the product of amendments to the original Notice of Department Decision that were not replicated in the parallel portions of the Notice of Denial of Access. *Compare* Staff Ex. 3 at 5-6 *with* Staff Ex. 2 at 14-15. However, Staff disclaimed any attempt to prove the larger numbers at the hearing, effectively making the numbers in the amended Notice of Department Decision the relevant pleadings with respect to both sets of remedies. Moreover, as Staff observed at the hearing, the difference is ultimately immaterial to whether or not it met its burden of proof in establishing the Board's authority to continue denying database access. *See* 43 Tex. Admin. Code § 215.505(a)(1)-(2).



independent violation.<sup>35</sup> The pleading further asserts additional violations predicated on Respondent's alleged issuing of multiple buyer's temporary tags on four vehicles, issuing the tags on three of those vehicles despite lacking proper inspections, and issuing the tags on the fourth vehicle despite not having made the purported sale.<sup>36</sup> The pleading also accuses Respondent of failing to timely initiate registration and title transfer for another vehicle or to produce records as required when requested by a DMV representative.<sup>37</sup>

#### **A. MR. SCOTT'S DIRECT TESTIMONY**

Mr. Scott testified that he had worked as a DMV investigator for approximately five years following a 32-year career with the Houston Police Department. In his current role, he explained, he investigates complaints against Texas motor-vehicle dealers originating either externally or from within the agency. Mr. Scott attested that he was familiar with the statutes and rules that governed DMV licensees, and the substance of his testimony tended to validate that assertion. His testimony consisted chiefly of referencing and explaining documents he had compiled during his investigation and opining to the effect that they established each of the violations Staff had alleged.

Mr. Scott recounted that he began an investigation of Respondent at the direction of a DMV superior following the agency's receipt of a complaint from one of Respondent's customers alleging failure to initiate title transfer and registration

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<sup>35</sup> Staff Ex. 3 at 4 (violation 10).

<sup>36</sup> Staff Ex. 3 at 3-4 (violations 3-8).

<sup>37</sup> Staff Ex. 3 at 3-4 (violations 1 and 9, respectively).

and based on further concerns about possible misuse of buyer's temporary tags. Regarding the latter, Mr. Scott testified, he ran an inquiry in DMV's temporary-tag database that generated a "tag report" (Staff Exhibit 6) listing every buyer's temporary tag that had been issued under Respondent's name (John Chilaka, login "JCHILAKA") during the months of May 2021 through April 2022. The tag report reflected that a total of 106 temporary tags were generated under Respondent's name during this time period and listed each respective tag number, date and time of issuance, and information provided by Respondent that included the purported date of sale and vehicle make, model, year, color, and unique 17-digit identification (VIN) number.<sup>38</sup>

Additionally, Mr. Scott explained, he made an open-records request to the Harris County tax assessor-collector's office for all VIT statements Respondent had filed there during the same months, providing Respondent's dealer number to that end. The office responded that "[t]here were not VIT statements received for 2021 associated with this dealer license number" but produced copies of VIT statements that Respondent had filed each month from January through April 2022.<sup>39</sup> Comparing the VIT statements to the tag report, Mr. Scott noted, revealed that Respondent had issued buyer's temporary tags in each month for vehicles that it had not identified as being sold in the corresponding VIT statement.

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<sup>38</sup> Staff Ex. 6. Although there are 108 numbered lines in the tag report, the first two lines consist of headers, with the listing of tags and related information beginning on line three.

<sup>39</sup> Staff Ex. 16.

- In January 2022, the tag report showed that Respondent had issued a temporary tag on one vehicle, but the corresponding monthly VIT statement had represented that “0” vehicles were sold.<sup>40</sup>
- In February 2022, the tag report showed that Respondent had issued temporary tags on five vehicles, only two of which were shown in the corresponding monthly VIT statement as being sold.<sup>41</sup>
- In March 2022, the tag report showed that Respondent had issued temporary tags on six vehicles, only three of which were shown in the corresponding monthly VIT statement as being sold.<sup>42</sup>
- In April 2022, the tag report showed that Respondent had issued temporary tags on four vehicles, only two of which were shown in the corresponding monthly VIT statement as being sold.<sup>43</sup>

Furthermore, Mr. Scott deduced from the county’s response to his open-records request that Respondent had failed to file VIT statements for any month during 2021. In addition to constituting an independent violation, Mr. Scott reasoned, the failure also created further inconsistency with the tag report, which reflected that Respondent had issued 13 buyer’s temporary tags in May 2021, 18 in June, 14 in July, 16 in August, 9 in September, 6 in November, and 5 in December.<sup>44</sup>

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<sup>40</sup> Compare Staff Ex. 6 at 3 (line 93, showing one tag issued that month) with Staff Ex. 16 at 2 (representing that there were zero sales that month).

<sup>41</sup> Compare Staff Ex. 6 at 3 (lines 94-98, showing five tags issued) with Staff Ex. 16 at 4 (showing only two sales, of the vehicles listed on lines 94 and 98 of the tag report).

<sup>42</sup> Compare Staff Ex. 6 at 3 (lines 99-104, showing six tags issued) with Staff Ex. 16 at 6 (showing only three sales, of the vehicles listed on lines 99, 100, and 101 of the tag report).

<sup>43</sup> Compare Staff Ex. 6 at 3 (lines 105-08, showing four tags issued) with Staff Ex. 16 at 8 (showing only two sales, of the vehicles listed on lines 105 and 107 of the tag report).

<sup>44</sup> Staff Ex. 6 at 1-3.

Mr. Scott also pointed out other anomalies concerning the buyer's temporary tags that Respondent had issued in 2021. In four instances, the tag report reflected that Respondent had issued more than one buyer's temporary tag on a single vehicle.

- Respondent had issued buyer's temporary tags on a 2010 Buick, VIN ending in 3586, on May 11, July 12, and September 20, 2021.<sup>45</sup> Through an additional query into the database, Mr. Scott ascertained the buyer's identity as Gustavo Mondragon Garduno.<sup>46</sup>
- Respondent had issued buyer's temporary tags on a 2013 Toyota Camry, VIN ending in 5866, on June 2, August 2, and October 7, 2021.<sup>47</sup> The buyer was shown in the database as Iheanyichukwu Chilaka.<sup>48</sup>
- Respondent had issued buyer's temporary tags on a 2015 Buick, VIN ending in 3210, on June 4, August 4, and October 7, 2021.<sup>49</sup> The buyer was shown as Charlotte Nicole Igwe.<sup>50</sup>
- Respondent had issued buyer's temporary tags on a 2013 Lexus, VIN ending in 8565, on August 23, October 22, and December 22, 2021.<sup>51</sup> The buyer was shown as Uchechukwu Iwueze.<sup>52</sup>

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<sup>45</sup> Staff Ex. 6 at 1-2 (lines 5, 38, and 67).

<sup>46</sup> Staff Ex. 8 at 2.

<sup>47</sup> Staff Ex. 6 at 1-3 (lines 17, 48, and 77).

<sup>48</sup> Staff Ex. 10 at 2.

<sup>49</sup> Staff Ex. 6 at 1-3 (lines 20, 53, and 76).

<sup>50</sup> Staff Ex. 12 at 1.

<sup>51</sup> Staff Ex. 6 at 2-3 (lines 61, 80, and 92).

<sup>52</sup> Staff Ex. 14 at 1-4.

Further, anticipating an explanation to which Mr. Chilaka had alluded in opening statements, Mr. Scott opined that if delays in processing vehicle registration by the county tax assessor-collector's office were threatening to extend beyond the 60-day duration of the buyer's temporary tags, placing the driver at risk of being detained and cited for operating the vehicle without proper registration, the proper recourse was "never" for the dealer to issue another temporary tag, but instead for the dealer or buyer to obtain up to three 30-day permits from the county or DMV.<sup>53</sup>

Moreover, Mr. Scott attested that he had run VIN-number-based searches of each vehicle's inspection history through a website maintained by the Texas Commission on Environmental Quality. Referencing printouts of the results, Mr. Scott observed that these searches showed no inspection history for the 2010 Buick sold to Mr. Garduno or the 2013 Toyota Camry sold to Iheanyichukwu Chilaka, and only a July 2022 inspection—several months after Respondent had issued the buyer's temporary tags—on the 2015 Buick sold to Ms. Igwe.<sup>54</sup> From this evidence, Mr. Scott concluded that Respondent had committed violations both by issuing multiple buyer's temporary tags on the four vehicles and by issuing the multiple tags on three of them without a valid inspection within the 180 days preceding the issuance of each tag.

Mr. Scott also pointed out another oddity regarding the buyer's temporary tags issued on the 2013 Lexus sold to Mr. Iwueze. Namely, title history he had

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<sup>53</sup> Apparently referring to the 30-day permit authorized under Texas Transportation Code § 502.095 and 43 Texas Administrative Code § 217.40.

<sup>54</sup> Staff Ex. 7 at 1, Staff Ex. 9 at 1, Staff Ex. 11 at 1.

compiled reflected that Respondent (or someone purporting to act as its representative) had assigned the vehicle to another dealer, Sammy's Auto Repair Shop, on June 22, 2021; that Sammy's on that same day had sold the vehicle to Mr. Iwueze; and that Sammy's had then applied for title and registration on the buyer's behalf,<sup>55</sup> although the registration was ultimately not completed until December 30 of that year.<sup>56</sup> These sales involving Sammy's, Mr. Scott observed, predated all three of the buyer's temporary tags Respondent issued on that vehicle, which as noted were issued in August, October, and December 22, 2021. From this, Mr. Scott deduced that Respondent had issued three buyer's temporary tags on a vehicle that it did not actually sell, having previously sold it to Sammy's and Sammy's having made the sale to the buyer.

Mr. Scott further testified that Respondent had failed to apply for title or registration after selling a 2005 Toyota Camry to a Konstantin Maruzhenkov on November 4, 2021. He indicated that Mr. Maruzhenkov had been the complainant to whom he had alluded previously. Referencing printouts of title and registration history, Mr. Scott determined that the registration and title applications had ultimately been handled by Sammy's Auto Repair Shop (the same business involved with the vehicle sold to Mr. Iwueze) in 2022.<sup>57</sup>

Finally, Mr. Scott asserted that he had repeatedly requested copies of Respondent's sales records without success, constituting an additional violation.

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<sup>55</sup> Staff Ex. 13 at 11, 13-19.

<sup>56</sup> Staff Ex. 14 at 4.

<sup>57</sup> Staff Ex. 5 at 1-4.

He testified that he initially sent the request via email, regular mail, and certified mail to Respondent's addresses of record, then sought to obtain the records during an in-person site visit made during business hours on August 9, 2022. On this occasion, Mr. Scott recounted, Mr. Chilaka was not present, only a female employee, whom he identified by name. He added that the employee advised him that the requested records were not kept on site but with Mr. Chilaka, who was "away." According to Mr. Scott, he gave this employee a hard copy of his records request, and the employee appeared to be very cooperative, promising to get hold of Mr. Chilaka and obtain and produce the records immediately. But that never occurred, Mr. Scott maintained. Mr. Scott further testified that during this visit or an earlier one in May 2022, he had taken pictures of Respondent's facilities, which were in evidence and which he attested were accurate depictions of what he had seen.<sup>58</sup> The pictures include depictions of a secured "Inventory Parking Area" with what appears to be only three vehicles inside.<sup>59</sup>

Based on the evidence he had described, Mr. Scott expressed agreement with Staff's allegations of violations in its amended Notice of Department Decision and Notice of Denial of Access.

## **B. MR. GE'S TESTIMONY**

Through his testimony by affidavit, Mr. Ge presented Staff's reasoning or justifications for the administrative sanctions it was recommending in the event it

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<sup>58</sup> Staff Ex. 15.

<sup>59</sup> Staff Ex. 15 at 5-7.

proved all of the alleged violations. Mr. Ge attested that he had considered the statutory penalty factors, “the Department’s penalty matrix,” and “past decisions of the [Board] and [DMV’s] assessment of penalties for violations committed by licensees” with which he professed to be familiar but did not elaborate.<sup>60</sup> Nor, aside from his initial acknowledgment of the standards, did Mr. Ge cite any specific statutory penalty factors or Disciplinary Matrix provisions or explicitly tie his opinions to any particular factors.<sup>61</sup>

Mr. Ge opined, without citing specific authority, that the “normal sanction” for issuing a buyer’s temporary tag improperly would be \$1,000 for each such violation. However, in lieu of so fining Respondent for each of dozens of tags it had issued without a corresponding sale reflected in a VIT statement on file, Mr. Ge recommended that the \$1,000 penalty instead be assessed on a per-month basis, for each of the twelve months in which the discrepancies existed (May 2021 through April 2022), or \$12,000 for those violations collectively, in recognition that Respondent had only been licensed since December 2019 and had no prior violation history.<sup>62</sup>

But Mr. Ge also advocated an additional \$3,000 be imposed for Respondent’s issuance of the three buyer’s temporary tags on the 2013 Lexus despite not actually making the sale; another \$2,000 for failing to file VITs in 2021,

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<sup>60</sup> Staff Ex. 18 at 2.

<sup>61</sup> Likewise, as discussed further below, Mr. Ge did not specify which version of “the Department’s penalty matrix,” he was referencing.

<sup>62</sup> Staff Ex. 18 at 2.



deeming this “a serious violation”; and \$1,000 for each of what Staff treated as eight remaining violations (or \$8,000 collectively)—issuing successive buyer’s temporary tags on the vehicles sold to Mr. Garduno, Ms. Igwe, and Iheanyichukwu Chilaka (which Staff treated as three violations, one for each respective vehicle and buyer); issuing tags on these vehicles despite lacking proper inspections at time of each issuance (treated as three violations, one for each vehicle and buyer); failing to initiate title transfer and registration for the 2005 Toyota Camry sold to Mr. Maruzhenkov (one violation); and failing to produce records for inspection when requested by Mr. Scott (one violation).<sup>63</sup>

Adding these figures yields the \$25,000 total amount of civil penalties Staff is seeking.<sup>64</sup> Mr. Ge further urged revocation of Respondent’s dealer license “given the severity and number of violations.”<sup>65</sup> (That remedy, the ALJ would note, would also have the collateral effect of independently barring Respondent’s access to the temporary-tag database, as Respondent would no longer be a licensed dealer entitled to access in the first instance.<sup>66</sup>)

### **C. MR. CHILAKA’S TESTIMONY**

Under examination by Staff, Mr. Chilaka confirmed that he was the owner of Respondent, that Respondent had been licensed as a dealer since 2019, and that he and Respondent had been engaged in the used-car business since that time. In

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<sup>63</sup> Staff Ex. 18 at 2-3.

<sup>64</sup> Staff Ex. 18 at 2-3.

<sup>65</sup> Staff Ex. 18 at 3.

<sup>66</sup> See Tex. Transp. Code § 503.038(d).

response to queries about the extent of training or education he had received in the laws and rules governing motor-vehicle dealers, Mr. Chilaka stated that he had received just “a little” when initially obtaining his license in 2019 but more since, through an online course in late 2022, in connection with a license-renewal application. When asked whether he was generally familiar with the rules and regulations governing Texas used-car dealers, he responded (with what sounded like a chuckle) “I can’t say I know everything” and that he was “learning every day.” Mr. Chilaka added, with apparent reference to this case and the additional training he claimed to have received more recently, that he had “learned [his] lesson” as to “what was wrong, what is right,” and that he did “not think this will ever happen again.” He would return to these themes frequently during his ensuing testimony.

Mr. Chilaka acknowledged that Respondent had issued three buyer’s temporary tags on each of the four vehicles Staff had alleged (the 2010 Buick, the 2013 Toyota Camry, the 2015 Buick, and the 2013 Lexus). He explained that he (or Respondent) had done so in attempting to placate the customers who had purchased the vehicles because those customers had encountered prolonged delays in the county’s processing of registration,<sup>67</sup> were resultantly at risk of or were getting stopped by law enforcement for having expired temporary tags, and then complained to him about their plight. Mr. Chilaka insisted that he had not known at the time of these acts that he was prohibited from issuing more than one buyer’s

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<sup>67</sup> Mr. Chilaka further suggested that these asserted delays stemmed in part from COVID-related impediments, including an extended registration deadline, with matters made worse by the office’s rejection of some applications for “mistakes” that required correction and resubmission.

temporary tag per vehicle and sale, nor of the 30-day permit solution, but was now aware of both.

In response to questions about the vehicle-inspection allegations, Mr. Chilaka insisted that “most” vehicles Respondent sold had been inspected, further professing to recall that the 2013 Lexus had been inspected (and Staff does not allege otherwise<sup>68</sup>). But when pressed regarding the three vehicles for whom Staff had alleged failures to obtain inspections (the 2010 Buick, the 2013 Toyota Camry, and the 2015 Buick), Mr. Chilaka initially posited that he had been “away” for periods of time on business travel to Nigeria (he later indicated that he was a native of that country), implying that any such failures were the doings of employees rather than him. He acknowledged, however, that he (or more precisely Respondent) was ultimately responsible for the acts of those employees. Mr. Chilaka also urged that he had not been familiar with the governing regulations in 2021, when those violations alleged occurred, but had since acquired greater awareness and would not make the same “mistakes” again. Yet later in his testimony, Mr. Chilaka insisted that each of the three vehicles had, in fact, been inspected.

Regarding the allegations that Respondent had failed to apply for title and registration on the 2005 Toyota Camry purchased by Mr. Maruzhenkov, Mr. Chilaka seemed to contend initially that he or Respondent had not acted improperly. He asserted that Mr. Maruzhenkov had paid cash for the vehicle, received title immediately, and requested Respondent not to register the vehicle in

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<sup>68</sup> See Staff Ex. 3 at 3 (violations 2-4); Staff Ex. 13 at 20.

Texas because he intended to export it. As it turned out, according to Mr. Chilaka, Mr. Maruzhenkov had not exported the vehicle as he had indicated, but instead “driv[en] it around” and ultimately been stopped and cited by law enforcement after the buyer’s temporary tag expired. That event, he suggested, was the source of the “problems” with Mr. Maruzhenkov, along with that buyer’s own failure to export the vehicle as he had represented. Yet Mr. Chilaka later acknowledged that no references to exporting appear in Respondent’s records concerning the vehicle, that he was obligated to transfer title and registration when selling a vehicle, and that he had done otherwise at Mr. Maruzhenkov’s request because “the pressure is too much.”

Mr. Chilaka was also asked to explain why registration and title transfer for this vehicle, through sold by Respondent, were ultimately completed by Sammy’s Auto Repair Shop in March 2022. Sammy’s, Mr. Chilaka testified, was a fellow used-car dealer which whom Respondent would trade (*e.g.*, referring customers to each other) and to whom Respondent would give registration and title paperwork to handle on sales Respondent made when Mr. Chilaka was out of the country and unable to perform those functions himself. According to Mr. Chilaka, this had been the arrangement with respect to not only the 2005 Toyota Camry sold to Mr. Maruzhenkov, but also the 2013 Lexus sold to Mr. Iwueze (the one shown in documentation to have been sold by Sammy’s instead). Mr. Chilaka insisted that Respondent, not Sammy’s, had actually sold the 2013 Lexus to Mr. Iwueze, with Sammy’s role being merely to handle the registration paperwork in Mr. Chilaka’s absence. Thereafter, as he had done with other customers to whom he had sold vehicles, according to Mr. Chilaka, he had issued additional, successive buyer’s

temporary tags to Mr. Iwueze when prolonged delays were encountering in getting the vehicle registered (which, as noted previously, did not occur until December 30, 2021).<sup>69</sup> As for why the title history would instead reflect an intervening assignment of the vehicle from Respondent to Sammy's, placing the vehicle in Sammy's name and Sammy's then selling it to the retail buyer, Mr. Chilaka responded that he did not know.

Mr. Chilaka also pushed back when questioned about Respondent's alleged failures to file VIT statements during 2021. He insisted that those statements had been filed for Respondent. But as for why the Harris County tax assessor-collector's office would have advised that no such statements were on file, Mr. Chilaka stated that he did not know. Staff also inquired whether Respondent had filed VIT statements after June 14, 2022 (the date of the open-records response). To this, Mr. Chilaka acknowledged some uncertainty and that he would need to check Respondent's records, stating that he had not been "around" during much of that period and that his "secretary" could have failed to do so in his absence.

Under questioning about the recordkeeping allegations, Mr. Chilaka insisted that, contrary to Mr. Scott's account of his exchange with one of Respondent's employees, Respondent's sales records were maintained in a locked "wardrobe" in Mr. Chilaka's office at Respondent's licensed location. He added that he had not "been around" during Mr. Scott's visit and that he would have provided the records had he been present. Yet Mr. Chilaka also appeared to acknowledge that the employee had informed him that Mr. Scott had come by the dealership on

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<sup>69</sup> Staff Ex. 14 at 4.

August 9, 2022, and hand-delivered a records request. When asked whether he had responded, Mr. Chilaka insisted that “I think I gave him [Mr. Scott] most of what I have” while also insinuating a failure on his “secretary’s” part to inform him fully or clearly about everything that had been requested. But when pressed as to whose responsibility it was to respond to the records request, Mr. Chilaka again insisted that he would have produced the records had he been “around,” maintained that he had not been aware of the request (or at least the full extent of it), and suggested that his earlier acknowledgment of hearing about Mr. Scott’s request had instead referred to a different site visit or visits by Mr. Scott on an unrelated matter.<sup>70</sup>

In his direct testimony, Mr. Chilaka returned to the theme that he or Respondent had “made some mistakes,” but had learned his “lesson” and would not repeat them. He further expressed a desire to resolve the matter informally, insisting that he would comply with any requirements necessary to that end. Upon being advised that Staff was no longer interested in settlement negotiations at that juncture and that the ALJ would be required to rule on the merits of Staff’s allegations, Mr. Chilaka granted that some of the allegations were “facts” (*i.e.*, true) but urged the ALJ to consider that (1) many of the acts at issue were committed under “pressure” from customers, (2) he had not been aware that he was violating any laws, (3) “everyone makes mistakes,” and (4) he would avoid such “mistakes” in the future. In closing argument, he added a further plea for mercy regarding the civil penalty amount Staff was seeking, urging that \$25,000 would be unaffordable to him.

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<sup>70</sup> According to Mr. Chilaka, this site visit or visits had related to wind damage to the dealership’s signage.

In response to a question from the ALJ intended to clarify his understanding of Respondent's position, Mr. Chilaka testified that Respondent had not issued any buyer's temporary tags for a vehicle it had not actually sold. In response to another ALJ question about the VIT statements, Mr. Chilaka asserted that he filed them each month whenever he was around and not away. He further suggested that any failure by Respondent to file VIT statements might correspond to a three-or-four-month period in which he was in Nigeria in connection with the death of his father and unable to return, although it was unclear whether he was referring to filings after June 2022 (the subject of his previous similar testimony) or those from 2021.

#### **D. MR. SCOTT'S REBUTTAL TESTIMONY**

On rebuttal, Mr. Scott disputed Mr. Chilaka's testimony that Respondent had provided him records in response to Mr. Scott's request. He reiterated his earlier account that he had never received records from Respondent.

#### **IV. ANALYSIS**

The following violations were established by Mr. Scott's testimony and related documentation and were either materially undisputed or not persuasively disputed by Respondent:

- Respondent violated Texas Transportation Code § 503.063(a)'s prohibition against issuing more than one buyer's temporary tag to the vehicle's purchaser, by:
  - Issuing, after an initial buyer's temporary tag on May 11, 2021, successive tags on July 12 and September 20 of that year on the 2010 Buick sold to Mr. Garduno.

- Issuing, after an initial buyer's temporary tag on June 2, 2021, successive tags on August 2 and October 7 of that year on the 2013 Toyota Camry sold to Iheanyichukwu Chilaka.
  - Issuing, after an initial buyer's temporary tag on June 4, 2021, successive tags on August 4 and October 7 of that year on the 2015 Buick sold to Ms. Igwe.
- With respect to each of these three vehicles, and each of the three buyer's temporary tags it issued on each, Respondent violated the requirements of Board rules that the vehicle must have passed a valid state inspection within the preceding 180 days.
- On the 2005 Toyota Camry it sold to Mr. Maruzhenkov, Respondent failed to comply with the requirements of Texas Transportation Code § 501.0234 and Board rules to initiate registration within 30 days after date of sale.
- Respondent violated the VIT statement-filing requirement under Texas Tax Code § 23.122 for each month beginning in May 2021 through December of that year.
- Respondent violated the requirement of Board rules that it make records available for inspection by a DMV representative at its licensed location during posted business hours.

Further, Mr. Chilaka effectively conceded that Respondent had violated Texas Transportation Code § 503.063(a) with respect to each of the three buyer's temporary tags it issued on the 2013 Lexus sold to Mr. Iwueze. Under Mr. Chilaka's account of the arrangement between Respondent and Sammy's Auto Repair regarding this sale, his testimony implies that an initial buyer's temporary tag would have been issued at the time of sale, June 22, 2021, presumably by Sammy's, making all three of the tags Respondent issued thereafter improper



successive temporary tags. But the vehicle's title history also demonstrates persuasively that, as Staff contends, a representative of Respondent assigned the vehicle's title to Sammy's and that Sammy's, not Respondent, was thus the selling dealer, at least as far as the governing law is concerned. Although the representative's signature on the assignment appears to differ from signatures of Mr. Chilaka found elsewhere in Staff's exhibits<sup>71</sup>—a circumstance that would be consistent with Mr. Chilaka's account of being away at the time—it matches the signature of Respondent's representative in its preceding purchase of the vehicle roughly one month earlier.<sup>72</sup> Consequently, whatever Mr. Chilaka's subjective understanding may have been, it remains that Respondent issued all three buyer's temporary tags on this vehicle despite not actually being the lawful seller, acts inconsistent with statutes and rules contemplating that such tags are to be issued by the selling dealer and not others.<sup>73</sup>

Each of these violations constitute grounds for administrative sanctions up to and including license revocation, as well as authorizing the Board to impose civil penalties under either or both Texas Occupations Code § 2301.801 and Texas Transportation Code § 503.095.<sup>74</sup> Moreover, Respondent's issuance of the latter two buyer's temporary tags on the 2013 Lexus sold to Mr. Iwueze, the third buyer's temporary tags issued on the 2010 Buick sold to Mr. Garduno, the third

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<sup>71</sup> Compare Staff Ex. 13 at 15 with Staff Ex. 16 at 2, 4, 6, 10.

<sup>72</sup> See Staff Ex. 13 at 15.

<sup>73</sup> See Tex. Transp. Code §§ 503.063-.0632; 43 Tex. Admin. Code §§ 215.150, .152, .155, 505(a).

<sup>74</sup> See Tex. Occ. Code §§ 2301.651(a), .801(a); Tex. Transp. Code §§ 503.038(a), .095; 43 Tex. Admin. Code § 215.141.

buyer's temporary tag issued the 2013 Toyota Camry sold to Iheanyichukwu Chilaka, and the third buyer's temporary tag issued on the 2015 Buick sold to Ms. Igwe—*i.e.*, the tags Respondent issued after September 1, 2021, the effective date of the remedy—establish that Respondent issued “an excessive number of temporary tags relative to dealer sales” in each instance, a form of “misuse” of the temporary tag database, conferring discretion on the Board to continue to deny Respondent access to that database.<sup>75</sup>

However, to the extent Staff is seeking to establish additional violations predicated on discrepancies between tags Respondent issued versus sales reported in VIT statements, its proof falls short. And this is so despite the presumption under the Board's rules that a vehicle was not in Respondent's inventory if “the vehicle is not listed in the relevant monthly [VIT statement].”<sup>76</sup>

As Staff acknowledged during the hearing, a “presumed” fact, without more, does not necessarily equal a proven fact (*i.e.*, a *conclusive* presumption). Rather, a “presumption” ordinarily denotes the existence of circumstances that would suffice as legally sufficient evidence (also known as a *prima facie* showing) of a material fact (here, that Respondent had issued buyer's temporary tags on vehicles it did not actually have in inventory or sell), but is “rebutted” and

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<sup>75</sup> See Tex. Transp. Code § 503.0632(f); 43 Tex. Admin. Code § 215.505(a)(1).

<sup>76</sup> See 43 Tex. Admin. Code § 215.505(a)(2).

deprived of effect once the adverse party joins issue with controverting evidence.<sup>77</sup> Respondent presented *some* controverting evidence to rebut the presumption—Mr. Chilaka testified that Respondent never issued a buyer’s temporary tag on a vehicle it did not actually sell. Consequently, the burden reverted to Staff to prove the affirmative by a preponderance of the evidence, *i.e.*, the general burden and standard of proof, without benefit of the presumption. Staff did not do so with respect to any violations beyond those just noted.

Granted, the discrepancies between Respondent’s issuance of buyer’s temporary tags and its VIT statements in January through April 2022 could conceivably be explained by Respondent having issued tags on vehicles for which there was no underlying sale and/or vehicle in inventory. But that inference would assume or require that the VIT statements were accurate in the vehicle sales they reported, which in turn presents an alternative potential explanation that remains at least equally plausible on this record. Namely, the converse could also be true: the VIT statements could be inaccurate, omitting sales for which Respondent had legitimately issued buyer’s temporary tags (which, if also a violation, is not alleged by Staff here). The inference of temporary tag misuse would be even more tenuous for the months during 2021—here the discrepancies prove no more than a necessary consequence of Respondent’s separate violation of failing to file VIT statements during that time frame. In either case, Staff’s proof does not permit the

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<sup>77</sup> See Presumption, Black’s Law Dictionary (11th ed. 2019); *Dubai Petrol. Co. v. Kazi*, 12 S.W.3d 71, 80-81 (Tex. 2000) (and citing other authorities to the same effect). And judges are to construe statutes and rules based on the ordinary meaning of the words used, informed by context that includes background law. See *Texas Comm’n on Env’t Quality v. Maverick Cnty.*, 642 S.W.3d 537, 544 (Tex. 2022) (quoting *Patients Med. Ctr. v. Facility Ins. Co.*, 623 S.W.3d 336, 341 (Tex. 2021), and citing *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011)); *In re Allen*, 366 S.W.3d 696, 706 (Tex. 2012) (quoting *Acker v. Texas Water Comm’n*, 790 S.W.2d 299, 301 (Tex. 1990)).

ALJ to infer from the existence of the discrepancies (and no more) that Respondent had more likely than not issued additional buyer's temporary tags without having underlying sales or vehicles in inventory, *vis-a-vis* other potential explanations,<sup>78</sup> or at least does not do so persuasively.

The upshot of these holdings is that Staff proved some but not all of the violations it alleges as the bases for the administrative sanctions it seeks in this case, and in fact did not prove a substantial number of them, whether those violations are “counted” as dozens of individual instances when Respondent issued a buyer's temporary tag without a corresponding sale shown in a VIT statement or, as Staff proposes, they are treated as twelve per-month violations. Besides commensurately reducing Staff's support for revoking Respondent's dealer license, Staff's partial success would support only \$13,000 of the administrative penalties under the analysis presented by Mr. Ge—\$3,000 for Respondent's issuance of the three buyer's temporary tags on the 2013 Lexus sold to Mr. Iwueze; \$2,000 for failing to file VITs in 2021; \$1,000 each for issuing multiple buyer's temporary tags on the 2010 Buick sold to Mr. Garduno, the 2013 Toyota Camry sold to Iheanyichukwu Chilaka, and the 2015 Buick sold to Ms. Igwe (\$3,000 collectively); \$1,000 each for issuing buyer's temporary tags on the same three vehicles despite lacking state inspections (\$3,000 collectively); \$1,000 for failing to initiate title transfer and

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<sup>78</sup> See *City of Keller v. Wilson*, 168 S.W.3d 802, 813-14 (Tex. 2005) (“In claims and defenses supported only by meager circumstantial evidence, the evidence does not rise above a scintilla (and thus is legally insufficient) if [the fact-finder] would have to guess as to whether a vital fact exists. [And] [w]hen the circumstances are equally consistent with either of two facts, neither fact may be inferred.” (citations and internal quotations omitted)); see also *Kramer v. Lewisville Hosp.*, 858 S.W.2d 397, 405 (Tex. 1993) (explaining, with regard to causation, that the preponderance-of-the-evidence standard serves to ensure that “a sufficient number of alternative explanations and hypotheses for the cause of the harm are eliminated to permit a judicial determination of responsibility”).

registration for the 2005 Toyota Camry sold to Mr. Maruzhenkov; and \$1,000 for failing to produce records for inspection when requested by Mr. Scott.<sup>79</sup>

Further analysis requires the ALJ to consider the statutory penalty factors noted previously. Staff has urged that the ALJ also utilize, as further guidance, a DMV Disciplinary Matrix that elaborates upon the statutory factors and prescribes presumptive penalty ranges for certain violations. However, the record presents some confusion and uncertainty as to the version Staff is requesting the ALJ to apply. Staff requested the ALJ to take official notice of the Disciplinary Matrix, citing a link to a copy on its website, and the ALJ did so, while also offering and having admitted into evidence a printed copy as Staff Exhibit 17. But unbeknownst to the ALJ at time of hearing (and presumably also to Staff), it turns out that the Disciplinary Matrix posted on DMV's website differs from Staff Exhibit 17—and in some potentially material ways.

The version posted on the website bears the date of May 17, 2023, and would thus seemingly represent the version in effect at time of hearing (held a few days later) and currently. By contrast, the printed version in Staff Exhibit 17 lacks any indicated date, suggesting a predecessor version. But more critically, the current version reflects much greater emphasis and rigor regarding temporary-tag misuse than does the Staff Exhibit 17 version.<sup>80</sup> For example, the current version condemns the “**extraordinary breach of trust**” of temporary-tag misuse, warns

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<sup>79</sup> Staff Ex. 18 at 2-3.

<sup>80</sup> Compare <https://www.txdmv.gov/sites/default/files/body-files/Motor-Vehicle-Disciplinary-Matrix.pdf> (last visited June 29, 2023) with Staff Ex. 17.

that such conduct “**will be sanctioned as such,**” and that “[e]very **misused temporary tag will incur a penalty of NO LESS THAN \$1,000 PER TAG**” (all emphases in original), further prescribing license revocation as the sanction for a “high” violation. No such language appears in the Staff Exhibit 17 version, and the range of prescribed penalties is lower, including a mere warning letter for a “low” violation.

Where, as here, Staff requests the ALJ to apply a written agency policy not incorporated in a rule, Staff has the burden of authenticating it and showing it to be applicable to a factual or legal issue in the case.<sup>81</sup> In turn, the ALJ is to consider such a policy if “supported by the evidence” and determine whether to apply it based on factors that include “the extent to which the parties were given notice of the policy” and “had adequate opportunity to address it in the presentation of their cases and arguments.”<sup>82</sup> Staff presented evidence only of the Exhibit 17 version of the Disciplinary Matrix. Moreover, while Mr. Ge’s affidavit does not specify the version of “the Department’s penalty matrix” he was referencing, his affidavit is dated May 15, 2023—predating by two days the stated date of the current version, and implying that he was referencing the version then in effect, *i.e.*, Staff Exhibit 17.<sup>83</sup> Similarly, it is perhaps also significant that Staff’s Request for Official Notice, citing the website link at which the current version now appears, is itself dated May 16, 2023—again, before the current version’s date—implying that Staff was, at least at the time of its request, referring to the same version as Staff Exhibit 17.

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<sup>81</sup> 1 Tex. Admin. Code § 155.419(a).

<sup>82</sup> 1 Tex. Admin. Code § 155.419(b).

<sup>83</sup> Staff Ex. 18 at 3.

Only if Respondent or the ALJ happened to click on the website link sometime between May 17 and time of hearing would either have been made aware of any cause to question the continued applicability of the Staff Exhibit 17 version and/or of any material differences. Nor has Staff made any explicit contention to that effect. On this record, the ALJ finds that Staff has proven the existence and applicability of the DMV Disciplinary Matrix, but in the form reflected in Staff Exhibit 17 and not the May 17, 2023 version officially noticed.

Turning to the Staff Exhibit 17 version of the Disciplinary Matrix, the penalties it prescribes for misuse or improper issuance of a buyer's temporary tag range from a warning letter for a "low" violation (as noted) to a penalty of \$2,000 per tag for a "high" violation. Prescribed penalties for other pertinent violations range between \$500 per tag and \$2,000 per tag for issuing a buyer's temporary tag without an inspection<sup>84</sup>; between \$500 and \$2,000 for failing to comply with a records request<sup>85</sup>; and apparently similar penalty ranges for failing to file VIT statements or to initiate title or registration.<sup>86</sup> However, the text of the Disciplinary Matrix emphasizes that it does not limit DMV from seeking sanctions (or the Board imposing them) either below or above the recommended ranges "when circumstances require."<sup>87</sup>

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<sup>84</sup> See Staff Ex. 17 at 4.

<sup>85</sup> See Staff Ex. 17 at 5.

<sup>86</sup> See Staff Ex. 17 at 3 ("Tag and Title Violations," citing Tex. Tax. Code § 23.122 and Tex. Transp. Code § 501.0234).

<sup>87</sup> Staff Ex. 17 at 1.

In determining the amount of civil penalty to assess, this Disciplinary Matrix further provides, DMV or the Board will consider, as “aggravating circumstances,” the following, which replicate the first through fourth and the sixth statutory penalty factors:

- The seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public;
- The economic damage to the public caused by the violation;
- The history of previous violations;
- The amount necessary to deter a future violation; and
- Any other matter that justice may require.<sup>88</sup>

But the Matrix further specifies that the latter aggravating factor includes:

- History of violations of a similar nature;
- Number of violations or number of consumers harmed by violation;
- Attempted concealment of the violation;
- Intentional, premediated, knowing or grossly negligent act constituting a violation; and
- Violation of an order issued by [DMV].<sup>89</sup>

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<sup>88</sup> Staff Ex. 17 at 1; *compare* Tex. Occ. Code § 2301.801(b).

<sup>89</sup> Staff Ex. 17 at 1.



The Matrix also lists additional aggravating factors to be considered in determining whether license revocation is appropriate, although Staff did not purport to address any of these, and the following mitigating factors to be considered in determining either a civil penalty amount or whether revocation is appropriate:

- Acknowledgment of wrongdoing;
- Willingness to cooperate with [DMV];
- Efforts to correct the violation [the fifth statutory penalty factor]; and
- Any other matter that justice may require, to include:
  - Rehabilitative potential; and
  - Present value to the community.<sup>90</sup>

As an initial observation, nothing in the text of the Disciplinary Matrix (or at least the Exhibit 17 version) supports Staff's assertion that a \$1,000 per-tag penalty is the "normal sanction" for temporary tag misuse, although that amount would be within the prescribed penalty range.<sup>91</sup> Staff's sole support for that notion consisted of vague, conclusory references in the affidavit to "past decisions of the [Board] and [DMV's] assessment of penalties for violations committed by licensees," none of which are cited, described, or explained.<sup>92</sup> Without more than this *ipse dixit*, the ALJ is unpersuaded that he should apply or assume such a policy benchmark here.

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<sup>90</sup> Staff Ex. 17 at 1.

<sup>91</sup> Staff Ex. 18 at 2.

<sup>92</sup> Staff Ex. 18 at 2.

Rather, the choice of penalty amount within the applicable range (or, for that matter, whether to go above or below the range) must be guided by consideration of the prescribed factors as applied to the particular circumstances presented.

Turning to those factors, Respondent's conduct in issuing successive buyer's temporary tags on the vehicles sold to Mr. Garduno, Iheanyichukwu Chilaka, and Ms. Igwe, and issuing three buyer's temporary tags on the vehicle sold to Mr. Iwueze despite not being legally the seller, were not shown to be the product of any intentional or deliberate defiance or disobedience of the law or any sort of scheme to misuse buyer's temporary tags for some illicit purpose, evidently (and understandably) a key concern of DVM in recent years. Rather, the evidence was more consistent with a plausible and more benign explanation offered by Mr. Chilaka—essentially, these acts were attempts, though ultimately proving to be misguided under the law, to respond to concerns or demands from Respondent's customers (or those thought to be) who had encountered delays in obtaining vehicle registration.

Yet it remains that these violations were serious in nature, creating risks that the excessive temporary tags could be misused or abused by others. They also suggest a troubling degree of obliviousness regarding basic governing legal requirements by Mr. Chilaka or other agents of Respondent. But weighing somewhat the other way, Respondent has been licensed only since December 2019, a circumstance tending to square with the visage of a still-new and inexperienced dealer, and also one whose primary actor was not native to this country, struggling to find his way through the regulatory landscape. Further, Mr. Chilaka

acknowledged these violations, professes to have learned his “lessons” from this case, and insists that he has been striving to comply with these and other requirements going forward. Indeed, Staff has not alleged any violations by Respondent involving buyer’s temporary tags occurring after April 2022, nor proven any occurring after December 2021. Still, imposition of some civil penalties for these violations remains justified in the interest of deterring future “mistakes” of this sort.

Weighing these considerations and the other factors on this record, the ALJ recommends a \$500 civil penalty for each of Respondent’s excessive issuances of buyer’s temporary tags—the two successive tags issued to each of Mr. Garduno, Iheanyichukwu Chilaka, and Ms. Igwe (or a total of \$1,000 with respect to each of the three, the same amount Staff has requested) and the three buyer’s temporary tags issued to Mr. Iwueze (a total of \$1,500).

As for the remaining violations proved by Staff, the evidence is less favorable to Respondent in regard to any plausible excuse or justification, aside from Mr. Chilaka’s professions of contemporaneous ignorance of the law. Informed by the penalty ranges and relevant factors, the ALJ concurs with Staff’s requested civil penalty amounts for each of these violations—\$2,000 total for Respondent’s failures to file VIT statements between May and December 2021, \$1,000 total for issuing three buyer’s temporary tags to Mr. Garduno despite lacking state inspections within 180 days prior to each issuance, the same respective total penalty for those violations involving Iheanyichukwu Chilaka and Ms. Igwe, \$1,000 for failing to initiate registration and title transfer on the vehicle purchased by Mr.

Maruzhenkov within 30 days of sale, and \$1,000 for Respondent's failure to make records available for inspection at Ms. Scott's request. In this regard, the ALJ would note that Staff's penalty recommendations aggregate into single "violations" what are actually to be considered separate violations for purposes of determining civil penalties under both the Occupations Code and the Transportation Code authorizations.<sup>93</sup> The net effect is that several of Staff's penalty recommendations are, when viewed on a per-violation basis, near or even below the low end of the Disciplinary Matrix's applicable range.<sup>94</sup>

On this record, however, the ALJ does not recommend that the Board revoke Respondent's license or continue the current denial of its access to the temporary-tag database. Staff's principal focus in this case had been on its allegations that Respondent has engaged in extensive excessive issuance of buyer's temporary tags, yet it ultimately did not prove most of these allegations, and those it did prove turned out to be more benign in nature than the sort of "misuse" that would warrant those harsh consequences. Further, Staff has not alleged any violations of this sort since April 2022, nor proven any occurring since December 2021, circumstances tending to bear out Mr. Chilaka's professions of having learned his "lessons" and henceforth striven to comply. To the extent there would be any present potential concerns about Respondent's conduct going forward, DMV has the authority (and duty) to monitor the number of temporary tags

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<sup>93</sup> See Tex. Occ. Code § 2301.801(a); Tex. Transp. Code § 503.038(b).

<sup>94</sup> *E.g.*, Staff's proposed \$2,000 penalty for Respondent's failure to file VIT statements, substantively eight separate violations (committed each month between May and December 2021) would amount to only \$250 per each violation. Similarly, Staff's proposed penalty of \$1,000 for issuing buyer's temporary tags without an inspection would amount to, for each given buyer and tag issuance, a fine of only \$333.33.

Respondent is obtaining<sup>95</sup> and, if ever warranted, to re-deny database access and take further enforcement action accordingly.

In further support of these recommendations, the ALJ makes the following Findings of Fact and Conclusions of Law.

## **V. FINDINGS OF FACT**

1. Since December 2019, JNC Auto LLC (Respondent) has held a dealer's general distinguishing number issued by the Texas Department of Motor Vehicles (DMV), engaging in the business of used car sales at a licensed location on Fondren Road in Houston, Harris County.
2. Respondent is owned in its entirety by John Chilaka.
3. On August 26, 2022, the DMV staff (Staff) concurrently issued Respondent a Notice of Denial of Access to Temporary Tag System and a Notice of Department Decision.
4. Both matters were referred to the State Office of Administrative Hearings (SOAH) for contested-case hearing.
5. On January 9, 2023, Staff issued a Notice of Hearing to Respondent, which attached and incorporated Staff's previously issued Notice of Denial of Access to Temporary Tag System and Notice of Department Decision.
6. On February 28, 2023, Staff issued Respondent a First Amendment Notice of Department Decision.
7. The Notice of Hearing, First Amended Notice of Department Decision, and Notice of Denial of Access to Temporary Tag System contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a

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<sup>95</sup> See Tex. Transp. Code § 503.0632(f).

reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.

8. The hearing on the merits was convened on May 23, 2023, via Zoom videoconferencing, before SOAH Administrative Law Judge (ALJ) Robert Pemberton. Staff was represented by Attorney Damien Shores of DMV's Enforcement Division, while Respondent appeared through Mr. Chilaka. The hearing concluded that same day. The record closed on May 30, 2023, upon Staff's filing of the admitted exhibits.
9. After issuing an initial buyer's temporary tag on May 11, 2021, in connection with its sale of a 2010 Buick, vehicle identification number (VIN) ending in 3586, to Gustavo Mondragon Garduno, Respondent issued additional buyer's temporary tags on July 12 and September 20 of that year for the same vehicle.
10. After issuing an initial buyer's temporary tag on June 2, 2021, in connection with its sale of a 2013 Toyota Camry, VIN ending in 5866, to Iheanyichukwu Chilaka, Respondent issued additional buyer's temporary tags on August 2 and October 7 of that year for the same vehicle.
11. After issuing an initial buyer's temporary tag on June 4, 2021, in connection with its sale of a 2015 Buick, VIN ending in 3210, to Charlotte Nicole Igwe, Respondent issued additional buyer's temporary tags on August 4 and October 7 of that year for the same vehicle.
12. Respondent issued all three of the buyer's temporary tags for the 2010 Buick sold to Mr. Garduno despite the absence of a valid state inspection of the vehicle within 180 days before each issuance.
13. Respondent issued all three of the buyer's temporary tags for the 2013 Toyota Camry sold to Iheanyichukwu Chilaka despite the absence of a valid state inspection of the vehicle within 180 days before each issuance.
14. Respondent issued all three of the buyer's temporary tags for the 2015 Buick sold to Ms. Igwe despite the absence of a valid state inspection of the vehicle within 180 days before each issuance.

15. Respondent issued three buyer's temporary tags on a 2013 Lexus sold by another dealer to Uchechukwu Iwueze, and on which said dealer had previously issued the initial buyer's temporary tag, on August 23, October 22, and December 22, 2021.
16. After selling a 2005 Toyota Camry to Konstantin Maruzhenkov on November 4, 2021, Respondent failed to initiate registration and title transfer within 30 days after the date of sale.
17. Beginning in May 2021 through December of that year, Respondent failed to file monthly motor vehicle inventory tax (VIT) statements with the Harris County tax assessor-collector's office.
18. In response to a request made by a DMV representative on or about August 9, 2022, Respondent failed to make records available for inspection at its licensed location during posted business hours.
19. In committing the violations found in Findings of Fact Nos. 9-11 and 15, Respondent was attempting, however misguidedly under the law, to respond to problems or complaints from customers (or those Respondent believed to be) who had encountered delays in receiving their vehicle registrations, as opposed to intentional or deliberate misuse or abuse of buyer's temporary tags.

## **VI. CONCLUSIONS OF LAW**

1. DMV and its governing board (Board) have jurisdiction over independent motor vehicle dealers pursuant to Texas Occupations Code chapter 2301 and Texas Transportation Code chapter 503.
2. SOAH has jurisdiction over all matters related to conducting a contested case in this matter, including the preparation of a Proposal for Decision with proposed Findings of Fact and Conclusions of Law, under Texas Government Code chapter 2003.
3. Respondent received proper and timely notice of the hearing. Tex. Gov't Code §§ 2001.051-.052.

4. Staff had the burden to prove the violations it alleges against Respondent and that the sanctions it seeks are appropriate. 1 Tex. Admin. Code § 155.427.
5. The standard of proof is by a preponderance of the evidence. *Granek v. Texas St. Bd. of Med. Examin'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.); *Southwestern Pub. Servs. Co. v. Pub. Util. Comm'n of Tex.*, 962 S.W.2d 207, 213-14 (Tex. App.—Austin 1998, pet. denied).
6. By issuing successive buyer's temporary tags, as found in Findings of Fact Nos. 9, 10, and 11, Respondent violated a prohibition against issuing more than one buyer's temporary tag per vehicle and sale. Tex. Transp. Code § 503.063(a).
7. By issuing buyer's temporary tags despite lacking a valid state inspection on the subject vehicle within 180 days of issuance, as found in Findings of Fact Nos. 12, 13, and 14, Respondent violated Board rules. 43 Tex. Admin. Code § 215.155(b); *see* Tex. Transp. Code §§ 503.063(i)-(j), 548.101(2).
8. By issuing three buyer's temporary tags on a vehicle sold by another dealer and for which an initial buyer's temporary tag had been issued previously, as found in Finding of Fact No. 15, Respondent violated statutes and rules requiring such tags to be issued by the selling dealer and prohibiting issuance of more than one tag per sale and vehicle. *See* Tex. Transp. Code §§ 503.063-.0632; 43 Tex. Admin. Code §§ 215.150, .152, .155, 505(a).
9. By failing to initiate registration and title transfer within 30 days of selling a vehicle, as found in Finding of Fact No. 16, Respondent violated the Texas Transportation Code and Board rules. Tex. Transp. Code § 501.0234; 43 Tex. Admin. Code § 217.4, .23.
10. By failing to file a VIT statement with the Harris County tax assessor-collector's office by the tenth of each month, in each month beginning in May 2021 through December of that year, as found in Finding of Fact No. 17, Respondent violated the Texas Tax Code. Tex. Tax Code § 23.122.
11. By failing to make records available for inspection at its licensed location during its posted business hours, as found in Finding of Fact No. 18, Respondent violated Board rules. 43 Tex. Admin. Code § 215.144(a).

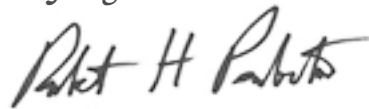


12. Staff did not meet its burden of proving any additional violations it had alleged.
13. Based on each of the violations identified in Conclusions of Law Nos. 6-11, the Board has discretion to revoke Respondent's dealer license. Tex. Occ. Code § 2301.651(a)(3), (4), (8); Tex. Transp. Code § 503.038(a)(10), (12), (14).
14. Based on the violations identified in Conclusions of Law Nos. 6 and 8 that occurred after September 1, 2021, the Board has discretion to continue the denial of Respondent's access to DMV's temporary-tag database. Tex. Transp. Code § 503.0632(f); 43 Tex. Admin. Code § 215.505(a)(1); *see* Acts 2021, 87th Leg., R.S., ch. 729 (H.B. 3927), §§ 4, 6-7.
15. Based on the violations identified in Conclusions of Law Nos. 6-11, the Board has discretion to impose civil penalties under either or both Texas Occupations Code or the Texas Transportation Code. Tex. Occ. Code § 2301.801(a); Tex. Transp. Code § 503.095.
16. In determining the amount of civil penalties to award, the Board is to consider: (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public; (2) the economic damage to the public caused by the violation; (3) the history of previous violations; (4) the amount necessary to deter a future violation; (5) efforts to correct the violation; and (6) any other matter that justice may require. Tex. Occ. Code § 2301.801(b); *see* Tex. Occ. Code § 2301.004; 43 Tex. Admin. Code § 215.302.
17. Under the circumstances of this case, the choice of civil penalty amounts and other remedies is also guided and informed by the DMV penalty policies set forth in the Disciplinary Matrix in effect prior to May 17, 2023, and admitted as Staff Exhibit 17. 1 Tex. Admin. Code § 155.419.
18. For each of the six violations identified in Conclusion of Law No. 6, the Board should impose a \$500 civil penalty, for a total of \$3000.

19. For the violations identified in Conclusion of Law No. 7, the Board should impose \$1,000 in civil penalties for each buyer to whom the tags were issued, for a total of \$3,000.
20. For each of the three violations identified in Conclusion of Law No. 8, the Board should impose a \$500 civil penalty, for a total of \$1,500.
21. For the violation identified in Conclusion of Law No. 9, the Board should impose a \$1,000 civil penalty.
22. For the eight violations identified in Conclusion of Law No. 10, the Board should impose \$2,000 in civil penalties.
23. For the violation identified in Conclusion of Law No. 11, the Board should impose a \$1,000 civil penalty.
24. The Board should exercise its discretion not to revoke Respondent's dealer license.
25. The Board should exercise its discretion not to continue denying Respondent's access to DMV's temporary-tag database.

**Signed July 17, 2023**

ALJ Signature:



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Robert Pemberton

Presiding Administrative Law Judge

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**Case Contacts**

Name	BarNumber	Email	TimestampSubmitted	Status
Damien Shores		damien.shores@txdmv.gov	7/17/2023 3:24:10 PM	SENT



# Texas Department of Motor Vehicles

## ENFORCEMENT DIVISION

4000 Jackson Avenue – Austin, Texas 78731  
Telephone (512) 465-4204 – FAX (512) 465-5650

July 25, 2023

Deputy Clerk  
State Office of Administrative Hearings  
PO Box 13025  
Austin TX 78711-3025  
VIA ELECTRONIC FILING

**RE: IN THE MATTER OF THE LICENSE OF  
J N C AUTO LLC  
MVD CAUSE NO. 22-0013983.ENF  
SOAH DOCKET NO. 608-23-07192.ENF**

Dear Clerk:

Please find enclosed Petitioner's Exceptions to the Proposal for Decision. A copy of this response has been forwarded to Respondent.

Should you have any questions, you may contact me at [Damien.Shores@TxDMV.gov](mailto:Damien.Shores@TxDMV.gov) or (512) 465-4167.

Sincerely,

**Damien Shores**  
Attorney  
Enforcement Division

cc: J N C Auto LLC  
12500 Fondren Rd., Ste. D  
Houston, TX 77035-5377  
VIA EMAIL

**MVD CAUSE NO. 22-0013983.ENF**  
**SOAH DOCKET NO. 608-23-07192.ENF**

<b>TEXAS DEPARTMENT OF MOTOR</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>VEHICLES,</b>	§	
<b>Petitioner</b>	§	<b>OF</b>
<b>v.</b>	§	
<b>J N C AUTO LLC,</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
<b>Respondent</b>		

**PETITIONER'S EXCEPTIONS TO PROPOSAL FOR DECISION**

Comes Now, Petitioner, the Texas Department of Motor Vehicles (TxDMV), and files its exceptions to the Proposal for Decision (PFD) issued by the Administrative Law Judge (ALJ) in this matter on July 17, 2023. Petitioner objects to certain findings set forth in the PFD, as shown below.

**I. DISCIPLINARY MATRIX**

Petitioner would like to point out that while TxDMV did update the Disciplinary Matrix on May 17, 2023, there has been no change in policy regarding the assessment of a penalty per each violation.<sup>1</sup> The updated version merely clarified that we are treating each misused buyer's temporary tag as a violation versus charging a penalty per category of violation. As such, where Respondent misused buyer's temporary tags, each extra buyer's temporary tag issued is considered a separate violation. This is further demonstrated by the penalties prescribed by the Staff Exhibit 17 version of the Disciplinary Matrix relied on in the PFD, where buyer's temporary tag misuse penalties range from a warning letter for a low violation, up to a penalty of

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<sup>1</sup> See Department's Disciplinary Matrix at 1, available at <https://www.txdmv.gov/sites/default/files/body-files/Motor-Vehicle-Disciplinary-Matrix.pdf> (last visited July 19, 2023), and Staff Exhibit 17, page 1, "Texas Occupations Code § 2301.801 allows for a civil penalty up to \$10,000.00 for each violation, or per day for a continuing violation, of Chapter 2301. Texas Transportation Code § 503.095 allows for a civil penalty of up to \$1,000.00 for each violation, or per day for a continuing violation, of Texas Transportation Code Ch. 503."

\$2,000 *per tag* for a high violation.<sup>2</sup> Given this range, there is plenty of support for TxDMV's assertion that a \$1,000 per tag penalty is a normal and appropriate sanction for temporary tag misuse in this matter.

## II. EVIDENCE AND ANALYSIS

Petitioner excepts to the ALJ's analysis claiming that TxDMV failed to prove additional violations predicated on discrepancies between buyer's temporary tags Respondent issued versus sales reported by Respondent in Vehicle Inventory Tax (VIT) statements.<sup>3</sup> This is because Staff Exhibit 6 (Respondent's Buyer's temporary Tag Report for May 1, 2021 to April 30, 2022) and Staff Exhibit 16 (Email from Harris County Tax Assessor-Collector along with Vehicle Inventory Tax Statements filed by Respondent January 2022 to April 2022) clearly shows the discrepancies between buyer's temporary tags Respondent issued versus sales reported in VIT statements, as characterized by the Notice of Denial of Access to Temporary Tag System (DoA) and violation number 11 in the First Amended Notice of Department Decision (NODD). Although Respondent testified that they never issued a buyer's temporary tag for a vehicle they did not actually sell, Respondent's testimony does not rebut the presumption of buyer's temporary tag misuse because: (1) Respondent actually did issue buyer's temporary tags for a vehicle they did not actually sell<sup>4</sup>, and (2) Respondent issued an excessive amount of buyer's temporary tags relative to Respondent's sales as clearly shown by comparing Staff Exhibit 6 (Respondent's Buyer's temporary Tag Report for May 1, 2021 to April 30, 2022) with Staff Exhibit 16 (Email from Harris County Tax Assessor-Collector along with Vehicle Inventory Tax Statements filed by Respondent January 2022 to April 2022). All this discussion in the PFD

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<sup>2</sup> Staff Exhibit 17, page 4.

<sup>3</sup> See PFD, page 28.

<sup>4</sup> See PFD, page 41, Finding of Fact 15, "*Respondent issued three buyer's temporary tags on a 2013 Lexus sold by another dealer.*"

regarding presumptions and inferences about whether or not Respondent issued buyer's temporary tags for vehicles it did not actually have in inventory or sell misses the point that Respondent issued more buyer's temporary tags than reported sales and that is *prima facie* proof that Respondent misused buyer's temporary tags.<sup>5</sup> Furthermore, at no point during the hearing was any statement made or evidence provided by either party that the VITs were inaccurate. As such, the portion of the PFD stating that the VIT statements could be inaccurate should be stricken and rewritten in conformity with other SOAH decisions finding tag misuse was demonstrated where temporary buyer tag issuance was greater than sales reported in Respondents' monthly VIT statements.<sup>6</sup>

Petitioner excepts to the ALJ's suggested sanction of a \$500 civil penalty for each of Respondent's excessive issuances of buyer's temporary tags, as reflected by violations 5, 6, 7, and 8 in the NODD.<sup>7</sup> Instead, each extra buyer's temporary tag issued should be assessed a \$1,000 civil penalty per tag, an amount that is firmly within the penalty range provided in the Disciplinary Matrix relied on by the ALJ.<sup>8</sup>

Petitioner also excepts to the ALJ's suggested recommendation that the Board not revoke Respondent's license or continue the current denial of its access to the temporary tag database.<sup>9</sup>

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<sup>5</sup> See Texas Department of Motor Vehicles v. NJIM Group Inc., d/b/a NJIM Auto, SOAH Docket No. 608-23-01988, Proposal for Decision at 16-17, ("The preponderant evidence shows Respondent issued 377 buyer's temporary tags and reported only 30 sales, which left 347 buyer's temporary tags unaccounted towards a specific sale from January 2022 through June 2022. Therefore, the ALJ finds Staff met its burden to demonstrate Respondent violated Texas Transportation Code section 503.063 in the issuance and misuse of the buyer's temporary tag.").

<sup>6</sup> See Texas Department of Motor Vehicles v. Marquez Auto Sales Inc., SOAH Docket No. 608-22-1781, Proposal for Decision at 11-12, ("None of Respondent's reasons for issuing additional tags fall within the statute's exceptions. Therefore, the ALJ concludes that Department met its burden to show a violation of § 503.063(a) of the Transportation Code for 142 vehicles."). See also Texas Department of Motor Vehicles v. LVB Automotive, Inc., SOAH Docket No. 608-22-1186, Proposal for Decision at 22, ("The evidence establishes that Respondent substantially abused the buyer's tag and eTag system. Even accepting Respondent's sales figures, over a 16-month period, it sold less than 150 vehicles but issued nearly 3,000 buyer's tags.").

<sup>7</sup> See PFD, page 37.

<sup>8</sup> See Staff Exhibit 17, page 4.

<sup>9</sup> See PFD, page 38.

Given that the testimony and admitted evidence conclusively proves all of the violations alleged in the NODD and DoA, which includes excessive issuance of buyer's temporary tags, the ALJ should recommend that Respondent's license be revoked and that their access to the temporary tag database continue to be denied.

### III. FINDINGS OF FACT

The PFD's Findings of Fact need to be amended to add a finding that Respondent misused buyer's temporary tags as alleged in the DoA and in violation 11 of the NODD.

### IV. CONCLUSIONS OF LAW

Petitioner excepts to Conclusion of Law (COL) number 12 on page 41 of the PFD because Staff did meet its burden of proving the additional violations it had alleged, namely violation 11 in the NODD and the violations in the DoA.

Petitioner excepts to COL number 18 on page 43 of the PFD because the total should be \$6,000 based on the assessment of \$1,000 per violation, instead of assessing \$500 per violation.

Petitioner excepts to COL number 20 on page 44 of the PFD because the total should be \$3,000 based on the assessment of \$1,000 per violation, instead of assessing \$500 per violation.

Petitioner excepts to COL numbers 24 and 25 on page 44 of the PFD because the TxDMV Board should exercise its discretion to revoke Respondent's dealer license and continue denying Respondent's access to the temporary tag database. Tag misuse is a hot button issue in Texas that the TxDMV Board takes very seriously. In two recent cases TxDMV had before SOAH, revocation was recommended by the ALJ for tag misuse.<sup>10</sup> In another recent case where

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<sup>10</sup> See Texas Department of Motor Vehicles v. LVB Automotive, Inc., SOAH Docket No. 608-22-1186.ENF, Proposal for Decision at 33, Aug. 2, 2022 (“*The Department may revoke a dealer's GDN if the dealer misuses or allows the misuse of a temporary tag and/or violates any law relating to the sale and distribution of motor vehicles or any rule adopted by the Board.*”). See also Texas Department of Motor Vehicles v. NJIM Group, Inc. d/b/a NJIM Auto, SOAH Docket No. 608-23-01988.ENF, Proposal for Decision at 19, April 26, 2023 (“*The Department may revoke a dealer's GDN if the dealer misuses or allows the misuse of a temporary tag.*”).



tag misuse was at issue, the ALJ did not recommend revocation, but the TxDMV Board ultimately decided to revoke the Respondent's license.<sup>11</sup> Petitioner sees no reason revocation and tag system access denial should not also be recommended in this case.

Lastly, the PFD and COL should be amended to reflect a total recommended civil penalty of \$25,000 for Respondent's proven violations of TxDMV statutes and rules as alleged and called for in the NODD.

#### V. PRAYER

WHEREFORE PREMISES CONSIDERED, Petitioner prays that the Administrative Law Judge consider these exceptions, and revise the PFD under the provisions of the Texas Occupations Code and the Texas Administrative Code as set forth herein.

Respectfully submitted,

**Damien Shores**

Damien Shores

Attorney, Enforcement Division

Bar Card No. 24061040

4000 Jackson Ave

Austin, Texas 78731

(512) 465-4167, (512) 465-5650 Fax

Damien.Shores@TxDMV.gov

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<sup>11</sup> See Texas Department of Motor Vehicles v. Jay Enterprises, Inc. d/b/a M&M Auto Sales, SOAH Docket No. 608-20-3330.ENF, Proposal for Decision at 17, October 27, 2020 (NOTE: in the attached Final Order, the TxDMV Board rejected the ALJ's recommended penalty of \$5,000 and ordered revocation of Respondent's license along with a \$11,000 penalty).

**CERTIFICATE OF SERVICE**

I certify that on the 25th day of July 2023, a true and correct copy of this document was served on the following individuals at the locations and the manner indicated below.

**Electronic Filing**

Docket Clerk

State Office of Administrative Hearings

300 West 15<sup>th</sup> #504

Austin, TX 78701

**Email:**

J N C Auto LLC

12500 Fondren Rd., Ste. D

Houston, TX 77035-5377

VIA EMAIL

**Damien Shores**

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Damien Shores

Attorney, Enforcement Division

## TEXAS DEPARTMENT OF MOTOR VEHICLES

<b>TEXAS DEPARTMENT OF MOTOR VEHICLES v. JAY ENTERPRISES, INC. D/B/A M&amp;M AUTO SALES</b>	<b>§ § § §</b>	<b>MVD CAUSE NO. 19-0014862.ENF   SOAH DOCKET NO. 608-20-3330.ENF</b>
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### FINAL ORDER

The referenced contested case is before the Board of the Texas Department of Motor Vehicles (Board) in the form of a Proposal for Decision (PFD) from the State Office of Administrative Hearings (SOAH) and involves a civil penalty assessed against Jay Enterprises, Inc. (Respondent) and the revocation of Respondent's license.

The Board enters this Final Order, having considered the administrative record.

In accordance with Texas Government Code §2001.058(e)(1), the specific reasons and legal basis for the Board's changes to the Administrative Law Judge's Conclusions of Law (COL) are as follows.

The Board amends Conclusion of Law 3 to renumber it to 3(a).

The Board adds Conclusion of Law 3(b) to read:

*A person who violates chapter 503 of the Texas Transportation Code or any Board rule adopted under chapter 503 of the Texas Transportation Code is subject to a civil penalty of not less than \$50 or more than \$1,000. Tex. Transp. Code §503.095. If the Board determines that a person is violating or has violated chapter 2301 of the Texas Occupations Code, a rule adopted or order issued under chapter 2301, or Section 503.038(a), Transportation Code, the Board may impose a civil penalty. The amount of the penalty may not exceed \$10,000 for each violation. Each act of violation and each day a violation continues is a separate violation. Tex. Occ. Code §2301.801.*

The addition of Conclusion of Law 3(b) is necessary because the Administrative Law Judge (ALJ) failed to include the statutory authority for the penalties in a Conclusion of Law.

The Board adds Conclusion of Law 3(c) to read:

*Respondent violated Texas Transportation Code §503.063 by issuing more than one buyer's temporary tag per vehicle sold and by failing to safekeep each buyer's temporary tag that Respondent obtained. Tex. Transp. Code §503.063(a) and (d).*

The Board amends Conclusion of Law 4 to read:

Respondent should pay a penalty of \$10,000 for allowing the issuance of 1,649 temporary buyer's tags under his eTag account in the same period that Respondent sold one vehicle. Tex. Transp. Code §503.063(a) and (d).

The addition of Conclusion of Law 3(c) and the amendment to Conclusion of Law 4 are necessary

because the ALJ misinterpreted and misapplied the law. Also, the ALJ only has the authority to recommend a penalty. The Board has the authority to change the ALJ's recommended penalty if the Board complies with Texas Government Code §2001.058(e). *Texas State Bd. of Dental Exam. v. Brown*, 281 S.W.3d 692, 700 (Tex. App.—Corpus Christi 2009, pet. denied).

The ALJ improperly imposed a knowledge requirement under Texas Transportation Code §503.063(a) and (d). Section 503.063 does not require the Texas Department of Motor Vehicles (department) to prove that the Respondent knew about the misuse of the buyer's tags. Section 503.063(d) says the dealer is responsible for the safekeeping and distribution of each buyer's tag the dealer obtains. The ALJ's recommendation would allow a dealer to avoid the consequences under §503.063(a) and (d) by merely stating that the dealer didn't know about the excess buyer's temporary tags.

The penalties in the PFD are too low to be effective. The ALJ recommended a penalty totaling \$4,000 based on the issuance of more than one buyer's tag for at least two buyers, using the department's penalty matrix recommendation of \$2,000 per tag. However, the ALJ did not assess any penalties for the remaining buyer's temporary tags that were issued under Respondent's account from January 1, 2019, to September 1, 2019, because the ALJ misinterpreted and misapplied the department's burden of proof under §503.063.

Finding of Fact 14 provides that a dealer is supposed to create one buyer's tag per sale. Finding of Fact 15 states that Respondent admitted to printing more than one buyer's tag for unspecified buyers. Finding of Fact 17 states that the department's records indicate that approximately 1,649 buyer's temporary tags were issued under Respondent's account between January 1, 2019, and September 1, 2019; however, Finding of Fact 16 states that Respondent reported to the Jefferson County Tax Assessor/Collector that Respondent only sold one vehicle during this period. The ALJ's finding that the department must prove the Respondent knew the tags were being issued in addition to these facts is a misinterpretation and misapplication of §503.063. The ALJ's misinterpretation creates an additional burden on the department that is not required under the law.

Texas Transportation Code §503.095(b) states that each act in violation of chapter 503 is a separate violation. Based on Findings of Fact 14 through 17 and the violations found in Conclusion of Law 3(c), it is proper for the Board to assess a civil penalty of \$10,000. A licensee that allows the issuance of 1,649 temporary buyer's tags during a period when the licensee only sold one vehicle presents a serious safety risk to the public. A low monetary penalty will not deter future violations of this magnitude. The Board will not tolerate a dealer that violates §503.063 in such an extreme manner.

The Board adds Conclusion of Law 7 to read:

*Respondent misused or allowed the misuse of a temporary tag under Transportation Code chapter 503. Accordingly, the Board should revoke Respondent's GDN license. Tex. Transp. Code §503.038(a)(12).*

The ALJ misinterpreted the Board's authority under Texas Transportation Code §503.038(a)(12). Under §503.038(a)(12), the Board has the authority to cancel a dealer's general distinguishing number (GDN) if the dealer misuses or allows the misuse of a temporary tag authorized under chapter 503. The ALJ misinterpreted the statute by inserting a knowledge requirement into the word "allows." Section 503.038(a)(12) does not impose a burden on the department to prove that the Respondent had knowledge of the misuse of buyer's temporary tags issued from Respondent's account.

Finding of Fact 14 provides that a dealer is supposed to create one buyer's tag per sale. Finding of Fact 15 states that Respondent admitted to printing more than one buyer's tag for unspecified buyers. Finding of Fact 17 states that the department's records indicate that approximately 1,649 buyer's temporary tags were issued under Respondent's account between January 1, 2019, and September 1, 2019; however, Finding of Fact 16 states that Respondent reported to the Jefferson County Tax Assessor/Collector that Respondent only sold one vehicle during this period. The ALJ's finding that the department must prove the Respondent knew the tags were being issued in addition to these facts is a misinterpretation and misapplication of §503.038(a)(12). The ALJ's misinterpretation creates an additional burden on the department that is not required under the law. Also, the ALJ's recommendation would allow a dealer to avoid any consequences under §503.038(a)(12) by merely stating that the dealer didn't know about the excess buyer's temporary tags.

Based on Findings of Fact 14 through 17, it is proper for the Board to revoke Respondent's GDN license. A licensee that allows the issuance of 1,649 temporary buyer's tags during a period when the licensee only sold one vehicle presents a serious safety risk to the public. A monetary penalty alone will not deter future violations of this magnitude. The Board will not tolerate a dealer that violates the statute in such an extreme manner. If a dealer allows this to happen with its eTag account, the dealer should not be allowed to be a licensed dealer anymore.

ACCORDINGLY, IT IS ORDERED:

1. Findings of Fact 1 through 25, and Conclusions of Law 1, 2, 5, and 6 are adopted as stated in the ALJ's PFD dated October 27, 2020;
2. Conclusions of Law 3 and 4 are amended as stated in this Final Order;
3. Conclusions of Law 3(b), 3(c), and 7 are adopted as stated in this Final Order;
4. Respondent must pay a civil penalty of \$11,000;
5. Respondent's GDN license is hereby revoked; and
6. Any other motions, requests for entry of specific findings of fact or conclusions of law, exceptions, objections, and requests for general or specific relief by the parties to this contested case, if not expressly granted herein, are hereby denied.

Date: 10/26/2021

*Charles Bacarisse*

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Charles Bacarisse, Chair  
Board of the Texas Department of Motor Vehicle

# State Office of Administrative Hearings

FILED  
608-23-07192  
8/7/2023 10:51 AM  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Taina Tipton, CLERK

Kristofer S. Monson  
Chief Administrative Law Judge

August 7, 2023

ACCEPTED  
608-23-07192  
8/7/2023 10:59:11 am  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Taina Tipton, CLERK

Damien T. Shores, Attorney for Petitioner  
Texas Department of Motor Vehicles

VIA EFILE TEXAS

JNC Auto LLC  
12500 Fondren Road, Suite D  
Houston, Texas 77035

VIA REGULAR MAIL

**RE: Docket Number 608-23-07192.ENF; Texas Department of Motor Vehicles No. 22-0013983; *Texas Department of Motor Vehicles v. JNC Auto LLC***

Dear Parties:

On July 25, 2023, Staff timely filed exceptions to the Proposal for Decision (PFD) issued on July 17, 2023. JNC did not file any exceptions. The Administrative Law Judge (ALJ) has reviewed Staff's exceptions and offers the following responsive comments, although he ultimately does not recommend any changes to the PFD.

Staff prevailed on ten of its numbered sets of alleged violations, which include allegations that JNC improperly issued two or three buyer's temporary tags to each of four vehicle purchasers. However, Staff complains of the ALJ's conclusion that Staff did not meet its burden as to numerous additional alleged violations subsumed in its composite Violation 11. The ALJ's reasoning in so concluding (explained at PFD pages 28-30) turns on well-established principles of Texas civil and administrative procedure, with which judges are to presume the Legislature was familiar and intended compliance when providing a right to a SOAH contested-case hearing—even in the context of DMV's understandable policy concerns regarding misuse of temporary tags.

Exceptions Letter

August 7, 2023

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Staff had the burden to prove the facts material to its alleged Violation 11 (that JNC either or both issued “an excessive number of temporary tags relative to dealer sales” or “temporary tags for vehicles or vehicles not in the dealer’s . . . inventory”) by a preponderance of the evidence. Staff did this only with respect to the tags improperly issued to the four individuals just noted, relying on sales records and the like. As for any other such violations, contrary to Staff’s assertions, the bare fact “that [JNC] issued more buyer’s temporary tags than reported sales” shown in VATs is not “*prima facie* proof that [JNC] misused buyer’s temporary tags,” or at least not on this record, because the discrepancy could also be explained simply by JNC’s failure to report corresponding sales in VATs. And it was not JNC’s burden to prove that the VAT statement were inaccurate, as Staff suggests. Instead, it was Staff’s burden to negate that alternative and at-least-equally-plausible inference so as to permit the reasonable inference that the discrepancy was more likely than not explained by JNC issuing temporary tags without corresponding sales, as opposed to merely a failure to report sales in VATs.<sup>1</sup> Staff simply did not do so.

As for the presumption that arises under 43 Texas Administrative Code § 215.505(a)(2), Staff seems to contend now that consideration of it “misses the point,” but to the extent some clarification is warranted, the ALJ would restate his reasoning as follows: (1) per the rule, “a vehicle [] not listed in the relevant monthly [VAT] Statement” is “presumed not to be in the dealer’s . . . inventory” for purposes of determining whether the dealer issued temporary tags on vehicles not in its inventory; (2) Mr. Chilaka testified that JNC did not issue temporary tags without underlying sales, which is legally sufficient evidence sufficient to rebut the presumption (and contrary to Staff’s suggestions, one does not consider or weigh any evidence contrary to his assertion at this stage); (3) which returns the normal burden of proof to Staff. Again, Staff met that burden only as to the temporary-tag misuse involving the four individuals, but not any other alleged.

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<sup>1</sup> See *City of Keller v. Wilson*, 168 S.W.3d 802, 813-14 (Tex. 2005) (“In claims and defenses supported only by meager circumstantial evidence, the evidence does not rise above a scintilla (and thus is legally insufficient) if [the fact-finder] would have to guess as to whether a vital fact exists. [And] [w]hen the circumstances are equally consistent with either of two facts, neither fact may be inferred.” (citations and internal quotations omitted)); see also *Kramer v. Lewisville Hosp.*, 858 S.W.2d 397, 405 (Tex. 1993) (explaining, with regard to causation, that the preponderance-of-the-evidence standard serves to ensure that “a sufficient number of alternative explanations and hypotheses for the cause of the harm are eliminated to permit a judicial determination of responsibility”).



## Exceptions Letter

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Staff also complains of the ALJ's sanction recommendations. These arguments appear to be predicated largely on its foregoing complaints about Violation 11, but Staff also takes issue with the administrative penalties the ALJ recommended for the violations he did find. As for those violations, the ALJ recommended the same administrative penalties that Staff had sought, with only two exceptions, and only one of which yielded any numerical difference: (1) a \$500 per-violation administrative penalty for each of JNC's two successive issuances of temporary tags to Mr. Garduno, Iheanyichukwa Chilaka, and Ms. Igwe, which differs from the \$1,000 per-violation penalty Staff advocated yet yields the same total because Staff treated each group of separate violations as a single violation<sup>2</sup>; and (2) a \$500 per-violation penalty for each of the three temporary tags issued to Mr. Iwueze (\$1,500 total), which is less than the \$3,000 total Staff urged for that group of violations. As explained in the PDF, the ALJ recognized that a \$1,000 per-violation administrative penalty was within the *range* permitted by statute and prescribed in applicable Disciplinary Matrix, but found no evidence of any DMV policy dictating that \$1,000 per-violation penalty is the "normal" penalty in the sense of a *de facto* automatic or default amount, as Staff had seemed to advocate.<sup>3</sup> In the absence of any such policy, the ALJ weighed the statutory penalty factors carefully in light of the evidence, as detailed on pages 33-39 of the PFD, to reach his recommendation.

Particularly compelling to the ALJ in this regard was that JNC's comparatively small number of temporary-tag violations were not shown to be the product of any deliberate disobedience of the law or any sort of scheme to misuse buyer's temporary tags for some illicit purpose. Rather, the evidence was more consistent with JNC's attempts, albeit ultimately misguided under the law, to address customer complaints related to delays in obtaining vehicle registration. These same considerations also informed the ALJ's recommendation that the Board exercise its discretion not to revoke JNC's dealer license or continue denying JNC access to the temporary-tag database.

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<sup>2</sup> As explained at PFD pages 26-27 and 37-38.

<sup>3</sup> PFD at 33, 35-36; *see also id.* at 32-33 (discussing the underlying legal standard governing consideration of agency policies not incorporated in a rule).



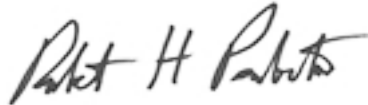
Exceptions Letter

August 7, 2023

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With these comments, the PFD is ready for the Board's consideration.

ALJ Signature:

A handwritten signature in black ink, appearing to read "Robert H. Pemberton", written over a horizontal line.

Robert Pemberton,

Presiding Administrative Law Judge

CC: Service List

**Board Meeting Date: 12/14/2023**  
**ACTION ITEM**

**To:** Texas Department of Motor Vehicles Board  
**From:** Jimmy Archer, Motor Carrier Division Director  
**Agenda Item:** 6  
**Subject:** Chapter 219. Oversize and Overweight Vehicles and Loads  
Amendments, §§219.11, 219.13, 219.14, 219.30–219.36, 219.41, 219.43, 219.61, and  
219.63  
(Relating to Cleanup)

### RECOMMENDATION

Action Item. Approval to publish the adoption of amendments in the *Texas Register*.

### PURPOSE AND EXECUTIVE SUMMARY

The amendments to 43 Texas Administrative Code (TAC) §§219.11, 219.13, 219.14, 219.30–219.36, 219.41, 219.43, 219.61, and 219.63 are necessary to clean up these sections.

### FINANCIAL IMPACT

For each year of the first five years the amendments will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the amendments. There will be no significant impact on local employment or the local economy as a result of the amendments.

### BACKGROUND AND DISCUSSION

The amendments are necessary to do the following:

1. implement House Bill 2620, 86th Legislature, Regular Session (2019). House Bill 2620 enacted Transportation Code, §623.004, which authorizes the department to deny an oversize or overweight permit application (application) if the Federal Motor Carrier Safety Administration issued an out-of-service order to prohibit the applicant from engaging in interstate transportation or the Texas Department of Public Safety issued an order to cease to prohibit the applicant from engaging in intrastate transportation;
2. implement Senate Bill 1814, 87th Legislature, Regular Session (2021) to delete reference to the following:
  - a. Chapter 645 of the Transportation Code in §219.11(n) because the legislature deleted reference to Chapter 645 in Transportation Code, §623.075; and
  - b. the state highway system in §219.30 because the legislature removed the requirement under Transportation Code, §623.012 for the surety bond to be payable to the Texas Department of Transportation (TxDOT) for any damage to the state highway system;
3. amend certain application requirements to provide the department with additional information that will help the department administer and enforce the laws regarding size and weight of vehicles and loads on public roadways, and that will help law enforcement officers to enforce the laws regarding size and weight of vehicles and loads on public roadways; and
4. clean up the language, such as modifying language to be consistent with statutes and other sections in Chapter 219, deleting language for which the department does not have rulemaking authority, and modifying language to be consistent with current practice.

The proposed amendments were published for comment in the September 1, 2023, issue of the *Texas Register*. The department did not receive comments on the proposed amendments.

Transportation Code, §623.145 and §623.195 require the board of the Texas Department of Motor Vehicles to consult with the Texas Transportation Commission (commission) prior to the adoption of certain rules regarding oversize and overweight permits for the operation of oil well servicing and drilling machinery and unladen lift equipment motor vehicles, respectively. The commission considered the proposed amendments to §§219.41, 219.43, 219.61, and 219.63 during its open meeting on October 26, 2023. The commission issued the attached Minute Order to document compliance with Transportation Code, §623.145 and §623.195, and to indicate that the Texas Department of Transportation staff did not have any comments on the proposed amendments.

If the board adopts the amendments during its December 14, 2023, open meeting, staff anticipates:

- Publication in the December 29, 2023, issue of the *Texas Register*; and
- An effective date of January 4, 2024.

**TEXAS TRANSPORTATION COMMISSION**All Counties**MINUTE ORDER**

Page 1 of 1

All Districts

Pursuant to Transportation Code, §623.145 and §623.195, the Department of Motor Vehicles Board (board) must consult with the Texas Transportation Commission (commission) prior to the adoption of rules regarding oversize and overweight permits for the operation of oil well servicing and drilling machinery and unladen lift equipment motor vehicles.

The board proposed changes to 43 TAC Chapter 219, Oversize and Overweight Vehicles and Loads, on August 17, 2023. The proposed rule amendments were published in the *Texas Register* on September 1, 2023.

To comply with the statutory requirements, the board consulted with the commission on the amendments to 43 TAC §§219.41, 219.43, 219.61, and 219.63. Texas Department of Transportation staff reviewed the amendments to those provisions and had no comments to the proposed language.

IT IS THEREFORE ORDERED by the commission that the executive director or the director's designee is directed to provide a copy of this minute order to the board as documentation of the board's consultation with the commission, in accordance with those sections.

Submitted and reviewed by:

Recommended by:

DocuSigned by:

Graham A. Bettis, P.E.

UB572EEDBD114E7...  
Director, Bridge Division

DocuSigned by:

0E1B35AE191749E...  
Executive Director

116592 October 26, 2023

Minute	Date
Number	Passed

## TITLE 43. TRANSPORTATION

Adopted Sections

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

**ADOPTION OF REVISIONS TO****SUBCHAPTER B. GENERAL PERMITS****43 TAC §§219.11, 219.13, and 219.14****SUBCHAPTER C. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES****43 TAC §§219.30–219.36****SUBCHAPTER D. PERMITS FOR OVERSIZE AND OVERWEIGHT OIL WELL RELATED VEHICLES****43 TAC §219.41 and §219.43****SUBCHAPTER E. PERMITS FOR OVERSIZE AND OVERWEIGHT UNLADEN LIFT EQUIPMENT MOTOR****VEHICLES****43 TAC §219.61 and §219.63**

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) Subchapter B, General Permits, §§219.11, 219.13, and 219.14; Subchapter C, Permits for Over Axle and Over Gross Weight Tolerances, §§219.30–219.36; Subchapter D, Permits for Oversize and Overweight Oil Well Related Vehicles, §219.41 and §219.43; and Subchapter E, Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles, §219.61 and §219.63 without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4810). The rules will not be republished.

The adopted amendments implement legislation; modify language to be consistent with statutes and other sections in Chapter 219 of Title 43; delete language that is already contained in statute; delete language for which the department does not have rulemaking authority; clarify the language; modify language to be consistent with current practice; amend certain application requirements to provide the department with additional information that will help it administer and enforce Subtitle E of Title 7 of the Transportation Code and that the department will provide to law enforcement officers who use the

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

information to enforce the laws regarding size and weight under Subtitle E of Title 7 of the Transportation Code; and update application requirements to allow applicants that are required to file a surety bond under Transportation Code, §623.075 to file an electronic copy, rather than a paper copy.

**REASONED JUSTIFICATION.**

The amendment to §219.11(c)(1) creates an exception for a permit application under §219.14(b), which prescribes the permit application requirements that are unique to a manufactured house as defined by Transportation Code, §623.091. A permit applicant for a permit regarding a manufactured house under §219.14 must provide additional specific information to the department, as explained below regarding the amendments to §219.14(b). The amendment to §219.11(c)(1) clarifies that the more specific requirements in §219.14(b) control over the more general requirements in §219.11(c)(1).

The amendments to §219.11(c)(1)(A) and (B) modify the application requirements to provide the department with the information it needs to process an application and to contact the correct person if there are updates to the permit restrictions. The amendments require the applicant to provide the department with the name, telephone number, and email address of the contact person, and delete the requirement for the applicant to provide the department with the applicant's telephone number and email address. The applicant could be a large corporation with different contact people for different permits. Having the contact person's email address and telephone number enables the department to communicate more efficiently with the applicant and any permit holder. The amendments also move the requirement for the applicant to provide its customer identification number from subparagraph (B) to subparagraph (A).

An amendment to §219.11(c)(1)(C) removes the requirement for a permit applicant under Subchapter B of Chapter 219 to provide their motor carrier registration (MCR) number to the department. An MCR number is issued to a motor carrier in a certificate of registration under Transportation Code,

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## Part 10. Texas Department of Motor Vehicles

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

Chapter 643. The department no longer needs the MCR number in an application for a permit under Subchapter B of Chapter 219 because the department's Texas Permitting and Routing Optimization System (TxPROS or permitting system) can search the federal motor carrier system by using the applicant's United States Department of Transportation (USDOT) Number to determine if the applicant has an MCR number under Transportation Code, Chapter 643 if necessary. Transportation Code, §623.075 and §623.094 state when it may be necessary for the department to know if a permit applicant under Subchapter B of Chapter 219 has an MCR number.

An amendment to §219.11(c)(1)(C) clarifies whether the permit applicant must provide their USDOT Number. The amendment replaces the words "if applicable" with the more precise explanation "if applicant is required by law to have a USDOT Number" because federal law and Texas law prescribe when a motor carrier must have a USDOT Number. For example, 49 U.S.C. §31134 requires an employer or person to be registered by the Secretary of Transportation and obtain a USDOT Number in order to operate a commercial motor vehicle in interstate transportation. Transportation Code, §643.064 requires a motor carrier to have and maintain a USDOT Number if they are required to register with the department under Subchapter B of Chapter 643 of the Transportation Code to engage in intrastate transportation in Texas.

A motor carrier's USDOT number is used as its identification number in state and federal agencies' databases and tracking systems that contain information the department needs to evaluate an applicant for a permit. To leverage this ease of reference and consistent identification that a USDOT number provides, amendments to the following sections conform with the requirement in §219.11(c)(1)(C) for a permit applicant to provide their USDOT Number if the applicant is required by law to have a USDOT Number: §§219.14(b), re-lettered 219.30(c)(2), 219.31(b)(2), 219.32(c)(2), 219.33(b)(2), 219.34(b)(2), 219.35(b)(2), 219.36(b)(2), 219.41(b), and 219.61(b). As previously explained, the department's

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1 permitting system can search the federal motor carrier system by using the motor carrier's USDOT  
2 Number to determine if the applicant has a certificate of registration under Chapter 643, which allows the  
3 department to determine, for example, whether certain applicants for permits for oil well-related vehicles  
4 are eligible for a permit because an applicant is not eligible if the applicant has a certificate of registration  
5 under Chapter 643. As another example, the department needs the permit applicant's USDOT Number  
6 to query the federal motor carrier system to determine the following: 1) whether the Federal Motor  
7 Carrier Safety Administration (FMCSA) placed the applicant out of service, which prohibits the applicant  
8 from engaging in interstate transportation on a public roadway; or 2) whether the Texas Department of  
9 Public Safety (DPS) issued the applicant an order to cease, which prohibits the applicant from engaging in  
10 intrastate transportation on a public roadway. Transportation Code, §623.004, which was enacted by  
11 House Bill 2620, 86<sup>th</sup> Legislature, Regular Session (2019), authorizes the department to deny a permit  
12 application under Subtitle E of Title 7 of the Transportation Code if the applicant is subject to an out-of-  
13 service order issued by FMCSA, if DPS determined the applicant has an unsatisfactory safety rating under  
14 49 C.F.R. Part 385, or if DPS determined the applicant has multiple violations of Transportation Code,  
15 Chapter 644, a rule adopted under Chapter 644, or Subtitle C of Title 7 of the Transportation Code. Making  
16 the USDOT number a consistent application requirement for permits is necessary for the department to  
17 get the information it needs to vet the permit applications under Transportation Code, §623.004.

18 Amendments to §219.11(l)(1) delete language regarding hazardous conditions during which  
19 movement of a permitted vehicle is prohibited and renumber the remaining paragraphs. This amendment  
20 is necessary because DPS and FMCSA, rather than the department, have the statutory authority to  
21 determine when road conditions are hazardous for vehicle movement. Transportation Code, §644.051  
22 gives DPS the authority to adopt rules regulating the safe operation of commercial motor vehicles,  
23 including the authority to adopt by reference all or part of the federal safety regulations. DPS adopted 49



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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1 C.F.R. §392.14 by reference in 37 TAC §4.11(a). Section 392.14 regulates the operation of a commercial  
2 motor vehicle regarding hazardous conditions. Together, 49 C.F.R. §392.14 and 37 TAC §4.11(a) regulate  
3 the operation of a commercial motor vehicle regarding hazardous conditions for both interstate and  
4 intrastate transportation. Also, even if a permittee is not operating a commercial motor vehicle, the Rules  
5 of the Road (Subtitle C of Title 7 of the Transportation Code) include provisions that govern the safe  
6 operation of a vehicle, such as Transportation Code, §545.401, which says a person commits an offense if  
7 the person drives a vehicle in willful or wanton disregard for the safety of persons or property. To align  
8 with the amendments to §219.11(l), the following provisions were also amended to delete the language  
9 regarding hazardous conditions during which movement of a permitted vehicle is prohibited and to  
10 renumber or re-letter the remaining subdivisions within these sections as necessary: §§219.13(e)(6),  
11 219.32(h), 219.33(c), 219.34(e), 219.35(g), 219.36(g), 219.41(d), and 219.61(d).

12 Additionally, other sections cross-reference §219.11(l). While these sections were not amended,  
13 the meaning of the provisions that cite to §219.11(l) were impacted by the amendments to §219.11(l).  
14 The deletion of the language regarding hazardous conditions in §219.11(l) had the effect of removing  
15 hazardous conditions from §§219.13(a), 219.13(e)(1)(C), 219.16(e), and 219.31(h).

16 An amendment to §219.11(n) authorizes applicants for permits to file an electronic copy of a  
17 surety bond that a permit applicant must file with the department under Transportation Code,  
18 §623.075(c). Transportation Code, §623.074(d) authorizes the department to adopt a rule to authorize an  
19 applicant to submit an application electronically. Prior to this amendment, permit applicants were  
20 required to file an original surety bond (the paper version with the original signature) with the department  
21 under §219.11(n)(1)(A)(iv) and (2)(B). New §219.11(n)(4) allows permit applicants to file their bonds  
22 electronically, providing a convenience for permit applicants that want to file their bonds electronically,  
23 potentially reducing costs for the department, and potentially streamlining the department's process. An

## TITLE 43. TRANSPORTATION

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1 electronic copy of a surety bond is legally enforceable under Texas Business and Commerce Code,  
2 §322.007. Moreover, the department currently maintains its records in electronic format, scanning a copy  
3 of the original surety bond and destroying the original as authorized by the Texas Department of  
4 Transportation (TxDOT). The amendment removes the scanning step from the department's process to  
5 the extent the applicant chooses to file an electronic copy of its surety bond with the department, rather  
6 than filing the original surety bond.

7 Amendments to §219.11(n) delete language that was inconsistent with the amendment to allow  
8 a permit applicant to file an electronic copy of the surety bond. The department deleted the following:  
9 the requirement for the bond to have an original signature under §219.11(n)(1)(A)(iv), the authority for  
10 an applicant to file a facsimile or electronic copy of the surety bond as long as the original surety bond is  
11 received by the department within 10 days under §219.11(n)(2)(B), and the restriction on the department  
12 issuing the applicant a permit until the original surety bond has been received by the department under  
13 §219.11(n)(2)(B). None of these requirements were necessary because new §219.11(n)(4) allows  
14 electronic filing of surety bonds.

15 Other amendments to §219.11(n) removed language in §219.11(n)(1)(C) regarding TxDOT's  
16 process for making a claim on a surety bond. TxDOT's process for making a claim against a surety bond  
17 should not be included in the department's rules because the department does not have statutory  
18 authority to set processes for TxDOT through rule. Section 219.11(n)(1)(C) was a relic from a time when  
19 TxDOT was responsible for implementing and administering Subtitle E of Title 7 of the Transportation  
20 Code and was no longer necessary or appropriate in the department's rule. This amendment also removes  
21 the reference to a bond under Transportation Code, §623.163 because the §623.163 bond is addressed  
22 in §219.3.

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1           New §219.11(n)(1) through (3) set out the procedures for filing surety bonds with the department  
2 for clarity and ease of reference. New paragraphs (1) through (3) consist of rearranged and edited  
3 language found in the following subdivisions that existed under §219.11(n) prior to the adoption of these  
4 amendments: §§219.11(n)(1)(A)(ii) (minus the unnecessary language that provides an example),  
5 219.11(n)(1)(A)(iii), 219.11(n)(1)(A)(iv), 219.11(n)(1)(A)(v), 219.11(n)(1)(A)(vi), 219.11(n)(1)(B), and  
6 219.11(n)(2)(A).

7           Other amendments to §219.11(n) remove all or part of the language in the following subdivisions  
8 that existed under §219.11(n) prior to the adoption of these amendments because the language was  
9 redundant and duplicative of Transportation Code, §623.075, and therefore unnecessary in rule:  
10 §§219.11(n)(1)(A)(i), 219.11(n)(1)(D), and 219.11(n)(2)(E) and (F). The deletion of §219.11(n)(2)(F) also  
11 removed the reference to Chapter 645 of the Transportation Code because Senate Bill 1814, 87<sup>th</sup>  
12 Legislature, Regular Session (2021) removed the reference to Chapter 645 from Transportation Code,  
13 §623.075. Amendments deleted §219.11(n)(2)(C) and (D) because they were unnecessary interpretations  
14 of the exemption in Transportation Code, §623.075(b)(1).

15           Amendments to §219.14(b) update the permit application requirements to be consistent with the  
16 format and application requirements in §219.11(c), while omitting unnecessary requirements and  
17 customizing the requirements to comply with Subchapter E of Chapter 623 of the Transportation Code.  
18 Amended §219.14(b)(1) clarifies that the permit applicant must submit the application to the department.

19           Amendments to §219.14(b)(2) modify the application requirements to provide the department  
20 with the information it needs to process an application and to contact the correct person if there are  
21 updates to the permit restrictions. The amendments require the applicant to provide the department with  
22 the name, customer identification number, and address of the applicant. The department needs the name  
23 of the applicant, so the department has the name of the person to whom the department issues a permit.

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1 The applicant's name and address will help law enforcement to enforce Transportation Code, §621.511,  
2 which makes it an offense if a person operates or moves a vehicle on a public highway under a permit  
3 when the person is not the person named on the permit or an employee of the person named on the  
4 permit. Also, the department cannot issue a permit unless the applicant provides their customer  
5 identification number, which the applicant can obtain from the department at no cost.

6 The amendments also require the applicant to provide the department with the name, telephone  
7 number, and email address of the contact person. Having the contact person's email address and  
8 telephone number enables the department to communicate more efficiently with the applicant and any  
9 permit holder. The applicant could be a large corporation with different contact people for different  
10 permits.

11 The amended §219.14(b)(2) also includes rearranged and edited language found in §219.14(b)(1)  
12 prior to the adoption of these amendments and incorporates the specific requirements which are unique  
13 to manufactured houses as defined by Transportation Code, §623.091. The permit applicant must provide  
14 a description of the manufactured home and the dimensions of the manufactured home to the  
15 department, so the department can include certain information on the permit as required by  
16 Transportation Code, §623.093. Amended §219.14(b)(2) also states that the permit applicant must  
17 provide any other information required by law, including the information listed in Transportation Code,  
18 §623.093(a).

19 An amendment to §219.14(b) deletes the following language which is included in Transportation  
20 Code, §623.093 because it is not necessary to repeat statutory language in a rule: "If the manufactured  
21 home is being moved to or from a site in this state where it has been, or will be, occupied as a dwelling,  
22 the permit must also show the name of the owner of the home, the location from which the home is being  
23 moved, and the location to which the home is being delivered." An amendment to §219.14(b) deleted the

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1 language §219.14(b)(2) that existed prior to the adoption of these amendments because the language  
2 was an unnecessary cross-reference that did not add clarity.

3 Amendments to §219.30 removed language that was duplicative with statute because it is not  
4 necessary to repeat statutory language in a rule. An amendment to §219.30(c) deleted language that is in  
5 Transportation Code, §623.011(b)(1). An amendment to re-lettered §219.30(d) deleted language that is  
6 in Transportation Code, §623.012 and the reference to the state highway system, which was removed by  
7 Senate Bill 1814, 87<sup>th</sup> Legislature, Regular Session (2021). Amendments to §219.30 re-lettered the  
8 remaining subsections, as well as an internal cross-reference to re-lettered subsection (e), due to the  
9 deletion of subsections (c) and (d).

10 An amendment to re-lettered §219.30(c)(1) updated the language to be consistent with the  
11 language in other sections of Chapter 219 regarding permit applications by stating the person must submit  
12 an application to qualify for the permit. An amendment to re-lettered §219.30(c)(2)(A) requires the  
13 applicant to provide its customer identification number because the department cannot issue a permit  
14 without the customer's identification number. The applicant can obtain a customer identification number  
15 from the department at no cost. An amendment to §219.30(c)(2)(B) rearranged the language for clarity.  
16 An amendment to re-lettered §219.30(c)(2)(B) also requires the applicant to provide an email address for  
17 its contact person to enable the department to communicate more efficiently with the applicant's contact  
18 person. Having an email address for the permittee's contact person enables the department to  
19 disseminate information more quickly and easily. For example, if the department wants to amend the  
20 permit because of a new restriction provided by TxDOT, the department will be able to send an email to  
21 the permit holders regarding the new restriction, so they can receive the update as soon as possible and  
22 print an updated permit. As another example, when a safety issue arises like a new height restriction on  
23 a specific roadway that includes a bridge, the permit holders need to know about the new height

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1 restriction as soon as possible. The department will be able to send an email to the permit holders  
2 regarding the new height restriction, which will reach the permittees more quickly than phone calls, which  
3 can be a slow process, especially if the department must call a large number of permit holders. Also, the  
4 department's permitting staff currently contact applicants and permit holders by both email and  
5 telephone, depending on the issue. For these reasons, similar amendments were made to the following  
6 sections to require applicants to provide email addresses: §§219.14(b), 219.31(b), 219.32(c), 219.33(b),  
7 219.34(b), 219.35(b), and 219.36(b).

8 An amendment to re-lettered §219.30(c)(2)(C) requires the applicant to provide vehicle  
9 registration information because Transportation Code, §623.011(b)(1) says the vehicle must be registered  
10 under Transportation Code, Chapter 502 for the maximum gross weight applicable to the vehicle under  
11 Transportation Code, §621.101, not to exceed 80,000 pounds. Other amendments to re-lettered  
12 §219.30(c)(2)(C) require the permit applicant to provide the truck year and vehicle identification number.  
13 The department needs the vehicle information for investigations regarding possible administrative  
14 enforcement actions and to provide to law enforcement officers who use the information to enforce the  
15 laws regarding size and weight under Subtitle E of Title 7 of the Transportation Code. For example, law  
16 enforcement officers use vehicle information to verify whether a permit is being used for more than one  
17 vehicle in violation of the law.

18 Amendments to re-lettered §219.30(h)(4) substitute the word "permittee" for the word  
19 "applicant" and add the replacement of the letter of credit or bond to be consistent with Transportation  
20 Code, §623.012(c) and (d). An amendment to re-lettered §219.30(h) replaces the reference to deleted  
21 §219.30(d) with a reference to Transportation Code, §623.012, which contains the relevant language.  
22 Amendments to §219.30 delete subsections (k) and (l) because the applicable statutes do not provide the  
23 authority to void the permit for the reason stated in subsection (k).

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1           An amendment to §219.31(b)(2)(A) requires the applicant to provide its customer identification  
2           number because the department cannot issue a permit without the customer's identification number.  
3           The applicant can obtain a customer identification number from the department at no cost. An  
4           amendment to §219.31(b)(2)(A) also deletes the requirement for the applicant to provide its telephone  
5           number and email address because §219.31(b)(2)(B) already requires the applicant to provide the  
6           department with the contact information for the applicant's contact person. An amendment to  
7           §219.31(b)(2)(B) also rearranges the language for clarity.

8           An amendment to §219.32(c)(2)(A) requires the applicant to provide its customer identification  
9           number because the department cannot issue a permit without the customer's identification number.  
10          The applicant can obtain a customer identification number from the department at no cost. An  
11          amendment to §219.32(c)(2)(B) also rearranges the language for clarity. For these reasons, similar  
12          amendments were made to the following sections: §§219.33(b), 219.34(b), 219.35(b), and 219.36(b).

13          An amendment to re-lettered §219.32(h) clarifies that the city's curfew movement restrictions do  
14          not apply unless the department publishes the curfew movement restrictions. The department only  
15          publishes the curfew movement restrictions if TxDOT approves the restrictions. Currently, the department  
16          publishes the curfew movement restrictions on the department's website.

17          Amendments to §219.33(a), (c), and (d) delete reference to an emergency declared by the  
18          president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act,  
19          (42 U.S.C. §5121, *et seq.*) (Stafford Act) because Transportation Code, §623.341(a) and 23 U.S.C. §127(i)  
20          only authorize the federal disaster relief permit if the president of the United States issues a major disaster  
21          declaration. The federal disaster relief permit authorizes an overweight vehicle that will be used to deliver  
22          relief supplies to exceed legal weight up to the axle weights and gross weight listed in §219.33(c), even if  
23          the vehicle is transporting a divisible load. Subject to the restrictions and conditions in §219.33, the

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1 permitted vehicle is authorized to exceed legal weight on state highways, including the National System  
2 of Interstate and Defense Highways.

3 Although 23 U.S.C. §127(i) uses the term “emergency,” §127(i)(1)(A) says a state may issue these  
4 special permits if the president has declared the emergency to be a “major disaster” under the Stafford  
5 Act. An emergency declaration is different than a major disaster declaration under the Stafford Act.  
6 Section 5170 of the Stafford Act provides the procedures for the president to declare a major disaster,  
7 which is defined in §5122 of the Stafford Act. Section 5191 of the Stafford Act provides the procedure for  
8 the president to declare an emergency, which is defined in §5122.

9 The Federal Highway Administration (FHWA) is a government agency within the United States  
10 Department of Transportation that supports state and local governments in the design, construction, and  
11 maintenance of the U.S. highway system. FHWA’s website explains that through financial and technical  
12 assistance to state and local governments, FHWA is responsible for ensuring that America’s roads and  
13 highways continue to be among the safest and most technologically sound in the world.

14 FHWA issued a memo on June 5, 2013, regarding the Public Law which enacted 23 U.S.C. §127(i)  
15 in which FHWA stated as follows: “Section 1511 of MAP-21 extends the States’ authority to issue Special  
16 Permits to vehicles with divisible loads that are delivering relief supplies during a Presidentially-declared  
17 emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act  
18 (“Stafford Act”) (42 U.S.C. 5121 et seq.).” The memo, titled “MAP-21, Section 1511 – Special Permits  
19 During Periods of National Emergency Implementation Guidance, Revised,” was available on FHWA’s  
20 website as of October 31, 2023. FHWA’s June 5, 2013, memo is from FHWA’s Associate Administrator for  
21 Operations to the Division Administrators, Directors of Field Services, and Director of Technical Services.  
22 Although the department previously relied on FHWA’s June 5, 2013, memo when enacting §219.33, the  
23 department amended §219.33(a), (c), and (d) to delete the reference to an emergency because



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1 Transportation Code, Section §623.341(a) and 23 U.S.C. §127(i) only authorize this special permit if the  
2 president issues a major disaster declaration for the reasons previously stated.

3 Amendments to §219.33(c)(3) and re-numbered (c)(4) were necessary to clarify that the city's  
4 curfew movement restrictions do not apply unless the department publishes the curfew movement  
5 restrictions. The department only publishes the curfew movement restrictions if TxDOT approves the  
6 restrictions. Currently, the department publishes the curfew movement restrictions on its website.

7 An amendment to re-numbered §219.33(c)(7) specifies that a permit will expire 120 days after  
8 the date of a disaster because the department's permitting system does not calculate the expiration date  
9 for each federal disaster relief permit. Under Transportation Code, §623.341(b) and 23 U.S.C. §127(i), the  
10 permit expires not later than the 120<sup>th</sup> day after the date the president declares a major disaster. The  
11 department's permitting system issues permits for 120 days after the major disaster declaration and does  
12 not print the expiration date on the permits. The amendment to re-numbered §219.33(c)(7) deleted  
13 language that said the expiration date is listed in the permit and replaced that language with language  
14 that says the permit will expire 120 days after the date of the major disaster declaration. The amended  
15 language is consistent with Transportation Code, §623.341(b) and 23 U.S.C. §127(i).

16 Amendments to §219.33(d) were necessary because in practice, only the notice of the president's  
17 major disaster declaration is available on the White House website and the Federal Emergency  
18 Management Agency's website. The official declaration that is signed by the president does not appear to  
19 be readily available to the public, so the department should only require a person to carry a copy of the  
20 notice of declaration in the permitted vehicle, along with the permit. If the permittee is stopped by law  
21 enforcement, the documentation will help the peace officer determine whether the permit was issued  
22 under a major disaster declaration issued by the president and whether the permit is valid under §219.33  
23 and Transportation Code, §623.341.

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Amendments to §219.41(b) modified the application requirements to provide the department with the information it needs to process an application under Subchapter D of Chapter 219 and to contact the correct person if there are updates to the permit restrictions. An amendment to §219.41(b)(1) requires the applicant to provide its customer identification number because the department cannot issue a permit without the customer's identification number. The applicant can obtain a customer identification number from the department at no cost. An amendment to §219.41(b)(1) also deleted the requirement for the applicant to provide its telephone number and email address because an amendment to §219.41(b)(2) requires the applicant to provide the department with the name, telephone number, and email address for the applicant's contact person. The applicant could be a large corporation with different contact people for different permits. Having an email address for the permittee's contact person enables the department to disseminate information more quickly and easily, including information that could impact the safety of the traveling public, such as a new permit restriction provided by TxDOT. Transportation Code, §623.145 requires the board of the Texas Department of Motor Vehicles (board) and the Texas Transportation Commission to consider the safety and convenience of the general traveling public when adopting rules regarding the issuance of permits for oil well servicing and drilling machinery under Subchapter G of Chapter 623 of the Transportation Code. An amendment to §219.41(b)(2) and (3) removed the year and make of the unit from paragraph (2) and combined this language with the language in paragraph (3) regarding the identification number of the unit. For these reasons, similar amendments were made to §219.61(b) regarding an application for a crane, which provisions apply to permit applications under Subchapter E of Chapter 219. Transportation Code, §623.195 requires the board and the Texas Transportation Commission to consider the safety and convenience of the general traveling public when adopting rules regarding the issuance of permits for cranes (a/k/a unladen lift equipment motor vehicles) under Subchapter J of Chapter 623 of the Transportation Code.

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1           An amendment to §219.41 deletes subsection (e) regarding void permits because it overstates  
2           the language in Transportation Code, §623.146 regarding the ramifications of an owner's or an owner's  
3           representative's violation of a rule of the board or a violation of a condition placed on the permit. An  
4           amendment to §219.41 deleted subsection (g) regarding records retention because §219.102(b) already  
5           includes language that requires the permit to be kept in the permitted vehicle until the permit terminates  
6           or expires. Amendments to §219.41 re-lettered the remaining subsections due to the deletion of  
7           subsections (e) and (g).

8           Amendments to §219.43(f) and §219.63(a)(7) eliminated the implication that a hubometer serial  
9           number is required to be listed on the permit and conformed the language to current practice. An  
10          amendment to §219.43(f) and §219.63(a)(7) clarified that an amendment can be made to the hubometer  
11          serial number on the permit if a hubometer serial number is listed on the permit.

12          Transportation Code, §623.145 and §623.195 require the board to consult with the Texas  
13          Transportation Commission prior to the adoption of certain rules regarding oversize and overweight  
14          permits for the operation of oil well servicing and drilling machinery and unladen lift equipment motor  
15          vehicles. To comply with these statutory requirements, the board consulted with the Texas Transportation  
16          Commission on the amendments to 43 TAC §§219.41, 219.43, 219.61, and 219.63. The department  
17          provided the proposed amendments to the Texas Transportation Commission through TxDOT's staff. The  
18          Texas Transportation Commission considered the proposed amendments at its public meeting on October  
19          26, 2023, and entered a Minute Order to document compliance with Transportation Code, §623.145 and  
20          §623.195.

**21          SUMMARY OF COMMENTS.**

22          No comments on the proposed amendments were received.

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1   **STATUTORY AUTHORITY.** The department adopts amendments under Transportation Code, §§621.008,  
2   622.002, 622.051, *et seq.*, 623.002, 623.004, 623.070, *et seq.*, 623.074(d), 623.095(c), 623.145, 623.195,  
3   623.342, 623.411, 623.427, 1002.001; and Government Code, §2001.004, as well as the statutes  
4   referenced throughout this preamble.

5           Transportation Code, §621.008 authorizes the board to adopt rules that are necessary to  
6   implement and enforce Transportation Code, Chapter 621.

7           Transportation Code, §622.002 authorizes the board to adopt rules that are necessary to  
8   implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et*  
9   *seq.* which authorize the department to issue a permit for transporting poles required for the maintenance  
10   of electric power transmission and distribution lines.

11           Transportation Code, §623.002 authorizes the board to adopt rules as necessary to implement  
12   Transportation Code, Chapter 623. Chapter 623 includes sections such as §623.004 which authorizes the  
13   department to deny a permit application if the applicant is subject to an out-of-service order issued by  
14   FMCSA or DPS; and §623.070, *et seq.* which authorize the department to issue a permit to an applicant to  
15   move certain equipment or commodities and prescribe the application requirements for such permits.

16           Transportation Code, §623.074(d) authorizes the department to adopt a rule to authorize an  
17   applicant to submit an application electronically.

18           Transportation Code, §623.095(c) authorizes the department to adopt rules concerning the  
19   requirements for a permit under §623.095(c) regarding an annual permit for a person authorized to be  
20   issued permits under §623.094 for the transportation of new manufactured homes from a manufacturing  
21   facility to a temporary storage location not to exceed 20 miles from the point of manufacture.

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1           Transportation Code, §623.145 authorizes the board, in consultation with the Texas  
2           Transportation Commission, by rule to provide for the issuance of permits under Subchapter G of Chapter  
3           623 of the Transportation Code regarding oil well servicing and drilling machinery.

4           Transportation Code, §623.195 authorizes the board, in consultation with the Texas  
5           Transportation Commission, by rule to provide for the issuance of permits under Subchapter J of Chapter  
6           623 of the Transportation Code regarding cranes.

7           Transportation Code, §623.342 authorizes the board to adopt rules that are necessary to  
8           implement Subchapter R of Chapter 623 of the Transportation Code regarding federal disaster relief  
9           permits.

10          Transportation Code, §623.411 authorizes the department to adopt rules that are necessary to  
11          implement Subchapter U of Chapter 623 of the Transportation Code regarding the permit for intermodal  
12          shipping containers.

13          Transportation Code, §623.427 authorizes the department to adopt rules that are necessary to  
14          implement Subchapter V of Chapter 623 regarding the permit for fluid milk.

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

17          Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature  
18          and requirements of all available formal and informal procedures.

19          **CROSS REFERENCE TO STATUTE.** These rule revisions implement Transportation Code Chapters 621, 622,  
20          and 623; and Government Code, §2001.004.

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**TEXT.**

## SUBCHAPTER B. GENERAL PERMITS

## 219.11 General Oversize/Overweight Permit Requirements and Procedures

(a) Purpose and scope. This section contains general requirements relating to oversized/overweight permits, including single-trip permits. Specific requirements for each type of specialty permit are provided for in this chapter.

(b) Prerequisites to obtaining an oversize/overweight permit. Unless exempted by law or this chapter, the following requirements must be met prior to the issuance of an oversize/overweight permit.

(1) Commercial motor carrier registration or surety bond. Prior to obtaining an oversize/overweight permit, an applicant permitted under the provisions of Transportation Code, Chapter 623, Subchapter D, must be registered as a commercial motor carrier under Chapter 218 of this title (relating to Motor Carriers) or, if not required to obtain a motor carrier registration, file a surety bond with the department as described in subsection (n) of this section.

(2) Vehicle registration. A vehicle registered with a permit plate will not be issued an oversize/overweight permit under this subchapter. A permitted vehicle operating under this subchapter must be registered with one of the following types of vehicle registration:

(A) current Texas license plates that indicate the permitted vehicle is registered for maximum legal gross weight or the maximum weight the vehicle can transport;

(B) Texas temporary vehicle registration;

(C) current out of state license plates that are apportioned for travel in Texas; or

(D) foreign commercial vehicles registered under Texas annual registration.

(c) Permit application.

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(1) An application for a permit shall be made in a form and by the method prescribed by the department, and at a minimum shall include the following, unless stated otherwise in this

subchapter:

(A) name, customer identification number, and address [~~telephone number,~~  
and email address (if requested)] of the applicant;

(B) name, telephone number, and email address of contact person; [~~applicant's~~  
~~customer identification number;~~]

(C) applicant's [~~MCR number or~~] USDOT Number if applicant is required by law  
to have a USDOT Number [~~, if applicable~~];

(D) complete load description, including maximum width, height, length,  
overhang, and gross weight;

(E) complete description of vehicle, including truck year, make, license plate  
number and state of issuance, and vehicle identification number, if required;

(F) vehicle axle and tire information including number of axles, distance  
between axles, axle weights, number of tires, and tire size for overweight permit applications; and

(G) any other information required by law.

(2) Applications transmitted electronically are considered signed if a digital signature is  
transmitted with the application and intended by the applicant to authenticate the application.

(A) The department may only accept a digital signature used to authenticate an  
application under procedures that comply with any applicable rules adopted by the Department of  
Information Resources regarding department use or acceptance of a digital signature.

(B) The department may only accept a digital signature to authenticate an  
application if the digital signature is:

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(i) unique to the person using it;

(ii) capable of independent verification;

(iii) under the sole control of the person using it; and

(iv) transmitted in a manner that will make it infeasible to change the

data in the communication or digital signature without invalidating the digital signature.

(d) Maximum permit weight limits.

(1) General. An overweight permitted vehicle will not be routed over a load-restricted

bridge when exceeding the posted capacity of the bridge, unless a special exception is granted by

TxDOT, based on an analysis of the bridge performed by a TxDOT approved licensed professional

engineer or by TxDOT. Any analysis by a non-TxDOT engineer must have final approval from TxDOT.

(A) An axle group must have a minimum spacing of four feet, measured from

center of axle to center of axle, between each axle in the group to achieve the maximum permit weight

for the group.

(B) The maximum permit weight for an axle group with spacing of five or more

feet between each axle will be based on an engineering study of the equipment conducted by TxDOT.

(C) A permitted vehicle will be allowed to have air suspension, hydraulic

suspension, and mechanical suspension axles in a common weight equalizing suspension system for any

axle group.

(D) The department may permit axle weights greater than those specified in this

section, for a specific individual permit request, based on an engineering study of the route and hauling

equipment performed by a TxDOT approved licensed professional engineer or by TxDOT. Any analysis by

a non-TxDOT engineer must have final approval from TxDOT.



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1 (E) A permitted vehicle or combination of vehicles may not exceed the  
2 manufacturer's rated tire carrying capacity, unless expressly authorized in the language on the permit  
3 based on an analysis performed by a TxDOT approved licensed professional engineer or by TxDOT. Any  
4 analysis by a non-TxDOT engineer must have final approval from TxDOT.

5 (F) Two or more consecutive axle groups having an axle spacing of less than 12  
6 feet, measured from the center of the last axle of the preceding group to the center of the first axle of  
7 the following group, will be reduced by 2.5% for each foot less than 12 feet.

8 (2) Maximum axle weight limits. Maximum permit weight for an axle or axle group is  
9 based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the  
10 lesser amount:

11 (A) single axle--25,000 pounds;

12 (B) two axle group--46,000 pounds;

13 (C) three axle group--60,000 pounds;

14 (D) four axle group--70,000 pounds;

15 (E) five axle group--81,400 pounds;

16 (F) axle group with six or more axles--determined by TxDOT based on an  
17 engineering study of the equipment, which will include the type of steering system used, the type of  
18 axle suspension, the spacing distance between each axle, the number of tires per axle, and the tire size  
19 on each axle; or

20 (G) trunnion axles--30,000 pounds per axle if the trunnion configuration has:

21 (i) two axles;

22 (ii) eight tires per axle;

23 (iii) axles a minimum of 10 feet in width; and

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(iv) at least five feet of spacing between the axles, not to exceed six feet.

(3) Weight limits for load restricted roads. Maximum permit weight for an axle or axle group, when traveling on a load restricted road, will be based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

(A) single axle--22,500 pounds;

(B) two axle group--41,400 pounds;

(C) three axle group--54,000 pounds;

(D) four axle group--63,000 pounds;

(E) five axle group--73,260 pounds;

(F) axle group with six or more axles--determined by TxDOT based on an engineering study of the equipment, which will include the type of steering system used, the type of axle suspension, the spacing distance between each axle, the number of tires per axle, and the tire size on each axle;

(G) trunnion axles--54,000 pounds; and

(H) two or more consecutive axle groups having an axle spacing of less than 12 feet, measured from the center of the last axle of the preceding group to the center of the first axle of the following group will be reduced by 2.5% for each foot less than 12 feet.

(e) Permit issuance.

(1) General. Upon receiving an application in the form prescribed by the department, the department will review the permit application for the appropriate information and will then determine the most practical route based on information provided by TxDOT.

(2) Routing.

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(A) A permitted vehicle will be routed over the most practical route available taking into consideration:

(i) the size and weight of the overdimension load in relation to vertical clearances, width restrictions, steep grades, and weak or load restricted bridges;

(ii) the geometrics of the roadway in comparison to the overdimension load;

(iii) sections of highways restricted to specific load sizes and weights due to construction, maintenance, and hazardous conditions;

(iv) traffic conditions, including traffic volume;

(v) route designations by municipalities in accordance with Transportation Code, §623.072;

(vi) load restricted roads; and

(vii) other considerations for the safe transportation of the load.

(B) When a permit applicant desires a route other than the most practical, more than one permit will be required for the trip unless an exception is granted by the department.

(3) Movement to and from point of origin or place of business. A permitted vehicle will be allowed to:

(A) move empty oversize and overweight hauling equipment to and from the job site; and

(B) move oversize and overweight hauling equipment with a load from the permitted vehicle's point of origin to pick up a permitted load, and to the permitted vehicle's point of origin or the permittee's place of business after dropping off a permitted load, as long as:

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(i) the load does not exceed legal size and weight limits under

Transportation Code, Chapters 621 and 622; and

(ii) the transport complies with the permit, including the time period

stated on the permit.

(f) Payment of permit fees, refunds.

(1) Payment methods. All permit applications must be accompanied by the proper fee, which shall be payable as provided by §209.23 of this title (relating to Methods of Payment).

(2) Refunds. A permit fee will not be refunded after the permit number has been issued unless such refund is necessary to correct an error made by the permit officer.

(g) Amendments. A permit may be amended for the following reasons:

(1) vehicle breakdown;

(2) changing the intermediate points in an approved permit route;

(3) extending the expiration date due to conditions which would cause the move to be delayed;

(4) changing route origin or route destination prior to the start date as listed on the permit;

(5) changing vehicle size limits prior to the permit start date as listed on the permit, provided that changing the vehicle size limit does not necessitate a change in the approved route; and

(6) correcting any mistake that is made due to permit officer error.

(h) Requirements for overwidth loads.

(1) Unless stated otherwise on the permit, an overwidth load must travel in the outside traffic lane on multi-lane highways, when the width of the load exceeds 12 feet.

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(2) Overwidth loads are subject to the escort requirements of subsection (k) of this section.

(3) A permitted vehicle exceeding 16 feet in width will not be routed on the main lanes of a controlled access highway, unless an exception is granted by TxDOT, based on a route and traffic study. The load may be permitted on the frontage roads when available, if the movement will not pose a safety hazard to other highway users.

(4) An applicant requesting a permit to move a load exceeding 20 feet wide will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the vehicle and load can safely negotiate it, unless an exception is granted based on a route and traffic study conducted by TxDOT. A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department in writing whether the vehicle and load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department with an alternate route around the unacceptable section.

(C) Once a route is decided upon and a permit issued, the permit may not be amended unless an exception is granted by the department.

(i) Requirements for overlength loads.

(1) Overlength loads are subject to the escort requirements stated in subsection (k) of this section.

(2) A single vehicle, such as a motor crane, that has a permanently mounted boom is not considered as having either front or rear overhang as a result of the boom because the boom is an integral part of the vehicle.

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(3) When a single vehicle with a permanently attached boom exceeds the maximum legal length of 45 feet, a permit will not be issued if the boom projects more than 25 feet beyond the front bumper of the vehicle, or when the boom projects more than 30 feet beyond the rear bumper of the vehicle, unless an exception is granted by TxDOT, based on a route and traffic study.

(4) Maximum permit length for a single vehicle is 75 feet.

(5) A load extending more than 20 feet beyond the front or rearmost portion of the load carrying surface of the permitted vehicle must have a rear escort flag vehicle, unless an exception is granted by TxDOT, based on a route and traffic study.

(6) A permit will not be issued for an oversize vehicle and load with:

(A) more than 25 feet front overhang; or

(B) more than 30 feet rear overhang, unless an exception is granted by TxDOT, based on a route and traffic study.

(7) An applicant requesting a permit to move an oversize vehicle and load exceeding 125 feet overall length will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the oversize vehicle and load can safely negotiate it, unless an exception is granted based on a route and traffic study conducted by TxDOT. A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department in writing whether the oversize vehicle and load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department with an alternate route around the unacceptable section.

(C) Once a route is decided upon and a permit issued, the permit may not be amended unless an exception is granted by the department.

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(8) A permitted vehicle that is not overwidth or overheight, and does not exceed 150 feet overall length, may be moved in a convoy consisting of not more than four overlength permitted vehicles. A permitted vehicle that is not overwidth or overheight that exceeds 150 feet, but does not exceed 180 feet overall length, may be moved in a convoy consisting of not more than two overlength permitted vehicles. Convoys are subject to the requirements of subsection (k) of this section. Each permitted vehicle in the convoy must:

(A) be spaced at least 1,000 feet, but not more than 2,000 feet, from any other permitted vehicle in the convoy; and

(B) have a rotating amber beacon or an amber pulsating light, not less than eight inches in diameter, mounted at the rear top of the load being transported.

(j) Requirements for overheight loads.

(1) Overheight loads are subject to the escort requirements stated in subsection (k) of this section.

(2) An applicant requesting a permit to move an oversize vehicle and load with an overall height of 19 feet or greater will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the oversize vehicle and load can safely negotiate it, unless an exception is granted based on a route and traffic study conducted by TxDOT. A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department in writing whether the oversize vehicle and load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department with an alternate route around the unacceptable section.

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1 (C) Once a route is decided upon and a permit issued, the permit may not be  
2 amended unless an exception is granted by the department.

3 (k) Escort flag vehicle requirements. Escort flag vehicle requirements are provided to facilitate  
4 the safe movement of permitted vehicles and to protect the traveling public during the movement of  
5 permitted vehicles. A permittee must provide for escort flag vehicles and law enforcement assistance  
6 when required by TxDOT. The requirements in this subsection do not apply to the movement of  
7 manufactured housing, portable building units, or portable building compatible cargo, unless stated  
8 otherwise in this chapter.

9 (1) General.

10 (A) Applicability. The operator of an escort flag vehicle shall, consistent with  
11 applicable law, warn the traveling public when:

12 (i) a permitted vehicle must travel over the center line of a narrow  
13 bridge or roadway;

14 (ii) a permitted vehicle makes any turning movement that will require  
15 the permitted vehicle to travel in the opposing traffic lanes;

16 (iii) a permitted vehicle reduces speed to cross under a low overhead  
17 obstruction or over a bridge;

18 (iv) a permitted vehicle creates an abnormal and unusual traffic flow  
19 pattern; or

20 (v) in the opinion of TxDOT, warning is required to ensure the safety of  
21 the traveling public or safe movement of the permitted vehicle.

22 (B) Law enforcement assistance. Law enforcement assistance may be required  
23 by TxDOT to control traffic when a permitted vehicle is being moved within the corporate limits of a city,



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1 or at such times when law enforcement assistance would provide for the safe movement of the  
2 permitted vehicle and the traveling public.

3 (C) Obstructions. It is the responsibility of the permittee to contact utility  
4 companies, telephone companies, television cable companies, or other entities as they may require,  
5 when it is necessary to raise or lower any overhead wire, traffic signal, street light, television cable, sign,  
6 or other overhead obstruction. The permittee is responsible for providing the appropriate advance  
7 notice as required by each entity.

8 (2) Escort requirements for overwidth loads. Unless an exception is granted based on a  
9 route and traffic study conducted by TxDOT, an overwidth load must:

10 (A) have a front escort flag vehicle if the width of the load exceeds 14 feet, but  
11 does not exceed 16 feet, when traveling on a two lane roadway;

12 (B) have a rear escort flag vehicle if the width of the load exceeds 14 feet, but  
13 does not exceed 16 feet, when traveling on a roadway of four or more lanes; and

14 (C) have a front and a rear escort flag vehicle for all roads, when the width of  
15 the load exceeds 16 feet.

16 (3) Escort requirements for overlength loads. Unless an exception is granted by TxDOT,  
17 based on a route and traffic study, overlength loads must have:

18 (A) a front escort flag vehicle when traveling on a two lane roadway if the  
19 vehicle exceeds 110 feet overall length, but does not exceed 125 feet overall length;

20 (B) a rear escort flag vehicle when traveling on a multi-lane highway if the  
21 vehicle exceeds 110 feet overall length, but does not exceed 125 feet overall length; and

22 (C) a front and rear escort flag vehicle at all times if the permitted vehicle  
23 exceeds 125 feet overall length.

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(4) Escort requirements for overheight loads. Unless an exception is granted by TxDOT, based on a route and traffic study, overheight loads must have:

(A) a front escort flag vehicle equipped with a height pole to ensure the vehicle and load can clear all overhead obstructions for any permitted vehicle that exceeds 17 feet in height; and

(B) a front and rear escort flag vehicle for any permitted vehicle exceeding 18 feet in height.

(5) Escort requirements for permitted vehicles exceeding legal limits in more than one dimension. When a load exceeds more than one dimension that requires an escort under this subsection, front and rear escort flag vehicles will be required unless an exception is granted by TxDOT.

(6) Escort requirements for convoys. Convoys must have a front escort flag vehicle and a rear escort flag vehicle on all highways at all times.

(7) General equipment requirements. The following special equipment requirements apply to permitted vehicles and escort flag vehicles that are not motorcycles.

(A) An escort flag vehicle must be a single unit with a gross vehicle weight (GVW) of not less than 1,000 pounds nor more than 10,000 pounds.

(B) An escort flag vehicle must be equipped with two flashing amber lights; one rotating amber beacon of not less than eight inches in diameter; or alternating or flashing blue and amber lights, each of which must be visible from all directions while actively engaged in escort duties for the permitted vehicle.

(C) An escort flag vehicle must display a sign, on either the roof of the vehicle, or the front and rear of the vehicle, with the words "OVERSIZE LOAD" or "WIDE LOAD." The sign must be

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1 visible from the front and rear of the vehicle while escorting the permitted load. The sign must meet the  
2 following specifications:

3 (i) at least five feet, but not more than seven feet in length, and at least  
4 12 inches, but not more than 18 inches in height;

5 (ii) the sign must have a yellow background with black lettering;

6 (iii) letters must be at least eight inches, but not more than 10 inches  
7 high with a brush stroke at least 1.41 inches wide; and

8 (iv) the sign must be visible from the front or rear of the vehicle while  
9 escorting the permitted vehicle, and the signs must not be used at any other time.

10 (D) An escort flag vehicle must maintain two-way communications with the  
11 permitted vehicle and other escort flag vehicles involved with the movement of the permitted vehicle.

12 (E) Warning flags must be either red or orange fluorescent material, at least 12  
13 inches square, securely mounted on a staff or securely fastened by at least one corner to the widest  
14 extremities of an overwidth permitted vehicle, and at the rear of an overlength permitted vehicle or a  
15 permitted vehicle with a rear overhang in excess of four feet.

16 (8) Equipment requirements for motorcycles.

17 (A) An official law enforcement motorcycle may be used as a primary escort flag  
18 vehicle for a permitted vehicle traveling within the limits of an incorporated city, if the motorcycle is  
19 operated by a highway patrol officer, sheriff, or duly authorized deputy, or municipal police officer.

20 (B) An escort flag vehicle must maintain two-way communications with the  
21 permitted vehicle and other escort flag vehicles involved with the movement of the permitted vehicle.

22 (I) Restrictions.

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1                   ~~[(1) Restrictions pertaining to road conditions. Movement of a permitted vehicle is~~  
2 ~~prohibited when road conditions are hazardous based upon the judgment of the operator and law~~  
3 ~~enforcement officials. Law enforcement officials shall make the final determination regarding whether~~  
4 ~~or not conditions are hazardous. Conditions that should be considered hazardous include, but are not~~  
5 ~~limited to:]~~

6                   ~~[(A) visibility of less than 2/10 of one mile; or]~~

7                   ~~[(B) weather conditions such as wind, rain, ice, sleet, or snow.]~~

8                   (1) ~~[(2)]~~ Daylight and night movement restrictions.

9                   (A) A permitted vehicle may be moved only during daylight hours unless:

10                               (i) the permitted vehicle is overweight only;

11                               (ii) the permitted vehicle is traveling on an interstate highway and does  
12 not exceed 10 feet wide and 100 feet long, with front and rear overhang that complies with legal  
13 standards; or

14                               (iii) the permitted vehicle meets the criteria of clause (ii) of this  
15 subparagraph and is overweight.

16                   (B) An exception may be granted allowing night movement, based on a route  
17 and traffic study conducted by TxDOT. Escort flag vehicles may be required when an exception allowing  
18 night movement is granted.

19                   (2) ~~[(3)]~~ Holiday restrictions. The maximum size limits for a permit issued under  
20 Transportation Code, Chapter 623, Subchapter D, for holiday movement is 14 feet wide, 16 feet high,  
21 and 110 feet long, unless an exception is granted based on a route and traffic study conducted by  
22 TxDOT. The department may restrict holiday movement of specific loads based on a determination that  
23 the load could pose a hazard for the traveling public due to local road or traffic conditions.

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1                   (3) [(4)] Curfew restrictions. The operator of a permitted vehicle must observe the  
2                   curfew movement restrictions of any city or county in which the vehicle is operated. However, only the  
3                   curfew restrictions listed on the permit apply to the permit.

4                   (m) General provisions.

5                   (1) Multiple commodities.

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

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

16                                       (i) The permit applicant or the shipper of the commodities files with the  
17                  department a written certification by the Texas Economic Development and Tourism Office, attesting  
18                  that issuing the permit will have a significant positive impact on the economy of Texas and that the  
19                  proposed load of multiple commodities therefore cannot be reasonably dismantled. As used in this  
20                  clause the term significant positive impact means the creation of not less than 100 new full-time jobs,  
21                  the preservation of not less than 100 existing full-time jobs, that would otherwise be eliminated if the  
22                  permit is not issued, or creates or retains not less than one percent of the employment base in the  
23                  affected economic sector identified in the certification.

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1 (ii) Transport of the commodities does not exceed legal axle and gross  
2 load limits.

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

9 (iv) The shipper and the permittee must file with the department a  
10 certificate of insurance on a form prescribed by the department, or otherwise acceptable to the  
11 department, naming the department, its board members, officers, and employees as named or  
12 additional insurers on its comprehensive general liability insurance policy for coverage in the amount of  
13 \$5 million per occurrence, including court costs and attorney fees, if any, which may arise from the  
14 transport of an oversized load under a permit issued pursuant to this subparagraph. The insurance  
15 policy is to be procured from a company licensed to transact insurance business in the State of Texas.

16 (v) The shipper and the permittee must file with the department, in  
17 addition to all insurance provided in clause (iv) of this subparagraph, a certificate of insurance on a form  
18 prescribed by the department, or otherwise acceptable to the department, naming the department, its  
19 board members, officers, and employees as insurers under an auto liability insurance policy for the  
20 benefit of said insurers in an amount of \$5 million per accident. The insurance policy is to be procured  
21 from a company licensed to transact insurance business in the State of Texas. If the shipper or the  
22 permittee is self-insured with regard to automobile liability then that party must take all steps and  
23 perform all acts necessary under the law to indemnify the department, its board members, officers, and

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employees as if the party had contracted for insurance pursuant to, and in the amount set forth in, the preceding sentence and shall agree to so indemnify the department, its board members, officers, and employees in a manner acceptable to the department.

(vi) Issuance of the permit is approved by written order of the board which written order may be, among other things, specific as to duration and routes.

(C) An applicant requesting a permit to haul a dozer and its detached blade may be issued a permit, as a non-dismantable load, if removal of the blade will decrease the overall width of the load, thereby reducing the hazard to the traveling public.

(2) Oversize hauling equipment. A vehicle that exceeds the legal size limits, as set forth by Transportation Code, Chapter 621, Subchapter C, may only haul a load that exceeds legal size limits unless otherwise noted in this subchapter, but such vehicle may haul an overweight load that does not exceed legal size limits, except for the special exception granted in §219.13(c)(3) of this title (relating to Time Permits).

(n) Surety bonds under Transportation Code, §623.075.

(1) General requirements. The surety bond must comply with the following requirements:

(A) be in the amount of \$10,000;

(B) be filed on a form and in a manner prescribed by the department;

(C) be effective the day it is issued and expire at the end of the state fiscal year;

(D) include the primary mailing address and zip code of the principal;

(E) be signed by the principal; and

(F) have a single entity as principal with no other principal names listed.

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1                    (2) Non-resident agent. A non-resident agent with a valid Texas insurance license may  
2   issue a surety bond on behalf of an authorized insurance company when in compliance with Insurance  
3   Code, Chapter 4056.

4                    (3) Certificate of continuation. A certificate of continuation will not be accepted.

5                    (4) Electronic copy of surety bond. The department will accept an electronic copy of the  
6   surety bond in lieu of the original surety bond. [The following conditions apply to surety bonds specified  
7   in Transportation Code, §623.075-]

8                    [(A) The surety bond must:]  
9                    [(i) be made payable to the Texas Department of Transportation with  
10   the condition that the applicant will pay the Texas Department of Transportation for any damage caused  
11   to the highway by the operation of the equipment covered by the surety bond;]

12                    [(ii) be effective the day it is issued and expires at the end of the state  
13   fiscal year, which is August 31st. For example, if you obtain a surety bond on August 30th, it will expire  
14   the next day at midnight;]

15                    [(iii) include the complete mailing address and zip code of the principal;]

16                    [(iv) be filed with the department and have an original signature of the  
17   principal;]

18                    [(v) have a single entity as principal with no other principal names listed;  
19   and]

20                    [(vi) A non-resident agent with a valid Texas insurance license may issue  
21   a bond on behalf of an authorized insurance company when in compliance with Insurance Code, Chapter  
22   4056-]

23                    [(B) A certificate of continuation will not be accepted.]



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1                               ~~[(C) The owner of a vehicle bonded under Transportation Code, §623.075 or~~  
2                               ~~§623.163, that damages the state highway system as a result of the permitted vehicle's movement will~~  
3                               ~~be notified by certified mail of the amount of damage and will be given 30 days to submit payment for~~  
4                               ~~such damage. Failure to make payment within 30 days will result in TxDOT placing the claim with the~~  
5                               ~~attorney general for collection.]~~

6                               ~~[(D) The venue of any suit for a claim against a surety bond for the movement of~~  
7                               ~~a vehicle permitted under the provisions of Transportation Code, Chapter 623, Subchapter D, will be any~~  
8                               ~~court of competent jurisdiction in Travis County.]~~

9                               ~~[(2) Permit surety bonds.]~~

10                              ~~[(A) A surety bond required under the provisions of Transportation Code,~~  
11                              ~~Chapter 623, Subchapter D, must be submitted on the department's standard surety bond form in the~~  
12                              ~~amount of \$10,000.]~~

13                              ~~[(B) A facsimile or electronic copy of the surety bond is acceptable in lieu of the~~  
14                              ~~original surety bond, for a period not to exceed 10 days from the date of its receipt in the department. If~~  
15                              ~~the original surety bond has not arrived in the department by the end of the 10 days, the applicant will~~  
16                              ~~not be issued a permit until the original surety bond has been received in the department.]~~

17                              ~~[(C) The surety bond requirement does apply to the delivery of farm equipment~~  
18                              ~~to a farm equipment dealer.]~~

19                              ~~[(D) A surety bond is required when a dealer or transporter of farm equipment~~  
20                              ~~or a manufacturer of farm equipment obtains a permit.]~~

21                              ~~[(E) The surety bond requirement does not apply to driving or transporting farm~~  
22                              ~~equipment which is being used for agricultural purposes if it is driven or transported by or under the~~  
23                              ~~authority of the owner of the equipment.]~~

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1                                   ~~[(F) The surety bond requirement does not apply to a vehicle or equipment~~  
2 ~~operated by a motor carrier registered with the department under Transportation Code, Chapters 643~~  
3 ~~or 645 as amended.]~~

## 219.13 Time Permits

6                   (a) General information. Applications for time permits issued under Transportation Code,  
7 Chapter 623, and this section shall be made in accordance with §219.11(b) and (c) of this title (relating to  
8 General Oversize/Overweight Permit Requirements and Procedures). Permits issued under this section  
9 are governed by the requirements of §219.11(e)(1) of this title.

10                   (b) 30, 60, and 90 day permits. The following conditions apply to time permits issued for  
11 overwidth or overlength loads, or overlength vehicles, under this section.

12                   (1) Fees. The fee for a 30-day permit is \$120; the fee for a 60-day permit is \$180; and the  
13 fee for a 90-day permit is \$240. All fees are payable in accordance with §219.11(f) of this title. All fees  
14 are non-refundable.

15                   (2) Validity of Permit. Time permits are valid for a period of 30, 60, or 90 calendar days,  
16 based on the request of the applicant, and will begin on the effective date stated on the permit.

17                   (3) Weight/height limits. The permitted vehicle may not exceed the weight or height  
18 limits set forth by Transportation Code, Chapter 621, Subchapters B and C.

19                   (4) Registration requirements for permitted vehicles. Time permits will not be issued to a  
20 vehicle or vehicle combination that is registered with temporary vehicle registration.

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(5) Vehicle indicated on permit. The permit will indicate only the truck or truck-tractor transporting the load; however, any properly registered trailer or semi-trailer is covered by the permit.

(6) Permit routes. The permit will allow travel on a statewide basis.

(7) Restrictions.

(A) The permitted vehicle must not cross a load restricted bridge or load restricted road when exceeding the posted capacity of the road or bridge.

(B) The permitted vehicle may travel through highway construction or maintenance areas if the dimensions do not exceed the construction restrictions as published by the department.

(C) The permitted vehicle is subject to the restrictions specified in §219.11(l) of this title, and the permittee is responsible for obtaining from the department information concerning current restrictions.

(8) Escort requirements. Permitted vehicles are subject to the escort requirements specified in §219.11(k) of this title.

(9) Transfer of time permits. Time permits issued under this subsection are non-transferable between permittees or vehicles.

(10) Amendments. With the exception of time permits issued under subsection (e)(4) of this section, time permits issued under this subsection will not be amended except in the case of permit officer error.

(c) Overwidth loads. An overwidth time permit may be issued for the movement of any load or overwidth trailer, subject to subsection (a) of this section and the following conditions:

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1 (1) Width requirements.

2 (A) A time permit will not be issued for a vehicle with a width exceeding 13 feet.

3 (B) When multiple items are hauled at the same time, the items may not be  
4 loaded in a manner that creates a width greater than the width of the widest item being hauled.

5 (2) Weight, height, and length requirements.

6 (A) The permitted vehicle shall not exceed legal weight, height, or length  
7 according to Transportation Code, Chapter 621, Subchapters B and C.

8 (B) When multiple items are hauled at the same time, the items may not be  
9 loaded in a manner that creates:

10 (i) a height greater than 14 feet;

11 (ii) an overlength load; or

12 (iii) a gross weight exceeding the legal gross or axle weight of the vehicle  
13 hauling the load.

14 (3) Movement of overwidth trailers. When the permitted vehicle is an overwidth trailer,  
15 it will be allowed to:

16 (A) move empty to and from the job site; and

17 (B) haul a load from the permitted vehicle's point of origin to pick up a permitted  
18 load, and to the permitted vehicle's point of origin or the permittee's place of business after dropping off  
19 a permitted load, as long as:

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1 (i) the load does not exceed legal size and weight limits under

2 Transportation Code, Chapters 621 and 622; and

3 (ii) the transport complies with the permit, including the time period  
4 stated on the permit.

5 (4) Use in conjunction with other permits. An overwidth time permit may be used in  
6 conjunction with an overlength time permit.

7 (d) Overlength loads. An overlength time permit may be issued for the transportation of  
8 overlength loads or the movement of an overlength self-propelled vehicle, subject to subsection (a) of  
9 this section and the following conditions:

10 (1) Length requirements.

11 (A) The maximum overall length for the permitted vehicle may not exceed 110  
12 feet.

13 (B) The department may issue a permit under Transportation Code, §623.071(a)  
14 for an overlength load or an overlength self-propelled vehicle that falls within the definition of a  
15 nondivisible load or vehicle.

16 (2) Weight, height and width requirements.

17 (A) The permitted vehicle may not exceed legal weight, height, or width  
18 according to Transportation Code, Chapter 621, Subchapters B and C.

19 (B) A permit will not be issued when the load has more than 25 feet front  
20 overhang, or more than 30 feet rear overhang.

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(3) Use in conjunction with other permits. An overlength time permit may be used in conjunction with an overwidth time permit.

(4) Emergency movement. A permitted vehicle transporting utility poles will be allowed emergency night movement for restoring electrical utility service, provided the permitted vehicle is accompanied by a rear escort flag vehicle.

(e) Annual permits.

(1) General information. All permits issued under this subsection are subject to the following conditions.

(A) Fees for permits issued under this subsection are payable as described in §219.11(f) of this title.

(B) Permits issued under this subsection are not transferable.

(C) Vehicles permitted under this subsection shall be operated according to the restrictions described in §219.11(l) of this title. The permittee is responsible for obtaining information concerning current restrictions from the department.

(D) Vehicles permitted under this subsection may not travel over a load restricted bridge or load restricted road when exceeding the posted capacity of the road or bridge.

(E) Vehicles permitted under this subsection may travel through any highway construction or maintenance area provided the dimensions do not exceed the construction restrictions as published by the department.

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1 (F) With the exception of permits issued under paragraph (5) of this subsection,  
2 vehicles permitted under this subsection shall be operated according to the escort requirements  
3 described in §219.11(k) of this title.

4 (2) Implements of husbandry. An annual permit may be issued for an implement of  
5 husbandry being moved by a dealer in those implements, and for harvesting equipment being moved as  
6 part of an agricultural operation. Permits issued under this paragraph are subject to the conditions  
7 described in paragraph (1) of this subsection.

8 (A) The fee for a permit issued under this paragraph is \$270, plus the highway  
9 maintenance fee specified in Transportation Code, §623.077.

10 (B) The time period will be for one year and will start on the effective date stated  
11 on the permit.

12 (C) The maximum width may not exceed 16 feet; maximum height may not  
13 exceed 16 feet; maximum length may not exceed 110 feet; and maximum weight may not exceed the  
14 limits stated in §219.11(d) of this title.

15 (D) Unless stated otherwise on the permit, the permitted vehicle must travel in  
16 the outside traffic lane on multi-lane highways, when the width of the load exceeds 12 feet.

17 (E) The permitted vehicle must be registered in accordance with Transportation  
18 Code, Chapter 502, for maximum weight for the vehicle or vehicle combination, as set forth by  
19 Transportation Code, Chapter 621.

20 (3) Water well drilling machinery. The department may issue annual permits under  
21 Transportation Code, §623.071, for water well drilling machinery and equipment that fall within the

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1 definition of a nondivisible load or vehicle. Permits issued under this paragraph are subject to the  
2 conditions described in paragraph (1) of this subsection.

3 (A) The fee for a permit issued under this paragraph is \$270, plus the highway  
4 maintenance fee specified in Transportation Code, §623.077 for an overweight load.

5 (B) A water well drilling machinery permit is valid for one year from the effective  
6 date stated on the permit.

7 (C) The maximum dimensions may not exceed 16 feet wide, 14 feet 6 inches  
8 high, 110 feet long, and maximum weight may not exceed the limits stated in §219.11(d) of this title.

9 (D) The permitted vehicle must be registered in accordance with Transportation  
10 Code, Chapter 502, for the maximum weight of the vehicle, as set forth by Transportation Code, Chapter  
11 621.

12 (E) A permit issued under this section authorizes a permitted vehicle to operate  
13 only on the state highway system.

14 (4) Envelope vehicle permits.

15 (A) The department may issue an annual permit under Transportation Code,  
16 §623.071(c), to a specific vehicle, for the movement of superheavy or oversize equipment that falls  
17 within the definition of a nondivisible load. This permit may not be used for a container, including a  
18 trailer or an intermodal container, loaded with divisible cargo. Unless otherwise noted, permits issued  
19 under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

20 (i) Superheavy or oversize equipment operating under an annual  
21 envelope vehicle permit may not exceed:



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- 1 (I) 12 feet in width;
- 2 (II) 14 feet in height;
- 3 (III) 110 feet in length; or
- 4 (IV) 120,000 pounds gross weight.
- 5 (ii) Superheavy or oversize equipment operating under an annual
- 6 envelope vehicle permit may not transport a load that has more than 25 feet front overhang, or more
- 7 than 30 feet rear overhang.
- 8 (iii) The fee for an annual envelope vehicle permit is \$4,000, and is non-
- 9 refundable.
- 10 (iv) The time period will be for one year and will start on the effective
- 11 date stated on the permit.
- 12 (v) This permit authorizes operation of the permitted vehicle only on the
- 13 state highway system.
- 14 (vi) The permitted vehicle must comply with §219.11(d)(2) and (3) of this
- 15 title.
- 16 (vii) The permitted vehicle or vehicle combination must be registered in
- 17 accordance with Transportation Code, Chapter 502, for maximum weight as set forth by Transportation
- 18 Code, Chapter 621.
- 19 (viii) A permit issued under this paragraph is non-transferable between
- 20 permittees.

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(ix) A permit issued under this paragraph may be transferred from one vehicle to another vehicle in the permittee's fleet provided:

(I) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable certificate of title or other qualifying documentation has been surrendered to the department; or

(II) the certificate of title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable certificate of title or other qualifying documentation has been transferred from the permittee.

(x) A single-trip permit, as described in §219.12 of this title (relating to Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D), may be used in conjunction with an annual permit issued under this paragraph for the movement of vehicles or loads exceeding the height or width limits established in subparagraph (A) of this paragraph. The department will indicate the annual permit number on any single-trip permit to be used in conjunction with a permit issued under this paragraph, and permittees will be assessed a fee of \$60 for the single-trip permit.

(B) The department may issue an annual permit under Transportation Code, §623.071(d), to a specific motor carrier, for the movement of superheavy or oversize equipment that falls within the definition of a nondivisible load. This permit may not be used for a container, including a trailer or an intermodal container, loaded with divisible cargo. Unless otherwise noted, permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection and subparagraphs (A)(i)-(viii) of this paragraph. A permit issued under this paragraph may be transferred from one vehicle to another vehicle in the permittee's fleet provided:

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(i) that no more than one vehicle is operated at a time; and

(ii) the original certified permit is carried in the vehicle that is being

operated under the terms of the permit.

(C) An annual envelope permit issued under subparagraph (B) of this paragraph

will be sent to the permittee via registered mail, or at the permittee's request and expense overnight

delivery service. This permit may not be duplicated. This permit will be replaced only if:

(i) the permittee did not receive the original permit within seven

business days after its date of issuance;

(ii) a request for replacement is submitted to the department within 10

business days after the original permit's date of issuance; and

(iii) the request for replacement is accompanied by a notarized

statement signed by a principle or officer of the permittee acknowledging that the permittee

understands the permit may not be duplicated and that if the original permit is located, the permittee

must return either the original or replacement permit to the department.

(D) A request for replacement of a permit issued under subparagraph (B) of this

paragraph will be denied if the department can verify that the permittee received the original.

(E) Lost, misplaced, damaged, destroyed, or otherwise unusable permits will not

be replaced. A new permit will be required.

(5) Annual manufactured housing permit. The department may issue an annual permit

for the transportation of new manufactured homes from a manufacturing facility to a temporary storage

location, not to exceed 20 miles from the point of manufacture, in accordance with Transportation

Code, §623.094. Permits issued under this paragraph are subject to the requirements of paragraph (1),

subparagraphs (A), (B), (C), (D), (E), and (G), of this subsection.

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1 (A) A permit shall contain the name of the company or person authorized to be  
2 issued permits by Transportation Code, Chapter 623, Subchapter E.

3 (B) The fee for a permit issued under this paragraph is \$1,500. Fees are non-  
4 refundable, and shall be paid in accordance with §219.11(f) of this title.

5 (C) The time period will be for one year from the effective date stated on the  
6 permit.

7 (D) The permitted vehicle must travel in the outside traffic lane on multi-lane  
8 highways when the width of the load exceeds 12 feet.

9 (E) The permitted vehicle must be registered in accordance with Transportation  
10 Code, Chapter 502.

11 (F) Authorized movement for a vehicle permitted under this section shall be  
12 valid during daylight hours only as defined by Transportation Code, §541.401.

13 (G) The permitted vehicle must be operated in accordance with the escort  
14 requirements described in §219.14(f) of this title (relating to Manufactured Housing, and Industrialized  
15 Housing and Building Permits).

16 (H) Permits issued under this section are non-transferable between permittees.

17 (6) Power line poles. An annual permit will be issued under Transportation Code,  
18 Chapter 622, Subchapter E, for the movement of poles required for the maintenance of electric power  
19 transmission and distribution lines. Permits issued under this paragraph are subject to the conditions  
20 described in paragraph (1) of this subsection.

21 (A) The fee for the permit is \$120.

22 (B) The time period will be for one year and will start on the effective date  
23 stated on the permit.

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1 (C) The maximum length of the permitted vehicle may not exceed 75 feet.

2 (D) The width, height and gross weight of the permitted vehicle may not exceed  
3 the limits set forth by Transportation Code, Chapter 621.

4 (E) Vehicles permitted under this paragraph may not travel over a load  
5 restricted bridge or load zoned road when exceeding posted limits.

6 (F) The permitted vehicle must be registered in accordance with Transportation  
7 Code, Chapter 502, for maximum weight as set forth by Transportation Code, Chapter 621.

8 (G) Movement will be between the hours of sunrise and sunset; however, the  
9 limitation on hours of operation does not apply to a vehicle being operated to prevent interruption or  
10 impairment of electric service, or to restore electric service that has been interrupted. When operated  
11 at night, a vehicle permitted under this subsection must be accompanied by a rear escort flag vehicle.

12 ~~[(H) The permitted vehicle may not travel during hazardous road conditions as~~  
13 ~~stated in §219.11(I)(1)(A) and (B) of this title except to prevent interruption or impairment of electric~~  
14 ~~service, or to restore electric service that has been interrupted.]~~

15 (H) ~~[(H)]~~ The speed of the permitted vehicle may not exceed 50 miles per hour.

16 (I) ~~[(H)]~~ The permitted vehicle must display on the extreme end of the load:

17 (i) two red lamps visible at a distance of at least 500 feet from the rear;

18 (ii) two red reflectors that indicate the maximum width and are visible,

19 when light is insufficient or atmospheric conditions are unfavorable, at all distances from 100 to 600 feet  
20 from the rear when directly in front of lawful lower beams of headlamps; and

21 (iii) two red lamps, one on each side, that indicate the maximum

22 overhang, and are visible at a distance of at least 500 feet from the side of the vehicle.

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(7) Cylindrically shaped bales of hay. An annual permit may be issued under Transportation Code, §623.017, for the movement of vehicles transporting cylindrically shaped bales of hay. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A) The permit fee is \$10.

(B) The time period will be for one year, and will start on the effective date stated on the permit.

(C) The maximum width of the permitted vehicle may not exceed 12 feet.

(D) The length, height, and gross weight of the permitted vehicle may not exceed the limits set forth by Transportation Code, Chapter 621.

(E) Movement is restricted to daylight hours only.

(F) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight, as set forth by Transportation Code, Chapter 621.

(8) Overlength load or vehicles. An annual overlength permit may be issued for the transportation of a nondivisible overlength load or the movement of a nondivisible overlength vehicle or combination of vehicles under Transportation Code, §623.071(c-1). This permit is subject to the portions of subsections (a), (b), and (d) of this section that are not limited to the fee or duration for the 30, 60, and 90 day permits.

## 219.14 Manufactured Housing, and Industrialized Housing and Building Permits

(a) General Information.

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1 (1) A manufactured home that exceeds size limits for motor vehicles as defined by  
2 Transportation Code, Chapter 621, Subchapters B and C, must obtain a permit from the department.

3 (2) Pursuant to Transportation Code, Chapter 623, Subchapter E, a permit may be issued  
4 to persons registered as manufacturers, installers, or retailers with the Texas Department of Housing and  
5 Community Affairs or motor carriers registered with the department under Transportation Code, Chapter  
6 643.

7 (3) The department may issue a permit to the owner of a manufactured home provided  
8 that:

9 (A) the same owner is named on the title of the manufactured home and towing  
10 vehicle;

11 (B) or the owner presents a lease showing that the owner of the manufactured  
12 home is the lessee of the towing vehicle.

13 (b) Permit application. ~~[Application for permit.]~~

14 (1) To qualify for a permit under this section, a person must submit an application to the  
15 department. ~~[The applicant must complete the application and shall include the manufactured home's~~  
16 ~~HUD label number, Texas seal number, or the complete identification number or serial number of the~~  
17 ~~manufactured home, and the overall width, height, and length of the home and the towing vehicle in~~  
18 ~~combination. If the manufactured home is being moved to or from a site in this state where it has been,~~  
19 ~~or will be, occupied as a dwelling, the permit must also show the name of the owner of the home, the~~  
20 ~~location from which the home is being moved, and the location to which the home is being delivered.]~~

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(2) All applications shall be made in a form and by the method prescribed by the department, and at a minimum shall include the following:

(A) name, customer identification number, and address of the applicant;

(B) name, telephone number, and email address of contact person;

(C) applicant's USDOT Number if applicant is required by law to have a USDOT Number;

(D) complete description of the manufactured home, including the year, make and one of the following:

(i) manufactured home's HUD label number;

(ii) Texas seal number; or

(iii) the complete identification number or serial number;

(E) the maximum width, height and length of the vehicle and manufactured home; and

(F) any other information required by law, including the information listed in Transportation Code §623.093(a).

~~[(2) A permit application for industrialized housing or industrialized building that does not meet the definition in Occupations Code, §1202.002 and §1202.003 shall be submitted in accordance with §219.11(c) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).]~~



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(c) Amendments to permit. Amendments can only be made to change intermediate points between the origination and destination points listed on the permit.

(d) Payment of permit fee. The cost of the permit is \$40, payable in accordance with §219.11(f) of this title.

(e) Permit provisions and conditions.

(1) The overall combined length of the manufactured home and the towing vehicle includes the length of the hitch or towing device.

(2) The height is measured from the roadbed to the highest elevation of the manufactured home.

(3) The width of a manufactured home includes any roof or eaves extension or overhang on either side.

(4) A permit will be issued for a single continuous movement not to exceed five days.

(5) Movement must be made during daylight hours only and may be made on any day except New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(6) The department may limit the hours for travel on certain routes because of heavy traffic conditions.

(7) The department will publish any limitations on movements during the national holidays listed in this subsection, or any limitations during certain hours of heavy traffic conditions, and will make such publications available to the public prior to the limitations becoming effective.

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(8) The permit will contain the route for the transportation of the manufactured home from the point of origin to the point of destination.

(9) The route for the transportation must be the most practical route as described in §219.11(e) of this title, except where construction is in progress and the permitted vehicle's dimensions exceed the construction restrictions as published by the department, or where bridge or overpass width or height would create a safety hazard.

(10) The department will publish annually a map or list of all bridges or overpasses which, due to height or width, require an escort flag vehicle to stop oncoming traffic while the manufactured home crosses the bridge or overpass.

(11) A permittee may not transport a manufactured home with a void permit; a new permit must be obtained.

(f) Escort requirements.

(1) A manufactured home exceeding 12 feet in width must have a rotating amber beacon of not less than eight inches in diameter mounted somewhere on the roof at the rear of the manufactured home, or may have two five-inch flashing amber lights mounted approximately six feet from ground level at the rear corners of the manufactured home. The towing vehicle must have one rotating amber beacon of not less than eight inches in diameter mounted on top of the cab. These beacons or flashing lights must be operational and luminiferous during any permitted move over the highways, roads, and streets of this state.

(2) A manufactured home with a width exceeding 16 feet but not exceeding 18 feet must have a front escort flag vehicle on two-lane roadways and a rear escort flag vehicle on roadways of four or more lanes.

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(3) A manufactured home exceeding 18 feet in width must have a front and a rear escort flag vehicle on all roadways at all times.

(4) The escort flag vehicle must:

(A) have one red 16 inch square flag mounted on each of the four corners of the vehicle;

(B) have a sign mounted on the front and rear of the vehicle displaying the words "WIDE LOAD" in black letters at least eight inches high with a brush stroke at least 1.41 inches wide against a yellow background;

(C) have mounted on top of the vehicle and visible from both the front and rear:

(i) two simultaneously flashing lights;

(ii) one rotating amber beacon of not less than eight inches in diameter;

or

(iii) alternating or flashing blue and amber lights; and

(D) maintain two-way communications with the permitted vehicle and other escort flag vehicles involved with the movement of the permitted vehicle.

(5) Two transportable sections of a multi-section manufactured home, or two single section manufactured homes, when towed together in convoy, may be considered one home for purposes of the escort flag vehicle requirements, provided the distance between the two units does not exceed 1,000 feet.

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(6) An escort flag vehicle must comply with the requirements in §219.11(k)(1) and §219.11(k)(7)(A) of this title.

**SUBCHAPTER C. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES**

## 219.30 Permits for Over Axle and Over Gross Weight Tolerances

(a) Purpose. In accordance with Transportation Code, §623.011, the department is authorized under certain conditions to issue an annual permit for the operation of a vehicle within certain tolerances above legal axle and gross weight limits, as provided in Transportation Code, Chapter 621. The sections under this subchapter set forth the requirements and procedures to be used in issuing an annual permit.

(b) Scope. A permit may be issued to an applicant under this subchapter to operate a vehicle that exceeds the legal axle weight by a tolerance of 10% and the legal gross weight by a tolerance of 5.0% on any county road and on any road in the state highway system provided the vehicle:

(1) is not operated on the national system of interstate and defense highways at a weight greater than authorized by federal law; and

(2) is not operated on a bridge for which the maximum weight and load limit has been established and posted under Transportation Code, §621.102 or §621.301, if the gross weight of the vehicle and load or the axles and wheel loads are greater than the established and posted limits, unless the bridge provides the only public vehicular access to or from the permittee's origin or destination.

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1           ~~[(c) Eligibility. To be eligible for a permit under this section, a vehicle must be registered~~  
2           ~~under Transportation Code, Chapter 502, for the maximum gross weight applicable to the vehicle~~  
3           ~~under Transportation Code, §621.101, not to exceed 80,000 pounds in total gross weight.]~~

4           ~~[(d) Security.]~~

5                     ~~[(1) Before a permit may be issued under this section, an applicant, other than an~~  
6           ~~applicant who intends to operate a vehicle that is loaded with timber or pulp wood, wood chips,~~  
7           ~~cotton, or agricultural products in their natural state, must have on file with the department one~~  
8           ~~of the following forms of security in the amount of \$15,000, conditioned that payment will be~~  
9           ~~made to the department for any damages to the state highway system and to any county for~~  
10          ~~damages to a road or bridge of such county caused by the operation of any vehicle for which a~~  
11          ~~permit is issued under this section and which has an axle weight or gross weight that exceeds the~~  
12          ~~weights authorized in Transportation Code, Chapter 621:]~~

13                             ~~[(A) an irrevocable letter of credit issued by a financial institution which~~  
14          ~~deposits are guaranteed by the Federal Deposit Insurance Corporation; or]~~

15                             ~~[(B) a blanket surety bond.]~~

16                     ~~[(2) The department may reject a bond which it determines will not provide the~~  
17          ~~intended security.]~~

18                     ~~[(3) If payment is made by the issuer in respect of the bond or letter of credit and~~  
19          ~~the applicant does not file with the department a replacement bond or letter of credit in the full~~  
20          ~~amount of \$15,000, or a notification from the issuer of the existing bond or letter of credit that the~~  
21          ~~existing bond or letter of credit has been restored to the full \$15,000, within 30 days after the date~~  
22          ~~of such payment, all permits held by the applicant under this section shall automatically expire on~~  
23          ~~the 31st day after such date.]~~

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1           (c) ~~[(e)]~~ Application for permit.

2                   (1) To qualify for a permit under this section, a person ~~[A person who desires to~~  
3 ~~permit a vehicle as provided in this section,]~~ must submit an application to the department.

4                   (2) The application shall be in a form prescribed by the department and at a  
5 minimum will require the following:

6                           (A) name, customer identification number, and address of the applicant;

7                           (B) name, [of contact person and] telephone number, and email address of  
8 contact person;

9                           (C) vehicle information, including truck year, make, license plate number  
10 and state of issuance, and vehicle identification number;

11                          (D) an indication as to whether the commodities to be transported will be  
12 agricultural or non-agricultural; [and]

13                          (E) a list of counties in which the vehicle will operate; and

14                          (F) applicant's USDOT Number if applicant is required by law to have a USDOT  
15 Number.

16                   (3) The application shall be accompanied by:

17                           (A) the total permit fee, which includes an administrative fee of \$5, the base  
18 fee, and the applicable annual fee based on the number of counties designated for travel; and

19                           (B) an original bond or irrevocable letter of credit as required in  
20 Transportation Code §623.012.

21                   (4) Payment of fees. Fees for permits issued under this subchapter are payable as  
22 required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements  
23 and Procedures).

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1            (d) ~~(f)~~ Issuance of permit and windshield sticker.

2                    (1) A permit and a windshield sticker will be issued on the approval of the  
3 application and each will be mailed to the applicant at the address contained in the application.

4                    (2) The permit shall be carried in the vehicle for which the permit is issued at all  
5 times.

6                    (3) The windshield sticker shall be affixed to the inside of the windshield of the  
7 vehicle within six inches above the vehicle's inspection sticker in a manner that will not obstruct  
8 the vision of the driver. Any attempt to remove the sticker from the windshield will render the  
9 sticker void, and will require a new permit and sticker. The windshield sticker must be removed  
10 from the vehicle upon expiration of the permit.

11                   (4) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be  
12 issued, provided that the permittee submits a request on a form approved by the department  
13 which shall include a statement, signed by the permittee, affirming that the sticker was lost,  
14 stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle. The cost  
15 for a replacement sticker is \$3.00.

16                   (5) Within 14 days of issuance of the permit, the department shall notify the county  
17 clerk of each county indicated on the application, and such notification shall contain or be  
18 accompanied by the following minimum information:

19                            (A) the name and address of the person for whom a permit is issued; and

20                            (B) the vehicle identification number, license plate number, and registration  
21 state of the vehicle, and the permit number.

22            (e) ~~(g)~~ Issuance of a credit. Upon written application on a form prescribed by the  
23 department, a prorated credit for the remaining time on the permit may be issued for a vehicle

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1 that is destroyed or otherwise becomes permanently inoperable to an extent that it will no longer  
2 be utilized. The date for computing a credit will be based on the date of receipt of the credit  
3 request. The fee for a credit will be \$25, and will be issued on condition that the applicant provides  
4 to the department:

- 5 (1) the original permit; or  
6 (2) if the original permit no longer exists, written evidence of the destruction or  
7 permanent incapacity from the insurance carrier of the vehicle.

8 (f) ~~[(h)]~~ Use of credit. A credit issued under subsection (e) ~~[(g)]~~ of this section may be used  
9 only towards the payment of permit fees under this section.

10 (g) ~~[(i)]~~ Exceptions. A vehicle carrying timber, wood chips, wood pulp, cotton, or other  
11 agricultural products in their natural state, may be allowed to exceed the maximum allowable axle  
12 weight by 12% without a permit; however, if such vehicle exceeds the maximum allowable gross  
13 weight by an amount of up to 5.0%, a permit issued in accordance with this section will be  
14 required.

15 (h) ~~[(j)]~~ Lapse or termination of permit. A permit shall lapse or terminate and the  
16 windshield sticker must be removed from the vehicle:

- 17 (1) when the lease of the vehicle expires;  
18 (2) on the sale of the vehicle for which the permit was issued;  
19 (3) on the sale, takeover, or dissolution of the firm, partnership, or corporation to  
20 which a permit was issued; or

21 (4) if the permittee ~~[applicant]~~ does not replace or replenish the letter of credit or  
22 bond as required by Transportation Code, §623.012. ~~[in subsection (d) of this section.]~~



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~~[(k) Void permit. A permit will be voided when the department is informed by law enforcement that a citation has been issued for a violation of a permit's terms and conditions.]~~

~~[(l) Movement with void permit. A permittee may not operate a permitted vehicle with a void permit; a new permit must be obtained.]~~

## 219.31 Timber Permits

(a) Purpose. This section prescribes the requirements and procedures regarding the annual permit for the operation of a vehicle or combination of vehicles that will be used to transport unrefined timber, wood chips, woody biomass, or equipment used to load timber on a vehicle under the provisions of Transportation Code, Chapter 623, Subchapter Q.

## (b) Application for permit.

(1) To qualify for a timber permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name, customer identification number, and address ~~[, telephone number, and email address (if requested)]~~ of the applicant;

(B) name, ~~[of contact person and]~~ telephone number, and ~~[or]~~ email address of contact person;

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number; ~~[and]~~

(D) a list of timber producing counties described in Transportation Code, §623.321(a), in which the vehicle or combination of vehicles will be operated; and

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1                                (E) applicant's USDOT Number if applicant is required by law to have a USDOT  
2   Number.

3                                (3) The application shall be accompanied by:

4                                        (A) the total annual permit fee required by statute; and

5                                        (B) a blanket bond or irrevocable letter of credit as required by

6   Transportation Code, §623.012, unless the applicant has a current blanket bond or irrevocable  
7   letter of credit on file with the department that complies with Transportation Code, §623.012.

8                                (4) Fees for permits issued under this section are payable as required by §219.11(f)  
9   of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

10                                (c) Issuance and placement of permit and windshield sticker; restrictions.

11                                        (1) A permit and a windshield sticker will be issued once the application is  
12   approved, and each will be mailed to the applicant at the address contained in the application.

13                                        (2) The windshield sticker shall be affixed to the inside of the windshield of the  
14   vehicle in accordance with the diagram printed on the back of the sticker and in a manner that will  
15   not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will  
16   render the sticker void and will require a new permit and sticker.

17                                        (3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be  
18   issued, provided that the permittee submits a request on a form approved by the department  
19   which shall include a statement, signed by the permittee, affirming that the sticker was lost,  
20   stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle.

21                                        (d) Notification. The financially responsible party as defined in Transportation Code,  
22   §623.323(a), shall electronically file the notification document described by §623.323(b) with the  
23   department via the form on the department's website.

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(e) Transfer of permit. An annual permit issued under this section is not transferable between vehicles.

(f) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(g) Termination of permit. An annual permit issued under this section will automatically terminate, and the windshield sticker must be removed from the vehicle:

(1) on the expiration of the permit;

(2) when the lease of the vehicle expires;

(3) on the sale or other transfer of ownership of the vehicle for which the permit was issued;

(4) on the dissolution or termination of the partnership, corporation, or other legal entity to which the permit was issued; or

(5) if the permittee fails to timely replenish the bond or letter of credit as required by Transportation Code, §623.012.

(h) Restrictions. Permits issued under this section are subject to the restrictions in §219.11(l) of this title.

## 219.32 Ready-Mixed Concrete Truck Permits

(a) Purpose. This section prescribes the requirements, restrictions, and procedures regarding the annual permit for a ready-mixed concrete truck, operating on three axles, under the provisions of Transportation Code, §623.0171 and Chapter 622, Subchapter B.

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(b) Axles. To qualify for movement with a ready-mixed concrete truck permit, the truck may only operate on three axles, regardless of whether the truck actually has more than three axles.

(c) Application for permit.

(1) To qualify for a ready-mixed concrete truck permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name, customer identification number, and address of the applicant;

(B) name, ~~[of contact person and]~~ telephone number, and ~~[or]~~ email address of contact person;

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number; ~~and~~

(D) a list of counties in which the vehicle will be operated; and

(E) applicant's USDOT Number if applicant is required by law to have a USDOT Number.

(3) The application shall be accompanied by the total annual permit fee of \$1,000.

(4) Fees for permits issued under this section are payable as required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(d) Issuance and placement of permit and windshield sticker; restrictions.

(1) A permit and a windshield sticker will be issued once the application is approved, and each will be mailed to the applicant at the address contained in the application.

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(2) The windshield sticker shall be affixed to the inside of the windshield of the vehicle in accordance with the diagram printed on the back of the sticker and in a manner that will not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will render the sticker void and will require a new permit and sticker.

(3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued, provided that the permittee submits a request on a form approved by the department. The request shall include a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle.

(e) Transfer of permit. An annual permit issued under this section is not transferable between vehicles.

(f) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(g) Termination of permit. An annual permit issued under this section will automatically terminate, and the windshield sticker must be removed from the vehicle:

(1) on the expiration of the permit;

(2) when the lease of the vehicle expires;

(3) on the sale or other transfer of ownership of the vehicle for which the permit was issued; or

(4) on the dissolution or termination of the partnership, corporation, or other legal entity to which the permit was issued.

~~[(h) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when road conditions are hazardous based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding~~

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~~whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:]~~

~~[(1) visibility of less than 2/10 of one mile; or]~~

~~[(2) weather conditions such as wind, rain, ice, sleet, or snow.]~~

(h) [(i)] Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department. ~~[of any city in which the vehicle is operated.]~~

(i) [(j)] Construction or maintenance areas.

(1) Permits issued under this section authorize the operator of the permitted vehicle to travel through any state highway construction or maintenance area, provided the size and weight of the vehicle do not exceed the construction restrictions that are available on the department's website. If a permitted vehicle is delivering concrete to a state highway construction or maintenance jobsite within a construction or maintenance area, the following may provide the permittee a written exception to operate the permitted vehicle in the construction or maintenance area at a size or weight that exceeds the size and weight listed on the department's website: the Texas Department of Transportation or a Texas Department of Transportation contractor that is authorized by the Texas Department of Transportation to issue permit exceptions. The written exception must be carried in the permitted vehicle when the vehicle is on a state highway and must be provided to the department or law enforcement upon request.

(2) The permittee is responsible for contacting the appropriate local jurisdiction for construction or maintenance restrictions on non-state maintained roadways.

(j) [(k)] Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

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(k) [(4)] Distribution of fees. The fees collected for permits under Transportation Code, §623.0171 shall be distributed as follows:

(1) 50 percent shall be deposited to the credit of the state highway fund; and

(2) 50 percent shall be divided equally among all counties designated in the permit application under Transportation Code, §623.0171.

## 219.33 Federal Disaster Relief Permit

(a) Purpose. In accordance with Transportation Code, Chapter 623, Subchapter R, and 23 U.S.C. §127(i), the department may issue a special permit that authorizes additional weight allowances for the transportation of certain divisible loads on state highways in Texas during a [an emergency or] major disaster declared by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5121 et seq.). This section prescribes the requirements, restrictions, and procedures regarding this permit.

## (b) Application for permit.

(1) To obtain a Federal Disaster Relief Permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name, customer identification number, and address of the applicant;

(B) name, ~~[of contact person and]~~ telephone number, and ~~[or]~~ email address of contact person;

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number; ~~[and]~~

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(D) the applicable attestation(s); and

(E) applicant's USDOT Number if applicant is required by law to have a USDOT

Number.

(c) Conditions and restrictions. This permit is subject to the following conditions and restrictions:

(1) The vehicle and load must not exceed the following weight limits:

(A) single axle--21,500 pounds;

(B) two-axle group--43,000 pounds;

(C) three-axle group--53,000 pounds. For the purposes of this section, a three-axle group is three consecutive axles more than 8 feet apart but less than 13 feet apart, measured from the center of the first axle to the center of the last axle in the group; and

(D) gross weight--160,000 pounds.

(2) The permitted vehicle must not cross a load-restricted bridge or travel on a load-restricted state highway when exceeding the posted capacity of the bridge or state highway.

(3) Nighttime movement is allowed under this permit, unless prohibited by the curfew movement restrictions published by the department. ~~[of a city in which the vehicle is operated.]~~

~~[(4) Movement of a permitted vehicle is prohibited when road conditions are hazardous, based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:]~~

~~[(A) visibility of less than 2/10 of one mile; or]~~

~~[(B) weather conditions such as wind, rain, ice, sleet, or snow.]~~



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(4) [(5)] The operator of a permitted vehicle must observe the curfew movement restrictions published by the department. ~~[of any city in which the vehicle is operated.]~~

(5) [(6)] The permit does not authorize the vehicle to exceed the manufacturer's tire load rating.

(6) [(7)] The permit is not transferable from the applicant to another person or entity. Also, the permit is not transferable between vehicles.

(7) [(8)] The permit will expire 120 days after the date of the major disaster declaration. ~~[on the expiration date listed in the permit.]~~

(8) [(9)] The permit may not be used in conjunction with any other oversize or overweight permits.

(9) [(10)] If the vehicle is being used to deliver relief supplies, the entire load must consist of relief supplies, which may include, but are not limited to:

(A) medicine and medical equipment;

(B) food supplies (including feed for livestock);

(C) water;

(D) materials used to provide or construct temporary housing;

(E) other supplies directly supporting the type of relief needed following a presidential declaration of a [emergency or] major disaster; and

(F) other materials as authorized by federal law or regulation; the United States Department of Transportation, Federal Highway Administration; or the president of the United States.

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1                   (10) ~~((11))~~ If the vehicle is being used to deliver relief supplies, the permit only  
2 authorizes delivery to a destination that is part of the geographical area covered by the president's  
3 ~~[emergency or]~~ major disaster declaration.

4                   (11) ~~((12))~~ If the vehicle is being used to transport materials from a geographical  
5 area covered by the president's ~~[emergency or]~~ major disaster declaration, the permit only  
6 authorizes loads which are necessary to facilitate the delivery of relief supplies to the geographical  
7 area covered by the president's ~~[emergency or]~~ major disaster declaration. An example of an  
8 authorized load is debris, as long as the removal of the debris expedites the clearing of roadways,  
9 staging areas, or locations for temporary structures in order to facilitate the delivery of relief  
10 supplies. However, the permit will only authorize such divisible overweight load if the permit  
11 expressly authorizes it.

12               (d) Copy of permit and notice of current ~~[emergency or]~~ disaster declaration. A copy of the  
13 permit and notice of the president's current ~~[emergency or]~~ major disaster declaration, including  
14 any amendments, must be kept in the permitted vehicle until the day after the date the permit  
15 expires.

16  
17 219.34 North Texas Intermodal Permit

18               (a) Purpose. This section prescribes the requirements, restrictions, and procedures  
19 regarding the annual permit for transporting an intermodal shipping container under the  
20 provisions of Transportation Code, §623.0172.

21               (b) Application for permit.

22                   (1) To qualify for a North Texas intermodal permit, a person must submit an  
23 application to the department.

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(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name, customer identification number, and address of the applicant;

(B) name, ~~[of contact person and]~~ telephone number, and ~~[or]~~ email address of contact person; ~~and~~

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number; and

(D) applicant's USDOT Number if applicant is required by law to have a USDOT Number.

(3) The application shall be accompanied by the total annual permit fee of \$1,000.

(4) Fees for permits issued under this section are payable as required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(c) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(d) Transfer of permit. A permit issued under this section may only be transferred once during the term of the permit from one vehicle to another vehicle in the permittee's fleet provided:

(1) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been surrendered to the department; or

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(2) the title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been transferred from the permittee.

~~[(e) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when road conditions are hazardous based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:]~~

~~[(1) visibility of less than 2/10 of one mile; or]~~

~~[(2) weather conditions such as wind, rain, ice, sleet, or snow.]~~

(e) ~~[(f)]~~ Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department.

(f) ~~[(g)]~~ Construction or maintenance areas. The permitted vehicle may not travel through any state highway construction or maintenance area if prohibited by the construction restrictions published by the department.

(g) ~~[(h)]~~ Night movement. Night movement is allowed under this permit, unless prohibited by the curfew movement restrictions published by the department.

(h) ~~[(i)]~~ Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

(i) ~~[(j)]~~ A truck-tractor and semitrailer combination is only eligible for a permit issued under this section if the truck-tractor is equipped with truck blind spot systems, and each vehicle in the combination is equipped with a roll stability support safety system.

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(i) ~~(k)~~ A truck-tractor and semitrailer combination is only eligible for a permit issued under this section if the distance between the front axle of the truck-tractor and the last axle of the semitrailer, measured longitudinally, is approximately 647 inches. For the purposes of this subsection, "approximately 647 inches" means the distance can be up to 15 percent above 647 inches for a total distance of 744.05 inches.

## 219.35 Fluid Milk Transport Permit

(a) Purpose. This section prescribes the requirements, restrictions, and procedures regarding the annual permit for transporting fluid milk under the provisions of Transportation Code, Chapter 623, Subchapter U, as added by Chapter 750 (S.B. 1383), Acts of the 85th Legislature, Regular Session, 2017.

## (b) Application for permit.

(1) To qualify for a fluid milk transport permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name, customer identification number, and address of the applicant;

(B) name, ~~[of contact person and]~~ telephone number, and ~~[or]~~ email address of contact person;

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number; ~~[and]~~

(D) a list of counties in which the vehicle will be operated; and

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1                                (E) applicant's USDOT Number if applicant is required by law to have a USDOT  
2   Number.

3                                (3) The application shall be accompanied by the total annual permit fee of \$1,200.

4                                (4) Fees for permits issued under this section are payable as required by §219.11(f)  
5 of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

6                                (c) Issuance and placement of permit and windshield sticker; restrictions.

7                                (1) A permit and a windshield sticker will be issued once the application is  
8 approved, and each will be mailed to the applicant at the address contained in the application.

9                                (2) The windshield sticker shall be affixed to the inside of the windshield of the  
10 vehicle in accordance with the diagram printed on the back of the sticker and in a manner that will  
11 not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will  
12 render the sticker void and will require a new permit and sticker.

13                                (3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be  
14 issued, provided that the permittee submits a request on a form approved by the department  
15 which shall include a statement, signed by the permittee, affirming that the sticker was lost,  
16 stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle.

17                                (d) Amendments. An annual permit issued under this section will not be amended except in  
18 the case of department error.

19                                (e) Transfer of permit. A permit issued under this section may only be transferred once  
20 during the term of the permit from one vehicle to another vehicle in the permittee's fleet  
21 provided:

22                                (1) the permitted vehicle is destroyed or otherwise becomes permanently  
23 inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that

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1 the negotiable title or other qualifying documentation, as determined by the department, has  
2 been surrendered to the department; or

3 (2) the title to the permitted vehicle is transferred to someone other than the  
4 permittee, and the permittee presents proof that the negotiable title or other qualifying  
5 documentation, as determined by the department, has been transferred from the permittee.

6 (f) Termination of permit. An annual permit issued under this section will automatically  
7 terminate, and the windshield sticker must be removed from the vehicle:

8 (1) on the expiration of the permit;

9 (2) when the lease of the vehicle expires;

10 (3) on the sale or other transfer of ownership of the vehicle for which the permit  
11 was issued; or

12 (4) on the dissolution or termination of the partnership, corporation, or other legal  
13 entity to which the permit was issued.

14 ~~[(g) Restrictions pertaining to road conditions. Movement of a permitted vehicle is~~  
15 ~~prohibited when road conditions are hazardous based upon the judgment of the operator and law~~  
16 ~~enforcement officials. Law enforcement officials shall make the final determination regarding~~  
17 ~~whether or not conditions are hazardous. Conditions that should be considered hazardous include,~~  
18 ~~but are not limited to:]~~

19 ~~[(1) visibility of less than 2/10 of one mile; or]~~

20 ~~[(2) weather conditions such as wind, rain, ice, sleet, or snow.]~~

21 (g) ~~[(h)]~~ Curfew restrictions. The operator of a permitted vehicle must observe the curfew  
22 movement restrictions published by the department.

23 (h) ~~[(i)]~~ Construction or maintenance areas.

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(1) The permitted vehicle may not travel through any state highway construction or maintenance area if prohibited by the construction restrictions published by the department.

(2) The permittee is responsible for contacting the appropriate local jurisdiction for construction or maintenance restrictions on non-state maintained roadways.

(i) ~~[(j)]~~ Night movement. Night movement is allowed under this permit, unless prohibited by the curfew movement restrictions published by the department.

(j) ~~[(k)]~~ Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

(k) ~~[(l)]~~ A truck-tractor and semitrailer combination is only eligible for a permit issued under this section if the truck-tractor is equipped with truck blind spot systems, and each vehicle in the combination is equipped with a roll stability support safety system.

#### 219.36 Intermodal Shipping Container Port Permit

(a) Purpose. This section prescribes the requirements, restrictions, and procedures regarding the annual permit for transporting an intermodal shipping container under the provisions of Transportation Code, Chapter 623, Subchapter U, as added by Chapter 108 (S.B. 1524), Acts of the 85th Legislature, Regular Session, 2017.

(b) Application for permit.

(1) To qualify for an intermodal shipping container port permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name, customer identification number, and address of the applicant;



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1 (B) name, ~~[of contact person and]~~ telephone number, and ~~[or]~~ email  
2 address of contact person;

3 (C) vehicle information, including vehicle year, make, license plate number  
4 and state of issuance, and vehicle identification number;

5 (D) a list of counties in which the vehicle will be operated; ~~and~~

6 (E) a list of municipalities in which the vehicle will be operated; and

7 (F) applicant's USDOT Number if applicant is required by law to have a USDOT  
8 Number.

9 (3) The application shall be accompanied by the total annual permit fee of \$6,000.

10 (4) Fees for permits issued under this section are payable as required by §219.11(f)  
11 of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

12 (c) Issuance and placement of permit and windshield sticker; restrictions.

13 (1) A permit and a windshield sticker will be issued once the application is  
14 approved, and each will be mailed to the applicant at the address contained in the application.

15 (2) The windshield sticker shall be affixed to the inside of the windshield of the  
16 vehicle in accordance with the diagram printed on the back of the sticker and in a manner that will  
17 not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will  
18 render the sticker void and will require a new permit and sticker.

19 (3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be  
20 issued, provided that the permittee submits a request on a form approved by the department  
21 which shall include a statement, signed by the permittee, affirming that the sticker was lost,  
22 stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle.

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(d) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(e) Transfer of permit. A permit issued under this section may only be transferred once during the term of the permit from one vehicle to another vehicle in the permittee's fleet provided:

(1) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been surrendered to the department; or

(2) the title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been transferred from the permittee.

(f) Termination of permit. An annual permit issued under this section will automatically terminate, and the windshield sticker must be removed from the vehicle:

(1) on the expiration of the permit;

(2) when the lease of the vehicle expires;

(3) on the sale or other transfer of ownership of the vehicle for which the permit was issued; or

(4) on the dissolution or termination of the partnership, corporation, or other legal entity to which the permit was issued.

~~[(g) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when road conditions are hazardous based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding~~

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~~whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:]~~

~~[(1) visibility of less than 2/10 of one mile; or]~~

~~[(2) weather conditions such as wind, rain, ice, sleet, or snow.]~~

(g) ~~[(h)]~~ Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department.

(h) ~~[(i)]~~ Construction or maintenance areas.

(1) The permitted vehicle may not travel through any state highway construction or maintenance area if prohibited by the construction restrictions published by the department.

(2) The permittee is responsible for contacting the appropriate local jurisdiction for construction or maintenance restrictions on non-state maintained roadways.

(i) ~~[(j)]~~ Night movement. Night movement is allowed under this permit, unless prohibited by the curfew movement restrictions published by the department.

(j) ~~[(k)]~~ Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

(k) ~~[(l)]~~ A truck-tractor and semitrailer combination is only eligible for a permit issued under this section if the truck-tractor is equipped with truck blind spot systems, and each vehicle in the combination is equipped with a roll stability support safety system.

(l) ~~[(m)]~~ A truck-tractor and semitrailer combination is only eligible for a permit issued under Transportation Code, §623.402(a) if the distance between the front axle of the truck-tractor and the last axle of the semitrailer, measured longitudinally, is approximately 647 inches. For the purposes of this subsection, "approximately 647 inches" means the distance can be up to 15 percent above 647 inches for a total distance of 744.05 inches.

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(m) [A] A truck-tractor and semitrailer combination is only eligible for a permit issued under Transportation Code, §623.402(b) if the distance between the front axle of the truck-tractor and the last axle of the semitrailer, measured longitudinally, is approximately 612 inches. For the purposes of this subsection, "approximately 612 inches" means the distance can be up to 15 percent above 612 inches for a total distance of 703.8 inches.

**SUBCHAPTER D. PERMITS FOR OVERSIZE AND OVERWEIGHT OIL WELL RELATED VEHICLES**

## 219.41 General Requirements

## (a) General information.

(1) Permits issued under this subchapter, with the exception of permits issued under §219.45 of this title (relating to Permits for Vehicles Transporting Liquid Products Related to Oil Well Production), are subject to the requirements of this section.

(2) Oil well related vehicles are eligible for:

(A) single-trip mileage permits;

(B) quarterly hubometer permits; and

(C) annual permits.

(b) Permit application. All applications shall be made on a form and in a manner prescribed by the department. An applicant shall provide all applicable information, including:

(1) name, customer identification number, and address [~~telephone number, and~~  
~~email address (if requested)~~] of the applicant;

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1                   (2) name, telephone number, and email address of contact person; [year and make of  
2 the unit;]

3                   (3) year, make, and vehicle identification number of the unit;

4                   (4) width, height, and length of the unit;

5                   (5) unit axle and tire information, including number of axles, distance between axles,  
6 gauge per axle, axle weights, number of tires, and tire size; ~~and~~

7                   (6) applicant's USDOT Number if applicant is required by law to have a USDOT Number;  
8 and

9                   ~~(7)~~ any other information required by law.

10               (c) Payment of permit fees. Fees for permits issued under this subchapter are payable as  
11 described in §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and  
12 Procedures).

13               (d) Restrictions.

14                   (1) A vehicle permitted under this subchapter is subject to the restrictions specified in  
15 §219.11(l) ~~(2) [(1), and (3) [, and (4)],~~ and the permittee is responsible for obtaining information  
16 concerning current restrictions from the department.

17                   (2) Vehicles permitted under this subchapter may not cross a load restricted bridge  
18 when exceeding the posted capacity of such. Vehicles permitted under this subchapter may travel on a  
19 load restricted road unless otherwise noted.

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(3) A vehicle permitted under this subchapter may travel through highway construction or maintenance areas provided the dimensions do not exceed the construction restrictions as published by the department.

(4) A unit exceeding nine feet in width, 14 feet in height, or 65 feet in length is restricted to daylight movement only.

~~[(e) Void permits. A permit will be voided when the department is informed by law enforcement that a citation has been issued for a violation of a permit's terms and conditions.]~~

(e) ~~[(f)]~~ Transferability. Unless otherwise noted, a permit issued under this subchapter may not be transferred between units or permittees.

~~[(g) Records retention. A unit permitted under this section must keep the permit and any attachments to the permit in the unit until the day after the date the permit expires.]~~

(f) ~~[(h)]~~ Escort requirements. In addition to any other escort requirements specified in this subchapter, vehicles permitted under this subchapter are subject to the escort requirements specified in §219.11(k).

## 219.43 Quarterly Hubometer Permits

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.41 of this title (relating to General Requirements).

(2) A quarterly hubometer permit:

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- 1 (A) is effective for three consecutive months;
- 2 (B) allows the unit to travel on all state-maintained highways; and
- 3 (C) allows the unit to travel on a state-wide basis.
- 4 (3) A unit permitted under this subsection must not exceed any of the following
- 5 dimensions:
- 6 (A) 12 feet in width;
- 7 (B) 14 feet, 6 inches in height; and
- 8 (C) 95 feet in length.
- 9 (4) With the exception of units that are overlength only, a unit operated with a permit
- 10 issued under this section must be equipped with a hubometer. The permittee must maintain the
- 11 hubometer in good working condition.
- 12 (5) A unit exceeding 175,000 pounds gross weight must:
- 13 (A) have front and rear escort flag vehicles to prevent traffic from traveling
- 14 beside the unit as it crosses a bridge;
- 15 (B) cross all multi-lane bridges by centering the unit on a lane line;
- 16 (C) cross all two-lane bridges in the center of the bridge; and
- 17 (D) cross each bridge at a speed not greater than 20 miles per hour.
- 18 (b) Maximum permit weight limits.

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(1) The maximum permit weight for any single axle must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on a unit will be determined by calculating the "W" weight for the group, using the formulas in Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight that is established in Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table."

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) A unit that does not have any group of axles that exceeds the limits established in Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas" will be permitted with a single-trip mileage or quarterly hubometer permit for travel on any route that does not include a load restricted bridge.

(5) A unit that has any group of axles that exceeds the limits established by Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas" will be eligible, on an individual case-by-case basis, for a single-trip mileage permit only; permit approval or denial will be based on a detailed route study and an analysis conducted by TxDOT of each bridge on the proposed travel route to determine if the road(s) and bridge(s) are capable of sustaining the movement.

(6) A bridge that has been analyzed and determined to be incapable of sustaining the unit will be excluded from the permit route.

(c) Initial permit application and issuance.



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(1) An application for an initial quarterly hubometer permit under this section must be made in accordance with §219.41(b) of this title. In addition, the applicant must provide the current hubometer mileage reading and an initial \$31 processing fee.

(2) Upon verification of the unit information and receipt of the permit fee, the department will provide a copy of the permit to the applicant, as well as a renewal application.

(d) Permit renewals and closeouts.

(1) An application for a permit renewal or closeout must be made on a form and in the manner prescribed by the department.

(2) Upon receipt of the renewal application, the department will verify unit information, check mileage traveled on the last permit, calculate the new permit fee, and advise the applicant of the permit fee.

(e) Permit fees.

(1) Minimum fee. The minimum fee for a quarterly hubometer permit is either the calculated permit fee or \$31, whichever is the greater amount.

(2) Fees for overlength units. A unit that is overlength only must obtain a quarterly hubometer permit with a fee of \$31, but is not required to have a hubometer.

(3) Quarterly hubometer permit fee calculation. The permit fee for a quarterly hubometer permit is calculated by multiplying the hubometer mileage, the highway use factor, and the total rate per mile, and then adding the indirect cost share to the product.

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1 (A) Hubometer mileage. Mileage for a quarterly hubometer permit is  
2 determined by the unit's current hubometer mileage reading minus the unit's hubometer mileage  
3 reading from the previous quarterly hubometer permit.

4 (B) Highway use factor. The highway use factor for a quarterly hubometer permit  
5 is 0.3.

6 (C) Total rate per mile. The total rate per mile is the combined mileage rates for  
7 width, height, and weight for the unit. The rate per mile for a trailer mounted unit is based on the overall  
8 width, overall height, and all axle weights, including the truck-tractor axles.

9 (i) The mileage rate for width is \$.06 per mile for each foot (or fraction  
10 thereof) above legal width.

11 (ii) The mileage rate for height is \$.04 per mile for each foot (or fraction  
12 thereof) above legal height.

13 (iii) The mileage rate for a single axle or any axle within a group that  
14 exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045  
15 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle  
16 group and dividing the resultant figure by 1,000 pounds.

17 (iv) The mileage rate for a single axle or any axle within a group that  
18 exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying \$.055  
19 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle  
20 group and dividing the resultant figure by 1,000 pounds.

21 (4) Permit fees for trailer mounted units.

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1 (A) The permit fee for a trailer mounted unit is based on the overall width,  
2 overall height, and all axle weights, including the truck-tractor axles.

3 (B) A unit with two or more axle groups that does not have a spacing of at least  
4 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the  
5 following method.

6 (i) The axle group with the lowest weight will have the axle closest to the  
7 next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet  
8 between the two groups for fee calculation purposes.

9 (ii) An axle group will not have more than one axle disregarded.

10 (iii) The permit fee for the axle group with the temporarily disregarded  
11 axle must be based on the actual weight of the entire axle group minus the legal weight for the  
12 remaining axles of the group.

13 (f) Amendments. A quarterly hubometer permit may be amended only to change the following  
14 [indicate]:

15 (1) if listed on the permit, the [a-new] hubometer serial number; or

16 (2) the [a-new] license plate number.

17

18 **SUBCHAPTER E. PERMITS FOR OVERSIZE AND OVERWEIGHT UNLADEN LIFT EQUIPMENT MOTOR**  
19 **VEHICLES**

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1 219.61 General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor  
2 Vehicles

3 (a) General information.

4 (1) Unless otherwise noted, permits issued under this subchapter are subject to the  
5 requirements of this section.

6 (2) Cranes are eligible for an annual permit under this subchapter.

7 (3) Cranes are also eligible for the following permits under this subchapter at weights  
8 above those established by §219.11(d)(2) of this title (relating to General Oversize/Overweight Permit  
9 Requirements and Procedures):

10 (A) single-trip mileage permits; and

11 (B) quarterly hubometer permits.

12 (4) If a truck-tractor is used to transport a trailer-mounted crane, the combination of  
13 vehicles is limited to the dimensions and weights listed in this subchapter.

14 (b) Permit application. An application shall be made on a form and in a manner prescribed by the  
15 department. The applicant shall provide all applicable information, including:

16 (1) name, customer identification number, and address [~~telephone number, and email~~  
17 ~~address (if requested)~~] of the applicant;

18 (2) name, telephone number, and email address of contact person; [~~year and make of~~  
19 ~~the crane;~~]

20 (3) year, make and vehicle identification number of the crane;

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- 1 (4) width, height, and length of the crane;
- 2 (5) crane axle and tire information, including the number of axles, distance between
- 3 axles, gauge per axle, axle weights, number of tires, and tire size; ~~and~~
- 4 (6) applicant's USDOT Number if applicant is required by law to have a USDOT Number;
- 5 and
- 6 (7) any other information required by law.
- 7 (c) Payment of permit fees. Fees for permits issued under this subchapter are payable as
- 8 described in §219.11(f) of this title.
- 9 (d) Restrictions.
- 10 (1) A crane permitted under this subchapter is subject to the restrictions specified in
- 11 §219.11(l) (2) ~~[(1), and (3) [, and (4)]]~~ of this title, and the permittee is responsible for obtaining
- 12 information concerning current restrictions from the department.
- 13 (2) A crane permitted under this subchapter may travel through highway construction or
- 14 maintenance areas provided the dimensions do not exceed the construction restrictions as published by
- 15 the department.
- 16 (3) A crane permitted under this subchapter may only be operated during daylight,
- 17 unless:
- 18 (A) the crane is overweight only; or
- 19 (B) the crane complies with one of the following, regardless of whether the
- 20 crane is overweight:

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1 (i) the crane does not exceed nine feet in width, 14 feet in height, or 65  
2 feet in length; or

3 (ii) the crane is accompanied by a front and rear escort flag vehicle and  
4 does not exceed:

5 (I) 10 feet, 6 inches in width;

6 (II) 14 feet in height; or

7 (III) 95 feet in length.

8 (e) Transferability. Unless otherwise noted, a permit issued under this subchapter may not be  
9 transferred between cranes or between permittees.

10 (f) Escort requirements. In addition to any other escort requirements specified in this  
11 subchapter, cranes permitted under this subchapter are subject to the escort requirements specified in  
12 §219.11(k) of this title.

13 (g) Properly secured equipment. A crane permitted under this subchapter may travel with  
14 properly secured equipment, such as outriggers, booms, counterweights, jibs, blocks, balls, cribbing,  
15 outrigger pads, and outrigger mats, in accordance with the manufacturer's specifications to the extent  
16 the equipment is necessary for the crane to perform its intended function, provided the axle weights,  
17 axle group weights, and gross weight do not exceed the maximum permit weights listed in this  
18 subchapter.

19

20 219.63 Quarterly Hubometer Permits

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(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.61 of this title (relating to General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles).

(2) A quarterly hubometer permit:

(A) is effective for three consecutive months;

(B) allows the crane to travel on all state-maintained highways; and

(C) allows the crane to travel on a state-wide basis.

(3) A crane permitted under this section must not exceed any of the following dimensions:

(A) 12 feet in width;

(B) 14 feet, 6 inches in height; or

(C) 95 feet in length.

(4) With the exception of cranes that are overlength only, cranes operated with a quarterly hubometer permit must be equipped with a hubometer. The permittee must maintain the hubometer in good working condition.

(5) A crane exceeding 175,000 pounds gross weight must:

(A) have front and rear escort flag vehicles to prevent traffic from traveling beside the crane as it crosses a bridge;

(B) cross all multi-lane bridges by centering the crane on a lane line;

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- 1 (C) cross all two-lane bridges in the center of the bridge; and
- 2 (D) cross each bridge at a speed not greater than 20 miles per hour.
- 3 (6) The permitted crane must not cross a load-restricted bridge when exceeding the
- 4 posted capacity of the bridge.
- 5 (7) The permit may be amended only to change the following ~~indicate~~:
- 6 (A) if listed on the permit, the ~~a new~~ hubometer serial number; or
- 7 (B) the ~~a new~~ license plate number.
- 8 (b) Maximum permit weight limits.
- 9 (1) The maximum permit weight for any single axle must not exceed 30,000 pounds or
- 10 850 pounds per inch of tire width, whichever is less.
- 11 (2) The maximum permit weight for any group of axles on a crane will be determined by
- 12 calculating the "W" weight for the group, using the formulas in Figure 2: 43 TAC §219.62(f), "Maximum
- 13 Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight
- 14 that is established in Figure 1 :43 TAC §219.62(f), "Maximum Permit Weight Table."
- 15 (3) The maximum permit weight per inch of tire width for axles that are steerable must
- 16 not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not
- 17 steerable must not exceed 850 pounds.
- 18 (4) A crane that has any group of axles that exceeds the limits established by Figure 1 :43
- 19 TAC §219.62(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.62(f), "Maximum Permit



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1 Weight Formulas," is not eligible for a permit under this section; however, it is eligible for a permit under  
2 §219.62 of this title (relating to Single-Trip Mileage Permits).

3 (c) Initial permit application and issuance.

4 (1) An application for an initial quarterly hubometer permit must be made in accordance  
5 with §219.61(b) of this title. In addition, the applicant must provide the current hubometer mileage  
6 reading and an initial \$31 processing fee.

7 (2) Upon verification of the crane information and receipt of the permit fee, the  
8 department will provide a copy of the permit to the applicant, and will also provide a renewal  
9 application form to the applicant.

10 (d) Permit renewals and closeouts.

11 (1) An application for a permit renewal or closeout must be made on a form and in a  
12 manner prescribed by the department.

13 (2) Upon receipt of the renewal application, the department will verify crane  
14 information, check mileage traveled on the last permit, calculate the new permit fee, and advise the  
15 applicant of the permit fee.

16 (e) Permit fees.

17 (1) Minimum fee. The minimum fee for a quarterly hubometer permit is either the  
18 calculated permit fee or \$31, whichever is the greater amount.

19 (2) Fees for overlength cranes. A crane that is overlength only is not required to have a  
20 hubometer. The fee for this permit is \$31.

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1 (3) Quarterly hubometer permit fee calculation. The permit fee for a quarterly  
2 hubometer permit is calculated by multiplying the hubometer mileage, the highway use factor, and the  
3 total rate per mile, and then adding the indirect cost share to the product.

4 (A) Hubometer mileage. Mileage for a quarterly hubometer permit is  
5 determined by the crane's current hubometer mileage reading minus the crane's hubometer mileage  
6 reading from the previous quarterly hubometer permit.

7 (B) Highway use factor. The highway use factor for a quarterly hubometer permit  
8 is 0.3.

9 (C) Total rate per mile. The total rate per mile is the combined mileage rates for  
10 width, height, and weight for the crane.

11 (i) The mileage rate for width is \$.06 per mile for each foot (or fraction  
12 thereof) above legal width.

13 (ii) The mileage rate for height is \$.04 per mile for each foot (or fraction  
14 thereof) above legal height.

15 (iii) The mileage rate for a single axle or any axle within a group that  
16 exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045  
17 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle  
18 group and dividing the resultant figure by 1,000 pounds.

19 (iv) The mileage rate for a single axle or any axle within a group that  
20 exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying \$.055

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1 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle  
2 group and dividing the resultant figure by 1,000 pounds.

3 (4) Special fee provisions. A crane with two or more axle groups that do not have a  
4 spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee  
5 calculated by the following method.

6 (A) The axle group with the lowest weight will have the axle closest to the next  
7 axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet  
8 between the two groups for fee calculation purposes.

9 (B) An axle group will not have more than one axle disregarded.

10 (C) The permit fee for the axle group with the temporarily disregarded axle must  
11 be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of  
12 the group.

Board Meeting Date: 12/14/2023

BRIEFING ITEM

**To:** Texas Department of Motor Vehicles Board  
**From:** David Richards, Associate General Counsel  
**Agenda Item:** 7  
**Subject:** Customer Service and Protection Advisory Committee (CSPAC) and Motor Vehicle Regulation Advisory Committee (MVIRAC) Recommendations to TxDMV Board

### RECOMMENDATION

Briefing Only. That the Texas Department of Motor Vehicles Board (board) consider advisory committee recommendations for amendments to 43 Texas Administrative Code, Chapters 215 and 224.

### PURPOSE AND EXECUTIVE SUMMARY

To implement Transportation Code §1001.031, by retaining or establishing one or more advisory committees to make recommendations to the board or the executive director. To review advisory committee recommendations regarding amendments to Chapters 215 and 224.

### 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.”

Under Transportation Code §1001.031, the board established five advisory committees by rules. The rules establishing four advisory committees as well as their purpose, use and structure, were adopted by the board at the August 8, 2019, board meeting. At its October 12, 2023, meeting, the board approved a fifth advisory committee with the creation of the Household Goods Rules Advisory Committee, or HGRAC.

In August and September 2023, the Motor Vehicle Industry Regulation Advisory Committee (MVIRAC) and the Customer Service and Protection Advisory Committee (CSPAC) held meetings to review and to discuss possible amendments to 43 TAC Chapters 206, Management; 215, Motor Vehicle Distribution; 221, Salvage Vehicle Dealers; and 224, Adjudicative Practice and Procedure; for Presentation to the Board. As a result of those meetings, recommendations for rule amendments to Chapter 215 and Chapter 224 were made by the MVIRAC and the CSPAC, respectively.

43 TAC §206.93(j) provides that recommendations of the advisory committees shall be reported to the board at a board meeting prior to board action on issues related to the recommendations. The recommendations shall be in writing and include any necessary supporting materials. The Presiding Officer of the advisory committee or the presiding officer’s designee may appear before the board to present their respective advisory committee’s recommendations. MVIRAC

Presiding David Blassingame, and CSPAC Presiding Officer Kristen Hoyt will appear before the board to present their joint and individual advisory committee recommendations for amendments to department rules for the board's consideration.

### **Roles of the Four Advisory Committees**

1. The **Customer Service and Protection Advisory Committee** will make recommendations related to improving and enhancing customer service by the department including: infrastructure, new customer service initiatives, policy and process improvements, and technology; topics on investigation and enforcement issues including: vehicle titles and registration fraud; lemon law; the warranty performance program; and various other topics affecting consumers.
2. The **Household Goods Rules Advisory Committee** will make recommendations on topics related to the protections for consumers using the service of a motor carrier who is transporting household goods for compensation.
3. The **Motor Carrier Regulation Advisory Committee** will make recommendations on topics related to motor carrier registration and motor carrier regulation.
4. The **Motor Vehicle Industry Regulation Advisory Committee** will make recommendations on topics related to regulation of the motor vehicle industry.
5. The **Vehicle Titles and Registration Advisory Committee** will make recommendations on topics related to vehicle titles and registration.

## Customer Service and Protection Advisory Committee (CSPAC) and Motor Vehicle Regulation Advisory Committee (MVIRAC) Recommendations to TxDMV Board

Impacted Section	Recommendation By	Recommended Change
§215.83(l)	Both Committees	Change the number of days that a License Holder has to dispute a denied license renewal from 10 to 15
§215.104(c)	Both Committees	Change the number of days that a franchised dealer is required to file an amendment application from 10 to 15 within a license change
§215.102(e)(2)(G)	Both Committees	Delete the requirement that an applicant for a Distributor license provide the department with the Distribution Agreement between a Manufacturer and the applicant
§215.102(e)(2)(E)(i)	Both Committees	Delete from the required information an applicant for a manufacturer or distributor license must provide as part of its application the following: “or if offers for sale or sales of motor vehicle in Texas will solely be over the internet, a list of each out-of-state franchised dealer authorized by the manufacturer or distributor to sell a product online to a Texas citizen including the dealer’s name, physical address, and dealer license number issued by the state in which the dealer is located”
§215.103(a)	CSPAC	Delete the word “only” from the provision: “A service facility is....where the franchised dealer [ <del>only</del> ] performs warranty repair services and not new motor vehicle sales.”
§215.112	Both Committees	Remove the repeal of the entire section and maintain to allow for further discussions between AC members and TxDMV Staff concerning Motor Home Show Limitations and Restrictions
Several Sections In Chapter 215	MVIRAC	Add Texas Rules of Civil Procedure Section 21(a) by stating that the notice requirements for the notice of protest will happen in accordance with the TRCP Section 21(a).
§215.244 (6)	CSPAC	Delete the phrase [ <del>required to be</del> ] from the definition of “Dealer Addendum”
§224.620(g)	MVIRAC	Add the words “dealer installed” options so that dealers are only accountable for reimbursement to a complainant, manufacturer, converter, or distributor for dealer installed options that are deemed to be defective.
§224.405(d)	MVIRAC	Add “Notwithstanding the terms of §224.400(b)” so that (d) reads, “Notwithstanding the terms of §224.400(b), a party may appeal to the board an order granting or denying a motion for a cease and desist order.
§224.406(c)	MVIRAC	Add “Notwithstanding the terms of §224.400(b)” so that (c) reads, “Notwithstanding the terms of §224.400(b), a party affected by a statutory stay imposed by

Impacted Section	Recommendation By	Recommended Change
		Occupations Code, Chapter 2301, may initiate a proceeding before the board to modify, vacate, or clarify the extent and application of the statutory stay."

**Board Meeting Date: 12/14/2023**  
**ACTION ITEM**

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**To:** Texas Department of Motor Vehicles Board  
**From:** Laura Moriaty, General Counsel  
**Agenda Item:** 8  
**Subject:** Rule Review Process and Proposals under Government Code §2001.039: Chapter 206, Management; Chapter 215, Motor Vehicle Distribution; and Chapter 221, Salvage Vehicle Dealers

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#### RECOMMENDATION

Action Item. Approval to publish the proposed notice of intention to review rules in the *Texas Register* for public comment.

#### PURPOSE AND EXECUTIVE SUMMARY

The department proposes to review 43 Texas Administrative Code (TAC), Chapter 206, Management; Chapter 215, Motor Vehicle Distribution; and Chapter 221, Salvage Vehicle Dealers. This review is being conducted under Texas Government Code §2001.039.

#### FINANCIAL IMPACT

None.

#### BACKGROUND AND DISCUSSION

Government Code, §2001.039 requires the department to review and consider for readoption each of its rules every four years. The department has not reviewed or readopted TAC Chapters 206 and 221 since 2015; Chapter 215 was last reviewed and readopted in 2017.

The Government Code requires the department to determine through the rule review whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Necessary repeals and amendments identified during the review of these rules will be presented to the Board separately for proposal and publication in the *Texas Register*, in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

TAC Chapter 206 covers the management of the department, including staff responsibilities, public meetings, advisory committees, and risk-based monitoring.

TAC Chapter 215 covers the licensure and regulation for all license types that the department issues under Occupations Code, Chapter 2301 and Transportation Code, Chapter 503, including motor vehicle dealers, manufacturers, distributors, converters, lessors and lease facilitators, wholesale motor vehicle auctions, and drive-a-way operators. TAC Chapter 215 provides requirements for licensure, requirements for use of license plates and temporary tags by license holders, protests and complaints brought by one license holder against another, warranty performance obligations, advertising restrictions, administrative sanctions, and the procedures for contested cases.

TAC Chapter 221 describes the procedures by which a person obtains a salvage vehicle dealer license, the requirements governing how a license holder must operate, and the procedures by which the department administers and enforces Chapter 221 and Occupations Code, Chapter 2302.



## TITLE 43. TRANSPORTATION

## Proposed Rule Review

## Part 10. Texas Department of Motor Vehicles

## Chapters 206, 215, and 221

## Intention to Review

The Texas Department of Motor Vehicles (department) will review and consider whether to readopt, readopt with amendments, or repeal 43 Texas Administrative Code, Chapter 206, Management; Chapter 215, Motor Vehicle Distribution; and Chapter 221, Salvage Vehicle Dealers. This review is being conducted pursuant to Government Code, § 2001.039.

The board will assess whether the reasons for initially adopting these rules continue to exist and whether the rules should be repealed, readopted, or readopted with amendments.

If you want to comment on this rule review proposal, submit your written comments by 5:00 p.m. CST on January 29, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

Proposed changes to sections of these chapters are published in the Proposed Rules section of this issue of the *Texas Register* and are open for a 30-day public comment period.

**To:** Texas Department of Motor Vehicles Board  
**From:** David Richards, Associate General Counsel  
**Agenda Item:** 9  
**Subject:** Chapter 206, Management  
Amendments, Subchapter A, B, C, E, F, G, and H  
Repeal Subchapter D  
(Relating to Cleanup)

#### RECOMMENDATION

Action Item. Approval to publish the rule amendments and repeals in the *Texas Register* for public comment.

#### PURPOSE AND EXECUTIVE SUMMARY

The department is conducting a review of its rules under 43 Texas Administrative Code (TAC) Chapter 206 in compliance with Government Code, §2001.039. The proposed amendments and repeals would clean up the language in Chapter 206.

#### FINANCIAL IMPACT

There will be no significant fiscal implications due to the proposed amendments and repeals.

#### BACKGROUND AND DISCUSSION

The amendments to Chapter 206 would bring the department's rules into alignment with statute; remove language that is redundant with statute; cite to statutory authority when helpful; clarify existing requirements; modernize language; improve readability through the use of consistent terminology; clarify or delete unused, archaic, or inaccurate definitions, terms, and references; and more specifically describe the department's methods and procedures, including its process for internal risk monitoring regarding the department's internal users of the Registration and Title System (RTS). The proposed repeal of Subchapter D of Chapter 206 would delete the subchapter to enable the consolidation of all the department's contested case rules into proposed new Chapter 224, Adjudicative Practice and Procedure. Chapter 224 would contain modified portions of Subchapter D, as applicable. The proposed amendments also re-letter subdivisions in Chapter 206 due to deletions and repeals.

1	<b>PROPOSAL OF REVISIONS TO</b>
2	<b>SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES</b>
3	<b>43 TAC §206.1 AND §206.2</b>
4	<b>SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS</b>
5	<b>43 TAC §206.22 AND §206.23</b>
6	<b>SUBCHAPTER C. PROCEDURE FOR PETITION TO ADOPT RULES</b>
7	<b>43 TAC §206.41</b>
8	<b>SUBCHAPTER E. ADVISORY COMMITTEES</b>
9	<b>43 TAC §206.92, §206.93 AND NEW §206.101</b>
10	<b>SUBCHAPTER F. DEPARTMENT VEHICLE FLEET MANAGEMENT</b>
11	<b>43 TAC §206.111</b>
12	<b>SUBCHAPTER G. ELECTRONIC SIGNATURES</b>
13	<b>43 TAC §206.131</b>
14	<b>SUBCHAPTER H. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY</b>
15	<b>43 TAC §206.151</b>
16	<b>REPEAL OF</b>
17	<b>SUBCHAPTER D. PROCEDURES IN CONTESTED CASES</b>

## TITLE 43. TRANSPORTATION

Proposed Sections

## Part 10. Texas Department of Motor Vehicles

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## Chapter 206 - Management

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Chapter 206, Subchapter A, Organization and Responsibilities, §206.1 and §206.2; Subchapter B, Public Meetings and Hearings, §206.22 and §206.23; Subchapter C, Procedure for Petition to Adopt Rules, §206.41; Subchapter E, Advisory Committees, §206.92 and §206.93; Subchapter F, Department Vehicle Fleet Management, §206.111; Subchapter G, Electronic Signatures, §206.131; and Subchapter H, Risk-Based Monitoring and Preventing Fraudulent Activity, §206.151. The department proposes new Subchapter E, Advisory Committees, §206.101. The department is also proposing the repeal of Subchapter D, Procedures in Contested Cases.

The proposed amendments and proposed new section in Chapter 206 would bring the rules into alignment with statute; remove language that is redundant with statute; clarify existing requirements; modernize language; improve readability through the use of consistent terminology; clarify or delete unused, archaic, or inaccurate definitions, terms, and references; and more specifically describe the department's methods and procedures, including its process for internal risk monitoring regarding the department's internal users of the department's Registration and Title System (RTS).

The proposed repeal of Subchapter D of Chapter 206 would enable the board of the Texas Department of Motor Vehicles (board) to consolidate all of the department's contested case rules into proposed new Chapter 224, Adjudicative Practice and Procedure. In this issue of the *Texas Register*, the department proposes new Chapter 224, which would include all of the department's adjudicative practice and procedure rules in one chapter.

**EXPLANATION.** The department is conducting a review of its rules in Chapter 206 in compliance with Government Code, §2001.039. Notice of the department's plan to review Chapter 206 is published in this

## TITLE 43. TRANSPORTATION

## Proposed Sections

## Part 10. Texas Department of Motor Vehicles

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## Chapter 206 - Management

1 issue of the *Texas Register*. As a part of the rule review, the department is proposing necessary  
2 amendments and repeals, as detailed in the following paragraphs.

### 3 Subchapter A. Organization and Responsibilities

4 The proposed amendments to Subchapter A would clarify the authority of the executive director  
5 and remove rules that are redundant with statute. The proposed amendments to §206.1 would cite to the  
6 statutory provision under which the executive director receives authority to delegate certain duties or  
7 responsibilities to department staff and would clarify that such delegation must be consistent with  
8 applicable law.

9 The proposed amendments to §206.2(a) would clarify that the executive director hires and  
10 oversees the department's general counsel, to align the rule with Transportation Code, §1001.041 and  
11 §1001.0411. The proposed amendment to §206.2(a)(3) would remove unnecessary limitations on the  
12 executive director's powers to delegate to staff. The proposed amendment to §206.2(b) would remove  
13 unnecessary language regarding the Texas Open Meetings Act because the subsection already references  
14 Government Code, Chapter 551. A proposed amendment to §206.2 would strike §206.2(c) because it is  
15 duplicative of Transportation Code, §1001.004.

### 16 Subchapter B. Public Meetings and Hearings

17 In Subchapter B, proposed amendments to §206.22 would delete subsection (f) and remove a  
18 cross-reference to subsection (f) because its provisions on contested cases would be combined with the  
19 department's other rules on contested cases in proposed new Chapter 224, Adjudicative Practice and  
20 Procedure. Proposed amendments to §206.22(b) and (c) would simplify and clarify the language, in  
21 addition to revising existing terminology for consistency with other department rules and with current  
22 practice. For example, when closed session is expected to last at least an hour, the board chairman allows

## TITLE 43. TRANSPORTATION

## Proposed Sections

## Part 10. Texas Department of Motor Vehicles

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## Chapter 206 - Management

1 open comments prior to going into closed session, instead of taking open comments at the end of the  
2 posted agenda. A proposed amendment to §206.22(c) would delete the words “with disabilities” because  
3 anyone who has special communication or accommodation needs who plans to attend a board meeting  
4 may request auxiliary aids or services. Proposed amendments to §206.22(d) would clarify that the public  
5 is authorized to make public comments, rather than presentations, at board meetings.

6 Proposed amendments to §206.23(b) would clarify and streamline the language without changing  
7 its meaning. Proposed amendments to §206.23(c) and (d) would provide that the executive director or the  
8 executive director’s designee may represent the department in a public hearing as well as the board chair  
9 or presiding officer. Proposed amendments to §206.23(d) would remove the term “with disabilities” to  
10 clarify that anyone with special communication or accommodation needs who plans to attend board  
11 hearings may contact the department to request auxiliary aids or services. The proposed amendments to  
12 §206.23(d) would also specify that if a hearing is conducted by the department’s executive director or  
13 designee rather than the board, persons requesting auxiliary aids or services may contact the  
14 department’s public affairs officer.

## 15 Subchapter C. Procedure for Petition to Adopt Rules

16 Proposed amendments to Subchapter C, §206.41 would clarify the procedure for submitting to  
17 the department a petition to adopt rules under Texas Government Code, §2001.021, and the required  
18 content of a petition. Proposed amendments to §206.41 would also remove unnecessary language.

## 19 Subchapter D. Procedures in Contested Cases

20 The proposed repeal of Subchapter D, Procedures in Contested Cases, would delete the  
21 subchapter to enable the consolidation of all the department’s contested case rules into proposed new  
22 Chapter 224, Adjudicative Practice and Procedure. Chapter 224 would contain modified portions of

## TITLE 43. TRANSPORTATION

## Proposed Sections

## Part 10. Texas Department of Motor Vehicles

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## Chapter 206 - Management

1 Subchapter D, as applicable. Due to the proposed repeal of Subchapter D, the remaining subchapters in  
2 Chapter 206 would be re-lettered.

3 Subchapter E. Advisory Committees

4 This subchapter is proposed to be re-lettered as Subchapter D as current Subchapter D is  
5 proposed for repeal and the subsequent subchapters are proposed to be re-lettered accordingly.

6 Proposed amendments to §206.92 would delete the definition of “division director” because  
7 the term is not used elsewhere in the subchapter, and would renumber the subsequent paragraphs in  
8 §206.92 accordingly. A proposed amendment would move the language from §206.93(c) to §206.93(b)  
9 regarding the prohibition against board members serving as advisory committee members. Proposed  
10 amendments to §206.93(b) and the proposed deletion of §206.93(c) would streamline and clarify the  
11 qualifications and appointment requirements for advisory committee members into one subsection. The  
12 proposed deletion of §206.93(c) would also remove language that is redundant with Transportation Code,  
13 §1001.031(b). Proposed amendments to §206.93 would re-letter the remaining subsections of §206.93  
14 due to the proposed deletion of §206.93(c). Proposed amendments to §206.93(g) and (h), which are  
15 proposed to be re-lettered to subsections (f) and (g), would remove unnecessary statutory titles. A  
16 proposed amendment would delete §206.93(i) because proposed new §206.101 would clarify the  
17 requirements and parameters for public comment during advisory committee meetings. Proposed  
18 amendments to §206.93(k), which is proposed to be re-lettered to subsection (i), would clarify that both  
19 the executive director and the board shall consider an advisory committee’s written recommendations in  
20 developing policy, and would remove redundant language describing advisory committee  
21 communications. The proposed deletion of §206.93(m) would remove unnecessary language that is  
22 duplicative of Texas Government Code, §2110.008.

## TITLE 43. TRANSPORTATION

## Proposed Sections

## Part 10. Texas Department of Motor Vehicles

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## Chapter 206 - Management

1 Proposed new §206.101 would clarify the requirements and parameters for public comment  
2 during advisory committee meetings. Proposed new §206.101 would closely parallel the requirements for  
3 public comments during board meetings in existing §206.93(i) and §206.22 (relating to Public Access to  
4 Board Meetings). Proposed new §206.101 would allow each public commenter three minutes to comment  
5 on any advisory committee agenda item or in an open comment period on any topic within the scope of  
6 the specific advisory committee. Proposed new §206.101(c) would set out the procedures for a member  
7 of the public to request a disability accommodation for an advisory committee meeting with the same  
8 process described in §206.22(c) for board meetings. Proposed new §206.101(d) would set requirements  
9 for conduct and decorum at advisory committee meetings to assist the acting advisory committee chair  
10 in maintaining order, which would be the same as the requirements for conduct and decorum at board  
11 meetings under §206.22(d). Proposed new §206.101(e) would allow the acting advisory committee chair  
12 to waive any requirements of §206.101 as necessary to allow the advisory committee or the department  
13 to perform their responsibilities. It would thereby allow the acting advisory committee chairs to remain  
14 responsive to the need for public comment while preventing proposed new §206.101 from unnecessarily  
15 encumbering the public comment process. Proposed new §206.101 does not include written public  
16 comment for advisory committee meetings to streamline the process and provide a consistent method of  
17 receiving comments, and to ensure that advisory committee members are able to ask follow-up questions  
18 of the commenters.

19 Subchapter F. Department Vehicle Fleet Management

20 This subchapter is proposed to be re-lettered as Subchapter E as current Subchapter D is proposed  
21 for repeal and the subsequent subchapters are proposed to be re-lettered accordingly.



## TITLE 43. TRANSPORTATION

## Proposed Sections

## Part 10. Texas Department of Motor Vehicles

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## Chapter 206 - Management

1           An amendment to §206.111 is proposed to clarify that a written documented finding must be  
2 signed by the executive director to support an assignment of a department vehicle to an individual  
3 employee on an everyday basis.

#### 4   Subchapter G. Electronic Signatures

5           This subchapter is proposed to be re-lettered as Subchapter F as current Subchapter D is proposed  
6 for repeal and the subsequent subchapters are proposed to be re-lettered accordingly.

7           Amendments to §206.131 are proposed to rename the title of the subchapter from “Electronic  
8 Signatures” to “Digital Certificates” for accuracy and consistency. A proposed amendment to  
9 §206.131(d)(2)(A) would clarify that one form of acceptable identity verification is an unexpired personal  
10 identification certificate with a photograph. A proposed amendment to §206.131(d)(2)(B) would delete a  
11 concealed handgun license as an acceptable form of identification because such license is no longer  
12 required by law. Proposed amendments to §206.131(d)(2)(E) and (G) would correct the name of the  
13 federal agency that issues a form I-94. A proposed amendment to §206.131(g) would clarify that the rule  
14 refers to digital certificates. Proposed amendments to §206.131(i) would substitute the word “certificate”  
15 for “signature” to increase consistency and accuracy.

#### 16   Subchapter H. Risk-Based Monitoring and Preventing Fraudulent Activity

17           This subchapter is proposed to be re-lettered as Subchapter G because current Subchapter D is  
18 proposed for repeal and the subsequent subchapters are proposed to be re-lettered accordingly.

19           Amendments to §206.151 are proposed to clarify and specify the division’s internal risk-based  
20 monitoring system required by Transportation Code, §520.004(4). The proposed amendments would  
21 subject the department’s internal users of RTS to periodic examination to determine whether to assign  
22 the RTS user a classification of priority or non-priority. Priority levels determine the minimum number of

## TITLE 43. TRANSPORTATION

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## Part 10. Texas Department of Motor Vehicles

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## Chapter 206 - Management

inspections the department would like to conduct on the internal RTS user each year. The inspections are conducted to determine whether there is evidence of fraud by the RTS user. The proposed amendments would base the classification of priority or non-priority on certain factors, including the RTS user's transaction volume, the RTS user's past violations of department rules and procedures within the past five years, title error investigations performed by the department on titles issued by the RTS user, public complaints received against the RTS user, and discrepancies in data reflecting the RTS user's transactions. The proposed amendments would also provide that RTS users who are classified as a priority shall be inspected not less than twice per year, and a RTS user classified as a non-priority shall be inspected not less than once per year. The proposed amendments further provide that the inspections may be virtual, on premises at the RTS user's location, or a combination of both.

Additional non-substantive amendments are proposed throughout Chapter 206 to correct punctuation, grammar, and capitalization.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments and repeals as proposed are in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposed amendments or repeals.

Executive Director Daniel Avitia has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

**PUBLIC BENEFIT AND COST NOTE.** Mr. Avitia has also determined that for each year of the first five years the proposed amended sections and repeals are in effect, the anticipated public benefit as a result of enforcing or administering the amendments and repeals will be the simplification, clarification, and streamlining of agency rules.

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## Chapter 206 - Management

1 Anticipated Cost to Comply with the Proposal. Mr. Avitia anticipates that there will be no costs to  
2 comply with the proposed amendments and repeals.

3 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government  
4 Code, §2006.002, the department has determined that the proposed amendments and repeals will not  
5 have an adverse economic impact on small businesses, micro-businesses, and rural communities because  
6 there are no anticipated economic costs for persons required to comply with the proposed amendments  
7 and repeals. Therefore, the department is not required to prepare a regulatory flexibility analysis under  
8 Government Code, §2006.002.

9 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests  
10 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property  
11 that would otherwise exist in the absence of government action and, therefore, does not constitute a  
12 taking or require a takings impact assessment under Government Code, §2007.043.

13 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the  
14 first five years the proposed amendments and repeals are in effect, no government program would be  
15 created or eliminated. Implementation of the proposed amendments and repeals would not require the  
16 creation of new employee positions or elimination of existing employee positions. Implementation would  
17 not require an increase or decrease in future legislative appropriations to the department or an increase  
18 or decrease of fees paid to the department. The proposed amendments and repeals do not create a new  
19 regulation; however, they expand an existing regulation regarding the department's internal risk-based  
20 monitoring system of internal users of RTS. While the repeal of Subchapter D of Chapter 206 is proposed,  
21 proposed new Chapter 224, Adjudicative Practice and Procedure, would contain modified portions of

## TITLE 43. TRANSPORTATION

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## Part 10. Texas Department of Motor Vehicles

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## Chapter 206 - Management

1 Subchapter D, as applicable. Lastly, the proposed amendments and repeals do not affect the number of  
2 individuals subject to Chapter 206's applicability and will not affect this state's economy.

3 **REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written  
4 comments by 5:00 p.m. CST on MM, DD, YYYY. A request for a public hearing must be sent separately  
5 from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov*  
6 or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue,  
7 Austin, Texas 78731. If a hearing is held, the department will consider written comments and public  
8 testimony presented at the hearing.

9 **STATUTORY AUTHORITY.** The amendments and repeals are proposed under Transportation Code,  
10 §520.004, which requires the department by rule to establish a risk-based system of monitoring and  
11 preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate  
12 resources and personnel; Transportation Code, §643.155, which authorizes the department to adopt rules  
13 to create a rules advisory committee consisting of the public, the department, and representatives of  
14 motor carriers transporting household goods using small, medium, and large equipment; Transportation  
15 Code, §1001.041, which requires the executive director to appoint deputies, assistants and other  
16 personnel, including a general counsel; Transportation Code, §1001.031, which requires the board to  
17 establish advisory committees; Transportation Code, §1001.0411(b), which allows the executive director  
18 to delegate duties or responsibilities; Transportation Code, §1001.0411(c), which requires the executive  
19 director to hire and oversee a general counsel to advise the department; Transportation Code, §1002.001,  
20 which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules  
21 that are necessary and appropriate to implement the powers and the duties of the department;  
22 Transportation Code, §1004.002, which requires the board and the department to develop and implement  
23 policies that provide the public with a reasonable opportunity to appear before the board or the

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## Part 10. Texas Department of Motor Vehicles

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## Chapter 206 - Management

1 department and to speak on any issue under the jurisdiction of the board or the department; Government  
2 Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and  
3 requirements of all available formal and informal procedures; Government Code, §2001.021(b), which  
4 requires state agencies to adopt rules that prescribe the form and procedures for a petition for  
5 rulemaking; and Government Code, Chapter 2110, which sets out the requirements for advisory  
6 committees and requires that the agency make rules to establish the purpose and tasks of the committee  
7 and the manner in which the committee will report to the agency.

8 **CROSS REFERENCE TO STATUTE.** The proposed amendments would implement Government Code,  
9 §2001.021(b) and Chapter 2110; and Transportation Code, §520.004 and Chapters 643, 1001, 1002, 1003,  
10 and 1004.

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## Chapter 206 - Management

1 TEXT.

2 SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

3 §206.1. Delegation.

4 The Board of the Texas Department of Motor Vehicles (board) may, consistent with applicable  
5 law, delegate any agency function to the executive director. The executive director may, consistent with  
6 applicable law, [further] delegate duties or responsibilities pursuant to Transportation Code, §1001.0411  
7 [such functions to one or more employees of the department].

8  
9 §206.2. Texas Department of Motor Vehicles.

10 (a) Executive director.

11 (1) To assist in discharging the duties and responsibilities of the executive director, the  
12 executive director may organize, appoint, and retain administrative staff.

13 (2) The executive director shall:

14 (A) serve the board in an advisory capacity, without vote;

15 (B) submit to the board quarterly, annually, and biennially, detailed reports of  
16 the progress of the divisions and a detailed statement of expenditures;

17 (C) hire, promote, assign, reassign, transfer, and, consistent with applicable law  
18 and policy, terminate staff necessary to accomplish the roles and missions of the department;

19 (D) hire and oversee a general counsel to advise the department; and

20 (E) perform other responsibilities as required by law or assigned by the board.

21 (3) The executive director may, consistent with applicable law, delegate one or more of  
22 the functions listed under paragraph 2 ~~[(2)(B)-(D)]~~ of this subsection to the staff of the department.

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## Chapter 206 - Management

(b) Department staff. The staff of the department, under the direction of the executive director, is responsible for:

(1) implementing the policies and programs of the board by:

(A) formulating and applying operating procedures; and

(B) prescribing such other operating policies and procedures as may be consistent with and in furtherance of the roles and missions of the department;

(2) providing the chair and board members administrative support necessary to perform their respective duties and responsibilities;

(3) preparing an agenda under the direction of the chair and providing notice of board meetings and hearings as required by ~~[the Texas Open Meetings Act,]~~ Government Code, Chapter 551; and

(4) performing all other duties as prescribed by law or as assigned by the board.

~~[(c) Divisions. The executive director shall organize the department into divisions reflecting the various functions and duties assigned to the department.]~~

#### **SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS**

§206.22. Public Access to Board Meetings.

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

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

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## Chapter 206 - Management

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

(b) Open comment period.

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

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

(3) Except as provided in subsections (d)(6) and (e) of this section, each person shall be allowed to speak for a maximum of three minutes ~~[for each presentation]~~ in the order in which requests to speak were received ~~[the speaker is registered]~~.

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

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

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

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

(3) Comments ~~[Presentations]~~ shall remain pertinent to the issue being discussed.



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

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

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

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

~~[(f) Contested Cases. The parties to a contested case under review by the board shall be allowed an opportunity to provide an oral presentation to the board, subject to the following limitations and conditions.]~~

~~[(1) Each party shall be allowed a maximum of 15 minutes for their oral presentation.]~~

~~[(2) No party is allowed to provide a rebuttal or a closing statement.]~~

~~[(3) Any party that is intervening in support of another party shall share that party's time; however, this provision is limited to intervenors of record from the State Office of Administrative Hearings proceeding.]~~

~~[(4) Time spent by a party responding to any board questions is not counted against their time.]~~

~~[(5) The parties to a contested case under review by the board shall limit their oral presentation and discussion to evidence in the State Office of Administrative Hearings' administrative record.]~~

~~[(6) During an oral presentation, a party to a contested case before the board may orally claim that a presenting party talked about evidence that is not contained in the State Office of Administrative~~

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~~Hearing's administrative record; time spent discussing such claims is not counted against the objecting party's time.]~~

~~[(7) A party must timely comply with the requirements of §215.59 of this title (relating to Request for Oral Presentation) before it is authorized to provide an oral presentation to the board.]~~

## §206.23 Public Hearings.

(a) The board may hold public hearings:

(1) to consider adoption of rules;

(2) in accordance with the programs operated by the department; and

(3) to provide, when deemed appropriate by the board or when otherwise required by law, for public input regarding any other issue under the jurisdiction of the board.

(b) The executive director or designee may hold ~~conduct~~ public hearings ~~held~~ under subsection (a)(2) and (3) of this section.

(c) Public hearings shall be conducted in a manner that maximizes public access and input while maintaining proper decorum and orderliness, and shall be governed by the following guidelines:

(1) Questioning of those making presentations shall be reserved to board members, the executive director, the executive director's designee, or if applicable, the presiding officer.

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

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

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(4) A person who disrupts a public hearing shall leave the hearing room and the premises if ordered to do so by the chair, the executive director, the executive director's designee, or, if applicable, the presiding officer.

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

(d) Persons ~~[with disabilities,]~~ who have special communication or accommodation needs and who plan to attend a hearing to be held by the board, may contact the department in Austin to request auxiliary aids or services. ~~For [in the case of]~~ a hearing conducted by the executive director or designee, ~~[department,]~~ those persons may contact the public affairs officer, whose address and telephone number appear in the public notice for the [that] hearing, to request auxiliary aids or services. Requests shall be made at least two days before the hearing. The department shall make every reasonable effort to accommodate these needs.

### SUBCHAPTER C. PROCEDURE FOR PETITION TO ADOPT RULES

#### §206.41. Petition.

Any interested person may petition the department requesting the adoption of a rule. ~~[Such]~~ The petition must be in writing ~~[directed]~~ to the executive director ~~[at the department's headquarters building in Austin]~~ and ~~[shall]~~ contain the person's physical address in Texas, ~~[and]~~ a clear and concise statement of the substance of the ~~[proposed]~~ requested rule, ~~[together with]~~ and a brief explanation of the purpose ~~[to be accomplished through such adoption]~~ of the requested rule. Within 60 days after receipt, the department will either deny the petition in writing, stating its reasons therefore, or will initiate rulemaking proceedings in accordance with ~~[the Administrative Procedure Act (]~~ Government Code, Chapter 2001, Subchapter B~~)]~~.

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1

2

**[~~SUBCHAPTER D. PROCEDURES IN CONTESTED CASES~~]**

3

~~[\$206.61. Scope and Purpose.]~~

4

~~[This subchapter describes the procedures to be followed in contested cases arising under Government~~

5

~~Code, Chapter 2001. Contested cases shall be governed by the procedural rules of the State Office of~~

6

~~Administrative Hearings.]~~

7

8

~~[\$206.62. Definitions.]~~

9

~~[The following words and terms, when used in this subchapter, shall have the following~~

10

~~meanings, unless the context clearly indicates otherwise.]~~

11

~~[(1) Administrative Law Judge--A person appointed by the State Office of Administrative~~

12

~~Hearings to conduct a hearing on matters within the department's jurisdiction.]~~

13

~~[(2) Claim--A claim made pursuant to Occupations Code, Chapter 2302, Salvage Vehicle~~

14

~~Dealers; Transportation Code, §681.012, Seizure and Revocation of Placard; Transportation Code,~~

15

~~Chapter 643, Motor Carrier and Leasing Company Registration; and Transportation Code, Chapter 645,~~

16

~~Single State Registration for Motor Carriers.]~~

17

~~[(3) Department--The Texas Department of Motor Vehicles.]~~

18

~~[(4) Executive director--The chief administrative officer of the department or, if~~

19

~~permitted by law, the director's designee.]~~

20

~~[(5) Party--The department or a person named or permitted to participate in a contested~~

21

~~case.]~~

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1                   ~~[(6) Petition--The document that initiates a contested case.]~~

2                   ~~[(7) Petitioner--A party who files a petition.]~~

3

4   ~~[\$206.63. Filing of Petition.]~~

5   ~~[An individual, representative, partnership, corporation, association, governmental subdivision, or public~~

6   ~~or private organization, the department, or any other entity may seek to initiate a contested case by~~

7   ~~filing an original, and one copy of a petition, with the executive director at the department's~~

8   ~~headquarters building in Austin.]~~

9

10   ~~[\$206.64. Content of Petition.]~~

11               ~~[(a) A petition must include:]~~

12                   ~~[(1) the name of the petitioner;]~~

13                   ~~[(2) the names of all other known persons with an interest in the outcome of the~~

14   ~~contested case;]~~

15                   ~~[(3) a concise statement of the facts on which the petitioner relies, including as an~~

16   ~~attachment, if applicable, the document issued by the department that notified the petitioner of the~~

17   ~~decision or action challenged by the petitioner;]~~

18                   ~~[(4) a statement of the relief demanded by the petitioner;]~~

19                   ~~[(5) any other matter required by statute;]~~

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1                   ~~[(6) the signature of the petitioner or the petitioner's authorized representative; and]~~

2                   ~~[(7) a department reference number, if applicable.]~~

3                   ~~[(b) No document including a settlement offer by a party may be enclosed with the petition, and~~  
4                   ~~the petition may not refer to the substance of a settlement offer]~~

5  
6                   ~~[\$206.65. Examination by Executive Director.]~~

7                   ~~[(a) The executive director will examine a petition and make a preliminary determination~~  
8                   ~~whether the petition states a claim that entitles the petitioner to initiate a contested case and whether~~  
9                   ~~the petition meets the procedural requirements of §206.63 and §206.64 of this subchapter (relating to~~  
10                   ~~Filing of Petition and Content of Petition) and of Government Code, Chapter 2001.]~~

11                   ~~[(b) If the executive director finds that the petition does not meet all legal requirements, the~~  
12                   ~~executive director will return the petition to the petitioner along with a statement of the reasons for~~  
13                   ~~rejecting it. The petitioner will be given at least 10 days in which to file a corrected petition.]~~

14                   ~~[(c) If a corrected petition is rejected under this section, the executive director will return the~~  
15                   ~~corrected petition to the petitioner along with a statement of the reasons for rejecting it. The petitioner~~  
16                   ~~will not be given an opportunity to file another corrected petition.]~~

17                   ~~[(d) The executive director's preliminary determination of a petition's legal sufficiency is without~~  
18                   ~~prejudice to the department's right to assert, in litigation, that a contested case should be dismissed for~~  
19                   ~~any reason.]~~

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~~§206.66. Initiation of Contested Cases, Service of Notice of Hearing, Standard of Review, and Burden of Proof.]~~

~~[(a) Initiation.]~~

~~[(1) If the executive director finds that a petition meets all legal requirements, the department will initiate a contested case in accordance with the rules of the State Office of Administrative Hearings.]~~

~~[(2) The department may initiate a contested case on its own initiative in accordance with the rules of the State Office of Administrative Hearings.]~~

~~[(b) Service of notice of hearing. Service of the notice of hearing shall be accomplished by certified or registered mail to the party's last known address as shown in the department's records. A notice of a hearing in a contested case is sufficient for purposes of notice if it includes a copy of the petition, prepared in accordance with §206.64 of this subchapter (relating to Content of Petition), and the following information, unless it is included in the petition:]~~

~~[(1) a statement of the time, place, and nature of the hearing;]~~

~~[(2) a statement of the legal authority and jurisdiction under which the hearing is to be held; and]~~

~~[(3) reference to the particular sections of the statutes and rules involved.]~~

~~[(c) Standard of review for department's decision or action.]~~

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1                   ~~[(1) The standard of review is whether the department was reasonable for claims made~~  
2 ~~pursuant to Transportation Code, §681.012, Seizure and Revocation of Placard, and other claims not~~  
3 ~~specified in paragraph (2) of this subsection.]~~

4                   ~~[(2) The standard of review is whether the department's decision or action was based on~~  
5 ~~fraud, misconduct, or such gross mistake as would imply bad faith or failure to exercise an honest~~  
6 ~~judgment for:]~~

7                   ~~[(A) claims related to Occupations Code, Chapter 2302, Salvage Vehicle Dealers;]~~

8                   ~~[(B) claims related to motor carrier and leasing company registration,~~  
9 ~~Transportation Code, Chapter 643; and]~~

10                  ~~[(C) claims related to single state registration for motor carriers, Transportation~~  
11 ~~Code, Chapter 645.]~~

12                  ~~[(d) Burden of proof. A party seeking monetary damages or penalties shall bear the burden of~~  
13 ~~proof. In all other instances, the party challenging a department decision or action shall bear the burden~~  
14 ~~of proof.]~~

15  
16 ~~[\$206.67. Discovery.]~~

17                  ~~[(a) Commissions to take depositions. At the written request of a party, the executive director~~  
18 ~~will issue a written commission directed to officers, authorized by statute, to take a deposition of a~~  
19 ~~witness.]~~



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1           ~~[(b) Subpoenas for the production of documents. At the verified written request of a party, the~~  
2           ~~executive director will issue a subpoena for the production of documents. The written request must~~  
3           ~~identify the documents with as much detail as possible and must include a statement of their relevance~~  
4           ~~to the issues in the case.]~~

5           ~~[(c) Subpoenas for attendance at hearings. At the written request of a party, the executive~~  
6           ~~director will issue a subpoena for the attendance of a witness at a hearing in a contested case. The~~  
7           ~~subpoena may be directed to any person within the department's jurisdiction, without regard to the~~  
8           ~~distance between the location of the witness and the location of the hearing.]~~

9           ~~[(d) Limits on discovery. A commission or subpoena will only be issued on a showing of good~~  
10          ~~cause and receipt of a deposit sufficient to ensure payment of expenses and fees related to the~~  
11          ~~subpoena, including statutory witness fees. A commission or subpoena will not be issued if it appears~~  
12          ~~that it is sought for the purpose of harassment or if it would unduly inconvenience the person to whom~~  
13          ~~it is directed. Issuance of a commission or subpoena will be subject to the provisions of Government~~  
14          ~~Code, Chapter 2001, and the rules of the State Office of Administrative Hearings.]~~

15  
16          ~~[\$206.68. Evidence.]~~

17          ~~[The admissibility of evidence in a contested case shall be governed by Government Code,~~  
18          ~~Chapter 2001, and by the rules of the State Office of Administrative Hearings, except that a settlement~~  
19          ~~offer shall not be admissible for any purpose.]~~

20  
21          ~~[\$206.69. Withdrawal or Amendment of Proposal for Decision.]~~

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~~[The administrative law judge may withdraw or amend a proposal for decision at any time before a final order is issued.]~~

~~§206.70. Filing of Exceptions and Replies.]~~

~~[(a) A party may file exceptions to an administrative law judge's proposal for decision or an amended proposal for decision no more than 20 days after service of the proposal for decision. A reply to exceptions must be filed no more than 15 days after the filing of the exceptions.]~~

~~[(b) Exceptions and replies to exceptions must be filed with the executive director at the department's headquarters building in Austin. A copy must be filed simultaneously with the administrative law judge.]~~

~~[(c) A request for an extension of time in which to file exceptions or a reply must be filed with the executive director no later than three days before the date sought to be extended. The request must be served on all parties by facsimile or hand delivery on the date on which it is filed, or if that is not feasible, by overnight delivery service. A request for an extension of time will be granted only in extraordinary circumstances when it is necessary in the interest of justice.]~~

~~§206.71. Form of Exceptions and Replies.]~~

~~[Exceptions and replies must conform to the following standards.]~~

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~~[(1) Exceptions and replies must be typewritten or printed on paper 8-1/2 inches wide by 11 inches long with an inside margin at least one inch wide. Reproductions are acceptable if all copies are legible.]~~

~~[(2) Exceptions and replies must contain:]~~

~~[(A) the names of all parties;]~~

~~[(B) a concise statement of the facts and law on which the submitting party relies;]~~

~~[(C) a statement of the relief desired;]~~

~~[(D) a certificate of service;]~~

~~[(E) the signature of the submitting party or the submitting party's authorized representative; and]~~

~~[(F) any other matter required by statute.]~~

~~[(3) Each specific exception must be separately numbered, separately set forth, and concisely stated, and it must incorporate all facts and law relating to that specific exception.]~~

~~[\$206.72. Motions for Rehearing.]~~

~~[(a) A party may file a motion for rehearing no more than 20 days after service of the final order. A reply to a motion for rehearing must be filed no more than 15 days after the filing of the motion.]~~

~~[(b) A request for an extension of time in which to file a motion for rehearing will not be granted.]~~

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~~[(c) A motion for rehearing must conform to the standards for exceptions and replies set forth in §206.71 of this subchapter (relating to Form of Exceptions and Replies).]~~

~~[\$206.73. Extension of Time for Final Order.]~~

~~[When the administrative law judge determines that a final order cannot reasonably be issued within 60 days after the date on which the hearing is finally closed, the administrative law judge shall announce, at the conclusion of the hearing, that the time for a final order will be extended. The proposal for decision shall include a reference to the announced extension. The extension shall be for a period extending at least 45 days after the issuance of the proposal for decision to ensure enough time for the filing of exceptions and replies. A longer extension shall be granted in matters of unusual complexity.]~~

## **SUBCHAPTER D~~E~~. ADVISORY COMMITTEES**

§206.92. Definitions.

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

(1) Advisory committee--Any committee created by the board to make recommendations to the board or to the executive director pursuant to Transportation Code, §1001.031 and §643.155.

(2) Board--The board of the Texas Department of Motor Vehicles.

(3) Department--The Texas Department of Motor Vehicles.

~~[(4) Division director--The chief administrative officer in charge of a division of the department.]~~

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1                   (4) [5] Executive director--The chief executive officer of the Texas Department of Motor  
2 Vehicles.

3                   (5) [6] Member--An appointed member of an advisory committee created under this  
4 subchapter.

5                   (6) [7] Presiding officer--The presiding officer of an advisory committee elected by the  
6 membership of the advisory committee created under this subchapter.

7  
8 §206.93. Advisory Committee Operations and Procedures.

9           (a) Role of advisory committee. The role of an advisory committee under this subchapter is to  
10 provide advice and recommendations to the board or executive director. Advisory committees shall  
11 meet and carry out their functions upon a request from the department or board for advice and  
12 recommendations on any issues.

13           (b) Appointment and qualifications of advisory committee members. The board shall appoint  
14 members to an advisory committee in accordance with Transportation Code, §643.155 and  
15 §1001.031(b) by selecting potential members from a list provided to the board by the executive  
16 director. Board members shall not serve as advisory committee members. Each advisory committee  
17 shall elect from its members a presiding officer, who shall report the advisory committee's  
18 recommendations to the board or the executive director in accordance with subsection (i) of this  
19 section. The executive director may designate a division or divisions of the department to participate  
20 with, or to provide subject-matter expertise, guidance, or administrative support to the advisory  
21 committee as necessary.

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1       ~~[(c) Member qualifications. Members shall have knowledge about and interests in, and~~  
2 ~~represent a broad range of viewpoints about, the work of the committee or applicable division(s). Board~~  
3 ~~members shall not serve as advisory committee members.]~~

4       (c) [d] Composition of advisory committees. In making appointments to the advisory  
5 committees, the board shall, to the extent practical, ensure representation of members from diverse  
6 geographical regions of the state.

7       (d) [e] Committee size and quorum requirements. An advisory committee shall be composed of  
8 a reasonable number of members not to exceed 24 as determined by the board. A simple majority of  
9 advisory committee members will constitute a quorum. An advisory committee may only deliberate on  
10 issues within the jurisdiction of the department or any public business when a quorum is present.

11       (e) [f] Terms of service. Advisory committee members will serve terms of four years. A member  
12 will serve on the committee until the member resigns, is dismissed or replaced by the board, or the  
13 member's term expires.

14       (f) [g] Member training requirements. Each member of an advisory committee must receive  
15 training regarding ~~[the Open Meetings Act,]~~ Government Code, Chapter 551; and ~~[the Public~~  
16 ~~Information Act,]~~ Government Code, Chapter 552.

17       (g) [h] Compliance with Open Meetings ~~[Act]~~. The advisory committee shall comply with ~~[the~~  
18 ~~Open Meetings Act,]~~ Government Code, Chapter 551.

19       ~~[i Public input and participation. The advisory committee shall accept public comments made in~~  
20 ~~person at advisory committee meetings or submitted in writing. Public comments made in writing~~  
21 ~~should be submitted to the advisory committee five business days in advance of the advisory committee~~  
22 ~~meeting with sufficient copies for all members.]~~

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(h) [j] Reporting recommendations. Recommendations of the advisory committee shall be reported to the board at a board meeting prior to board action on issues related to the recommendations. The recommendations shall be in writing and include any necessary supporting materials. The presiding officer of the advisory committee or the presiding officer's designee may appear before the board to present the committee's advice and recommendations. This subsection does not limit the ability of the advisory committee to provide advice and recommendations to the executive director as necessary.

(i) [k] Board and executive director use of advisory committee recommendations. In developing department policies, the board and the executive director shall consider the written recommendations [and reports] submitted by advisory committees.

(j) [l] Reimbursement. The department may, if authorized by law and the executive director, reimburse advisory committee members for reasonable and necessary travel expenses.

~~[(m) Expiration dates for advisory committees. Unless a different expiration date is established by the board for the advisory committee, each advisory committee is abolished on the fourth anniversary of its creation by the board.]~~

§206.101. Public Access to Advisory Committee Meetings.

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

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

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

3                   (b) Open comment period.

4                   (1) At each regular advisory committee meeting, the advisory committee shall allow an  
5 open comment period, not to exceed one hour, to receive public comment on any other matter that is  
6 within the scope of the specific advisory committee under §206.94(a) of this title (relating to Motor  
7 Vehicle Industry Regulation Advisory Committee (MVRAC)), §206.95(a) of this title (relating to Motor  
8 Carrier Regulation Advisory Committee (MCRAC)), §206.96(a) of this title (relating to Vehicle Titles and  
9 Registration Advisory Committee (VTRAC)), §206.97(a) of this title (relating to Customer Service and  
10 Protection Advisory Committee (CSPAC)), or §206.98(a) of this title (relating to Household Goods Rules  
11 Advisory Committee (HGRAC)).

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

14                   (3) Except as provided in subsections (d)(6) and (e) of this section, each person shall be  
15 allowed to speak for a maximum of three minutes for each comment in the order in which the requests  
16 to speak were received.

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

21                   (d) Conduct and decorum. An advisory committee shall receive public input as authorized by this  
22 section, subject to the following guidelines:



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1                   (1) questioning of speakers shall be reserved to advisory committee members and the  
2 department's administrative staff;

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

5                   (3) comments shall remain pertinent to the issue being discussed;

6                   (4) a person who disrupts an advisory committee meeting shall leave the meeting room  
7 and the premises if ordered to do so by the acting advisory committee chair;

8                   (5) time allotted to one speaker may not be reassigned to another speaker; and

9                   (6) the time allotted for comments under this section may be increased or decreased by  
10 the acting advisory committee chair, as may be appropriate to assure opportunity for the maximum  
11 number of persons to appear.

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

15  
16                   **SUBCHAPTER E [F]. DEPARTMENT VEHICLE FLEET MANAGEMENT**

17                  §206.111. Restrictions on Assignment of Vehicles.

18                  (a) Definitions. The following words and terms, when used in this section, shall have the  
19 following meanings, unless the context clearly indicates otherwise.

20                   (1) Department--The Texas Department of Motor Vehicles.

21                   (2) Division director--The chief administrative officer in charge of a division of the  
22 department.

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(3) Executive Director--The executive director of the Texas Department of Motor Vehicles or the executive director's designee not below the level of division director.

(b) Motor pool. Each department vehicle, with the exception of a vehicle assigned to a field employee, shall be assigned to the department's motor pool and be available for checkout.

(c) Regular vehicle assignment. The department may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the executive director makes a signed, written documented finding that the assignment is critical to the needs and mission of the department.

#### **SUBCHAPTER F [G]. DIGITAL CERTIFICATES [ELECTRONIC SIGNATURES]**

§206.131. Digital Certificates.

(a) General. This section prescribes the requirements that govern the issuance, use, and revocation of digital certificates issued by the Texas Department of Motor Vehicles (department) for electronic commerce in eligible department programs. The provisions of 1 TAC Chapter 203, Subchapter B govern this section in the event of a conflict between that subchapter and a provision of this section.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Business entity--An entity recognized by law through which business is conducted with the department, including a sole proprietorship, partnership, limited liability company, corporation, joint venture, educational institution, governmental agency, or non-profit organization.

(2) Certificate holder--An individual to whom a digital certificate is issued.

(3) Digital certificate--A certificate, as defined by 1 TAC §203.1, issued by the department for purposes of electronic commerce.

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(4) Digital signature--Has the same meaning assigned by 1 TAC §203.1.

(5) Division director--The chief administrative officer of a division of the department.

(c) Program authorization. A division director may authorize the use of digital signatures for a particular program based on whether the applicable industries or organizations are using such technology, the frequency of document submission, and the appropriateness for the program. The solicitation documentation for eligible programs will include the information that digital signatures may be used.

(d) Application and issuance of digital certificate.

(1) A request for a digital certificate shall be in writing and shall be signed by the individual authorized by the business entity to request a digital certificate.

(2) The department may request information necessary to verify the identity of the individual requestor or the identity of the individual to whom the certificate is to be issued. To verify identity under this paragraph a person shall present:

(A) an unexpired Texas driver's license or unexpired personal identification certificate with a photograph;

(B) an unexpired [~~concealed handgun license or~~] license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(C) an unexpired United States passport;

(D) a United States citizenship (naturalization) certificate with identifiable photograph;

(E) an unexpired United States Customs and Border Protection [~~Bureau of Citizenship and Immigration Services~~] document that:

(i) was issued for a period of at least one year;

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(ii) is valid for not less than six months from the date it is presented to the department with a completed application; and

(iii) contains verifiable data and an identifiable photograph;

(F) an unexpired United States military identification card for active duty, reserve, or retired personnel with an identifiable photograph; or

(G) a foreign passport with a valid or expired visa issued by the United States Department of State with an unexpired United States Customs and Border Protection [~~Bureau of Citizenship and Immigration Services~~] Form I-94:

(i) that was issued for a period of at least one year, is marked valid for a fixed duration, and is valid for not less than six months from the date it is presented to the department with a completed application; or

(ii) that is marked valid for the duration of the person's stay and is accompanied by appropriate documentation.

(3) The department may take actions necessary to confirm that the individual who signed the request is authorized to act on behalf of the business entity, including requiring the individual requestor or the person authorizing the request to personally appear at the department location responsible for the issuing of the certificate.

(4) The department shall issue a digital certificate only to an individual. Information identifying the business entity that authorized the issuance of the certificate may be embedded in the digital certificate.

(e) Refusal to issue a digital certificate. The department shall not issue a digital certificate if the identity of the individual to whom the certificate is to be issued, or the identity of the individual requesting the certificate on behalf of a business entity, cannot be established. The department will not

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1 issue a digital certificate if the business entity on whose behalf the request is allegedly being made does  
2 not authorize its issuance.

3 (f) Responsibilities of certificate holder. A certificate holder shall:

4 (1) maintain the security of the digital certificate;

5 (2) use the certificate solely for the purpose for which it was issued; and

6 (3) renew the certificate in a timely manner, if continued use is intended.

7 (g) Responsibilities of business entity. A business entity is responsible for:

8 (1) determining what individual may request a certificate for the business entity;

9 (2) determining to what individual a certificate is to be issued; and

10 (3) requesting within a reasonable time the revocation of the business entity's digital  
11 certificate if the security of the certificate has been compromised or if the business entity is changing its  
12 certificate holder.

13 (h) Revocation of certificate. The department shall revoke a digital certificate:

14 (1) upon receipt of a written request for revocation of the business entity's digital  
15 certificate, signed by an individual authorized to act on behalf of the business entity for which it was  
16 issued;

17 (2) for suspension or debarment of the individual or business entity; or

18 (3) if the department has reason to believe that continued use of the digital certificate  
19 would present a security risk.

20 (i) Use of digital certificate.

21 (1) A digital certificate ~~signature~~ issued by the department shall only be used for the  
22 purpose of digitally signing electronic documents filed with the department. Use of a [A] digital

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1 certificate [signature] is binding on the individual to whom the certificate was issued and the  
2 represented business entity, as if the document were signed manually.

3 (2) The department may use the digital certificate to identify the certificate holder when  
4 granting or verifying access to secure computer systems used for electronic commerce.

5 (j) Forms. The department may prescribe forms to request, modify, or revoke a digital  
6 certificate.

7  
8 **SUBCHAPTER G [H]. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY**

9 §206.151. Internal Risk-Based Monitoring System.

10 (a) All users of the Registration and Title System (RTS) at the Texas Department of Motor  
11 Vehicles (department) are subject to periodic examination by the department. As a result of the  
12 examination, the department will assign each RTS user a classification of priority or non-priority for the  
13 purposes of prioritizing inspections to determine whether there is evidence of fraud by the user. In  
14 classifying an RTS user, the department may consider factors including, but not limited to:

- 15 (1) the RTS user's transaction volume;  
16 (2) the RTS user's past violations of the department's rules and procedures within the  
17 last five years;  
18 (3) title error investigations performed by the department on titles issued by the RTS  
19 user;  
20 (4) public complaints received by the department against the RTS user; and  
21 (5) discrepancies in data reflecting the RTS user's transactions.

22 (b) It is the department's goal to inspect each RTS user as follows:

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1                   (1) if the RTS user is classified as priority, the RTS user will be inspected not less than  
2 twice per year; or

3                   (2) if the RTS user is classified as non-priority, the RTS user will be inspected not less  
4 than once per year.

5                   (c) Inspections under this section may be virtual, on premises at the RTS user's location, or a  
6 combination of both.

7                   ~~[The department shall establish a risk-based system of monitoring and preventing fraudulent~~  
8 ~~activity related to vehicle registration and titling in order to efficiently allocate resources and personnel,~~  
9 ~~including:]~~

10                   ~~[(1) establishing a risk-based system of monitoring the department's regional service~~  
11 ~~centers;]~~

12                   ~~[(2) developing criteria to determine varying risk levels for the department's internal~~  
13 ~~fraud-monitoring functions to strategically allocate resources and personnel;]~~

14                   ~~[(3) reviewing the department's methods for collecting and evaluating related~~  
15 ~~information; and]~~

16                   ~~[(4) developing and providing training to department staff.]~~

**Board Meeting Date: 12/14/2023**  
**ACTION ITEM**

**To:** Texas Department of Motor Vehicles Board  
**From:** Monique Johnston, Motor Vehicle Division Director  
**Agenda Item:** 10  
**Subject:** Chapter 215, Motor Vehicle Distribution  
Amendments, Subchapters A, C, D, E, F, H and J  
New §§215.102, 215.120, 215.121, 215.134, and 215.143  
Repeal, §§215.112, 215.146, 215.501, 215.502, and 215.505; and Subchapters B, G, and I  
(Relating to SB 422, Fingerprinting, Legislative Implementation, and Cleanup)

### RECOMMENDATION

Action Item. Approval to publish the proposal in the *Texas Register* for public comment.

### PURPOSE AND EXECUTIVE SUMMARY

This rule item proposes amendments, new sections, and repeals to Chapter 215, Motor Vehicle Distribution and is proposed in conjunction with a review of Chapter 215 in compliance with Government Code, § 2001.039. This rule item is proposed concurrently with new Chapter 224, Adjudicative Practice and Procedure, which would consolidate into one chapter all contested case rules, including those currently in Chapter 215.

### FINANCIAL IMPACT

N/A

### BACKGROUND AND DISCUSSION

#### Overview

As part of the department's rule review of Chapter 215, Motor Vehicle Distribution, the department has considered and is proposing amendments and repeals to sections of Chapter 215 with the following goals in mind:

- to implement statutory changes and add conforming language to be consistent with statutes and other chapters in Title 43 of the Texas Administrative Code
- to delete language describing actions for which the department does not have rulemaking authority;
- to deter fraud or abuse by expanding fingerprint requirements to drive-a-way operators;
- to modify language to be consistent with current practice, including the use of records or electronic systems;
- to amend certain application requirements consistent regulatory best practices;
- to clarify existing requirements;
- to increase temporary tag allocations for new franchised dealers based on department experience;
- to modernize language and improve readability;
- to clarify or delete unused, archaic, or inaccurate definitions, terms, and references to improve understanding and readability; and
- to repeal rules that are concurrently proposed to be included in new Chapter 224, Adjudicative Practice and Procedure.

The following paragraphs highlight significant proposals in Chapter 215.



### Legislation Implementation

Proposed amendments would implement Senate Bill (SB) 422, 88th Legislature, Regular Session (2023), which amended Occupations Code §§55.004, 55.0041, and 55.005, affecting licensing of military service members; and would conform rules with SB 604, 86th Legislature, Regular Session (2019), which eliminated department approvals for shows and exhibitions.

### Proposed Fingerprint Requirements

On June 30, 2022, the Board adopted fingerprint requirements for GDN dealer applicants and holders effective September 1, 2022. On October 12, 2023, the board adopted a rule that would allow fingerprint requirements to be added for other license types effective November 2, 2023.

Fingerprint requirements are a proven, effective way to prevent application fraud. This proposal would expand fingerprint requirements to drive-a-way operators who apply for or renew an in-transit license under Transportation Code, Chapter 503.

### Proposed New Sections

New sections are proposed to document and clarify current licensing application requirements, procedures for issuing industry license plates, and sanctions relating to manufacturers, distributors, converters, franchised dealers, and to document and clarify application requirements and procedures for issuing industry license plates to drive-away operators.

### Proposed Repeals

Repeals are proposed to implement statutory changes in Senate Bill (SB) 604, 86th Legislature, Regular Session (2019), which eliminated department approval for shows and exhibitions; to move an existing rule to the subchapter designated for that license type; and to move the adjudicative rules in Subchapters B, G, I, and J to proposed new Chapter 224, Adjudicative Practice and Procedure, which is proposed concurrently for board consideration.

### Advisory Council Input

The board adopted advisory committee rules in 2019, and advisory committees have since provided valuable input on rule proposals considered by the board for proposal or adoption. In September 2023, the department provided an early draft of these rules to two department advisory committees, the Motor Vehicle Industry Regulation Advisory Committee (MVIRAC) and the Customer Service and Protection Advisory Committee (CSPAC). Committee members voted on formal motions and provided informal comments on other provisions. Input from both committees was incorporated in proposed §§215.83, License Applications, Amendments, and Renewals; 215.102, Application Requirements; 215.103, Service-Only Facility; 215.132, Definitions; 215.144, Records; 215.244, Definitions; and 215.250, Dealer Price Advertising; Savings Claims; Discounts.

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**PROPOSAL OF REVISIONS TO****SUBCHAPTER A. GENERAL PROVISIONS****43 TAC §215.1 and §215.2****SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE****43 TAC §§215.21–215.63****SUBCHAPTER C. LICENSES, GENERALLY****43 TAC §§215.82–215.89****SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS****43 TAC §§215.101–215.113, 215.115–215.217, and 215.120–215.121****SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS****43 TAC §§215.131–215.152, 215.154–215.155, and 215.160–161****SUBCHAPTER F. LESSORS AND LEASE FACILITATORS****43 TAC §§215.171–215.180****SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS****43 TAC §§215.201–215.210****SUBCHAPTER H. ADVERTISING****43 TAC §§215.242, 215.244, 215.249, 215.250, 215.257, 215.261, 215.264, 215.268, and 215.270****SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE OF****ADMINISTRATIVE HEARINGS****43 TAC §§215.301–215.317****SUBCHAPTER J. ADMINISTRATIVE SANCTIONS****43 TAC §§215.500–215.502 and 215.505**

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## Chapter 215 – Motor Vehicle Distribution

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §215.1 and §215.2; repeal of Subchapter B, Adjudicative Practice and Procedure, §§215.21–215.63; amendments to Subchapter C. Licenses, Generally, §§215.82, 215.83, 215.87, and 215.89; in Subchapter D. Franchised Dealers, Manufacturers, Distributors, and Converters, amendments to §§215.101, 215.103–215.111, 215.113, 215.115–215.217, and 215.119, repeal of §215.112, and new proposed §215.102, 215.120, and §215.121; in Subchapter E. General Distinguishing Numbers, proposes amendments to §§215.131–133; 215.135–215.142; 215.144, 215.145, 215.147–215.152, 215.154, 215.155, 215.160, and 215.161, repeal of §215.146, and new §215.134 and §215.143; proposes amendments to Subchapter F. Lessors and Lease Facilitators, §§215.171–215.180; proposes repeal of Subchapter G. Warranty Performance Obligations, §§215.201–215.210; proposes amendments to Subchapter H. Advertising, §§215.242, 215.244, 215.249, 215.250, 215.257, 215.261, 215.268, and 215.270; proposes repeal of Subchapter I. Practice and Procedure for Hearings Conducted by The State Office of Administrative Hearings, §§ 215.301–215.317; and in Subchapter J. Administrative Sanctions, proposes amendments and partial repeal of §215.500, and repeal of §§215.501, 215.502, and 215.505.

The proposed amendments are necessary to modify language to be consistent with statutes and other chapters in Title 43 of the Texas Administrative Code; to delete language describing actions for which the department does not have rulemaking authority; to clarify the purpose of a rule by amending the rule title and language; to modify language to be consistent with current practice including use of records or electronic systems; to amend certain application requirements consistent with regulatory best practices; to increase temporary tag allocations for new franchised dealers based on department experience; to improve readability through the use of consistent terminology; to clarify or delete unused, archaic, or inaccurate definitions, terms, references or other language; to implement statutory changes;

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1 to deter fraud or abuse by expanding fingerprint requirements to other license types issued under  
2 Transportation Code, Chapter 503; to clarify existing requirements, and to modernize language and  
3 improve readability. Amendments are proposed to implement SB 422, 88th Legislature, Regular Session  
4 (2023), which amended Occupations Code, §§55.004, 55.0041, and 55.005 affecting licensing of military  
5 service members.

6 New sections are proposed to document and clarify current licensing application requirements,  
7 procedures for issuing industry license plates, and sanctions relating to manufacturers, distributors,  
8 converters, franchised dealers, and to document and clarify application requirements and procedures for  
9 issuing industry license plates to drive-away operators.

10 Repeals are proposed to move an existing rule to the designated subchapter for that license type;  
11 to move adjudicative rules to proposed new Chapter 224, which is proposed to include all department  
12 adjudicative practice and procedure rules; and to implement statutory changes in Senate Bill (SB) 604,  
13 86th Legislature, Regular Session (2019). Certain subchapters are proposed for relettering because  
14 preceding subchapters are being proposed for repeal. The title of one subchapter is proposed to be  
15 amended to describe the types of licenses to which the subchapter applies. Proposed new Chapter 224 is  
16 also published in this issue of the Texas Register.

17 In 2019, the Sunset Commission recommended the board establish advisory committees and  
18 adopt rules regarding standard advisory committee structure and operating criteria. The board adopted  
19 rules in 2019 and advisory committees have since provided valuable input on rule proposals considered  
20 by the board for proposal or adoption. In September 2023, the department provided an early draft of  
21 these rules to two department advisory committees, the Motor Vehicle Industry Regulation Advisory  
22 Committee (MVIRAC) and the Customer Service and Protection Advisory Committee (CSPAC). Committee  
23 members voted on formal motions and provided informal comments on other provisions. Input from both

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committees was incorporated in proposed §§215.83, 215.102, 215.103, 215.132, 215.144, 215.244, and 215.250.

**EXPLANATION.** The department is conducting a review of its rules under Chapter 215 in compliance with Government Code, §2001.039. Notice of the department’s plan to review is also published in this issue of the *Texas Register*. As a part of the review, the department is proposing necessary amendments and repeals, as detailed in the following paragraphs.

#### Subchapter A. General Provisions

A proposed amendment to §215.1 and §215.2(a) would delete a stray reference to Transportation Code, Chapter 1000, which does not exist. Proposed amendments to §215.1 would delete an incomplete list of license types regulated by the department, delete the word “motor” from the phrase “motor vehicle,” and add the word “industry” to more accurately reflect the scope of the department’s responsibility to encompass all vehicles including trailers and all license types under Occupations Code, Chapter 2301, and Transportation Code, Chapter 503. A proposed amendment to §215.1 would clarify the scope of the rules in Chapter 215, which is to describe licensing requirements and rules governing the operation of license holders, recognizing that other chapters also prescribe policies and procedures that apply to the motor vehicle industry.

Proposed amendments to §215.2(b) would delete definitions for terms used in contested cases because rules that use these terms are proposed for repeal in this chapter and are included in proposed new Chapter 224, Adjudicative Practice and Procedure, which is published in this same issue of the *Texas Register*. The definitions proposed for deletion include the terms ALJ, executive director, final order authority, hearing officer, motion for rehearing authority, and SOAH, and the remaining definitions would be renumbered accordingly. Proposed amendments in renumbered §215.2(b)(1) would clarify that only a board member or a person employed by the department may be authorized to serve as a board delegate

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as provided under Occupations Code, §2301.154. A proposed amendment to renumbered §215.2(b)(2) would add a definition for “day” and is necessary for standardization and consistency throughout the chapter. Proposed amendments to §215.2(b)(3) would substitute the term “division” for “department” to correctly refer to the responsible organizational unit in the department and would substitute the term “department staff” for “personnel” for clarity and consistency. A proposed amendment to renumbered §215.2(b)(4) would add a reference to Transportation Code, Chapter 503, which defines the types of general distinguishing numbers that the department may issue. A proposed amendment to renumbered §215.2(b)(5) would clarify that any state agency other than the department is included in the definition of a governmental agency. A proposed amendment to renumbered §215.2(b)(6) would add a new definition for standard license plate. This definition is necessary to differentiate a standard license plate issued to a dealer under Transportation Code, §503.061 from a personalized prestige license plate issued to a dealer under Transportation Code, §503.0615, recognizing that each plate has a different term and cost prescribed in statute and is obtained from the department through a different process.

## Subchapter B. Adjudicative Practice and Procedure

All sections of Subchapter B, Adjudicative Practice and Procedure, are proposed for repeal because the substance of each rule and any proposed amendments would be incorporated into proposed new Chapter 224. Adjudicative Practice and Procedure. The proposed repeal includes §§ 215.21–215.63.

## Subchapter C. Licenses, Generally

This subchapter is proposed to be relettered as Subchapter B as the current Subchapter B is proposed for repeal.

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## Chapter 215 – Motor Vehicle Distribution

1 Proposed amendments would delete §215.82(a) and (b) and reletter the remaining subsections  
2 as necessary, because §215.82(a) and (b) refer to an archaic process that the department no longer  
3 follows. A license holder is not required to request a duplicate license from the department; rather, a  
4 license holder may print a license copy on demand in the electronic system designated by the department  
5 for licensing. Proposed amendments to §215.82(c) would delete the subsection designation and  
6 substitute “standard” for “metal” to identify which plate type applies to the replacement process.  
7 Proposed amendments to §215.82(c) would also clarify that the same process applies for obtaining a  
8 replacement sticker, and that a request for a replacement license plate or sticker must be submitted  
9 electronically in the department-designated system.

10 Proposed amendments to §215.83(a)(1) and (d) would clarify that an application for a new license,  
11 a license amendment, or a license renewal must be filed electronically. A proposed amendment to  
12 §215.83(a)(3) would specify which electronic payment forms are accepted. Paper checks are no longer  
13 accepted because fee payment must be completed before an application may be submitted and  
14 processed. A proposed amendment to §215.83(b) would clarify that an authorized representative who  
15 files an application on behalf of an applicant or license holder may be required to provide written proof  
16 of authority to act. A proposed amendment to §215.83(c) would clarify that a pending new license number  
17 will not be released to a person who is not an applicant, license holder, or authorized representative,  
18 unless that person files a written request under Government Code, Chapter 552. Once a license is  
19 approved and issued, the license number may be published on the department’s website or otherwise  
20 provided in response to an inquiry consistent with Government Code, §552.11765 and other requirements  
21 in Government Code, Chapter 552.

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1 A proposed amendment to §215.83(d)(2) would delete an archaic reference to an envelope  
2 postmark for a renewal application to comport with §215.133(c), which requires a license application be  
3 submitted electronically in the department's designated licensing system.

4 Proposed amendments to §215.83(e) would delete redundant language and combine the  
5 language in §215.83(e) and §215.83(f) for consistency and ease of understanding without changing the  
6 meaning. Other proposed amendments would reletter the remaining subsections and internal references  
7 accordingly.

8 Proposed amendments to relettered §215.83(i) would add the phrase "military service members  
9 or" in multiple places in subparagraphs (1), (2), and (3). These proposed amendments are necessary to  
10 implement SB 422, which added military service members who hold out-of-state licenses as persons  
11 eligible for special business or occupational authorization or licensing consideration. A proposed  
12 amendment to relettered §215.83(i) would clarify that the requirements and procedures authorized  
13 under Texas law do not modify or alter rights under federal law.

14 In relettered §215.83(i)(1), proposed amendments would delete two duplicative references to  
15 Occupations Code, §55.0041. Also, in relettered §215.83(i)(1), a proposed amendment would substitute  
16 the phrase "being stationed" for "residency" to clarify that eligibility for special licensing consideration for  
17 both the military member and military spouse is based on the military member being stationed in Texas,  
18 rather than on the spouse's residency.

19 Additional amendments to relettered §215.83(i)(3) are proposed to implement SB 422. Proposed  
20 amendments would change the word "may" to "shall" and would add the phrase "within 30 days" to set  
21 a deadline by which the department must issue a license to a military service member or spouse. This  
22 change is necessary to implement changes to Occupations Code, §55.005(a) from SB 422, which requires  
23 a state agency to issue a license no later than the 30th day after an application is filed. Issuing a license



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1 within 30 days would also fulfill the requirement of Occupations Code, §55.0041, as amended by SB 422,  
2 that the department provide confirmation within 30 days that the military service member or military  
3 spouse is authorized to engage in the licensed business or occupation. Another proposed amendment to  
4 relettered §215.83(i)(3) would add the phrase “modified or” to recognize that provisions of Occupations  
5 Code, Chapter 55 may require the department to modify standard licensing processes when processing  
6 an application for a military service member or military spouse and to clarify that the department’s  
7 licensing process for military service members and military spouses will be in accordance with all  
8 Occupations Code, Chapter 55 requirements.

9 A proposed amendment to relettered §215.83(j) would add a reference to Government Code,  
10 §2001.054 for ease of reference. An amendment to relettered §215.83(k) increases the time from 10 to  
11 15 days in which a license holder may dispute whether a renewal application was timely received by the  
12 department.

13 A proposed amendment to relettered §215.83(n) substitutes the term “standard” for “metal” to  
14 more accurately describe the type of dealer’s license plate addressed in this subsection and adds the  
15 phrase “is canceled” to clarify that a standard dealer’s license plate expires on the date a dealer’s GDN is  
16 canceled under Transportation Code, §503.038.

17 A proposed amendment to §215.84(a) would insert an introductory paragraph with a statutory  
18 cite to Occupations Code, §2301.002 to enable a person to more easily determine whether the section  
19 applies and to clarify the basic statutory prohibition against brokering and would reletter the remaining  
20 subparagraphs accordingly. Proposed amendments to relettered §215.84(b) would add two clarifying  
21 phrases “in the definition of broker” and “acting as a” to clarify language related to the term broker and  
22 to be more consistent with the statute and delete duplicate phrasing to improve readability. Proposed  
23 amendments to relettered §215.84(c) would add the term “franchised” in §215.84(c)(3) to more

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1 accurately describe the type of dealer to which a buyer referral service, program, or club may refer a  
2 potential new vehicle buyer, would correct punctuation in relettered §215.84(c), and would move a  
3 requirement from §215.84(d) regarding compliance with advertising rules to relettered §215.84(c)(7) for  
4 completeness and ease of reference, and would update a reference to the relettered subchapter  
5 containing the advertising rules. Proposed amendments to relettered §215.84(d) would clarify that  
6 §215.84 does not apply to a person who is not a broker as defined in in Occupations Code, §2301.002,  
7 and would delete a redundant phrase “or entity” as entities are included in the definition of “person” in  
8 Occupations Code, §2301.002. A proposed amendment would delete current §215.84(d) because the  
9 content of that the subsection is incorporated into proposed relettered §215.84(c)(7).

10 Proposed amendments to §215.85(b) would correct punctuation and move language from  
11 §215.85(c) to §215.85(b)(7) for completeness and clarity without changing the meaning. A proposed  
12 amendment to §215.85(c) would delete the redundant subsection moved to §215.85(b)(7). Proposed  
13 amendments to §215.85(d) would reletter the subsection to (c) and delete redundant terms “licensed”  
14 and “independent motor vehicle” from this subsection.

15 Proposed amendments to §215.87 would substitute the term “standard” for the phrase “metal  
16 dealer’s” in the rule title and in §215.87(a)-(c) to more accurately describe the type of dealer’s license  
17 plate addressed in this subsection. A proposed amendment to §215.87(a) would add a list of license types  
18 eligible to request a standard license plate for completeness and clarity. A proposed amendment to  
19 §215.87(b) would clarify that a standard license plate expires when the associated license is canceled. A  
20 proposed amendment to §215.87(c) would clarify that a license holder may be required to pay tax when  
21 ordering a standard plate as required under Tax Code, §152.027. Another proposed amendment would  
22 create new §215.87(d) to describe the process a dealer must use to apply for or renew a personalized  
23 prestige plate issued under Transportation Code, §501.0615.

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1 Proposed amendments to §215.89(a) and (b) would delete the redundant “or department”  
2 because the word “board” is defined to include department staff to whom the board delegates a duty. A  
3 proposed amendment to §215.89(a)(2) would add a reference to Transportation Code, §503.034, which  
4 authorizes the department to deny a new or renewal application for a dealer general distinguishing  
5 number or a Wholesale Motor Vehicle Auction general distinguishing number if the applicant is guilty of  
6 conduct that would result in the cancellation of the general distinguishing number under Transportation  
7 Code, §503.038. A proposed amendment to §215.89(b)(6) would add the phrase “or other legal entity”  
8 for completeness because legal entities other than a corporation can fail to maintain authority to conduct  
9 business in Texas. Proposed amendments to §215.89(b)(10) would add “final” and substitute the “after”  
10 for “through” for clarity and consistency with department contested case procedures.

11  
12 Subchapter D. Franchised Dealers, Manufacturers, Distributors, and Converters

13 This subchapter is proposed to be relettered as Subchapter C as current Subchapter B is proposed  
14 for repeal and the subsequent subchapters are proposed to be relettered accordingly.

15 Proposed amendments to §215.101 would delete an incorrect reference to a non-existent  
16 Transportation Code, Chapter 1000 and add the license types to which this subchapter applies for clarity.

17 Proposed new §215.102 would describe application requirements for manufacturers,  
18 distributors, converters, and franchised dealers for new, renewal, and amendment license applications  
19 including the requirement to attach documents, pay required fees, and submit applications electronically  
20 on a prescribed form in the department's designated licensing system. Occupations Code, §2301.257 and  
21 §2301.258 authorize the department to prescribe the application form and require any information  
22 necessary to determine the applicant's qualifications to adequately serve the public. Occupations Code,  
23 §2301.651(b) gives the board authority to deny an application for an act or omission by an officer, director,

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1 partner, trustee, or other person acting in a representative capacity that would be cause for denying a  
2 license. Fees are prescribed by statute in Occupations Code, §2301.264. Proposed new §215.102(c) would  
3 require a license holder renewing or amending a license to review current license information, update  
4 information that has changed, provide related supporting information or documents for any change or  
5 new requirement, and allow the department to implement its responsibilities under Occupations Code  
6 §§2301.251, 2301.252, 2301.256–2301.260, 2301.303, and 2301.304. Proposed new §215.101(a-d) would  
7 include requirements that apply to all four license types. Proposed new §215.101(e)(1) would describe  
8 the information that must be submitted in the application, denoting any differences by license type.  
9 Proposed new §215.101(e)(2) would describe the documents that must be attached to the application,  
10 denoting any differences by license type. Proposed information and attachment requirements vary for  
11 each license type based on statutory requirements and related consumer fraud or public safety  
12 considerations resulting from the license holder’s operation, business model including distribution  
13 methods, and the specific new products manufactured or offered for sale. These proposed requirements  
14 incorporate best practice recommendations from the American Association of Motor Vehicle  
15 Administrators (AAMVA) regarding internet sales. Proposed new §215.101(e)(3) would describe the fees  
16 that must be paid when an applicant applies online for a license. To prevent consumer fraud and abuse,  
17 proposed new §215.101(f) would state that a license applicant may not use a name or assumed name that  
18 could be confused with a governmental entity, or could be deceptive or misleading to the public. Proposed  
19 new §215.101(g) would set out the process through which a manufacturer or distributor may add a new  
20 line make to an existing license during the license period.

21 Proposed amendments to §215.103(a) would substitute “performs” for the phrase “will only  
22 perform” and add the phrase “and not new motor vehicle sales” to clarify that the franchised dealer  
23 activity that may not be performed at a service-only facility is new motor vehicle sales. The phrase “and

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1 nonwarranty” would be deleted because the department does not regulate non-warranty repair services.  
2 Similarly, the last sentence in §215.103(a) is proposed for deletion as Occupations Code, Chapter 2301  
3 does not require warranty repair services to be performed only at a licensed dealer location. This  
4 proposed change would provide franchised dealers with more flexibility in performing warranty repair  
5 services. Proposed amendments to §215.103(b) would delete a redundant word and change the term  
6 “line” to “line-make” for consistency. A proposed amendment to §215.103(d) would delete the word  
7 “only” as the word is not required by statute and the franchised dealer may prefer to have contracting  
8 flexibility to obtain more attractive commercial terms.

9 Proposed amendments to §215.104(a) and §215.104 (b)(3) would delete unnecessary words to  
10 improve readability without changing meaning. Proposed amendments throughout §215.104 would  
11 update and modernize the amendment process by requiring a franchised dealer to submit an amendment  
12 application electronically in the system designated for licensing. A proposed amendment in  
13 §215.104(a)(1) would clarify that amendment application attachments must be legible and accurate  
14 electronic images, and a proposed amendment in §215.104(a)(2) would add a reference to the new  
15 proposed Chapter 224, which would include procedures related to processing protests of a franchised  
16 dealer’s application. A proposed amendment in §215.104(b)(3) would modernize and standardize the  
17 process through which a publicly held corporation informs the department of an ownership change by  
18 requiring that the corporation file an amendment application electronically when a person or entity  
19 acquires a 10% ownership share. A proposed amendment to §215.104(c)(5) would delete an archaic  
20 requirement for a franchised dealer to notify the department if the dealer’s facsimile number has  
21 changed, and renumber accordingly. A proposed amendment to §215.104(d)(1) would replace “oversees”  
22 with “is in charge of” for consistency and clarity without a change to the meaning of the provision.  
23 Proposed amendments to §215.104(e) and §215.104(f) would add “franchised” and delete the phrase

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1 “licensed new motor vehicle,” for consistency in describing a dealer under this subchapter and would add  
2 the word “amendment” to describe the type of application required to process the change described to  
3 the franchised dealer’s license.

4 Proposed amendments to §215.105(b) and §215.105(c) would add “franchised” and delete the  
5 phrase “licensed new motor vehicle” for consistency in describing a dealer under this subchapter. A  
6 proposed amendment to §215.105(d) would clarify and modernize the process for a franchised dealer to  
7 file a protest by specifying that a franchised dealer with standing to protest must file a timely protest  
8 electronically in the department-designated system for licensing and pay the required fee.

9 A proposed amendment to §215.106(a)(1) would clarify that a notice of protest must be received  
10 by 5:00 p.m. Central Time, which will be either Central Standard Time or Central Daylight Time as  
11 applicable. A proposed amendment to §215.106(a)(2) would modernize the protest process by requiring  
12 the notice of protest to be filed in the department’s designated electronic filing system, and a proposed  
13 amendment to §215.106(a)(3) would clarify that the fee must be paid at the time the application is  
14 submitted. A proposed amendment to §215.106(b)(2) would clarify that the protest will be rejected if  
15 payment is not made or is later dishonored.

16 A proposed amendment to §215.108 would add the word “franchised” and delete the phrase  
17 “licensed new motor vehicle,” for consistency in describing a dealer under this subchapter.

18 A proposed amendment to §215.109 would add the word “franchised” and delete the phrase  
19 “licensed new motor vehicle,” for consistency in describing a dealer under this subchapter. A proposed  
20 amendment to §215.109(4) would require a franchised dealer to submit a dealership replacement  
21 application electronically in the department system designated for licensing.

22 Proposed amendments to §215.110(a) would split the subsection into three separate sections  
23 lettered (a) through (c), would modify internal references in relettered (b) and (c) from “subsection” to

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“section” to reflect the new organization, and would reletter current subsection (b) to subsection (d) accordingly. Proposed amendments to §215.110(a) and relettered §215.110(d) would add the word “franchised” or “franchised dealer” and delete the phrase “licensed new motor vehicle,” for consistency in describing a dealer under this subchapter. Proposed amendments in §215.110(a) would remove unnecessary language and clarify that the applicant must submit legible and accurate electronic images of the franchise agreement pages that identify the parties, the parties’ signatures, each line-make listed in the application, and the address of the franchised dealership’s physical location. A proposed amendment to relettered §215.110(b) would clarify that an applicant may submit temporary evidence of franchise electronically, and proposed amendments to relettered §215.110(c) would clarify that an applicant is required to provide the designated franchise agreement pages to the department before a license may be issued.

Proposed amendments to §215.111 would organize the existing language into two subsections to improve readability. A proposed amendment to new §215.111(a) clarifies that a manufacturer or distributor must provide notice of termination or discontinuation as required under Occupations Code, §2301.453 and would remove language that duplicates the statute. A proposed amendment to new §215.111(b) would require a franchised dealer to file a written notice of protest electronically in the department’s designated system for licensing.

SB 604, 86th Legislature, Regular Session (2019), eliminated the department’s authority to approve a vehicle show or exhibition under Occupations Code, §2301.358, effective September 1, 2019. As a result, §215.112 is proposed for repeal as the §215.112(a) expressly limits applicability of the rule to motor home shows that require department approval.

A proposed amendment to the title of §215.113 would correct the spelling of “Franchised” as the statutory term in Occupations Code, §2301.002 is “franchised dealer.” Proposed amendments to

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§215.113(a)-(c) and (f) would add the word “franchised” and delete the phrase “new motor vehicle,” for consistency in describing a dealer under this subchapter. Proposed amendments to §215.113(a), (d), and (e) would require the notice of protest to be filed electronically in the department’s designated system for licensing. Proposed amendments to §215.113(c) would substitute the more general Occupations Code subchapter designation for the specific section series reference so any future statutory changes will not require a rule change and would add a reference to the subchapter in proposed new Chapter 224 which applies to this subsection. Proposed amendments to §215.113(f) would add a reference to the subchapter in proposed new Chapter 224, which applies to this subsection, would delete archaic language as contested case hearing scheduling is determined by the State Office of Administrative Hearings (SOAH) and its procedural rules, and would substitute the word “issued” for “rendered” for consistency.

A proposed amendment to the title of §215.115 adds the phrase “Vehicle Sales” to describe the scope of the section more accurately. Proposed amendments to §215.115(a), (b), (d) and (f) would delete the phrase “a representative of” as the phrase is unnecessary. Proposed amendments to §215.115(a), (b), and (f) would add language to allow a record to be submitted to the department electronically upon request. Proposed amendments to §215.115(b) would correct preposition use to improve readability without changing the meaning.

A proposed amendment to title of §215.116 would add the term “Franchised Dealership” to describe the scope of this section more accurately. A proposed amendment to §215.116(a) would add the descriptor “franchised” to the term dealer and delete duplicate language without changing meaning.

Proposed amendments to §215.117 would improve the readability of the section without changing the meaning.

Proposed new §215.120 would set out the requirements for manufacturers, distributors and converters using license plates issued by the department. Proposed new §215.120(a) would specify when



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1 a manufacturer, distributor, or converter may apply for a standard license plate and proposed new  
2 §215.120(a) and (b) would specify the type of vehicle and purposes for which a license plate may be used.  
3 Proposed new §215.120(c) would explain where the license plate is to be placed on the vehicle. Proposed  
4 new §215.120(d) would contain the record requirements for these plates. Proposed new §215.120(e) and  
5 (f) would explain what a manufacturer, distributor or converter is required to do if a license plate is lost,  
6 stolen, or damaged. Proposed new §215.120(g) would require license plate records be available for  
7 inspection or review if requested by the department. Proposed new §215.120(h) would specify the criteria  
8 the department will use to evaluate a request for additional standard license plates. Proposed new  
9 §215.120(i) would require a manufacturer, distributor, or converter to return department-issued license  
10 plates to the department within 10 days of the associated license being closed, canceled, or revoked.

11 Proposed new §215.121 would set out the powers of the board and department to sanction a  
12 manufacturer, distributor, or converter. Proposed new §215.121(a) would describe existing  
13 administrative sanctions that the board or department may take if a manufacturer, distributor, or  
14 converter violates a law or rule enforced by the department. Proposed new §215.121(b) would describe  
15 which actions may result in a sanction.

16  
17 Subchapter E. General Distinguishing Numbers

18 This subchapter is proposed to be relettered as Subchapter D as current Subchapter B is proposed  
19 for repeal and the subsequent subchapters are proposed to be relettered accordingly. An amendment to  
20 the title of this subchapter is proposed to reflect that the scope of the chapter also includes in-transit  
21 licenses issued to drive-a-way operators under Transportation Code, §503.023.

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1 Proposed amendments to §215.131 would add a reference to Transportation Code, Chapters  
2 1001–1005 and would clarify that provisions in this subchapter apply to general distinguishing numbers  
3 and drive-a-way operator in-transit licenses issued by the department.

4 Proposed amendments to §215.132 would delete an unused definition for charitable  
5 organization, delete an unnecessary definition for license, and add a definition for municipality, which is  
6 defined by reference to Local Government Code, Chapter 1. Proposed amendments would renumber the  
7 remaining provisions accordingly.

8 A proposed amendment to §215.133 would retitle the section to “Application Requirements for  
9 a Dealer or a Wholesale Motor Auction” to accurately reflect the scope of the section. A proposed  
10 amendment to §215.133(a) would add a reference to a wholesale motor vehicle auction and delete a  
11 redundant word. Proposed amendments to §215.133(c) would add multiple references to wholesale  
12 motor vehicle auction throughout, add a reference to §215.83, and clarify an existing requirement for a  
13 license holder to pay any outstanding civil penalties owed the department under a final order before  
14 renewing a GDN. Proposed amendments to §215.133(c)(1) would clarify existing application requirements  
15 in §215.133(c)(1)(C); add new §215.133(c)(1)(D), which requires an applicant to provide a contact name  
16 and contact details for a person who can provide business information about the applicant so the  
17 department knows who to contact for related questions; reletter the remaining subparagraphs; add in  
18 §215.133(c)(1)(I) the requirement for a telephone number for a dealer’s temporary tag database account  
19 administrator; and correct in §215.133(c)(1)(O) the name of a form. Proposed amendments to  
20 §215.133(c)(2) would clarify in §215.133(c)(2)(D) by adding “unexpired” and deleting “current” in the  
21 related clauses and substituting the modern phrase “military identification card” for armed forces  
22 identification and would add the word “business” in §215.133(c)(2)(G) to clarify the phrase premises  
23 photos. Proposed amendments to §215.133(c)(3) would delete a redundant phrase in §215.133(c)(3)(A),

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1 add a reference in §215.133(c)(3)(B) to applicable taxes, and substitute “standard” for “metal” for a more  
2 precise description of a dealer plate. In §215.133(d), proposed amendments would add a fingerprint  
3 requirement for wholesale motor vehicle auction GDNs to allow the department to evaluate the criminal  
4 histories of applicants and update the title of a §211.6. Proposed amendments to §215.133(e) would  
5 delete “dealer” to clarify that all GDNs must follow the assumed name requirements in that subsection  
6 and would add the phrase “a name or” to denote that an applicant cannot use either a business name or  
7 an assumed name that is confusing, deceptive, or otherwise misleading to the public. Proposed new  
8 §215.133(j) would clarify that a person holding an independent motor vehicle GDN and performing  
9 salvage activities must apply for a National Motor Vehicle Title Information System (NMVTIS)  
10 Identification number and provide that number to the department in the application, to allow the  
11 department to verify that the applicant meets federal registration requirements and is qualified to  
12 perform salvage activities; the next subsection is proposed to be relettered accordingly.

13 Proposed new §215.134 would define the application requirements for a drive-a-way operator in-  
14 transit license. Proposed new §215.134(a) would set out the requirement for a license. Proposed new  
15 §215.134(b) would require an applicant to complete an application form prescribed by the department  
16 and submit it through the department’s designated electronic system. Proposed new §215.134(c) would  
17 requires a license holder renewing or amending a license to verify current information and provide related  
18 information and documents for any changes to the license, as well as pay required fees. Proposed new  
19 §215.134(d) would instruct a new applicant how to register in the department-designated licensing  
20 system. Proposed new §215.134(e)(1) would describe the information that must be submitted in the  
21 application for a drive-a-way operator in-transit license. Proposed new §215.134(e)(2) would describe  
22 the documents that must be attached to the application based on statutory requirements and related  
23 consumer fraud or public safety considerations resulting from the license holder’s operation or business

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1 model. Proposed new §215.134(e)(3) would describe the fees that must be paid when an applicant  
2 applies for a license. Proposed new §215.134(f) would require a license applicant to comply with  
3 fingerprint requirements to allow the department to confirm an applicant's identity and perform a more  
4 comprehensive review of the applicant's criminal record. Proposed new §215.134(g) would protect the  
5 public by requiring an in-transit license holder to not use a business name or assumed name that would  
6 be confusing, deceptive, or misleading to prevent consumer fraud and abuse.

7 Proposed amendments to §215.135(a) and (b) would substitute "municipality" for "city" as  
8 municipality is a defined term in the Local Government Code, Chapter 1, and is proposed to be a defined  
9 term in §215.132. A proposed amendment to §215.135(a) would update a reference to the title of  
10 §215.140. Proposed amendments to §§215.135(b) and (c) would correct punctuation. A proposed  
11 amendment to §215.135(d) would require a GDN holder to notify the department of a new, closed or  
12 relocated business location by filing an amendment electronically in the system designated by the  
13 department for licensing.

14 Proposed amendments to §215.137(a) would substitute "GDN" for "license" and delete  
15 "dealership" for consistency in terminology. Proposed amendments to §215.137(c) would rephrase a  
16 sentence for clarity and consistency without changing the meaning.

17 Proposed amendments to the title of §215.138 and throughout the section would delete "metal"  
18 or "assigned metal dealer's" to describe a dealer license plate for specificity and consistency. A proposed  
19 amendment to §215.138(a) would delete the requirement to attach a plate to a license plate holder and  
20 would instead refer a license holder to §217.27 for plate placement requirements. Minor edits are  
21 proposed in §215.138(b) for clarity and would not change the meaning. Proposed amendments would  
22 combine the definition of light truck in §215.138(e) and rule language in §215.138(f) into relettered  
23 §215.138(e) for clarity, and the remaining sections would be relettered accordingly. Proposed

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1 amendments to relettered §215.138(h) would clarify that a dealer must keep records of all license plates  
2 issued by the department for dealer use, including both standard and personalized prestige plates.  
3 Proposed amendments to relettered §215.138(i) and (j) would clarify the procedures for reporting a  
4 license plate that is lost, stolen, or damaged. Proposed new §215.138(k) would require that a dealer's  
5 license plate record be available for inspection or to submit to the department electronically upon request  
6 to allow the department to inspect dealers for potential misuse of license plates. Proposed new  
7 §215.138(l) would require a dealer to return to the department all plates, stickers, and related receipts  
8 within 10 days, consistent with the requirements of Transportation Code §503.038.

9 Proposed amendments to the title of §215.139 and throughout the section and attached graphics  
10 would delete "metal" and add "standard" to describe a dealer plate more accurately and consistently. In  
11 §215.139(d) and in §215.139(f)(2), proposed minor edits would improve readability without changing  
12 meaning. In the attached graphic to §215.139(f)(1), proposed amendments would correct the number of  
13 plates that a dealer selling 50 to 99 vehicles during the previous 12 months is eligible to request and add  
14 a missing category for a dealer selling 100 to 200 vehicles during the previous 12 months. These proposed  
15 amendments would correct inadvertent errors made when the graphic was last published. The proposed  
16 amendments would delete §215.139(h) as an unnecessary disclaimer because other proposed  
17 amendments to §215.87(d) and §215.138(h) would explicitly address procedures relating to personalized  
18 prestige dealer plates.

19 A proposed amendment to §215.140 would add a subsection letter (a) to distinguish premises  
20 requirements for GDN dealers from premises requirements for wholesale motor vehicle auctions, which  
21 are proposed in new subsection (b). Proposed amendments to §215.140(a)(1)(B) and §215.140(a)(2)  
22 would clarify that the dealer's business hours must be posted in a manner and location that is accessible  
23 to the public to meet the requirements of Transportation Code, §503.032. Proposed amendments to

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§215.140(a)(5)(F) would clarify that an established and permanent location must be capable of receiving U.S. mail and must have an assigned emergency services property address to allow the department to verify the physical location. A proposed amendments to §215.140(a)(5)(F) would delete “metal” to describe the dealer’s license plate more consistently. A proposed amendment to §215.140(a)(11)(B)(ii) would clarify that a display area must be reserved exclusively for the dealer’s inventory. Proposed amendments to §215.140(a)(11)(B)(iv) and (vii) would clarify that a barrier that cannot be readily removed is one that cannot be easily moved by one person and typically weighs more than 50 pounds. This weight guideline is consistent with Occupation Health and Safety Administration guidelines for the maximum weight that one person may safely lift without assistance. Proposed amendments to §215.140(a)(11)(C) would clarify by replacing “dealer” with “GDN holder” and would add a requirement for a GDN holder to disclose in an application or license amendment the location of a storage lot, if the lot is not located at the licensed business address. The department must be able to determine where a storage lot is located, so the department can inspect the lot to ensure compliance with department rules. The proposed changes in §215.140(11) are necessary to prevent fraud and consumer abuse and to protect public health and safety. A proposed amendment to §215.140(a)(12) would delete an exclusion for salvage pool operators as this exclusion is not consistent with public welfare and to ensure that no member of the public is misled about the status or condition of a salvage vehicle. If a dealer is selling both motor vehicles and salvage vehicles, each salvage vehicle should be clearly and conspicuously marked. A proposed amendment to §215.140(a)(14) would move the requirement to post a dealer’s GDN and bond notice in each location to the end of the paragraph to improve clarity without changing meaning. Proposed new §215.140(b) would add premises requirements for wholesale motor vehicle auctions consistent with the requirements of Transportation Code, §503.032.

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1 Proposed amendments to §215.141(a) would reorder language for consistency with §215.141(b)  
2 and add a reference to a cease-and-desist order, which is an action the board is authorized to take under  
3 Occupations Code, §2301.153 and §2301.802. Proposed amendments to §215.141(b)(1) would add a  
4 reference to the relevant statute and a reference to the requirement to post a bond notice and would  
5 delete an archaic reference to a bond amount. Proposed new §215.141(b)(2) would address the fact that  
6 the failure of a license holder to meet or maintain the established and permanent place of business  
7 premises requirements is one of the most common violations requiring a sanction under this subchapter;  
8 the remaining paragraphs would be renumbered accordingly. Proposed amendments to relettered  
9 §215.141(b)(4) would clarify that a license holder under this subchapter may be sanctioned for either  
10 failing to provide electronic records, or for refusing or failing to comply with a department request to  
11 review records at the licensed business location. Proposed new §215.141(b)(4)(D) would add the  
12 Certificate of Occupancy, Certificate of Compliance, business license or permit, or other official  
13 documentation confirming compliance with county and municipal laws or ordinances for a vehicle  
14 business at the licensed physical location as records the department may request to confirm compliance  
15 with Transportation Code requirements. Proposed amendments would reletter the remaining subsections  
16 to accommodate proposed new §215.141(b)(4)(D). A proposed amendment to relettered §215.141(b)(6)  
17 would delete a redundant reference to §215.140 as a reference to that section is proposed in  
18 §215.141(b)(2) and would remove subsection delineations within §215.141(b)(6) because they would be  
19 unnecessary. Proposed amendments to relettered §215.141(b)(8) would clarify that a license holder  
20 under this subchapter may be sanctioned if the license holder fails to submit a license amendment in the  
21 electronic system designated by the department to change an address, including the address of a storage  
22 lot, within 10 days of the change. A proposed amendment to relettered §215.141(b)(9) would clarify that  
23 a license holder under this subchapter may be sanctioned if a person fails to submit a license amendment

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1 in the electronic system designated by the department to notify the department of a change in name or  
2 change in management or ownership within 10 days of the change. The proposed amendments to  
3 §§215.141(b)(8) and (9) would incentivize licensees to make timely updates to their information through  
4 the department's electronic system. Proposed amendments to relettered §215.141(b)(12) and (13) would  
5 delete "metal" from the description of license plate consistent with statutory language in Transportation  
6 Code, Chapter 503. A proposed amendment to relettered §215.141(b)(16) would delete an incorrect  
7 reference to non-existent Transportation Code, Chapter 1000. A proposed amendment to relettered  
8 §215.141(b)(17) would clarify by adding a reference to §211.3. A proposed amendment to relettered  
9 §215.141(b)(20) would clarify that providing a false or forged document to the department may result in  
10 a sanction. A proposed amendment to relettered §215.141(b)(22) would clarify that providing a false or  
11 forged identity document, photograph, image, or document to the department is a material  
12 misrepresentation and may result in a sanction. Proposed new §215.141(b)(25) would clarify that a license  
13 holder's failure to comply with the requirements for dealer's issuance of temporary tags under §215.150  
14 may result in a sanction. Proposed amendments to relettered §215.141(b)(28) would delete an archaic  
15 effective date and clarify by adding the title of the statutory provision referenced. Proposed new  
16 §215.141(b)(29) adds failure to issue a refund as ordered by the board or department as an action that  
17 may result in a sanction, to ensure that the board is able to enforce its refund orders. Proposed new  
18 §215.141(b)(30) would add failure to acquire or maintain a certificate, business license, permit, or other  
19 documents confirming compliance with county or municipal laws or ordinances for a vehicle business as  
20 an action that may result in a sanction, as a license holder must comply with county and local laws to have  
21 and maintain an established and permanent place of business. An established and permanent place of  
22 business is a requirement for GDN holders under Transportation Code §503.032 and wholesale motor  
23 vehicle auctions under Transportation Code §503.030.



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1 Proposed new §215.143 would set out the requirements for drive-away operator in-transit license  
2 plates. Proposed new §215.143(a) would specify when a drive-a-way operator may apply for an in-transit  
3 standard license plate. Proposed new §215.143(b) would explain when and where the license plate is to  
4 be placed on the vehicle. Proposed new §215.143(c) would contains the record requirements for these  
5 plates. Proposed §215.143(d) and (e) would explain what a drive-a-way operator is required to do if a  
6 license plate is lost, stolen, or damaged. Proposed new §215.143(f) would require that license plate  
7 records be available for inspection or review if requested by the department. Proposed new §215.143(g)  
8 would specify the criteria the department will use to evaluate a request for additional in-transit standard  
9 license plates. Proposed new §215.143(h) would require a drive-a-way operator to return department-  
10 issued license plates to the department within 10 days of the associated license being closed, canceled,  
11 or revoked.

12 A proposed amendment to the title of §215.144 would add “Vehicle” to the title to describe the  
13 scope more accurately as pertaining to vehicle records. Proposed amendments to §215.144(a) would add  
14 a reference to a wholesale motor vehicle auction and delete a redundant phrase. A proposed amendment  
15 to §215.144(b) would add a reference to records that must be kept by an independent mobility motor  
16 vehicle dealer for ease of reference. A proposed amendment to §215.144(c) would delete unnecessary  
17 punctuation. Proposed amendments to §215.144(d) would simplify the language for the requirement that  
18 a dealer must reply within 15 days of receiving a department records request regardless of the method in  
19 which the department makes the request and would correct a reference from division to department for  
20 consistency. Proposed amendments to §215.144(e)(7) would delete an archaic reference to the title of a  
21 tax receipt form and substitute the general phrase “county tax assessor-collector receipt marked paid,”  
22 as the form of the receipt may vary by county. Proposed amendments to §215.144(e)(8) would add clarity  
23 by improving sentence structure, clarifying that records must be kept for both the purchase and the sale

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1 of a vehicle, deleting a reference to an archaic form, and adding requirements to keep a copy of the  
2 purchaser's photo identification, the odometer disclosure statement signed by the buyer, and the rebuilt  
3 salvage disclosure, if applicable. These additional record requirements §§215.144(e)(8)(L)-(N) are  
4 necessary to prevent consumer harm and reduce potential for fraud. Proposed amendments to  
5 §215.144(e)(9) would rephrase the existing requirement for readability without changing the meaning.  
6 Proposed amendments to §215.144(f)(2) would add a reference to a statutory exemption and update the  
7 language consistent with current statutory requirements that any willing county tax-assessor-collector  
8 may process a title or registration request. Proposed amendments to §215.144(f)(3) would change the  
9 presumed reasonable time for a dealer to apply for a title and registration from 20 working days to 30  
10 days and add references to title processing to clarify that the same presumed time limit applies to both  
11 titling and registration dealer responsibilities. A proposed amendment to §215.144(g)(1) changes the  
12 presumed reasonable time for a dealer to act for out-of-state sales from 20 working days to 30 days;  
13 "days" is proposed to be defined under §215.2(b)(2) as calendar days. Proposed amendments to  
14 §215.144(h) would update the language consistent with current statutory requirements that any willing  
15 county tax-assessor-collector may process a title or registration request. Proposed amendments to  
16 §215.144(j) would delete the unnecessary phrase "a representative of" to describe the department, would  
17 simplify the language in §215.144(j)(2) regarding the requirement that a wholesale motor vehicle auction  
18 must reply within 15 days of receiving a department records request regardless of the method in which  
19 the department makes the request, and would update a citation to the federal odometer disclosure  
20 requirements in §215.144(j)(3)(F). A proposed amendment to §215.144(k) would delete the unnecessary  
21 phrase "a representative of" in describing the department. Proposed amendments to §215.144(l) would  
22 update the subsection title to refer to the department's electronic titling and registration system for  
23 clarity and delete unnecessary punctuation.

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1 A proposed amendment to §215.145(a) would delete a duplicative word. Proposed amendments  
2 to §215.145(b) would clarify that a dealer must submit a license amendment electronically in the  
3 department's designated licensing system. Proposed amendments to §215.145(c)-(f) would remove  
4 redundant language or restate language to improve readability without changing the meaning. Another  
5 proposed amendment to §215.145(f) would modernize the provision by adding a reference to filing a GDN  
6 application electronically in the department's designated licensing system. A proposed amendment to  
7 §215.145(g) would delete unnecessary punctuation and correct the title of a referenced statute.

8 The entirety of §215.146 is proposed for repeal as this rule would be incorporated into new  
9 proposed §215.120, relating to License Plates.

10 Proposed amendments to §215.147(a) would correct a reference to the driver license and delete  
11 an archaic reference to a concealed handgun license. A proposed amendment to §215.147(b) would  
12 substitute "dealer's" for "license holder's" for consistency in terminology and does not change the  
13 meaning. A proposed amendment to §215.147(c) would add "Vehicle" for consistency with a proposed  
14 title change to §215.144, relating to Vehicle Records.

15 Proposed amendments to §215.148 would add references to Transportation Code, Chapter 503,  
16 and proposed new Chapter 224, Adjudicative Practice and Procedure, would update a proposed title  
17 change to §215.144, and would remove redundant and unnecessary words and punctuation.

18 Proposed amendments to §215.149 would change the title to "Sales of New Mobility Motor  
19 Vehicles" to reflect the section scope and add references to "new" mobility motor vehicles for clarity.

20 A proposed amendment to §215.150(a) would add "or lease" to clarify that a dealer may issue a  
21 temporary tag for a vehicle leased to a customer. A proposed amendment to §215.150(b)(1) would update  
22 a reference to proposed new Chapter 224, Adjudicative Practice and Procedure. Proposed amendments  
23 to §215.150(c) would change word order to "buyer's temporary tag" for consistency.

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1           A proposed amendment to §215.151(a) would add “governmental agency” to the list of entities  
2           that must display temporary tags on the rear of a vehicle in operation. As a result, §215.151(b) is proposed  
3           for deletion and the remaining subsections are proposed to be relettered accordingly. Proposed  
4           amendments to relettered §215.151(c) would delete duplicate language from a referenced statute and  
5           add a statutory reference for allowed uses of a converter’s temporary tag for completeness and ease of  
6           reference.

7           Proposed amendments to §215.152(a) and (b) would delete an unnecessary phrase as a  
8           governmental agency is defined in §215.2 to include federal, state, and local agencies. Proposed  
9           amendments in §215.152(f) would increase the allotment of temporary tags for a franchised dealer from  
10          600 to 1,000 based on the department’s historical experience. Since maximum tag limits were put in place,  
11          the department has been monitoring temporary tag usage and processing requests for additional  
12          temporary tags. The one dealer category that has consistently required more temporary tags to be  
13          allocated is a new franchised dealer, so increasing the initial amount allocated to this dealer type is  
14          necessary to ensure a new franchise dealer has the requisite number of tags necessary to support daily  
15          operations. Proposed amendments in §215.152(i) would clarify the process and procedure for requesting  
16          additional temporary tags and for appealing a denial of a request, but do not change existing process or  
17          procedure. Another amendment to §215.152(i) would clarify that temporary tag allotments do not carry  
18          over to subsequent years.

19          A proposed amendment to §215.154(a) would add “or lease” to clarify that a dealer may issue a  
20          dealer’s temporary tag for a vehicle the dealer is authorized to lease. A proposed amendment to  
21          §215.154(c) would delete “metal” and adds “standard or personalized prestige” to accurately describe  
22          the plate types the dealer may use. A proposed amendment to §215.154(d)(2)(B) would add a reference  
23          to §215.138(d) for clarity and ease of reference. Proposed amendments to §215.154(e) and (g) would

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1 delete these two subsections as the language in these subsections duplicates §215.138, which is proposed  
2 to be added for reference in §215.154(d)(2)(B), and the remaining subsections would be relettered  
3 accordingly.

4 Proposed amendments to §215.155(a) would clarify that a buyer's temporary tag may only be  
5 displayed on a vehicle from the selling dealer's inventory, would reorganize and combine the content in  
6 §215.155(a) and (b) in a numbered list for clarity and readability, and would add "or lease" to clarify that  
7 a dealer may issue a dealer's temporary tag for a vehicle the dealer is authorized to lease. Proposed new  
8 §215.155(b) would clarify that in accordance with Texas Transportation Code §503.063, a buyer's  
9 temporary tag must be issued and provided to a buyer of a vehicle that is to be titled but not registered  
10 and would clarify that the temporary tag must not be displayed on the vehicle in these circumstances.  
11 This clarification is necessary to facilitate title-only vehicle sales for vehicles that will not be driven on  
12 Texas roads. A proposed amendment to §215.155(c) would delete "metal" for consistency. Proposed  
13 amendments to §215.155(e) would delete unnecessary punctuation and phrasing without changing the  
14 meaning. Proposed amendments to §215.155(f) and proposed new §215.155(g) would reorganize and  
15 rephrase language in §215.155(f) to improve clarity and readability without changing the meaning.

16 A proposed amendment to §215.160(b) would increase the required font size from 11 pt to 14 pt  
17 in the rebuilt vehicle acknowledgment or vehicle disclosure form to increase legibility. A proposed  
18 amendment in §215.160(c) would require a separate signature on the acknowledgment or disclosure  
19 form. Proposed amendments in §215.160(d) would reorder language to improve clarity and would update  
20 a referenced section title. The proposed amendments increasing the required font size and requiring a  
21 signature are necessary to protect consumers and prevent consumer harm.

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1 Proposed amendments to §215.161 would update the title to add “Provider” as the  
2 requirements in this section relate to motor vehicle licensing education course providers. Proposed new  
3 §215.161(f) would clarify that the department does not offer an approved licensing education course.

4  
5 Subchapter F. Lessors and Lease Facilitators

6 This subchapter is proposed to be relettered as Subchapter E as current Subchapter B is proposed  
7 for repeal and the following subchapters are proposed to be relettered accordingly.

8 Proposed amendments to §215.171 would update statutory references including references to  
9 relevant Transportation Code chapters.

10 Proposed amendments to §215.173(a) would edit language and provide a statutory reference for  
11 clarity and to improve readability.

12 The proposed amendments to §215.174 would modernize the provision by implementing the  
13 requirements necessary for the department’s electronic licensing system. Proposed amendments to  
14 §215.174(a) would add a reference to §215.83 and clarify that applications, including supporting  
15 documentation and fees, are to be submitted electronically in the department’s licensing system.  
16 Proposed new §215.174(b) would require a license holder renewing or amending a license to verify  
17 current information and provide related information and documents for any changes to the license as well  
18 as pay required fees, to ensure that licensees provide the department with updated information through  
19 the electronic licensing system. Proposed new §215.174(c) would instruct a new applicant how to register  
20 in the department-designated licensing system. Proposed new §215.174(d) would describe the  
21 information that must be submitted in the application, and the remaining subsections would be relettered  
22 accordingly. Proposed amendments to relettered §215.174(e) would specify the supporting  
23 documentation that an applicant for a vehicle lessor’s license must provide to allow the department to

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1 thoroughly investigate the applicant and its business practices. The proposed amendments to relettered  
2 §215.174(e) would clarify that a document submitted as part of a vehicle lessor's license application must  
3 be a legible and accurate electronic image, describe the business organization documents required, add  
4 current identity document requirements, and require a vehicle lessor not located in Texas to provide a list  
5 of vehicle lessor licenses in other states, if applicable, and any other information required to evaluate the  
6 application under current law. Proposed amendments to relettered §215.174(f) would specify the  
7 supporting documentation that an applicant for a vehicle lease facilitator's license must provide to allow  
8 the department to thoroughly investigate the applicant and its business practices. The proposed  
9 amendments to relettered §215.174(f) would clarify that a document submitted as part of a vehicle lease  
10 facilitator's license application must be a legible and accurate electronic image, describe the business  
11 organization documents required, add current identity document requirements, delete a requirement for  
12 a vehicle lease facilitator to update a vehicle lessor list, and require a vehicle lease facilitator to provide  
13 any other information required to evaluate the application under current law. Proposed new §215.174(g)  
14 would protect the public by prohibiting a vehicle lessor or vehicle lease facilitator from using a business  
15 name or assumed name that would be confusing, deceptive, or misleading to prevent consumer fraud and  
16 abuse. Proposed new §215.174(h) would clarify an existing requirement that during the license term, a  
17 vehicle lessor or vehicle lease facilitator must update the list of authorized vehicle lease facilitators or  
18 vehicle lessors, as applicable, and notify the department within 10 days of a change by electronically  
19 submitting a license amendment in the system designated by the department for licensing.

20 Proposed amendments to §215.175(b)(5) and (6) would clarify that a vehicle lessor or vehicle  
21 lease facilitator must notify the department of a change in address, name, assumed name, or change in  
22 management or ownership by electronically submitting a license amendment in the system designated by  
23 the department for licensing. A proposed amendment to §215.175(b)(7) would update a statutory

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1 reference. A proposed amendment to §215.175(b)(8) would update a subchapter designation to match  
2 the proposed relettering. Proposed amendments to §215.175(b)(13) would delete the term “willfully” to  
3 make any omission of material information sanctionable conduct and would clarify that a material  
4 misrepresentation includes providing a false or forged identity document or a false or forged photograph,  
5 electronic image, or document. Proposed amendments to §215.175(c) and (d) would clarify that the  
6 vehicle lessor and the vehicle lease facilitator must notify the department by electronically submitting a  
7 license amendment in the system designated by the department for licensing.

8 A proposed amendment to §215.176 would add “business” to the title of the section and a  
9 proposed amendment in §215.176(b) would substitute “municipality” for “city” for consistency with the  
10 term proposed to be defined in §215.132.

11 A proposed amendment to the title of §215.177 would add “Premises Requirements” to describe  
12 the scope of the section. A proposed amendment to §215.177(a) would remove unnecessary words. A  
13 proposed amendment to §215.177(a)(1)(A) would enhance a license holder’s responsiveness to the public  
14 by adding a requirement that the business telephone be answered from 8:00 a.m. to 5:00 p.m. weekdays  
15 by a bona fide employee, owner, answering service, voicemail service, or answering machine, and that a  
16 caller must be able to speak to a natural person or leave a message during these hours. Proposed  
17 amendments to §215.177(a)(1)(B) would clarify that “chairs” is interpreted as two chairs and by clarifying  
18 that a vehicle lessor or vehicle facilitator’s office must have internet access to ensure a license holder has  
19 the minimum level of facilities necessary to provide adequate service the public. Proposed amendments  
20 to §215.177(a)(1)(C) would further ensure facilities for the public by requiring that a vehicle lessor or  
21 vehicle facilitator’s office have a permanent roof, requiring the office to be in a building open to the public,  
22 requiring the physical address to have an assigned emergency services property address, and stating that  
23 the office may not be virtual or provided by a subscription for office space or office services. Proposed



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1 amendments to §215.177(a)(1)(E) and (F) would make minor editing changes that do not change the  
2 meaning of the subparagraph. Proposed amendments to §215.177(a)(2) would protect the public from  
3 being misled or confused by a licensee’s signage by adding “business” to clarify that the requirements are  
4 for a business sign, requiring that the business name used on the sign be substantially similar to the name  
5 of the licensed entity, and adding criteria to determine whether the sign is conspicuous and permanent.  
6 Proposed amendments to §215.177(a)(3) clarify premises lease requirements and modernize the  
7 language. The proposed amendments in §215.177(a) are consistent with the minimum requirements for  
8 a retail dealer, deter fraud, and protect consumers. A proposed amendment would delete the  
9 requirements in §215.177(b) for out-of-state vehicle lessors who do not deal directly with the public as  
10 these requirements are unnecessary and unenforceable, and the remaining following subsections would  
11 be relettered accordingly.

12 Proposed amendments to §215.178(a)(1) would add “complete” to describe records for  
13 consistency, delete an archaic requirement to keep records for prior periods at a location in the same  
14 county or within 25 miles of the license location, and simplify the language regarding the requirement  
15 that a dealer must reply within 15 days of receiving a request for records from the department regardless  
16 of the method in which the department makes the request. Proposed amendments to §215.178(b) would  
17 make multiple edits throughout the subsection to improve clarity and readability and would revise the  
18 requirement to provide a vehicle lease facilitator’s employees’ home addresses to a more relevant  
19 requirement to provide a work address. Proposed new §215.178(c) would be added to describe the  
20 vehicle lessor’s record requirements if a leased vehicle is later sold, and the following subsections are  
21 relettered accordingly. Proposed amendments to relettered §215.178(d) would consist of minor edits  
22 throughout to improve clarity and readability and would not change the meaning. Proposed amendments  
23 to relettered §215.178(f) would delete redundant language and clarify that a letter of representation or

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1 appointment between a vehicle lessor and a vehicle lease facilitator must be executed and maintained by  
2 each party. Proposed amendments to relettered §215.178(g) would modernize the rule by adding the  
3 option for a vehicle lessor or a vehicle lease facilitator to send records to the department electronically  
4 and would make minor edits to improve readability.

5 Proposed amendments throughout §215.179 would modernize the rule by specifying that a  
6 vehicle lessor or vehicle facilitator must submit a notice of a change to a license electronically in the  
7 system designated by the department for licensing, would remove redundant or unnecessary language,  
8 and would update the title of a referenced section of this chapter.

9 A proposed amendment to §215.180 would substitute a subchapter designation for a list of  
10 sections so a future statutory change will not require a rule change.

11  
12 Subchapter G. Warranty Performance Obligations

13 All sections of Subchapter G. Warranty Performance Obligations are proposed for repeal because  
14 the substance of each rule and any proposed amendments are incorporated into proposed new Chapter  
15 224, Adjudicative Practice and Procedure. The proposed repeal includes §§ 215.201–215.210.

16  
17 Subchapter H. Advertising

18 This subchapter is proposed to be relettered as Subchapter F as current Subchapters B and G are  
19 proposed for repeal and the remaining subchapters are proposed to be relettered accordingly.

20 A proposed amendment to §215.242 would substitute “deemed” for “considered” for  
21 consistency.

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1 Proposed amendments to §215.244(11) would delete an unnecessary definition for a license  
2 holder and renumber the remaining definitions. A proposed amendment to renumbered §215.244(17)  
3 would clarify and specify that the communication referred to in the rule is a notice of opportunity to cure.

4 A proposed amendment to the title of §215.249 would substitutes “or” for “/” for clarity. A  
5 proposed amendment to §215.249(c) would delete “the State of” for consistency.

6 Proposed amendments to §215.250(a) would delete “new or used” as unnecessary and add a  
7 requirement for a dealer to disclose a market adjustment if one is added to the sales price so that the  
8 public is aware of the pricing. Proposed amendments to §215.250(b) would rephrase for clarity that fees  
9 and charges expressly allowed by law do not have to be included in a featured sales price.

10 A proposed amendment to §215.257 would clarify that the term “authorized dealer” or similar  
11 term may not be used unless a dealer holds both a franchised dealer license and a franchised dealer GDN.

12 Proposed amendments to the title and text of §215.261 would substitute “or” for “/” for clarity  
13 and style consistency.

14 A proposed amendment to §215.264(c) would substitute “other disclosure or deal term” for the  
15 lengthy list of disclosures and deal terms in this section for clarity and brevity. Proposed amendments to  
16 §215.264(f) and (h) would delete references to specific paragraphs within a referenced subsection as the  
17 paragraph references are unnecessary.

18 Proposed amendments to §215.268 would delete language and substitute terms for consistency  
19 and would not change the meaning of the rule.

20 Proposed amendments to §215.270(b) would identify the referenced notice as an opportunity to  
21 cure for clarity and update a reference to the proposed new Notice of Department Decision section in  
22 proposed new Chapter 224.

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1 Subchapter I. Practice and Procedure for Hearings Conducted by The State Office of Administrative  
2 Hearings

3 All sections of Subchapter I, Practice and Procedure for Hearings Conducted by The State Office  
4 of Administrative Hearings, are proposed for repeal because the substance of each rule and any proposed  
5 amendments are incorporated into proposed new Chapter 224 Adjudicative Practice and Procedure. The  
6 proposed repeal includes §§ 215.301–215.317.

7  
8 Subchapter J. Administrative Sanctions

9 This subchapter is proposed to be relettered as Subchapter G, because current Subchapters B, G,  
10 and I are proposed for repeal and the remaining subchapter is being proposed to be relettered  
11 accordingly.

12 A proposed amendment to the title of §215.500 would delete “and Procedures” as the procedures  
13 from this section are proposed for repeal and are proposed to be included in new Chapter 224,  
14 Adjudicative Practice and Procedure. Proposed amendments to §215.500(a) would delete the (a)  
15 designation and correct a reference to a referenced rule section. The remaining subsections are proposed  
16 for repeal and are proposed to be included in proposed new Chapter 224: §§215.501, 215.502, and  
17 §215.505.

18 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,  
19 has determined that for each year of the first five years the amendments will be in effect, there will be no  
20 significant fiscal impact to state or local governments as a result of the enforcement or administration of  
21 the proposal. Monique Johnston, Director of the Motor Vehicle Division (MVD), has determined that there  
22 will be no significant impact on local employment or the local economy as a result of the proposal.

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1 **PUBLIC BENEFIT AND COST NOTE.** Ms. Johnston also determined that, for each year of the first five years  
2 the proposed amendments are in effect, several significant public benefits are anticipated, and certain  
3 applicants and license holders may incur costs to comply with the proposal. The department prioritized  
4 the public benefits associated with reducing fraud and related crime and improving public health and  
5 safety, while carefully considering potential costs to GDN dealers consistent with board and department  
6 responsibilities.

7 Proposed amendments to §§215.102, 215.133, 215.134, and 215.174 may require applicants and  
8 license holders to provide more information in the application. While some applicants may be required to  
9 spend more time completing an application or providing additional information Ms. Johnston has  
10 determined these costs will be offset by the reduced risk of applicants and holders incurring financial  
11 penalties due to noncompliance with applicable federal, state, or local statutes or property owner  
12 requirements which will benefit both license holders and the public. Importantly, this information allows  
13 the department to investigate an applicant more thoroughly and is consistent with the department's  
14 obligations to detect and deter fraud in the application process to prevent consumer harm.

15 In proposed amendments to §§215.102, 215.133, 215.134, and 215.174, an applicant or license  
16 holder may not use a name or assumed name that may be confused with or is similar to that of a  
17 governmental entity or that is otherwise deceptive or misleading to the public. Ms. Johnston estimates  
18 that a small number of current license holders may have to change a confusing, deceptive, or misleading  
19 business name or assumed name and may incur related secretary of state or county filing fees or signage  
20 cost. The Secretary of State filing fee to amend a business name is \$150. Department research suggests  
21 the cost for an exterior sign will vary between \$30 to \$167, with an average expected cost of about \$80.  
22 The department recognizes that these costs may vary widely based on business owner style and design  
23 preferences. The department's civil penalty guidelines for license holders who violate statutory provisions

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1 range \$500 to \$10,000 per violation. Ms. Johnston has determined that the signage cost will be offset by  
2 the reduced risk of these license holders incurring financial penalties due to noncompliance with laws and  
3 regulations and will benefit the public by informing the public and preventing consumer harm.

4 Proposed amendments to §§215.120, 215.138, and 215.143 require license holders that purchase  
5 industry license plates to return plates, stickers, and receipts when the associated license is closed. In  
6 Fiscal Year 2019, license holders started returning industry plates when a license was closed. Since then,  
7 more than 10,150 industry plates have been returned to the department, significantly reducing the  
8 potential for fraudulent plate use. Department research suggest that the average cost to mail a plate is  
9 \$9.65. Ms. Johnston has determined that the cost for a license holder to mail or return a plate to the  
10 department after the associated license is closed is reasonable and necessary to reduce potential fraud.

11 Proposed amendments to §215.133 and §215.134 add fingerprint requirements for wholesale  
12 motor vehicle auction GDN and drive-a-way operator in-transit license applicants and holders. Fingerprint  
13 requirements allow the department to verify the identity of license applicants, preventing fraudulent  
14 applications under false or stolen identities, while giving the department access to more accurate and  
15 comprehensive criminal history record information to use in evaluating fitness for licensure under its  
16 criminal offense guidelines in §211.3. These new fingerprint requirements benefit the public by preventing  
17 bad actors with a history of criminal offenses that directly relate to the duties and responsibilities of a  
18 license holder from obtaining licenses from the department and using those licenses to perpetrate  
19 fraudulent and criminal actions, or otherwise taking advantage of the position of trust created by the  
20 license. Ms. Johnston anticipates that there will be no additional costs on regulated persons to comply  
21 with the fingerprint requirements under this proposal as the new section does not establish fees for  
22 fingerprinting or processing criminal background checks. Fees for fingerprinting and access to criminal  
23 history reports are established by DPS under the authority of Texas Government Code Chapter 411.

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1 Proposed amendments to §215.144 require a dealer to keep copies of the purchaser's photo  
2 identification, the odometer disclosure statement signed by the buyer, and the rebuilt salvage disclosure,  
3 if applicable in the vehicle sales file. Ms. Johnston anticipates that while most bona fide dealers already  
4 comply with these requirements, a few dealers may have to add two to three additional pages to the sales  
5 file. Department research suggests that the cost of a copy ranges from \$0.14 to \$0.22 per page. She has  
6 determined that these costs are necessary to prevent fraud and protect consumers.

7 Proposed amendments to §215.160 require a dealer offering a rebuilt vehicle for sale to use a  
8 minimum 14-point font size in the disclosure statement and for the disclosure statement to have a  
9 separate buyer signature. Ms. Johnston anticipates that many bona fide dealers already comply with these  
10 requirements, however, some dealers may have to adjust existing forms. These formatting changes may  
11 be performed easily at little or no cost using available free word processing software or at a print shop.  
12 Department research suggests that the cost of reformatting this disclosure ranges from \$10 to \$48. Ms.  
13 Johnston has determined that these costs are necessary to prevent fraud and protect consumers.

14 Proposed changes to §215.177 require a vehicle lessor or vehicle lease facilitator to ensure that  
15 the business telephone is answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee,  
16 owner, answering service, voicemail service, or answering machine, and requires that the office have  
17 internet access. Ms. Johnston anticipates that while most bona fide vehicle lessors or vehicle lease  
18 facilitators already comply with these requirements, a few vehicle lessors or vehicle lease facilitators may  
19 have to purchase a mobile phone with a data plan to comply. Department research suggests that this cost  
20 ranges from \$15 to \$90 per month. Ms. Johnston has determined that these requirements are reasonable  
21 minimum standards as the department and the public must be able to communicate with a license holder,  
22 and these requirements are necessary to prevent fraud and consumer harm.

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1 Proposed amendments to §215.140 require GDN applicants and holders to disclose the physical  
2 address of a storage lot if the address is different than the physical address of the licensed location.  
3 Applicants for a new GDN will not incur an additional fee. Current dealer GDN holders will incur a \$25  
4 statutorily required license amendment fee to add or change the physical address of a storage lot. Ms.  
5 Johnston has determined that the public benefit derived from the department's more thorough fitness  
6 for licensure investigation, reduction in fraud, and enforcement of department statutes and rules  
7 substantially outweighs this cost and are necessary.

8 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government  
9 Code §2006.002, the department has determined that this proposal may have an adverse economic effect  
10 or disproportionate economic impact on small or micro businesses. The department has determined that  
11 the proposed amendments will not have an adverse economic effect on rural communities because rural  
12 communities are exempt from the requirement to hold a GDN under Transportation Code §503.024.

13 The cost analysis in the Public Benefit and Cost Note section of this proposal determined that  
14 proposed amendments may result in additional costs for certain license holders. Based on data from the  
15 Comptroller and the Texas Workforce Commission, the department estimates that most license holders  
16 are small or micro-businesses. The department has tried to minimize costs to license holders. The new  
17 proposed requirements are designed to be the minimum standards that will prevent fraud in the  
18 application process, prevent consumer abuse, and protect public health and safety. These requirements  
19 do not include requirements that will cause a license holder to incur unnecessary or burdensome costs,  
20 such as employing additional persons.

21 Under Government Code §2006.002, the department must perform a regulatory flexibility  
22 analysis. The department considered the alternatives of not adopting amendments, exempting small and  
23 micro-business license holders from these amendments, and adopting a limited version of these



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1 amendments for small and micro-business applicants and license holders. The department rejects all three  
2 options. The department reviewed licensing records, including records for license holders who have been  
3 denied access to the temporary tag system, and determined that small and micro-business license holders  
4 are largely the bad actors perpetrating fraud in the application process. The department, after considering  
5 the purpose of the authorizing statutes, does not believe it is feasible to waive or limit the requirements  
6 of the proposed amendments for small or micro-business GDN dealers. Also, Government Code  
7 §2006.002(c-1) does not require the department to consider alternatives that might minimize possible  
8 adverse impacts on small businesses and micro-businesses if the alternatives would not be protective of  
9 the health and safety of the state.

10 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests  
11 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property  
12 that would otherwise exist in the absence of government action and, therefore, does not constitute a  
13 taking or require a takings impact assessment under Government Code, §2007.043.

14 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the  
15 first five years the proposed amendments are in effect the amendments will not create or eliminate a  
16 government program; will not require the creation of new employee positions and will not require the  
17 elimination of existing employee positions; will not require an increase or decrease in future legislative  
18 appropriations to the department; will require an increase in fees paid to the department by certain  
19 license holders who are required to file a license amendment to add an address; will expand existing  
20 regulations, delete some existing regulations, and make other existing regulations more flexible as  
21 described in the explanation section of this proposal; will repeal existing regulations to improve overall  
22 organization of department rules in conjunction with the proposal of new Chapter 224 published in this  
23 issue of the *Texas Register*; will not increase or decrease the number of individuals subject to the rule's

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1 applicability; and will positively affect the Texas economy by deterring fraud and preventing consumer  
2 harm.

3 **REQUEST FOR PUBLIC COMMENT.**

4 If you want to comment on the proposal, submit your written comments by 5:00 p.m. Central  
5 Time on MM, DD, YYYY. A request for a public hearing must be sent separately from your written  
6 comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office  
7 of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a  
8 hearing is held, the department will consider written comments and public testimony presented at the  
9 hearing.

10 **STATUTORY AUTHORITY.** The department proposes amendments to Chapter 215 under Occupations  
11 Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease of motor  
12 vehicles and the authority to take any action that is necessary or convenient to exercise that authority;  
13 Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license  
14 holders, ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute  
15 and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in  
16 connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations  
17 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which  
18 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter  
19 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives  
20 the board authority to deny an application for a license, revoke or suspend a license, place on probation,  
21 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,  
22 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds  
23 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government

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1 Code, §411.122(d), which authorizes department access to criminal history record information  
2 maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal  
3 history record information from DPS and the FBI for license applicants, license holders, and  
4 representatives whose act or omission would be cause for denying, revoking, or suspending a general  
5 distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,  
6 Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as  
7 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which  
8 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; and  
9 Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and  
10 appropriate to implement the powers and the duties of the department, as well as the statutes referenced  
11 throughout this preamble.

12 **CROSS REFERENCE TO STATUTE.** These proposed revisions would implement Government Code, Chapters  
13 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 503 and  
14 1002.

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## 1 TEXT.

## 2 SUBCHAPTER A. GENERAL PROVISIONS

## 3 215.1. Purpose and Scope.

4 Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1001~~[1000]~~–10055 require the Texas Department of Motor Vehicles to license and regulate the ~~[motor-]~~vehicle6 ~~industry[dealers, manufacturers, distributors, converters, representatives, vehicle lessors and vehicle~~7 ~~lease facilitators, in order]~~ to ensure a sound system of distributing and selling ~~[motor-]~~vehicles; provide

8 for compliance with manufacturers' warranties; and to prevent fraud, unfair practices, discrimination,

9 impositions, and other abuses of the people of this state in connection with the distribution and sale of

10 ~~[motor-]~~vehicles. This chapter describes licensing requirements and the rules governing~~[prescribes the~~11 ~~policies and procedures for the regulation of the motor vehicle industry]~~ license holders under12 Occupations Code, Chapter 2301 and Transportation Code, Chapter 503.13  
14 215.2. Definitions; Conformity with Statutory Requirements.

15 (a) The definitions contained in Occupations Code, Chapter 2301 and Transportation Code,

16 Chapters 503 and 1001~~[1000]~~–1005 govern this chapter. In the event of a conflict, the definition or

17 procedure referenced in Occupations Code, Chapter 2301 controls.

18 (b) The following words and terms, when used in this chapter, shall have the following

19 meanings, unless the context clearly indicates otherwise.

20 (1) ~~[ALJ--An Administrative Law Judge of the State Office of Administrative Hearings.~~21 ~~(2)--The Board of the Texas Department of Motor Vehicles, including[-any]~~22 department staff~~[personnel]~~ to whom the board delegates a~~[ny]~~ duty~~[-assigned]~~.23 (2) Day--The word "day" refers to a calendar day.

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(3) Director—The director of the division~~[department]~~ that regulates the distribution and sale of motor vehicles, including any department staff ~~[personnel]~~ to whom the director delegates a~~ny~~ duty assigned under this chapter.

(4) ~~[Executive director—The executive director of the Texas Department of Motor Vehicles.]~~

~~[(5) Final order authority—The person(s) with authority under Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000—1005; or board rules to issue a final order.]~~

~~[(6)]GDN--General distinguishing number, a license issued under Transportation Code, Chapter 503.~~

~~[(5)][(7)]Governmental agency—A state agency other than the department, [All other state and]all local governmental agencies, and all agencies of the United States government, whether executive, legislative, or judicial.~~

~~(6) Standard license plate--A motor vehicle license plate issued by the department to a license holder for use by the license holder that is not a personalized prestige dealer's license plate issued under Transportation Code §503.0615.~~

~~[(8) [Hearing officer—An ALJ, a hearings examiner, or any other person designated, employed, or appointed by the department to hold hearings, administer oaths, receive pleadings and evidence, issue subpoenas to compel the attendance of witnesses, compel the production of papers and documents, issue interlocutory orders and temporary injunctions, make findings of fact and conclusions of law, issue proposals for decision, and recommend or issue final orders.~~

~~(9) Motion for rehearing authority—The person(s) with authority under Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000—1005; or board rules to decide a motion for rehearing.~~

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~~(10) SOAH – The State Office of Administrative Hearings.]~~

~~[SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE]~~

~~[215.21. Purpose and Scope.]~~

~~[(a) The purpose of this subchapter is to ensure adjudication of the rights of parties in matters within the jurisdiction of Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1000 – 1005; and to ensure effective administration of Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1000 – 1005 by the department, in accordance with Government Code, Chapter 2001 and Occupations Code, §2301.001 and §2301.152.]~~

~~[(b) Practice and procedure in contested cases heard by SOAH are addressed in:~~

~~(1) 1 TAC Chapter 155;~~

~~(2) Subchapter I of this chapter (relating to Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings); and~~

~~(3) this subchapter, where not in conflict with SOAH rules.]~~

~~[(c) This subchapter applies to contested cases filed under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503; and to complaints filed on or after January 1, 2014, under Occupations Code, §2301.204 or §§2301.601 – 2301.613, to the extent they do not conflict with state law, rule, or court order.]~~

~~[215.22. Prohibited Communications.]~~

~~[(a) No person, party, attorney of record, or authorized representative in any contested case shall engage in, directly or indirectly, any ex parte communication, in violation of Government Code,~~

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~~§2001.061, concerning the contested case with the board or hearing officer assigned to render a decision or make findings of fact and conclusions of law in a contested case.]~~

~~[(b) Except as prohibited by Government Code §2001.061, department staff may advise the board, the hearing officer, and a person delegated power from the board under Occupations Code §2301.154 regarding the contested case and any procedural matters. However, the department staff shall not recommend a final decision to the board unless the department is a party to the contested case.]~~

~~[(c) Violations of this section shall be promptly reported to the hearing officer, as applicable, and the general counsel of the department. The general counsel shall ensure that a copy or summary of the ex parte communication is included with the record of the contested case and that a copy is forwarded to all parties or their authorized representatives. The general counsel may take any other appropriate action otherwise provided by law.]~~

~~[215.23. Appearances.]~~

~~[(a) General. Any party to a contested case may appear in person or by an authorized representative. An authorized representative may be required to show authority to represent a party.]~~

~~[(b) Intervention. Any public official or other person having an interest in a contested case may, upon request to the hearing officer, be permitted to intervene. Any person desiring to intervene in a contested case may be required to disclose that person's interest in the contested case before permission to appear will be granted.]~~

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~~[215.24. Petitions.]~~~~[(a) Petitions shall be in writing and shall:~~~~(1) state the petitioner's interest in the subject matter, the facts relied upon, and the relief sought; and~~~~(2) cite the specific code provision(s) or other appropriate law.]~~~~[(b) The original of each petition, pleading, motion, brief, or other document permitted or required to be filed with the department in a contested case shall be signed by the party or the party's authorized representative.]~~~~[(c) All pleadings filed in a contested case shall be printed or typed on 8-1/2 inch by 11 inch paper in no smaller than 11 point type with margins of at least one inch at the top, bottom, and each side. Each page shall be numbered at the bottom. All text, except block quotations and footnotes, shall be double spaced.]~~~~[215.27. Complaints.]~~~~[(a) Complaints alleging violations of Occupations Code, Chapter 2301 or Transportation Code, Chapters 503 and 1000–1005 shall be in writing, addressed to the department, and signed by the complainant. Complaint forms will be supplied by the department for the purpose of filing complaints.]~~~~[(b) A complaint shall contain the name and address of the complainant, the name and address of the party against whom the complaint is made, and a brief statement of the facts forming the basis of the complaint.]~~



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1           ~~[(c) If requested by the department, complaints shall be under oath. Before initiating an~~  
2     ~~investigation or other proceeding to determine the merits of the complaint, the department may require~~  
3     ~~from the complainant additional information necessary to evaluate the merits of the complaint.]~~

4  
5     ~~[215.29. Computing Time.][Any period of time prescribed or allowed by this chapter, by order of the~~  
6     ~~board, or by any applicable statute shall be computed in accordance with Government Code, §311.014.]~~

7  
8     ~~[215.30. Filing of Documents.]~~

9           ~~[(a) Each document required or permitted to be filed with the department under this chapter~~  
10    ~~shall be delivered:~~

11                 ~~(1) in person;~~

12                 ~~(2) by first-class mail to the address of the department; or~~

13                 ~~(3) by electronic document transfer to a destination designated by the department.]~~

14           ~~[(b) Delivery by electronic document transfer is considered timely if the document is received by~~  
15     ~~5:00 p.m. Central Standard Time (CST). Delivery by electronic document transfer after 5:00 p.m. CST shall~~  
16     ~~be deemed received on the following day.]~~

17           ~~[(c) A certificate by the party or party's authorized representative showing timely delivery of a~~  
18     ~~document in a manner described in this section shall be prima facie evidence of timely delivery. Nothing~~  
19     ~~herein shall preclude the department or any party from offering proof that the document was not timely~~  
20     ~~delivered.]~~

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~~[(d) To be timely filed, a document must be received by the department within the time specified by statute, rule, or department order. A document received after the specified time, notwithstanding the date of mailing or other means of delivery, shall be deemed untimely.]~~

~~[215.32. Extension of Time.]~~

~~[(a) Except as provided by subsection (b) of this section, when an act is required or allowed to be done at or within a specified time in accordance with this chapter, the board or the hearing officer, with good cause shown, may:~~

~~(1) order the specific period extended if the extension is requested before the expiration of the period previously specified; or~~

~~(2) permit the act to be done after the expiration of the specified period, provided good cause is shown for the failure to act.]~~

~~[(b) Notwithstanding subsection (a) of this section, the board or hearing officer may not extend the time for filing a document when a statute or rule specifies the time period by which a document must be received by the department.]~~

~~[215.34. Notice of Hearing in Contested Cases.]~~

~~[(a) In a contested case, each party is entitled to a hearing, in accordance with Government Code, §2001.051.]~~

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1           ~~[(b) A notice of hearing in a contested case shall comply with the requirements of Government~~  
2     ~~Code, §2001.052(a) and shall be served upon the parties in person or by certified mail, return receipt~~  
3     ~~requested to the last known address of the parties or their authorized representatives, in accordance~~  
4     ~~with Occupations Code, §2301.705.]~~

5           ~~[(c) The last known address of a license applicant, license holder, or other person is the last~~  
6     ~~mailing address provided to the department when the license applicant applies for its license, when a~~  
7     ~~license holder renews its license, or when the license holder notifies the department of a change in the~~  
8     ~~license holder's mailing address.]~~

9           ~~[(d) A notice of hearing in a contested case may be amended in accordance with Government~~  
10    ~~Code, §2001.052(b).]~~

11  
12    ~~[215.35. Reply.]~~

13           ~~[(a) Within 20 days after service of a notice of hearing in a contested case or within 10 days after~~  
14     ~~service of an amended notice of hearing, a party may file a reply.]~~

15           ~~[(b) A reply shall include the docket number of the contested case and shall be filed by the party~~  
16     ~~or party's authorized representative. The original reply shall be filed with the department and a copy~~  
17     ~~shall be served on any other parties to the contested case.]~~

18           ~~[(c) A party may file an amended reply prior to the contested case hearing. In any contested case~~  
19     ~~when the notice of hearing has been amended at the contested case hearing, a party, at the discretion of~~  
20     ~~the hearing officer, shall have an opportunity to file an amended reply.]~~

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1           ~~[(d) Upon the motion of a party, with good cause shown, the department may extend the time~~  
2   ~~to file a reply.]~~

3           ~~[(e) All allegations shall be deemed admitted by any party not appearing at the contested case~~  
4   ~~hearing on the merits.]~~

5  
6   ~~[215.36. Hearings To Be Public.][Hearings in contested cases shall be open to the public.]~~

7  
8   ~~[215.37. Recording and Transcriptions of Hearing Cost.]~~

9           ~~[(a) Except as provided by Subchapter G of this chapter (relating to Warranty Performance~~  
10   ~~Obligations), hearings in contested cases will be transcribed by a court reporter or recorded by the~~  
11   ~~hearing officer.]~~

12          ~~[(b) In a contested case in which the hearing is transcribed by a court reporter, the costs of~~  
13   ~~transcribing the hearing and for the preparation of an original transcript of the record for the~~  
14   ~~department shall be assessed to the requesting party in the contested case, unless otherwise directed.]~~

15          ~~[(c) Copies of recordings or transcriptions of a contested case hearing will be provided to any~~  
16   ~~party upon written request and upon payment for the cost of the recordings or transcriptions.]~~

17          ~~[(d) In the event a final decision in a contested case is appealed and the department is required~~  
18   ~~to transmit to the court the original or a certified copy of the record, or any part thereof, the appealing~~  
19   ~~party shall, unless waived by the department, pay the costs of preparation of the record that is required~~  
20   ~~to be transmitted to the court.]~~

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1

2

~~[215.38. Consolidation of Proceedings.][No contested case proceedings including two or more~~

3

~~complaints or petitions shall be jointly heard without the consent of all parties, unless the hearing officer~~

4

~~finds that justice and efficiency are better served by the consolidation.]~~

5

6

~~[215.39. Waiver of Hearing.][After the issuance of a notice of hearing in a contested case, and in~~

7

~~accordance with the deadlines prescribed by §215.35 of this title (relating to Reply), a party may waive a~~

8

~~hearing and consent to the entry of an agreed order. Agreed orders proposed by the parties remain~~

9

~~subject to the approval of the final order authority.]~~

10

11

~~[215.40. Continuance of Hearing.]~~

12

~~[After a contested case has been called on the date assigned for hearing pursuant to notice, a~~

13

~~continuance of the contested case hearing will be granted only upon a showing of good cause. A motion~~

14

~~for continuance of a contested case hearing shall be filed and served on all parties at least five days~~

15

~~before the hearing date, except when good cause is shown to consider a motion for continuance filed~~

16

~~after the deadline.]~~

17

18

~~[215.41. Presiding Officials.]~~

19

~~[(a) Hearing officer. The term "hearing officer" as used in this section includes the board when~~

20

~~presiding over a hearing.]~~

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1           ~~[(b) Powers and duties. A hearing officer shall conduct fair hearings and shall take all necessary~~  
2           ~~action to administer the disposition of contested cases. A hearing officer's powers include, but are not~~  
3           ~~limited to the authority to:~~

4                     ~~(1) administer oaths;~~

5                     ~~(2) examine witnesses;~~

6                     ~~(3) rule upon the admissibility of evidence;~~

7                     ~~(4) rule upon motions; and~~

8                     ~~(5) regulate the course of the contested case hearing and the conduct of the parties and~~  
9           ~~their authorized representatives.]~~

10           ~~[(c) Recusal.~~

11                     ~~(1) If the hearing officer determines that he or she should be recused from a particular~~  
12           ~~contested case hearing, the hearing officer shall withdraw from the contested case by giving notice on~~  
13           ~~the record and by notifying the chief hearing officer.~~

14                     ~~(2) A party may file a motion to recuse the hearing officer. The motion to recuse shall be~~  
15           ~~supported by an affidavit setting forth the alleged grounds for disqualification. A copy of the motion shall~~  
16           ~~be served on the hearing officer who shall have 10 days to reply, and a copy shall be served on all parties~~  
17           ~~or their authorized representatives.~~

18                     ~~(3) If the hearing officer contests the alleged grounds for disqualification, the chief~~  
19           ~~hearing officer shall promptly determine the validity of the grounds alleged and render a decision.]~~

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~~[(d) Substitution of hearing officer. If the hearing officer is disqualified, dies, becomes disabled, or withdraws during any contested case proceeding, the chief hearing officer may appoint another hearing officer to preside over the remainder of the contested case proceeding.]~~

~~[215.42. Conduct of Hearing.] [Each party in a contested case shall have the right to notice, cross examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair contested case hearing. Except as provided by this chapter or in the notice of hearing, the Texas Rules of Civil Procedure, as applied to non-jury civil cases, shall be applicable to hearings in contested cases, as far as reasonably practical.]~~

~~[215.43. Conduct of Decorum.]~~

~~[(a) All parties, witnesses, counsel, and authorized representatives shall conduct themselves in all contested case hearings with proper dignity, courtesy, and respect for the board, the hearing officer, and other parties.]~~

~~[(b) Upon violation of this section, any party, witness, attorney, or authorized representative may be:~~

~~(1) excluded from the contested case hearing for such period and upon such conditions as are just; or~~

~~(2) subject to other just, reasonable, and lawful disciplinary action as the board, hearing officer, or department may order.]~~

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1 ~~[215.44. Evidence.]~~

2 ~~[(a) General. The Texas Rules of Evidence shall apply in all contested cases, in accordance with~~  
3 ~~Government Code, Chapter 2001.]~~

4 ~~[(b) Documents in department files. The hearing officer may take judicial notice of documents or~~  
5 ~~information in the department's files, in accordance with Government Code, Chapter 2001.]~~

6 ~~[(c) Exhibits. Exhibits shall be limited to facts with respect to the relevant and material issues~~  
7 ~~involved in a particular contested case. Documentary exhibits shall not unduly encumber the record.~~  
8 ~~Where practical, the sheets of each exhibit shall not be more than 8-1/2 inches by 11 inches in size, and~~  
9 ~~shall be numbered and labeled. The original and one copy of each exhibit offered shall be tendered to~~  
10 ~~the reporter or hearing officer for identification, and a copy shall be furnished to each party. In the event~~  
11 ~~an offered exhibit has been excluded after objection and the party offering the exhibit withdraws the~~  
12 ~~offer, the hearing officer shall return the exhibit. If the excluded exhibit is not withdrawn, it shall be given~~  
13 ~~an exhibit number for identification and be included in the record only for the purpose of preserving the~~  
14 ~~exception together with the hearing officer's ruling.]~~

15  
16 ~~[215.45. Stipulation of Evidence.][Evidence may be stipulated by agreement of all parties.]~~

17  
18 ~~[215.46. Objections and Exceptions.][Formal exceptions to the ruling of the hearing officer is not~~  
19 ~~necessary.]~~

20  
21 ~~[215.47. Motions.]~~



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~~[(a) Each motion in a contested case, unless made during a contested case hearing, shall be in writing and shall state:~~

~~(1) the relief sought; and~~

~~(2) the specific reasons and grounds.]~~

~~[(b) If the motion is based upon matters which do not appear of record, the motion must be supported by affidavit.]~~

~~[(c) Any motion not made during a contested case hearing shall be filed with the hearing officer and a copy shall be served on all parties or their authorized representatives.]~~

~~[215.48. Briefs.][The hearing officer may direct that the parties file briefs in any pending contested case.]~~

~~[215.49. Service of Pleadings, Petitions, Briefs, and other Documents.]~~

~~[(a) A copy of each document filed in any contested case shall be served upon all parties or their authorized representatives and upon the department by sending a copy properly addressed to each party by:~~

~~(1) first-class mail;~~

~~(2) hand delivery;~~

~~(3) facsimile; or~~

~~(4) email.]~~

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1           ~~[(b) A copy of each document may be served upon the department by electronic document~~  
2   ~~transfer at a destination designated by the department.]~~

3           ~~[(c) A certificate of service shall accompany each document.]~~

4  
5   ~~[215.55. Final Decision.]~~

6           ~~[(a) Except as provided by §215.58 of this title (relating to Delegation of Final Order Authority),~~  
7   ~~the board has final order authority in a contested case initiated by a complaint filed before January 1,~~  
8   ~~2014, under Occupations Code, §2301.204 or §§2301.601–2301.613.]~~

9           ~~[(b) The hearings examiner has final order authority in a contested case filed on or after January~~  
10   ~~1, 2014, under Occupations Code, §2301.204 or §§2301.601–2301.613.]~~

11           ~~[(c) Except as provided by subsections (a) and (b) of this section and §215.58 of this title, the~~  
12   ~~board has final order authority in a contested case filed under Occupations Code, Chapter 2301 or under~~  
13   ~~Transportation Code, Chapter 503.]~~

14           ~~[(d) An order shall be deemed final and binding on all parties and all administrative remedies are~~  
15   ~~deemed to be exhausted as of the effective date, unless a motion for rehearing is filed with the~~  
16   ~~appropriate authority as provided by law.]~~

17  
18   ~~[215.56. Submission of Amicus Briefs.]~~

19           ~~[(a) Any interested person may submit an amicus brief for consideration in a contested case and~~  
20   ~~should file the brief no later than the deadline for filing exceptions.]~~

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1           ~~[(b) A party may submit one written response to the amicus brief no later than the deadline for~~  
2     ~~filing replies to exceptions.]~~

3           ~~[(c) Any amicus brief, or response to that brief, not filed within the deadlines prescribed by~~  
4     ~~subsection (b) of this section will not be considered, unless good cause is shown why the deadline~~  
5     ~~should be waived or extended.]~~

6  
7     ~~[215.58. Delegation of Final Order Authority.]~~

8           ~~[(a) In accordance with Occupations Code, §2301.154(c), except as provided by subsection (b) of~~  
9     ~~this section, the director is authorized to issue, where there has not been a decision on the merits, a~~  
10    ~~final order in a contested case, including, but not limited to a contested case resolved:~~

11           ~~(1) by settlement;~~

12           ~~(2) by agreed order;~~

13           ~~(3) by withdrawal of the complaint;~~

14           ~~(4) by withdrawal of a protest;~~

15           ~~(5) by dismissal for want of prosecution;~~

16           ~~(6) by dismissal for want of jurisdiction;~~

17           ~~(7) by summary judgment or summary disposition;~~

18           ~~(8) by default judgment; or~~

19           ~~(9) when a party waives opportunity for a contested case hearing.]~~

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1       ~~[(b) In accordance with Occupations Code, §2301.154(c), the director is authorized to issue a~~  
2       ~~final order in a contested case filed prior to January 1, 2014, under Occupations Code, §2301.204 or~~  
3       ~~§§2301.601 – 2301.613.]~~

4       ~~[(c) In a contested case in which the board has delegated final order authority under subsections~~  
5       ~~(a) or (b) of this section, a motion for rehearing shall be filed with and decided by the final order~~  
6       ~~authority delegate.]~~

7  
8       ~~[215.59. Request for Oral Presentation.]~~

9       ~~[(a) At least 30 days prior to the date of a proposed board meeting during which the board may~~  
10       ~~review a contested case, department staff shall notify the parties regarding the opportunity to attend~~  
11       ~~and provide an oral presentation concerning a proposal for decision before the board. The department~~  
12       ~~will deliver notice in accordance with §215.30 of this title (relating to Filing of Documents), using the last~~  
13       ~~known address that the parties provided to the department.]~~

14       ~~[(b) If a party seeks to provide an oral presentation at the board meeting, it must submit a~~  
15       ~~written request for an oral presentation to the department's contact listed in the notice provided under~~  
16       ~~subsection (a) of this section and copy all other parties in accordance with §215.49 of this title (relating~~  
17       ~~to Service of Pleadings, Petitions, Briefs, and Other Documents) at least 14 days prior to the date of the~~  
18       ~~board meeting at which the party's contested case will be considered.]~~

19       ~~[(c) If there is more than one other party who was not adversely affected by the proposal for~~  
20       ~~decision, such parties may agree on the order of their presentations in lieu of the order prescribed under~~  
21       ~~§215.62(c) of this title (relating to Order of Presentations to the Board for Review of a Contested Case). If~~

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1 the parties who were not adversely affected by the proposal for decision do not timely provide the  
2 department and the other parties with notice under subsection (b) of this section regarding their agreed  
3 order of presentation, their order of presentation will be determined under §215.62(c) of this title.]

4 [(d) If a party timely submits a written request for an oral presentation, that party may make an  
5 oral presentation at the board meeting. If a party fails to timely submit a written request for an oral  
6 presentation, that party shall not make an oral presentation at the board meeting.]

7  
8 [215.60. Written Materials and Evidence.]

9 [(a) If a party seeks to provide written materials to the board, it must provide the written  
10 materials to the department and all other parties in accordance with §215.30 of this title (relating to  
11 Filing of Documents) and §215.49 of this title (relating to Service of Pleadings, Petitions, Briefs, and  
12 Other Documents) at least 21 days prior to the date of the board meeting. If a party fails to timely  
13 provide written materials to the department or any other party, the department shall not provide the  
14 written materials to the board and the party shall not provide the written materials to the board at the  
15 board meeting.]

16 [(b) For the purposes of this section, written materials are defined as language or images that  
17 are contained in the SOAH administrative record that are recorded in paper form. The language or  
18 images in the written materials must be taken without changes from the administrative record. Proposed  
19 final orders are not prohibited from being included in a party's written materials. Written materials shall  
20 be limited to evidence contained in the SOAH administrative record and consistent with the scope of the  
21 board's authority to take action under Government Code §2001.058(e) and Occupations Code, Chapter  
22 2301. However, any party may argue that the board should remand the case to SOAH.]

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1           ~~[(c) All information in the written materials shall include a cite to the SOAH administrative record~~  
2           ~~on all points to specifically identify where the information is located.]~~

3           ~~[(d) Written materials shall be single sided, double spaced, 8.5 inches by 11 inches, and at least~~  
4           ~~12-point type. Written materials are limited to 15 pages per party. If a party provides the department~~  
5           ~~with written materials that contain more pages than the maximum allowed, the department shall not~~  
6           ~~provide the written materials to the board and the party shall not provide the written materials to the~~  
7           ~~board at the board meeting.]~~

8  
9           ~~[216.61. Limiting Oral Presentation and Discussion to Evidence in the Administrative Record.]~~

10           ~~[(a) The parties to a contested case under review by the board shall limit their oral presentation~~  
11           ~~and discussion to evidence in the SOAH administrative record, and their oral presentation and discussion~~  
12           ~~shall be consistent with the scope of the board's authority to take action under Government Code~~  
13           ~~§2001.058(e) and Occupations Code, Chapter 2301. However, any party may argue that the board should~~  
14           ~~remand the case to SOAH.]~~

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

17  
18           ~~[215.62. Oral Presentations to the Board for Review of a Contested Case.]~~

19           ~~[(a) The department's staff will present the procedural history and summary of the contested~~  
20           ~~case.]~~

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1       ~~[(b) The party that is adversely affected has the opportunity to make its oral presentation first.~~

2       ~~However, the board chairman is authorized to determine the order of each party's oral presentation in~~

3       ~~the event of the following:~~

4               ~~(1) it is not clear which party is adversely affected;~~

5               ~~(2) it appears as though more than one party is adversely affected; or~~

6               ~~(3) different parties are adversely affected by different portions of the contested case~~

7       ~~under review.]~~

8       ~~[(c) The other party or parties who were not adversely affected then have an opportunity to~~

9       ~~make their oral presentation. If there is more than one other party, each party will have an opportunity~~

10       ~~to respond in alphabetical order based on the name of the party in the pleadings in the SOAH~~

11       ~~administrative record, except as stated otherwise in §215.59(c) of this title (relating to Request for Oral~~

12       ~~Presentation).]~~

13       ~~[(d) A party must timely comply with the requirements of §215.59 of this title before the party is~~

14       ~~authorized to provide an oral presentation to the board.]~~

15       ~~[(e) Each party is limited to the time allotted under §206.22(f) of this title (relating to Public~~

16       ~~Access to Board Meetings).]~~

17

18       ~~[215.63. Board Conduct and Discussion When Reviewing a Contested Case.]~~

19       ~~[(a) The board shall conduct its review of a contested case in compliance with Government Code~~

20       ~~Chapter 2001 and Occupations Code, Chapter 2301, including the limitations on changing a finding of~~

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~~fact or conclusion of law made by the administrative law judge at SOAH, and the prohibition on considering evidence outside of the SOAH administrative record.]~~

~~[(b) Board members may question any party or the department on any matter that is relevant to the proposal for decision; however, any questions shall be consistent with the scope of the board's authority to take action under Government Code §2001.058(e) and Occupations Code, Chapter 2301; any questions must be limited to evidence contained in the SOAH administrative record; and the communication must comply with §215.22 of this title (relating to Prohibited Communications). In addition, board members are authorized to ask questions regarding a request to remand the case to SOAH, including a remand to SOAH for further consideration of the evidence.]~~

~~[(c) Board members may use their industry expertise to help them understand the case and make effective decisions, consistent with the scope of the board's authority to take action under Government Code §2001.058(e) and Occupations Code, Chapter 2301. However, board members are not advocates for a particular industry. Board members are public servants who take an oath to preserve, protect, and defend the Constitution and laws of the United States and Texas.]~~

**SUBCHAPTER B[~~C~~]. LICENSES, GENERALLY****215.82. Duplicate [~~Licenses and~~]Plates and Stickers.**

~~[(a) A request for a duplicate license must:~~

~~(1) be made on a department approved form;~~

~~(2) state the reason for the duplicate license; and~~

~~(3) be accompanied by the required duplicate license fee.]~~



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1       ~~[(b) A license holder may receive one duplicate license at no charge if the license holder:~~

2               ~~(1) did not receive the original license; and~~

3               ~~(2) makes the request within 45 days of the date the license was mailed to the~~

4 ~~license holder.]~~

5       ~~[(c)]~~A license holder may receive a replacement standard~~[metal]~~-dealer's, converter's,

6 drive-a-way in-transit, or manufacturer's license plate or assigned sticker, as~~[if]~~ applicable, at no

7 charge if the license holder:

8               (1) did not receive the applicable standard~~[metal dealer's]~~ license plate or sticker; ~~[and]~~

9               (2) makes the request within 45 days of the date the applicable standard~~[metal dealer's]~~  
10 license plate or sticker was mailed to the license holder; and

11               (3) submits a request [on a department approved form] electronically in the system  
12 designated by the department for licensing.

13  
14 215.83. License Applications, Amendments, or Renewals.

15               (a) An application for a new license, license amendment, or license renewal filed with the  
16 department must be:

17                       (1) filed electronically in the department-designated licensing system on a form  
18 approved by the department;

19                       (2) completed by the applicant, license holder, or authorized representative who is  
20 an employee, a licensed attorney, or a certified public accountant;

21                       (3) accompanied by the required fee, paid by~~[check,]~~ credit card~~[,]~~ or by electronic  
22 funds transfer, drawn from an account held by the applicant or license holder, or drawn from a  
23 trust account of the applicant's attorney or certified public accountant; and

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(4) accompanied by proof of a surety bond, if required.

(b) An authorized representative of the applicant or license holder who files an application with the department on behalf of an applicant or license holder may be required to provide written proof of authority to act on behalf of the applicant or license holder.

(c) The department will not provide information regarding the status of an application, application deficiencies, or pending new license numbers to a person other than a person listed in subsection (a)(2) of this section, unless that person files a written request under Government Code, Chapter 552.

(d) Prior to the expiration of a license, a license holder or authorized representative must electronically file with the department a sufficient license renewal application. Failure to receive notice of license expiration from the department does not relieve the license holder from the responsibility to timely file a sufficient license renewal application. A license renewal application is timely filed if:

~~(1)] the department receives a sufficient license renewal application on or before the date the license expires[; or~~

~~(2) a legible postmark on the envelope transmitting the sufficient license renewal application clearly indicates that the license holder or authorized representative mailed the license renewal application on or before the date the license expires].~~

(e) An application for a new license, ~~or~~ license amendment, or license renewal filed with the department must be sufficient. An application is sufficient if the application:

(1) includes all information and documentation required by the department; and

(2)] is filed in accordance with subsection (a) of this section.

~~(f) [A license renewal application received by the department is sufficient if:~~

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1                   ~~(1) the renewal application form is completed by the license holder or authorized~~  
2 ~~representative of the license holder who is an employee, an unpaid agent, a licensed attorney, or~~  
3 ~~certified public accountant;~~

4                   ~~(2) accompanied by the required license renewal application fee payment; and~~

5                   ~~(3) accompanied by proof of a surety bond, if required.]~~

6           ~~[(g)]~~ If an applicant, license holder, or authorized representative does not provide the  
7 information or documentation required by the department, the department will issue a written  
8 notice of deficiency. The information or documentation requested in the written notice of  
9 deficiency must be received by the department within 20 calendar days of the date of the notice of  
10 deficiency, unless the department issues a written extension of time. If an applicant, license  
11 holder, or authorized representative fails to respond or fully comply with all deficiencies listed in  
12 the written notice of deficiency within the time prescribed by this subsection, the application will  
13 be deemed withdrawn and will be administratively closed.

14           ~~[(g)]~~~~[(h)]~~ The department will evaluate a sufficient application for a new license, license  
15 amendment, or license renewal in accordance with applicable rules and statutes to determine  
16 whether to approve or deny the application. If the department determines that there are grounds  
17 for denial of the application, the department may pursue denial of the application in accordance  
18 with Subchapter G~~[(j)]~~ of this chapter (relating to Administrative Sanctions).

19           ~~[(h)]~~~~[(i)]~~ The department will process an application for a new license, license amendment,  
20 or license renewal filed by a military service member, military spouse, or military veteran in  
21 accordance with Occupations Code, Chapter 55. A license holder who fails to timely file a sufficient  
22 application for a license renewal because that license holder was on active duty is exempt from

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1 any increased fee or penalty imposed by the department for failing to renew the license in a timely  
2 manner.

3 ~~(i)(4)~~ A military service member or military spouse may engage in a business or occupation  
4 for which a department issued license is required if the military service member or military spouse  
5 meets the requirements of Occupations Code, §55.0041 and this section. This section establishes  
6 requirements and procedures authorized or required by Occupations Code, Chapter 55, and does  
7 not modify or alter rights that may be provided under federal law.

8 (1) ~~[To meet the requirements of Occupations Code, §55.0041, a]~~ A military  
9 service member or military spouse must submit to the department:

10 (A) notice of the military service member or military spouse's intent  
11 to engage in a business or occupation in Texas for which a department issued license is required;

12 (B) proof of the military service member or military spouse's being  
13 stationed [residency] in Texas and a copy of the military service member or military spouse's  
14 military identification card~~[, as required by Occupations Code, §55.0041(b)(2)]~~; and

15 (C) documentation demonstrating that the military service member or  
16 military spouse is licensed and in good standing in another jurisdiction for the relevant business or  
17 occupation.

18 (2) Upon receipt of the notice and documentation required by paragraphs  
19 (1)(B) and (1)(C) of this subsection, the department shall:

20 (A) confirm with the other licensing jurisdiction that the military  
21 service member or military spouse is currently licensed and in good standing for the relevant  
22 business or occupation; and

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(B) conduct a comparison of the other jurisdiction's license requirements, statutes, and rules with the department's licensing requirements to determine if the requirements are substantially equivalent.

(3) If the department confirms that a military service member or military spouse is currently licensed in good standing in another jurisdiction with substantially equivalent licensing requirements, the department shall~~may~~ issue a license to the military service member or military spouse for the relevant business or occupation within 30 days. The license is subject to requirements in Chapter 215 of this title and Occupations Code, Chapter 2301 in the same manner as a license issued under the standard application process, unless modified or exempted under Occupations Code, Chapter 55.

~~(j)~~~~(k)~~ A license holder who timely files a sufficient license renewal application in accordance with subsection (d) of this section may continue to operate under the expired license until the license renewal application is determined in accordance with Government Code §2001.054.

~~(k)~~~~(l)~~ A license holder who fails to timely file a sufficient license renewal application in accordance with subsection (d) of this section is not authorized to continue licensed activities after the date the license expires. A license holder may dispute a decision that a license renewal application was not timely or sufficient by submitting evidence to the department demonstrating that the license renewal application was timely and sufficient. Such evidence must be received by the department within 15~~10 calendar~~ days of the date the department issues notice that a timely or sufficient license renewal application was not received by the department.

~~(l)~~~~(m)~~ The department shall accept a late license renewal application up to 90 days after the date the license expires. In accordance with subsection ~~(k)~~~~(l)~~ of this section, the license

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holder is not authorized to continue licensed activities after the date the license expires until the department approves the late license renewal application. If the department grants a license renewal under this section, the licensing period begins on the date the department issues the renewed license. The license holder may resume licensed activities upon receipt of the department's written verification or upon receipt of the renewed license.

(m)~~(n)~~ If the department has not received a late license renewal application within 90 days after the date the license expires, the department will close the license. A person must apply for and receive a new license before that person is authorized to resume activities requiring a license.

(n)~~(o)~~ A ~~metal~~ dealer's standard license plate issued in accordance with Transportation Code, Chapter 503, Subchapter C expires on the date the associated license expires, is canceled, or when a license renewal application is determined, whichever is later.

## 215.84. Brokering, New Motor Vehicles.

(a) Unless excluded from the definition of "Broker" in Occupations Code, §2301.002, a person may not act, offer to act, or claim to be a broker.

(b) For purposes of this ~~sub~~chapter, the phrase "arranges or offers to arrange a transaction," as used in the definition of broker in Occupations Code, §2301.002, includes the practice of arranging or offering to arrange a transaction involving the sale of a new motor vehicle for a fee, commission, or other valuable consideration. Advertising is not acting as a broker~~ing~~, provided the person's business primarily ~~is~~includes the business of broadcasting, printing, publishing, or advertising for others in their own names.

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1           ~~(c)(4)~~ A buyer referral service, program, plan, club, or any other entity that accepts a fee  
2   for arranging a transaction involving the sale of a new motor vehicle is a broker. The payment of a  
3   fee to such entity is aiding and abetting brokering. However, a referral service, program, plan, club,  
4   or other entity that forwards a referral to a franchised dealership may lawfully operate in a  
5   manner that includes all of the following conditions:[-]

6                   (1) There is no exclusive market area offered to a dealer by the program. All dealers  
7   are allowed to participate in the program on equal terms.

8                   (2) Participation by a dealer in the program is not restricted by conditions, such as  
9   limiting the number of line-makes or discrimination by size of dealership or location. The total  
10   number of participants in the program may be restricted if the program is offered to all dealers at  
11   the same time, with no regard to the line-make.

12                  (3) All participants pay the same fee for participation in the program. The program  
13   fee shall be a weekly, monthly, or annual fee, regardless of the size, location, or line-makes sold by  
14   the franchised dealer.

15                  (4) A person is not to be charged a fee on a per referral fee basis or any other basis  
16   that could be considered a transaction-related fee.

17                  (5) The program does not set or suggest to the dealer any price of a motor vehicle  
18   or a trade-in.

19                  (6) The program does not advertise or promote its plan in a manner that implies  
20   that the buyer, as a customer of that program, receives a special discounted price that cannot be  
21   obtained unless the customer is referred through that program.

22                  (7) A program must comply with Subchapter F of this chapter (related to  
23   Advertising).

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(d) ~~[(c) Subsections (a)–(c) of t]~~ This section does not apply to a ~~[ny]~~ person ~~[or entity]~~ who is not a ~~[exempt from the]~~ broker as defined ~~[definition]~~ in Occupations Code, §2301.002.

~~[(d) All programs must comply with Subchapter H of this chapter (relating to Advertising).]~~

## 215.85. Brokering, Used Motor Vehicles.

(a) Transportation Code, §503.021 prohibits a person from engaging in business as a dealer, directly or indirectly, including by consignment without a GDN. Except as provided by this section, "directly or indirectly" includes the practice of arranging or offering to arrange a transaction involving the sale of a used motor vehicle for a fee, commission, or other valuable consideration. A person who is a bona fide employee of a dealer holding a GDN and acts for the dealer is not a broker for the purposes of this section.

(b) A buyer referral service, program, plan, club, or any other entity that accepts a fee for arranging a transaction involving the sale of a used motor vehicle is required to meet the requirements for and obtain a GDN, unless the referral service, program, plan, or club is operated in the following manner: [:-]

(1) There is no exclusive market area offered to a dealer by the program. All dealers are allowed to participate in the program on equal terms.

(2) Participation by a dealer in the program is not restricted by conditions, such as limiting the number of line-makes or discrimination by size of dealer ~~[ship]~~ or location. The total number of participants in the program may be restricted if the program is offered to all dealers at the same time, with no regard to the line-make.



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(3) All participants pay the same fee for participation in the program. The program fee shall be a weekly, monthly, or annual fee, regardless of the size, location, or line-makes sold by the dealer.

(4) A person is not to be charged a fee on a per referral fee basis or any other basis that could be considered a transaction-related fee.

(5) The program does not set or suggest to the dealer any price of a motor vehicle or a trade-in.

(6) The program does not advertise or promote its plan in a manner that implies that the buyer, as a customer of that program, receives a special discounted price that cannot be obtained unless the customer is referred through that program.

(7) A program complies with Subchapter F of this chapter (relating to Advertising).

~~(c) [All programs must comply with Subchapter H of this chapter (relating to Advertising)].~~

~~(d) A [licensed] dealer holding a GDN pursuant to Transportation Code, §503.029(a)(6)(B), may pay a referral fee in cash or value to an individual who has purchased a vehicle from the [licensed] dealer within the four-year period preceding the referral. The fee may be paid contingent upon either the new referred individual:~~

~~(1) purchasing a vehicle from the [independent motor vehicle] dealer; or~~

~~(2) the referral of a new potential purchaser.~~

215.87. License and Standard~~[Metal Dealer's]~~ License Plate Terms and Fees.

(a) Except as provided by other law, the term of a license or standard~~[metal dealer's-]~~ license plate issued by the department to a dealer, converter, drive-a-way operator, distributor, or

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1 manufacturer under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 is two  
2 years.

3 (b) A standard~~[metal dealer's]~~ license plate issued by the department expires on the date  
4 the associated license expires or is canceled.

5 (c) The fee for a license or standard~~[metal dealer's]~~ license plate is computed by  
6 multiplying the applicable annual fee by the number of years of the license term. The entire[  
7 ~~amount of the~~] fee including any tax owed under Tax Code §152.027 is due at the time of  
8 application for the license or license renewal.

9 (d) A dealer may apply for a personalized prestige plate issued under Transportation Code  
10 §503.0615 by completing a department form, providing a copy of a department-issued license, and  
11 submitting payment to a county tax assessor-collector. A personalized prestige plate may be  
12 renewed in an electronic system designated by the department.

13  
14 215.89. Fitness.

15 (a) In determining a person's fitness for a license issued or to be issued by the department  
16 under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, the board~~[or~~  
17 ~~department]~~ will consider:

- 18 (1) the requirements of Occupations Code, Chapter 53;  
19 (2) the provisions of Occupations Code, §2301.651 and Transportation Code  
20 §503.034;  
21 (3) any specific statutory licensing criteria or requirements;  
22 (4) mitigating factors; and

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1 (5) other evidence of a person's fitness, as allowed by law, including the standards  
2 identified in subsection (b) of this section.

3 (b) The board~~[or department]~~ may determine that a person is unfit to perform the duties  
4 and discharge the responsibilities of a license holder and may, following notice and an opportunity  
5 for hearing, deny a person's license application or revoke or suspend a license if the person:

6 (1) fails to meet or maintain the qualifications and requirements of licensure;

7 (2) is convicted, or considered convicted under Occupations Code §53.021(d), by  
8 any local, state, federal, or foreign authority of an offense that directly relates to the duties or  
9 responsibilities of the licensed occupation as described in §211.3 of this title (relating to Criminal  
10 Offense Guidelines) or is convicted, or considered convicted under Occupations Code §53.021(d),  
11 of an offense that is independently disqualifying under Occupations Code §53.021;

12 (3) omits information or provides false, misleading, or incomplete information on  
13 an initial application, renewal application, or application attachment, for a license or other  
14 authorization issued by the department or by any local, state, or federal regulatory authority;

15 (4) is found to have violated an administrative or regulatory requirement based on  
16 action taken on a license, permit, or other authorization, including disciplinary action, revocation,  
17 suspension, denial, corrective action, cease and desist order, or assessment of a civil penalty,  
18 administrative fine, fee, or similar assessment, by the board, department, or any local, state, or  
19 federal regulatory authority;

20 (5) is insolvent or fails to obtain or maintain financial resources sufficient to meet  
21 the financial obligations of the license holder;

22 (6) is a corporation or other legal entity that fails to maintain its charter, certificate,  
23 registration, or other authority to conduct business in Texas;

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(7) is assessed a civil penalty, administrative fine, fee, or similar assessment, by the board, department, or a local, state, or federal regulatory authority, for violation of a requirement governing or impacting the distribution or sale of a vehicle or a motor vehicle, or the acquisition, sale, repair, rebuild, reconstruction, or other dealing of a salvage motor vehicle or nonrepairable motor vehicle, and fails to comply with the terms of a final order or fails to pay the penalty pursuant to the terms of a final order;

(8) was or is a person described in §211.2 of this title (relating to Application of Subchapter) whose actions or omissions could be considered unfit, who is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment;

(9) has an ownership, organizational, managerial, or other business arrangement, that would allow a person the power to direct or cause the direction of the management, policies, and activities, of an applicant or license holder, whether directly or indirectly, when the person could be considered unfit, ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority, has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the board, department, or any local, state, or federal regulatory authority;

(10) is found in a ~~an~~ final order issued after~~[through]~~ a contested case hearing to be unfit or acting in a manner detrimental to the system of distribution or sale of motor vehicles in Texas, the economy of the state, the public interest, or the welfare of Texas residents.

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**SUBCHAPTER C[D]. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS****215.101. Purpose and Scope.**

This subchapter implements Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1001[1000] – 1005, and applies to franchised dealers, manufacturers, distributors, and converters.

**215.102. Application Requirements.**

(a) No person may engage in business, serve in the capacity of, or act as a manufacturer, distributor, converter, or franchised dealer in Texas unless that person holds a license.

(b) A license application shall be on a form prescribed by the department and properly completed by the applicant. A license application shall include all required information, supporting documents, and fees and shall be submitted to the department electronically in a system designated by the department for licensing.

(c) A license holder renewing or amending its license must verify current license information, provide related information and documents for any new license requirements or changes to the license, and pay required fees including any outstanding civil penalties owed the department under a final order.

(d) An applicant for a new license must register for an account in the department-designated licensing system by selecting the licensing system icon on the dealer page of the department website. An applicant must designate the account administrator and provide the name and email address for that person, and provide the business telephone number, name, business type, and social security number or

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1 employer identification number, as applicable. The applicant's licensing account administrator must be  
2 an owner, officer, manager, or bona fide employee.

3 (e) Once registered, an applicant may apply for a new license and must provide the  
4 following:

5 (1) Required information:

6 (A) type of license requested;

7 (B) business information, including the name, physical and mailing  
8 addresses, telephone number, Secretary of State file number (if applicable), and website address  
9 (if applicable);

10 (C) contact name, email address, and telephone number of the person  
11 submitting the application;

12 (D) contact name, email address, and telephone number of a person who  
13 can provide information about business operations and the motor vehicle products or services  
14 offered;

15 (E) the name, social security number, date of birth, identity document  
16 information, and ownership percentage for each owner, partner, member, beneficiary, or principal  
17 if the applicant is not a publicly traded company;

18 (F) the name, social security number, date of birth, and identity document  
19 information for each officer, director, manager, trustee, or other representative authorized to act  
20 on behalf of the applicant if the applicant is owned in full or in part by a legal entity;

21 (G) the name, employer identification number, ownership percentage, and  
22 non-profit or publicly traded status for each legal entity that owns the applicant in full or in part;

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1                   (H) criminal history record information under the laws of Texas, another  
2 state in the United States, the United States, and any foreign jurisdiction for each person listed in  
3 the application, including offense description, date, and location;

4                   (I) military service status;

5                   (J) licensing history required to evaluate fitness for licensure under §215.89  
6 of this title (relating to Fitness);

7                   (K) if applying for a manufacturer, distributor, or converter license:

8                         (i) financial resources, business integrity and experience, facilities  
9 and personnel for serving franchised dealers;

10                        (ii) a description of the business model or business process and  
11 product and services used or offered sufficient to allow the department to determine if the license  
12 type applied for is appropriate under Texas law; and

13                        (iii) number of standard license plates requested.

14                   (L) if applying for a manufacturer or distributor license:

15                        (i) if the applicant or any entity controlled by the applicant owns an  
16 interest in a Texas motor vehicle dealer or dealership, controls a Texas dealer or dealership, or acts  
17 in the capacity of a Texas dealer;

18                        (ii) a statement regarding the manufacturer's compliance with  
19 Occupations Code Chapter 2301, Subchapter I and §§2301.451-2301.476;

20                        (iii) if a franchise agreement for each line-make being applied for  
21 exists which states the obligations of a Texas franchised dealer to the applicant and the obligations  
22 of the applicant to the Texas franchised dealer; and

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1                                    (iv) the terms of the contract under which the distributor will act for  
2 the manufacturer.

3                                    (M) if applying for a manufacturer license, the line-make information  
4 including the world manufacturer identifier assigned by the National Highway Traffic Safety  
5 Administration, line-make name, and vehicle type;

6                                    (N) if applying for a distributor license:  
7                                    (i) the manufacturer for whom the distributor will act;  
8                                    (ii) whether the manufacturer is licensed in Texas;  
9                                    (iii) the person in this state who is responsible for compliance with  
10 the warranty covering the motor vehicles to be sold; and  
11                                    (iv) whether a franchise agreement for each line-make being applied  
12 for exists which states the obligations of a Texas franchised dealer to the applicant and the  
13 obligations of the applicant to the Texas franchised dealer.

14                                    (O) if applying for a converter license:  
15                                    (i) a name and description for each conversion package; and  
16                                    (ii) the manufacturer or distributor and line-make of the underlying  
17 new motor vehicle chassis to be converted.

18                                    (P) if applying for a franchised dealer license:  
19                                    (i) reason for the new application;  
20                                    (ii) dealership location on a system-generated map;  
21                                    (iii) if the dealership is under construction and expected completion  
22 date;



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1 (iv) information about the performance of sales or warranty services

2 at the location; and

3 (v) information necessary to obtain a franchised dealer GDN under

4 §215.133 of this title (relating to General Distinguishing Number).

5 (Q) signed Certificate of Responsibility, which is a form provided by the

6 department; and

7 (R) any other information required by the department to evaluate the

8 application under current law and board rules.

9 (2) A legible and accurate electronic image of each applicable required document:

10 (A) the certificate of filing, certificate of incorporation, or certificate of

11 registration on file with the Secretary of State, if applicable;

12 (B) each assumed name certificate on file with the Secretary of State or

13 county clerk;

14 (C) at least one of the following unexpired identity documents for each

15 natural person listed in the application:

16 (i) driver license;

17 (ii) Texas Identification Card issued by the Texas Department of

18 Public Safety under Transportation Code, Chapter 521, Subchapter E;

19 (iii) license to carry a handgun issued by the Texas Department of

20 Public Safety under Government Code, Chapter 411, Subchapter H;

21 (iv) passport; or

22 (v) United States armed forces identification.

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1                   (D) if applying for a manufacturer, distributor, or converter license, a  
2 written description of the business model or business process and brochures, photos, or other  
3 documents describing products and services sufficient to allow the department to identify a motor  
4 vehicle product type and the appropriate license required under Texas law;

5                   (E) if applying for a manufacturer or distributor license:

6                   (i) a list of each franchised dealer in Texas including the dealer's  
7 name and physical address, or if offers for sale or sales of motor vehicle in Texas will solely be over  
8 the internet, a list of each out-of-state dealer authorized by the manufacturer or distributor to sell  
9 a product online to a Texas resident including the dealer's name, physical address, and dealer  
10 license number issued by the state in which the dealer is located; and

11                   (ii) a list of motor vehicle product line-makes manufactured or  
12 distributed for sale;

13                   (F) if applying for a manufacturer license:

14                   (i) a list of authorized distributors or representatives; and

15                   (ii) a franchised dealer's preparation and delivery obligations before  
16 delivery of a new vehicle to a retail purchaser and the schedule of compensation to be paid to the  
17 franchised dealer;

18                   (G) if applying for a distributor license, either:

19                   (i) a copy of the distribution agreement between a manufacturer  
20 and distributor; or

21                   (ii) a completed department-provided questionnaire containing the  
22 information required under Occupations Code, §2301.260, and signed by the applicant as true and  
23 complete.

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1                                (H) if applying for a franchise dealer license, pages of the executed  
2 franchise agreement containing at minimum the following:

3                                (i) the legal business name of each party;  
4                                (ii) authorized signature of each party;  
5                                (iii) authorized dealership location;  
6                                (iv) list of motor vehicle line-makes and vehicle types to be sold or  
7 serviced; and

8                                (v) a department Evidence of Relocation form signed by the  
9 manufacturer or distributor (if applicable); and

10                              (I) any other documents required by the department to evaluate the  
11 application under current law and board rules.

12                              (3) Required fees:

13                              (A) the license fee as prescribed by law; and

14                              (B) the fee as prescribed by law for each plate requested by the applicant.

15                              (f) An applicant operating under a name other than the applicant shall use the name under  
16 which the applicant is authorized to do business, as filed with the Secretary of State or county  
17 clerk, and the assumed name of such legal entity shall be recorded by the applicant on the  
18 application using the letters "DBA." The applicant may not use a name or assumed name that may  
19 be confused with or is similar to that of a governmental entity or that is otherwise deceptive or  
20 misleading to the public.

21                              (g) A manufacturer or distributor may add a new line-make to an existing license during the  
22 license period by submitting a license amendment application and providing brochures, photos, or  
23 other documents describing the new line-make sufficient to allow the department to identify the

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1 line-make and vehicle product type. A license amendment to add a line-make to a manufacturer or  
2 distributor license must be approved by the department before the new line-make may be added  
3 to a franchised dealer's license.

## 215.103. Service-only Facility.

6 (a) A service-only facility is a location occupied and operated by a franchised dealer that is  
7 a completely separate, noncontiguous site, from the franchised dealer's new motor vehicle sales  
8 and service or sales only location, where the franchised dealer performs ~~[will only perform]~~  
9 warranty~~[-and nonwarranty]~~ repair services and not new motor vehicle sales. ~~[Except as allowed in~~  
10 ~~subsection (d) of this section, warranty repair services may only be performed at either a licensed~~  
11 ~~dealership or a licensed service-only facility.]~~

12 (b) A franchised dealer must obtain a license to operate a service-only facility. A dealer may  
13 not obtain a service-only facility license to service a ~~[particular-]~~line-make of new motor vehicles,  
14 unless that dealer is franchised and licensed to sell that line-make.

15 (c) A service-only facility is a dealership subject to protest under Occupations Code,  
16 Chapter 2301.

17 (d) Upon the manufacturer's or distributor's prior written approval, which cannot be  
18 unreasonably withheld,~~[-only]~~ a franchised dealer of the manufacturer or distributor may contract  
19 with another person as a subcontractor to perform warranty repair services that the dealer is  
20 authorized to perform under a franchise agreement with a manufacturer or distributor. Payment  
21 shall be made by the franchised dealer to the subcontractor and not by the manufacturer or  
22 distributor to the subcontractor.

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(e) A person with whom a franchised dealer contracts to perform warranty repair services is not eligible to obtain a service-only facility license and may not advertise the performance of warranty repair services in any manner to the public.

## 215.104. Changes to Franchised Dealer's License.

(a) In accordance with Occupations Code, §2301.356, a franchised dealer must file an application to amend the franchised dealer's license ~~[in order]~~ to request~~[-inclusion-]~~ of an additional line-make at the dealer's currently licensed showroom. The amendment application must be filed electronically in a system designated by the department for licensing.

(1) In accordance with §215.110 of this title (relating to Evidence of Franchise), the franchised dealer must attach to the amendment application a legible and accurate electronic image[copy] of:

- (A) the executed franchise agreement;
- (B) the required excerpt from the executed franchise agreement; or
- (C) an evidence of franchise form completed by the manufacturer, distributor, or representative.

(2) The amendment application for an additional franchise at the showroom is considered an original application and is subject to protest, in accordance with Occupations Code, Chapter 2301, this chapter, and Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

(b) A franchised dealer may propose to sell or assign to another any interest in the licensed entity, whether a corporation or otherwise, provided the physical location of the licensed entity remains the same.

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(1) The franchised dealer shall notify the department in writing within 10 days of the sale or assignment of interest by filing an application to amend the franchised dealer's license electronically in a system designated by the department for licensing.

(2) If the sale or assignment of any portion of the business results in a change of business entity, then the purchasing entity or assignee must apply for and obtain a new license in the name of the new business entity.

(3) A publicly-held corporation must file an amendment application~~[needs only to inform the department of a change in ownership]~~ if one person or entity acquires 10% or greater interest in the licensed entity.

(c) A franchised dealer is required to file an amendment application electronically in a system designated by the department for licensing within 10 days of a license change, including:

(1) deletion of a line-make from the dealer's license;

(2) a change of assumed name on file with the Office of the Secretary of State or county clerk;

(3) a change of mailing address;

(4) a change of telephone number; or

(5) ~~[a change of facsimile number; or~~

~~(6)]~~a change of email address.

(d) A franchised dealer is required to file a business entity amendment application electronically in a system designated by the department for licensing within 10 days of an entity change, including:

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1 (1) a change in management, dealer principal, or change of other person who  
2 oversees~~[is in charge of]~~ a franchised dealer's business activities, including a managing partner,  
3 officer, director of a corporation, or similar person; or

4 (2) a change of legal entity name on file with the Office of the Secretary of State.

5 (e) If a franchised~~[licensed new motor vehicle]~~ dealer changes or converts from one type of  
6 business entity to another type of business entity without changing ownership of the dealership,  
7 the submission of a franchise agreement in the name of the new entity is not required in  
8 conjunction with an amendment application. The franchise agreement on file with the department  
9 prior to the change or conversion of the dealer's business entity type applies to the successor  
10 entity until the parties agree to replace the franchise agreement. This subsection does not apply to  
11 a sole proprietorship or general partnership.

12 (f) If a franchised dealer adopts a plan of conversion under a state or federal law that  
13 allows one legal entity to be converted into another legal entity, only an amendment  
14 application~~[to amend the license]~~ is necessary to be filed with the department. The franchise  
15 agreement on file with the department continues to apply to the converted entity. If a license  
16 holder becomes another legal entity by any means other than by conversion, a new application is  
17 required, subject to subsection (e) of this section.

18 (g) In addition to obtaining permission from the manufacturer or distributor, a franchised  
19 dealer shall obtain department approval prior to opening a supplemental location or relocating an  
20 existing location by filing an amendment application electronically in a system designated by the  
21 department for licensing. A franchised dealer must notify the department electronically in a  
22 system designated by the department for licensing when closing an existing location.

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## 215.105. Notification of License Application; Protest Requirements.

(a) The provisions of this section are not applicable to an application filed with the department for a franchised dealer license as a result of the purchase or transfer of an existing entity holding a current franchised dealer's license that does not involve a physical relocation of the purchased or transferred line-makes.

(b) Upon receipt of an application for a franchised~~new motor vehicle~~ dealer's license, including an application filed with the department by reason of the relocation of an existing dealership, the department shall give notice of the filing of the application to each franchised dealer that may have standing to protest the application.

(c) If it appears to the department that there are no franchised dealers with standing to protest, then no notice shall be given.

(d) A person holding a franchised dealer's license for the sale of the same line-make of a new motor vehicle as proposed for sale in the subject application and that has standing to protest the application may file with the department a notice of protest opposing the granting of a license by timely filing a protest electronically in the system designated by the department for licensing, and paying the required fee.

(e) A franchised dealer that wishes to protest the application shall give notice in accordance with Occupations Code, Chapter 2301.

(1) The notice of protest shall be in writing and shall be signed by an authorized officer or other official authorized to sign on behalf of the protesting dealer filing the notice.



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(2) The notice of protest shall state the statutory basis upon which the protest is made and assert how the protesting dealer meets the standing requirements under §215.119 of this title (relating to Standing to Protest) to protest the application.

(3) The notice of protest shall state that the protest is not made for purposes of delay or for any other purpose except for justifiable cause.

(4) If a protest is filed against an application for the establishment of a dealership or for addition of a line-make at an existing dealership, the notice of protest shall state under which provision of Occupations Code, Chapter 2301 the protest is made.

## 215.106. Time for Filing Protest.

(a) A notice of protest must be:

(1) received by the department not later than 5:00 p.m. Central ~~[Standard ]~~Time (CST or CDT, as applicable) on the date 15 days from the date of mailing of the department's notification to the license holder of the filing of the application;

(2) filed in ~~[with the department by United States mail, facsimile, hand delivery, or through]~~ the department's designated electronic filing system ~~[when available; however, a notice of protest may not be filed by email];~~ and

(3) ~~[accompanied by the required filing fee]~~ submitted with the filing fee paid. ~~[If the filing fee does not accompany the notice of protest, the fee must be received by the department not later than 5:00 p.m. CST on the date 20 days from the date of mailing of the department's notification to the license holder of the filing of the application.]~~

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(b) The department will reject a notice of protest if:

(1) the complete notice of protest is not filed within 15 days from the date of mailing of the department's notification to the license holder of the filing of the application; or

(2) the required filing fee is not paid when the protest is submitted in the department's designated electronic filing system or is later dishonored~~[remitted within 20 days from the date of mailing of the department's notification to the license holder of the filing of the application]~~.

215.108. Addition or Relocation of Line-make.

An application to amend an existing franchised~~[new motor vehicle]~~ dealer's license for the addition of another line-make at the existing dealership or for the relocation of a line-make to the existing dealership shall be deemed an "application to establish a dealership" insofar as the line-make to be added is concerned, and shall be subject to the provisions of §215.105 of this title (relating to Notification of License Application; Protest Requirements) and §215.106 of this title (relating to Time for Filing Protest).

215.109. Replacement Dealership.

An application for a franchised~~[new motor vehicle]~~ dealer's license for a dealership intended as a replacement for a previously existing dealership shall be deemed an application for a "replacement dealership" required to be established in accordance with Occupations Code, §2301.453 and shall not be subject to protest under the provisions of §215.105 of this title (relating to Notification of License Application; Protest Requirements), provided that:

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(1) the application states that the applicant is intended as a replacement dealership and identifies the prior dealership to be replaced;

(2) the manufacturer or distributor of the line-make gives notice to the department and to other dealers franchised for the same line-make that meet the provisions of Occupations Code, §2301.652(b) and (c);

(3) the notice under paragraph (2) of this subsection is given within 60 days following the closing of the prior dealership;

(4) the application is filed electronically in the system designated by the department for licensing, ~~[with the department]~~ not later than one year following the closing of the prior dealership; and

(5) the location of the applicant's proposed dealership is not more than two miles from the location of the prior dealership.

215.110. Evidence of Franchise.

(a) Upon application for a franchised~~[new motor vehicle]~~ dealer's license or an amendment of an existing franchised~~[new motor vehicle]~~ dealer's license to add a line-make, the applicant must submit a legible and accurate electronic image~~[photocopy]~~ of the ~~[pages of the]~~ franchise agreement~~[(s)]~~ pages that reflect:

(1) the parties~~[ to the agreement(s)]~~,

(2) the authorized signatures of the parties~~[ to the agreement(s)]~~, ~~[and]~~

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1                   (3) each line-make listed in the application, and

2                   (4) the address of the franchised dealership's physical location.

3                   (b) To meet this requirement temporarily for the purpose of application processing, a form  
4 prescribed by the department and completed by the manufacturer or distributor may be electronically  
5 submitted with the application in lieu of the information described in this ~~[sub]~~ section.

6                   (c) The applicant must submit the required ~~[photocopies of the]~~ franchise agreement~~[(s)]~~ pages  
7 described in this ~~[sub]~~ section immediately upon the applicant's receipt of the franchise agreement~~[(s)]~~  
8 as the department will not issue a license without verifying that the franchise agreement has been  
9 executed.

10                  (d)~~[(b)]~~ Upon application to relocate a franchised~~[new motor vehicle]~~ dealership, the franchised  
11 dealer applicant must submit a form prescribed by the department and completed by the manufacturer  
12 or distributor that identifies the license holder and the new franchised dealership location.

13  
14 215.111. Notice of Termination or Discontinuance of Franchise and Time for Filing Protest.

15                  (a) A manufacturer or distributor must give notice of termination or discontinuance of a dealer's  
16 franchise to a franchised dealer and the department ~~[shall be given by a manufacturer or distributor]~~ in  
17 accordance with Occupations Code, §2301.453~~[not less than 60 days prior to the effective date of the~~  
18 ~~franchise termination or discontinuance]~~.

19                  (b) A dealer must file a written notice of protest of the franchise termination or discontinuance~~[~~  
20 ~~by a dealer]~~ pursuant to Occupations Code, §2301.453 ~~[shall be in writing and shall be filed with the~~  
21 ~~department]~~ electronically in the system designated by the department for licensing, prior to the

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1 effective date of the franchise termination or discontinuance stated in the notice from the manufacturer  
2 or distributor.

3  
4 ~~[215.112. Motor Home Show Limitations and Restrictions]~~

5 ~~[(a) Applicability. This rule implements Occupations Code, §2301.358 and is expressly limited to~~  
6 ~~motor home shows that require department approval in accordance with subsection (b) of this section.]~~

7 ~~[(b) Show approval required. Without written approval by the department, a person may not~~  
8 ~~promote or conduct a show involving a new motor home that will be sold or offered for sale.]~~

9 ~~[(c) Show requirements. The department may approve a motor home show in accordance with~~  
10 ~~this section if the show:~~

11 ~~(1) does not exceed six consecutive days;~~

12 ~~(2) is not conducted within 90 days of a previous show in the same county; and~~

13 ~~(3) complies with Occupations Code, Chapter 2301; Transportation Code, Chapters 503~~  
14 ~~and 1000—1005; and board rules.]~~

15 ~~[(d) Additional motor home shows. The department may authorize additional motor home~~  
16 ~~shows in any county upon a showing of good cause by the promoter for waiver from the show~~  
17 ~~requirements of subsection (c) of this section.]~~

18 ~~[(e) Show approval requirements. For purposes of this section, the promoter or coordinator of a~~  
19 ~~motor home show must submit an application to the department. The application must:~~

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1                   ~~(1) be completed and submitted on a form and in the manner prescribed by the~~  
2   ~~department;~~

3                   ~~(2) be accompanied by all required attachments;~~

4                   ~~(3) be submitted no less than 30 days and no more than 90 days before the proposed~~  
5   ~~show date;~~

6                   ~~(4) be accompanied by a \$25,000 surety bond if the promoter or coordinator of the~~  
7   ~~show is not a license holder, an association of license holders, or an organization of license holders;~~

8                   ~~(5) affirm that at least three franchised dealers of new motor homes, each participating~~  
9   ~~with at least one different line make, will participate in the show;~~

10                  ~~(6) affirm that each franchised dealer that participates in the show holds a valid~~  
11   ~~franchised dealer's license issued by the department for each motor home line make that the franchised~~  
12   ~~dealer will participate with in the show; and~~

13                  ~~(7) designate either Saturday or Sunday for suspension of the sale of any motor home, in~~  
14   ~~accordance with Transportation Code, Chapter 728, Subchapter A, when the show is conducted over a~~  
15   ~~consecutive Saturday and Sunday.]~~

16                  ~~[(f) Dealer participation approval required. Without written approval by the department, a~~  
17   ~~motor home dealer may not participate in a show of new motor homes, where a motor home will be~~  
18   ~~sold or offered for sale.]~~

19                  ~~[(g) Dealer participation requirements. A dealer of new motor homes requesting approval to~~  
20   ~~participate in a show must submit a sufficient application to the department. To be sufficient, the~~

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1 application must be on a form prescribed by the department and accompanied by all required  
2 attachments.]

3 [(h) Located within 70 miles of show site. For the purpose of this section, a franchised dealer  
4 located within 70 miles of the site of the proposed show has a right equal to any other franchised dealer  
5 that is also located within 70 miles of the show site to participate in the show with a like-line motor  
6 home.]

7 [(i) Located more than 70 miles from show site. For the purpose of this section, a franchised  
8 dealer that is located more than 70 miles from the proposed show site does not have a right to  
9 participate in the show; however, the department may approve that franchised dealer to participate in  
10 the motor home show, if:

11 (1) there is no franchised dealer of a like-line motor home located within 70 miles of the  
12 proposed show site; or

13 (2) the franchised dealer obtains a written waiver from each like-line franchised motor  
14 home dealer located within 70 miles of the proposed show site.]

15 [(j) Suspension of sales. For the purpose of this section and pursuant to Transportation Code,  
16 Chapter 728, Subchapter A, when a show is conducted over a consecutive Saturday and Sunday, all  
17 franchised dealers of motor homes will suspend sales on the same Saturday or Sunday, as designated by  
18 the show promoter or coordinator. On the day sales are suspended, a motor home dealer:

19 (1) may quote a price;

20 (2) may open and attend to the motor home product;

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(3) may not sell, offer to sell, negotiate a price, or enter into a contract or letter of intention to contract for the sale of the motor home; and

(4) is not required to remove or cover the suggested retail price the manufacturer may have affixed to the motor home.]

215.113. Manufacturer Ownership of Franchised Dealer; Good Cause Extension; Dealer Development.

(a) In the absence of a showing of good cause, an application for a franchised~~[new motor vehicle]~~ dealer's license of which a manufacturer or distributor owns any interest in or has control of the dealership entity must be submitted to the department electronically in the system designated by the department for licensing no later than 30 days before:

(1) the opening of the dealership;

(2) close of the buy-sell agreement; or

(3) the expiration of the current license.

(b) If a manufacturer or distributor applies for a franchised~~[new motor vehicle]~~ dealer's license of which the manufacturer or distributor holds an ownership interest in or has control of the dealership entity in accordance with Occupations Code, §2301.476(d) - (f), the license application must contain a sworn statement from the manufacturer or distributor that the dealership was purchased from a franchised dealer and is for sale at a reasonable price and under reasonable terms and conditions, and that the manufacturer or distributor intends to sell the dealership to a person not controlled or owned by the manufacturer or distributor within 12 months of acquiring the dealership, except as provided by subsection (h) of this section.



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(c) A request for an extension of the initial 12-month period for manufacturer or distributor ownership or control of a franchised~~[new motor vehicle]~~ dealership, in accordance with Occupations Code, §2301.476(e), must be submitted to the department in accordance with subsection (a) of this section along with a sufficient application to renew the new motor vehicle dealer's license. The request must contain a detailed explanation, including appropriate documentary support, to show the manufacturer's or distributor's good cause for failure to sell the dealership within the initial 12-month period. The director will evaluate the request and determine whether the license should be renewed for a period not to exceed 12 months or deny the renewal application. If the renewal application is denied, the manufacturer or distributor may request a hearing on the denial in accordance with Occupations Code, Chapter 2301, Subchapter O~~[\$§2301.701 – 2301.713]~~ and the matter will be referred to SOAH for a hearing under Chapter 224, Subchapter C of this title (relating to Motor Vehicle, Salvage Vehicle, and Trailer Industry License Enforcement).

(d) Requests for extensions after the first extension is granted, as provided by Occupations Code, §2301.476(e), must be submitted at least 120 days before the expiration of the current license electronically in the system designated by the department for licensing. Upon receipt of a subsequent request, the department~~[board]~~ will initiate a hearing in accordance with Occupations Code, Chapter 2301, Subchapter O~~[\$§2301.701 – 2301.713]~~, at which the manufacturer or distributor will be required to show good cause for the failure to sell the dealership. The manufacturer or distributor has the burden of proof and the burden of going forward on the sole issue of good cause for the failure to sell the dealership.

(e) The department will give notice of the hearing described in subsection (d) of this section to all other franchised dealers holding franchises for the sale and service or service only of the same line-make of new motor vehicles that are located in the same county in which the dealership owned or

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1 controlled by the manufacturer or distributor is located or in an area within 15 miles of the dealership  
2 owned or controlled by the manufacturer or distributor. Such dealers, if any, will be allowed to intervene  
3 and protest the granting of the subsequent extension. Notices of intervention by dealers afforded a right  
4 to protest under Occupations Code, §2301.476(e) must be filed with the department electronically in  
5 the system designated by the department within 15 days of the date of mailing of the notice of  
6 hearing, and a copy must be provided to the manufacturer or distributor. The department will reject a  
7 notice of intervention if the notice is not filed at least 30 days before:

8 (1) the opening of the dealership;

9 (2) close of the buy-sell agreement; or

10 (3) the expiration of the current license.

11 (f) A hearing under subsection (d) of this section will be referred to SOAH for a hearing under  
12 Chapter 224, Subchapter C of this title (relating to Contested Cases Between Motor Vehicle Industry  
13 License Holders or Applicants).~~[conducted as expeditiously as possible, but not later than 120 days after~~  
14 ~~receipt of the subsequent request for extension from the manufacturer or distributor. An ALJ will~~  
15 ~~prepare a written decision and proposed findings of fact and conclusions of law as soon as possible, but~~  
16 ~~not later than 60 calendar days after the hearing is closed.]~~ The franchised~~[new motor vehicle]~~ dealer's  
17 license that is the subject of the hearing will continue in effect until a final decision on the request for a  
18 subsequent extension is issued~~[rendered]~~ by the board.

19 (g) The procedures described in subsections (d) - (f) of this section will be followed for all  
20 extensions requested by the manufacturer or distributor after the initial extension.

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(h) An application for a new motor vehicle dealer's license of which a manufacturer or distributor owns any interest in the dealership entity in accordance with Occupations Code, §2301.476(g) must contain sufficient documentation to show that the applicant meets the requirements of Occupations Code, §2301.476(g).

215.115. Manufacturer, Distributor, and Converter Vehicle Sales Records.

(a) A manufacturer or distributor must maintain, for a minimum period of 48 months, a record of each vehicle sold to any person in this state. The manufacturer or distributor shall make the record available during business hours for inspection and copying by ~~a representative of~~ the department or be available to submit electronically to the department upon request.

(b) A converter must maintain, for a minimum period of 48 months, a record of each vehicle converted ~~for~~to ~~a~~any person in this state, including ~~to~~a Texas franchised dealer. The converter shall make the record available during business hours for inspection and copying by ~~a representative of~~ the department or be available to submit electronically to the department upon request.

(c) A manufacturer, distributor, or converter is required to maintain at its licensed location a record reflecting each purchase, sale, or conversion for a minimum period of 24 months. Records for prior time periods may be kept off-site.

(d) Within 15 days of receipt of a request sent by mail or electronic document transfer from ~~a representative of~~ the department, a manufacturer, distributor, or converter must submit a copy of specified records to the address listed in the request.

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(e) Records required to be maintained and made available to the department must include the following:

(1) the date of sale or conversion of the motor vehicle;

(2) the VIN;

(3) the name and address of the person purchasing the motor vehicle~~[dealer or converter];~~

(4) a copy of or a record with the information contained in the manufacturer's certificate of origin or title;

(5) information regarding the prior status of the motor vehicle such as the Reacquired Vehicle Disclosure Statement;

(6) the repair history of any motor vehicle subject to a warranty complaint;

(7) technical service bulletin or equivalent advisory; and

(8) any audit of a franchised dealership.

(f) Any record required by the department may be maintained in an electronic format, if the electronic record can be printed at the licensed location upon request ~~[for the record]~~ by ~~a representative of~~ the department or be available to submit electronically to the department upon request.

215.116. Franchised Dealership Lease or Sublease Listing.

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1 A franchised dealer that lists its dealership for lease or sublease to mitigate damages in  
2 accordance with Occupations Code, §2301.4651(e) is required to list~~[-for lease or sublease]:~~

3 (1) the entire real property if the termination or discontinuance effectively terminates all  
4 line-makes and all franchises for the entire dealership; or

5 (2) only that portion of the real property associated with the terminated line-make or  
6 franchise, if the termination or discontinuance does not affect all line-makes and all franchises of the  
7 dealership.

8  
9 215.117. Market Value Property Appraisal.

10 (a) An appraiser performing a[A] market value property appraisal~~[-assessment made]~~ in  
11 accordance with Occupations Code, §2301.482(c) must be a Texas-~~[requires three general]~~certified real  
12 estate appraiser~~[-s certified by the State of Texas]~~.

13 (b) Necessary real estate and necessary construction are each determined by the applicable  
14 property use agreement.

15 (c) The~~[To determine]~~market value of property in accordance with Occupations Code,  
16 §2301.482(c), is the~~[an]~~ average of the market value property appraisals~~[-will be calculated from the~~  
17 ~~independent market value property assessment determinations]~~ of the three ~~[general]~~certified real  
18 estate appraisers.

19  
20 215.120 License Plates.

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1           (a) A manufacturer, distributor, or converter may apply for a manufacturer or converter standard  
2           license plate for use on a new unregistered vehicle of the same vehicle type assembled or modified in  
3           accordance with Transportation Code §503.064 or §503.0618, as applicable:

4                     (1) when applying for a new or renewal license, or  
5                     (2) by submitting a plate request application electronically in the system designated by  
6           the department.

7           (b) A manufacturer may use a manufacturer's standard plate to test a prototype motor vehicle  
8           on a public street or highway including a commercial motor vehicle prototype designed to carry a load. A  
9           manufacturer's standard plate may not be used on a commercial motor vehicle prototype or new  
10          commercial motor vehicle to carry a load for which the manufacturer or other person receives  
11          compensation.

12          (c) A manufacturer, distributor, or converter shall attach a license plate to the rear of a vehicle in  
13          accordance with §217.27 of this title (relating to Vehicle Registration Insignia).

14          (d) A manufacturer, distributor, or converter shall maintain a record of each license plate issued  
15          to the manufacturer, distributor, or converter by the department. The record of each license plate issued  
16          must contain:

17                     (1) the license plate number;  
18                     (2) the year and make of the vehicle to which the license plate is affixed;  
19                     (3) the VIN of the vehicle; and  
20                     (4) the name of the person in control of the vehicle to which the license plate is affixed.

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1           (e) If a manufacturer, distributor, or converter cannot account for a license plate or a license  
2   plate is damaged, the manufacturer, distributor, or converter must:

3                   (1) document the license plate as "void" in plate record in subsection (c); and  
4                   (2) within three days of discovering that the license plate is missing or damaged, report  
5   the license plate as lost, stolen, or damaged electronically in the system designated by the department;  
6   and

7                   (3) if found after reported missing, cease use of the license plate.

8           (f) A license plate is no longer valid for use after the manufacturer, distributor, or converter  
9   reports to the department that the plate is lost, stolen, or damaged. A manufacturer, distributor, or  
10   converter must render a void plate unusable by permanently marking the front of the plate with the  
11   word "VOID" or a large "X" and once marked, must destroy or recycle the license plate, or return the  
12   license plate to the department within 10 days.

13           (g) The license holder's license plate record must be available for inspection and copying by the  
14   department during normal business hours or be available to submit electronically to the department  
15   upon request.

16           (h) In evaluating requests for additional standard license plates, the department will consider the  
17   business justification provided by a license holder including the following:

18                   (1) the number of vehicles assembled or modified;  
19                   (2) the highest number of motor vehicles in inventory in the prior 12 months;  
20                   (3) the size and type of business;

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1                   (4) how the license holder typically uses the plates;

2                   (5) the license holder's record of tracking and reporting missing or damaged plates to

3 the department; and

4                   (6) any other factor the Department in its discretion deems necessary to support the

5 number of plates requested.

6                   (i) a license holder must return a department-issued license plate to the department within 10

7 days of the license holder closing the associated license or the associated license being revoked,

8 canceled, or closed by the department.

9

10 215.121. Sanctions.

11                   (a) The board or department may take the following actions against a license applicant, a license  
12 holder, or a person engaged in business for which a license is required:

13                   (1) deny an application;

14                   (2) revoke a license;

15                   (3) suspend a license;

16                   (4) assess a civil penalty;

17                   (5) issue a cease and desist order; or

18                   (6) take other authorized action.



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1           **(b) The board or department may take action described in subsection (a) of this section if a**  
2     **license applicant, a license holder, or a person engaged in business for which a license is required:**

3                     **(1) fails to maintain records required under this chapter;**

4                     **(2) refuses or fails to timely comply with a request for records made by a representative**  
5     **of the department;**

6                     **(3) sells or offers to sell a motor vehicle to a retail purchaser other than through a**  
7     **licensed or authorized dealer;**

8                     **(4) fails to submit a license amendment application in the electronic system designated**  
9     **by the department for licensing to notify the department of a change of the license holder's physical**  
10    **address, mailing address, telephone number, or email address within 10 days of the change;**

11                    **(5) fails to timely submit a license amendment application in the electronic system**  
12    **designated by the department for licensing to notify the department of a license holder's business or**  
13    **assumed name change, deletion of a line-make, or management or ownership change;**

14                    **(6) fails to notify the department or pay or reimburse a franchised dealer as required by**  
15    **law;**

16                    **(7) misuses or fails to display a license plate as required by law;**

17                    **(8) is a manufacturer or distributor and fails to provide a manufacturer's certificate for a**  
18    **new vehicle;**

19                    **(9) fails to remain regularly and actively engaged in the business of manufacturing,**  
20    **assembling, or modifying a new motor vehicle of the type and line make for which a license has been**  
21    **issued by the department;**

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1                   (10) violates a provision of Occupations Code, Chapter 2301; Transportation Code  
2                   Chapters 501–503 or 1001–1005; a board order or rule; or a regulation of the department relating to the  
3                   manufacture, assembly, sale, lease, distribution, financing, or insuring of vehicles, including advertising  
4                   rules under Subchapter H of this chapter (relating to Advertising);

5                   (11) is convicted of an offense that directly relates to the duties or responsibilities of the  
6                   occupation in accordance with §211.3 of this title (relating to Criminal Offense Guidelines);

7                   (12) is determined by the board or department, in accordance with §215.89 of this title  
8                   (relating to Fitness), to be unfit to hold a license;

9                   (13) omits information or makes a material misrepresentation in any application or other  
10                  documentation filed with the department including providing a false or forged identity document or a  
11                  false or forged photograph, electronic image, or other document;

12                  (14) fails to remit payment as ordered for a civil penalty assessed by the board or  
13                  department;

14                  (15) violates any state or federal law or regulation relating to the manufacture,  
15                  distribution, modification, or sale of a motor vehicle;

16                  (16) fails to issue a refund as ordered by the board or department; or

17                  (17) fails to participate in statutorily required mediation without good cause.

18  
19                  **SUBCHAPTER D[~~E~~]. GENERAL DISTINGUISHING NUMBERS AND IN-TRANSIT LICENSES.**

20  
21                  215.131. Purpose and Scope.

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1           This subchapter implements Transportation Code, Chapters 503 and 1001–1005, and  
2           Occupations Code, Chapter 2301, and applies to general distinguishing numbers and drive-a-way  
3           operator in-transit licenses issued by the department.

4  
5           215.132. Definitions.

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

8                     (1) Barrier--A material object or set of objects that separates or demarcates.

9                     (2)~~Charitable organization--Has the meaning assigned by Transportation Code,~~  
10           ~~§503.062(e).~~

11                    (3)~~]~~Consignment sale--The owner-authorized sale of a motor vehicle by a person  
12           other than the owner.

13                    (3)~~[(4)]~~ House trailer--A nonmotorized vehicle designed for human habitation and  
14           for carrying persons and property on its own structure and for being drawn by a motor vehicle. A  
15           house trailer does not include manufactured housing. A towable recreational vehicle, as defined by  
16           Occupations Code, §2301.002, is included in the terms "house trailer" or "travel trailer."

17                    (5)~~License--A dealer's GDN assigned by the department identifying the type of~~  
18           ~~business for a specified location from which the person engages in business.]~~

19                    (4) Municipality--As defined according to the Local Government Code, Chapter 1.

20                    (5)~~[(6)]~~ Person--Has the meaning assigned by Occupations Code, §2301.002.

21                    (6)~~[(7)]~~ Sale--With regard to a specific vehicle, the transfer of possession of that  
22           vehicle to a purchaser for consideration.

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(7)[(8)] Temporary tag--A buyer's temporary tag, converter's temporary tag, or dealer's temporary tag as described under Transportation Code, Chapter 503.

(8)[(9)] Towable recreational vehicle--Has the same meaning as "house trailer" defined by this section.

(9)[(10)] Travel Trailer--Has the same meaning as "house trailer" defined by this section.

(10)[(11)] Vehicle--Has the meaning assigned by Transportation Code, §503.001.

(11)[(12)] VIN--Vehicle identification number.

215.133. GDN[General Distinguishing Number] Application Requirements for a Dealer or a Wholesale Motor Vehicle Auction.

(a) No person may engage in business as a dealer or as a wholesale motor vehicle auction unless that person has a ~~currently~~ valid GDN assigned by the department for each location from which the person engages in business. A dealer must also hold a GDN for a consignment location, unless the consignment location is a wholesale motor vehicle auction.

(b) Subsection (a) of this section does not apply to a person exempt from the requirement to obtain a GDN under Transportation Code §503.024.

(c) A GDN dealer or wholesale motor vehicle auction application shall be on a form prescribed by the department and properly completed by the applicant as required under §215.83 of this title (relating to License Applications, Amendments, or Renewals). A GDN dealer or wholesale motor vehicle auction application shall include all required information, required supporting documents, and required fees and shall be submitted to the department electronically in a system designated by the department for licensing. A GDN dealer or wholesale motor vehicle

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1 auction GDN holder renewing or amending its GDN must verify current license information,  
2 provide related information and documents for any new requirements or changes to the GDN, and  
3 pay required fees including any outstanding civil penalties owed the department under a final  
4 order. An applicant for a new dealer or wholesale motor vehicle auction GDN must provide the  
5 following:

6 (1) Required information:

7 (A) type of GDN requested;

8 (B) business information, including the name, physical and mailing  
9 addresses, telephone number, Secretary of State file number (if applicable), and website address  
10 (if applicable);

11 (C) ~~[application contact name, email address, and telephone~~  
12 ~~number]~~ contact name, email address, and telephone number of the person submitting the  
13 application;

14 (D) contact name, email address, and telephone number of a person who  
15 can provide information about business operations and the motor vehicle products or services  
16 offered;

17 (E) ~~[(D)]~~ the name, social security number, date of birth, identity document  
18 information, and ownership percentage for each owner, partner, member, or principal if the  
19 applicant is not a publicly traded company;

20 (F) ~~[(E)]~~ the name, social security number, date of birth, and identity  
21 document information for each officer, director, manager, trustee, or other representative  
22 authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal  
23 entity;

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1                    (G)~~(F)~~ the name, employer identification number, ownership percentage,  
2 and non-profit or publicly traded status for each legal entity that owns the applicant in full or in  
3 part;

4                    (H)~~(G)~~ the name, social security number, date of birth, and identity  
5 document information of at least one manager or other bona fide employee who will be present at  
6 the established and permanent place of business if the owner is out of state or will not be present  
7 during business hours at the established and permanent place of business in Texas;

8                    (I)~~(H)~~ if a dealer, the name, telephone number, and business email address  
9 of the temporary tag database account administrator designated by the applicant who must be an  
10 owner or representative listed in the application;

11                    (J)~~(I)~~ criminal history record information under the laws of Texas, another  
12 state in the United States, the United States, and any foreign jurisdiction for each person listed in  
13 the application, including offense description, date, and location;

14                    (K)~~(J)~~ military service status;

15                    (L)~~(K)~~ licensing history required to evaluate fitness for licensure under  
16 §215.89 of this title (relating to Fitness);

17                    (M)~~(L)~~ information about the business location and business premises,  
18 including whether the applicant will operate as a salvage vehicle dealer at the location;

19                    (N)~~(M)~~ history of insolvency, including outstanding or unpaid debts,  
20 judgments, or liens, unless the debt was discharged under 11 U.S.C. §§101 et seq. (Bankruptcy Act)  
21 or is pending resolution under a case filed under the Bankruptcy Act;

22                    (O)~~(N)~~ signed Certification~~Certificate~~ of Responsibility, which is a form  
23 provided by the department; and

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1                                ~~(P)~~~~(Q)~~ any other information required by the department to evaluate the  
2 application under current law and board rules.

3                                (2) A legible and accurate electronic image of each applicable required document:

4                                (A) a proof of a surety bond if required under §215.137 of this title (relating  
5 to Surety Bond);

6                                (B) the certificate of filing, certificate of incorporation, or certificate of  
7 registration on file with the Secretary of State, if applicable;

8                                (C) each assumed name certificate on file with the Secretary of State or  
9 county clerk;

10                              (D) at least one of the following unexpired identity documents for each  
11 natural person listed in the application:

12                              (i) ~~[current]~~ driver license;

13                              (ii) ~~[current]~~ Texas Identification Card issued by the Texas  
14 Department of Public Safety under Transportation Code, Chapter 521, Subchapter E;

15                              (iii) ~~[current]~~ license to carry a handgun issued by the Texas  
16 Department of Public Safety under Government Code, Chapter 411, Subchapter H;

17                              (iv) ~~[current]~~ passport; or

18                              (v) ~~[current]~~ United States military identification card~~[armed forces~~  
19 ~~identification]~~.

20                              (E) a certificate of occupancy, certificate of compliance, or other official  
21 documentation confirming the business location complies with municipal ordinances, including  
22 zoning, occupancy, or other requirements for a vehicle business;

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(F) documents proving business premises ownership, or lease or sublease agreement for the license period;

(G) business premises photos and a notarized affidavit certifying that all premises requirements in §215.140 of this title (relating to Established and Permanent Place of Business Premises Requirements) are met and will be maintained during the license period;

(H) evidence of franchise if applying for a franchised motor vehicle dealer GDN;

(I) proof of completion of the dealer education and training required under Transportation Code §503.0296, if applicable; and

(J) any other documents required by the department to evaluate the application under current law and board rules.

(3) Required fees:

(A) the fee ~~[for the GDN]~~ for each type of license requested as prescribed by law; and

(B) the fee, including applicable taxes, for each standard~~[metal]~~ dealer plate requested by the applicant as prescribed by law.

(d) An applicant for a dealer or wholesale auction GDN must also comply with fingerprint requirements in §211.6 of this title (relating to Fingerprint Requirements for Designated License Types~~[General Distinguishing Numbers]~~), if applicable.

(e) An applicant for a ~~[dealer]~~ GDN operating under a name other than the applicant's business name shall use the assumed name under which the applicant is authorized to do business, as filed with the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant on the application using the letters "DBA." The applicant may not use



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1 a name or~~an~~ assumed name that may be confused with or is similar to that of a governmental  
2 entity or that is otherwise deceptive or misleading to the public.

3 (f) A wholesale motor vehicle dealer GDN holder may sell or exchange vehicles with  
4 licensed or authorized dealers only. A wholesale motor vehicle dealer GDN holder may not sell or  
5 exchange vehicles at retail.

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

9 (h) In evaluating a new or renewal~~dealer~~ GDN application or an application for a new  
10 GDN location, the department may require a site visit to determine if the business location meets  
11 the requirements in §215.140. The department will require the applicant or GDN holder to provide  
12 a notarized affidavit confirming that all premises requirements are met and will be maintained  
13 during the license period.

14 (i) A person holding an independent motor vehicle GDN does not have to hold a salvage  
15 vehicle dealer license to:

- 16 (1) act as a salvage vehicle dealer or rebuilder; or  
17 (2) store or display a motor vehicle as an agent or escrow agent of an insurance  
18 company.

19 (j) A person holding an independent motor vehicle GDN and performing salvage activities  
20 under subsection (i) must apply for a National Motor Vehicle Title Information System (NMVTIS)  
21 identification number and provide the number to the department in the GDN application.

22 (k)(j) To be eligible for an independent motor vehicle GDN, a person must complete dealer  
23 education and training specified by the department, except as provided in this subsection:

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

(2) a person holding an independent motor vehicle GDN for at least 10 years as of September 1, 2019, is exempt from the dealer education and training requirement; and.

(3) a military service member, military spouse, or military veteran will receive appropriate credit for prior training, education, and professional experience and may be exempted from the dealer education and training requirement.

215.134. Requirements for a Drive-a-way Operator In-Transit License.

(a) No drive-a-way operator may engage in business in Texas unless that person has a currently valid drive-a-way operator in-transit license issued by the department.

(b) A drive-a-way operator in-transit application shall be on a form prescribed by the department and properly completed by the applicant as required under §215.83 of this title (relating to License Applications, Amendments, or Renewals). A drive-a-way operator in-transit application shall include all required information, required supporting documents, and required fees, and shall be submitted to the department electronically in a system designated by the department for licensing.

(c) A drive-a-way operator in-transit license holder renewing or amending its license must verify current license information, provide related information and documents for any new requirements or changes to the license, and pay required fees.

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1           (d) An applicant for a new license must register for an account in the department-designated  
2           licensing system by selecting the licensing system icon on the dealer page of the department website. An  
3           applicant must designate the account administrator and provide the name and email address for that  
4           person, and provide the business telephone number, name, business type, and social security number or  
5           employer identification number, as applicable. The applicant's licensing account administrator must be  
6           an owner, officer, manager, or bona fide employee.

7           (e) Once registered, an applicant may apply for a new license and must provide the  
8           following:

9                   (1) Required information:

10                           (A) type of license requested;

11                           (B) business information, including the name, physical and mailing  
12                           addresses, telephone number, Secretary of State file number (if applicable), and website address  
13                           (if applicable);

14                           (C) contact name, email address, and telephone number of the person  
15                           submitting the application;

16                           (D) contact name, email address, and telephone number of a person who  
17                           can provide information about business operations and the motor vehicle services offered;

18                           (E) the name, social security number, date of birth, identity document  
19                           information, and ownership percentage for each owner, partner, member, beneficiary, or principal  
20                           if the applicant is not a publicly traded company;

21                           (F) the name, social security number, date of birth, and identity document  
22                           information for each officer, director, manager, trustee, or other representative authorized to act  
23                           on behalf of the applicant if the applicant is owned in full or in part by a legal entity;

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1                   (G) the name, employer identification number, ownership percentage, and  
2 non-profit or publicly traded status for each legal entity that owns the applicant in full or in part;

3                   (H) criminal history record information under the laws of Texas, another  
4 state in the United States, the United States, and any foreign jurisdiction for each person listed in  
5 the application, including offense description, date, and location;

6                   (I) military service status;

7                   (J) licensing history required to evaluate fitness for licensure under §215.89  
8 of this title (relating to Fitness);

9                   (K) signed Certification of Responsibility, which is a form provided by the  
10 department; and

11                   (L) any other information required by the department to evaluate the  
12 application under current law and board rules.

13                   (2) A legible and accurate electronic image of each applicable required document:

14                   (A) the certificate of filing, certificate of incorporation, or certificate of  
15 registration on file with the Secretary of State, if applicable;

16                   (B) each assumed name certificate on file with the Secretary of State or  
17 county clerk;

18                   (C) at least one of the following unexpired identity documents for each  
19 natural person listed in the application:

20                   (i) driver license;

21                   (ii) Texas Identification Card issued by the Texas Department of  
22 Public Safety under Transportation Code, Chapter 521, Subchapter E;

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1                                    (iii) license to carry a handgun issued by the Texas Department of  
2 Public Safety under Government Code, Chapter 411, Subchapter H;

3                                    (iv) passport; or

4                                    (v) United States military identification card;

5                                    (D) a list of manufacturers, distributors, dealers, or auctions for which the  
6 applicant provides drive-a-way services;

7                                    (E) a description of the business model or business process, transportation  
8 methods, compensation agreements, products, and services used or offered sufficient to allow  
9 department to determine if the license type applied for is appropriate under Texas law; and

10                                   (F) any other documents required by the department to evaluate the  
11 application under current law and board rules.

12                                   (3) Required fees:

13                                   (A) the license fee as prescribed by law; and

14                                   (B) the fee, including any taxes, for each standard drive-a-way in-transit  
15 license plate requested by the applicant as prescribed by law.

16                                   (f) An applicant for a drive-a-way operator in-transit license must also comply with  
17 fingerprint requirements in §211.6 of this title (relating to Fingerprint Requirements for  
18 Designated License Types).

19                                   (g) An applicant operating under a name other than the applicant's business name shall use  
20 the name under which the applicant is authorized to do business, as filed with the Secretary of  
21 State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant  
22 on the application using the letters "DBA." The applicant may not use a name or assumed name

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1 that may be confused with or is similar to that of a governmental entity or that is otherwise  
2 deceptive or misleading to the public.

3  
4 215.135. More than One Location.

5 (a) A dealer that holds a GDN for a particular type of vehicle may operate from more than one  
6 location within the limits of a municipality~~[city]~~, provided each location is operated by the same legal  
7 entity and meets the requirements of §215.140 of this title (relating to Established and Permanent Place  
8 of Business Premises Requirements).

9 (b) Additional locations not located within the limits of the same municipality~~[city]~~ of the initial  
10 dealership are required to:

11 (1) obtain a new GDN; and

12 (2) provide a new surety bond reflecting the additional location~~[s]~~ unless the licensed  
13 location is exempt by statute from the surety requirement.

14 (c) A dealer that relocates from a point outside the limits of a city or relocates to a point not  
15 within the limits of the same city of the initial location is required to:

16 (1) obtain a new GDN; and

17 (2) provide a new surety bond reflecting the new address~~[s]~~ unless the licensed location  
18 is exempt by statute from the surety requirement.

19 (d) A dealer shall notify the department in writing within 10 days of opening, closing, or  
20 relocating a~~ny~~ licensed location by filing an amendment application electronically in the system

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1 designated by the department for licensing. Each location must meet and maintain the requirements of  
2 §215.140.

3 (e) A dealer may not commence business at any location until the department issues a license  
4 specific to that location.

5  
6 215.137. Surety Bond.

7 (a) The surety bond required by Transportation Code, §503.033 shall be in the legal business  
8 name in which the dealer's GDN[license] will be issued and shall contain the complete physical address  
9 of each [dealership] location licensed under the GDN that the surety bond is intended to cover.

10 (b) A surety bond executed by an agent representing a bonding company or surety must be  
11 supported by an original power of attorney from the bonding company or surety.

12 (c) The identity of the obligee on a surety bond or a rider to a surety bond must be approved by  
13 the department. An obligee may be identified as~~[A surety bond or rider to a surety bond may be~~  
14 ~~identified as]:~~

15 (1) a person who obtains a court judgment assessing damages and attorney's fees for an  
16 act or omission on which the bond is conditioned; or

17 (2) unknown.

18 (d) A bonding company that pays any claim against a surety bond shall immediately report the  
19 payment to the department.

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(e) A bonding company shall give written notice to the department 30 days prior to canceling any surety bond.

(f) The surety bond required by this section does not apply to a:

(1) franchised motor vehicle dealer licensed by the department;

(2) franchised motorcycle dealer licensed by the department;

(3) franchised house trailer or travel trailer dealer licensed by the department; or

(4) trailer or semitrailer dealer licensed by the department.

215.138. Use of ~~[Metal]~~ Dealer's License Plates.

(a) A ~~[metal]~~ dealer's license plate shall be attached to the rear ~~[license plate holder]~~ of a vehicle in accordance with §217.27 of this title (relating to Vehicle Registration Insignia)~~[Transportation Code, §503.061]~~.

(b) A copy of the receipt for a ~~[the metal]~~ dealer's standard license plate issued by the department should be carried in the vehicle to present~~[so that the receipt can be presented]~~ to law enforcement personnel upon request.

(c) A ~~[metal]~~ dealer's license plate may not be displayed on:

(1) a laden commercial vehicle being operated or moved on the public streets or highways; or

(2) the dealer's service or work vehicle, except as provided by Transportation Code, §503.068(b-1).



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(d) For purposes of this section, a dealer's service or work vehicle includes:

(1) a vehicle used for towing or transporting another vehicle;

(2) a vehicle, including a light truck, used in connection with the operation of the dealer's shops or parts department;

(3) a courtesy car on which a courtesy car sign is displayed;

(4) a rental or lease vehicle; and

(5) a boat trailer owned by a dealer or manufacturer that is used to transport more than one boat.

(e) ~~[As used in this section, "light truck" has the meaning assigned by Transportation Code, §541.201.~~

~~(f)~~ For purposes of this section, a light truck as defined by Transportation Code, §541.201, is not considered a laden commercial vehicle when it is:

(1) mounted with a camper unit; or

(2) towing a trailer for recreational purposes.

~~(f)~~~~(g)~~ A ~~metal~~ dealer's license plate may be displayed only on the type of vehicle for which the GDN is issued and for which a dealer is licensed to sell. A nonfranchised dealer may not display a ~~metal~~ dealer's license plate on a new motor vehicle.

~~(g)~~~~(h)~~ A ~~metal~~ dealer's license plate may be displayed only on a vehicle that has a valid inspection in accordance with Transportation Code, Chapter 548.

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(h)(i) A dealer shall maintain a record of each ~~metal dealer's~~ license plate issued by the department to that dealer including standard and personalized prestige plates. The record must contain:

(1) the ~~assigned metal dealer's~~ license plate number;

(2) the year and make of the vehicle to which the ~~metal~~ dealer's license plate is affixed;

(3) the VIN of the vehicle; and

(4) the name of the person in control of the vehicle.

(i)(j) If a dealer cannot account for a ~~metal~~ dealer's license plate that the department issued to that dealer, the dealer must:

(1) document the ~~metal~~ dealer's license plate as "void" in the ~~metal~~ dealer's license plate record;

(2) within three days of discovering that the ~~metal~~ dealer's license plate is missing or damaged, report the dealer's license plate as lost, stolen, or damaged in the electronic system designated by the department ~~report to the department in writing that the metal dealer's license plate is lost or stolen~~; and

(3) if found, cease use of the ~~metal~~ dealer's license plate.

(j)(k) A ~~metal~~ dealer's license plate is no longer valid for use after the dealer reports to the department that the ~~metal~~ dealer's license plate is lost, stolen, or damaged ~~missing~~. A dealer must render a void plate unusable by permanently marking the front of the plate with the word "VOID" or a large "X" and once marked, must destroy or recycle the license plate, or return the license plate to the department for recycling within 10 days.

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1        (k) A dealer's license plate record must be available for inspection and copying by the  
2        department during normal business hours or be available to submit electronically to the department  
3        upon request.

4        (l) A dealer must return a department-issued license plate, sticker, or receipt to the department  
5        within 10 days of the license holder closing the associated license or the department revoking or  
6        canceling the license.

7  
8        215.139. ~~[Metal]~~ Dealer's Standard License Plate Allocation.

9        (a) The number of ~~[metal]~~ dealer's standard license plates a dealer may order for business use is  
10       based on the type of license for which the dealer applied and the number of vehicles the dealer sold  
11       during the previous year.

12       (b) A new license applicant is allotted a predetermined number of ~~[metal]~~ dealer's standard  
13       license plates for the duration of the dealer's first license term.

14       (c) Unless otherwise qualified under this section, the maximum number of ~~[metal]~~ dealer's  
15       standard license plates the department will issue to a new license applicant during the applicant's first  
16       license term is indicated in the following table.

17       Attached Graphic

18       (d) A dealer applying ~~[that submits an application to the department]~~ for a license is not subject  
19       to the initial allotment limits described in this section and may rely on that dealer's existing allocation of  
20       ~~[metal]~~ dealer's standard license plates if that dealer is:

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(1) a franchised dealership subject to a buy-sell agreement, regardless of a change in the entity or ownership;

(2) any type of dealer that is relocating and has been licensed by the department for a period of one year or longer; or

(3) any type of dealer that is changing its business entity type and has been licensed by the department for a period of one year or longer.

(e) The maximum number of ~~[meta]~~ dealer's standard license plates the department will issue to a vehicle dealer per license term is indicated in the following table.

Attached Graphic

(f) A dealer may obtain more than the maximum number of ~~[meta]~~ dealer's standard license plates provided by this section by submitting to the department proof of sales for the previous 12-month period that justifies additional allocation.

(1) The number of additional ~~[meta]~~ dealer's standard license plates the department will issue to a dealer that demonstrates a need through proof of sales is indicated in the following table.

Attached Graphic

(2) For purposes of this section, proof of sales for the previous 12-month period may consist of a copy of the most recent vehicle inventory tax declaration or monthly statements filed with the taxing authority in the county of the dealer's licensed location. Each copy must be stamped as received by the taxing authority. The department will consider a[A] franchised dealer's license renewal application that indicates sales of more than 200 units ~~[is considered]~~ to be proof of sales of more than 200 units and no additional proof is required.

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(3) The department may not issue more than two ~~[metal]~~ dealer's standard license plates to a wholesale motor vehicle dealer. For purposes of this section, a wholesale motor vehicle dealer's proof of sales may be demonstrated to the department by submitting:

(A) evidence of the wholesale motor vehicle dealer's sales for the previous 12-month period, if the wholesale motor vehicle dealer has been licensed during those 12 months; or

(B) other documentation approved by the department demonstrating the wholesale motor vehicle dealer's transactions.

(g) The director may waive the ~~[metal]~~dealer's standard license plate issuance restrictions if the waiver is essential for the continuation of the business. The director will determine the number of ~~[metal]~~dealer's standard license plates the department will issue based on the dealer's past sales, dealer's inventory, and any other factor the director determines pertinent.

(1) A request for a waiver must be submitted to the director in writing and specifically state why the additional plate is necessary for the continuation of the applicant's business.

(2) A request for a waiver must be accompanied by proof of the dealer's sales for the previous 12-month period, if applicable.

(3) A wholesale motor vehicle dealer may not apply for a waiver of the ~~[metal]~~ dealer's standard license plate issuance restrictions.

(4) A waiver granted by the director under this section for a specific number of ~~[metal]~~ dealer's standard license plates is valid for four years.

~~[(h) This section does not apply to a personalized prestige dealer's license plate issued in accordance with Transportation Code, §503.0615.]~~

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1

2 215.140. Established and Permanent Place of Business Premises Requirements.

3       (a) A dealer must meet the following requirements at each licensed location and maintain the  
4 requirements during the term of the license. If multiple dealers are licensed at a location, each dealer  
5 must maintain the following requirements during the entire term of the license.

6               (1) Business hours for retail dealers.

7                       (A) A retail dealer's office shall be open at least four days per week for at least  
8 four consecutive hours per day and may not be open solely by appointment.

9                       (B) The retail dealer's business hours for each day of the week must be posted at  
10 the main entrance of the retail dealer's office in a manner and location that is accessible to the public.  
11 The owner or a bona fide employee of the retail dealer shall be at the retail dealer's licensed location  
12 during the posted business hours for the purposes of buying, selling, exchanging, or leasing vehicles. If  
13 the owner or a bona fide employee is not available to conduct business during the retail dealer's posted  
14 business hours due to special circumstances or emergencies, a separate sign must be posted indicating  
15 the date and time the retail dealer will resume operations. Regardless of the retail dealer's business  
16 hours, the retail dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona  
17 fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able  
18 to speak to a natural person or leave a message during these hours.

19               (2) Business hours for wholesale motor vehicle dealers. A dealer that holds only a  
20 wholesale motor vehicle dealer's GDN must post its business hours at the main entrance of the  
21 wholesale motor vehicle dealer's office in a manner and location that is accessible to the public. A

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1 wholesale motor vehicle dealer or bona fide employee shall be at the wholesale motor vehicle dealer's  
2 licensed location at least two weekdays per week for at least two consecutive hours per day. A wholesale  
3 motor vehicle dealer may not be open solely by appointment. Regardless of the wholesale motor vehicle  
4 dealer's business hours, the wholesale motor vehicle dealer's telephone must be answered from 8:00  
5 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or  
6 answering machine. A caller must be able to speak to a natural person or leave a message during these  
7 hours.

8 (3) Business sign requirements for retail dealers.

9 (A) A retail dealer must display a conspicuous, permanent sign with letters at  
10 least six inches in height showing the retail dealer's business name or assumed name substantially  
11 similar to the name reflected on the retail dealer's GDN under which the retail dealer conducts business.  
12 A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main  
13 entrance of the business office. A business sign is considered permanent only if it is made of durable,  
14 weather-resistant material.

15 (B) The sign must be permanently mounted at the physical address listed on the  
16 application for the retail dealer's GDN. A business sign is considered permanently mounted if bolted to  
17 an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently  
18 installed in the ground.

19 (C) A retail dealer may use a temporary sign or banner if that retail dealer can  
20 show proof that a sign that meets the requirements of this paragraph has been ordered and provides a  
21 written statement that the sign will be promptly and permanently mounted upon delivery.

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(D) A retail dealer is responsible for ensuring that the business sign complies with municipal ordinances, and that any lease signage requirements are consistent with the signage requirements in this paragraph.

(4) Business sign requirements for wholesale motor vehicle dealers.

(A) Exterior Sign

(i) A wholesale motor vehicle dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the wholesale motor vehicle dealer's business name or assumed name substantially similar to the name reflected on the wholesale motor vehicle dealer's GDN under which the wholesale motor vehicle dealer conducts business. Effective September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers" in letters at least three inches in height. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(ii) The sign must be permanently mounted on the business property at the physical address listed on the application. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground. A wholesale motor vehicle dealer may use a temporary exterior sign or banner if the wholesale motor vehicle dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(B) Interior Sign



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(i) If the wholesale motor vehicle dealer's office is located in an office building with one or more other businesses and an outside sign is not permitted by the property owner, a conspicuous permanent business sign permanently mounted on or beside the main door to the wholesale motor vehicle dealer's office with letters at least two inches in height is acceptable. Effective September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers" in letters at least one inch in height.

(ii) An interior business sign is considered conspicuous if it is easily visible to the public within 10 feet of the main entrance of the wholesale motor vehicle dealer's office. An interior sign is considered permanent if made from durable material and has lettering that cannot be changed. An interior sign is considered permanently mounted if bolted or otherwise permanently affixed to the main door or nearby wall. A wholesale motor vehicle dealer may use a temporary interior sign or banner if the wholesale motor vehicle dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(C) A wholesale motor vehicle dealer is responsible for ensuring that the business sign complies with municipal ordinances and that any lease signage requirements are consistent with the signage requirements in this paragraph.

(5) Office requirements for a retail dealer and a wholesale motor vehicle dealer.

(A) A dealer's office must be located in a building with a permanent roof and connecting exterior walls on all sides.

(B) A dealer's office must comply with all applicable municipal ordinances, including municipal zoning ordinances. The dealer is responsible for obtaining a certificate of occupancy,

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1 certificate of compliance, or other required document issued by a municipal government to show  
2 compliance, including a new certificate or document when the building is altered or remodeled, or when  
3 the building use changes.

4 (C) A dealer's office may not be located in a residence, apartment, hotel, motel,  
5 rooming house, or any room or building not open to the public.

6 (D) A dealer's office may not be located in a restaurant, gas station, or  
7 convenience store, unless the office has a separate entrance door that does not require a dealer's  
8 customer to pass through the other business.

9 (E) A dealer's office may not be virtual or provided by a subscription for office  
10 space or office services. Access to an office space or office services is not considered an established and  
11 permanent location.

12 (F) The physical address of the dealer's office must be in Texas and recognized by  
13 the U.S. Postal Service, be[or] capable of receiving U.S. mail, and have an assigned emergency services  
14 property address. The department will not mail a ~~metal~~ dealer's license plate to an out-of-state  
15 address.

16 (G) A portable-type office building may qualify as an office only if the building  
17 meets the requirements of this section and is not a readily moveable trailer or other vehicle.

18 (H) The dealer's office space must:

19 (i) include at least 100 square feet of interior floor space, exclusive of  
20 hallways, closets, or restrooms;

21 (ii) have a minimum seven-foot-high ceiling;

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(iii) accommodate required office equipment; and

(iv) allow a dealer and customer to safely access the office and conduct

business in private while seated.

(6) Required office equipment for a retail dealer and a wholesale motor vehicle dealer.

At a minimum, a dealer's office must be equipped with:

(A) a desk;

(B) two chairs;

(C) internet access; and

(D) a working telephone number listed in the business name or assumed name

under which the dealer conducts business.

(7) Number of retail dealers in one building. Not more than four retail dealers may be

located in the same building. Each retail dealer located in the same building must meet the requirements

of this section.

(8) Number of wholesale motor vehicle dealers in one office building. Not more than

eight wholesale motor vehicle dealers may be located in the same office building. Each wholesale motor

vehicle dealer located in the same office building must meet the requirements of this section.

(9) Office sharing prohibition for retail dealers and wholesale motor vehicle dealers.

Unless otherwise authorized by the Transportation Code, a retail dealer and a wholesale motor vehicle

dealer licensed after September 1, 1999, may not be located in the same building.

(10) Dealer housed with other business.

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(A) If a person conducts business as a dealer in conjunction with another business owned by the same person and under the same name as the other business, the same telephone number may be used for both businesses. If the name of the dealer differs from the name of the other business, a separate telephone listing and a separate sign for each business are required.

(B) A person may conduct business as a dealer in conjunction with another business not owned by that person only if the dealer owns the property on which business is conducted or has a separate lease agreement from the owner of that property that meets the requirements of this section. The same telephone number may not be used by both businesses. The dealer must have separate business signs, telephone listings, and office equipment required under this section.

(C) A dealer's office must have permanent interior walls on all sides and be separate from any public area used by another business.

(11) Display area and storage lot requirements.

(A) A wholesale motor vehicle dealer is not required to have display space at the wholesale motor vehicle dealer's business premises.

(B) A retail dealer must have an area designated as display space for the retail dealer's inventory. A retail dealer's designated display area must comply with the following requirements.

(i) The display area must be located at the retail dealer's physical business address or contiguous to the retail dealer's physical address. The display area may not be in a storage lot.

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1 (ii) The display area must be of sufficient size to display at least five  
2 vehicles of the type for which the GDN is issued. The display area~~[Those spaces]~~ must be reserved  
3 exclusively for the retail dealer's inventory and may not be used for customer parking, employee parking,  
4 general storage, or shared or intermingled with another business or a public parking area, a driveway to  
5 the office, or another dealer's display area.

6 (iii) The display area may not be on a public easement, right-of-way, or  
7 driveway unless the governing body having jurisdiction of the easement, right-of-way, or driveway  
8 expressly consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part  
9 of the state highway system, use as a display area may only be authorized by a lease agreement.

10 (iv) If a retail dealer shares a display or parking area with another  
11 business, including another dealer, the dealer's vehicle inventory must be separated from the other  
12 business's display or parking area by a material object or barrier that cannot be readily removed. A  
13 barrier that cannot be readily removed is one that cannot be easily moved by one person and typically  
14 weighs more than 50 pounds. A material object or barrier must be in place on all sides except for the  
15 space necessary to allow for entry and exit of vehicle inventory.

16 (v) If a dealer's business location includes gasoline pumps or a charging  
17 station or includes another business that sells gasoline or has a charging station, the dealer's display area  
18 may not be part of the parking area for fuel or charging station customers and may not interfere with  
19 access to or from the gasoline pumps, fuel tanks, charging station, or fire prevention equipment.

20 (vi) The display area must be adequately illuminated if the retail dealer  
21 is open at night so that a vehicle for sale can be properly inspected by a potential buyer.

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(vii) The display area may be located inside a building; however, if multiple dealers are displaying vehicles inside a building, each dealer's display area must be separated by a material object or barrier that cannot be readily removed. A barrier that cannot be readily removed is one that cannot be easily moved by one person and typically weighs more than 50 pounds. A material object or barrier must be in place on all sides except for the space necessary to allow for entry and exit of vehicle inventory.

(C) A GDN holder~~[dealer]~~ may maintain a storage lot only if the storage lot is not accessible to the public and no sales activity occurs at the storage lot. A sign stating the license holder's~~[dealer's]~~ name, contact information, and the fact the property is a storage lot is permissible. A storage lot must be fenced or in an access-controlled location to be considered not accessible to the public. An applicant must include the physical address of a storage lot in an application for a new license if the storage lot is located at a different physical address than the licensed business. If a storage lot is established after a license is issued and is located at a different physical address than the licensed business, the dealer must submit a license amendment to add the physical address of the storage lot within 10 days of the storage lot being established.

(12) Dealers authorized to sell salvage motor vehicles. If an independent motor vehicle dealer offers a salvage motor vehicle for sale on the dealer's premises, the vehicle must be clearly and conspicuously marked with a sign informing a potential buyer that the vehicle is a salvage motor vehicle. ~~[This requirement does not apply to a licensed salvage pool operator.]~~

(13) Lease requirements. If the premises from which a dealer conducts business, including any display area, is not owned by the dealer, the dealer must maintain a lease that is

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continuous during the period of time for which the dealer's license will be issued. The lease agreement must be on a properly executed form containing at a minimum:

(A) the name of the property owner as the lessor of the premises and the name of the dealer as the tenant or lessee of the premises;

(B) the period of time for which the lease is valid;

(C) the street address or legal description of the property, provided that if only a legal description of the property is included, a dealer must attach a statement verifying that the property description in the lease agreement is the physical street address identified on the application as the physical address for the established and permanent place of business;

(D) the signature of the property owner as the lessor and the signature of the dealer as the tenant or lessee; and

(E) if the lease agreement is a sublease in which the property owner is not the lessor, the dealer must also obtain a signed and notarized statement from the property owner including the following information:

(i) property owner's full name, email address, mailing address, and phone number; and

(ii) property owner's statement confirming that the dealer is authorized to sublease the location and may operate a vehicle sales business from the location.

(14) Dealer must display GDN and bond notice. A dealer must display the dealer's GDN issued by the department at all times in a manner that makes the GDN easily readable by the public and in a conspicuous place at each place of business for which the dealer's GDN is issued. ~~If the dealer's~~

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~~GDN applies to more than one location, a copy of the GDN and bond notice must be displayed in each supplemental location.]~~ A dealer required to obtain a surety bond must post a bond notice adjacent to and in the same manner as the dealer's GDN is displayed. The notice must include the bond company name, bond identification number, and procedure by which a claimant can recover under the bond. The notice must also include the department's website address and notify a consumer that a dealer's surety bond information may be obtained by submitting a request to the department. If the dealer's GDN applies to more than one location, a copy of the GDN and bond notice must be displayed in each supplemental location.

(b) Wholesale motor vehicle auction premises requirements. A wholesale motor vehicle auction must comply with the following premises requirements:

(1) a wholesale motor vehicle auction GDN holder must hold a motor vehicle auction on a regular periodic basis at the licensed location, and an owner or bona fide employee must be available at the business location during each auction and during posted business hours. If the owner or a bona fide employee is not available to conduct business during the posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time operations will resume.

(2) the business telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(3) a wholesale motor vehicle auction GDN holder must display a business sign that meets the following requirements:



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1                   (A) The sign must be a conspicuous, permanent sign with letters at least six  
2 inches in height showing the business name or assumed name substantially similar to the name reflected  
3 on the GDN under which the GDN holder conducts business. A business sign is considered conspicuous  
4 if it is easily visible to the public within 100 feet of the main entrance of the business office. A business  
5 sign is considered permanent only if it is made of durable, weather-resistant material.

6                   (B) The sign must be permanently mounted at the physical address listed on the  
7 application for the wholesale motor vehicle auction GDN. A business sign is considered permanently  
8 mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign  
9 support permanently installed in the ground.

10                  (C) An applicant may use a temporary sign or banner if the applicant can show  
11 proof that a sign that meets the requirements of this paragraph has been ordered and provides a written  
12 statement that the sign will be promptly and permanently mounted upon delivery.

13                  (D) An applicant or holder is responsible for ensuring that the business sign  
14 complies with municipal ordinances, and that any lease signage requirements are consistent with the  
15 signage requirements in this paragraph.

16                  (4) The business office of a wholesale motor vehicle auction GDN applicant and holder  
17 must meet the following requirements:

18                   (A) The office must be located in a building with a permanent roof and  
19 connecting exterior walls on all sides.

20                   (B) The office must comply with all applicable municipal ordinances, including  
21 municipal zoning ordinances. The wholesale motor vehicle auction is responsible for obtaining a

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1 certificate of occupancy, certificate of compliance, or other required document issued by a municipal  
2 government to show compliance, including a new certificate or document when the building is altered or  
3 remodeled, or when the building use changes.

4 (C) The office may not be located in a residence, apartment, hotel, motel,  
5 rooming house, or any room or building not open to the public.

6 (D) The office may not be located in a restaurant, gas station, or convenience  
7 store, unless the office has a separate entrance door that does not require a customer to pass through  
8 the other business.

9 (E) The office may not be virtual or provided by a subscription for office space or  
10 office services. Access to office space or office services is not considered an established and permanent  
11 location.

12 (F) The physical address of the office must be in Texas and recognized by the U.S.  
13 Postal Service, capable of receiving U.S. mail, and have an assigned emergency services property  
14 address.

15 (G) A portable-type office building may qualify as an office only if the building  
16 meets the requirements of this section and is not a readily moveable trailer or other vehicle.

17 (5) A wholesale motor vehicle auction GDN applicant and holder must have the following  
18 office equipment:

19 (A) a desk;

20 (B) a chair;

21 (C) internet access; and

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1                                (D) a working telephone number listed in the business name or assumed name  
2   under which business is conducted.

3                                (6) A wholesale motor vehicle auction must meet the following display area and storage  
4   lot requirements:

5                                (A) The area designated as display space for inventory must be located at the  
6   physical business address or contiguous to the physical address. The display area may not be in a storage  
7   lot.

8                                (B) The display area must be of sufficient size to display at least five vehicles.  
9   Those spaces must be reserved exclusively for inventory and may not be used for customer parking,  
10   employee parking, general storage, or shared or intermingled with another business or a public parking  
11   area, or a driveway to the office.

12                               (C) The display area may not be on a public easement, right-of-way, or driveway  
13   unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly  
14   consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part of the  
15   state highway system, use as a display area may only be authorized by a lease agreement.

16                               (D) If the business location includes gasoline pumps or a charging station or  
17   includes another business that sells gasoline or has a charging station, the display area may not be part  
18   of the parking area for fuel or charging station customers and may not interfere with access to or from  
19   the gasoline pumps, fuel tanks, charging station, or fire prevention equipment.

20                               (E) The display area must be adequately illuminated if open at night so that a  
21   vehicle for sale can be properly inspected by a potential buyer.

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1                   (F) The display area may be located inside a building.

2                   (G) A wholesale motor vehicle auction may maintain a storage lot only if the

3 storage lot is not accessible to the public and no sales activity occurs at the storage lot. A sign stating the

4 business name, contact information, and the fact the property is a storage lot is permissible. A storage

5 lot must be fenced or in an access-controlled location to be considered not accessible to the public. An

6 applicant must include the physical address of a storage lot in an application for a new license if the

7 storage lot is located at a different physical address. If a storage lot is established after a license is issued

8 and is located at a different physical address, the dealer must submit a license amendment to add the

9 physical address of the storage lot within 10 days of the storage lot being established.

10                  (7) A wholesale motor vehicle auction must meet the following lease requirements if the

11 business premises, including any display area, is not owned by the wholesale motor vehicle auction:

12                   (A) the applicant or holder must maintain a lease that is continuous during the

13 period of time for which the GDN will be issued;

14                   (B) The lease agreement must be on a properly executed form containing at a

15 minimum:

16                   (i) the name of the property owner as the lessor of the premises and the

17 name of the GDN applicant or holder as the tenant or lessee of the premises;

18                   (ii) the period of time for which the lease is valid;

19                   (iii) the street address or legal description of the property, provided that

20 if only a legal description of the property is included, a wholesale motor vehicle auction must attach a

21 statement verifying that the property description in the lease agreement is the physical street address

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1 identified on the application as the physical address for the established and permanent place of  
2 business;

3 (iv) the signature of the property owner as the lessor and the signature  
4 of the applicant or holder as the tenant or lessee; and

5 (C) if the lease agreement is a sublease in which the property owner is not the  
6 lessor, the wholesale motor vehicle auction must also obtain a signed and notarized statement from the  
7 property owner including the following information:

8 (i) property owner's full name, email address, mailing address, and  
9 phone number; and

10 (ii) property owner's statement confirming that the dealer is authorized  
11 to sublease the location and may operate a wholesale motor vehicle auction business from the location.

12  
13 215.141. Sanctions.

14 (a) The board or department may take the following actions against a license applicant, a license  
15 holder, or a person engaged in business for which a license is required:

16 (1) deny an application;

17 (2) revoke a license;

18 (3) suspend a license; ~~and~~

19 (4) assess a civil penalty;~~[or other action against a license applicant, a license holder, or a~~  
20 ~~person engaged in business for which a license is required.]~~

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1                   (5) issue a cease and desist order; or

2                   (6) or take other authorized action.

3                   (b) The board or department may take action described in subsection (a) of this section if a  
4                   license applicant, a license holder, or a person engaged in business for which a license is required:

5                   (1) fails to maintain a good and sufficient bond or post the required bond notice ~~in the~~  
6                   ~~amount of \$25,000]~~ if required under Transportation Code §503.033 (relating to Security Requirement);

7                   (2) fails to meet or maintain the requirements of §215.140 (relating to Established and  
8                   Permanent Place of Business Premises Requirements);

9                   (3) fails to maintain records required under this chapter;

10                  (4)[3] refuses or fails to comply with a request by [a representative of] the department  
11                  for electronic records or to examine and copy during the license holder's business hours at the licensed  
12                  business location:

13                               (A) sales records required to be maintained by §215.144 of this title (relating to  
14                   Records);

15                               (B) ownership papers for a vehicle owned by that dealer or under that dealer's  
16                   control;

17                               (C) evidence of ownership or a current lease agreement for the property on  
18                   which the business is located; or

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1                                (D) the Certificate of Occupancy, Certificate of Compliance, business license or  
2 permit, or other official documentation confirming compliance with county and municipal laws or  
3 ordinances for a vehicle business at the licensed physical location.

4                                (5)[(4)] refuses or fails to timely comply with a request for records made by a  
5 representative of the department;

6                                (6)[(5)] holds a wholesale motor vehicle dealer's license and[:]

7                                [(A) fails to meet the requirements of §215.140 of this title (relating to  
8 Established and Permanent Place of Business)); or

9                                (B)] sells or offers to sell a motor vehicle to a person other than a licensed or  
10 authorized dealer;

11                                (7)[(6)] sells or offers to sell a type of vehicle that the person is not licensed to sell;

12                                (8)[(7)] fails to submit a license amendment application in the electronic system  
13 designated by the department for licensing to notify the department of a change of the license holder's  
14 physical address, mailing address, telephone number, or email address within 10 days of the change,  
15 including a change in the physical address of a storage lot;

16                                (9)[(8)] fails to submit a license amendment application in the electronic system  
17 designated by the department for licensing to notify the department of a license holder's name change,  
18 or management or ownership change within 10 days of the change;

19                                (10)[(9)] except as provided by law, issues more than one buyer's temporary tag for the  
20 purpose of extending the purchaser's operating privileges for more than 60 days;

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(11)[(10)] fails to remove a license plate or registration insignia from a vehicle that is displayed for sale;

(12)[(11)] misuses a [metal]dealer's license plate or a temporary tag;

(13)[(12)] fails to display a [metal]dealer's license plate or temporary tag, as required by law;

(14)[(13)] holds open a title or fails to take assignment of a certificate of title, manufacturer's certificate, or other basic evidence of ownership for a vehicle acquired by the dealer, or fails to assign the certificate of title, manufacturer's certificate, or other basic evidence of ownership for a vehicle sold;

(15)[(14)] fails to remain regularly and actively engaged in the business of buying, selling, or exchanging vehicles of the type for which the GDN is issued by the department;

(16)[(15)] violates a provision of Occupations Code, Chapter 2301; Transportation Code Chapters 503 and 1001[1000]–1005; a board order or rule; or a regulation of the department relating to the sale, lease, distribution, financing, or insuring of vehicles, including advertising rules under Subchapter F[H] of this chapter (relating to Advertising);

(17)[(16)] is convicted of an offense that directly relates to the duties or responsibilities of the occupation in accordance with §211.3 of this title (relating to Criminal Offense Guidelines);

(18)[(17)] is determined by the board or department, in accordance with §215.89 of this title (relating to Fitness), to be unfit to hold a license;

(19)[(18)] has not assigned at least five vehicles in the prior 12 months, provided the dealer has been licensed more than 12 months;



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1                   (20)[(19)] files or provides a false or forged:

2                               (A) title document, including an affidavit making application for a certified copy  
3 of a title; or

4                               (B) tax document, including a sales tax statement or affidavit;

5                   (21)[(20)] uses or allows use of that dealer's license or location for the purpose of  
6 avoiding a provision of Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 -  
7 1005; or other laws;

8                   (22)[(21)] omits information or makes a material misrepresentation in any application or  
9 other documentation filed with the department including providing a false or forged identity document  
10 or a false or forged photograph, electronic image, or other document;

11                   (23)[(22)] fails to remit payment as ordered for a civil penalty assessed by the board or  
12 department;

13                   (24)[(23)] sells a new motor vehicle without a franchised dealer's license issued by the  
14 department;

15                   (25)[(24)] fails to comply with a dealer responsibility under §215.150 of this title  
16 (relating to Authorization to Issue Temporary Tags);

17                   (26) utilizes a temporary tag that fails to meet the requirements of §215.153 of this title  
18 (relating to Specifications for All Temporary Tags);

19                   (27)[(25)] violates any state or federal law or regulation relating to the sale of a motor  
20 vehicle; [or]

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1                   ~~(28)[(26) effective January 1, 2017,]~~ knowingly fails to disclose that a motor vehicle has  
2   been repaired, rebuilt, or reconstructed and issued a title under Transportation Code, §501.100 (relating  
3   to Application for Regular Certificate of Title for Salvage Vehicle);.

4                   (29) fails to issue a refund as ordered by the board or department; or

5                   (30) fails to acquire or maintain a required certificate of occupancy, certificate of  
6   compliance, business license or permit, or other official documentation for the licensed location  
7   confirming compliance with county or municipal laws or ordinances or other local requirements for a  
8   vehicle business.

9  
10   215.143. Drive-a-way Operator In-Transit License Plates.

11                  (a) A drive-a-way operator may apply for a drive-a-way in-transit standard license plate:

12                   (1) when applying for a new or renewal in-transit license, or

13                   (2) by submitting a plate request application electronically in the system designated by  
14   the department.

15                  (b) A drive-a-way operator must display an in-transit license plate in the rear of each transported  
16   motor vehicle from the vehicle's point of origin to its point of destination in Texas in accordance with  
17   §217.27 of this title (relating to Vehicle Registration Insignia).

18                  (c) A drive-a-way operator shall maintain a record of each license plate issued to the operator by  
19   the department. The record of each license plate issued must contain:

20                   (1) the license plate number;

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1                   (2) the year and make of the vehicle to which the license plate is affixed;

2                   (3) the VIN of the vehicle; and

3                   (4) the name of the person in control of the vehicle.

4                   (d) If a drive-a-way operator cannot account for a license plate or a license plate is damaged, the  
5 operator must:

6                   (1) document the license plate as "void" in the operator's plate record;

7                   (2) within three days of discovering that the license plate is missing or damaged, report  
8 the license plate as lost, stolen, or damaged in the electronic system designated by the department; and

9                   (3) if found once reported, cease use of the license plate.

10                  (e) A license plate is no longer valid for use after the drive-a-way operator reports to the  
11 department that the plate is lost, stolen, or damaged. A drive-a-way operator must render a void plate  
12 unusable by permanently marking the front of the plate with the word "VOID" or a large "X" and once  
13 marked, may destroy or recycle the license plate, or return the license plate to the department for  
14 recycling within 10 days.

15                  (f) The drive-a-way operator's license plate record must be available for inspection and copying  
16 by the department during normal business hours or be available to submit electronically to the  
17 department upon request.

18                  (g) In evaluating requests for additional license plates, the department will consider the business  
19 justification provided by a drive-a-way operator including the following:

20                  (1) the number of vehicles currently being transported to a location in Texas;

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1                   (2) the highest number of motor vehicles transported in the prior 12 months;

2                   (3) the size and type of business; and

3                   (4) the operator's record of tracking and reporting missing or damaged plates to the  
4 department.

5                   (h) If a drive-a-way operator closes the associated license or the associated license is revoked or  
6 canceled by the department, the operator must return a license plate to the department within 10 days.

7  
8   215.144. Vehicle Records.

9                   (a) Purchases and sales records. A dealer and wholesale motor vehicle auction must maintain a  
10 complete record of all vehicle purchases and sales for a minimum period of 48 months and make the  
11 record available for inspection and copying by ~~[a representative]~~ of the department during business  
12 hours.

13                   (b) Independent mobility motor vehicle dealers. An independent mobility motor vehicle dealer  
14 must keep a complete written record of each vehicle purchase, vehicle sale, and any adaptive work  
15 performed on each vehicle for a minimum period of 36 months after the date the adaptive work is  
16 performed on the vehicle. An independent mobility motor vehicle dealer shall also retain and produce  
17 for inspection all records relating to the license requirements under Occupations Code, §2301.002(17-b)  
18 and all information and records required under Transportation Code §503.0295.

19                   (c) Location of records. A dealer's record reflecting purchases and sales for the preceding 13  
20 months must be maintained at the dealer's licensed location. Original titles are not required to be kept

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1 at the licensed location[,r] but must be made available to the agency upon reasonable request. A dealer's  
2 record for prior time periods may be kept off-site.

3 (d) Request for records. Within 15 days of receiving a request~~[receipt of a request sent by mail or~~  
4 ~~electronic document transfer]~~ from the department, a dealer must deliver a copy of the specified  
5 records to the address listed in the request. If a dealer has a concern about the origin of a records  
6 request, the dealer may verify that request with the department~~[division]~~ prior to submitting its records.

7 (e) Content of records. A dealer's complete record for each vehicle purchase or vehicle sale must  
8 contain:

- 9 (1) the date of the purchase;
- 10 (2) the date of the sale;
- 11 (3) the VIN;
- 12 (4) the name and address of the person selling the vehicle to the dealer;
- 13 (5) the name and address of the person purchasing the vehicle from the dealer;
- 14 (6) the name and address of the consignor if the vehicle is offered for sale by  
15 consignment;
- 16 (7) except for a purchase or sale where the Tax Code does not require payment of motor  
17 vehicle sales tax, a county tax assessor-collector receipt marked paid~~[copy of the receipt, titled "Tax~~  
18 ~~Collector's Receipt for Texas Title Application/Registration/Motor Vehicle Tax"]~~;
- 19 (8) a copy of all documents, forms, and agreements applicable to a particular sale,  
20 including a copy of:

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- 1 (A) the title application;
- 2 (B) the work-up sheet;
- 3 (C) the front and back of the manufacturer's certificate of origin or
- 4 manufacturer's statement of origin, unless the dealer obtains the title ~~[is obtained]~~ through the
- 5 electronic title system;
- 6 (D) the front and back of the title for the purchase and the sale, unless the
- 7 dealer enters or obtains the title ~~[is obtained]~~ through the electronic title system;
- 8 (E) the factory invoice, if applicable;
- 9 (F) the sales contract;
- 10 (G) the retail installment agreement;
- 11 (H) the buyer's order;
- 12 (I) the bill of sale;
- 13 (J) any waiver;
- 14 (K) any other agreement between the seller and purchaser; ~~[and]~~
- 15 (L) the purchaser's photo identification; ~~[Form VTR-136, relating to County of~~
- 16 ~~Title Issuance, completed and signed by the buyer;]~~
- 17 (M) the odometer disclosure statement signed by the buyer; and
- 18 (N) the rebuilt salvage disclosure, if applicable.

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1 (9) the original manufacturer's certificate of origin, original manufacturer's statement of  
2 origin, or original title for a new motor vehicle[s] offered for sale by a dealer which must be~~[-and a]~~  
3 properly stamped ~~[original manufacturer's certificate of origin, original manufacturer's statement of~~  
4 ~~origin, or original title for motor vehicles sold by a dealer]~~ if the title transaction is entered into the  
5 electronic titling system by the dealer;

6 (10) the dealer's monthly Motor Vehicle Seller Financed Sales Returns, if any; and

7 (11) if the vehicle sold is a motor home or a towable recreational vehicle subject to  
8 inspection under Transportation Code, Chapter 548, a copy of the written notice provided to the buyer at  
9 the time of the sale, notifying the buyer that the vehicle is subject to inspection requirements.

10 (f) Title assignments.

11 (1) For each vehicle a dealer acquires or offers for sale, the dealer must properly take  
12 assignment in the dealer's name of any:

13 (A) title;

14 (B) manufacturer's statement of origin;

15 (C) manufacturer's certificate of origin; or

16 (D) other evidence of ownership.

17 (2) Unless not required by Transportation Code, §501.0234(b), a[A] dealer must apply in  
18 the name of the purchaser of a vehicle for the title and registration, if applicable, of the vehicle with  
19 a[the appropriate] county tax assessor-collector~~[-as selected by the purchaser].~~

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(3) To comply with Transportation Code, §501.0234(f), a registration is considered filed within a reasonable time if the registration is filed within:

(A) 30~~[20-working]~~ days of the date of sale of the vehicle for a vehicle titled or registered in Texas; or

(B) 45 days of the date of sale of the vehicle for a dealer-financed transaction involving a vehicle that is titled or registered in Texas.

(4) The dealer is required to provide to the purchaser the receipt for the title and registration application.

(5) The dealer is required to maintain a copy of the receipt for the title and registration application in the dealer's sales file.

(g) Out-of-state sales. For a sale~~[s-transaction]~~ involving a vehicle to be transferred out of state, the dealer must:

(1) within 30~~[20-working]~~ days of the date of sale, either file the application for certificate of title on behalf of the purchaser or deliver the properly assigned evidence of ownership to the purchaser; and

(2) maintain in the dealer's record at the dealer's licensed location a photocopy of the completed sales tax exemption form for out of state sales approved by the Texas Comptroller of Public Accounts.

(h) Consignment sales. A dealer offering a vehicle for sale by consignment shall have a written consignment agreement or a power of attorney for the vehicle, and shall, after the sale of the vehicle, take assignment of the vehicle in the dealer's name and, pursuant to subsection (f), apply in the name of



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1 the purchaser for transfer of title and registration, if the vehicle is to be registered, with a[the  
2 appropriate] county tax assessor-collector[~~as selected by the purchaser~~]. The dealer must, for a  
3 minimum of 48 months, maintain a record of each vehicle offered for sale by consignment, including the  
4 VIN and the name of the owner of the vehicle offered for sale by consignment.

5 (i) Public motor vehicle auctions.

6 (1) A GDN holder that acts as a public motor vehicle auction must comply with  
7 subsection (h) of this section.

8 (2) A public motor vehicle auction:

9 (A) is not required to take assignment of title of a vehicle it offers for sale;

10 (B) must take assignment of title of a vehicle from a consignor prior to making  
11 application for title on behalf of the buyer; and

12 (C) must make application for title on behalf of the purchaser and remit motor  
13 vehicle sales tax within 20 working days of the sale of the vehicle.

14 (3) A GDN holder may not sell another GDN holder's vehicle at a public motor vehicle  
15 auction.

16 (j) Wholesale motor vehicle auction records. A wholesale motor vehicle auction license holder  
17 must maintain, for a minimum of 48 months, a complete record of each vehicle purchase and sale  
18 occurring through the wholesale motor vehicle auction. The wholesale motor vehicle auction license  
19 holder shall make the record available for inspection and copying by ~~a representative of~~ the  
20 department during business hours.

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(1) A wholesale motor vehicle auction license holder must maintain at the licensed location a record reflecting each purchase and sale for at least the preceding 24 months. Records for prior time periods may be kept off-site.

(2) Within 15 days of receiving a department request~~[receipt of a request sent by mail or by electronic document transfer from a representative of the department]~~, a wholesale motor vehicle auction license holder must deliver a copy of the specified records to the address listed in the request.

(3) A wholesale motor vehicle auction license holder's complete record of each vehicle purchase and sale shall, at a minimum, contain:

(A) the date of sale;

(B) the VIN;

(C) the name and address of the person selling the vehicle;

(D) the name and address of the person purchasing the vehicle;

(E) the dealer license number of both the selling dealer and the purchasing dealer, unless either is exempt from holding a license;

(F) all information necessary to comply with the federal odometer disclosure requirements in 49 CFR Part 580~~[Truth in Mileage Act]~~;

(G) auction access documents, including the written authorization and revocation of authorization for an agent or employee, in accordance with §215.148 of this title (relating to Dealer Agents);

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(H) invoices, bills of sale, checks, drafts, or other documents that identify the vehicle, the parties, or the purchase price;

(I) any information regarding the prior status of the vehicle such as the Reacquired Vehicle Disclosure Statement or other lemon law disclosures; and

(J) a copy of any written authorization allowing an agent of a dealer to enter the auction.

(k) Electronic records. A license holder may maintain a record in an electronic format if the license holder can print the record at the licensed location upon request by ~~a representative of~~ the department, except as provided by subsection (I) of this section.

(l) Use of department electronic titling and registration systems~~[webDEALER]~~. A license holder utilizing the department's web-based title application known as webDEALER, as defined in §217.71 of this title (relating to Automated and Web-Based Vehicle Registration and Title Systems), must comply with §217.74 of this title (relating to Access to and Use of webDEALER). Original hard copy titles are not required to be kept at the licensed location~~[,]~~ but must be made available to the department upon request.

#### 215.145. Change of Dealer's Status.

(a) A dealer's name change requires a new bond or a rider to the existing bond reflecting the new ~~dealer~~ name, unless the dealer is not otherwise required to purchase a bond.

(b) A dealer shall notify the department in writing within 10 days of a change of ownership by submitting a license amendment application in the department-designated electronic system for

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1 licensing. A licensed dealer that proposes to sell or assign to another any interest in the licensed entity,  
2 whether a corporation or otherwise, and provided the physical location of the licensed entity remains  
3 the same, shall notify the department in writing within 10 days of the change by filing an application to  
4 amend the license in the department-designated electronic system for licensing. If the sale or  
5 assignment of any portion of the business results in a change of entity, then the new entity must apply  
6 for and obtain a new license. A publicly held corporation only needs to inform the department of a  
7 change in ownership if one person or entity acquires a 10% or greater interest in the licensed entity.

8 (c) Upon the death of a dealer~~[-of a dealership]~~ operating~~[ed]~~ as a sole proprietor~~[ship]~~, either  
9 the surviving spouse of the deceased dealer or other individual deemed qualified by the department  
10 shall submit to the department a bond rider adding the name of the surviving spouse or other qualifying  
11 person to the bond for the remainder of the bond and license term. The surviving spouse or other  
12 qualifying person may continue operating~~[dealership operations]~~ under the current dealer license until  
13 the end of the license term.

14 (d) For purposes of subsection (c) of this section, ~~[if the qualifying person is]~~ the sole proprietor's  
15 surviving spouse~~[, then the surviving spouse]~~ may change the ownership of the dealership at the time the  
16 license is renewed without applying for a new GDN. At the time the renewal application is filed, the sole  
17 proprietor's surviving spouse must~~[is required to]~~ submit to the department:

18 (1) an application to amend the business entity;

19 (2) a copy of the sole proprietor's certificate of death, naming the surviving spouse;

20 (3) the required ownership information; and

21 (4) if applicable, a bond in the name of the surviving spouse.

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(e) For purposes of subsection (c) of this section, ~~[if the qualifying person is not the surviving spouse, then the]~~ a qualifying person who is not the surviving spouse may operate the sole proprietorship business during the term of the license. The qualifying person must file with the department:

(1) an application to amend the business entity, identifying the qualifying person as the manager;

(2) an ownership information form, indicating that the qualifying person has no ownership interest in the business; and

(3) a bond rider adding the qualified person's~~[individual's]~~ name to the existing bond.

(f) For purposes of subsection (c) of this section, ~~[if the qualifying person is not the surviving spouse, then at the time the license is due to be renewed, the]~~ a qualifying person who is not the surviving spouse must file with the department an application for a new GDN on or before the expiration of the license term in the department-designated electronic system for licensing.

(g) A determination made under this section does not impact a decision made by the board under Occupations Code, §2301.462~~[,]~~~~(relating to Succession Following Death of Franchised Dealer).~~

~~[215.146. Metal Converter's License Plates]~~

~~[(a) A metal converter's license plate shall be attached to the rear license plate holder of a vehicle in accordance with Transportation Code, §503.0618.]~~

~~[(b) A converter shall maintain a record of each metal converter's license plate issued to that converter. The record of each metal converter's license plate issued must contain:~~

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1                   ~~(1) the assigned metal converter's license plate number;~~

2                   ~~(2) the year and make of the vehicle to which the metal converter's license plate is~~

3   ~~affixed;~~

4                   ~~(3) the VIN of the vehicle; and~~

5                   ~~(4) the name of the person in control of the vehicle.]~~

6                   ~~[(c) If a converter cannot account for a metal converter's license plate that the department~~

7   ~~issued to the converter, the converter must:~~

8                   ~~(1) document the metal converter's license plate as "void" in the converter's metal~~

9   ~~license plate record;~~

10                  ~~(2) within three days of discovering that the plate is missing, report to the department in~~

11   ~~writing that the metal converter's license plate is lost or stolen; and~~

12                  ~~(3) if found, cease use of the metal converter's license plate.]~~

13                  ~~[(d) A metal converter's license plate is no longer valid for use after the converter reports to the~~

14   ~~department that the plate is missing.]~~

15                  ~~[(e) A metal converter's license plate record shall be made available for inspection and copying~~

16   ~~by the department at the converter's licensed location during the converter's posted business hours.]~~

17

18   215.147. Export Sales.

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(a) Before selling a motor vehicle for export from the United States to another country, a dealer must obtain a legible photocopy of the buyer's government-issued photo identification document. The photo identification document must be issued by the jurisdiction where the buyer resides and be:

(1) a passport;

(2) a driver[~~'s~~] license;

(3) a [~~concealed handgun license or~~] license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(4) a national identification certificate or identity document; or

(5) other identification document containing the:

(A) name of the issuing jurisdiction;

(B) buyer's full name;

(C) buyer's foreign address;

(D) buyer's date of birth;

(E) buyer's photograph; and

(F) buyer's signature.

(b) A dealer that sells a vehicle for export from the United States shall place a stamp on the title that includes the words "For Export Only" and includes the dealer's[~~license holder's~~] GDN. The stamp must be legible, in black ink, at least two inches wide, and placed on the:

(1) back of the title in all unused dealer reassignment spaces; and

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(2) front of the title in a manner that does not obscure any names, dates, mileage statements, or other information printed on the title.

(c) In addition to the records required to be maintained by §215.144 of this title (relating to Vehicle Records), a dealer shall maintain, for each motor vehicle sold for export, a sales file record. The sales file record shall be made available for inspection and copying upon request by the department. The sales file record of each vehicle sold for export shall contain:

(1) a completed copy of the Texas Motor Vehicle Sales Tax Exemption Certificate for Vehicles Taken Out of State, indicating that the vehicle has been purchased for export to a foreign country;

(2) a copy of the front and back of the title of the vehicle, showing the "For Export Only" stamp and the GDN of the dealer; and

(3) if applicable, an Export-only Sales Record Form, listing each motor vehicle sold for export only.

(d) A dealer, at the time of sale of a vehicle for export, shall:

(1) enter the information required by Transportation Code, §503.061 in the temporary tag database;

(2) designate the sale as "For Export Only"; and

(3) issue a buyer's temporary tag, in accordance with Transportation Code, §503.063.

215.148. Dealer Agents.



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(a) A dealer must provide written authorization to each person with whom the dealer's agent or employee will conduct business on behalf of the dealer, including to a person that:

(1) buys and sells motor vehicles for resale; or

(2) operates a licensed auction.

(b) If a dealer's agent or employee that conducts business on behalf of the dealer commits an act or omission that would be cause for denial, revocation, or suspension of a license in accordance with Occupations Code, Chapter 2301 or Transportation Code, Chapter 503, the board may:

(1) deny an application for a license; or

(2) revoke or suspend a license.

(c) The board may take action described in subsection (b) of this section after notice and an opportunity for hearing, in accordance with Occupations Code, Chapter 2301 and Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

(d) A dealer's authorization to an agent or employee shall:

(1) be in writing;

(2) be signed by the dealer principal or person in charge of daily activities of the dealership;

(3) include the agent's or employee's name, current mailing address, and telephone number;

(4) include the dealer's business name, address, and dealer license number or numbers;

(5) expressly authorize buying or selling by the specified agent or employee;

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(6) state that the dealer is liable for any act or omission regarding a duty or obligation of the dealer that is caused by that agent or employee, including any financial considerations to be paid for the vehicle;

(7) state that the dealer's authorization remains in effect until the recipient of the written authorization is notified in writing of the revocation of the authority; and

(8) be maintained as a required dealer's record and made available upon request by a representative of the department, in accordance with the requirements of §215.144 of this title (relating to Vehicle Records).

(e) A license holder, including a wholesale motor vehicle auction~~[-license holder]~~ that buys and sells vehicles on a wholesale basis, including by sealed bid, is required to verify the authority of any person claiming to be an agent or employee of a licensed dealer who purports to be buying or selling a motor vehicle:

(1) on behalf of a licensed dealer; or

(2) under the written authority of a licensed dealer.

(f) A title to a vehicle bought by an agent or employee of a dealer shall be:

(1) reassigned to the dealer by the seller or by the auction; and

(2) shall not be delivered to the agent or employee~~[-]~~ but delivered only to the dealer or the dealer's financial institution.

(g) Notwithstanding the prohibitions in this section, an authorized agent or employee may sign a required odometer statement.

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(h) In a wholesale transaction for the purchase of a motor vehicle, the seller may accept as consideration only:

(1) a check or a draft drawn on the purchasing dealer's account;

(2) a cashier's check in the name of the purchasing dealer; or

(3) a wire transfer from the purchasing dealer's bank account.

215.149. Sales of New Mobility Motor Vehicles~~[Independent Mobility Motor Vehicle Dealers]~~.

In accordance with Occupations Code, §2301.361, a transaction occurs through or by a franchised dealer of the motor vehicle's chassis line-make if the franchised dealer applies for title and registration of a new~~the~~ mobility motor vehicle in the name of the purchaser. An independent mobility motor vehicle dealer may prepare the documentation necessary for a franchised dealer to comply with the requirements of Transportation Code, §501.0234 in connection with the sale of a new mobility motor vehicle.

215.150. Authorization to Issue Temporary Tags.

(a) A dealer that holds a GDN may issue a dealer's temporary tag, buyer's temporary tag, or a preprinted Internet-down temporary tag for authorized purposes only for each type of vehicle the dealer is licensed to sell or lease. A converter that holds a converter's license under Occupations Code, Chapter 2301 may issue a converter's temporary tag for authorized purposes only.

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(b) A license holder may issue an applicable dealer's temporary tag, buyer's temporary tag, or converter's temporary tag until:

(1) the department denies access to the temporary tag database under Transportation Code §503.0632(f) and ~~§224.58~~~~§215.505~~ of this title (relating to Denial of Dealer or Converter Access to Temporary Tag System);

(2) the license holder issues the maximum number of temporary tags authorized under Transportation Code §503.0632(a)-(d); or

(3) the license is canceled, revoked, or suspended.

(c) A federal, state, or local governmental agency that is exempt under Section 503.024 from the requirement to obtain a dealer general distinguishing number may issue one ~~temporary~~ buyer's temporary tag, or one preprinted Internet-down temporary tag, in accordance with Transportation Code §503.063. A governmental agency that issues a ~~temporary~~ buyer's temporary tag, or preprinted Internet-down temporary tag, under this subsection:

(1) is subject to the provisions of Transportation Code §503.0631 and §503.067 applicable to a dealer; and

(2) is not required to charge the registration fee under Transportation Code §503.063(g).

(d) A dealer or converter is responsible for all use of and access to the applicable temporary tag database under the dealer's or converter's account, including access by any user or unauthorized person. Dealer and converter duties include monitoring temporary tag usage, managing account access, and taking timely and appropriate actions to maintain system security, including:

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1 (1) establishing and following reasonable password policies, including preventing the  
2 sharing of passwords;

3 (2) limiting authorized users to owners and bona fide employees with a business need to  
4 access the database;

5 (3) removing users who no longer have a legitimate business need to access the system;

6 (4) securing printed tags and destroying expired tags, by means such as storing printed  
7 tags in locked areas and shredding or defacing expired tags; and

8 (5) securing equipment used to access the temporary tag database and print temporary  
9 tags.

10  
11 215.151. Temporary Tags, General Use Requirements, and Prohibitions.

12 (a) A dealer, governmental agency, or converter shall secure a temporary tag to a vehicle in the  
13 license plate display area located at the rear of the vehicle, so that the entire temporary tag is visible and  
14 legible at all times, including when the vehicle is being operated.

15 (b) ~~[A federal, state, or local governmental agency shall secure a temporary buyer's tag or~~  
16 ~~preprinted Internet-down temporary tag issued under 215.150(c) of this title (relating to Authorization to~~  
17 ~~Issue Temporary Tags) to a vehicle in the license plate display area located at the rear of the vehicle, so~~  
18 ~~that the entire temporary tag is visible and legible at all times, regardless of whether the vehicle is being~~  
19 ~~operated.~~

20 ~~(c)]~~ All printed information on a temporary tag must be visible and may not be covered or  
21 obstructed by any plate holder or other device or material.

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1           ~~(c)(d)~~ A motor vehicle that is being transported [~~using the full mount method, the saddle mount~~  
2 ~~method, the tow bar method, or any combination of those methods~~] in accordance with Transportation  
3 Code, §503.068(d) or §503.0625, must have a dealer's temporary tag, a converter's temporary tag, or a  
4 buyer's temporary tag, whichever is applicable, affixed to the motor vehicle being transported.

5  
6           215.152. Obtaining Numbers for Issuance of Temporary Tags.

7           (a) A dealer, a [~~federal, state, or local~~] governmental agency, or a converter is required to have  
8 internet access to connect to the temporary tag databases maintained by the department.

9           (b) Except as provided by §215.157 of this title (relating to Advance Numbers, Preprinted  
10 Internet-down Temporary Tags), before a temporary tag may be issued and displayed on a vehicle, a  
11 dealer, a [~~federal, state, or local~~] governmental agency, or converter must:

12                   (1) enter in the temporary tag database true and accurate information about the vehicle,  
13 dealer, converter, or buyer, as appropriate; and

14                   (2) obtain a specific number for the temporary tag.

15           (c) The department will inform each dealer annually of the maximum number of buyer's  
16 temporary tags the dealer is authorized to issue during the calendar year under Transportation Code  
17 §503.0632. The number of buyer's temporary tags allocated to each dealer by the department will be  
18 determined based on the following formula:

19                   (1) Sales data determined from the department's systems from the previous three fiscal  
20 years. A dealer's base number will contain the sum of:

21                           (A) the greater number of:

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1 (i) in-state buyer's temporary tags issued in one fiscal year during the  
2 previous three fiscal years; or

3 (ii) title transactions processed through the Registration and Title System  
4 in one fiscal year during the previous three fiscal years; but

5 (iii) the amount will be limited to an amount that is not more than two  
6 times the number of title transactions identified in subparagraph (ii) of this paragraph; and

7 (B) the addition of the greatest number of out-of-state buyer's temporary tags  
8 issued in one fiscal year during the previous three fiscal years;

9 (2) the total value of paragraph (1) of this subsection will be increased by a multiplier  
10 based on the dealer's time in operation giving a 10 percent increase in tags for each year the dealer has  
11 been in operation up to 10 years;

12 (3) the total value of paragraph (2) of this subsection will be increased by a multiplier  
13 that is the greater of:

14 (A) the dealer's actual growth rate percentage identified from the preceding two  
15 fiscal years, calculated by the growth of the number of title transactions processed through the  
16 Registration and Title System plus the growth of the number of out-of-state buyer's temporary tags  
17 issued, except that it may not exceed 200 percent; or

18 (B) the statewide actual growth rate percentage identified from the preceding  
19 two fiscal years, calculated by the growth of the number of title transactions processed through the  
20 Registration and Title System plus the growth of the number of out-of-state buyer's temporary tags  
21 issued, not less than zero, to determine the buyer's temporary tag allotment; and

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(4) the department may increase the determined allotment of buyer's temporary tags for dealers in the state, in a geographic or population area, or in a county, based on:

(A) changes in the market;

(B) temporary conditions that may affect sales; and

(C) any other information the department considers relevant.

(d) The department will inform each dealer annually of the maximum number of agent temporary tags and vehicle specific temporary tags the dealer is authorized to issue during the calendar year under Transportation Code §503.0632. The number of agent temporary tags and vehicle specific temporary tags allocated to each dealer by the department, for each tag type, will be determined based on the following formula:

(1) dealer temporary tag data for agent temporary tags and vehicle specific temporary tags determined from the department's systems from the previous three fiscal years. A dealer's base number will contain the maximum number of dealer temporary tags issued during the previous three fiscal years;

(2) the total value of paragraph (1) of this subsection will be increased by a multiplier based on the dealer's time in operation giving a 10 percent increase in tags for each year the dealer has been in operation up to 10 years; and

(3) the total value of paragraph (2) of this subsection will be increased by a multiplier that is the greater of:



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1 (A) the dealer's actual growth rate percentage identified from the preceding two  
2 fiscal years, calculated by the growth of the number of dealer's temporary tags issued, except that it may  
3 not exceed 200 percent; or

4 (B) the statewide actual growth rate percentage identified from the preceding  
5 two fiscal years, calculated by the growth of the number of dealer's temporary tags issued, not less than  
6 zero, to determine the dealer's temporary tag allotment; and

7 (4) the department may increase a dealer's allotment of agent temporary tags and  
8 vehicle specific temporary tags for dealers in the state, in a geographic or population area, or in a county,  
9 based on:

10 (A) changes in the market;

11 (B) temporary conditions that may affect sales; and

12 (C) any other information the department considers relevant.

13 (e) The department will inform each converter annually of the maximum number of temporary  
14 tags the converter is authorized to issue during the calendar year under Transportation Code §503.0632.  
15 The number of temporary tags allocated to each converter by the department will be determined based  
16 on the following formula:

17 (1) converter temporary tag data determined from the department's systems from the  
18 previous three fiscal years. A converter's base number will contain the maximum number of converter  
19 temporary tags issued during the previous three fiscal years;

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(2) the total value of paragraph (1) of this subsection will be increased by a multiplier based on the converter's time in operation giving a 10 percent increase in tags for each year the dealer has been in operation up to 10 years; and

(3) the total value of paragraph (2) of this subsection will be increased by a multiplier that is the greater of:

(A) the converter's actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of converter's temporary tags issued, except that it may not exceed 200 percent; or

(B) the statewide actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of converter's temporary tags issued, not less than zero, to determine the converter's temporary tag allotment;

(4) the department may increase a converter's allotment of converter temporary tags for converters in the state, in a geographic or population area, or in a county, based on:

(A) changes in the market;

(B) temporary conditions that may affect sales; and

(C) any other information the department considers relevant.

(f) A dealer or converter that is licensed after the commencement of a calendar year shall be authorized to issue the number of temporary tags allotted in this subsection prorated on all or part of the remaining months until the commencement of the calendar year after the dealer's or converter's initial license expires. The initial allocations shall be as determined by the department in granting the license, but not more than:

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(1) 1,000~~[600]~~ temporary tags for a franchised dealer per each tag type, buyer's temporary tags, agent temporary tags, and vehicle specific tags, unless:

(A) the dealer provides credible information indicating that a greater number of tags is warranted based on anticipated sales, and growth, to include new and used vehicle sales, including information from the manufacturer or distributor, or as otherwise provided in this section; and

(B) if more than 1,000~~[600]~~ temporary tags are determined to be needed based on anticipated sales and growth, the total number of temporary tags needed, including the 1,000~~[600]~~, will be doubled;

(2) 300 temporary tags for a nonfranchised dealer per each tag type, buyer's temporary tags, agent temporary tags, and vehicle specific tags, unless the dealer provides credible information indicating that a greater number of tags is warranted based on anticipated sales as otherwise provided in this section; and

(3) A converter will be allocated 600 temporary tags, unless the converter provides credible information indicating that a greater number of tags is warranted based on anticipated sales, including information from the manufacturer or distributor, or as otherwise provided in this section.

(g) An existing dealer or converter that is:

(1) moving its operations from one location to a different location will continue with its allotment of temporary tags and not be allocated temporary tags under subsection (f) of this section;

(2) opening an additional location will receive a maximum allotment of temporary tags based on the greater of the allotment provided to existing locations, including franchised dealers opening additional locations for different line makes, or the amount under subsection (f) of this section;

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(3) purchased as a buy-sell ownership agreement will receive the maximum allotment of temporary tags provided to the location being purchased and not be allocated temporary tags under subsection (f) of this section; and

(4) inherited by will or laws of descent will receive the maximum allotment of temporary tags provided to the location being inherited and not be allocated temporary tags under subsection (f) of this section.

(h) A new dealer or converter may also provide credible information supporting a request for additional temporary tags to the amount allocated under subsection (f) of this section based on:

(1) franchised dealer, manufacturer, or distributor sales expectations;

(2) a change in license required by death or retirement, except as provided in subsection (g) of this section;

(3) prior year's sales by a dealership moving into the state; or

(4) other similar change of location or ownership that indicates some continuity in existing operations.

(i) After using 50 percent of the allotted maximum number of temporary tags, a dealer or converter may request an increase in the number of temporary tags by submitting a request in the department's eLICENSING system.

(1) The dealer or converter must provide information demonstrating the need for additional temporary tags results from business operations, including anticipated needs, as required by §503.0632(c). Information may include documentation of sales and tax reports filed as required by law, information of anticipated need, or other information of the factors listed in §503.0632(b).

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(2) The department shall consider the information presented and may consider information not presented that may weigh for or against granting the request that the department in its sole discretion determines to be relevant in making its determination. Other relevant information may include information of the factors listed in §503.0632(b), the timing of the request, and the applicant's temporary tag activity.

(3) The department may allocate a lesser or greater number of additional temporary tags than the amount requested~~[by the dealer or converter]~~. Allocation of a lesser or greater number of additional temporary tags is not a denial of the request. Allocation of additional temporary tags under this paragraph does not limit the dealer's or converter's ability to submit additional requests for more temporary tags.

(4) If a request is denied, the denial will be sent to the dealer or converter by email to the requestor's email address~~[a dealer or converter may appeal the denial to the Director of the Motor Vehicle Division whose decision is final]~~.

(A) A dealer or converter may appeal the denial to the Motor Vehicle Division Director.~~[The denial will be sent to the license holder by email to the email used by the license holder in the request.]~~

(B) The appeal must be requested through the eLICENSING system within 15~~10~~ ~~business~~ days of the date the department emailed the denial to the dealer or converter~~[the denial being sent to the department through the eLICENSING system]~~.

(C) The appeal may discuss information provided in the request but may not include additional information.

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(D) The Motor Vehicle Division Director will review the submission and any additional statements concerning the information submitted in the original request and render an opinion within ~~15~~<sup>10 business</sup> days of receiving the appeal. The Motor Vehicle Division Director may decide to deny the request and issue no additional tags~~;~~ or award an amount of additional temporary tags that is lesser, equal to, or greater than the request.

(E) The requesting dealer or converter~~[license holder]~~ will be notified as follows:

(i) If the Motor Vehicle Division Director ~~D~~<sup>d</sup>irector decides~~[has decided]~~ to deny the appeal, the department will contact the license holder ~~[will be contacted]~~ by email regarding the decision and options to submit a new request with additional relevant credible supporting documentation or to pursue a claim in district court; or

(ii) If the Motor Vehicle Division Director ~~[has decided to]~~ awards an amount of additional temporary tags that is lesser, equal to, or greater than the request, the additional temporary tags will be added to the dealer's or converter's ~~[license holders]~~ account and the license holder will be contacted by email regarding the decision, informed that the request has not been denied, and options ~~[the license holder has]~~ to submit a new request.

(5) The Motor Vehicle Division Director's decision on appeal is final.

~~(6)~~<sup>(5)</sup> Once a denial is final, a dealer or converter may only submit a subsequent request for additional temporary tags during that calendar year if the dealer or converter is able to provide additional information not considered in a~~the~~ prior request.

(j) A change in the allotment under subsection (i) of this section does not create a dealer or converter base for subsequent year calculations.

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(k) The department may at any time initiate an enforcement action against a dealer or converter if temporary tag usage suggests that misuse or fraud has occurred as described in Transportation Code §§503.038, 503.0632(f), or 503.067.

(l) Unused ~~temporary[dealer or converter]~~ tag allotments from a calendar year do not roll over to subsequent years.

#### 215.154. Dealer's Temporary Tags.

(a) A dealer's temporary tag may be displayed only on the type of vehicle for which the GDN is issued and for which the dealer is licensed by the department to sell or lease.

(b) A wholesale motor vehicle auction license holder that also holds a dealer GDN may display a dealer's temporary tag on a vehicle that is being transported to or from the licensed auction location.

(c) When an unregistered vehicle is sold to another dealer, the selling dealer shall remove the selling dealer's temporary tag. The purchasing dealer may display its dealer's temporary tag or its ~~metal~~ dealer's standard or personalized prestige license plate on the vehicle.

(d) A dealer's temporary tag:

(1) may be displayed on a vehicle only as authorized in Transportation Code §503.062;  
and

(2) may not be displayed on:

(A) a laden commercial vehicle being operated or moved on the public streets or highways;

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(B) on the dealer's service or work vehicles as described in §215.138(d) of this chapter (relating to Use of Dealer's License Plates);

(C) a golf cart as defined under Transportation Code Chapter 551; or

(D) an off-highway vehicle as defined under Transportation Code Chapter 551A.

(e) ~~[For purposes of this section, a dealer's service or work vehicle includes:~~

~~(1) a vehicle used for towing or transporting other vehicles;~~

~~(2) a vehicle, including a light truck, used in connection with the operation of the dealer's shops or parts department;~~

~~(3) a courtesy car on which a courtesy car sign is displayed;~~

~~(4) a rental or lease vehicle; and~~

~~(5) any boat trailer owned by a dealer or manufacturer that is used to transport more than one boat.]~~

~~[(f)]~~For purposes of subsection (d) of this section, a vehicle bearing a dealer's temporary tag is not considered a laden commercial vehicle when the vehicle is:

(1) towing another vehicle bearing the same dealer's temporary tags; and

(2) both vehicles are being conveyed from the dealer's place of business to a licensed wholesale motor vehicle auction or from a licensed wholesale motor vehicle auction to the dealer's place of business.

~~[(g) As used in this section, "light truck" has the meaning assigned by Transportation Code, §541.201.]~~



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1            ~~(f)~~~~(h)~~ A dealer's temporary tag may not be used to operate a vehicle for the personal use of a  
2 dealer or a dealer's employee.

3            ~~(g)~~~~(i)~~ A dealer's temporary tag must show its expiration date, which must not exceed 60 days  
4 after the date the temporary tag was issued.

5            ~~(h)~~~~(j)~~ A dealer's temporary tag may be issued by a dealer to a specific motor vehicle in the  
6 dealer's inventory or to a dealer's agent who is authorized to operate a motor vehicle owned by the  
7 dealer.

8            ~~(i)~~~~(k)~~ A dealer that issues a dealer's temporary tag to a specific vehicle must ensure that the  
9 following information is placed on the temporary tag:

10                    (1) the vehicle-specific number from the temporary tag database;

11                    (2) the year and make of the vehicle;

12                    (3) the VIN of the vehicle;

13                    (4) the month, day, and year of the temporary tag's expiration; and

14                    (5) the name of the dealer.

15            ~~(j)~~~~(l)~~ A dealer that issues a dealer's temporary tag to an agent must ensure that the following  
16 information is placed on the temporary tag:

17                    (1) the specific number from the temporary tag database;

18                    (2) the month, day, and year of the temporary tag's expiration; and

19                    (3) the name of the dealer.

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## 215.155. Buyer's Temporary Tags.

(a) A buyer's temporary tag may be displayed only on a vehicle;

(1) from the selling[er's] dealer's inventory; and

(2) that can be legally operated on the public streets and highways; and

(3) for which a sale or lease has been consummated;[-] and

(4)[(b) A buyer's temporary tag may be displayed only on a vehicle.] that has a valid inspection in accordance with Transportation Code Chapter 548, unless:

(a) an inspection is not required under Transportation Code §503.063(i) or (j); or

(b) the vehicle is exempt from inspection under Chapter 548.

(b) A buyer's temporary tag must be issued and provided to the buyer of a vehicle that is to be titled but not registered but the temporary tag must not be displayed on the vehicle.

(c) For a wholesale transaction, the purchasing dealer places on the motor vehicle its own:

(1) dealer's temporary tag; or

(2) ~~metal~~ dealer's license plate.

(d) A buyer's temporary tag is valid until the earlier of:

(1) the date on which the vehicle is registered; or

(2) the 60th day after the date of purchase.

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(e) The dealer[, or [federal, state, or local] governmental agency, must ensure that the following information is placed on a buyer's temporary tag[~~that the dealer issues~~]:

(1) the vehicle-specific number obtained from the temporary tag database;

(2) the year and make of the vehicle;

(3) the VIN of the vehicle;

(4) the month, day, and year of the expiration of the buyer's temporary tag; and

(5) the name of the dealer or [federal, state, or local] governmental agency.

(f) A dealer shall charge a buyer a fee of \$5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456.[ ~~A federal, state, or local governmental agency may charge a buyer a fee of \$5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456. A dealer shall remit the fee [shall be remitted by a dealer] to the county[~~in conjunction~~ with the title transfer application[~~and, if collected, by a federal, state, or local governmental agency, to the county,~~] for deposit to the credit of the Texas Department of Motor Vehicles fund. If[, unless] the vehicle is sold by a dealer to an out-of-state resident[~~in which case~~]:~~

(1) the dealer shall remit the entire fee to the department for deposit to the credit of the Texas Department of Motor Vehicles fund if payment is made through the department's electronic title system; or

(2) the dealer shall remit the fee to the county for deposit to the credit of the Texas Department of Motor Vehicles fund.

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1       (g) A governmental agency may charge a buyer a fee of \$5 for the buyer's temporary tag or  
2       Internet-down buyer's temporary tag issued, unless the vehicle is exempt from payment of registration  
3       fees under Transportation Code, §502.453 or §502.456. If collected by a governmental agency, the fee  
4       must be sent to the county for deposit to the credit of the Texas Department of Motor Vehicles fund.

5  
6       215.160. Duty to Identify Motor Vehicles Offered for Sale as Rebuilt.

7       (a) For each motor vehicle a dealer displays or offers for retail sale and which the dealer knows  
8       has been a salvage motor vehicle as defined by Transportation Code, §501.091(15) and a regular title  
9       subsequently issued under Transportation Code, §501.100, a dealer shall disclose in writing that the  
10      motor vehicle has been repaired, rebuilt, or reconstructed and issued a title under Transportation Code,  
11      §501.100. The written disclosure must:

12               (1) be visible from outside of the motor vehicle; and

13               (2) contain lettering that is reasonable in size, stating as follows: *"This motor vehicle has*  
14      *been repaired, rebuilt or, reconstructed after formerly being titled as a salvage motor vehicle."*

15       (b) Upon the sale of a motor vehicle which has been a salvage motor vehicle as defined by  
16      Transportation Code, §501.091(15) and a regular title subsequently issued under Transportation Code,  
17      §501.100, a dealer shall obtain the purchaser's signature on the vehicle disclosure form or on an  
18      acknowledgement written in fourteen~~eleven~~ point or larger font that states as follows: *"I, (name of*  
19      *purchaser), acknowledge that at the time of purchase, I am aware that this vehicle has been repaired,*  
20      *rebuilt, or reconstructed and was formerly titled as a salvage motor vehicle."*

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(c) The purchaser's acknowledgement as required in subsection (b) of this section may be incorporated in a Buyer's Order, a Purchase Order, or other disclosure document. This disclosure ~~does not~~ requires a separate signature.

(d) An original signed acknowledgement or vehicle disclosure form required by subsection (b) of this section ~~[or a signed vehicle disclosure form]~~ shall be given to the purchaser and a copy of the signed acknowledgement or vehicle disclosure form shall be retained by the dealer in the records of motor vehicles sales required by §215.144 of this title (relating to Vehicle Records). If the acknowledgement is incorporated in a Buyer's Order, a Purchase Order, or other disclosure document, a copy of that document must be given to the purchaser and a copy retained in the dealer's records in accordance with §215.144.

(e) This section does not apply to a wholesale motor vehicle auction.

215.161. Licensing Education Course Provider 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.

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(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.

(f) The dealer training provided by the department is not an approved licensing education course under this section.

**SUBCHAPTER E[F]. LESSORS AND LEASE FACILITATORS**

215.171. Purpose and Scope.

This subchapter implements Occupations Code, Chapter 2301 ~~[and more]~~ specifically, §§2301.251, 2301.253, 2301.254, 2301.261, 2301.262, 2301.357, and Subchapter L. Vehicle Lessors and Vehicle Lease Facilitators[2301.551 – 2301.556], and Transportation Code Chapters 1001 - 1005.

215.173. License.

(a) No person may engage in business as a vehicle lessor or a vehicle lease facilitator unless that person holds a valid license issued by the department[,], or is ~~[otherwise]~~ exempt~~[by law]~~ from obtaining such a license under Occupations Code §2301.254.

(b) Any person who facilitates vehicle leases on behalf of a vehicle lease facilitator must:

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(1) be on the vehicle lease facilitator's payroll and receive compensation from which social security, federal unemployment tax, and all other appropriate taxes are withheld from the representative's paycheck and paid to the proper taxing authority; and

(2) have work details such as when, where, and how the final results are achieved, directed, and controlled by the vehicle lease facilitator.

## 215.174. Application for a License.

(a) An applicant for a vehicle lessor's or vehicle lease facilitator's license must submit a sufficient application to the department as required under §215.83 of this title (relating to License Applications, Amendments, or Renewals). To be sufficient, the application must be on a form prescribed by the department, ~~and~~ accompanied by all required supporting documentation, and required fees, and submitted to the department electronically in a system designated by the department for licensing.

(b) A license holder renewing or amending a license must verify current license information, provide related information and documents for any new requirements or changes to the license, and pay required fees.

(c) An applicant for a new license must register for an account in the department-designated licensing system by selecting the licensing system icon on the dealer page of the department website. An applicant must designate the account administrator and provide the name and email address for that person, and provide the business telephone number, name, business type, and social security number or employer identification number, as applicable. The applicant's licensing account administrator must be an owner, officer, manager, or bona fide employee.

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1           (d) Once registered, an applicant may apply for a new license and must provide the  
2 following:

3                   (1) type of license requested;

4                   (2) business information, including the name, physical and mailing addresses,  
5 telephone number, Secretary of State file number (if applicable), and website address (if  
6 applicable);

7                   (3) contact name, email address, and telephone number of the person submitting  
8 the application;

9                   (4) contact name, email address, and telephone number of a person who can  
10 provide information about business operations and the motor vehicle services offered;

11                   (5) the name, social security number, date of birth, identity document information,  
12 and ownership percentage for each owner, partner, member, beneficiary, or principal if the  
13 applicant is not a publicly traded company;

14                   (6) the name, social security number, date of birth, and identity document  
15 information for each officer, director, manager, trustee, or other representative authorized to act  
16 on behalf of the applicant if the applicant is owned in full or in part by a legal entity;

17                   (7) the name, employer identification number, ownership percentage, and non-  
18 profit or publicly traded status for each legal entity that owns the applicant in full or in part;

19                   (8) criminal history record information under the laws of Texas, another state in the  
20 United States, the United States, and any foreign jurisdiction for each person listed in the  
21 application, including offense description, date, and location;

22                   (9) military service status;



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1                   (10) licensing history required to evaluate fitness for licensure under §215.89 of  
2   this title (relating to Fitness);

3                   (11) signed Certification of Responsibility, which is a form provided by the  
4   department; and

5                   (12) any other information required by the department to evaluate the application  
6   under current law and board rules.

7                   ~~(e)[(b)]~~ The supporting documentation for a vehicle lessor's license application shall  
8   include a legible and accurate electronic image of each applicable required document:

9                   (1) Certificate of incorporation, registration, or formation filed with the Texas  
10   Secretary of State~~[verification of the criminal background of each owner and officer of the~~  
11   ~~applicant, if applicable];~~

12                   (2) at least one of the following current identity documents for each natural person  
13   listed in the application:

14                               (A) driver license;

15                               (B) Texas Identification Card issued by the Texas Department of Public  
16   Safety under Transportation Code Chapter 521, Subchapter E;

17                               (C) license to carry a handgun issued by the Texas Department of Public  
18   Safety under Government Code Chapter 411, Subchapter H;

19                               (D) passport; or

20                               (E) United States military identification card

21   ~~[the fee required by law for each type of license required];~~

22                   (3) a copy of each assumed name certificate on file with the appropriate recording  
23   entity, such as the Office of the Secretary of State or the county clerk;

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(4) a sample copy of the vehicle lease agreement between the vehicle lessor and a lessee;

(5) a sample copy of the required fee disclosure statement regarding fees paid by the vehicle lessor to a vehicle lease facilitator for the facilitation of a vehicle lease or a statement that no such fees were or will be paid;

(6) a list including the business name(s), DBA(s), and addresses of lease facilitators with whom the applicant conducts or intends to conduct business;

(7) a list of other satellite offices that conduct business in the State of Texas that includes the address, phone number, and name of the contact person for each location;[-]

(8) if a vehicle lessor does not deal directly with the public to execute vehicle leases and has a licensed location in another state, a vehicle lessor must provide the jurisdiction name, licensed business address, and license number for each location that leases a motor vehicle to a Texas resident; and

(9) any other information required by the department to evaluate the application under current law and board rules.

(f)[(e)] The supporting documentation for a vehicle lease facilitator's license application shall include a legible and accurate electronic image of each applicable required document:

(1) Certificate of incorporation, registration, or formation filed with the Texas Secretary of State~~[verification of the criminal background of each owner and officer of the applicant, if applicable];~~

(2) at least one of the following unexpired identity documents for each natural person listed in the application:

(A) driver license;

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1                                (B) Texas Identification Card issued by the Texas Department of Public

2   Safety under Transportation Code Chapter 521, Subchapter E;

3                                (C) license to carry a handgun issued by the Texas Department of Public

4   Safety under Government Code Chapter 411, Subchapter H;

5                                (D) passport; or

6                                (E) United States military identification card;

7                                (3) a copy of each assumed name certificate on file with the appropriate recording  
8   entity, such as the Office of the Secretary of State or the county clerk;

9                                (4) a sample copy of the vehicle lease agreement between each of the lessors the  
10   lease facilitator represents, and the lessee;

11                               (5) a sample copy of the required fee disclosure statement regarding fees paid by a  
12   vehicle lessor to the vehicle lease facilitator for the facilitation of a vehicle lease or a statement  
13   that no such fees were or will be paid;

14                               (6) a list of all vehicle lessors, including names and addresses, for whom any vehicle  
15   lease facilitator solicits or procures a lessee; ~~[-The vehicle lease facilitator shall update the list~~  
16   ~~upon renewal of a license and within 10 days of the addition of any vehicle lessor to this list; and]~~

17                               (7) a copy of the representation agreement between the vehicle lease facilitators  
18   and each lessor; and[-]

19                               (8) any other information required by the department to evaluate the application  
20   under current law and board rules.

21                               (g) An applicant operating under a name other than the applicant's business name shall use  
22   the name under which the applicant is authorized to do business, as filed with the Secretary of  
23   State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant

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1 on the application using the letters "DBA." The applicant may not use a name or assumed name  
2 that may be confused with or is similar to that of a governmental entity or that is otherwise  
3 deceptive or misleading to the public.

4 (h) During the term of a license, a vehicle lessor must add, delete, or update the previously  
5 submitted list of lease facilitators and a lease facilitator must add, delete, or update the previously  
6 submitted list of new vehicle lessors within 10 days by electronically submitting a license  
7 amendment in the system designated by the department for licensing.

8  
9 215.175. Sanctions.

10 (a) The board or department may:

11 (1) deny a vehicle lessor or vehicle lease facilitator application;  
12 (2) revoke or suspend a vehicle lessor or vehicle lease facilitator license; or  
13 (3) assess a civil penalty or take other action on a vehicle lessor or vehicle lease  
14 facilitator applicant or license holder, or a person engaged in business for which a vehicle lessor or  
15 vehicle lease facilitator license is required.

16 (b) The board or department may take action described in subsection (a) of this section if a  
17 vehicle lessor or vehicle lease facilitator applicant or license holder, or a person engaged in  
18 business for which a vehicle lessor or vehicle lease facilitator license is required:

19 (1) fails to maintain an established and permanent place of business required by  
20 §215.177 of this title (relating to Established and Permanent Place of Business);  
21 (2) fails to maintain records required under this subchapter;

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(3) refuses or fails to comply with a request by a representative of the department to examine during the vehicle lessor's or vehicle lease facilitator's posted business hours at the vehicle lessor's or vehicle lease facilitator's licensed location:

(A) a vehicle leasing record required to be maintained by §215.178 of this title (relating to Records Required for Vehicle Lessors and Vehicle Lease Facilitators);

(B) ownership papers for a vehicle owned, leased, or under that vehicle lessor's or vehicle lease facilitator's control; or

(C) evidence of ownership or a current premises lease agreement for the property upon which the business is located;

(4) refuses or fails to timely comply with a request for records made by a representative of the department;

(5) fails to notify the department in writing by electronically submitting a license amendment in the system designated by the department for licensing within 10 days of a change of the vehicle lessor or vehicle lease facilitator license holder's:

(A) mailing address;

(B) physical address;

(C) telephone number; or

(D) email address;

(6) fails to notify the department in writing by electronically submitting a license amendment in the system designated by the department for licensing within 10 days of a change of the vehicle lessor or vehicle lease facilitator license holder's name, assumed name, management, or ownership;

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(7) fails to comply with the fee restrictions or other requirements under Occupations Code, §2301.357 or Chapter 2301, Subchapter L. Vehicle Lessors and Vehicle Lease Facilitators~~§§2301.551 – 2301.556~~;

(8) fails to maintain advertisement records or otherwise fails to comply with the advertising requirements of:

(A) §215.178; or

(B) Subchapter F~~[H]~~ of this chapter (relating to Advertising);

(9) violates any law relating to the sale, lease, distribution, financing, or insuring of motor vehicles;

(10) is convicted of an offense that, in accordance with Occupations Code, Chapter 53 and with §215.88 of this title (relating to Criminal Offense and Action on License), directly relates to the duties or responsibilities of the licensed occupation;

(11) is determined by the board or department, in accordance with §215.89 of this title (relating to Fitness), to be unfit to hold a vehicle lessor or vehicle lease facilitator license;

(12) uses or allows use of a vehicle lessor or vehicle lease facilitator license in violation of any law or for the purpose of avoiding any provision of Occupations Code, Chapter 2301; or

(13) ~~willfully~~ omits material information or makes a material misrepresentation in any application or other documentation filed with the department including providing a false or forged identity document or a false or forged photograph, electronic image, or other document.

(c) The board or department may take action on a vehicle lessor's license or assess civil penalties for the vehicle lessor's failure to notify the department in writing by electronically submitting a license amendment in the system designated by the department for licensing within

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1 10 days of any change, addition, or deletion to the list of vehicle lease facilitators with whom the  
2 vehicle lessor conducts business, including any change to a vehicle lease facilitator's mailing  
3 address, physical address, telephone number, or email address.

4 (d) The board or department may take action on a vehicle lease facilitator's license or  
5 assess civil penalties for the failure to notify the department in writing within 10 days by  
6 electronically submitting a license amendment in the system designated by the department for  
7 licensing of any change, addition, or deletion to the list of vehicle lessors for whom the vehicle  
8 lease facilitator conducts business, including any change to a vehicle lessor's mailing address,  
9 physical address, telephone number, or email address.

10 (e) The board or department may take action on a vehicle lessor's or vehicle lease  
11 facilitator's license if the vehicle lessor or vehicle lease facilitator accepts a fee from a dealer,  
12 directly or indirectly, for referring a customer who purchases or considers purchasing a motor  
13 vehicle.

14  
15 215.176. More Than One Business Location.

16 (a) A vehicle lease facilitator must be licensed separately for each business location.

17 (b) A vehicle lessor or vehicle lease facilitator that relocates from a point outside the limits  
18 of a municipality[city] or relocates to a point not within the limits of the same municipality[city] of  
19 the initial business location is required to obtain a new license.

20 (c) A vehicle lessor is required to obtain a license for the vehicle lessor's primary location. A  
21 vehicle lessor must provide the address, telephone number, and the name of a contact person for  
22 all other satellite offices that conduct business in the state of Texas.

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215.177. Established and Permanent Place of Business Premises Requirements.

(a) A vehicle lessor or vehicle lease facilitator operating within ~~[the State of]~~ Texas must meet the following requirements at each location where vehicles are leased or offered for lease.

## (1) Physical location requirements.

(A) A vehicle lessor or vehicle lease facilitator operating within ~~[the State of]~~ Texas must be open to the public. The vehicle lessor's or vehicle lease facilitator's business hours for each day of the week must be posted at the main entrance of the office. The business telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours. The owner or an employee of the vehicle lessor or vehicle lease facilitator must be at the location during the posted business hours for the purpose of leasing vehicles. In the event the owner or an employee is not available to conduct business during the posted business hours, a separate sign must be posted indicating the date and time such owner or employee will resume vehicle leasing operations.

(B) A vehicle lessor's or vehicle leasing facilitator's office structure must be of sufficient size to accommodate the following required equipment:

(i) a desk and two chairs from which the vehicle lessor or vehicle lease facilitator transacts business; ~~and~~

(ii) a working telephone number listed in the business name or assumed name under which the vehicle lessor or vehicle lease facilitator conducts business; and ~~and~~

(iii) internet access.



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(C) A vehicle lessor or vehicle lease facilitator that files an application for a new license or a vehicle lessor that files an application for a satellite location must comply with the following requirements:

(i) The office must be located in a building with a permanent roof and connecting exterior walls on all sides.

(ii) The office must comply with all applicable local zoning ordinances and deed restrictions.

(iii) The office may not be located within a residence, apartment, hotel, motel, or rooming house or building not open to the public.

(iv) The physical address of the office must be recognized by the U.S. Postal Service, ~~and~~ capable of receiving U.S. mail, and have an assigned emergency services property address.

(v) The office may not be virtual or provided by a subscription for office space or office services. Access to office space or office services is not considered an established and permanent location.

(D) A portable-type office structure may qualify as an office only if the structure meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(E) One or more licensed vehicle lessors or vehicle lease facilitators, or a combination of one or more licensed vehicle lessors and vehicle lease facilitators may occupy the same business structure and conduct vehicle leasing operations in accordance with the license held by the vehicle lessor or licensed vehicle lease facilitator. Each ~~person engaged in business as a~~ vehicle lessor or vehicle lease facilitator must have:

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1 (i) a separate desk from which that vehicle lessor or vehicle lease  
2 facilitator transacts business;

3 (ii) a separate working telephone number listed in the vehicle lessor  
4 or vehicle lease facilitator's business name or assumed name;

5 (iii) a separate right of occupancy that meets the requirements of  
6 this section; and

7 (iv) a vehicle lessor or vehicle lease facilitator license issued by the  
8 department in the name of the vehicle lessor or vehicle lease facilitator.

9 (F) A vehicle lease facilitator's established and permanent place of business  
10 must be physically located within ~~[the State of]~~ Texas.

11 (2) Business Sign requirements. A vehicle lessor or vehicle lease facilitator shall  
12 display a conspicuous and permanent business sign at the licensed location showing the name  
13 under which the vehicle lessor or vehicle lease facilitator conducts business. Outdoor business  
14 signs must contain letters that are at least six inches in height. The business name or assumed  
15 name on the sign must be substantially similar to the name reflected on the license issued by the  
16 department. A business sign is considered conspicuous if it is easily visible to the public within 100 feet  
17 of the main entrance of the business office. A business sign is considered permanent only if it is made of  
18 durable, weather-resistant material.

19 (3) Premises lease requirements. If the premises from which a licensed vehicle  
20 lessor or vehicle lease facilitator conducts business is not owned by the license holder, the license  
21 holder must maintain for the licensed location a valid premises lease that is continuous during the  
22 period of time for which the vehicle lessor's or vehicle lease facilitator's license will be issued. The  
23 premises lease agreement must be on a properly executed form containing at a minimum:

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(A) the name of the property owner~~[landlord]~~ of the premises and the name of the vehicle lease facilitator as the tenant or lessee of the premises;

(B) the street address or legal description of the property, provided that if only a legal description of the property is included, the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application as the physical address for the established and permanent place of business; [and]

(C) the signature of the property owner as the lessor and the signature of the applicant or holder as the tenant or lessee;

(D)~~[(C)]~~ the period of time for which the premises lease is valid; ~~[-]~~ and

(E) if the lease agreement is a sublease in which the property owner is not the lessor, the applicant or holder must also obtain a signed and notarized statement from the property owner including the following information:

(i) property owner's full name, email address, mailing address, and phone number; and

(ii) property owner's statement confirming that the license holder is authorized to sublease the location and may operate a motor vehicle leasing business from the location.

~~[(b) A vehicle lessor that does not deal directly with the public to execute vehicle leases and whose licensed location is in another state must and meet the following requirements at each location.~~

~~(1) Physical location requirements.~~

~~(A) The vehicle lessor's office structure must be of sufficient size to accommodate the following required equipment:~~

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~~(i) a desk and chairs from which the vehicle lessor transacts~~

~~business; and~~

~~(ii) a working telephone number listed in the business name or~~

~~assumed name under which the vehicle lessor conducts business.~~

~~(B) A vehicle lessor that files an application for a new license or a satellite~~

~~location with a primary licensed location in another state must conform to the following~~

~~requirements:~~

~~(i) The office must be located in a building with connecting exterior~~

~~walls on all sides.~~

~~(ii) The office must comply with all applicable local zoning~~

~~ordinances and deed restrictions.~~

~~(iii) The office may not be located within a residence, apartment,~~

~~hotel, motel, or rooming house.~~

~~(iv) The physical address of the office must be recognized by the U.S.~~

~~Postal Service and capable of receiving U.S. mail.~~

~~(C) A portable type office structure may qualify as an office only if the~~

~~structure meets the requirements of this section and is not a readily moveable trailer or other~~

~~vehicle.~~

~~(D) More than one licensed vehicle lessor may occupy the same business~~

~~structure and conduct vehicle leasing operations under different names in accordance with the~~

~~license held by each vehicle lessor. Each person engaged in business as a vehicle lessor must have:~~

~~(i) a separate desk from which that vehicle lessor transacts business;~~

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~~(ii) a separate working telephone number listed in the vehicle~~

~~lessor's business name or assumed name;~~

~~(iii) a separate right of occupancy that meets the requirements of~~

~~this section; and~~

~~(iv) a vehicle lessor license issued by the department in the name of~~

~~the vehicle lessor.~~

~~(2) Sign requirements. An out of state vehicle lessor shall display a conspicuous and permanent sign at the licensed location showing the name under which the vehicle lessor conducts business. Outdoor signs must contain letters at least six inches in height.~~

~~(3) Premises lease requirements. If the out of state premises from which a licensed vehicle lessor conducts business is not owned by the license holder, the license holder must maintain a valid premises lease for the property of the licensed location. The premises lease must be continuous during the period of time for which the license will be issued. The premises lease agreement must be on a properly executed form containing at a minimum:~~

~~(A) the name of the landlord of the premises and the name of the licensed lessor identified as the tenant of the premises;~~

~~(B) the street address or legal description of the property, provided that if only a legal description of the property is included, the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application; and~~

~~(C) the period of time for which the premises lease is valid.]~~

(b)~~[(e)]~~ A vehicle lessor or vehicle lease facilitator shall be independent of financial institutions and dealerships in location and in business activities, unless that vehicle lessor or vehicle lease facilitator is an:

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(1) employee or legal subsidiary of the financial institution or dealership; or

(2) entity wholly owned by the financial institution or dealership.

~~(c)~~~~(d)~~ For purposes of this section, an employee is a person who meets the requirements of §215.173(b) of this title (relating to License).

215.178. Records Required for Vehicle Lessors and Vehicle Lease Facilitators.

(a) Purchase and leasing records. A vehicle lessor or vehicle lease facilitator must maintain a complete record of all vehicle purchases and sales for at least one year after the expiration of the vehicle lease.

(1) Complete r~~(R)~~ecords reflecting vehicle lease transactions that occurred within the preceding 24 months must be maintained at the licensed location. Records for prior time periods may be kept off-site~~[-at a location within the same county or within 25 miles of the licensed location].~~

(2) Within 15 days of receipt of a request~~[-sent by mail or by electronic document transfer]~~ from a representative of the department, a vehicle lessor or vehicle lease facilitator must deliver a copy of the specified records to the address listed in the request.

(b) Content of records for lease transaction. A complete record for a vehicle lease transaction must contain:

(1) the name, address, and telephone number of the vehicle lessor~~[-of the vehicle subject to the transaction];~~

(2) the name, mailing address, physical address, and telephone number of each vehicle lessee~~[-of the vehicle subject to the transaction];~~

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(3) the name, address, telephone number, and license number of the lease facilitator~~[-of the vehicle subject to the transaction];~~

(4) the name, work~~[home]~~ address, and telephone number of each employee of the vehicle lease facilitator that handled the transaction;

(5) a complete description of the vehicle involved in the transaction, including the VIN;

(6) the name, address, telephone number, and GDN of the dealer selling the vehicle, as well as the franchised dealer license number ~~[of the dealer]~~ if the vehicle~~[-involved in the transaction]~~ is a new motor vehicle;

(7) the amount of fee paid to the vehicle lease facilitator or a statement that no fee was paid;

(8) a copy of the buyer's order and sales contract for the vehicle;

(9) a copy of the vehicle lease contract;

(10) a copy of all other contracts, agreements, or disclosures between the vehicle lease facilitator and the consumer lessee; and

(11) a copy of the front and back of the manufacturer's statement of origin, manufacturer's certificate of origin, or the title of the vehicle, as applicable~~[-if the vehicle involved in the transaction is a new motor vehicle]~~.

(c) Content of records for sale of leased vehicle. A vehicle lessor's complete record for each vehicle sold at the end of a lease to a lessee, a dealer, or at a wholesale motor vehicle auction must contain:

(1) the date of the purchase;

(2) the date of the sale;

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- 1                   (3) the VIN;
- 2                   (4) the name and address of the person selling the vehicle to the vehicle lessor;
- 3                   (5) the name and address of the person purchasing the vehicle from the vehicle lessor;
- 4                   (6) except for a purchase or sale where the Tax Code does not require payment of motor  
5 vehicle sales tax, a tax assessor-collector receipt marked paid;
- 6                   (7) a copy of all documents, forms, and agreements applicable to a particular sale,  
7 including a copy of:
- 8                   (A) the title application;
- 9                   (B) the work-up sheet;
- 10                  (C) the front and back of manufacturer's certificate of origin or manufacturer's  
11 statement of origin, unless the title is obtained through the electronic title system;
- 12                  (D) the front and back of the title, unless the title is obtained through the  
13 electronic title system;
- 14                  (E) the factory invoice;
- 15                  (F) the sales contract;
- 16                  (G) the retail installment agreement;
- 17                  (H) the buyer's order;
- 18                  (I) the bill of sale;
- 19                  (J) any waiver;



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1                           (K) any other agreement between the seller and purchaser; and

2                           (L) the purchaser's photo identification if sold to a lessee;

3                           (8) a copy of the original manufacturer's certificate of origin, original manufacturer's

4 statement of origin, or title for motor vehicle offered for sale, or a properly stamped original

5 manufacturer's certificate of origin, original manufacturer's statement of origin, or original title for a

6 title transaction entered into the electronic titling system by a dealer;

7                           (9) the monthly Motor Vehicle Seller Financed Sales Returns, if any; and

8                           (10) if the vehicle sold is a motor home or a towable recreational vehicle subject to

9 inspection under Transportation Code, Chapter 548, a copy of the written notice provided to the buyer at

10 the time of the sale, notifying the buyer that the vehicle is subject to inspection requirements.

11           (d) Records of advertising. A vehicle lessor or vehicle lease facilitator must maintain a copy  
12 of all advertisements, brochures, scripts, or an electronically reproduced copy in whatever medium  
13 appropriate, of promotional materials for a period of at least 18 months. Each copy is subject to  
14 inspection upon request by ~~[a representative of]~~ the department at the business ~~[of the~~  
15 ~~licenseholder]~~ location during posted business hours.

16                           (1) A vehicle lessor and a vehicle lease facilitator~~[Vehicle Lessors and vehicle lease~~  
17 ~~facilitators]~~ must comply with all federal and state advertising laws and regulations, including  
18 Subchapter ~~F~~[H] of this chapter (relating to Advertising).

19                           (2) A vehicle lessor's or vehicle lease facilitator's advertising or promotional  
20 materials may not state or infer~~[in any advertisement]~~, either directly or indirectly, that the  
21 business involves the sale of new motor vehicles.

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1           ~~(e)~~~~(d)~~ Title assignments. Each certificate of title, manufacturer's certificate of origin, or  
2 other evidence of ownership for a vehicle that has been acquired by a vehicle lessor for lease must  
3 be properly assigned from the seller in the vehicle lessor's name.

4           ~~(f)~~~~(e)~~ Letters of representation or appointment. A letter of representation or appointment  
5 between a vehicle lessor and a vehicle lease facilitator [~~with whom the vehicle lessor conducts~~  
6 ~~business~~] must be executed by both parties and maintained by each party.

7           ~~(g)~~~~(f)~~ Electronic records. Any record required to be maintained by a vehicle lessor or  
8 vehicle lease facilitator may be maintained in an electronic format, provided the electronic record  
9 can be printed at the licensed location or sent electronically upon department request~~[for the~~  
10 ~~record by a representative of the department]~~.

11  
12 215.179. Change of Vehicle Lessor or Vehicle Lease Facilitator Status.

13           (a) Change of ownership. A vehicle lessor or vehicle lease facilitator that [~~proposes to~~] sells  
14 or assigns to another any interest in the licensed entity, whether a corporation or otherwise,  
15 provided the physical location of the licensed entity remains the same, shall notify the department  
16 in writing within 10 days by filing an application to amend the license in the electronic system  
17 designated by the department for licensing. If the sale or assignment of any portion of the business  
18 results in a change of entity, then the purchasing or assignee entity must apply for and obtain a  
19 new license by submitting a new license application in the electronic system designated by the  
20 department for licensing. A publicly held corporation licensed as a vehicle lessor or vehicle lease  
21 facilitator needs only inform the department of a change in ownership if one person or entity  
22 acquires 10% or greater interest in the licensed entity by submitting a license amendment  
23 application in the electronic system designated by the department for licensing.

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(b) Change of operating status of business location. A license holder shall obtain department approval prior to opening a satellite location or relocating an existing location, in accordance with §215.176 of this title (relating to More than One Business Location) by electronically submitting a new license application in the system designated by the department for licensing and receiving electronic notice of approval prior to relocating or opening a satellite location. A license holder must notify the department when closing an existing location or a satellite location by electronically submitting a license amendment to close the license or close the satellite location in the system designated by the department for licensing.

## 215.180. Required Notices to Lessees.

Vehicle lessors and vehicle lease facilitators shall provide notice of the complaint procedures provided by Occupations Code, §[§]2301.204 and Subchapter M (relating to Warranties: Rights of Vehicle Owners), ~~[2301.601 – 2301.613]~~ to each lessee of a new motor vehicle with whom they enter into a vehicle lease.

**~~[SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS]~~**~~[215.201. Purpose and Scope.]~~~~[(a) This subchapter implements Occupations Code, §2301.204 and §§2301.601 – 2301.613.]~~~~[(b) Practice and procedure in contested cases heard by the department's Office of Administrative Hearings (OAH) are addressed in Subchapter B of this chapter (relating to Adjudicative Practice and Procedure) and the provisions of this subchapter to the extent that the provisions do not conflict with state law, rule, or court order.]~~

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1           ~~[(c) The following words and terms, when used in this subchapter, shall have the following~~  
2           ~~meanings, unless the context clearly indicates otherwise.~~

3                     ~~(1) Comparable Motor Vehicle--A new motor vehicle, with comparable mileage,~~  
4           ~~from the same manufacturer, converter, or distributor's product line and the same model year or~~  
5           ~~newer as the motor vehicle to be replaced or as reasonably equivalent to the motor vehicle to be~~  
6           ~~replaced.~~

7                     ~~(2) Lemon Law--Refers to Occupations Code, Chapter 2301, Subchapter M~~  
8           ~~{§§2301.601-2301.613}.~~

9                     ~~(3) Warranty Performance--Refers to Occupations Code, §2301.204.]~~

10  
11           ~~[215.202. Filings of Complaints.]~~

12           ~~[(a) Lemon law complaints.~~

13                     ~~(1) Complaints seeking relief under the lemon law must be in writing and filed with~~  
14           ~~the department. A complaint filed with the department shall be delivered:~~

15                             ~~(A) in person to the department;~~

16                             ~~(B) by mail to the address of the department;~~

17                             ~~(C) by email to a department designated email address; or~~

18                             ~~(D) by facsimile transmission to a department designated facsimile number.~~

19                     ~~(2) Complaints may be submitted in letter or other written format, or on complaint~~  
20           ~~forms provided by the department.~~

21                     ~~(3) Complaints shall state sufficient facts to enable the department and the party~~  
22           ~~complained against to know the nature of the complaint and the specific problems or~~  
23           ~~circumstances forming the basis of the claim for relief under the lemon law.~~

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~~(4) Complaints shall, at a minimum, provide the following information:~~

~~(A) the name, address, and telephone number of the motor vehicle owner;~~

~~(B) the identification of the motor vehicle, including the make, model, year,~~

~~and manufacturer's VIN;~~

~~(C) the type of warranty coverage;~~

~~(D) the name and address of the dealer or other person from whom the~~

~~motor vehicle was purchased or leased, including the name and address of the vehicle lessor, if~~

~~applicable;~~

~~(E) the date of delivery of the motor vehicle to the original owner and in the~~

~~case of a demonstrator, the date the motor vehicle was placed into demonstrator service;~~

~~(F) the motor vehicle mileage at the time when:~~

~~(i) the motor vehicle was purchased or leased;~~

~~(ii) problems with the motor vehicle were first reported; and~~

~~(iii) the complaint was filed;~~

~~(G) the name of the dealer or the name of the manufacturer's, converter's,~~

~~or distributor's agent to whom the problems were first reported;~~

~~(H) identification of the motor vehicle's existing problems and a brief~~

~~description of the history of problems and repairs on the motor vehicle, including:~~

~~(i) the date and mileage of each repair; and~~

~~(ii) a copy of each repair order where possible;~~

~~(I) the date the motor vehicle manufacturer, converter, or distributor~~

~~received written notification of the complaint;~~

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1                   ~~(J) the date and results of the motor vehicle inspection, if the motor vehicle~~  
2 ~~was inspected by the manufacturer, converter, or distributor; and~~

3                   ~~(K) any other information the complainant deems relevant to the complaint.~~

4                   ~~(5) The department's staff will provide information concerning the complaint~~  
5 ~~procedure and complaint forms to any person requesting assistance.~~

6                   ~~(6) The filing fee required under the lemon law should be remitted with the~~  
7 ~~complaint by any form of payment accepted by the department. The filing fee is nonrefundable,~~  
8 ~~but a complainant that prevails in a case is entitled to reimbursement of the filing fee from the~~  
9 ~~nonprevailing party. Failure to remit the filing fee with the complaint will delay commencement of~~  
10 ~~the 150-day period referenced in paragraph (8) of this subsection and may result in dismissal of~~  
11 ~~the complaint.~~

12                   ~~(7) The commencement of a lemon law proceeding occurs on the date the filing fee~~  
13 ~~is received by the department or its authorized agent.~~

14                   ~~(8) If the hearings examiner has not issued an order within 150 days after the~~  
15 ~~commencement of the lemon law proceeding in accordance with paragraph (7) of this subsection,~~  
16 ~~department staff shall notify the parties by mail that the complainant may file a civil action in state~~  
17 ~~district court to seek relief under the lemon law. The notice will inform the complainant of the~~  
18 ~~complainant's right to continue the lemon law complaint through the department. The 150-day~~  
19 ~~period shall be extended upon request of the complainant or if a delay in the proceeding is caused~~  
20 ~~by the complainant.]~~

21                   ~~[(b) Warranty performance complaints (repair-only relief).~~

22                   ~~(1) Complaints for warranty performance relief filed with the department must~~  
23 ~~comply with the requirements of subsection (a)(1) -- (4) of this section.~~

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~~(2) A filing fee is not required for a complaint that is subject to a warranty performance claim.~~

~~(3) A complaint may be filed with the department in accordance with this section if the defect in the motor vehicle subject to the warranty performance complaint was reported to the manufacturer, converter, distributor, or to an authorized agent prior to the expiration of the warranty period.~~

~~(4) If the defect is not resolved pursuant to §215.205 of this title (relating to Mediation; Settlement), a hearing will be scheduled and conducted in accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O and this subchapter.~~

~~(5) The final order authority will issue an order on the warranty performance complaint. A party who disagrees with the order may oppose the order in accordance with §215.207 of this title (relating to Contested Cases: Final Orders).~~

~~(6) Department staff will provide information concerning the complaint procedure and complaint forms to any person requesting assistance.]~~

~~[215.203. Review of Complaints.][Department staff will promptly review a complaint to determine if the complaint meets the minimum requirements of a lemon law or a warranty performance complaint.~~

~~(1) If department staff cannot determine whether a complaint meets the minimum lemon law or warranty performance requirements, the complainant will be contacted for additional information.~~

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~~(2) If department staff determines that the complaint meets the minimum lemon law or warranty performance requirements, the complaint will be processed in accordance with this subchapter.]~~

~~[215.204. Notification to Manufacturer, Converter, or Distributor.]~~

~~[(a) Upon receipt of a complaint for lemon law or warranty performance relief, the department will:~~

~~(1) provide notification of the complaint to, and request a response from, the appropriate manufacturer, converter, or distributor; and~~

~~(2) provide a copy of the complaint to, and may request a response from, the selling dealer and any other dealer involved with the complaint.]~~

~~[(b) The manufacturer shall, upon request by the department, provide a copy of the warranty for the motor vehicle subject to the lemon law or warranty performance complaint.]~~

~~[215.205. Mediation; Settlement.]~~

~~[(a) Department staff will attempt to settle or resolve a lemon law or warranty performance complaint through nonbinding mediation before a hearing on the complaint is scheduled.]~~

~~[(b) The parties are required to participate in the nonbinding mediation process in good faith.]~~

~~[(c) In a case filed under Occupations Code, §2301.204 or §§2301.601 – 2301.613, the mediator shall qualify for appointment as an impartial third party in accordance with Civil Practice and Remedies Code, Chapter 154.]~~



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~~[215.206. Hearings.] [Lemon law or warranty performance complaints that satisfy the jurisdictional requirements of the Occupations Code will be set for hearing. Notification of the date, time, and place of the hearing will be given to all parties by certified mail. Additional information contained in the notice of hearing shall be consistent with §215.34 of this title (relating to Notice of Hearing in Contested Cases).~~

~~(1) When possible, hearings will be held in the city in which the complainant resides.~~

~~(2) Hearings will be scheduled at the earliest date possible, provided that a 10-day notice or other notice required by law is given to all parties.~~

~~(3) Hearings will be conducted expeditiously by a hearings examiner in accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O; and with the provisions of Subchapter B of this chapter (relating to Adjudicative Practice and Procedure) and this subchapter.~~

~~(4) Hearings will be conducted informally. The parties have the right to be represented by attorneys at a hearing, although attorneys are not required. Any party who intends to be represented at a hearing by an attorney or an authorized representative must notify the hearings examiner, the department, and any other party in writing at least five business days prior to the hearing. Failure to provide notice will result in postponement of the hearing if requested by any other party.~~

~~(5) Subject to a hearings examiner ruling, a party may present that party's case in full, including testimony from witnesses and documentary evidence such as repair orders, warranty documents, and the motor vehicle sales contract.~~

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1                   ~~(6) By agreement of the parties and with the written approval of the hearings examiner,~~  
2 ~~the hearing may be conducted by written submission only or by telephone.~~

3                   ~~(7) Except for a hearing conducted by written submission, each party may be questioned~~  
4 ~~by the other party at the discretion of the hearings examiner.~~

5                   ~~(8) Except for a hearing conducted by written submission or by telephone, the~~  
6 ~~complainant must bring the motor vehicle in question to the hearing so that the motor vehicle may be~~  
7 ~~inspected and test driven, unless otherwise ordered by the hearings examiner upon a showing of good~~  
8 ~~cause by the complainant.~~

9                   ~~(9) The department may have the motor vehicle in question inspected by an expert prior~~  
10 ~~to the hearing, if the department determines that an expert opinion may assist in arriving at a decision.~~  
11 ~~An inspection under this section shall be made only upon prior notice to all parties, who shall have the~~  
12 ~~right to be present at such inspection. A copy of any findings or report from such inspection will be~~  
13 ~~provided to all parties before, or at, the hearing.~~

14                   ~~(10) Except for hearings conducted by written submission, all hearings will be recorded~~  
15 ~~by the hearings examiner. A copy of the recording will be provided to any party upon request and upon~~  
16 ~~payment for the cost of the copy, as provided by law or board rules.]~~

17  
18 ~~[215.207. Contested Cases: Final Orders.]~~

19                   ~~[(a) A motion for rehearing of a final order issued by the board or a person delegated final order~~  
20 ~~authority for a complaint filed under Occupations Code, Chapter 2301, Subchapters E or M shall proceed~~  
21 ~~in accordance with Occupations Code, §2301.713.]~~

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1           ~~[(b) A hearings examiner shall prepare a final order as soon as possible, but not later than 60~~  
2           ~~days after the hearing is closed, or as otherwise provided by law. The final order shall include the~~  
3           ~~hearings examiner's findings of fact and conclusions of law. The final order shall be sent by the~~  
4           ~~department to all parties by certified mail.]~~

5           ~~[(c) A party who disagrees with the final order may file a motion for rehearing in accordance~~  
6           ~~with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O. A~~  
7           ~~motion for rehearing of a final order issued by a hearings examiner must:~~

8                     ~~(1) be filed with the chief hearings examiner;~~

9                     ~~(2) include the specific reasons, exceptions, or grounds asserted by a party as the basis~~  
10           ~~of the request for a rehearing; and~~

11                    ~~(3) recite, if applicable, the specific findings of fact, conclusions of law, or any other~~  
12           ~~portions of the final order to which the party objects.]~~

13           ~~[(d) Replies to a motion for rehearing must be filed with the chief hearings examiner in~~  
14           ~~accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301,~~  
15           ~~Subchapter O.]~~

16           ~~[(e) If the chief hearings examiner or the chief hearings examiner's designee grants a motion for~~  
17           ~~rehearing, the parties will be notified by mail and a rehearing will be scheduled promptly. After~~  
18           ~~rehearing, a final order shall be issued with any additional findings of fact or conclusions of law, if~~  
19           ~~necessary to support the final order. A hearings examiner may issue an order granting the relief~~  
20           ~~requested in a motion for rehearing or requested in a reply to a motion for rehearing without the need~~  
21           ~~for a rehearing. If a motion for rehearing and the relief requested is denied, an order will be issued.]~~

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~~[(f) A party who has exhausted all administrative remedies and who is aggrieved by a final order in a contested case from which appeal may be taken is entitled to judicial review pursuant to Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter P, under the substantial evidence rule. A copy of the petition for judicial review must be served on the final order authority and any other parties of record. After service of the petition and within the time permitted for filing an answer, the final order authority shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding. If the court orders that new evidence be presented to the final order authority, the final order authority may modify the findings and decision or order by reason of the new evidence, and shall transmit the additional record to the court.]~~

~~[215.208. Lemon Law Relief Decisions:]~~

~~[(a) Unless otherwise indicated, this section applies to decisions that relate to lemon law complaints. Decisions shall give effect to the presumptions provided in Occupations Code, §2301.605, where applicable.~~

~~(1) If it is found that the manufacturer, distributor, or converter is not able to conform the motor vehicle to an applicable express warranty by repairing or correcting a defect in the complainant's motor vehicle, creating a serious safety hazard or substantially impairing the use or market value of the motor vehicle after a reasonable number of attempts, and that the affirmative defenses provided under Occupations Code, §2301.606 are not applicable, the final order authority shall issue a final order to the manufacturer, distributor, or converter to:~~

~~(A) replace the motor vehicle with a comparable motor vehicle, less a reasonable allowance for the owner's use of the vehicle; or~~

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1                               ~~(B) accept the return of the motor vehicle from the owner and refund the full~~  
2     ~~purchase price of the motor vehicle to the owner, less a reasonable allowance for the owner's use of the~~  
3     ~~motor vehicle.~~

4                               ~~(2) In any decision in favor of the complainant, the final order authority will, to the~~  
5     ~~extent possible, accommodate the complainant's request with respect to replacement or repurchase of~~  
6     ~~the motor vehicle.]~~

7                               ~~[(b) This subsection applies only to the repurchase of motor vehicles.~~

8                               ~~(1) When a refund of the purchase price of a motor vehicle is ordered, the purchase~~  
9     ~~price shall be the total purchase price of the motor vehicle, excluding the amount of any interest, finance~~  
10    ~~charge, or insurance premiums. The award to the motor vehicle owner shall include reimbursement of~~  
11    ~~the amount of the lemon law complaint filing fee paid by, or on behalf of, the motor vehicle owner. The~~  
12    ~~refund shall be made payable to the motor vehicle owner and to any lienholder, respective to their~~  
13    ~~ownership interest.~~

14                              ~~(2) There is a rebuttable presumption that a motor vehicle has a useful life of 120,000~~  
15    ~~miles. Except in cases where the preponderance of the evidence shows that the motor vehicle has a~~  
16    ~~longer or shorter expected useful life than 120,000 miles, the reasonable allowance for the owner's use~~  
17    ~~of the motor vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this~~  
18    ~~paragraph.~~

19                              ~~(A) The product obtained by multiplying the purchase price, as defined in~~  
20    ~~paragraph (1) of this subsection, of the motor vehicle by a fraction having as its denominator 120,000~~  
21    ~~and having as its numerator the number of miles that the motor vehicle traveled from the time of~~

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1 delivery to the owner to the first report of the defect or condition forming the basis of the repurchase  
2 order; and

3 (B) 50% of the product obtained by multiplying the purchase price by a fraction  
4 having as its denominator 120,000 and having as its numerator the number of miles that the motor  
5 vehicle traveled after the first report of the defect or condition forming the basis of the repurchase  
6 order. The number of miles during the period covered in this paragraph shall be determined from the  
7 date of the first report of the defect or condition forming the basis of the repurchase order through the  
8 date of the hearing.

9 (3) There is a rebuttable presumption that the useful life of a towable recreational  
10 vehicle is 3,650 days or 10 years. Except in cases where a preponderance of the evidence shows that the  
11 vehicle has a longer or shorter expected useful life than 3,650 days or 10 years, the reasonable  
12 allowance for the owner's use of the towable recreational vehicle shall be that amount obtained by  
13 adding subparagraphs (A) and (B) of this paragraph.

14 (A) The product obtained by multiplying the purchase price, as defined in  
15 paragraph (1) of this subsection, of the towable recreational vehicle by a fraction having as its  
16 denominator 3,650 days or 10 years, except the denominator shall be 1,825 days or five years, if the  
17 towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of  
18 days from the time of delivery to the owner to the first report of the defect or condition forming the  
19 basis of the repurchase order.

20 (B) 50% of the product obtained by multiplying the purchase price by a fraction  
21 having as its denominator 3,650 days or 10 years, except the denominator shall be 1,825 days or five  
22 years, if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the

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1 number of days of ownership after the first report of the defect or condition forming the basis of the  
2 repurchase order. The number of days during the period covered in this paragraph shall be determined  
3 from the date of the first report of the defect or condition forming the basis of the repurchase order  
4 through the date of the hearing.

5 (C) Any day or part of a day that the vehicle is out of service for repair will be  
6 deducted from the numerator in determining the reasonable allowance for use of a towable recreational  
7 vehicle in this paragraph.]

8 [(c) This subsection applies only to leased motor vehicle relief.

9 (1) Except in cases involving unusual and extenuating circumstances supported by a  
10 preponderance of the evidence, when a refund of the purchase price of a leased motor vehicle is  
11 ordered, the purchase price shall be allocated and paid to the lessee and the vehicle lessor, respectively,  
12 in accordance with subparagraphs (A) and (B) of this paragraph.

13 (A) The lessee shall receive the total of:

14 (i) all lease payments previously paid by the lessee to the vehicle lessor  
15 under the terms of the lease; and

16 (ii) all sums previously paid by the lessee to the vehicle lessor in  
17 connection with entering into the lease agreement, including, but not limited to any capitalized cost  
18 reduction, down payment, trade-in, or similar cost, plus sales tax, license, registration fees, and other  
19 documentary fees, if applicable.

20 (B) The vehicle lessor shall receive the total of:

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1                               ~~(i) the actual price paid by the vehicle lessor for the motor vehicle,~~  
2     ~~including tax, title, license, and documentary fees, if paid by the vehicle lessor and evidenced in a bill of~~  
3     ~~sale, bank draft demand, tax collector's receipt, or similar instrument; and~~

4                               ~~(ii) an additional 5.0% of the purchase price plus any amount or fee paid~~  
5     ~~by vehicle lessor to secure the lease or interest in the lease.~~

6                               ~~(C) A credit reflecting all of the payments made by the lessee shall be deducted~~  
7     ~~from the actual purchase price that the manufacturer, converter, or distributor is required to pay the~~  
8     ~~vehicle lessor, as specified in subparagraph (B)(i) and (ii) of this paragraph.~~

9                               ~~(2) When the final order authority orders a manufacturer, converter, or distributor to~~  
10    ~~refund the purchase price in a leased vehicle transaction, the motor vehicle shall be returned to the~~  
11    ~~manufacturer, converter, or distributor with clear title upon payment of the sums indicated in paragraph~~  
12    ~~(1)(A) and (B) of this subsection. The vehicle lessor shall transfer title of the motor vehicle to the~~  
13    ~~manufacturer, converter, or distributor, as necessary to effectuate the lessee's rights. The lease shall be~~  
14    ~~terminated without penalty to the lessee.~~

15                              ~~(3) Refunds shall be made to the lessee, vehicle lessor, and to any lienholder, respective~~  
16    ~~to their ownership interest. The refund to the lessee under paragraph (1)(A) of this subsection shall be~~  
17    ~~reduced by a reasonable allowance for the lessee's use of the motor vehicle. A reasonable allowance for~~  
18    ~~use shall be computed in accordance with subsection (b)(2) or (3) of this section, using the amount in~~  
19    ~~paragraph (1)(B)(i) of this subsection as the applicable purchase price.]~~

20                              ~~[(d) This subsection applies only to replacement of motor vehicles.~~



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1                   ~~(1) Upon issuance of an order from the final order authority to a manufacturer,~~  
2     ~~converter, or distributor to replace a motor vehicle, the manufacturer, converter, or distributor shall:~~

3                   ~~(A) promptly authorize the exchange of the complainant's motor vehicle with~~  
4     ~~the complainant's choice of any comparable motor vehicle; and~~

5                   ~~(B) instruct the dealer to contract the sale of the selected comparable motor~~  
6     ~~vehicle with the complainant under the following terms.~~

7                   ~~(i) The sales price of the comparable motor vehicle shall be the vehicle's~~  
8     ~~Manufacturer's Suggested Retail Price (MSRP/DSRP, as applicable);~~

9                   ~~(ii) The trade-in value of the complainant's motor vehicle shall be the~~  
10    ~~MSRP/DRSP, as applicable, at the time of the original transaction, less a reasonable allowance for the~~  
11    ~~complainant's use of the complainant's motor vehicle.~~

12                  ~~(iii) The use allowance for replacement relief shall be calculated in~~  
13    ~~accordance with subsection (b)(2) and (3) of this section.~~

14                  ~~(2) Upon any replacement of a complainant's motor vehicle, the complainant shall be~~  
15    ~~responsible for payment or financing of the usage allowance of the complainant's vehicle, any~~  
16    ~~outstanding liens on the complainant's vehicle, and applicable taxes and fees associated with the new~~  
17    ~~sale, excluding documentary fees.~~

18                  ~~(A) If the comparable motor vehicle has a higher MSRP/DSRP, as applicable, than~~  
19    ~~the complainant's vehicle, the complainant shall be responsible at the time of sale to pay or finance the~~  
20    ~~difference in the two vehicles' MSRPs/DSRPs, as applicable, to the manufacturer, converter or distributor.~~

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1                   ~~(B) If the comparable motor vehicle has a lower MSRP/DSRP, as applicable, than~~  
2 ~~the complainant's vehicle, the complainant will be credited the difference in the MSRP/DSRP, as~~  
3 ~~applicable, between the two motor vehicles. The difference credited shall not exceed the amount of the~~  
4 ~~calculated usage allowance for the complainant's vehicle.~~

5                   ~~(3) The complainant is responsible for obtaining financing, if necessary, to complete the~~  
6 ~~transaction.~~

7                   ~~(4) The replacement transaction, as described in paragraphs (2) and (3) of this~~  
8 ~~subsection, shall be completed as specified in the final order. If the replacement transaction cannot be~~  
9 ~~completed within the ordered time period, the manufacturer shall repurchase the complainant's motor~~  
10 ~~vehicle in accordance with the repurchase provisions of this section. If repurchase relief occurs, a party~~  
11 ~~may request calculation of the repurchase price by the final order authority.]~~

12                   ~~[(e) If the final order authority finds that a complainant's motor vehicle does not qualify for~~  
13 ~~replacement or repurchase, an order may be entered in any proceeding, where appropriate, requiring~~  
14 ~~repair work to be performed or other action taken to obtain compliance with the manufacturer's,~~  
15 ~~converter's, or distributor's warranty obligations.]~~

16                   ~~[(f) If the motor vehicle is substantially damaged or if there is an adverse change in the motor~~  
17 ~~vehicle's condition beyond ordinary wear and tear, from the date of the hearing to the date of~~  
18 ~~repurchase, and the parties are unable to agree on an amount allowed for such damage or condition,~~  
19 ~~either party may request reconsideration by the final order authority of the repurchase price contained~~  
20 ~~in the final order.]~~

21                   ~~[(g) In any award in favor of a complainant, the final order authority may require the dealer~~  
22 ~~involved to reimburse the complainant, manufacturer, converter, or distributor for the cost of any items~~

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or options added to the motor vehicle if one or more of those items or options contributed to the defect that is the basis for the order, repurchase, or replacement. This subsection shall not be interpreted to require a manufacturer, converter, or distributor to repurchase a motor vehicle due to a defect or condition that was solely caused by a dealer add-on item or option.]

[215.209. Incidental Expenses.]

[(a) When a refund of the purchase price or replacement of a motor vehicle is ordered, the complainant shall be reimbursed for certain incidental expenses incurred by the complainant from loss of use of the motor vehicle because of the defect or nonconformity which is the basis of the complaint. The expenses must be reasonable and verifiable. Reimbursable incidental expenses include, but are not limited to the following costs:

(1) alternate transportation;

(2) towing;

(3) telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the motor vehicle;

(4) meals and lodging necessitated by the motor vehicle's failure during out of town trips;

(5) loss or damage to personal property;

(6) attorney fees if the complainant retains counsel after notification that the respondent is represented by counsel; and

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1                   ~~(7) items or accessories added to the motor vehicle at or after purchase, less a~~  
2 ~~reasonable allowance for use.]~~

3                   ~~[(b) Incidental expenses shall be included in the final repurchase price required to be paid by a~~  
4 ~~manufacturer, converter, or distributor to a prevailing complainant or in the case of a motor vehicle~~  
5 ~~replacement, shall be tendered to the complainant at the time of replacement.]~~

6                   ~~[(c) When awarding reimbursement for the cost of items or accessories presented under~~  
7 ~~subsection (a)(7) of this section, the hearings examiner shall consider the permanent nature,~~  
8 ~~functionality, and value added by the items or accessories and whether the items or accessories are~~  
9 ~~original equipment manufacturer (OEM) parts or non-OEM parts.]~~

10  
11 ~~[215.210. Compliance with Order Granting Relief.]~~

12                   ~~[(a) Compliance with an order issued by the final order authority will be monitored by the~~  
13 ~~department.]~~

14                   ~~[(b) A complainant is not bound by a final decision and order.]~~

15                   ~~[(c) If a complainant does not accept the final decision, the proceeding before the final order~~  
16 ~~authority will be deemed concluded and the complaint file closed.]~~

17                   ~~[(d) If the complainant accepts the final decision, then the manufacturer, converter, or~~  
18 ~~distributor, and the dealer to the extent of the dealer's responsibility, if any, shall immediately take such~~  
19 ~~action as is necessary to implement the final decision and order.]~~

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1           ~~[(e) If a manufacturer, converter, or distributor replaces or repurchases a motor vehicle pursuant~~  
2           ~~to an order issued by the final order authority, then the manufacturer, converter, or distributor shall,~~  
3           ~~prior to the resale of such motor vehicle, retitle the vehicle in Texas and shall:~~

4                     ~~(1) issue a disclosure statement on a form provided by or approved by the department;~~  
5           and

6                     ~~(2) affix a department approved disclosure label in a conspicuous location in or on the~~  
7           ~~motor vehicle.]~~

8           ~~[(f) The disclosure statement and disclosure label required under subsection (e) of this section~~  
9           ~~shall accompany the motor vehicle through the first retail purchase. No person or entity holding a license~~  
10          ~~or GDN issued by the department under Occupations Code, Chapter 2301 or Transportation Code,~~  
11          ~~Chapter 503 shall remove or cause the removal of the disclosure label until delivery of the motor vehicle~~  
12          ~~to the first retail purchaser.]~~

13           ~~[(g) A manufacturer, converter, or distributor shall provide to the department the name, address,~~  
14           ~~and telephone number of the transferee to whom the manufacturer, distributor, or converter transfers~~  
15           ~~the motor vehicle on the disclosure statement within 60 days of each transfer. The selling dealer shall~~  
16           ~~return the completed disclosure statement to the department within 60 days of the retail sale of a~~  
17           ~~reacquired motor vehicle.]~~

18           ~~[(h) The manufacturer, converter, or distributor must repair the defect or condition in the motor~~  
19           ~~vehicle that resulted in the vehicle being reacquired and issue a basic warranty excluding non-original~~  
20           ~~equipment manufacturer items or accessories, for a minimum of 12 months or 12,000 miles, whichever~~  
21           ~~comes first. The warranty shall be provided to the first retail purchaser of the motor vehicle.]~~

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1       ~~[(i) In the event this section conflicts with the terms contained in a cease and desist order, the~~  
2 ~~terms of the cease and desist order shall prevail.]~~

3       ~~[(j) The failure of any manufacturer, converter, distributor, or dealer to comply with a final order~~  
4 ~~issued by the final order authority within the time period prescribed in the order may subject the~~  
5 ~~manufacturer, converter, distributor, or dealer to formal action by the department, including the~~  
6 ~~assessment of civil penalties or other sanctions prescribed by Occupations Code, Chapter 2301, for the~~  
7 ~~failure to comply with an order issued by the final order authority.]~~

8  
9                                   **SUBCHAPTER ~~F~~<sup>H</sup>. ADVERTISING**

10  
11       215.242. General Prohibition.

12           A person advertising motor vehicles shall not use false, deceptive, unfair, or misleading  
13 advertising. In addition to a violation of a specific advertising rule, any other advertising or  
14 advertising practices found by the department to be false, deceptive, or misleading, whether  
15 herein described, shall be deemed a violation of Occupations Code, Chapter 2301 and shall also be  
16 deemed~~considered~~ a violation of this rule.

17  
18       215.244. Definitions.

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

21                   (1) Advertisement--

22                                   (A) An oral, written, graphic, or pictorial statement or representation made  
23 in the course of soliciting business, including, but not limited to a statement or representation:

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1 (i) made in a newspaper, magazine, or other publication;

2 (ii) contained in a notice, sign, poster, display, circular, pamphlet, or

3 letter;

4 (iii) aired on the radio;

5 (iv) broadcast on the internet or television; or

6 (v) streamed via an online service.

7 (B) Advertisement does not include direct communication between a person  
8 or person's representative and a prospective purchaser.

9 (2) Advertising provision--

10 (A) A provision of Occupations Code, Chapter 2301, relating to the  
11 regulation of advertising; or

12 (B) A rule relating to the regulation of advertising, adopted pursuant to the  
13 authority of Occupations Code, Chapter 2301.

14 (3) Bait advertisement--An alluring but insincere offer to sell or lease a product of  
15 which the primary purpose is to obtain a lead to a person interested in buying or leasing  
16 merchandise of the type advertised and to switch a consumer from buying or leasing the  
17 advertised product in order to sell or lease some other product at a higher price or on a basis more  
18 advantageous to the dealer.

19 (4) Balloon payment--Any scheduled payment made as required by a consumer  
20 credit transaction that is more than twice as large as the average of all prior scheduled payments  
21 except the down payment.

22 (5) Clear and conspicuous--The statement, representation, or term being disclosed  
23 is of such size, color, contrast, and audibility and is presented so as to be readily noticed and

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1 understood. All language and terms, including abbreviations, shall be used in accordance with their  
2 common or ordinary usage and meaning.

3 (6) Dealership addendum--A form that is displayed on a window of a motor vehicle  
4 when a~~the~~ dealership installs special features, equipment, parts, or accessories, or charges for  
5 services not already compensated by the manufacturer or distributor for work required to prepare  
6 a motor vehicle for delivery to a buyer.

7 (A) The purpose of the addendum is to disclose:

8 (i) that it is supplemental;

9 (ii) any added feature, service, equipment, part, or accessory,  
10 including the retail price, charged and added by the dealership;

11 (iii) any additional charge to the selling price such as additional  
12 dealership markup; and

13 (iv) the total dealer selling price.

14 (B) The dealership addendum form shall not be deceptively similar in  
15 appearance to the Monroney label, as defined by paragraph (14) of this section.

16 (7) Demonstrator--A new motor vehicle that is currently in the inventory of the  
17 automobile dealership and used primarily for test drives by customers and for other purposes  
18 designated by the dealership.

19 (8) Disclosure--Required information that is clear, conspicuous, and accurate.

20 (9) Distributor Suggested Retail Price (DSRP)--means the total price shown on the  
21 Monroney Label as specified by sub-paragraph (D) of paragraph (14) of this section.



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1 (10) Factory executive/official motor vehicle--A new motor vehicle that has been  
2 used exclusively by an executive or official of the dealer's franchising manufacturer, distributor, or  
3 their subsidiaries.

4 (11)[~~License holder~~ Any person required to obtain a license from the department.  
5 ~~(12)~~] Limited rebate--A rebate that is not available to every consumer purchasing or  
6 leasing a motor vehicle because qualification for receipt of the rebate is conditioned or restricted  
7 in some manner. A rebate conditioned or restricted to purchasers who are residents of the  
8 contiguous United States is not a limited rebate.

9 ~~(12)~~[(13)] Manufacturer's Suggested Retail Price (MSRP)--means the total price  
10 shown on the Monroney Label as specified by sub-paragraph (D) of paragraph (13) of this section.

11 ~~(13)~~[(14)] Monroney Label--The label required by the Automobile Information  
12 Disclosure Act, 15 U.S.C. §§1231 - 1233, to be affixed to the windshield or side window of certain  
13 new motor vehicles delivered to the dealer and that contains information about the motor vehicle,  
14 including, but not limited to:

15 (A) the retail price of the motor vehicle suggested by the manufacturer or  
16 distributor, as applicable;

17 (B) the retail delivered price suggested by the manufacturer or distributor,  
18 as applicable, for each accessory or item of optional equipment, physically attached to the motor  
19 vehicle at the time of its delivery to a dealer, which is not included within the price of the motor  
20 vehicle as stated in subparagraph (A) of this paragraph;

21 (C) the amount charged, if any, to a dealer for the transportation of the  
22 motor vehicle to the location at which it is delivered to the dealer; and

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(D) the total of the amounts specified pursuant to subparagraphs (A), (B), and (C) of this paragraph.

~~(14)~~(15) Online service--A network that connects computer users.

~~(15)~~ (16) Rebate or cash back--A sum of money applied to the purchase or lease of a motor vehicle or refunded after full payment has been rendered for the benefit of the purchaser.

~~(16)~~(17) Savings claim or discount--An offer to sell or lease a motor vehicle at a reduced price, including, but not limited to, a manufacturer's or distributor's customer rebate, a dealer discount, or a limited rebate.

~~(17)~~(18) Subsequent violation--Conduct that is the same or substantially the same as conduct the department has previously alleged in a notice of an opportunity to cure~~[an earlier communication]~~ to be a violation of an advertising provision.

215.249. Manufacturer's or~~/~~ Distributor's Suggested Retail Price.

(a) Except as provided by subsection (b) of this section, the suggested retail price of a new motor vehicle advertised by a manufacturer or distributor shall include all costs and charges for the motor vehicle advertised.

(b) The following costs and charges may be excluded if an advertisement described in subsection (a) of this section clearly and conspicuously states the costs and charges are excluded:

(1) destination and dealer preparation charges;

(2) registration, certificate of title, license fees, or an additional registration fee, if any;

(3) taxes; and

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(4) other fees or charges that are allowed or prescribed by law.

(c) Except as provided by this subsection, if the price of a motor vehicle is stated in an advertisement placed with local media in ~~[the State of]~~ Texas by a manufacturer or distributor and the names of the local dealers for the motor vehicles advertised are included in that advertisement, then the price must include all costs and charges for the motor vehicle advertised, including destination and dealer preparation charges. The only costs and charges that may be excluded from the price are:

(1) registration, certificate of title, license fees, or an additional registration fee, if any;

(2) taxes; and

(3) other fees or charges that are allowed or prescribed by law.

215.250. Dealer Price Advertising; Savings Claims; Discounts.

(a) When featuring a sales price of a ~~[new or used]~~ motor vehicle in an advertisement, the dealer must be willing to sell the motor vehicle for that featured sales price to any retail buyer. The featured sales price shall be the price before the addition or subtraction of any other negotiated items. Destination and dealer preparation charges and additional dealership markup, if any must be included in the featured sales price.

(b) The only costs and charges that may be excluded from the featured sales price are:

(1) registration, certificate of title, or license fees;

(2) taxes; and

(3) other fees or charges that are expressly allowed ~~[or prescribed]~~ by law.

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(c) A qualification may not be used when featuring a sales price for a motor vehicle such as "with trade," "with acceptable trade," "with dealer-arranged financing," "rebate assigned to dealer," or "with down payment."

(d) Advertising an "internet price," "e-price," or using similar terms that indicate or create the impression that there is a different or unique sales price for an online or internet consumer or transaction is prohibited.

(e) A savings claim or discount offer is prohibited except to advertise a new motor vehicle. No person may advertise a savings claim or discount offer on a used motor vehicle.

(f) Statements such as "up to," "as much as," and "from" shall not be used by a dealer in connection with savings claims or discount offers.

(g) The savings claim or discount offer for a new motor vehicle, when advertised by a dealer, must be the savings claim or discount available to any and all members of the buying public.

(h) If an advertisement includes a savings claim or discount offer, the amount and type of each incentive that makes up the total amount of the savings claim or discount offer must be disclosed.

(1) If a savings claim or discount offer includes only a dealer discount, that incentive must be disclosed as a deduction from the MSRP/DSRP, as applicable. The following are acceptable formats for advertising a dealer discount with and without a sales price.

Attached Graphic

(2) If a savings claim or discount offer includes only a customer rebate, that incentive must be disclosed as a deduction from the MSRP/DSRP, as applicable. The following are acceptable formats for advertising a customer rebate with and without a sales price.

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1 Attached Graphic

2 (3) If a savings claim or discount offer includes both a customer rebate and a dealer  
3 discount, the incentives must be disclosed as deductions from the MSRP/DSRP, as applicable. The  
4 following are acceptable formats for advertising both a customer rebate and a dealer discount with and  
5 without a sales price.

6 Attached Graphic

7 (i) If a savings claim or discount offer includes an option package discount, that discount should  
8 be disclosed above, or prior to, the MSRP/DSRP, as applicable, with a total sales price of the motor  
9 vehicle before option discounts. Any additional savings or discounts should then be disclosed below the  
10 MSRP/DSRP, as applicable. The following are acceptable formats for advertising an option package  
11 discount with and without a sales price.

12 Attached Graphic

13 (j) Except as provided herein, the calculation of the featured sales price or featured savings claim  
14 or discount may not include a limited rebate. A limited rebate may be advertised by providing the  
15 amount of the limited rebate and explaining the conditions or restrictions on qualification for the limited  
16 rebate in a statement below the featured sales price or featured savings claim or discount.

17 Attached Graphic

18 (k) In an internet advertisement with multiple limited rebates available on an advertised new  
19 motor vehicle, a dealer may display each limited rebate separately allowing a potential buyer to "click"  
20 on the limited rebate to view the sales price after deducting the applicable limited rebate or applicable  
21 multiple rebates.

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1 Attached Graphic

2 (I) If a dealer has added an option that was not obtained from the manufacturer or distributor of  
3 the motor vehicle, a dealer discount may not be advertised for that vehicle. If a dealer has added an  
4 option obtained from the manufacturer or distributor and disclosed that option and its suggested retail  
5 price on a dealership addendum, the dealer may advertise a dealer discount for that motor vehicle if the  
6 option is listed, and the difference is shown between the dealer's sales price and the MSRP/DSRP, as  
7 applicable, of the vehicle including the option obtained from the manufacturer or distributor.

8 Attached Graphic

9

10 215.257. Authorized Dealer.

11 The term "authorized dealer" or a similar term shall not be used unless the advertising dealer  
12 holds both a franchised dealer license and a franchised dealer GDN[dealer license] to sell the motor  
13 vehicles the dealer identifies itself as "authorized" to sell.

14

15 215.261. Manufacturer or ~~/~~ Distributor Sales and Wholesale Prices.

16 A motor vehicle shall not be advertised for sale in any manner that creates the impression that it  
17 is being offered for sale by the manufacturer or distributor of the motor vehicle. An advertisement shall  
18 not:

19 (1) contain terms such as "factory sale," "fleet prices," "wholesale prices," "factory  
20 approved," "factory sponsored," "manufacturer sale," or "distributor sale";

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1 (2) use a manufacturer's or [A] distributor's name or abbreviation in any manner

2 calculated or likely to create an impression that the motor vehicle is being offered for sale by the

3 manufacturer or distributor; or

4 (3) use any other similar terms which indicate sales other than retail sales from the

5 dealer.

6

7 215.264. Payment Disclosure - Vehicle Lease.

8 (a) An advertisement that promotes a consumer lease and contains the amount of any payment

9 or that contains either a statement of any capitalized cost reduction or other payment or a statement

10 that no payment is required at consummation or prior to consummation or delivery, if delivery occurs

11 after consummation, must clearly and conspicuously include the following:

12 (1) that the transaction advertised is a vehicle lease;

13 (2) the total amount due at consummation or prior to consummation or delivery, if

14 delivery occurs after consummation;

15 (3) the number, amount, and due date or period of scheduled payments under the

16 vehicle lease;

17 (4) a statement of whether a security deposit is required; and

18 (5) a statement that an extra charge may be imposed at the end of the vehicle lease

19 term where the lessee's liability, if any, is based on the difference between the residual value of the

20 leased property and its realized value at the end of the vehicle lease term.

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(b) Except for a periodic payment, a reference to a charge described in subsection (a)(2) of this section cannot be more prominently advertised than the disclosure of the total amount due at vehicle lease signing or delivery.

(c) Except for disclosures of limitations on rate information, if a percentage rate is advertised, that rate shall not be more prominently advertised than any other disclosure or deal term ~~of the following disclosures in the advertisement~~.

~~(1) Description of payments.~~

~~(2) Amount due at vehicle lease signing or delivery.~~

~~(3) Payment schedule and total amount of periodic payments.~~

~~(4) Other itemized charges that are not included in the periodic payment. These charges include the amount of any liability that the vehicle lease imposes upon the lessee at the end of the vehicle lease term.~~

~~(5) Total number of payments.~~

~~(6) Payment calculation, including:~~

~~(A) gross capitalized cost;~~

~~(B) capitalized cost reduction;~~

~~(C) adjusted capitalized cost;~~

~~(D) residual value;~~

~~(E) depreciation and any amortized amounts;~~



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- 1                   ~~(F) rent charge;~~
- 2                   ~~(G) total of base periodic payments;~~
- 3                   ~~(H) vehicle lease term;~~
- 4                   ~~(I) base periodic payment;~~
- 5                   ~~(J) itemization of other charges that are a part of the periodic payment; and~~
- 6                   ~~(K) total periodic payment.~~
- 7                   ~~(7) Early termination conditions and disclosure of charges.~~
- 8                   ~~(8) Maintenance responsibilities.~~
- 9                   ~~(9) Purchase option.~~
- 10                  ~~(10) Statement referencing nonsegregated disclosures.~~
- 11                  ~~(11) Liability between residual and realized values.~~
- 12                  ~~(12) Right of appraisal.~~
- 13                  ~~(13) Liability at the end of the vehicle lease term based on residual value.~~
- 14                  ~~(14) Fees and taxes.~~
- 15                  ~~(15) Insurance.~~
- 16                  ~~(16) Warranties or guarantees.~~
- 17                  ~~(17) Penalties and other charges for delinquency.~~
- 18                  ~~(18) Security interest.]~~

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(d) If a vehicle lessor provides a percentage rate in an advertisement, a notice stating "this percentage may not measure the overall cost of financing this lease" shall accompany the rate disclosure. The vehicle lessor shall not use the terms "annual percentage rate," "annual lease rate," or any equivalent terms in any advertisement containing a percentage rate.

(e) A multi-page advertisement that provides a table or schedule of the required disclosures is considered a single advertisement, provided that for vehicle lease terms appearing without all of the required disclosures, the advertisement refers to the page or pages on which the table or schedule appears.

(f) A merchandise tag stating any item listed in subsection (a) of this section must comply with subsection (a)[~~(1)–(5)~~] of this section by referring to a sign or to a display prominently posted in the vehicle lessor's place of business. The sign or display must contain a table or schedule of the required disclosures under subsection (a)[~~(1)–(5)~~].

(g) An advertisement made through television or radio stating any item listed in subsection (a) of this section, must include the following statements:

(1) that the transaction advertised is a vehicle lease;

(2) the total amount due at consummation or due prior to consummation or delivery, if delivery occurs after consummation; and

(3) the number, amount, and due date or period of scheduled payments under the vehicle lease.

(h) In addition to the requirements of subsection (g)[~~(1)–(3)~~] of this section, an advertisement made through television or radio stating any item listed in subsection (a) of this section, must:

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(1) provide a toll-free telephone number along with a statement that the telephone number may be used by consumers to obtain the information in subsection (a) of this section; or

(2) direct the consumer to a written advertisement in a publication of general circulation in the community served by the media station, including the name and the date of the publication, with a statement that the required disclosures in subsection (a) of this section are included in the advertisement.

(i) The toll-free telephone number required by subsection (h)(1) of this section shall be available for at least 10 days, beginning on the date of the broadcast. Upon request, the vehicle lessor shall provide the information in subsection (a) of this section orally or in writing.

(j) The written advertisement required by subsection (h)(2) of this section shall be published beginning at least three days before the broadcast and ending at least 10 days after the broadcast.

## 215.268. Bankruptcy and Liquidation Sales.

A person who advertises a liquidation sale, auction sale, or going out of business sale shall state the correct name and permanent address of the ~~owner of the~~ business in the advertisement. The phrases "going out of business," "closing out," "shutting doors forever," "bankruptcy sale," "foreclosure," "bankruptcy," or similar phrases or words indicating that a business~~[an enterprise]~~ is ceasing operation~~[business]~~ shall not be used unless the business is closing its operations and follows the procedures required by Business and Commerce Code, Chapter 17, Subchapter F.

## 215.270. Enforcement.

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(a) The department may file a Notice of Department Decision against a license holder alleging a violation of an advertising provision pursuant to Occupations Code, §2301.203, provided the department can show:

(1) that the license holder who allegedly violated an advertising provision has received from the department a notice of an opportunity to cure the violation by certified mail, return receipt requested, in compliance with subsection (b) of this section; and

(2) that the license holder committed a subsequent violation of the same advertising provision.

(b) An effective notice of an opportunity to cure issued under subsection (a)(1) of this section must:

(1) state that the department has reason to believe that the license holder violated an advertising provision and must identify the provision;

(2) set forth the facts upon which the department bases its allegation of a violation; and

(3) state that if the license holder commits a subsequent violation of the same advertising provision, the department will ~~formally~~ file a Notice of Department Decision under §224.56 of this title (relating to Notice of Department Decision).

(c) As a part of the cure procedure, the department may require a license holder who allegedly violated an advertising provision to publish a retraction notice to effect an adequate cure of the alleged violation. A retraction notice must:

(1) appear in a newspaper of general circulation in the area in which the alleged violation occurred;

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(2) appear in the portion of the newspaper devoted to motor vehicle advertising, if any;

(3) identify the date and the medium of publication, print, electronic, or other, in which the advertising alleged to be a violation appeared; and

(4) identify the alleged violation of the advertising provision and contain a statement of correction.

(d) A cure is made solely for the purpose of settling an allegation and is not an admission of a violation of these rules; Occupations Code, Chapter 2301; or other law.

**~~[SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE  
OF ADMINISTRATIVE HEARINGS]~~**

~~[215.301. Purpose and Scope.]~~

~~[(a) This subchapter implements the practice and procedure for contested cases under the jurisdiction of the department that are conducted by an ALJ under Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1000 – 1005.]~~

~~[(b) A contested case hearing held by an ALJ shall be conducted in accordance with Government Code, Chapter 2001; applicable SOAH rules; and board rules.]~~

~~[(c) Unless otherwise provided by statute or by this chapter, this subchapter governs practice and procedure relating to contested cases filed with the department on or after September 1, 2007.]~~

~~[(d) Practice and procedure in contested cases filed on or after January 1, 2014, under Occupations Code, Chapter 2301, Subchapters E or M are addressed in Subchapter B of this chapter (relating to Adjudicative Practice and Procedure).]~~

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~~[215.302. Conformity with Statutory Requirements.][In the event of a conflict between Occupations Code, Chapter 2301 and Transportation Code, Chapter 503, the definition or procedure referenced in Occupations Code, Chapter 2301 controls.]~~

~~[215.303. Application of Board and SOAH Rules.][Upon referral by the department of a contested case to SOAH, the rules contained in 1 TAC Chapter 155 and the provisions of this subchapter, to the extent they are not in conflict with 1 TAC Chapter 155, govern the processing of the contested case until the ALJ disposes of the contested case.]~~

~~[215.305. Filing of Complaints, Protests, and Petitions; Mediation.]~~

~~[(a) All complaints, protests, and petitions required or allowed to be filed under Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 – 1005; or this chapter must be delivered to the department:~~

~~(1) in person;~~

~~(2) by first class mail; or~~

~~(3) by electronic document transfer at a destination designated by the department.]~~

~~[(b) Except as provided by subsections (d), (n), and (o) of this section, parties to a contested case filed under Occupations Code, Chapter 2301 or Transportation Code, Chapters 503 and 1000 – 1005 are required to participate in mediation, in accordance with this section, before the case is referred for hearing.]~~

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1           ~~[(c) The term "mediation" as used in this section has the meaning assigned by Occupations Code,~~  
2   ~~§2301.521.]~~

3           ~~[(d) This section does not limit the parties' ability to settle a case without mediation.]~~

4           ~~[(e) The department shall provide mediation services.]~~

5           ~~[(f) The mediator shall qualify for appointment as an impartial third party in accordance with~~  
6   ~~Civil Practice and Remedies Code, Chapter 154.]~~

7           ~~[(g) The mediation process will conclude within 60 days of the date a contested case is assigned~~  
8   ~~to a mediator unless, at the department's discretion, the mediation deadline is extended.]~~

9           ~~[(h) The department will assign a different mediator if:~~

10                 ~~(1) either party promptly and with good cause objects to an assigned mediator; or~~

11                 ~~(2) an assigned mediator is recused.]~~

12           ~~[(i) At any time before a contested case is referred for hearing, the parties may file a joint notice~~  
13   ~~of intent to retain an outside mediator. The notice must include:~~

14                 ~~(1) the name, address, email address, facsimile number, and telephone number of the~~  
15   ~~outside mediator selected;~~

16                 ~~(2) a statement that the parties have entered into an agreement with the outside~~  
17   ~~mediator regarding the mediator's rate and method of compensation;~~

18                 ~~(3) an affirmation that the outside mediator qualifies for appointment as an impartial~~  
19   ~~third party in accordance with Civil Practice and Remedies Code, Chapter 154; and~~

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~~(4) a statement that the mediation will conclude within 60 days of the date of the joint notice of retention unless, at the department's discretion, the mediation deadline is extended.]~~

~~[(j) All communications in a mediation are confidential and subject to the provisions of the Governmental Dispute Resolution Act, Government Code, §2009.054.]~~

~~[(k) Agreements reached by the parties in mediation shall be reduced to writing by the mediator and signed by the parties before the mediation concludes or as soon as practical.]~~

~~[(l) Within 10 days of the conclusion of the mediation period, a mediator shall provide to the department and to the parties a written report stating:~~

~~(1) whether the parties attended the mediation;~~

~~(2) whether the matter settled in part or in whole;~~

~~(3) any unresolved issues; and~~

~~(4) any other stipulations or matters the parties agree to report.]~~

~~[(m) Upon receipt of the mediator's report required under this section, the department shall:~~

~~(1) enter an order disposing of resolved issues; and~~

~~(2) refer unresolved issues for hearing.]~~

~~[(n) Parties to a contested case filed as an enforcement action brought by the department are not required to participate in mediation.]~~

~~[(o) Parties to a contested case filed under Occupations Code, §2301.204 or §§2301.601–2301.613, must participate in mediation in accordance with §215.205 of this title (relating to Mediation; Settlement).]~~



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1

2

~~[215.306. Referral to SOAH.][Contested cases shall be referred to SOAH upon determination that a~~

3

~~hearing is appropriate under Occupations Code, Chapter 2301, Subchapter O; Transportation Code,~~

4

~~Chapter 503; or this chapter, including contested cases relating to:~~

5

~~(1) an enforcement complaint on the department's own initiative;~~

6

~~(2) a notice of protest that has been timely filed in accordance with §215.106 of this title~~

7

~~(relating to Time for Filing Protest);~~

8

~~(3) a protest filed under Occupations Code, §2301.360 or a complaint or protest filed~~

9

~~under Occupations Code, Chapter 2301, Subchapters I or J;~~

10

~~(4) issuance of a cease and desist order, whether the order is issued with or without~~

11

~~prior notice at the time the order takes effect; or~~

12

~~(5) any other contested matter that meets the requirements for a hearing at SOAH under~~

13

~~Occupations Code, Chapter 2301.]~~

14

15

~~[215.307. Notice of Hearing.]~~

16

~~[(a) The requirements for a notice of hearing in a contested case are provided by Government~~

17

~~Code, §2001.052; Occupations Code, §2301.705; and 1 TAC §155.401, as applicable.]~~

18

~~[(b) For service of parties outside of the United States, in addition to service under Occupations~~

19

~~Code, §2301.265, the department may serve a notice of hearing by any method allowed under Texas~~

20

~~Rules of Civil Procedure, Rule 108a(1) or that provides for confirmation of delivery to the party.]~~

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1           ~~[(c) The last known address of a license applicant, license holder, or other person is the last~~  
2           ~~mailing address provided to the department when the license applicant applies for its license, when a~~  
3           ~~license holder renews its license, or when the license holder notifies the department of a change in the~~  
4           ~~license holder's mailing address.]~~

5  
6           ~~[215.308. Reply to Notice of Hearing and Default Proceedings.]~~

7           ~~[(a) On or before the 20th day after a notice of hearing has been served on a party in a contested~~  
8           ~~case referred by the department to SOAH, the party may file a written reply or pleading responding to all~~  
9           ~~allegations. The written reply or responsive pleading must be filed with SOAH in accordance with 1 TAC~~  
10           ~~§155.101 and must identify the SOAH and department docket numbers as reflected on the notice of~~  
11           ~~hearing.]~~

12           ~~[(b) Any party filing a reply or responsive pleading shall serve a copy of the reply or responsive~~  
13           ~~pleading on each party or party's representative in compliance with 1 TAC §155.103. Any party filing a~~  
14           ~~reply or responsive pleading shall also provide a copy to the department. The presumed time of receipt~~  
15           ~~of served documents is subject to 1 TAC §155.103.]~~

16           ~~[(c) A party may file an amended or supplemental reply or responsive pleading in accordance~~  
17           ~~with 1 TAC §155.301.]~~

18           ~~[(d) If a party properly noticed under this chapter does not appear at the hearing, a party may~~  
19           ~~request that the ALJ dismiss the contested case from the SOAH docket. If the contested case is dismissed~~  
20           ~~from the SOAH docket, the case may be presented to the board for disposition based on the default~~  
21           ~~pursuant to 1 TAC §155.501. The board may enter a final order finding that the allegations in the petition~~

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are deemed admitted and granting relief in accordance with applicable law. No later than 10 days after the hearing date, if a final order has not been issued, a party may file a motion with the board to set aside the default and reopen the record. The board, for good cause shown, may grant the motion, set aside the default, and refer the case back to SOAH for further proceedings.]

[215.310. Issuance of Proposals for Decision and Orders.]

[(a) All proposals for decision prepared by the ALJ shall be submitted to the board and copies furnished to the parties.]

[(b) All decisions and orders issued by the board shall be furnished to the parties and to the ALJ.]

[215.311. Amicus Briefs.]

[(a) Any interested person may submit an amicus brief for consideration by the board in a contested case by the deadline for exceptions under 1 TAC §155.301. A party may submit one written response to the amicus brief no later than the deadline for replies to exceptions under 1 TAC §155.301.]

[(b) Amicus briefs and responses to amicus briefs must be submitted to the board and the ALJ, and copies must be served on all parties.]

[(c) Any amicus brief, or response to that brief, not submitted to the board and the ALJ within the deadlines prescribed by subsection (a) of this section will not be considered by the board, unless good cause is shown why the deadline should be waived or extended.]

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1           ~~[(d) The ALJ may amend the proposal for decision in response to any amicus brief or response to~~  
2   ~~an amicus brief.]~~

3  
4   ~~[215.314. Cease and Desist Orders.]~~

5           ~~[(a) Whenever it appears that a person is violating any provision of Occupations Code, Chapter~~  
6   ~~2301; Transportation Code, Chapter 503; or a board rule or order, an order requiring the person to cease~~  
7   ~~and desist from the violation may be entered.]~~

8           ~~[(b) If it appears from specific facts shown by affidavit or by verified complaint that one or more~~  
9   ~~of the conditions in Occupations Code, §2301.802(b) will occur before notice can be served and a~~  
10   ~~hearing held, the order may be issued without notice; otherwise, the order must be issued after a~~  
11   ~~hearing has been held to determine the validity of the order and to allow the person who requested the~~  
12   ~~order to show good cause why the order should remain in effect during the pendency of the contested~~  
13   ~~case.]~~

14           ~~[(c) Each cease and desist order issued without notice must include:~~

15                   ~~(1) the date and hour of issuance;~~

16                   ~~(2) a statement of which of the conditions in Occupations Code, §2301.802(b) will occur~~  
17   ~~before notice can be served and a hearing held; and~~

18                   ~~(3) a notice of hearing for the earliest date possible to determine the validity of the~~  
19   ~~order and to allow the person who requested the order to show good cause why the order should~~  
20   ~~remain in effect during the pendency of the contested case.]~~

21           ~~[(d) Each cease and desist order shall:~~

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1                   ~~(1) state the reasons for its issuance; and~~

2                   ~~(2) describe in reasonable detail the act or acts to be restrained.]~~

3                   ~~[(e) A cease and desist order shall not be issued unless the person requesting the order presents~~  
4                   ~~a petition or complaint, verified by affidavit, containing a plain statement of the grounds for seeking the~~  
5                   ~~cease and desist order.]~~

6                   ~~[(f) A cease and desist order issued without notice expires as provided in the order, but shall not~~  
7                   ~~exceed 20 days.]~~

8                   ~~[(g) A cease and desist order may be extended for a period of time equal to the period of time~~  
9                   ~~granted in the original order if, prior to the expiration of the previous order, good cause is shown for the~~  
10                  ~~extension or the party against whom the order is directed consents to the extension.]~~

11                  ~~[(h) The person against whom a cease and desist order was issued without notice may request~~  
12                  ~~that the scheduled hearing be held earlier than the date set in the order.]~~

13                  ~~[(i) After the hearing, the ALJ shall prepare a written order, including a justification explaining~~  
14                  ~~why the cease and desist order should remain in place during the pendency of the contested case.]~~

15                  ~~[(j) A party may appeal to the board an order granting or denying a motion for a cease and desist~~  
16                  ~~order.]~~

17                  ~~[(k) An appeal of an order granting or denying a motion for a cease and desist order must be~~  
18                  ~~made to the board before a person may seek judicial review of an order issued under this section.]~~

19                  ~~[(l) Upon appeal to a district court of an order issued under this section, the order may be stayed~~  
20                  ~~by the board upon a showing of good cause by a party.]~~

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## Chapter 215 – Motor Vehicle Distribution

1           ~~[(m) Prior to the commencement of a proceeding by SOAH, the director is authorized to issue a~~  
2           ~~cease and desist order under this section. An ALJ shall hold a hearing to determine whether an~~  
3           ~~interlocutory cease and desist order should remain in effect during the pendency of the proceeding.]~~

4  
5           ~~[215.315. Statutory Stay.]~~

6           ~~[(a) A person affected by a statutory stay imposed by Occupations Code, Chapter 2301 may~~  
7           ~~request a hearing before an ALJ to modify, vacate, or clarify the extent and application of the statutory~~  
8           ~~stay.]~~

9           ~~[(b) After a hearing on a motion to modify, vacate, or clarify a statutory stay, the ALJ shall~~  
10          ~~expeditiously prepare a written order, including a justification explaining why the statutory stay should or~~  
11          ~~should not be modified, vacated, or clarified.]~~

12          ~~[(c) A person affected by a statutory stay imposed by Occupations Code, Chapter 2301 may~~  
13          ~~initiate a proceeding before the board to modify, vacate, or clarify the extent and application of the~~  
14          ~~statutory stay.]~~

15  
16          ~~[215.316. Informal Disposition.]~~

17          ~~[(a) Notwithstanding any other provision in this subchapter, at any time during the contested~~  
18          ~~case, the board may informally dispose of a contested case by stipulation, agreed settlement, dismissal,~~  
19          ~~or consent order.]~~

20          ~~[(b) If the parties have settled or otherwise determined that a contested case proceeding is not~~  
21          ~~required, the party who brought the protest, complaint, or petition shall file a motion to dismiss the~~

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## Chapter 215 – Motor Vehicle Distribution

1 ~~contested case from SOAH's docket and present a proposed agreed order or dismissal order to the~~  
2 ~~board.]~~

3 ~~[(c) Agreed orders must contain proposed findings of fact and conclusions of law that are signed~~  
4 ~~by all parties or their authorized representatives.]~~

5 ~~[(d) Upon receipt of the agreed order, the board may:~~

6 ~~(1) adopt the settlement agreement and issue a final order;~~

7 ~~(2) reject the settlement agreement and remand the contested case for a hearing before~~  
8 ~~SOAH; or~~

9 ~~(3) take other action that the board finds just.]~~

10  
11 ~~[215.317. Motion for Rehearing.]~~

12 ~~[(a) A motion for rehearing and any reply to a motion for rehearing will be processed in~~  
13 ~~accordance with Government Code, Chapter 2001.]~~

14 ~~[(b) For an order issued by the board, a motion for rehearing and reply to a motion for rehearing~~  
15 ~~must be filed with the department and decided by the board unless the board specifically delegates~~  
16 ~~motion for rehearing authority.]~~

17 ~~[(c) For an order issued by a board delegate, a motion for rehearing and reply to a motion for~~  
18 ~~rehearing must be filed with the department and decided by the board delegate who issued the order.]~~

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~~[(d) The requirements for a motion for rehearing regarding a complaint filed on or after January 1, 2014, under Occupations Code, §§2301.204 or §§2301.601 – 2301.613 are governed by §215.207 of this title (relating to Contested Cases: Final Orders).]~~

**SUBCHAPTER G[J]. ADMINISTRATIVE SANCTIONS**

215.500. Administrative Sanctions~~[-and Procedures]~~.

~~[(a)]~~ An administrative sanction may include:

(1) denial of an application for a license;

(2) suspension of a license;

(3) revocation of a license;

(4) the imposition of civil penalties; or

(5) a refund under §215.504 of this title (relating to~~[concerning]~~ B[b]uyer or

L[t]essee R[r]efund).

~~[(b) The department shall issue and mail a Notice of Department Decision to a license applicant, license holder, or other person by certified mail, return receipt requested, to the last known address upon a determination under Occupations Code, Chapters 2301 and 2302 or Transportation Code, Chapter 503 that:~~

~~(1) an application for a license should be denied; or~~

~~(2) administrative sanctions should be imposed.]~~

~~[(c) The last known address of a license applicant, license holder, or other person is the last mailing address provided to the department when the license applicant applies for its license, when a license holder renews its license, or when the license holder notifies the department of a change in the license holder's mailing address.]~~



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## Chapter 215 – Motor Vehicle Distribution

1       ~~[(d) The Notice of Department Decision shall include:~~

2               ~~(1) a statement describing the department decision and the effective date;~~

3               ~~(2) a description of each alleged violation;~~

4               ~~(3) a description of each administrative sanction being adopted;~~

5               ~~(4) a statement regarding the legal basis for each administrative sanction;~~

6               ~~(5) a statement regarding the license applicant, license holder, or other person's~~  
7 ~~right to request a hearing;~~

8               ~~(6) the procedure to request a hearing, including the deadline for filing; and~~

9               ~~(7) notice to the license applicant, license holder, or other person that the adopted~~  
10 ~~decision and administrative sanctions in the Notice of Department Decision will become final on~~  
11 ~~the date specified if the license applicant, license holder, or other person fails to timely request a~~  
12 ~~hearing.]~~

13       ~~[(e) The license applicant, license holder, or other person must submit, in writing, a request~~  
14 ~~for a hearing under this section. The department must receive a request for a hearing within 26~~  
15 ~~days of the date of the Notice of Department Decision.]~~

16       ~~[(f) If the department receives a timely request for a hearing, the department will set a~~  
17 ~~hearing date and give notice to the license applicant, license holder, or other person of the date,~~  
18 ~~time, and location of the hearing.]~~

19       ~~[(g) If the license applicant, license holder, or other person does not make a timely request~~  
20 ~~for a hearing or enter into a settlement agreement within 27 days of the date of the Notice of~~  
21 ~~Department Decision, the department decision becomes final.]~~

22  
23 ~~[215.501. Final Decisions and Orders; Motions for Rehearing.]~~

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## Chapter 215 – Motor Vehicle Distribution

1       ~~[(a) If a department decision becomes final under a Notice of Department Decision issued under~~  
2       ~~§215.500 of this title (relating to Administrative Sanctions and Procedures), the matter will be forwarded~~  
3       ~~to the final order authority for issuance of a final order incorporating the decisions, findings, and~~  
4       ~~administrative sanctions imposed by the Notice of Department Decision. The department will send a~~  
5       ~~copy of the final order to the parties.]~~

6       ~~[(b) The provisions of Government Code, Chapter 2001, Subchapter F govern:~~

7                 ~~(1) the issuance of a final order issued under this subchapter; and~~

8                 ~~(2) motions for rehearing filed in response to a final order.]~~

9  
10       ~~[215.502. Judicial Review of Final Order.]~~

11       ~~[The provisions of Government Code, Chapter 2001, Subchapter G govern the appeal of a final~~  
12       ~~order issued under this subchapter.]~~

13  
14       ~~[215.505. Denial of Dealer or Converter Access to Temporary Tag System.]~~

15       ~~[(a) In this section "fraudulently obtained temporary tags from the temporary tag database"~~  
16       ~~means a dealer or converter account user misusing the temporary tag database authorized under~~  
17       ~~Transportation Code §503.0626 or §503.0631 to obtain:~~

18                 ~~(1) an excessive number of temporary tags relative to dealer sales;~~

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## Chapter 215 – Motor Vehicle Distribution

1                   ~~(2) temporary tags for a vehicle or vehicles not in the dealer's or converter's inventory (a~~  
2 ~~vehicle is presumed not to be in the dealer's or converter's inventory if the vehicle is not listed in the~~  
3 ~~relevant monthly Vehicle Inventory Tax Statement); or~~

4                   ~~(3) access to the temporary tag database for a fictitious user or person using a false~~  
5 ~~identity; or~~

6                   ~~[(b) The department shall deny a dealer or converter access to the temporary tag database~~  
7 ~~effective on the date the department sends notice electronically and by certified mail to the dealer or~~  
8 ~~converter that the department has determined, directly or through an account user, the dealer or~~  
9 ~~converter has fraudulently obtained temporary tags from the temporary tag database. A dealer or~~  
10 ~~converter may seek a negotiated resolution with the department by demonstrating corrective actions~~  
11 ~~taken or that the department's determination was incorrect.]~~

12                   ~~[(c) Notice shall be sent to the dealer's or converter's last known email and mailing address in~~  
13 ~~the department's records.]~~

14                   ~~[(d) A dealer or converter may request a hearing on the denial as provided by Subchapter O,~~  
15 ~~Chapter 2301, Occupations Code. The request must be submitted in writing and request a hearing under~~  
16 ~~this section. The department must receive a written request for a hearing within 26 days of the date of~~  
17 ~~the notice denying access to the database. The request for a hearing does not stay the denial of access~~  
18 ~~under subsection (b) of this section. A dealer may continue to seek a negotiated resolution with the~~  
19 ~~department after a request for hearing has been submitted under this subsection by demonstrating~~  
20 ~~corrective actions taken or that the department's determination was incorrect.]~~

21                   ~~[(e) The department may also issue a Notice of Department Decision stating administrative~~  
22 ~~violations as provided in §215.500 concurrently with the notice of denial of access under this section. A~~

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Chapter 215 – Motor Vehicle Distribution

1 ~~Notice of Department Decision may include notice of any violation, including a violation listed under~~  
2 ~~subsection (a) of this section.]~~

3 ~~[(f) A department determination and action denying access to the temporary tag database~~  
4 ~~becomes final if the dealer or converter does not request a hearing or enter into a settlement agreement~~  
5 ~~with the department within 26 days of the date of the notice denying access to a database.]~~

Figure: 43 TAC §215.139(c)

If a new license applicant is:	Maximum number of <del>[metal-]</del> dealer's <u>standard</u> license plates issued during the first license term is:
1. a franchised motor vehicle dealer	5
2. a franchised motorcycle dealer	5
3. an independent motor vehicle dealer	2
4. an independent motorcycle dealer	2
5. a franchised or independent travel trailer dealer	2
6. a trailer or semi-trailer dealer	2
7. an independent mobility motor vehicle dealer	2
8. a wholesale motor vehicle dealer	1

Figure: 43 TAC §215.139(e)

If a vehicle dealer is:	Maximum number of <del>metal</del> dealer's <u>standard</u> license plates issued per license term is:
1. a franchised motor vehicle dealer	30
2. a franchised motorcycle dealer	10
3. an independent motor vehicle dealer	3
4. an independent motorcycle dealer	3
5. a franchised or independent travel trailer dealer	3
6. a trailer or semi-trailer dealer	3
7. an independent mobility motor vehicle dealer	3
8. a wholesale motor vehicle dealer	1

Figure: 43 TAC §215.139(f)(1)

If a vehicle dealer is:	Number of additional <u>standard</u> <del>[metal-dealer's]</del> license plates issued to a dealer with a <del>[that]</del> <u>demonstrated need</u> <del>[demonstrates a-need]</del> through proof of sales is:
1. a wholesale motor vehicle dealer	1
2. a dealer selling fewer than 50 vehicles during the previous 12-month period	1
3. a dealer selling 50 to 99 vehicles during the previous 12-month period	<u>2</u> <del>[5]</del>
<u>4. a dealer selling 100 to 200 vehicles during the previous 12-month period</u>	<u>5</u>
<u>5</u> <del>[4]</del> . a dealer selling more than 200 vehicles during the previous 12-month period	any number of <u>standard</u> <del>[metal-dealer's]</del> license plates the dealer requests.



## Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

**Board Meeting Date: 12/14/2023****ACTION ITEM**

**To:** Texas Department of Motor Vehicles Board  
**From:** Monique Johnston, Motor Vehicle Division Director  
**Agenda Item:** 11  
**Subject:** Chapter 221, Salvage Vehicle Dealers  
Amendments, Subchapters A, B, C, D, and F  
Repeal, §221.48 and Subchapter E  
(Relating to SB 422, Fingerprinting, and Cleanup)

### RECOMMENDATION

Action Item. Approval to publish the proposal in the *Texas Register* for public comment.

### PURPOSE AND EXECUTIVE SUMMARY

This rule item proposes amendments and repeals to Chapter 221, Salvage Vehicle Dealers and is proposed in conjunction with a review of Chapter 221 in compliance with Government Code, §2001.039. This rule item is also proposed concurrently with new Chapter 224, Adjudicative Practice and Procedure, which would consolidate into one chapter all contested case rules, including those currently in Chapter 221.

### FINANCIAL IMPACT

N/A

### BACKGROUND AND DISCUSSION

#### Overview

As part of the department's rule review of Chapter 221, Salvage Vehicle Dealer, the department has considered and is proposing amendments and repeals to sections of Chapter 221 with the following goals in mind:

- to implement statutory changes and add conforming language;
- to deter fraud or abuse by expanding fingerprint requirements to salvage vehicle dealers and setting minimum standards for business operations;
- to modify language to be consistent with statutes and other chapters in Title 43 of the Texas Administrative Code;
- to modify language to be consistent with current practice, including the use of records or electronic systems;
- to clarify existing requirements;
- to improve readability by use of consistent terminology;
- to clarify or delete unused, archaic, or inaccurate definitions, terms, and references to improve understanding and readability; and
- to repeal rules that are concurrently proposed to be included in new Chapter 224, Adjudicative Practice and Procedure.

The following paragraphs highlight the most significant proposals in Chapter 221.

#### Legislation Implementation



Proposed amendments would implement Senate Bill (SB) 422, 88th Legislature, Regular Session (2023), which amended Occupations Code §§55.004, 55.0041, and 55.005, affecting licensing of military service members; and would conform language with SB 604, 86th Legislature, Regular Session (2019), which eliminated salvage vehicle dealer license endorsements, and House Bill (HB) 1667, 86th Legislature, Regular Session (2019), which allowed holders of an independent motor vehicle dealer's general distinguishing number (GDN) issued under Transportation Code, Chapter 503, to act as a salvage vehicle dealer. HB 1667 added Occupations Code, §2302.009 and amended §2302.101, granting these dealers the ability to perform salvage activities without obtaining a salvage vehicle dealer's license, but at the same time requiring these dealers to comply with Occupations Code, Chapter 2302 requirements.

#### Proposed Fingerprint Requirements

On June 30, 2022, the Board adopted fingerprint requirements for GDN dealer applicants and holders effective September 1, 2022. On October 12, 2023, the board adopted a rule that would allow fingerprint requirements to be added for other license types effective November 2, 2023.

Fingerprint requirements are a proven, effective way to prevent application fraud. This proposal would expand fingerprint requirements to salvage vehicle dealer new and renewal license applicants.

#### Fee Consistency

The department compared GDN and salvage dealer application requirements and is proposing amendments relating to fees for consistency. A proposed amendment to §221.13, License Terms and Fees, would allow the department to charge a salvage vehicle dealer a \$25 license amendment fee. Occupations Code, §2301.264(e) prescribes a \$25 license amendment fee for Occupations Code, Chapter 2301 and Transportation Code, Chapter 503 license holders. A proposed amendment to §221.115 would allow flexibility for the director to approve an application refund in certain circumstances.

#### Proposed Repeals

Repeals are proposed to delete §221.48, Scrapped or Destroyed Motor Vehicle, which duplicates §217.86, Dismantling, Scrapping, or Destruction of Motor Vehicles, and to move the adjudicative rules in Subchapter E to proposed new Chapter 224, Adjudicative Practice and Procedure, which is proposed concurrently for board consideration.

#### Advisory Council Input

The board adopted advisory committee rules in 2019, and advisory committees have since provided valuable input on rule proposals considered by the board for proposal or adoption. In September 2023, the department provided an early draft of these rules to two department advisory committees, the Motor Vehicle Industry Regulation Advisory Committee (MVIRAC) and the Customer Service and Protection Advisory Committee (CSPAC). The members of these two advisory committees did not have any comments on Chapter 221 proposed amendments.

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Chapter 221 Salvage Vehicle Dealers

**PROPOSAL OF REVISIONS TO****SUBCHAPTER A. GENERAL PROVISIONS****43 TAC §221.1 and §221.2****SUBCHAPTER B. LICENSING****43 TAC §§221.11–221.20****SUBCHAPTER C. LICENSED OPERATIONS****43 TAC §§221.41–221.54****SUBCHAPTER D. RECORDS****43 TAC §§221.71–221.73****SUBCHAPTER E. ADMINISTRATIVE PROCEDURES****43 §§221.91–221.96****SUBCHAPTER F. ADMINISTRATIVE SANCTIONS****43 TAC §§221.111–221.115**

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes to amend 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §221.1 and §221.2; Subchapter B, Licensing, §§ 221.11–221.20; Subchapter C, Licensed Operations, §§ 221.41–221.47 and 221.49–43; Subchapter D, Records, §§221.71– 221.73; and Subchapter F, Administrative Sanctions, §§221.111–221.15. The department proposes to repeal §221.48 and Subchapter E, Administrative Procedures, §§221.91–221.96. The proposed amendments are necessary to modify language to be consistent with statutes and other chapters in Title 43 of the Texas Administrative Code; to clarify the purpose of a rule by amending the rule title and language; to modify language to be consistent with current practice including the use of records or electronic systems; to improve readability by use of consistent terminology; to clarify or delete unused,

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1 archaic, or inaccurate definitions, terms, and references or other language; to delete language that is  
2 inconsistent with statute, to implement statutory changes and add conforming language; to deter fraud  
3 or abuse by expanding fingerprint requirements to salvage vehicle dealers and setting minimum standards  
4 for business operations; to clarify existing requirements; and to modernize language and improve  
5 understanding and readability. Proposed amendments would implement Senate Bill (SB) 422, 88th  
6 Legislature, Regular Session (2023), which amended Occupations Code §§55.004, 55.0041, and 55.005  
7 affecting licensing of military service members, and would conform language with SB 604, 86th  
8 Legislature, Regular Session (2019), which eliminated salvage vehicle dealer license endorsements, and  
9 House Bill (HB) 1667, 86th Legislature, Regular Session (2019) which granted certain motor vehicle dealers  
10 the option to act as a salvage dealer.

11 Repeals are proposed to remove a section which duplicates §217.86 of this title and to move the  
12 adjudicative rules in Subchapter E to proposed new Chapter 224 of this title (relating to Adjudicative  
13 Practice and Procedure), which is proposed in this edition of the *Texas Register* to consolidate all  
14 department adjudicative practice and procedure rules in one chapter. Subchapter F is also proposed for  
15 relettering because the preceding subchapter is proposed for repeal.

**EXPLANATION.**

## Subchapter A. General Provisions

19 Proposed conforming amendments to §221.1 would more completely describe the scope of the  
20 chapter to include holders of an independent motor vehicle dealer's general distinguishing number (GDN)  
21 issued under Transportation Code, Chapter 503, who act as salvage vehicle dealers.  
22 HB 1667, 86th Legislature, Regular Session (2019), added Occupations Code, §2302.009 and amended  
23 §2302.101, granting these dealers the ability to perform salvage activities without obtaining a salvage

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## Chapter 221 Salvage Vehicle Dealers

1 vehicle dealer's license, but at the same time requiring these dealers to comply with Occupations Code,  
2 Chapter 2302 requirements. For completeness, a proposed amendment would add a reference to persons  
3 exempt from licensure as Occupations Code, Chapter 2302 contains exceptions for metal recyclers,  
4 insurance companies, and used automotive recyclers licensed under Occupations Code, Chapter 2309.

5 The proposed amendments to §221.2 would add the following definitions for consistency: "day"  
6 in §221.2(4) to mean a calendar day, unless otherwise stated or the context clearly indicates otherwise;  
7 "director" in §221.2(6) to mean the division director that regulates the distribution and sales of motor  
8 vehicles, including any department staff to whom the director delegates any duty assigned under this  
9 chapter; and "General Distinguishing Number (GDN)" in §221.2(7) to match the definition of the same  
10 term in Occupations Code, §2301.002(17). A proposed amendment to §221.2(8) would also conform the  
11 definition of "license holder" to include an independent motor vehicle dealer GDN authorized to operate  
12 as a salvage vehicle dealer consistent with Occupations Code, §2302.009 and §2302.102. A proposed  
13 amendment to renumbered §221.2(15) would also substitute the current definition of "person" for the  
14 definition in Occupations Code, §2301.002 for consistency. The proposed amendments to §221.2 would  
15 also remove the definition of "corporation" in §221.2(4) because a special definition for corporation is  
16 unnecessary. The proposed amendments to §221.2 would remove the definition of "final order authority"  
17 in §221.2(6) because the sections of Chapter 221 that use the term "final order authority", §221.93 and  
18 §221.95, are proposed for repeal and will be incorporated into new proposed Chapter 224 of this title  
19 (relating to Adjudicative Practice and Procedure). The proposed amendments to §221.2 would also  
20 remove the definitions of "major component part," in §221.2(8) and "minor component part" in §221.2  
21 (10) because these two terms are not referenced in Chapter 221. Proposed amendments would also  
22 renumber the definitions to correspond with the proposed revisions.

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## Chapter 221 Salvage Vehicle Dealers

## 1 Subchapter B. Licensing

2 The proposed amendment to § 221.11(b) would make a minor change to reflect that a motor  
3 vehicle may be either registered or titled to operate on public highways. Proposed amendments to  
4 §221.11(c) would substitute a statutory reference to a person exempt from licensure and would delete  
5 rule language that duplicates the statute to ensure consistency with any future statutory changes.

6 A proposed amendment to § 221.13(c) would set a fee for a salvage vehicle dealer license  
7 amendment at \$25. Occupations Code, §2302.052 assigns the board the duty of setting reasonable and  
8 necessary fees. Occupations Code, §2301.264(e) prescribes a \$25 license amendment fee for licenses  
9 issued under Occupations Code, Chapter 2301 and Transportation Code, Chapter 503. The department  
10 construes the fee amount prescribed in statute to be reasonable and necessary and proposes adopting  
11 the same fee because department resources required to process a license amendment are similar across  
12 all license types.

13 A proposed amendment to §221.14(a) would make a minor edit to remove redundant language.  
14 Occupations Code, §2302.103 requires an applicant to submit an application on a form prescribed by the  
15 department. Proposed amendments to §221.14(b) would update application requirements for a new  
16 salvage vehicle dealer license, license amendment, or license renewal. These proposed amendments  
17 include language consistent with current practices and new requirements to deter and prevent fraud in  
18 the application process, such as fingerprinting and site visits, that have proven to be successful in reducing  
19 fraud in the issuance of dealer GDNs, a related license type. Proposed amendments §221.14(b) would  
20 specify that the application must be on a department-approved form; completed by the applicant, license  
21 holder, or authorized representative who is an employee, a licensed attorney, or a certified public  
22 accountant; and accompanied by the required fee from an account held by the applicant or license holder,  
23 or from a trust account of the applicant or license holder, or from a trust account of the applicant's or

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1 license holder's attorney or certified public accountant. Proposed amendments would create new  
2 §221.14(c) to modernize the application process by requiring license applications and fees to be submitted  
3 to the department electronically and paid for by credit card or electronic funds transfer. Proposed  
4 amendments would create new §221.14(d), intended to reduce application fraud by giving the  
5 department the option to require a site visit to determine whether a business location meets the  
6 requirements of Chapter 221. Proposed amendments would add new §221.14(e) to reduce application  
7 fraud by requiring salvage vehicle dealers applying for or renewing a license to comply with fingerprint  
8 requirements in §211.6 of Title 43. The proposed fingerprinting requirement would be a one-time  
9 requirement if a person maintains an active license. Proposed amendments would create new §221.14(f)  
10 to clarify that the department will not provide information regarding the status of an application,  
11 application deficiencies, or pending new license numbers to a person other than to the applicant, license  
12 holder, or authorized representative, unless the person files a written request under the Texas Public  
13 Information Act. These proposed revisions to §221.14 would provide more clarity and certainty regarding  
14 the salvage vehicle dealer license application process.

15 Proposed amendments to §221.15 update the information required on a salvage vehicle dealer  
16 application. Proposed new §221.15(a) would modernize the application process by requiring an applicant  
17 for a new salvage dealer license to register for an account in the online licensing system, to designate an  
18 account administrator, to provide the name and email address for that person, and to provide the  
19 business telephone number, name, business type, and social security number or employer identification  
20 number, as applicable. Proposed new §221.15(a) would specify that the applicant's license account  
21 administrator must be an owner, officer, manager, or bona fide employee to reduce fraud and increase  
22 responsiveness and accountability by the applicant.

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## Chapter 221 Salvage Vehicle Dealers

1 Proposed amendments would create a new subsection §221.15(b) that would include language  
2 currently in §221.15. Proposed new §221.15(b) would require the applicant to provide the reason for the  
3 application and certain other business information. Proposed amendments to the existing language  
4 incorporated into proposed new §221.15(b) would remove surplus language and provide additional detail  
5 regarding required business information to improve the department's ability to identify fraud and  
6 investigate applicants, including clarifying that the business address is the physical address of the  
7 business, and that the following information is required: business email address; telephone number; Texas  
8 Sales Tax Identification Number; National Motor Vehicle Title Information System Identification Number  
9 (NMVTIS); and Secretary of State filing number, if applicable. Proposed amendments to the text in  
10 proposed new §221.15(b) would prohibit the business name or assumed name from being misleading to  
11 the public so that accurate information about the nature of the salvage business is disclosed to the public.  
12 Proposed amendments to the text incorporated into proposed new §221.15(b) would also require the  
13 applicant to provide an application contact name, email address, and telephone number to allow the  
14 division to contact the applicant easily and would delete the prior requirement that the department  
15 consider the applicant's last known address as the applicant's designated mailing address to decrease  
16 misdirected mail. Additionally, proposed new §221.15(b) would consolidate previous subsections that set  
17 out separate requirements for the applicant to apply as a sole proprietor, a general partnership, or a  
18 limited partnership, limited liability company, or corporation. To allow the department to identify and  
19 investigate applicants, the proposed amendments to §221.15(b) would require the applicant to provide:  
20 the name, social security number, date of birth, identity document information, and ownership  
21 percentage for each owner, partner, member, beneficiary, or principal if the applicant is not a publicly  
22 traded company; the name, social security number, date of birth, and identity document information for  
23 each officer, director, manager, trustee, or other representative authorized to act on behalf of the

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1 applicant if the applicant is owned in full or in part by a legal entity; the name, employer identification  
2 number, ownership percentage, and non-profit or publicly-traded status for each legal entity that owns  
3 the applicant in full or in part; the name, social security number, date of birth, and identity document  
4 information of at least one manager or other bona fide employee who will be present at the business  
5 location if the license holder is out of state or will not be present during business hours at the business  
6 location in Texas. To facilitate the department's evaluation of applicants and its efforts to protect the  
7 public from crime, proposed amendments to the text incorporated into new §221.15(b) would clarify that  
8 criminal history record information required for an application is criminal history record information  
9 under the laws of Texas, another state in the United States, the United States, and any foreign jurisdiction  
10 for each person listed in the application, including the offense description, date, and location. Other  
11 proposed amendments to the text incorporated into new §221.15(b) would clarify that applicants are  
12 required to provide their military service status to enable the department to determine eligibility for  
13 special licensing considerations provided under law to veterans. Proposed amendments to the text  
14 incorporated into new §221.15(b) would facilitate department investigations of applicants by clarifying  
15 the requirement for an applicant to provide information regarding previously submitted license  
16 applications, whether under this chapter or the laws of another jurisdiction, the result of previous  
17 applications, and whether the applicant has ever been the holder of a license issued by the department  
18 or another jurisdiction that was revoked, suspended, or subject of an order issued by the board or by  
19 another jurisdiction, or has an unpaid administrative penalty. These proposed requirements in proposed  
20 new §221.15(b) are consistent with Occupations Code, §2302.104, which prescribes information that  
21 must be obtained from an applicant, and that is necessary for the department to investigate an applicant's  
22 qualifications as required under Occupations Code, §2302.105. Proposed amendments in proposed new  
23 §221.15(b) would require an applicant to provide information about each business location and business



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1 premises sufficient to demonstrate compliance with related premises rules in Chapter 221, Subchapter C.  
2 Proposed amendments in proposed new §221.15(b) would also clarify that a salvage vehicle dealer  
3 renewing or amending its license must verify its current license information and provide information for  
4 any new requirements or changes to the license.

5 Proposed amendments to §221.16 would require an applicant to attach a legible and accurate  
6 image of each required document to allow the department to investigate and process the application as  
7 required under Occupations Code, Chapter 2302. Proposed amendments to §221.16 would specify that  
8 required attachments include the certificate of filing, certificate of incorporation, or certificate of  
9 registration on file with the Secretary of State, if applicable; each assumed name certificate on file with  
10 the Secretary of State or county clerk; at least one identity document for each natural person listed in the  
11 application; documents proving premises ownership or a valid lease; business premises photos with a  
12 notarized affidavit; a Texas Use and Sales Tax Permit; a Franchise Tax Account Status issued by the  
13 Comptroller's Office, and any other documents required by the department to evaluate the application  
14 under current law and board rules. These proposed amendments would consolidate previous separate  
15 requirements for sole proprietors, general partnerships, limited partnerships, limited liability companies,  
16 and corporations. The proposed amendments to §221.16(c) would also update references to types of  
17 identification consistent with current usage and changes in statute. The proposed amendments to  
18 §§221.16(d) and (e) would clarify and add requirements that the license application includes documents  
19 proving business premises ownership or a fully executed lease or sublease agreement for the license  
20 period, and business premises photos with a notarized affidavit certifying that all premises requirements  
21 in Subchapter C are met and will be maintained during the license period. These changes are necessary to  
22 prevent and deter fraud in the application process and to improve compliance with premises  
23 requirements in Chapter 221, Subchapter C. These requirements are consistent with GDN dealer

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1 requirements, which have proven successful in preventing and deterring fraud and improving compliance  
2 with premises requirements. A proposed amendment to §221.16(h) would further authorize the  
3 department to require any other documents necessary to evaluate the application to ensure that the  
4 department can comply with its statutory duty to investigate each license application as required under  
5 Occupations Code, §2302.105.

6 A proposed amendment to §221.17(a) would exempt a license holder from any increased fee or  
7 penalty for failing to timely renew a license because the license holder was on active military duty. This  
8 amendment is necessary to conform to Occupations Code, §55.002.

9 Proposed amendments to §221.17(b) would add the phrase “military service members or” in  
10 multiple places in subparagraphs (1), (2), and (3). These proposed amendments are necessary to  
11 implement SB 422, which entitled military service members with out-of-state licenses to be eligible for  
12 special business or occupational authorization or licensing consideration that is already afforded for  
13 military spouses.

14 Proposed amendments in §221.17(b)(1) would delete duplicate references to Occupations Code,  
15 §55.0041 and would substitute the phrase “being stationed” for “residency” to clarify that eligibility for  
16 special licensing consideration for both the military service member and military spouse is based on the  
17 military service member being stationed in Texas rather than residing in Texas.

18 Three other amendments to §221.17(b)(3) are proposed to implement SB 422. Proposed  
19 amendments would change the word “may” to “shall” and add the phrase “within 30 days” to set a  
20 deadline by which the department must issue a license to a military service member or spouse. This  
21 change is necessary to implement changes to Occupations Code, §55.005(a) from SB 422, which requires  
22 a state agency to issue a license no later than the 30th day after an application is filed. Issuing a license  
23 within 30 days would also fulfill the requirement of Occupations Code, §55.0041, as amended by SB 422,

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1 which requires that the department confirm within 30 days that the military service member or military  
2 spouse is authorized to engage in the licensed business or occupation. Another amendment to  
3 §221.17(b)(3) would add the phrase “or modified” to recognize that provisions of Occupations Code,  
4 Chapter 55 may require the department to modify standard licensing processes when processing an  
5 application for a military service member or military spouse and to clarify that the department’s licensing  
6 process for military service members and military spouses will be in accordance with all Occupations Code,  
7 Chapter 55 requirements. A proposed amendment would add new §221.17(c) to clarify that the  
8 requirements and procedures authorized under Texas law do not modify or alter rights under federal law.

9 Proposed amendments to §§221.18(a-c) would modernize the notification requirements by  
10 specifying that a license holder notify the department if the license holder opens or closes an additional  
11 location by electronically submitting a license amendment in the department’s designated licensing  
12 system. Proposed amendments to §221.18(a)(2) and §221.18(b)(2) would remove surplus language. A  
13 proposed amendment to §221.18(c) would clarify the appropriate action a license holder must take when  
14 closing a location depending on the number of locations listed in the license. A proposed amendment  
15 would add new §221.18(d) to clarify an existing requirement that a license holder must apply for a new  
16 license if the license holder is opening a new location not located in the same county.

17 Proposed amendments to §221.19 would update the title to reflect the scope of the section.  
18 Proposed amendments to §221.19(a) and (b) would modernize the process for requesting a license  
19 amendment by requiring the license holder to submit a license amendment application electronically in  
20 the department’s designated licensing system. A proposed amendment to §221.19(a) would clarify that a  
21 license holder is required to submit a change in assumed name to the department to enable the  
22 department to investigate whether the assumed name is misleading or deceptive or otherwise violates a  
23 law or rule. Proposed amendments would add new §221.19(b)(4) to clarify that a license holder must

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1 notify the department of a change in business email address, telephone number, mailing address, or  
2 license contact so that the department can communicate with a license holder. Another proposed  
3 amendment would add §221.19(c), which would require the license holder to provide the department  
4 with any information necessary for the department to fully evaluate a license amendment to enable the  
5 department before approving to conduct a thorough and efficient investigation as required by  
6 Occupations Code, §2302.105.

7 Proposed amendments to §221.20(a), (d), (e), (h), and relettered (j) would simplify the language  
8 and improve readability without changing meaning. Proposed amendments to §221.20(c) would change  
9 “salvage vehicle dealer’s” to “license holder’s” for clarity and consistency, correct the time frame in which  
10 the department will provide notice of license expiration from 30 to 31 days consistent with Occupations  
11 Code, §2302.152, add “of expiration” to clarify a reference to a written notice, and add “license” to clarify  
12 the description of a renewal fee. A proposed amendment to §220.20(i) would add new language to clarify  
13 that a license holder who timely submits a renewal application may continue to operate under the expired  
14 license until the status of the renewal application is determined by the department in accordance with  
15 Government Code, §2001.054. The current language in §220.20(i) is relettered to §220.20(j).

16  
17 Subchapter C. Licensed Operations

18 Proposed amendments to §221.41 would make minor changes to simplify and modernize the  
19 language to add clarity without changing meaning. Proposed amendments to §221.41(1) would add new  
20 requirements that apply if a salvage dealer leases or subleases property for a business location. Proposed  
21 amendments to create new §§221.41(1)(D) and (E) would require a property owner signature or a signed  
22 and notarized statement from the property owner if the location is subleased and the property owner is  
23 not the lessor. The property owner statement must include the property owner’s full name, email address,

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1 mailing address, and phone number and confirm that the dealer is authorized to sublease the location  
2 and to operate a salvage vehicle dealer business. These proposed changes are necessary to prevent fraud  
3 in the application process, to prevent consumer abuse, and to protect public health and safety. This  
4 provision also protects salvage vehicle dealer applicants: the department has received applications from  
5 dealers with a signed sublease who are unable to operate a business because the property owner has not  
6 authorized a dealer to operate such a business on the property.

7 Proposed amendments to the title and language of §221.42 would make minor wording changes  
8 to clarify and remove surplus wording.

9 Proposed amendments to §221.43(a) would require a salvage vehicle dealer who sells to a retail  
10 customer to be open at least four days per week for at least four consecutive hours per day and prohibit  
11 the office to be open solely by appointment. These proposed amendments would create standard  
12 minimum business hours across the industry by requiring the office of a salvage pool operator selling only  
13 to a wholesale dealer to be open at least two weekdays per week for at least two consecutive hours per  
14 day and prohibit the office to be open solely by appointment. Occupations Code, §2302.0015 requires a  
15 person to allow the department, law enforcement officers, and others to enter and inspect a business  
16 during normal business hours. Minimum normal business hours are not defined in statute or rule;  
17 therefore, these proposed amendments are necessary to establish these standards, and the board is  
18 authorized to do so under the rulemaking authority in Occupations Code, §2302.051. Proposed minimum  
19 standards for salvage vehicle dealers are consistent with current minimum requirements for GDN dealers  
20 in §215.140(1)(A) of this title and proposed minimum standards for salvage pool operators that only sell  
21 to wholesale dealers are consistent with current requirements for wholesale GDN dealers in §215.140(2)  
22 of this title. These proposed minimum hours are necessary to deter and prevent fraud in the application  
23 process, prevent consumer harm, and ensure the department and others authorized by law have access

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1 to a salvage vehicle dealer's location for inspection purposes. Proposed amendments to §221.43(c) and  
2 (d) would make minor word changes for clarity. An additional proposed amendment to §221.43(d) would  
3 give license holders more flexibility by adding options for the office telephone to be answered by the  
4 owner or a voicemail service in addition to a bona fide employee, answering service, or answering  
5 machine.

6 Proposed amendments to §221.44(a) would clarify that a permanent business sign must be made  
7 of durable, weather resistant material. Proposed amendments to §221.44(b) would clarify that a sign will  
8 be considered permanently mounted if it is bolted to an exterior building wall or bolted or welded to a  
9 dedicated sign pole or a sign support permanently installed in the ground. Proposed new §221.44(c) would  
10 authorize a license holder to use a temporary sign or banner if that license holder can show proof that a  
11 business sign that meets the above requirements has been ordered and provides a written statement that  
12 the business sign will be promptly and permanently mounted upon delivery. This proposed amendment  
13 would allow a license holder to open their business without delay if all other department requirements  
14 are met. Proposed new §221.44(d) would clarify that a license holder is still responsible for ensuring that  
15 the business sign complies with applicable municipal ordinances and that any signage requirements in a  
16 lease comport with the requirements of this section.

17 A proposed amendment to §221.45(a) would clarify that a business must be located in a building  
18 that has a permanent roof. A proposed amendment to §221.45(c) would clarify that a business may not  
19 conduct operations in a room or building not open to the public. A proposed amendment would create  
20 new §221.45(e) to clarify that a business may not be virtual or provided by a subscription for office space  
21 or office services. A proposed amendment would create new §221.45(f) to require the physical address  
22 of a business be in Texas, recognized by the U.S. Postal Service, and have an assigned emergency services  
23 property address, to ensure that both the public and department personnel can readily locate the place

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1 of business, and confirm the municipality in which the property is located. A proposed amendment to  
2 §221.45(g) would modernize the business access requirements by requiring the business to be equipped  
3 with internet access. These amendments are consistent with minimum standards for public health and  
4 safety and business operation and are necessary to deter and prevent fraud in the licensing process.

5 Proposed amendments to §221.46 regarding the requirements to display a license would make  
6 minor wording changes to simplify language for clarity without changing meaning.

7 A proposed amendment to §221.47 would clarify that a salvage vehicle dealer must properly  
8 process vehicle records in accordance with §217.86 of this title regarding the dismantling, scrapping, or  
9 destruction of motor vehicles. The following provision, §221.48, duplicates §217.86 and is therefore  
10 proposed for repeal because it is redundant and unnecessary with the proposed addition of a citation to  
11 §217.86 in §221.47.

12 A proposed amendment to §221.49 would add a phrase from the title of the section to the body  
13 of the section for clarification.

14 Proposed amendments to §221.50(a) would clarify that a sale or transfer of a flood-damaged  
15 vehicle must be in accordance with §217.88 of this title, regarding the sale, transfer, or release of  
16 ownership of a non-repairable or salvage motor vehicle. Proposed amendments to §221.50(b) would  
17 make wording and format changes to clarify the language without changing the meaning. Proposed  
18 amendments to §221.50(c) and (d) would delete duplicative language also found in §217.88.

19 Proposed amendments to §221.51 would make wording changes to clarify the language and  
20 comport with current practice. Proposed amendments to §221.51(c) and (d) would remove the phrase  
21 “or any other state” to reflect that the department does not have jurisdiction over out-of-state highways.  
22 Proposed amendments to §221.51(f) would allow flexibility for a salvage vehicle dealer who offers only  
23 salvage vehicles for sale to install a conspicuous permanent sign to provide the required notice to

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1 consumers under §221.51(a) and (c). A proposed amendment to §221.51(h) would rephrase the existing  
2 requirement to recognize that a separate salvage pool license endorsement no longer exists in statute as  
3 salvage vehicle dealer license endorsements were eliminated by SB 604, 86th Legislature, Regular Session  
4 (2019).

5 The proposed amendment to §221.52(a) would add a reference to §217.88 of this title. A  
6 proposed amendment to §221.52(b) would remove duplicate language found in §217.88 of this title, and  
7 the remaining subsections would be relettered. A proposed change to relettered §221.52(b) would change  
8 the retention period for a copy of a purchaser's photo identification from 48 to 36 months for consistency  
9 with §217.88.

10 Proposed amendments to §221.53 would reference §217.88 and delete redundant language  
11 found in §217.88.

12 Proposed amendments to §221.54 would add "vehicle" for consistency in terminology and would  
13 add two factors the department will consider in determining whether to conduct a site visit: whether a  
14 business location fails to meet premises or operating requirements and whether records require further  
15 investigation by the department. These criteria are proposed to be added because they are indicators of  
16 fraud and consumer harm that frequently arise in complaints investigated by the department.

17  
18 Subchapter D. Records

19 Proposed amendments to §221.71 would edit language to remove surplus language and improve  
20 grammar and clarity. A proposed amendment to §221.71(c) would modernize the rule by deleting a  
21 reference to a requestor being present at the business location and adding an option for records to be  
22 provided electronically upon request. A proposed amendment to §221.71(e) would increase the deadline



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1 from 10 days to 15 days for a salvage vehicle dealer to provide copies of requested records to the  
2 department.

3 Proposed amendments to §221.72 would clarify an existing requirement that a salvage vehicle  
4 dealer maintain a record of each vehicle that is dismantled, in addition to each vehicle scrapped or  
5 destroyed, and shortens the length of retention of these records from the fourth anniversary of the date  
6 the report was acknowledged as received by the department to the third anniversary for consistency with  
7 other sections. Lastly, proposed amendments to §221.72(c) would add a word and remove a comma for  
8 clarity without changing the meaning of the rule.

9 Proposed amendments to §221.73 would make wording changes to improve clarity and reflect  
10 current practice regarding both vehicle purchase and vehicle sales records. Proposed amendments would  
11 add references to §221.52 and §217.89 and would remove redundant language in this section, related to  
12 unnecessary descriptors including various types of photo identification. The proposed amendments to  
13 §221.73(a) would expand the list of records that may be applicable to a particular purchase or sale for  
14 clarification and consistency with other rules and because these records are necessary for the department  
15 to determine a dealer's compliance with existing laws and rules.

16  
17 Subchapter E. Administrative Procedures

18 All sections in Subchapter E are proposed for repeal because the substance of each rule and any  
19 proposed amendments are incorporated into proposed new Chapter 224, Adjudicative Practice and  
20 Procedure, which is published in this issue of the *Texas Register*. The proposed repeal includes §§221.91–  
21 221.96.

22  
23 Subchapter F. Administrative Sanctions

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1 Proposed amendments to §221.111 would delete unnecessary phrases without changing the  
2 meaning and would update a citation to improve clarity. Additionally, proposed amendments to  
3 §221.111(a)(5-6) would remove the phrase “is unfit to hold the licenses, is ineligible for licensure” from  
4 the factors the department considers to determine denial of licensure as that language is not found in  
5 Occupations Code, Chapter 2302.

6 Proposed amendments to §221.112 would delete unnecessary phrases without changing the  
7 meaning, add statutory and rule references and explanatory language for clarity, remove surplus language  
8 associated with those references, and renumber accordingly.

9 Proposed amendments to §221.115 would remove the language stating that the department will  
10 not refund license fees in the case of a licensure denial, suspension, or revocation and would substitute  
11 language that allows a refund with director approval unless a license application is withdrawn, denied,  
12 suspended, or revoked, or the license applicant or license holder is subject to an unpaid civil penalty  
13 imposed by a final order against the license applicant or license holder. This provision would ensure that  
14 the department receives as much of the civil penalties it assesses as possible but would also give the  
15 department flexibility to refund an application fee in other circumstances. These proposed amendments  
16 are consistent with the refund process for other license types.

17 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,  
18 has determined that for each year of the first five years the amendments will be in effect, there will be no  
19 significant fiscal impact to state or local governments as a result of the enforcement or administration of  
20 the proposal. Monique Johnston, Director of the Motor Vehicle Division (MVD), has determined that there  
21 will be no significant impact on local employment or the local economy as a result of the proposal.

22 **PUBLIC BENEFIT AND COST NOTE.** Ms. Johnston also determined that, for each year of the first five  
23 years the proposed amendments are in effect, several significant public benefits are anticipated, and

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1 certain applicants and license holders may incur costs to comply with the proposal. In proposing these  
2 amendments, the department prioritized the public benefits associated with reducing fraud and related  
3 crime and improving public health and safety, while carefully considering potential costs to salvage  
4 vehicle dealers consistent with board and department responsibilities.

5 A proposed amendment would charge a \$25 fee for a license amendment, the same amount  
6 paid by all other license holders for filing an amendment. Ms. Johnston has determined department  
7 resources to process a salvage vehicle dealer license amendment is approximately the same on average  
8 as for other dealer license types and a \$25 fee is reasonable and fair.

9 Proposed amendments to §§221.14, 221.15, and 221.16, may require applicants and license  
10 holders to provide more information in the application. While some applicants may be required to  
11 spend more time completing an application or providing additional information, Ms. Johnston has  
12 determined these costs will be offset by the reduced risk of license applicants and holders incurring  
13 financial penalties due to noncompliance with applicable federal, state, or local statutes or property  
14 owner requirements, which will benefit both license holders and the public. The department's civil  
15 penalty guidelines for license holders who violate statutory provisions range \$500 to \$10,000 per  
16 violation.

17 In proposed amendments to §221.15, an applicant or license holder may not use a name or  
18 assumed name that may be confused with or is similar to that of a governmental entity or that is  
19 otherwise deceptive or misleading to the public. Ms. Johnston estimates that a small number of current  
20 license holders may have to change a confusing, deceptive, or misleading business name or assumed  
21 name and may incur related secretary of state or county filing fees or signage cost. The Secretary of  
22 State filing fee to amend a business name is \$150. Department research suggests the cost for an exterior  
23 sign will vary between \$30 to \$167, with an average expected cost of about \$80. The department

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1 recognizes that these costs may vary widely based on business owner style and design preferences. The  
2 department's civil penalty guidelines for license holders who violate statutory provisions range \$500 to  
3 \$10,000 per violation. Ms. Johnston has determined that the signage cost will be offset by the reduced  
4 risk of these license holders incurring financial penalties due to noncompliance with laws and  
5 regulations and will benefit the public by informing the public and preventing consumer harm.

6 A proposed amendment to §221.14 would add fingerprint requirements for a salvage vehicle  
7 dealer license applicant and holder. Fingerprint requirements allow the department to verify the  
8 identity of license applicants, preventing fraudulent applications under false or stolen identities, while  
9 giving the department access to more accurate and comprehensive criminal history record information  
10 to use in evaluating fitness for licensure under its criminal offense guidelines in §211.3. These new  
11 fingerprint requirements benefit the public by preventing bad actors with a history of criminal offenses  
12 that directly relate to the duties and responsibilities of a license holder from obtaining licenses from the  
13 department and using those licenses to perpetrate fraudulent and criminal actions, or otherwise taking  
14 advantage of the position of trust created by the license. Ms. Johnston anticipates that there will be no  
15 additional costs on regulated persons to comply with the fingerprint requirements under this proposal  
16 as the new section does not establish fees for fingerprinting or processing criminal background checks.  
17 Fees for fingerprinting and access to criminal history reports are established by DPS under the authority  
18 of Texas Government Code Chapter 411.

19 Proposed amendments to §221.73 may require a salvage vehicle dealer to keep more document  
20 copies in a vehicle records file. Ms. Johnston anticipates that while most bona fide dealers already  
21 comply with these requirements, a few dealers may have to add up to four additional pages to the sales  
22 file. Department research suggests that the cost of a copy ranges from \$0.14 to \$0.22 per page. She has  
23 determined that these costs are necessary to prevent fraud and protect consumers.

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1 Proposed changes to §221.43 requires a salvage vehicle dealer to observe minimum  
2 requirements for weekly business hours which vary based on whether a dealer sells at retail to the  
3 public or to wholesale customers. Ms. Johnston anticipates that bona fide salvage vehicle dealers  
4 exceed these minimum requirements. However, a salvage vehicle dealer may be required to establish  
5 more regular hours to comply. Ms. Johnston has determined that the minimum 16 hours per week for  
6 retail dealers and four hours per week for wholesale dealers is set so that the hiring of additional staff  
7 should not be required and that establishing minimum requirements for regular business hours is  
8 necessary to prevent fraud and ensure the public and department has access to the licensed business.

9 A proposed amendment would require a salvage vehicle dealer to have internet access in the  
10 office. Ms. Johnston anticipates that most bona fide salvage vehicle dealers already have access either at  
11 their office or on a mobile device. If a salvage dealer does not have access a dealer could purchase a  
12 mobile phone with a data plan. Department research suggests that this cost ranges from \$15 to \$90 per  
13 month and that basic internet service costs \$65 per month. Ms. Johnston has determined that these  
14 requirements are reasonable minimum standards as the public and the department must be able to  
15 communicate with a license holder and these requirements are necessary to prevent fraud and  
16 consumer harm.

**17 ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.**

18 The cost analysis in the Public Benefit and Cost Note section of this proposal determined that  
19 proposed amendments may result in additional costs for a few license holders. Based on data from the  
20 Comptroller and the Texas Workforce Commission, the department estimates that most license holders  
21 are small or micro-businesses. The department has tried to minimize costs to license holders. The new  
22 proposed requirements are designed to be the minimum standards that will prevent fraud in the  
23 application process, prevent consumer abuse, and protect public health and safety. These requirements

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1 do not include requirements that will cause a license holder to incur unnecessary or burdensome costs,  
2 such as employing additional persons.

3 Under Government Code §2006.002, the department must perform a regulatory flexibility  
4 analysis. The department considered the alternatives of not adopting amendments, exempting small or  
5 micro-businesses, and rural community license holders from these amendments, and adopting a limited  
6 version of these amendments for these license holders. The department rejects all three options. The  
7 department reviewed licensing and enforcement records, including records for license holders whose  
8 license has been revoked and determined that small and micro-business license holders are largely the  
9 bad actors perpetrating fraud in the application process and causing consumer harm, and that rural  
10 communities are not currently affected because department records indicate that no rural community  
11 holds a salvage dealer license. The department, after considering the purpose of the authorizing statutes,  
12 does not believe it is feasible to waive or limit the requirements of the proposed amendments for small  
13 or micro-business salvage vehicle dealers. Also, Government Code §2006.002(c-1) does not require the  
14 department to consider alternatives that might minimize possible adverse impacts on small businesses,  
15 micro-businesses, or rural communities if the alternatives would not be protective of the health and safety  
16 of the state.

17 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests  
18 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property  
19 that would otherwise exist in the absence of government action and, therefore, does not constitute a  
20 taking or require a takings impact assessment under the Government Code, §2007.043.

21 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the  
22 first five years the proposed amendments and repeals are in effect, the amendments will not create or  
23 eliminate a government program; will not require the creation of new employee positions and will not

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1 require the elimination of existing employee positions; will not require an increase or decrease in future  
2 legislative appropriations to the department; will require an increase in fees paid to the department by  
3 certain license holders who are required to file a license amendment; will expand existing regulations,  
4 delete some existing regulations, and make other existing regulations more flexible as described in the  
5 explanation section of this proposal; will repeal existing regulations to improve overall organization of  
6 department rules in conjunction with other proposals published in this issue of the *Texas Register*; will  
7 not increase or decrease the number of individuals subject to the rule's applicability; and will positively  
8 affect the Texas economy by deterring fraud and preventing consumer harm.

9 **REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written  
10 comments by 5:00 p.m. Central Time on MM, DD, YYYY. A request for a public hearing must be sent  
11 separately from your written comments. Send written comments or hearing requests by email to  
12 *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000  
13 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments  
14 and public testimony presented at the hearing.

15 **STATUTORY AUTHORITY.** The department proposes amendments to Chapter 221 under Government  
16 Code, §411.122(d), which authorizes department access to criminal history record information  
17 maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal  
18 history record information from DPS and the FBI for license applicants, license holders, and  
19 representatives whose act or omission would be cause for denying, revoking, or suspending a license  
20 issued under Occupations Code, Chapter 2302; Occupations Code, §2302.051, which authorizes the board  
21 to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.052,  
22 which assigns the board a duty to set reasonable and necessary application fees, license fees, renewal  
23 fees, and other fees as required to implement the chapter; Occupations Code, §2302.103, which requires

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1 a salvage vehicle dealer to apply for a license on a form prescribed by the department and pay an  
2 application fee; Occupations Code, §2302.104, which prescribes content that must be included in an  
3 application; Occupations Code, §2302.105, which requires the department to complete an investigation  
4 of the applicant's qualifications before issuing a license; Occupations Code, §2302.108, which authorizes  
5 the department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent  
6 with the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which  
7 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the  
8 duties of the department.

9 **CROSS REFERENCE TO STATUTE.** These rule revisions would implement Government Code, Chapters 411  
10 and 2001; Occupations Code, Chapter 2302; and Transportation Code, Chapter 1002.



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1 TEXT.

2 SUBCHAPTER A. GENERAL PROVISIONS

3 221.1. Purpose and Scope.

4 Transportation Code, §1001.002, provides that the department shall administer and enforce  
5 Occupations Code, Chapter 2302. Chapter 2302 provides that a person may not act as a salvage vehicle  
6 dealer, unless the department issues that person a salvage vehicle dealer license, or an independent  
7 motor vehicle dealer's general distinguishing number issued under Chapter 503, Transportation Code, or  
8 a person is exempt from licensure under Occupations Code, Chapter 2302. This chapter describes the  
9 procedures by which a person obtains a salvage vehicle dealer license and the rules governing how a  
10 license holder or an independent motor vehicle dealer with authority to operate as a salvage vehicle  
11 dealer, must operate, and the procedures by which the department will administer and enforce  
12 Occupations Code, Chapter 2302, and this chapter.

13  
14 221.2. Definitions.

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

17 (1) Board--The Board of the Texas Department of Motor Vehicles.

18 (2) Casual sale--A sale as defined by Transportation Code, §501.091.

19 (3) Component part--As defined by Occupations Code, §2302.251.

20 (4) Day--Means a calendar day unless otherwise stated or context clearly indicates  
21 otherwise.~~[Corporation--A business entity, including a corporation, or limited liability company, but not a~~

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1 ~~sole proprietorship or general partnership, which has filed a certificate of formation or registration with~~  
2 ~~the Texas Secretary of State.]~~

3 (5) Department--The Texas Department of Motor Vehicles.

4 (6) Director--Means the division director that regulates the distribution and sales of  
5 motor vehicles, including any department staff to whom the director delegates any duty assigned under  
6 this chapter.~~[Final order authority--The person with authority under Occupations Code, Chapter 2302, or~~  
7 ~~board rules to issue a final order.]~~

8 (7) General Distinguishing Number (GDN)--As defined by Occupations Code,  
9 §2301.002(17).

10 (8) ~~[(7)]~~ License holder--A person that holds a salvage vehicle dealer license or an  
11 independent motor vehicle dealer GDN that authorizes the dealer to operate as a salvage vehicle  
12 dealer~~[issued by the department].~~

13 ~~[(8) Major component part--As defined by Transportation Code, §501.091.]~~

14 (9) Metal recycler--As defined by Transportation Code, §501.091.

15 (10) ~~[Minor component part--As defined by Occupations Code, §2302.251.]~~

16 ~~[(11)]~~ Nonrepairable motor vehicle--As defined by Transportation Code, §501.091.

17 ~~[(11)]~~~~[(12)]~~ Nonrepairable record of title--As defined by Transportation Code, §501.091.

18 ~~[(12)]~~~~[(13)]~~ Nonrepairable vehicle title--As defined by Transportation Code, §501.091.

19 ~~[(13)]~~~~[(14)]~~ Out-of-state buyer--As defined by Transportation Code, §501.091.

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(14)[(15)] Out-of-state ownership document--As defined by Transportation Code, §501.091.

(15)[(16)] Person--Has the meaning assigned by Occupations Code, §2301.002.~~[A natural person, partnership, corporation, trust, association, estate, or any other legal entity.]~~

(16)[(17)] Public highway--As defined by Transportation Code, §502.001.

(17)[(18)] Retail sale--As defined by Occupations Code, §2301.002.

(18)[(19)] Salvage motor vehicle--As defined by Transportation Code, §501.091.

(19)[(20)] Salvage record of title--As defined by Transportation Code, §501.091.

(20)[(21)] Salvage vehicle dealer--As defined by Transportation Code, §501.091.

(21)[(22)] Salvage vehicle title--As defined by Transportation Code, §501.091.

(22)[(23)] Used part--As defined by Transportation Code, §501.091.

**SUBCHAPTER B. LICENSING**

221.11. License Required.

(a) A person must hold a salvage vehicle dealer license, or an independent motor vehicle dealer's general distinguishing number issued under Chapter 503; Transportation Code 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.

(b) A person may not engage in the business of buying, selling or exchanging motor vehicles that can be titled or registered to operate on public highways, including selling a salvage motor

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1 vehicle that has been rebuilt, repaired or reconstructed, unless the person holds a general  
2 distinguishing number issued by the department under Transportation Code, Chapter 503.

3 (c) The provisions of this subchapter do not apply to a person exempt from licensure under  
4 Occupations Code, Chapter 2302.[:

5 ~~(1) a person who purchases no more than five (5) nonrepairable or salvage motor~~  
6 ~~vehicles at casual sale in a calendar year from:~~

7 ~~(A) a salvage vehicle dealer; or~~

8 ~~(B) an insurance company;~~

9 ~~(2) a metal recycler, unless a motor vehicle is sold, transferred, released, or~~  
10 ~~delivered to the metal recycler for the purpose of reuse or resale as a motor vehicle, or as a source~~  
11 ~~of used parts, and is used for that purpose;~~

12 ~~(3) a person who casually repairs, rebuilds, or reconstructs no more than five (5)~~  
13 ~~salvage motor vehicles in the same calendar year;~~

14 ~~(4) a person who is a non-United States resident who purchases nonrepairable or~~  
15 ~~salvage motor vehicles for export only;~~

16 ~~(5) an agency of the United States, an agency of this state, or a local government;~~

17 ~~(6) a financial institution or other secured party that holds a security interest in a~~  
18 ~~motor vehicle and is selling that motor vehicle in the manner provided by law for the forced sale of~~  
19 ~~a motor vehicle;~~

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

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~~(8) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in Transportation Code, §683.077, if the special interest vehicle is at least 12 years old; and~~

~~(9) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction under the following conditions:~~

~~(A) neither legal nor equitable title passes to the auctioneer;~~

~~(B) the auction is not held for the purpose of avoiding a provision of Occupations Code, Chapter 2302, or this subchapter; and~~

~~(C) the auction is conducted of motor vehicles owned, legally or equitably, by a person who holds a salvage vehicle dealer's license and the auction is conducted at their licensed location or at a location approved by the department.]~~

## 221.13. License Terms and Fees.

(a) The term of a salvage vehicle dealer license issued by the department under Occupations Code, Chapter 2302, and this chapter, is two years. The fee for a salvage vehicle dealer license is \$190. The entire amount of the fee is due at the time of application for the license.

(b) The department may prorate the fee for a salvage vehicle dealer license to allow the salvage vehicle dealer license to expire on the same day as another license issued by the department under Occupations Code, Chapter 2301; Chapter 2302; or Transportation Code, Chapter 503.

(c) The fee for a license amendment is \$25.

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## 221.14. License Applications Generally.

(a) A salvage vehicle dealer license may be issued for multiple locations within a single county. A separate license and fee is required for a business location ~~[or locations located]~~ in another county.

(b) An application for a new license, license amendment, or license renewal filed with the department must be:

(1) on a form approved by the department;

(2) completed by the applicant, license holder, or authorized representative who is an employee, a licensed attorney, or a certified public accountant; and

(3) accompanied by the required fee from an account held by the applicant or license holder, or from a trust account of the applicant's or license holder's attorney or certified public accountant. ~~[A license applicant must submit a signed application on a form prescribed by the department, provide any required attachments, and remit the required fees at the time of submission of the application.]~~

(c) License applications and fees must be submitted to the department electronically in a system designated by the department for licensing. Fees may be paid by credit card or electronic funds transfer.

(d) In evaluating a new or renewal salvage vehicle dealer license application or an application for a new location, the department may require a site visit to determine if the business location meets the requirements in this chapter.

(e) An applicant for a salvage vehicle dealer license must also comply with fingerprint requirements in §211.6 of this title (relating to Fingerprint Requirements for Designated License Applicants and License Holders).

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1        (f) The department will not provide information regarding the status of an application,  
2        application deficiencies, or pending new license numbers to a person other than a person listed in  
3        subsection (b)(2) of this section unless the person files a written request under Government Code,  
4        Chapter 552.

5  
6        221.15. Required License Application Information.

7        (a) An applicant for a new salvage dealer license must register for an account in the department-  
8        designated licensing system by selecting the licensing system icon on the dealer page of the department  
9        website. An applicant must designate the account administrator and provide the name and email  
10       address for that person, and provide the business telephone number, name, business type, and social  
11       security number or employer identification number, as applicable. The applicant's licensing account  
12       administrator must be an owner, officer, manager, or bona fide employee.

13       (b) Once registered, an applicant for a new salvage dealer license may apply for a license and  
14       must provide the following~~[The following information must be provided on each salvage vehicle dealer~~  
15       ~~application]:~~

16                (1) the application reason~~[full legal name of the applicant];~~

17                (2) business information including:

18                        (i) the name, provided that the applicant may not use a name or assumed name  
19                        under which the applicant is authorized to do business that may be confused with or is  
20                        similar to that of a governmental entity or that is otherwise deceptive or misleading to  
21                        the public;

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1                   (ii) mailing address;

2                   (iii) the full business physical address, including number, street, municipality,  
3                   county, and zip code for each location where the applicant will conduct business ~~[under~~  
4                   the license if each location is] in the same county;

5                   (iv) business email;

6                   (v) telephone number;

7                   (vi) Texas Sales Tax Identification Number;

8                   (vii) National Motor Vehicle Title Information System (NMVTIS) Identification  
9                   Number;

10                  (viii) Secretary of State file number, if applicable; and

11                  (ix) website address, if applicable.

12                  (3) application contact name, email address, and telephone number~~[the business~~  
13                  telephone number and email address];

14                  (4) the name, social security number, date of birth, identity document information, and  
15                  ownership percentage for each owner, partner, member, beneficiary, or principal if the applicant is not a  
16                  publicly traded company~~[the mailing address];~~

17                  (5) the name, social security number, date of birth, and identity document information  
18                  for each officer, director, manager, trustee, or other representative authorized to act on behalf of the  
19                  applicant if the applicant is owned in full or in part by a legal entity~~[a statement acknowledging that the~~  
20                  department will consider the applicant's designated mailing address the applicant's last known address



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1 ~~for department communication, including service of process under Subchapter E of this chapter (relating~~  
2 ~~to Administrative Procedures). The designated mailing address will be considered applicant's last known~~  
3 ~~address until such time that the mailing address is changed in the licensing records of the department~~  
4 ~~after the license holder submits an amendment to change the license holder's mailing address];~~

5 (6) the name, employer identification number, ownership percentage, and non-profit or  
6 publicly-traded status for each legal entity that owns the applicant in full or in part~~[all assumed names as~~  
7 ~~registered with the secretary of state or county clerk, as applicable];~~

8 (7) the name, social security number, date of birth, and identity document information  
9 of at least one manager or other bona fide employee who will be present at the business location if the  
10 license holder is out of state or will not be present during business hours at the business location in  
11 Texas~~[if applying as a sole proprietor, the social security number, address and telephone number for the~~  
12 ~~sole proprietor];~~

13 (8) criminal history record information under the laws of Texas, another state in the  
14 United States, the United States, and any foreign jurisdiction for each person listed in the application,  
15 including offense description, date, and location~~[if applying as a general partnership, the social security~~  
16 ~~number, address and telephone number for each of the general partners];~~

17 (9) military service status~~[if applying as a limited partnership, limited liability company,~~  
18 ~~or corporation, the full name, social security number, address and telephone number for each officer or~~  
19 ~~director of the corporation, each member, officer, or manager of the limited liability company, each~~  
20 ~~partner, and each officer of the limited partnership, including the information for the general partner~~  
21 ~~based on the type of entity];~~

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(10) licensing history required to evaluate business reputation, character, and fitness for licensure including a statement indicating whether the applicant or any person described in §211.2 of this title (relating to Application of Subchapter) has previously applied for a license under this chapter or the salvage vehicle dealer licensing laws of another jurisdiction, the result of the previous application, and whether the applicant, including a person described in §211.2 of this title, has ever been the holder of a license issued by the department or another jurisdiction that was revoked, suspended, or subject of an order issued by the board or by another jurisdiction to pay an administrative penalty that remains unpaid[the state sales tax number];

(11) information about each business location and business premises to demonstrate compliance with related rules in this chapter[the National Motor Vehicle Title Information System (NMVTIS) number evidencing that the applicant is registered with NMVTIS];

(12) signed Certification of Responsibility, which is a form provided by the department[a statement indicating whether the applicant or any person described in §211.2 of this title (relating to Application of Subchapter) has previously applied for a license under this chapter or the salvage vehicle dealer licensing laws of another jurisdiction, the result of the previous application, and whether the applicant, including a person described in §211.2 of this title, has ever been the holder of a license issued by the department or another jurisdiction that was revoked, suspended, or subject of an order issued by the board or by another jurisdiction to pay an administrative penalty that remains unpaid]; and

(13) any other information required by the department to evaluate the application under current law and board rules.[a statement indicating whether the applicant has an ownership, organizational, affiliation, or other business arrangement that would allow a person to direct the management, policies, or activities of an applicant or license holder, whether directly or indirectly, who

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1 ~~was the holder of a license issued by the department or by another jurisdiction that was revoked,~~  
2 ~~suspended, or subject of an order issued by the board or by another jurisdiction to pay an administrative~~  
3 ~~penalty that remains unpaid;~~

4 ~~(14) details of the criminal history of the applicant and any person described in §211.2 of~~  
5 ~~this title;~~

6 ~~(15) details of the professional information of the applicant and any person described in~~  
7 ~~§211.2 of this title;~~

8 ~~(16) a statement that the applicant at the time of submitting the application is in~~  
9 ~~compliance, and, after issuance of a license, will remain in compliance, with all ordinances and rules of~~  
10 ~~the municipality or county of each location where the applicant will conduct business; and~~

11 ~~(17) an acknowledgement that the applicant understands, is, and will remain in~~  
12 ~~compliance with all state and federal laws relating to the licensed activity.]~~

13 (c) A salvage vehicle dealer renewing or amending its license must verify current license  
14 information and provide related information for any new requirements or changes to the license.

15  
16 221.16. Required Attachments to the License Application.

17 A legible and accurate electronic image of each applicable required document must be attached to the  
18 license application:

19 (1) the certificate of filing, certificate of incorporation, or certificate of registration on file with  
20 the Secretary of State, if applicable;[(a) If the applicant is a sole proprietor or general partnership, in  
21 addition to the information required by §221.15 of this title (relating to Required License Application

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Information), the applicant must submit a legible copy of one of the following types of identification that is valid and active at the time of application for the sole proprietor and each of the general partners:

(1) driver's license, Department of Public Safety identification, or state identification certificate issued by a state or territory of the United States;

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

(3) United States or foreign passport;

(4) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State Identification document;

(5) United States military identification card; or

(6) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement.]

(2) each assumed name certificate on file with the Secretary of State or county clerk; ~~[(b) If the applicant is a limited partnership, limited liability company, or a corporation, the applicant must submit a legible copy of one of the following current types of identification that is valid and active at the time of application for each partner of the limited partnership, each member of the limited liability company, and for each officer of the corporation:~~

~~(1) driver's license, Department of Public Safety identification, or state identification certificate issued by a state or territory of the United States;~~

~~(2) concealed handgun license or license to carry a handgun issued by the Department of Public Safety under Government Code, Chapter 411, Subchapter H;~~

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~~(3) United States or foreign passport;~~

~~(4) United States Department of Homeland Security, United States Citizenship and~~

~~Immigration Services, or United States Department of State Identification document;~~

~~(5) United States military identification card; or~~

~~(6) North Atlantic Treaty Organization identification or identification issued under a~~

~~Status of Forces Agreement.]~~

(3) at least one of the following valid and current identity documents for each natural person listed in the application:

(A) driver's license;

(B) Texas Identification Card issued by the Texas Department of Public Safety under Transportation Code, Chapter 521, Subchapter E;

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

(D) United States or foreign passport; or

(E) United States military identification card;

~~[(c) If the applicant is a corporation, the applicant must submit a copy of the certificate of incorporation issued by the secretary of state or a certificate issued by the jurisdiction where the applicant is incorporated, and a verification that, at the time the application is submitted, all business franchise taxes of the corporation have been paid.]~~

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1           (4) documents proving business premises ownership, or a fully executed lease or sublease  
2 agreement for the license period; ~~[(d) If the applicant is a limited partnership, the applicant must submit~~  
3 ~~a copy of the certificate of partnership issued by the secretary of state or a certificate issued by the~~  
4 ~~jurisdiction where the applicant is formed, and verification that, at the time the application is submitted,~~  
5 ~~all business franchise taxes of the limited partnership have been paid.]~~

6           (5) business premises photos and a notarized affidavit certifying that all premises requirements  
7 in Subchapter C of the chapter are met and will be maintained during the license period; ~~[(e) Upon~~  
8 ~~request by the department, the applicant shall submit documents demonstrating that the applicant~~  
9 ~~owns the real property on which the business is situated or has a written lease for the property that has~~  
10 ~~a term of not less than the term of the license.]~~

11           (6) Texas Use and Sales Tax Permit; ~~[(f) If the applicant is a sole proprietor or general partnership,~~  
12 ~~in addition to the information required by §221.15, the applicant must submit a legible copy of the~~  
13 ~~Assumed Name Certificate (DBA) issued by the county clerk in which the business is located.]~~

14           (7) Franchise Tax Account Status issued by the Comptroller's Office; and ~~[(g) If the applicant is a~~  
15 ~~limited partnership, limited liability company, or a corporation, the applicant must submit a legible copy~~  
16 ~~of the Assumed Name Certificate (DBA) as registered with the Texas Secretary of State's office.]~~

17           (8) any other documents required by the department to evaluate the application under current  
18 law and board rules. ~~[(h) If the applicant is a sole proprietor or general partnership, in addition to the~~  
19 ~~information required by §221.15, the applicant must submit a legible copy of the Texas Sales and Use Tax~~  
20 ~~Permit.]~~

21           ~~[(i) If the applicant is a limited partnership, limited liability company, or a corporation, the~~  
22 ~~applicant must submit a legible copy of the Texas Sales and Use Tax Permit.]~~

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## 221.17. License Processing for Military Service Members, Spouses, and Veterans.

(a) The department will process a license, amendment, or renewal application submitted for licensing of a military service member, military spouse, or military veteran in accordance with Occupations Code, Chapter 55. A license holder who fails to timely file a sufficient renewal application because the license holder was on active duty is exempt from any increased fee or penalty imposed by the department.

(b) A military service member or military spouse may engage in a business or occupation for which a department issued license is required if the military service member or military spouse meets the requirements of Occupations Code, §55.0041 and this section.

(1) ~~[To meet the requirements of Occupations Code, §55.0041, a]~~ A military service member or military spouse must submit to the department:

(A) notice of the military service member or military spouse's intent to engage in a business or occupation in Texas for which a department issued license is required;

(B) proof of the military service member~~[military spouse's]~~ being stationed ~~[residency]~~ in Texas and a copy of the military service member or military spouse's military identification card~~[, as required by Occupations Code, §55.0041(b)(2)]~~; and

(C) documentation demonstrating that the military service member or military spouse is licensed and in good standing in another jurisdiction for the relevant business or occupation.

(2) Upon receipt of the notice and documentation required by paragraphs (1)(B) and (1)(C) of this subsection the department shall:

(A) confirm with the other licensing jurisdiction that the military service member or military spouse is currently licensed and in good standing for the relevant business or occupation; and

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1 (B) conduct a comparison of the other jurisdiction's license requirements,  
2 statutes, and rules with the department's licensing requirements to determine if the requirements are  
3 substantially equivalent.

4 (3) If the department confirms that a military service member or military spouse is  
5 currently licensed in good standing in another jurisdiction with substantially equivalent licensing  
6 requirements, the department shall ~~may~~ issue a license to the military service member or military spouse  
7 for the relevant business or occupation within 30 days. The license is subject to the requirements of this  
8 chapter and Occupations Code, Chapter 2302 in the same manner as a license issued under the standard  
9 application process, unless exempted or modified under Occupations Code, Chapter 55.

10 (c) This section establishes requirements and procedures authorized or required by Occupations  
11 Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

12  
13 221.18. Additional, New, or Closed Location.

14 (a) If the license holder intends to conduct business at more than one location within the same  
15 county, the applicant must:

16 (1) notify the department no later than 10 days before opening the additional location  
17 by electronically submitting a license amendment application in the department-designated licensing  
18 system~~[to amend the license to add an additional location];~~

19 (2) acknowledge that the additional location~~[, at the time of submitting the~~  
20 ~~amendment,~~ is and will remain in compliance with all ordinances and rules of the municipality or county  
21 for the additional location and board rules; and



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(3) obtain approval from the department before conducting business at the additional location.

(b) If the license holder intends to relocate its business to a new location within the same county, the license holder must:

(1) notify the department no later than 10 days before opening the new location by electronically submitting a license amendment application in the department-designated licensing system~~[to amend the license]~~ to add a new location and remove the existing location from the department's records;

(2) acknowledge that the new location~~[, at the time of submitting the amendment,]~~ is and will remain in compliance with all ordinances and rules of the municipality or county for the new location and board rules; and

(3) obtain approval from the department before conducting business at the new location.

(c) A license holder must notify the department in writing within 10 days of ~~[the] closing [of]~~ a business location by electronically submitting a license amendment application in the department-designated licensing system to delete the location if more than one location is listed on the license, or closing the license if a single location is listed on the license.

(d) If a license holder is opening a new location not located in the same county, the license holder must apply for a new license.

221.19. Notice of Change in~~[of]~~ License Holder~~[s Name, Ownership, or Control]~~ Information.

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(a) A license holder shall notify the department by electronically submitting a license amendment application in the department-designated licensing system to amend its license within 30 days of a change in the license holder's business name or assumed name. Upon submission of an amendment to change the business name or assumed name, the department shall reflect the new business name in the department's records. The dealer shall retain the same salvage vehicle dealer license number except if the business name change is the result of a change in the type of entity being licensed, such as a sole proprietorship becoming a corporation, or if the ownership of the business changes as discussed in subsection (b) of this section.

(b) A salvage vehicle dealer shall notify the department by electronically submitting a license amendment application in the department-designated licensing system ~~[by submitting a request for license amendment]~~ within 30 days of a change to:

(1) the entity type of the applicant or license holder;

(2) the departure or addition of any person reported to the department in the original license application or most recent renewal application, including any person described in §211.2 of this title (relating to Application of Subchapter);

(3) an ownership, organizational, managerial, or other business arrangement that would allow the power to direct or cause the direction of the management and policies and activities of an applicant or license holder, whether directly or indirectly, to be established in or with a person not described in paragraph (1) or (2) of this subsection; or

(4) a business email address, telephone number, mailing address, or change in license contact.

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(c) The license holder must submit to the department~~[a notice of change and]~~ all information required by the department to evaluate the license amendment application under current law and rules~~[needed for that specific license modification]~~.

## 221.20. License Renewal.

(a) A salvage vehicle dealer license expires on the second anniversary of the date the license was issued~~[of issuance of the salvage vehicle dealer license]~~.

(b) The salvage vehicle dealer license may be renewed for an additional period of two years upon timely submission of a renewal application on a form approved by the department with all required information, attachments, and fees. A renewal application is considered "timely" submitted if the renewal application with all required information, attachments, and required fees are received by the department on or before the expiration date of the existing license.

(c) The department will send a written notice of expiration to a license holder's~~[salvage vehicle dealer's]~~ email address at least 31~~[30]~~ days before expiration of a license.

(d) Failure by the department to send written notice of expiration under this section does not relieve a license holder from timely renewing a license.

(e) The renewal fee for salvage vehicle dealer license is \$170.

(f) A license holder may renew an expired license by submitting a renewal application and paying a late renewal fee of \$85 in addition to the renewal fee, if 90 or fewer days have elapsed since the license expired.

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(g) A license holder may renew an expired license by submitting a renewal application and paying a late renewal fee of \$170 in addition to the renewal fee, if more than 90 days but less than one year has elapsed since the license expired.

(h) If a license has been expired for ~~[a period of]~~ one year or longer and the department has not received~~[is not in receipt of]~~ a renewal application~~[with all required information and attachments]~~, the department will close the license, and the license holder must apply for a new license~~[in the same manner as an applicant for an initial license]~~.

(i) In accordance with Government Code, §2001.054, a license holder that timely submits a renewal application under subsection (b) of this section may continue to operate under the expired license until the status of the renewal application is determined by the department.

(j) If the department does not receive a timely~~[is not in receipt of a]~~ renewal application with all required information and attachments and the applicable renewal fee on or before~~[prior to]~~ the license expiration date~~[cancellation date of the license]~~, a salvage vehicle dealer may not engage in the activities that require the license until the license has been renewed by the department.

## SUBCHAPTER C. LICENSED OPERATIONS

### 221.41. Location Requirements.

A salvage vehicle dealer must meet and maintain the following requirements at each licensed business location~~[and must maintain the following requirements]~~ during the ~~[entire]~~ term of the license.

(1) If the licensed business location is not owned by the license holder, the license holder must maintain a lease that is continuous during the period of time for which the license will

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1 be issued~~[that extends through the period for which the license will be issued]~~. The lease  
2 agreement must be on a properly executed form ~~[an executed lease contract]~~ containing at a  
3 minimum:

4 (A) the name of the property owner as the lessor of the premises and the  
5 name of the dealer as the tenant or lessee of the premises~~[the names of the lessor and lessee];~~

6 (B) the period of time for which the lease is valid;~~and~~

7 (C) the street address or legal description of the property, provided that if  
8 only a legal description of the property is provided, the license holder must attach a statement  
9 verifying that the property description in the lease agreement is the physical street address  
10 identified on the application;~~[-]~~

11 (D) the signature of the property owner as the lessor and the signature of  
12 the dealer as the tenant or lessee; and

13 (E) if the lease agreement is a sublease in which the property owner is not  
14 the lessor, the dealer must also obtain a signed and notarized statement from the property owner  
15 including the following information:

16 (i) property owner's full name, email address, mailing address, and  
17 phone number; and

18 (ii) property owner's statement confirming that the dealer is  
19 authorized to sublease the location and may operate a salvage vehicle dealer business from the  
20 location.

21 (2) Any business location requirement in this subchapter are in addition to any  
22 requirements by municipal~~[city]~~ ordinance, county rule, or state law.

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221.42. Operations Only at Licensed Business Location.

A salvage vehicle dealer may not sell or offer to sell a salvage motor vehicle[s] or non-repairable motor vehicle[s] from any location other than a[the] licensed business location ~~that has been approved by the department~~.

## 221.43. Business Hours.

(a) The office of a salvage vehicle dealer who sells to a retail customer shall be open at least four days per week for at least four consecutive hours per day and may not be open solely by appointment. The office of a salvage pool operator selling only to a wholesale dealer must be open at least two weekdays per week for at least two consecutive hours per day and may not be open solely by appointment. The business hours must be posted at the main entrance of the business's office that is accessible to the public.

(b) The license holder or a bona fide employee of the license holder shall be at the licensed business location during the posted business hours for the purpose of operating the salvage business and allowing the inspection of the business location and records.

(c) If the license holder or a bona fide employee of the license holder is not available to conduct business during the posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time the license holder or bona fide employee of the license holder will resume operations at the licensed business location.

(d) Regardless of the license holder's business hours, the license holder's ~~licensee's~~ telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine.

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## 221.44. Business Sign Requirements.

(a) The license holder must display a permanent business sign with letters at least six inches in height showing the license holder's business name or assumed name as reflected on the ~~[license holder's]~~ license issued by the department. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(b) A business~~[The]~~ sign must be permanently mounted at ~~[the]~~each physical business address listed on the license. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground.

(c) A license holder may use a temporary sign or banner if that license holder can show proof that a business sign that meets the requirements of this paragraph has been ordered and provides a written statement that the business sign will be promptly and permanently mounted upon delivery.

(d) A license holder is responsible for ensuring that the business sign complies with municipal ordinances, and that any lease signage requirements are consistent with the signage requirements in this paragraph.

## 221.45. Business Office.

(a) The license holder's office must be located at the licensed business location in a building with a permanent roof and connecting exterior walls on all sides.

(b) A license holder's office structure must comply with all applicable local zoning ordinances and deed restrictions.

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(c) A license holder's office may not be located within a residence, apartment house or building, hotel, motel, ~~or~~ rooming house, or any room or building not open to the public.

(d) A portable-type office structure may qualify as a business office only if the structure meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(e) A license holder's office may not be virtual or provided by a subscription for office space or office services.

(f) The physical address of the salvage vehicle dealer's office must be in Texas, recognized by the U.S. Postal Service, and have an assigned emergency services property address.

(g) A license holder's office must be equipped with internet access.

#### 221.46. Display of License.

At each licensed business location, a [A]license holder must continuously display [at its business location the original or copy of]the license issued by the department [at all times]in a conspicuous manner that makes the license easily readable by the public[and is displayed in a conspicuous place at each licensed business location for which the license is issued].

#### 221.47. Evidence of Ownership.

A salvage vehicle dealer must receive a properly assigned salvage vehicle title, salvage record of title, non-repairable vehicle title, non-repairable record of title, or out-of-state ownership document, as



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1 applicable, when acquiring a non-repairable motor vehicle or salvage motor vehicle in accordance with  
2 §217.86 of this title (relating to Dismantling, Scrapping, or Destruction of Motor Vehicles).

3  
4 ~~[221.48. Scrapped or Destroyed Motor Vehicle]~~

5 ~~[(a) Within 30 days after a salvage vehicle dealer acquires a non-repairable motor vehicle or~~  
6 ~~salvage motor vehicle for the purpose of scrapping or destroying the motor vehicle, the salvage vehicle~~  
7 ~~dealer shall:~~

8 ~~(1) submit to the department a report on a form prescribed by the department stating~~  
9 ~~that the motor vehicle will be scrapped or destroyed and certifying that all license plates and registration~~  
10 ~~stickers have been removed from the motor vehicle; and~~

11 ~~(2) surrender to the department the properly assigned ownership document.]~~

12 ~~[(b) Not later than 60 days after the motor vehicle is scrapped or destroyed, the salvage vehicle~~  
13 ~~dealer shall report to the department that the motor vehicle has been scrapped or destroyed.]~~

14 ~~[(c) A salvage vehicle dealer shall maintain records of each motor vehicle that is scrapped or~~  
15 ~~destroyed, as provided by Subchapter D of this chapter (relating to Records).]~~

16 ~~[(d) License plates and registration stickers of vehicles that will be scrapped or destroyed shall be~~  
17 ~~stored by the salvage vehicle dealer in a secure location until the department acknowledges receipt of~~  
18 ~~the report required by subsection (a) of this section.]~~

19 ~~[(e) The salvage vehicle dealer shall recycle[destroy] the license plates and destroy the~~  
20 ~~registration stickers to the vehicles reported under subsection (a) of this section upon receipt of the~~  
21 ~~acknowledged report from the department.]~~

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1       ~~[(f) A vehicle reported to the department under subsection (a) of this section is considered a~~  
2       ~~non-repairable vehicle effective the date of the report.]~~

3  
4       221.49. Unique Inventory Number.

5               Occupations Code, §2302.255, sets out the requirements for a salvage vehicle dealer in assigning  
6       a unique inventory number when the salvage vehicle dealer purchases or takes delivery of a component  
7       part.

8  
9       221.50. Restrictions on Sales of Flood Damaged Vehicles.

10           (a) A motor vehicle that is ~~[classified as]~~ a non-repairable motor vehicle or salvage motor vehicle  
11       based solely on flood damage may be sold or transferred only as provided by this section and §217.88 of  
12       this title (relating to Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor  
13       Vehicle).

14           (b) A salvage vehicle dealer may sell, transfer, or release a non-repairable motor vehicle or  
15       salvage motor vehicle ~~[to anyone if a non-repairable or salvage vehicle title or a comparable out of state~~  
16       ~~ownership document has been issued for the motor vehicle.]~~ if the salvage vehicle dealer provides  
17       ~~[provided]~~ a written disclosure ~~[has been made]~~ that the vehicle has been classified as a non-repairable  
18       motor vehicle or salvage motor vehicle based solely on flood damage.

19           ~~[(c) If a non-repairable or salvage vehicle title or a comparable out of state ownership document~~  
20       ~~has not been issued for the motor vehicle, a salvage vehicle dealer may only sell, transfer, or release a~~  
21       ~~non-repairable motor vehicle or salvage motor vehicle to:~~

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- 1                   ~~(1) an insurance company;~~
- 2                   ~~(2) a governmental entity;~~
- 3                   ~~(3) a licensed salvage vehicle dealer;~~
- 4                   ~~(4) an out-of-state buyer;~~
- 5                   ~~(5) a metal recycler; or~~
- 6                   ~~(6) a used automotive parts recycler, provided a written disclosure has been made that~~
- 7 ~~the vehicle has been classified as a non-repairable motor vehicle or salvage motor vehicle based solely~~
- 8 ~~on flood damage.]~~

9

## 10   221.51. Duty to Identify Motor Vehicles Offered for Sale.

- 11           (a) A salvage vehicle dealer shall place a notice~~[sign]~~ on each salvage motor vehicle it displays or
- 12 offers for sale that:

13                   (1) is visible from outside of the salvage motor vehicle;

14                   (2) contains lettering that is two inches or more in height identifying the vehicle is a

15 salvage motor vehicle; and

16                   (3) states as follows: *"This is a salvage titled vehicle that cannot be operated on a public*

17 *highway. If the salvaged vehicle is to be registered in Texas, the purchaser must apply to a county tax*

18 *assessor-collector's office, surrender the salvage title, submit the required information on repairs that*

19 *have been made to the vehicle and pay the applicable fees before the vehicle may be titled and/or*

20 *registered to operate on the public highway."*

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(b) Upon the sale of a salvage motor vehicle, a salvage vehicle dealer shall obtain the purchaser's signature to a disclosure statement written in eleven point or larger font that states as follows: *"I, (name of purchaser), acknowledge that at the time of purchase, I am aware that: the vehicle is titled on a salvage title; if I intend to operate the vehicle on a public highway in Texas, I am responsible for applying for a title for this salvage vehicle through a Texas county tax assessor-collector's office accompanied by the required forms showing that repairs have been made to the vehicle; I am responsible for paying the applicable fees; and, I may not drive this salvage vehicle on a public highway until after a titled branded rebuilt salvage and registration have been issued."*

(c) A salvage vehicle dealer shall place a sign on each non-repairable motor vehicle it displays or offers for sale that:

(1) is visible from outside of the non-repairable motor vehicle;

(2) contains lettering that is two inches or more in height; and

(3) states as follows: *"This is a non-repairable titled motor vehicle that can never be operated on a public highway of this state~~[or any other state]~~."*

(d) Upon the sale of a non-repairable motor vehicle, a salvage vehicle dealer shall obtain the purchaser's signature to a disclosure statement written in eleven point or larger font that states as follows: *"I, (name of purchaser), acknowledge that at the time of purchase, I am aware that the vehicle is a non-repairable vehicle; this vehicle will never be able to operate on a public highway of this state~~[or any other state]~~ and will never be registered to operate on a public highway of this state~~[or any other state]~~; and, before selling this non-repairable vehicle I must have the non-repairable vehicle titled in my name."*

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(e) A salvage vehicle dealer shall maintain a copy of the written disclosures required by this section as part of its records of sales in accordance with §221.73 of this title (relating to Content of Records).

(f) The notice requirements of subsections (a) and (c) can be met if the salvage vehicle dealer conspicuously displays a permanent sign that~~[single notice or notices if]~~ all of the vehicles being offered for sale by the salvage vehicle dealer are salvage motor vehicles or non-repairable motor vehicles.

(g) If the salvage vehicle dealer conducts a sale of a salvage motor vehicle or a non-repairable motor vehicle in Spanish or other foreign language, the notices and disclosures required by this section shall be in that language.

(h) This section does not apply to a vehicle that is displayed or offered for sale by a salvage vehicle dealer who operates solely as a salvage pool operator and only sells vehicles at wholesale~~[person who holds a salvage pool license on the premises of the licensed salvage pool operator]~~.

## 221.52. Export-only Sales.

(a) A license holder may sell a non-repairable motor vehicle or a salvage motor vehicle to a person who resides in a jurisdiction outside the United States only as provided by Transportation Code, §501.099 and §217.88 of this title (relating to Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle).

~~(b) [A license holder may accept any of the following types of government issued photo identification documents to establish that the purchaser resides outside the United States:~~

~~(1) passport;~~

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(2) driver's license;

(3) consular identity document;

(4) national identification certificate or identity document; or

(5) other photo identification card issued by the jurisdiction where the purchaser resides

that contains the name, address, and date of birth of the purchaser.]

[(c)] A legible copy of the purchaser's photo identification document must be maintained in the records of the license holder for a period of 36[48] months after the sale of a salvage motor vehicle or a non-repairable motor vehicle for "export-only."

(c)[(d)] The limitation on the number of casual sales that may be made to a person under §221.53 of this title (relating to Casual Sales) does not apply to sales to a person who resides in a jurisdiction outside the United States and who purchases salvage motor vehicles and non-repairable motor vehicles for "export-only."

#### 221.53. Casual Sales.

(a) A license holder may not make more than five (5) casual sales of salvage motor vehicles or non-repairable motor vehicles during a calendar year to the same person.

(b) A license holder must maintain records of each casual sale made in accordance with §217.88 of this title (relating to Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle).~~[during the previous 36 months, as provided by §221.72 of this title (relating to Record Retention)].~~ Such records must contain the following information regarding each casual sale:

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~~(1) the complete name, address and phone number of the purchaser;~~

~~(2) a copy of one of the following valid and current photo identification documents for~~

~~the purchaser:~~

~~(A) driver's license, Department of Public Safety identification, or state~~

~~identification certificate issued by a state or territory of the United States;~~

~~(B) concealed handgun license or license to carry a handgun issued by the~~

~~Department of Public Safety under Government Code, Chapter 411, Subchapter H;~~

~~(C) United States or foreign passport;~~

~~(D) United States Department of Homeland Security, United States Citizenship~~

~~and Immigration Services, or United States Department of State Identification document;~~

~~(E) United States military identification card; or~~

~~(F) North Atlantic Treaty Organization identification or identification issued~~

~~under a Status of Forces Agreement; and~~

~~(3) the year, make, model, color and vehicle identification number for the salvage motor~~

~~vehicle or non-repairable motor vehicle.~~

(c) A person who purchases a salvage motor vehicle or a non-repairable motor vehicle through a casual sale may not sell that salvage motor vehicle or non-repairable motor vehicle until the salvage vehicle title, salvage record or title, non-repairable vehicle title or non-repairable record of title, as applicable, is in the person's name.

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## 221.54. Criteria for Site Visits.

In determining whether to conduct a site visit at an active salvage vehicle dealer's location, the department will consider whether the dealer has:

(1) failed to respond to a records request;

(2) failed to operate from the license location; ~~or~~

(3) an enforcement history that reveals failed compliance inspections or multiple complaints with administrative sanctions being taken by the department;

(4) a business location that fails to meet premises or operating requirements under this chapter; or

(5) records that require further investigation by the department.

**SUBCHAPTER D. RECORDS**

## 221.71. Records; Generally.

(a) A salvage vehicle dealer shall maintain a record of each salvage motor vehicle and non-repairable motor vehicle purchased, sold, or exchanged by the salvage vehicle dealer.

(b) A salvage vehicle dealer's records must be maintained at the licensed business location.

(c) Any records required to be maintained by a license holder may be maintained in an electronic format if the record can be reviewed and printed at the licensed business location or provided



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1 electronically upon request ~~[by a representative]~~ of the department ~~[at the time the requestor is at the~~  
2 ~~business location]~~.

3 (d) A salvage vehicle dealer must make records available for review and copying upon request by  
4 ~~[a representative of]~~ the department. The department may request records ~~[A request for records may~~  
5 ~~be made by the department]~~ in person, by mail, or electronically from a department email or a  
6 department-designated system ~~[by electronically document transfer]~~.

7 (e) ~~[Upon receipt of a request for review of records sent by mail or electronic document transfer~~  
8 ~~from the department, a]~~ A salvage vehicle dealer must provide ~~[produce]~~ copies of requested ~~[specified]~~  
9 records to the department ~~[requestor]~~ within 15 ~~[10 calendar]~~ days of receipt of the request ~~[by mail or~~  
10 ~~electronic document transfer]~~.

11 (f) Occupations Code, §2302.254, establishes the requirements that a salvage vehicle dealer  
12 maintain a record of an inventory of component parts purchased by or delivered to the salvage vehicle  
13 dealer.

14  
15 221.72. Record Retention.

16 (a) A salvage vehicle dealer must retain at the licensed business location, or have electronic  
17 access at the licensed business location of records stored electronically, a complete record of all  
18 purchases and sales of salvage motor vehicles and nonrepairable motor vehicles for a minimum period  
19 of 36 months from the date of the transaction.

20 (b) A salvage vehicle dealer shall maintain at the licensed business location a record of each  
21 vehicle that is dismantled, scrapped or destroyed, and a photocopy of the front and back of all salvage

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vehicle titles and nonrepairable vehicle titles, or a photocopy or electronic copy of all salvage records of title, and nonrepairable records of title, and, if applicable, a photocopy of any out-of-state evidence of ownership surrendered to the department, until the third~~fourth~~ anniversary of the date the report was acknowledged as received by the department.

(c) A salvage vehicle dealer utilizing the department's web-based title application known as webDEALER, as defined in §217.71 of this title (relating to Automated and Web-Based Vehicle Registration and Title Systems), must comply with §217.74 of this title (relating to Access to and Use of webDEALER). Original hard copy titles are not required to be kept at the licensed business location~~;~~ but must be made available to the department upon request.

## 221.73. Content of Records.

(a) The records of a salvage vehicle dealer for purchases and sales shall include:

(1) the date the license holder purchased ~~[of purchase of]~~ the salvage motor vehicle, or non-repairable motor vehicle;

(2) the name and address of the person who sold the salvage motor vehicle or non-repairable motor vehicle to the salvage vehicle dealer;

(3) if the person ~~[who sold the salvage motor vehicle or non-repairable motor vehicle to the salvage motor vehicle dealer]~~ is not an insurance company or a license holder~~[salvage pool operator]~~, a photocopy of ~~[one of]~~ the ~~[following current]~~ photo identification document~~[s]~~ of the person who purchased the salvage motor vehicle or non-repairable motor vehicle from the salvage vehicle dealer or sold the salvage motor vehicle or non-repairable motor vehicle to the salvage vehicle dealer~~;~~

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1                               ~~(A) driver's license, Department of Public Safety identification, or state~~  
2     ~~identification certificate issued by a state or territory of the United States;~~

3                               ~~(B) concealed handgun license or license to carry a handgun issued by the~~  
4     ~~Department of Public Safety under Government Code, Chapter 411, Subchapter H;~~

5                               ~~(C) United States or foreign passport;~~

6                               ~~(D) United States Department of Homeland Security, United States Citizenship~~  
7     ~~and Immigration Services, or United States Department of State Identification document;~~

8                               ~~(E) United States military identification card; or~~

9                               ~~(F) North Atlantic Treaty Organization identification or identification issued~~  
10    ~~under a Status of Forces Agreement];~~

11                           (4) a description of the salvage motor vehicle or non-repairable motor vehicle, including  
12    the model, year, make, and vehicle identification number, if applicable;

13                           (5) the ownership document number and state of issuance of the salvage motor vehicle  
14    or non-repairable motor vehicle ownership document, if applicable;

15                           (6) a copy of the salvage record of title or non-repairable record of title, if applicable, or  
16    a copy of the front and back of the ownership document for the salvage motor vehicle or non-repairable  
17    motor vehicle;

18                           (7) a copy of the form if the ownership document has been surrendered to the  
19    department; ~~and]~~

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(8) any evidence indicating that the motor vehicle was dismantled, scrapped, or destroyed;

(9) the sales contract or buyer's order;

(10) the salvage disclosure notice required under §221.51 of this title (relating to Duty to Identify a Motor Vehicle Offered for Sale);

(11) a copy of the photo identification document required for export sales under §221.52 (relating to Export-Only Sales);

(12) records for a casual sale as required under §221.53 (relating to Casual Sales); and

(13) any other records required under current rules in this title.

(b) If the salvage motor vehicle has been rebuilt, repaired, or reconstructed by the salvage vehicle dealer the salvage vehicle dealer's records must also include a form prescribed by the department ~~[for "Rebuilt Vehicle Statement," listing all repairs made to the motor vehicle, and, when required to be completed, a form prescribed by the department for "Component Part(s) Bill of Sale."]~~ in accordance with §217.89 of this title (relating to Rebuilt Salvage Motor Vehicles).

**[SUBCHAPTER E. ADMINISTRATIVE PROCEDURES]**

~~[221.91. Notice of Department Decision.]~~

~~[(a) Upon a determination that an application for a license issued under Occupations Code, Chapter 2302, and this chapter should be denied, or that a license be revoked or suspended, or that administrative sanctions should be imposed based on alleged violations of Occupations Code, Chapter 2302, or this chapter, the department shall issue and mail, by certified mail, a Notice of~~

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1 ~~Department Decision to the applicant's, license holder's or person's last known mailing address, as~~  
2 ~~reflected in the department's licensing records.]~~

3 ~~[(b) The Notice of Department Decision includes a statement:~~

4 ~~(1) that describes the department decision and its effective date;~~

5 ~~(2) that describes each alleged violation;~~

6 ~~(3) that describes each administrative sanction being proposed;~~

7 ~~(4) which sets out the legal basis for each administrative sanction;~~

8 ~~(5) informing the license applicant, license holder or other person of the right to~~  
9 ~~request a hearing;~~

10 ~~(6) setting forth the procedures for requesting a hearing, including the period~~  
11 ~~during which a request for a hearing must be received by the department; and~~

12 ~~(7) informing the license applicant, license holder, or other person that the~~  
13 ~~proposed decision and administrative sanctions in the Notice of Department Decision will become~~  
14 ~~final on the date specified if the license applicant, license holder, or other person fails to timely~~  
15 ~~request a hearing.]~~

16 ~~[(c) A request for an administrative hearing under this section must be made in writing and~~  
17 ~~received by the department within 26 days of the date the Notice of Department Decision is~~  
18 ~~mailed by the department.]~~

19 ~~[(d) If the license applicant, license holder, or person does not make a timely request for~~  
20 ~~hearing or enter into a settlement agreement before the 27th day after the date the Notice of~~  
21 ~~Department Decision is mailed, the matter becomes final in accordance with the Government~~  
22 ~~Code, Chapter 2001.]~~

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1 ~~[221.92. Notice of Hearing.]~~

2 ~~[(a) If a request for administrative hearing is timely received, the department shall set a hearing~~  
3 ~~with the State Office of Administrative Hearings and give notice to the license applicant, license holder~~  
4 ~~or other person of the date, time and location where the hearing will be held.]~~

5 ~~[(b) The hearing shall be conducted under the provisions set forth in this chapter and by an~~  
6 ~~administrative law judge of the State Office of Administrative Hearings.]~~

7  
8 ~~[221.93. Final Decisions and Orders; Motions for Rehearing.]~~

9 ~~[(a) If a department decision becomes final under a Notice of Department Decision issued under~~  
10 ~~§221.91 of this title (relating to Notice of Department Decision), the matter will be forwarded to the final~~  
11 ~~order authority for issuance of a final order incorporating the decisions, findings and administrative~~  
12 ~~sanctions imposed by the Notice of Department Decision. The department will send a copy of the final~~  
13 ~~order to the license applicant, license holder, or other person.]~~

14 ~~[(b) The provisions of Government Code, Chapter 2001, Subchapter F, govern the issuance of a~~  
15 ~~final order issued under this subchapter and motions for rehearing filed in response to issuance of a final~~  
16 ~~order.]~~

17  
18 ~~[221.94. Judicial Review of Final Order.][The provisions of Government Code, Chapter 2001, Subchapter~~  
19 ~~G, govern the appeal of a final order issued under this subchapter.]~~

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~~[221.95. Delegation of Final Order Authority]~~

~~[(a) In accordance with Transportation Code, §1003.005(b), in cases brought under Occupations Code, Chapter 2302, the director of the division that regulates the distribution and sale of motor vehicles is authorized to issue a final order in a case without a decision on the merits, including, but not limited to a case resolved:~~

~~(1) by settlement;~~

~~(2) by agreed order;~~

~~(3) by withdrawal of the complaint;~~

~~(4) by dismissal for want of prosecution;~~

~~(5) by dismissal for want of jurisdiction;~~

~~(6) by summary judgment or summary disposition;~~

~~(7) by default judgment; or~~

~~(8) when a party waives opportunity for a hearing.]~~

~~[(b) In contested cases in which the board has delegated final order authority under subsection (a) of this section, a motion for rehearing shall be filed with and decided by the final order authority delegate.]~~

~~[221.96. Cease and Desist Order.]~~

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1       ~~[(a) The board may issue a cease and desist order if the board reasonably believes a person who~~  
2       ~~is not licensed under Occupations Code Chapter 2302 is violating that chapter or a rule or order adopted~~  
3       ~~under that chapter.]~~

4       ~~[(b) A cease and desist order may require a person to cease and desist from committing a~~  
5       ~~violation. The order must contain a notice that a request for hearing may be filed under this section.]~~

6       ~~[(c) A person to whom a cease and desist order is issued may file a written request for a hearing~~  
7       ~~before the board. The order is final unless a request for hearing is timely filed. The person must file the~~  
8       ~~hearing request not later than the 10th day after the date of receipt of the order.]~~

9  
10                               **SUBCHAPTER E[F]. ADMINISTRATIVE SANCTIONS**

11       221.111. Denial of License.

12       (a) The ~~[board or]~~ department may deny an application for a new license or an application  
13       for a license renewal~~[of a license]~~ under Occupations Code Chapter 53 or Chapter 2302, and  
14       §211.3 of this title (relating to Criminal Offense Guidelines) or this chapter, if:

- 15                       (1) all the information required on the application is not complete;
- 16                       (2) the applicant or any owner, officer, director, or other person described in  
17       §211.2 of this title (relating to Application of Subchapter) made a false statement, material  
18       misrepresentation, or a material omission, on the application to issue, renew, or amend a license;
- 19                       (3) the applicant, or any owner, officer, director, or other person described in  
20       §211.2 of this title, has been convicted, or considered convicted under Occupations Code  
21       §53.021(d), by any local, state, federal, or foreign authority, of an offense that directly relates to



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1 the duties or responsibilities of the licensed occupation as described in §211.3 of this title or is  
2 convicted of an offense that is independently disqualifying under Occupations Code §53.021;

3 (4) the applicant's or any owner's, officer's, director's, or other person described in  
4 §211.2 of this title, previous license was revoked;

5 (5) the applicant~~[or license holder]~~ has an ownership, organizational, managerial,  
6 or other business arrangement that would allow a person the power to direct, management,  
7 policies, or activities, of the applicant or license holder, whether directly or indirectly, who ~~[is~~  
8 ~~unfit, ineligible for license, or]~~ has been subject to disciplinary action, including suspension,  
9 revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty,  
10 administrative fine, or similar assessment for a current or previous license, permit, or other  
11 authorization issued by any local, state, or federal regulatory authority; or

12 (6) the applicant, or any owner, officer, or director, or other person described in  
13 §211.2 of this title~~[is unfit to hold the license, is ineligible for licensure, or]~~ whose current or  
14 previous license, permit, or other authorization issued by any local, state, or federal regulatory  
15 authority has been subject to disciplinary action, including suspension, revocation, denial,  
16 corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee,  
17 or similar assessment.

18 (b) If the department denies an application for a license to be issued under the authority of  
19 Occupations Code Chapter 2302, the applicant may request an administrative hearing in the  
20 manner specified in §224.54~~§221.91~~ of this title (relating to Notice of Department Decision).

21 (c) In accordance with Occupations Code §2302.108, the ~~[board or]~~ department shall reject  
22 any application for issuance of a new license under Occupations Code Chapter 2302 filed by a  
23 person whose license is revoked before the first anniversary of the date of revocation.

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## 221.112. Suspension, Revocation and Administrative Penalties.

The ~~[board or]~~ department may suspend or revoke a license or impose an administrative penalty if the license holder:

(1) fails to meet or maintain the qualifications and requirements for a license;

(2) violates any law relating to the purchase, sale, exchange, storage, or distribution of motor vehicles, including salvage motor vehicles and nonrepairable motor vehicles;

(3) willfully defrauds a purchaser;

(4) fails to maintain purchase, sales, and inventory records as required by Occupations Code, Chapter 2302, Transportation Code, Chapter 501, Chapter 217, Subchapter D of this title, or this chapter;

(5) refuses~~[to permit]~~, or fails to comply with a request by the department to examine, during normal business hours, the license holder's records as required by Occupations Code, Chapter 2302, or this chapter;

(6) engages in motor vehicle or salvage business without the required license;

(7) engages in business as a salvage vehicle dealer at a location for which a license has not been issued by the department;

(8) fails to notify the department of a change of the salvage vehicle dealer's ~~[legal business entity name, assumed name, mailing address, or email address within 30 days of such change by submitting an amendment to the license]~~ license holder information as required under §221.19 of this title (relating to Notice of Change in License Holder Information);

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(9) fails to notify the department of a change in location~~[described in §221.19(b) of this title (relating to Change of License Holder's Name, Ownership, or Control)]~~ as required in that section] prior to operating in a new location or closing a location in accordance with §221.18 of this title (relating to Additional, New, or Closed Location);

(10) fails to remain regularly and actively engaged in the business for which the salvage vehicle dealer license is issued;

(11) sells more than five (5) nonrepairable motor vehicles or salvage motor vehicles to the same person in a casual sale during a calendar year;

(12) violates any provision of Occupations Code Chapters 2301 or 2302, Transportation Code Chapters 501, 502, or 503, or any board rule or order promulgated under those statutes;

(13) uses or allows use of the salvage vehicle dealer's license or business location for the purpose of avoiding the requirements of Occupations Code Chapters 2301 or 2302, Transportation Code, Chapters 501, 502 or 503, or any board rule or order promulgated under those statutes;

(14) violates any law, ordinance, rule or regulation governing the purchase, sale, exchange, or storage, of salvage motor vehicles or nonrepairable motor vehicles;

(15) sells or offers for sale a nonrepairable motor vehicle or a salvage motor vehicle from any location other than the salvage vehicle dealer's licensed business location;

(16) is, or any owner, officer, director, or other person described in §211.2 of this title (relating to Application of Subchapter), is convicted, or considered convicted under Occupations Code §53.021(d), by any local, state, federal, or foreign authority, of an offense that directly relates to the duties or responsibilities of the licensed occupation as described in §211.3 of this title (relating to

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1 Criminal Offense Guidelines) or an offense that that is independently disqualifying under Occupations

2 Code §53.021 after initial issuance or renewal of the salvage vehicle dealer license, or that has not been

3 reported to the department as required;

4 (17) makes a false statement, material misrepresentation, or material omission in any

5 application or other information filed with the department;

6 (18) fails to timely remit payment for administrative penalties imposed by the

7 department;

8 (19) engages in business without a license required under Occupations Code Chapters

9 2301 or 2302, or Transportation Code Chapter 503;

10 (20) operates a salvage motor vehicle or a nonrepairable motor vehicle on ~~the~~ public

11 highways or allows another person to operate a salvage motor vehicle or a nonrepairable motor vehicle

12 on public highways; or

13 (21) ~~[dismantles a salvage motor vehicle or a nonrepairable motor vehicle~~

14 ~~(22)]~~deals in used automotive parts as more than an incidental part of the salvage

15 vehicle dealer's primary business.

16  
17 221.115. Refund of Fees.

18 In the absence of director approval, the department will not refund a fee paid by a license

19 applicant or a license holder if:

20 (1) the application or license is withdrawn, denied, suspended, or revoked; or

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- 1                   (2) the license applicant or license holder is subject to an unpaid civil penalty imposed
- 2 against the license applicant or license holder by a final order.~~[The department will not refund fees paid~~
- 3 ~~if a license is denied, suspended or revoked.]~~

**Board Meeting Date: 12/14/2023**  
**ACTION ITEM**

**To:** Texas Department of Motor Vehicles Board  
**From:** Jimmy Archer, Motor Carrier Division Director  
**Agenda Item:** 12  
**Subject:** Chapter 217, Vehicle Titles and Registration  
Amendments, §217.56  
(Relating to Cleanup)

### RECOMMENDATION

Action Item. Approval to publish the proposal of amendments in the *Texas Register*.

### PURPOSE AND EXECUTIVE SUMMARY

The proposed amendments to 43 Texas Administrative Code (TAC) §217.56 are necessary to incorporate by reference the current edition of the International Registration Plan (IRP) dated January 1, 2022. The amendments are also necessary to clean up the language and to refer to proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure) for an appeal under §217.56.

### FINANCIAL IMPACT

For each year of the first five years the amendments will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no significant impact on local employment or the local economy as a result of the proposal.

### BACKGROUND AND DISCUSSION

The proposed amendments are necessary to do the following:

1. incorporate by reference the current edition of IRP dated January 1, 2022;
2. clarify language;
3. make the terminology consistent with other department rules;
4. delete certain language regarding the process for an appeal under §217.56; and
5. refer to proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure) for an appeal of the department's decision against a vehicle registrant regarding an assessment, cancellation, or revocation under §217.56.

**PROPOSAL OF REVISIONS TO****SUBCHAPTER B. MOTOR VEHICLE REGISTRATION****43 TAC §217.56**

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes to amend 43 Texas Administrative Code (TAC) Subchapter B, Motor Vehicle Registration, §217.56 concerning vehicle registration reciprocity agreements. The amendments are necessary to incorporate by reference the current edition of the International Registration Plan (IRP) dated January 1, 2022. The amendments are also necessary to clarify language, to make the terminology consistent with other department rules, to delete certain language regarding the process for an appeal under §217.56, and to refer to proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure) for an appeal of the department's decision against a vehicle registrant regarding an assessment, cancellation, or revocation under §217.56. In this issue of the *Texas Register*, the department is proposing new Chapter 224, which would include all department adjudicative practice and procedure rules.

**EXPLANATION.**

Proposed amendments to §217.56(c)(2)(B) would incorporate by reference the current edition of IRP dated January 1, 2022. Texas is bound by IRP, which is a vehicle registration reciprocity agreement between the 48 contiguous states, the District of Columbia, and the Canadian provinces. Section 217.56 must incorporate the latest edition of IRP because it contains language regarding the nature and requirements of vehicle registration under IRP. Texas is a member of IRP, as authorized by Transportation Code, §502.091 and 49 U.S.C. §31704, and must comply with the current edition of IRP. The jurisdictions that are members of IRP amended the January 1, 2021, edition of IRP as follows to create the January 1, 2022, edition: added Section 601 (Uploading Data to the Repository), amended Section 1505 (Amendment

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## Chapter 217 – Vehicle Titles and Registration

1 Introduction Process), amended Section 1515 (Ballot Process), and amended Section 1520 (Effective Date  
2 of Plan Amendments).

3 A proposed amendment to §217.56(c)(2)(J) would replace the current catch line for subparagraph  
4 (J) to provide a better description of the contents of subparagraph (J). A proposed amendment to  
5 §217.56(c)(2)(J)(ii) would change the word “ruling” to “decision” to be consistent with other department  
6 rules. Proposed amendments to §217.56(c)(2)(J)(iii) would reference proposed new §224.122 of this title  
7 (relating to Appeal of Decision Regarding Assessment, Cancellation, or Revocation Under §217.56), which  
8 would prescribe the requirements for a vehicle registrant that wants to appeal a decision against the  
9 registrant under subparagraph (J) of an assessment (a financial penalty under §217.56(c)(2)(G)) or a  
10 cancellation or revocation of the registrant’s apportioned registration under IRP. Proposed amendments  
11 to §217.56(c)(2)(J)(iii) would also add a citation to Transportation Code, Chapter 502 and proposed new  
12 Chapter 224 of this title (relating to Adjudicative Practice and Procedure), which would govern an appeal  
13 under subparagraph (J). In addition, proposed amendments would delete language regarding the  
14 procedure for an appeal under current subparagraph (J), including the procedures under Chapter 206,  
15 Subchapter D of this title (relating to Procedures in Contested Cases). In this issue of the *Texas Register*,  
16 the department is proposing amendments that would repeal Subchapter D of Chapter 206 and replace it  
17 with provisions in proposed new Chapter 224.

18 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,  
19 has determined that for each year of the first five years the amendments will be in effect, there will be no  
20 significant fiscal impact to state or local governments as a result of the enforcement or administration of  
21 the proposal. Jimmy Archer, Director of the Motor Carrier Division (MCD), has determined that there will  
22 be no significant impact on local employment or the local economy as a result of the proposal.



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## Chapter 217 – Vehicle Titles and Registration

1 **PUBLIC BENEFIT AND COST NOTE.** Mr. Archer has also determined that, for each year of the first five  
2 years the amended section is in effect, there are two anticipated public benefits regarding the  
3 amendments.

4 Anticipated Public Benefits. One public benefit anticipated as a result of the proposal is an  
5 updated rule that references the current edition of IRP. IRP governs the department's issuance of  
6 apportioned registration under IRP, so the public might need to know the current edition of IRP to review  
7 the provisions in IRP. Another public benefit is the deletion of language regarding the procedure for an  
8 appeal under current §217.56(c)(2)(J). The department's proposed new Chapter 224 would contain  
9 language regarding the adjudicative practice and procedure for all of the department's contested cases,  
10 including an appeal under §217.56(c)(2)(J). Chapter 224 would provide more information for a registrant  
11 who wants to file an appeal under §217.56(c)(2)(J), in addition to providing more clarity and consistency  
12 regarding the department's adjudicative practice and procedure for all contested cases.

13 Anticipated Costs To Comply With The Proposal. Mr. Archer anticipates that there will be no costs  
14 to comply with these amendments.

15 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government  
16 Code, §2006.002, the department has determined that the proposed amendments will not have an  
17 adverse economic effect on small businesses, micro-businesses, and rural communities because the  
18 amendments to the January 1, 2022, edition of IRP do not directly impact registrants under IRP.

19 Also, the amendments regarding an appeal under §217.56(c)(2)(J) only apply if the registrant  
20 chooses to appeal an assessment or a proposed cancellation or revocation of the registrant's apportioned  
21 registration under IRP. In addition, the proposed amendments would not change the fact that the  
22 contested case procedures and requirements are primarily governed by Government Code, Chapter 2001  
23 and 1 TAC Chapter 155, which are the rules of procedure for the State Office of Administrative Hearings

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(SOAH). Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

**TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the first five years the proposed amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments do not create a new regulation; however, they technically enable the expansion of an existing regulation regarding the department's adjudicative practice and procedure. The proposed amendments to §217.56(c)(2)(J) enable the department's proposed new Chapter 224 to govern the adjudicative practice and procedure under §217.56(c)(2)(J), which results in more detailed requirements and clarity. Lastly, the proposed amendments do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

**REQUEST FOR PUBLIC COMMENT.**

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on MM, DD, YYYY. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

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**1 STATUTORY AUTHORITY.**

2           The department proposes amendments to §217.56 under Transportation Code, §§502.091(b),  
3   502.0021, and 1002.001; and Government Code, §2001.004 and §2001.054, in addition to the statutory  
4   authority referenced throughout this preamble.

5           Transportation Code, §502.091(b) authorizes the department to adopt and enforce rules to carry  
6   out IRP. Transportation Code, §502.0021 authorizes the department to adopt rules to administer  
7   Transportation Code, Chapter 502. Transportation Code, §1002.001 authorizes the board to adopt rules  
8   that are necessary and appropriate to implement the powers and duties of the department.

9           Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature  
10   and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies  
11   the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal  
12   of a license.

13   **CROSS REFERENCE TO STATUTE.** These proposed revisions would implement Transportation Code,  
14   Chapter 502, and Government Code, Chapter 2001.

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## Chapter 217 – Vehicle Titles and Registration

1   **TEXT.**

2                                   **SUBCHAPTER B. MOTOR VEHICLE REGISTRATION**

3   §217.56. Registration Reciprocity Agreements.

4           (a) Purpose. To promote and encourage the fullest possible use of the highway system and  
5   contribute to the economic development and growth of the State of Texas and its residents, the  
6   department is authorized by Transportation Code, §502.091 to enter into agreements with duly  
7   authorized officials of other jurisdictions, including any state of the United States, the District of  
8   Columbia, a foreign country, a state or province of a foreign country, or a territory or possession of  
9   either the United States or of a foreign country, and to provide for the registration of vehicles by Texas  
10   residents and nonresidents on an allocation or distance apportionment basis, and to grant exemptions  
11   from the payment of registration fees by nonresidents if the grants are reciprocal to Texas residents.

12           (b) Definitions. The following words and terms, when used in this section, shall have the  
13   following meanings, unless the context clearly indicates otherwise:

14                   (1) Cab card--The apportioned vehicle registration receipt that contains, but is not  
15   limited to, the vehicle description and the registered weight at which the vehicle may operate in each  
16   jurisdiction.

17                   (2) Department--The Texas Department of Motor Vehicles.

18                   (3) Director--The director of the Motor Carrier Division, Texas Department of Motor  
19   Vehicles.

20                   (4) Executive director--The chief executive officer of the department.

21                   (5) Regional Service Center--A department office which provides specific services to the  
22   public, including replacement titles, bonded title rejection letters, and apportioned registration under  
23   the International Registration Plan (IRP).

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1 (6) Temporary cab card--A temporary registration permit authorized by the department  
2 that allows the operation of a vehicle for 30 days subject to all rights and privileges afforded to a vehicle  
3 displaying apportioned registration.

4 (c) Multilateral agreements.

5 (1) Authority. The executive director may on behalf of the department enter into a  
6 multilateral agreement with the duly authorized officials of two or more other jurisdictions to carry out  
7 the purpose of this section.

8 (2) International Registration Plan.

9 (A) Applicability. The IRP is a registration reciprocity agreement among states of  
10 the United States and other jurisdictions providing for payment of registration fees on the basis of fleet  
11 distance operated in various jurisdictions. Its purpose is to promote and encourage the fullest possible  
12 use of the highway system by authorizing apportioned registration for commercial motor vehicles and  
13 payment of appropriate vehicle registration fees and thus contributing to the economic development  
14 and growth of the member jurisdictions.

15 (B) Adoption. The department adopts by reference the January 1, 2022, [2021]  
16 edition of the IRP. The department also adopts by reference the January 1, 2016, edition of the IRP Audit  
17 Procedures Manual. In the event of a conflict between this section and the IRP or the IRP Audit  
18 Procedures Manual, the IRP and the IRP Audit Procedures Manual control. Copies of the documents are  
19 available for review in the Motor Carrier Division, Texas Department of Motor Vehicles. Copies are also  
20 available on request.

21 (C) Application.

22 (i) An applicant must submit an application to the department on a form  
23 prescribed by the director, along with additional documentation as required by the director. An

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1 applicant shall provide the department with a copy of the applicant's receipt under the Unified Carrier  
2 Registration System Plan and Agreement under 49 U.S.C. §14504a (UCR) to prove the applicant is  
3 currently registered under UCR if the applicant is required to register under UCR.

4 (ii) Upon approval of the application, the department will compute the  
5 appropriate registration fees and notify the registrant.

6 (D) Fees. Upon receipt of the applicable fees in the form as provided by §209.23  
7 of this title (relating to Methods of Payment), the department will issue one or two license plates and a  
8 cab card for each vehicle registered.

9 (E) Display of License Plates and Cab Cards.

10 (i) The department will issue one license plate for a tractor, truck-  
11 tractor, trailer, and semitrailer. The license plate issued to a tractor or a truck-tractor shall be installed  
12 on the front of the tractor or truck-tractor, and the license plate issued for a trailer or semitrailer shall  
13 be installed on the rear of the trailer or semitrailer.

14 (ii) The department will issue two license plates for all other vehicles  
15 that are eligible to receive license plates under the IRP. Once the department issues two license plates  
16 for a vehicle listed in this clause, one plate shall be installed on the front of the vehicle, and one plate  
17 shall be installed on the rear of the vehicle.

18 (iii) The cab card shall be carried at all times in the vehicle in accordance  
19 with the IRP. If the registrant chooses to display an electronic image of the cab card on a wireless  
20 communication device or other electronic device, such display does not constitute consent for a peace  
21 officer, or any other person, to access the contents of the device other than the electronic image of the  
22 cab card.

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(iv) The authority to display an electronic image of the cab card on a wireless communication device or other electronic device does not prevent the Texas State Office of Administrative Hearings or a court of competent jurisdiction from requiring the registrant to provide a paper copy of the cab card in connection with a hearing, trial, or discovery proceeding.

(F) Audit. An audit of the registrant's vehicle operational records may be conducted by the department according to the IRP provisions and the IRP Audit Procedures Manual. Upon request, the registrant shall provide the operational records of each vehicle for audit in unit number order, in sequence by date, and including, but not limited to, a summary of distance traveled by each individual vehicle on a monthly, quarterly, and annual basis with distance totaled separately for each jurisdiction in which the vehicle traveled.

(G) Assessment. The department may assess additional registration fees of up to 100% of the apportionable fees paid by the registrant for the registration of its fleet in the registration year to which the records pertain, as authorized by the IRP, if an audit conducted under subparagraph (F) of this paragraph reveals that:

(i) the operational records indicate that the vehicle did not generate interstate distance in two or more member jurisdictions for the distance reporting period supporting the application being audited, plus the six-month period immediately following that distance reporting period;

(ii) the registrant failed to provide complete operational records; or

(iii) the distance must be adjusted, and the adjustment results in a shortage of registration fees due Texas or any other IRP jurisdiction.

(H) Refunds. If an audit conducted under subparagraph (F) of this paragraph reveals an overpayment of fees to Texas or any other IRP jurisdiction, the department will refund the

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## Chapter 217 – Vehicle Titles and Registration

1 overpayment of registration fees in accordance with Transportation Code, §502.195 and the IRP. Any  
2 registration fees refunded to a carrier for another jurisdiction will be deducted from registration fees  
3 collected and transmitted to that jurisdiction.

4 (I) Cancellation or revocation. The director or the director's designee may cancel  
5 or revoke a registrant's apportioned registration and all privileges provided by the IRP as authorized by  
6 the following:

7 (i) the IRP; or

8 (ii) Transportation Code, Chapter 502.

9 (J) Procedures for assessment, cancellation, or revocation. [~~Enforcement of~~  
10 ~~cancelled or revoked registration.~~]

11 (i) Notice. If a registrant is assessed additional registration fees, as  
12 provided in subparagraph (G) of this paragraph, and the additional fees are not paid by the due date  
13 provided in the notice or it is determined that a registrant's apportioned license plates and privileges  
14 should be canceled or revoked, as provided in subparagraph (I) of this paragraph, the director or the  
15 director's designee will mail a notice by certified mail to the last known address of the registrant. The  
16 notice will state the facts underlying the assessment, cancellation, or revocation; the effective date of  
17 the assessment, cancellation, or revocation; and the right of the registrant to request a conference as  
18 provided in clause (ii) of this subparagraph.

19 (ii) Conference. A registrant may request a conference upon receipt of a  
20 notice issued as provided by clause (i) of this subparagraph. The request must be made in writing to the  
21 director or the director's designee within 30 days of the date of the notice. If timely requested, the  
22 conference will be scheduled and conducted by the director or the director's designee at division  
23 headquarters in Austin and will serve to abate the assessment, cancellation, or revocation unless and



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## Chapter 217 – Vehicle Titles and Registration

1 until that assessment, cancellation, or revocation is affirmed or disaffirmed by the director or the  
2 director's designee. In the event matters are resolved in the registrant's favor, the director or the  
3 director's designee will mail the registrant a notice of withdrawal, notifying the registrant that the  
4 assessment, cancellation, or revocation is withdrawn, and stating the basis for that action. In the event  
5 matters are not resolved in the registrant's favor, the director or the director's designee will issue a  
6 decision ~~[ruling]~~ reaffirming the department's assessment of additional registration fees or cancellation  
7 or revocation of apportioned license plates and privileges. The registrant has the right to appeal in  
8 accordance with clause (iii) of this subparagraph.

9 (iii) Appeal. If a conference held in accordance with clause (ii) of this  
10 subparagraph fails to resolve matters in the registrant's favor, the registrant may submit an appeal  
11 under §224.122 of this title (relating to Appeal of Decision Regarding Assessment, Cancellation, or  
12 Revocation Under §217.56). An appeal will be governed by Transportation Code, Chapter 502 and  
13 Chapter 224 of this title (relating to Adjudicative Practice and Procedure). ~~[request an administrative~~  
14 ~~hearing.]~~

15 ~~[The request must be in writing and must be received by the director no later than the 20th day~~  
16 ~~following the date of the ruling issued under clause (ii) of this subparagraph. If requested within the~~  
17 ~~designated period, the hearing will be initiated by the department and will be conducted in accordance~~  
18 ~~with Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). Assessment,~~  
19 ~~cancellation, or revocation is abated unless and until affirmed or disaffirmed by order of the Board of~~  
20 ~~the Texas Department of Motor Vehicles or its designee.]~~

21 (K) Reinstatement.

22 (i) The director or the director's designee will reinstate apportioned  
23 registration to a previously canceled or revoked registrant if all applicable fees and assessments due on

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## Chapter 217 – Vehicle Titles and Registration

1 the previously canceled or revoked apportioned account have been paid and the applicant provides  
2 proof of an acceptable recordkeeping system for a period of no less than 60 days.

3 (ii) The application for the following registration year will be processed  
4 in accordance with the provisions of the IRP.

5 (L) Denial of apportioned registration for safety reasons. The department will  
6 comply with the requirements of the Performance and Registration Information Systems Management  
7 program (PRISM) administered by the Federal Motor Carrier Safety Administration (FMCSA).

8 (i) Denial or suspension of apportioned registration. Upon notification  
9 from the FMCSA that a carrier has been placed out of service for safety violations, the department will:

10 (I) deny initial issuance of apportioned registration;

11 (II) deny authorization for a temporary cab card, as provided for  
12 in subparagraph (M) of this paragraph;

13 (III) deny renewal of apportioned registration; or

14 (IV) suspend current apportioned registration.

15 (ii) Issuance after denial of registration or reinstatement of suspended  
16 registration. The director or the director's designee will reinstate or accept an initial or renewal  
17 application for apportioned registration from a registrant who was suspended or denied registration  
18 under clause (i) of this subparagraph upon presentation of a Certificate of Compliance from FMCSA, in  
19 addition to all other required documentation and payment of fees.

20 (M) Temporary cab card.

21 (i) Application. The department may authorize issuance of a temporary  
22 cab card to a motor carrier with an established Texas apportioned account for a vehicle upon proper  
23 submission of all required documentation, a completed application, and all fees for either:

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## Chapter 217 – Vehicle Titles and Registration

1 (I) Texas title as prescribed by Transportation Code, Chapter 501  
2 and Subchapter A of this chapter (relating to Motor Vehicle Titles); or

3 (II) registration receipt to evidence title for registration  
4 purposes only (Registration Purposes Only) as provided for in Transportation Code, §501.029 and  
5 §217.24 of this title (relating to Vehicle Last Registered in Another Jurisdiction).

6 (ii) Title application. A registrant who is applying for a Texas title as  
7 provided for in clause (i)(I) of this subparagraph and is requesting authorization for a temporary cab  
8 card, must submit to a Regional Service Center a photocopy of the title application receipt issued by the  
9 county tax assessor-collector's office.

10 (iii) Registration Purposes Only. A registrant who is applying for  
11 Registration Purposes Only under clause (i)(II) of this subparagraph and is requesting authorization for a  
12 temporary cab card, must submit an application and all additional original documents or copies of  
13 original documents required by the director to a Regional Service Center.

14 (iv) Department approval. On department approval of the submitted  
15 documents, the department will send notice to the registrant to finalize the transaction and make  
16 payment of applicable registration fees.

17 (v) Finalization and payment of fees. To finalize the transaction and  
18 print the temporary cab card, the registrant may compute the registration fees through the  
19 department's apportioned registration software application, TxIRP system, and:

20 (I) make payment of the applicable registration fees to the  
21 department as provided by §209.23 of this title; and

22 (II) afterwards, mail or deliver payment of the title application  
23 fee in the form of a check, certified cashier's check, or money order payable to the county tax assessor-

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## Chapter 217 – Vehicle Titles and Registration

1 collector in the registrant's county of residency and originals of all copied documents previously  
2 submitted.

3 (vi) Deadline. The original documents and payment must be received by  
4 the Regional Service Center within 72-hours after the time that the office notified the registrant of the  
5 approval to print a temporary cab card as provided in clause (iv) of this subparagraph.

6 (vii) Failure to meet deadline. If the registrant fails to submit the original  
7 documents and required payment within the time prescribed by clause (vi) of this subparagraph, the  
8 registrant's privilege to use this expedited process to obtain a temporary cab card will be denied by the  
9 department for a period of six months from the date of approval to print the temporary cab card.

**Board Meeting Date: 12/14/2023**  
**ACTION ITEM**

**To:** Texas Department of Motor Vehicles Board  
**From:** Jimmy Archer, Motor Carrier Division Director  
**Agenda Item:** 13  
**Subject:** Chapter 218, Motor Carriers  
Amendments, §§218.10, 218.16, 218.33, 218.64, 218.70, 218.71 and 218.72  
Repeal, §§218.73, 218.75, 218.76, 218.77 and 218.78  
(Relating to HB 2190 and Cleanup)

#### RECOMMENDATION

Action Item. Approval to publish the proposal of amendments in the *Texas Register*.

#### PURPOSE AND EXECUTIVE SUMMARY

The proposed amendments to 43 Texas Administrative Code (TAC) Chapter 218, as well as the repeals, are necessary to delete language regarding adjudicative practice and procedure. The proposed amendments refer to proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure). These amendments are also necessary to implement House Bill (HB) 2190 enacted during the 88th Texas Legislature, Regular Session (2023) and to clean up the language.

#### FINANCIAL IMPACT

For each year of the first five years the amendments and repeals will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no significant impact on local employment or the local economy as a result of the proposal.

#### BACKGROUND AND DISCUSSION

The proposed amendments to 43 Texas Administrative Code (TAC) Chapter 218 are necessary to delete language regarding adjudicative practice and procedure and to refer to proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure). These amendments are also necessary to implement HB 2190, which changed the word “accident” to “collision” in Transportation Code, §643.105. These amendments are also necessary to make the terminology consistent with statute and current practice.

The department is also proposing the repeal of 43 TAC §§218.73, 218.75, 218.76, 218.77, and 218.78, because the language from these sections would be incorporated into proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

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Chapter 218 – Motor Carriers

**PROPOSAL OF REVISIONS TO****SUBCHAPTER B. MOTOR CARRIER REGISTRATION****43 TAC §218.10 AND §218.16****SUBCHAPTER C. RECORDS AND INSPECTIONS****43 TAC §218.33****SUBCHAPTER E. CONSUMER PROTECTION****43 TAC §218.64****SUBCHAPTER F. ENFORCEMENT****43 TAC §§218.70, 218.71 AND 218.72****REPEAL OF****SUBCHAPTER F. ENFORCEMENT****43 TAC §§218.73, 218.75, 218.76, 218.77 AND 218.78**

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Subchapter B, Motor Carrier Registration, §218.10 and §218.16; Subchapter C, Records and Inspections, §218.33; Subchapter E, Consumer Protection, §218.64; and Subchapter F, Enforcement, §§218.70, 218.71 and 218.72. These amendments are necessary to delete language regarding adjudicative practice and procedure and to refer to proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure). In this issue of the *Texas Register*, the department proposes new Chapter 224, which would include all department adjudicative practice and procedure rules in one chapter. These amendments are also necessary to make the terminology consistent with statute and current practice, and to implement House Bill (HB) 2190 enacted during the 88th Texas Legislature, Regular Session (2023), which changed the word “accident” to “collision” in Transportation Code, §643.105. The department is also proposing the repeal of 43 TAC Subchapter F, Enforcement, §§218.73,

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## Chapter 218 – Motor Carriers

218.75, 218.76, 218.77, and 218.78, because those provisions would be incorporated into proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

**EXPLANATION.**

A proposed amendment to §218.10 would replace the word “accident” with “accidental” to be consistent with the terminology in Transportation Code, §643.106.

A proposed amendment to §218.16(d)(6) would replace the reference to orders issued or adopted by the department regarding self-insured status with a reference to the department’s approval letter. When the department grants an applicant self-insured status under §218.16(d) and Transportation Code, §643.102, it issues an approval letter that contains the scope and terms of the approval, including maintenance requirements. A proposed amendment to §218.16(d) would also clarify the scope of the reasons for which self-insured status could be revoked by referring to the applicable requirements under §218.16, instead of the requirements under §218.16(d)(6). In addition, a proposed amendment to §218.16(d)(6) would refer to proposed new Chapter 224 for the revocation of self-insured status.

Proposed amendments to §218.16(d)(7) would delete reference to revocation of self-insured status and modify the catch line to indicate this change because revocations are addressed in §218.16(d)(6). Revocations would be treated differently than a denial of an application for self-insured status under proposed new Chapter 224. Government Code, §2001.054 authorizes this distinction between the two actions and the applicable procedures. Proposed amendments to §218.16(d)(7) would also reference proposed new §224.126 of this title (relating to Appeal of a Denial of Self-Insured Status) regarding the filing of an appeal of a denial of an application for self-insured status, and clarify that the applicant would file an appeal, rather than a petition for an administrative hearing. In addition, a proposed amendment to §218.16(d)(7) would replace the reference to “self-insurance status” with a reference to “self-insured status” to be consistent with the terminology in §218.16(d). Further, a proposed amendment

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## Chapter 218 – Motor Carriers

1 to §218.16(d)(7) would delete the reference to Chapter 206, Subchapter D of this title (relating to  
2 Procedures in Contested Cases). In this issue of the *Texas Register*, the department is proposing  
3 amendments which would repeal Subchapter D of Chapter 206 and replace it with provisions in proposed  
4 new Chapter 224.

5 A proposed amendment to §218.16(h) would replace the word “accidents” with “collisions” to  
6 implement HB 2190, which changed the word “accident” to “collision” in Transportation Code, §643.105.

7 A proposed amendment to §218.33 would replace the reference to Subchapter F of Chapter 218  
8 with a reference to proposed new Chapter 224, which would include all department adjudicative practice  
9 and procedure rules in one chapter.

10 Proposed amendments to §218.64(c)(7) would delete language regarding the current procedure  
11 for non-approval of a collective ratemaking agreement under Transportation Code, §643.154. Proposed  
12 amendments would replace the language with a new procedure that would be governed by proposed new  
13 Chapter 224. Department staff do not recall having any hearings regarding the rejection of a collective  
14 ratemaking agreement, which may be because the requirements for an acceptable collective ratemaking  
15 agreement are minimal. The proposed deletions in §218.64(c)(7) would provide for greater flexibility in  
16 the procedure for these cases and would make the procedure consistent with Transportation Code,  
17 §643.154 and other contested cases under Transportation Code, Chapter 643 to the extent applicable.

18 A proposed amendment to the heading for Subchapter F of Chapter 218 would make the heading  
19 consistent with the proposed amendments and repeals in Subchapter F that would change the scope of  
20 the subchapter. Proposed amendments to §218.70 would make the section consistent with the proposed  
21 amendments to and repeals of sections within Subchapter F. In addition, proposed amendments to  
22 §218.70 would reference the assessment of civil penalties in certain cases under federal law regarding the  
23 interstate movement of household goods under current §218.71(c). A proposed amendment to §218.70



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## Chapter 218 – Motor Carriers

1 would also state that the enforcement actions under Chapter 218 are governed by Transportation Code,  
2 Chapters 643 and 645; and proposed new Chapter 224 of this title (relating to Adjudicative Practice and  
3 Procedure).

4 A proposed amendment to §218.70 would delete reference to Transportation Code, Chapter 648  
5 regarding foreign commercial motor transportation because the department enforces the insurance  
6 requirements under Transportation Code, Chapter 643, rather than Chapter 648. Transportation Code,  
7 §643.101(b) requires the department by rule to set the amount of liability insurance required for a motor  
8 carrier at an amount that does not exceed the amount required under a federal regulation adopted under  
9 49 U.S.C. §13906(a)(1). The insurance requirements in 49 C.F.R. Part 387 were adopted under 49 U.S.C.  
10 §13906. The department adopted the insurance requirements under Subchapter G of Chapter 218 under  
11 Transportation Code, §643.101(b). Also, Chapter 648 does not provide enforcement authority for the  
12 department; however, Transportation Code, Chapter 643 provides the department with enforcement  
13 authority, such as §§643.251, 643.252, 643.2525, 643.254, and 643.256.

14 Proposed amendments to §218.71 would delete subsections (b) and (d). In this issue of the *Texas*  
15 *Register*, the department is proposing new Chapter 224, which would include new §224.115 of this title  
16 (relating to Administrative Penalty Assessment and Probation of Suspension), which would contain the  
17 language found in current §218.71(b). Chapter 224 would also include new §224.116 of this title (relating  
18 to Administrative Proceedings), which would contain a modified version of the language the department  
19 proposes to delete from §218.71(d). A proposed amendment to §218.71 would re-letter subsection (c)  
20 due to the deletion of current subsection (b).

21 Proposed amendments to §218.72(a) would add language regarding the department's authority  
22 to deny a certificate of registration to a motor carrier under Transportation Code, §643.252, as well as the  
23 department's authority to place on probation a motor carrier whose registration is suspended. Proposed

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## Chapter 218 – Motor Carriers

1 amendments to §218.72 would also delete subsection (c) and re-letter current subsection (c) to  
2 subsection (d). In this issue of the *Texas Register*, the department is proposing new Chapter 224, which  
3 would include new §224.115 of this title (relating to Administrative Penalty Assessment and Probation of  
4 Suspension), which would contain a modified version of the language found in current §218.72(c)  
5 regarding the probation of any suspension ordered under Transportation Code, §643.252.

6 Proposed amendments would repeal the following sections: §§218.73, 218.75, 218.76, 218.77,  
7 and 218.78. In this issue of the *Texas Register*, the department is proposing new Chapter 224, which would  
8 include the language in these sections with some modifications. Current §218.73 would be addressed in  
9 proposed new §224.116 of this title (relating to Administrative Proceedings), current §218.75 would be  
10 addressed in proposed new §224.31 of this title (relating to Cost of Record on Appeal), current §218.76  
11 would be addressed in proposed new §224.120 of this title (relating to Registration Suspension Ordered  
12 Under Family Code), current §218.77 would be addressed in proposed new §224.114 of this title (relating  
13 to Cease and Desist Order), and current §218.78 would be addressed in proposed new §224.124 of this  
14 title (relating to Appeal of a Denial Under Transportation Code, §643.2526).

15 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,  
16 has determined that for each year of the first five years the amendments and repeals will be in effect,  
17 there will be no significant fiscal impact to state or local governments as a result of the enforcement or  
18 administration of the proposal. Jimmy Archer, Director of the Motor Carrier Division, has determined that  
19 there will be no significant impact on local employment or the local economy as a result of the proposal.

20 **PUBLIC BENEFIT AND COST NOTE.** Mr. Archer has also determined that, for each year of the first five  
21 years the amended and repealed sections are in effect, there are two anticipated public benefits regarding  
22 the amendments and repeals.

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## Chapter 218 – Motor Carriers

1           Anticipated Public Benefits. One anticipated public benefit as a result of the proposal is updated  
2 rules that would contain terminology that is consistent with statute and current practice. Another public  
3 benefit is that the repeal of language regarding adjudicative practice and procedure in Chapter 218 in  
4 conjunction with the department's proposal of new Chapter 224 would consolidate all of the  
5 department's rules regarding adjudicative practice and procedure in one chapter that provides more  
6 clarity, consistency regarding adjudicative practice and procedure, and consistency with statute.

7           Anticipated Costs To Comply With The Proposal. Mr. Archer anticipates that there will be no costs  
8 to comply with these rules.

9       **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government  
10 Code, §2006.002, the department has determined that the proposed amendments and repeals will not  
11 have an adverse economic effect on small businesses, micro-businesses, and rural communities because  
12 the changes are not sufficient to create an adverse economic effect. The department's current Chapter  
13 218 rules regarding adjudicative practice and procedure are proposed to be repealed, in conjunction with  
14 adding most of the repealed rule text to the proposed new Chapter 224 with some minor modifications,  
15 including modifications to make the rule text consistent with statute. In addition, the proposed  
16 amendments would not change the fact that the contested case procedures and requirements are  
17 primarily governed by Government Code, Chapter 2001 and 1 TAC Chapter 155, which are the rules of  
18 procedure for the State Office of Administrative Hearings (SOAH). Further, the proposed amendments  
19 would not change the fact that Transportation Code, Chapter 643 imposes certain requirements for a  
20 contested case under Chapter 643, such as the requirements in Transportation Code, §643.2525.  
21 Therefore, the department is not required to prepare a regulatory flexibility analysis under Government  
22 Code, §2006.002.

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## Chapter 218 – Motor Carriers

**TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the first five years the proposed amendments and repeals are in effect, no government program would be created or eliminated. Implementation of the proposed amendments and repeals would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments and repeals do not create a new regulation; however, they technically enable the expansion of an existing regulation regarding the department's adjudicative practice and procedure. The proposed amendments and repeals in Chapter 218 enable the department's proposed new Chapter 224 to govern the adjudicative practice and procedure under Chapter 218, which results in more detailed requirements and clarity for contested cases under Chapter 218. Lastly, the proposed amendments and repeals do not affect the number of individuals subject to the applicability of the rules and will not affect this state's economy.

**REQUEST FOR PUBLIC COMMENT.**

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on MM, DD, YYYY. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

**STATUTORY AUTHORITY.**

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## Chapter 218 – Motor Carriers

1           The department proposes amendments to §§218.10, 218.16, §218.33, 218.64, 218.70, 218.71,  
2   and 218.72; and repeals of §§218.73, 218.75, 218.76, 218.77, and 218.78 under Transportation Code  
3   §§643.003, 643.101(b), 643.102, 643.251, 643.252, 643.2525, 643.2526, 648.102, and 1002.001; and  
4   Government Code, §2001.004 and §2001.054, in addition to the statutory authority referenced  
5   throughout this preamble.

6           Transportation Code, §643.003 authorizes the department to adopt rules to administer  
7   Transportation Code, Chapter 643. Transportation Code, §643.101(b) requires the department by rule to  
8   set the amount of liability insurance required for a motor carrier at an amount that does not exceed the  
9   amount required under a federal regulation adopted under 49 U.S.C. §13906(a)(1). Transportation Code,  
10   §643.102 authorizes a motor carrier to comply with the requirements under Transportation Code,  
11   §643.101 through self-insurance if it complies with the requirements. Transportation Code, §643.251  
12   authorizes the department to impose an administrative penalty against a motor carrier required to  
13   register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter 643 or a rule or  
14   order adopted under Chapter 643. Transportation Code, §643.252 authorizes the department to suspend,  
15   revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a  
16   motor carrier whose registration is suspended. Transportation Code, §643.2525 provides the process for  
17   an administrative hearing under Transportation Code, Chapter 643. Transportation Code, §643.2526  
18   authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or  
19   reregistration under Transportation Code, Chapter 643. Transportation Code, Section 648.102 requires  
20   the department to adopt rules that conform with 49 C.F.R. Part 387 that require motor carriers operating  
21   foreign commercial motor vehicles in this state to maintain financial responsibility. Transportation Code,  
22   §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the  
23   powers and duties of the department under the Transportation Code and the other laws of this state.

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## Chapter 218 – Motor Carriers

1 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature  
2 and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies  
3 the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal  
4 of a license.

5 **CROSS REFERENCE TO STATUTE.** These rule revisions would implement Transportation Code, Chapters  
6 643, 645, and 648; and Government Code, Chapter 2001.

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## Chapter 218 – Motor Carriers

1   **TEXT.**

2                                   **SUBCHAPTER B. MOTOR CARRIER REGISTRATION**

3   §218.10. Purpose.

4           Transportation Code, Chapter 643, provides that a motor carrier may not operate a commercial  
5   motor vehicle or transport household goods on a for-hire basis on a road or highway of this state unless  
6   the carrier registers with the department or is exempt from registration under Transportation Code,  
7   §643.002. This subchapter prescribes the procedures by which a motor carrier, leasing business, or for-  
8   hire transporter of household goods may register, and sets out minimum insurance requirements and  
9   minimum workers' compensation or accidental [~~accident~~] insurance requirements.

11   §218.16. Insurance Requirements.

12           (a) Automobile liability insurance requirements. A motor carrier must file proof of commercial  
13   automobile liability insurance with the department on a form acceptable to the director for each vehicle  
14   required to be registered under this subchapter. The motor carrier must carry and maintain automobile  
15   liability insurance that is combined single limit liability for bodily injury to or death of an individual per  
16   occurrence, loss or damage to property (excluding cargo) per occurrence, or both. Extraneous  
17   information will not be considered acceptable, and the department may reject proof of commercial  
18   automobile liability insurance if it is provided in a format that includes information beyond what is  
19   required. Minimum insurance levels are indicated in the following table. However, a motor carrier that  
20   operates a foreign commercial motor vehicle must comply with the minimum level of financial  
21   responsibility in 49 C.F.R. Part 387 to the extent Part 387 prescribes a higher level of financial  
22   responsibility than the following table. The department adopts by reference 49 C.F.R. Part 387. Effective

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## Chapter 218 – Motor Carriers

October 23, 2015, the department adopts by reference the amendments to 49 C.F.R. Part 387 with an effective date of October 23, 2015.

[Attached Graphic](#)

(b) Cargo insurance. Household goods carriers shall file and maintain with the department proof of financial responsibility.

(1) The minimum limits of financial responsibility for a household goods carrier for hire is \$5,000 for loss or damage to a single shipper's cargo carried on any one motor vehicle.

(2) The minimum limits of financial responsibility for a household goods carrier for hire is \$10,000 for aggregate loss or damage to multiple shipper cargo carried on any one motor vehicle. In cases in which multiple shippers sustain damage and the aggregate amount of cargo damage is greater than the cargo insurance in force, the insurance company shall prorate the benefits among the shippers in relationship to the damage incurred by each shipper.

(c) Workers' compensation or accidental insurance coverage.

(1) A motor carrier that is required to register under this subchapter and whose primary business is transportation for compensation or hire between two or more incorporated cities, towns, or villages shall provide workers' compensation for all its employees or accidental insurance coverage in the amounts prescribed in paragraph (2) of this subsection.

(2) Accidental insurance coverage required by paragraph (1) of this subsection shall be at least in the following amounts:

(A) \$300,000 for medical expenses and coverage for at least 104 weeks;

(B) \$100,000 for accidental death and dismemberment, including 70 percent of employee's pre-injury income for not less than 104 weeks when compensating for loss of income; and

(C) \$500 for the maximum weekly benefit.



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## Chapter 218 – Motor Carriers

1 (d) Qualification of motor carrier as self-insured.

2 (1) General qualifications. A motor carrier may meet the insurance requirements of  
3 subsections (a) and (b) of this section by filing an application, in a form prescribed by the department, to  
4 qualify as a self-insured. The application must include a true and accurate statement of the motor  
5 carrier's financial condition and other evidence that establishes its ability to satisfy obligations for bodily  
6 injury and property damage liability without affecting the stability or permanency of its business. The  
7 department may accept USDOT evidence of the motor carrier's qualifications as a self-insured.

8 (2) Applicant guidelines. In addition to filing an application as prescribed by the  
9 department, an applicant for self-insured status must submit materials that will allow the department to  
10 determine the following information.

11 (A) Applicant's net worth. An applicant's net worth must be adequate in relation  
12 to the size of its operations and the extent of its request for self-insurance authority. The applicant must  
13 demonstrate that it can and will maintain an adequate net worth.

14 (B) Self-insurance program. An applicant must demonstrate that it has  
15 established and will maintain a sound insurance program that will protect the public against all claims  
16 involving motor vehicles to the same extent as the minimum security limits applicable under this  
17 section. In determining whether an applicant is maintaining a sound insurance program, the department  
18 will consider:

19 (i) reserves;

20 (ii) sinking funds;

21 (iii) third-party financial guarantees;

22 (iv) parent company or affiliate sureties;

23 (v) excess insurance coverage; and

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(vi) other appropriate aspects of the applicant's program.

(C) Safety program. An applicant must submit evidence of substantial

compliance with the federal motor carrier safety regulations as adopted by the Texas Department of

Public Safety and with Transportation Code, Chapter 644.

(3) Other securities or agreements. The department may accept an application for

approval of a security or agreement if satisfied that the security or agreement offered will adequately

protect the public.

(4) Periodic reports. An applicant shall file annual statements, semi-annual and quarterly

reports, and any other reports required by the department reflecting the applicant's financial condition

and the status of its self-insurance program while the motor carrier is self-insured.

(5) Duration and coverage of self-insured status. The department may approve an

applicant as a self-insured for any specific time or for an indefinite time. An approved self-insured status

only applies to the type of cargo that the applicant reported to the department in the application for

self-insured status.

(6) Revocation of self-insured status. On receiving evidence that a self-insured motor

carrier's financial condition has changed, that its safety program or record is inadequate, or that it is

otherwise not in compliance with this subchapter, the department may at any time require the self-

insured to provide additional information. On 10 days' notice from the department, the self-insured

shall appear and demonstrate that it continues to have adequate financial resources to pay all claims

involving motor vehicles for bodily injury and property damage liability. The self-insured shall also

demonstrate that it remains in compliance with the requirements of this section and of any active self-

insurance requirements included in the department's approval letter. ~~[orders issued or adopted by the~~

~~department.]~~ If an applicant fails to comply with the applicable requirements under this section, ~~[this~~

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paragraph,] its self-insured status may be revoked. The revocation of self-insured status will be governed by Transportation Code, Chapter 643 and Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

(7) Appeal of denial of application for self-insured status. An applicant may appeal a denial ~~[or revocation]~~ of self-insured ~~[self insurance]~~ status by filing an appeal ~~[a petition for an administrative hearing]~~ in accordance with §224.126 of this title (relating to Appeal of a Denial of Self-Insured Status). ~~[Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases).]~~

(e) Filing proof of insurance with the department.

(1) Forms.

(A) A motor carrier shall file and maintain proof of automobile liability insurance for all vehicles required to be registered under this subchapter at all times. This proof shall be filed on a form acceptable to the director.

(B) A household goods carrier shall also file and maintain proof of cargo insurance for its cargo at all times. This proof shall be on a form acceptable to the director.

(2) Filing proof of insurance. A motor carrier's insurer shall file and maintain proof of insurance on a form acceptable to the director:

(A) at the time of the original application for motor carrier certificate of registration;

(B) on or before the cancellation date of the insurance coverage as described in subsection (f) of this section;

(C) when the motor carrier changes insurers;

(D) when the motor carrier asks to retain the certificate number of a revoked certificate of registration;

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1 (E) when the motor carrier changes its name under §218.13(e)(2) of this title  
2 (relating to Application for Motor Carrier Registration);

3 (F) when the motor carrier, under subsection (a) of this section, changes the  
4 classification of the cargo being transported; and

5 (G) when replacing another active insurance filing.

6 (3) Filing fee. Each certificate of insurance or proof of financial responsibility filed with  
7 the department for the coverage required under this section shall be accompanied by a nonrefundable  
8 filing fee of \$100. This fee applies both when the carrier submits an original application and when the  
9 carrier submits a supplemental application when retaining a revoked certificate of registration number.

10 (4) Acceptable filings. The motor carrier's insurer must file proof of insurance with the  
11 department in a form prescribed by the department and approved by an authorized agent of the  
12 insurer.

13 (f) Cancellation of insurance coverage. Except when replaced by another acceptable form of  
14 insurance coverage or proof of financial responsibility approved by the department, no insurance  
15 coverage shall be canceled or withdrawn until 30 days after notice has been given to the department by  
16 the insurer in a form approved by the department. Nonetheless, proof of insurance coverage for a seven  
17 day or 90 day certificate of registration may be canceled by the insurer without 30 days' notice if the  
18 certificate of registration is expired, suspended, or revoked, and the insurer provides a cancellation date  
19 on the proof of insurance coverage.

20 (g) Replacement insurance filing. The department will consider a new insurance filing as the  
21 current record of financial responsibility required by this section if:

22 (1) the new insurance filing is received by the department; and

23 (2) a cancellation notice has not been received for previous insurance filings.

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(h) Insolvency of insurance carrier. If the insurer of a motor carrier becomes insolvent or becomes involved in a receivership or other insolvency proceeding, the motor carrier must file an affidavit with the department. The affidavit must be executed by an owner, partner, or officer of the motor carrier and show that:

(1) no collisions ~~[accidents]~~ have occurred and no claims have arisen during the insolvency of the insurance carrier; or

(2) all claims have been satisfied.

**SUBCHAPTER C. RECORDS AND INSPECTIONS**

§218.33. Enforcement.

A motor carrier who fails or refuses to permit an inspection, fails to maintain and make available the requisite records, or otherwise fails to comply with the requirements of this subchapter commits a violation subject to enforcement under Chapter 224 of this title (relating to Adjudicative Practice and Procedure). ~~[Subchapter F of this chapter (relating to Enforcement).]~~

**SUBCHAPTER E. CONSUMER PROTECTION**

§218.64. Rates.

(a) Ratemaking. A household goods carrier and/or its household goods agent shall set maximum rates and charges for services in its applicable tariff. The household goods carrier and/or its household goods agent shall disclose the maximum rates and charges to prospective shippers before transporting a shipment between two incorporated cities.

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(b) Prohibited charges and allowances. A household goods carrier and/or its household goods agent shall not charge more than the maximum charges published in its tariff on file with the department for services associated with transportation between two incorporated cities.

(c) Collective ratemaking agreements.

(1) Eligibility. In accordance with Transportation Code, §643.154, a household goods carrier and/or its household goods agent may enter into collective ratemaking agreements between one or more other household goods carriers or household goods agents concerning the establishment and filing of maximum rates and charges, classifications, rules, or procedures.

(2) Designation of collective ratemaking associations. An approved association may be designated by a member household goods carrier as its collective ratemaking association for the purpose of filing a tariff containing maximum rates and charges required by §218.65 of this title (relating to Tariff Registration).

(3) Submission. In accordance with Transportation Code, §643.154, a collective ratemaking agreement shall be filed with the department for approval. The agreement shall include the following information:

(A) full and correct name, business address (street and number, city, state and zip code), and phone number of the association;

(B) whether the association is a corporation or partnership; and

(i) if a corporation, the government, state, or territory under the laws of which the applicant was organized and received its present charter; and

(ii) if an association or a partnership, the names of the officers or partners and date of formation;

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1 (C) full and correct name and business address (city and state) of each  
2 household goods carrier on whose behalf the agreement is filed and whether it is an association, a  
3 corporation, an individual, or a partnership;

4 (D) the name, title, and mailing address of counsel, officer, or other person to  
5 whom correspondence in regard to the agreement should be addressed; and

6 (E) a copy of the constitution, bylaws, or other documents or writings, specifying  
7 the organization's powers, duties, and procedures.

8 (4) Signature. The collective ratemaking agreement shall be signed by all parties subject  
9 to the agreement or the association's executive officer.

10 (5) Incomplete agreement. If the department receives an agreement which does not  
11 comply with this subsection, the department will send a letter to the individual submitting the  
12 agreement. The letter shall identify the information that is missing and advise the association that the  
13 agreement will not be processed until the information is received.

14 (6) Approval. In accordance with Transportation Code, §643.154, the director or  
15 designee will approve a collective ratemaking agreement if the agreement provides that:

16 (A) all meetings are open to the public; and

17 (B) notice of meetings shall be sent to shippers who are multiple users of  
18 household good carriers.

19 (7) Noncompliance. If the director or the director's designee determines that an  
20 agreement does not comply with paragraph (6) of this subsection, the matter will be governed by  
21 Transportation Code, Chapter 643 and Chapter 224 of this title (relating to Adjudicative Practice and  
22 Procedure).

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1                   ~~[(A) If the director or designee determines that an agreement does not comply~~  
2 ~~with paragraph (6) of this subsection, the department will notify the association representative by~~  
3 ~~certified mail of:]~~

4                                 ~~[(i) the specific reason that an agreement is not being approved; and]~~

5                                 ~~[(ii) the hearing date.]~~

6                   ~~[(B) If the association representative resubmits an acceptable agreement which~~  
7 ~~meets the requirements of paragraph (6) of this subsection within 10 business days prior to the hearing~~  
8 ~~date, the hearing will be canceled and the agreement will be approved. The State Office of~~  
9 ~~Administrative Hearings (SOAH) shall conduct the hearing in accordance with Chapter 206, Subchapter D~~  
10 ~~of this title (relating to Procedures in Contested Cases).]~~

11                   ~~[(C) If the hearing is held, the presiding officer shall explain the reason(s) that~~  
12 ~~the agreement was rejected. The association representative will be allowed to respond to the objections~~  
13 ~~and present evidence or exhibits which relate to his or her response. The hearing examiner, based on~~  
14 ~~the evidence provided, will make a recommendation to the board whether the agreement should be~~  
15 ~~approved or resubmitted. The association representative shall be advised of the examiner's~~  
16 ~~recommendation. The final order will be submitted to the board for approval.]~~

17                   (8) New parties to an agreement. An updated agreement shall be filed with the  
18 department as new parties are added.

19                   (9) Amendments to approved agreements. Amendments to approved agreements  
20 (other than as to new parties) may become effective only after approval of the department.

21  
22                   **SUBCHAPTER F. ADMINISTRATIVE PENALTIES AND SANCTIONS [ENFORCEMENT]**

23                   §218.70. Purpose.



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## Chapter 218 – Motor Carriers

1 The purpose of this subchapter is to provide for administrative penalties and sanctions under  
2 Transportation Code, Chapters 643 and 645, as well as the probation of the suspension of a motor  
3 carrier's certificate of registration. This subchapter also provides for the assessment of civil penalties in  
4 certain cases under federal law regarding the interstate movement of household goods. The  
5 enforcement actions under this chapter are governed by Transportation Code, Chapters 643 and 645;  
6 and Chapter 224 of this title (relating to Adjudicative Practice and Procedure), as applicable. [an efficient  
7 and effective system of enforcement of Transportation Code, Chapters 643, 645, and 648, by  
8 establishing procedures for the assessment of administrative penalties; the suspension, revocation, and  
9 denial of motor carrier registration and leasing business registration; cease and desist orders; and  
10 probation of the suspension of a motor carrier's certificate of registration.]

11  
12 §218.71. Administrative Penalties.

13 (a) Authority. The department, after notice and opportunity for hearing, may impose an  
14 administrative penalty against the following:

15 (1) a motor carrier that violates a provision of Transportation Code, Chapter 643 or  
16 Chapter 645 or violates a rule or order adopted under Transportation Code, Chapter 643 or Chapter 645;  
17 or

18 (2) a motor carrier or broker that violates a federal law or regulation, the enforcement  
19 of which has been delegated to the department.

20 (b) ~~[Amount of administrative penalty for violations of state laws, rules, or orders.]~~

21 ~~[(1) In an action brought by the department, the aggregate amount of administrative~~  
22 ~~penalty shall not exceed \$5,000 unless it is found that the motor carrier knowingly committed a~~  
23 ~~violation.]~~

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1                   ~~[(2) In an action brought by the department, if it is found that the motor carrier~~  
2                   ~~knowingly committed a violation, the aggregate amount of administrative penalty shall not exceed~~  
3                   ~~\$15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation, or~~  
4                   ~~acting with deliberate ignorance of or reckless disregard for the violation involved. Actual awareness~~  
5                   ~~may be inferred from the conduct of the alleged violator or from the history of previous violations by~~  
6                   ~~the alleged violator.]~~

7                   ~~[(3) In an action brought by the department, if it is found that the motor carrier~~  
8                   ~~knowingly committed multiple violations, the aggregate amount of administrative penalty for the~~  
9                   ~~multiple violations shall not exceed \$30,000.]~~

10                   ~~[(4) Each day a violation continues or occurs is a separate violation for purposes of~~  
11                   ~~imposing an administrative penalty.]~~

12                   ~~[(e)]~~ Memorandum of Agreement. Pursuant to a Memorandum of Agreement between the  
13                   department and the Federal Motor Carrier Safety Administration, United States Department of  
14                   Transportation, the department is authorized to initiate an enforcement action and assess civil penalties  
15                   against a motor carrier or broker, as applicable, under the authority of the following:

16                   (1) 49 U.S.C. §§13702, 13704, 13707(b), 13901, 14104(b), 14706(f), 14708, 14710,  
17                   14901(d)(2) and (3), 14901(e), and 14915, as amended;

18                   (2) 49 C.F.R. §§366.4, 370.3-370.9, 371.3(c), 371.7, 371.105, 371.107, 371.109, 371.111,  
19                   371.113, 371.115, 371.117, 371.121, 373.201, Part 375, §§378.3 - 378.9, 387.301(b), 387.307, 387.403,  
20                   and Part 386 Appendix B(g)(22) - (23), as amended; and

21                   (3) any future delegations pursuant to 49 U.S.C. §14710.

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~~[(d) Enforcement process for federal laws and regulations. The department will follow the process set forth in Transportation Code, §643.2525 when enforcing the federal laws and regulations cited in subsection(c) of this section via an administrative proceeding.]~~

## §218.72. Administrative Sanctions.

(a) Grounds for suspension, ~~[and]~~ revocation, denial, and probation. Transportation Code, §643.252 provides the grounds on ~~[for]~~ which the department can suspend, ~~[or]~~ revoke, or deny a certificate of registration issued under Transportation Code, Chapter 643. Transportation Code, §643.252 also provides the grounds on which the department can place on probation a motor carrier whose registration is suspended.

## (b) Department of Public Safety enforcement recommendations.

(1) The department may suspend or revoke a certificate of registration of a motor carrier upon a written request by the Department of Public Safety, if a motor carrier:

(A) has an unsatisfactory safety rating under 49 C.F.R., Part 385; or

(B) has multiple violations of Transportation Code, Chapter 644, a rule adopted under that chapter, or Transportation Code, Title 7, Subtitle C.

(2) A request under paragraph (1) of this subsection must include documentation showing the violation.

(c) ~~[Probation.]~~

~~[(1) The department may probate any suspension ordered under this section.]~~

~~[(2) In determining whether to probate a suspension, the department will review:]~~

~~[(A) the seriousness of the violation;]~~

~~[(B) prior violations by the motor carrier;]~~

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1 ~~[(C) whether the department has previously probated a suspension for the~~  
2 ~~motor carrier;]~~

3 ~~[(D) cooperation by the motor carrier in the investigation and enforcement~~  
4 ~~proceeding; and]~~

5 ~~[(E) the ability of the motor carrier to correct the violations.]~~

6 ~~[(3) The department shall set the length of the probation based on the seriousness of~~  
7 ~~the violation and previous violations by the motor carrier.]~~

8 ~~[(4) The department will require that the motor carrier report monthly to the~~  
9 ~~department any information necessary to determine compliance with the terms of the probation.]~~

10 ~~[(5) The department may revoke the probation and order the initial suspension and~~  
11 ~~administrative penalty if the motor carrier fails to abide by any terms of the probation.]~~

12 ~~[(d)]~~ Refund.

13 (1) The department may order a motor carrier that violates Transportation Code  
14 Chapter 643, department rules, or a department order adopted under Transportation Code Chapter 643  
15 to issue a refund to a customer who paid the motor carrier to transport household goods.

16 (2) Under this subsection, a refund is the return of any percentage of funds paid, or  
17 contracted to be paid, to a motor carrier transporting household goods, whether those funds are  
18 documented as a separate line item or included in the overall amount paid by a customer.

19 (A) A refund includes overpayments, fees paid for services not rendered, and  
20 fees paid for charges not listed on the household mover's tariff after the household mover takes  
21 possession of the customer's property.

22 (B) A refund does not include any consideration of damages or harm over the  
23 amount paid by the customer.

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~~[§218.73. Administrative Proceedings.]~~

~~[(a) If the department decides to take an enforcement action under §218.71 of this title (relating to Administrative Penalties) or §218.72 of this title (relating to Administrative Sanctions), the department shall give written notice to the motor carrier by first class mail to the carrier's address as shown in the records of the department.]~~

~~[(b) The notice required by subsection (a) of this section must include:]~~

~~[(1) a brief summary of the alleged violation;]~~

~~[(2) a statement of each sanction and/or penalty;]~~

~~[(3) the effective date of each sanction and/or penalty;]~~

~~[(4) a statement informing the carrier of the carrier's right to request a hearing;]~~

~~[(5) a statement as to the procedure for requesting a hearing, including the period during which a request must be made; and]~~

~~[(6) a statement that the proposed penalties and sanctions will take effect on the date specified in the letter if the motor carrier fails to request a hearing.]~~

~~[(c) The motor carrier must submit a written request for a hearing to the address provided in the notice not later than the 26th day after the date the notice is mailed.]~~

~~[(d) On receipt of the written request for a hearing the department will refer the matter to the State Office of Administrative Hearings. When the hearing is set, the department will give notice of the time and place of the hearing to the carrier.]~~

~~[(e) If the motor carrier does not make a written request for a hearing or enter into a settlement agreement before the 27th day after the date the notice is mailed, the department's decision becomes final.]~~

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1           ~~[(f) Except as provided by Transportation Code, Chapter 643 and this chapter, any proceeding at~~  
2           ~~the State Office of Administrative Hearings is governed by Government Code, Chapter 2001 and 1 TAC~~  
3           ~~Chapter 155, including the authority to informally dispose of the contested case by stipulation, agreed~~  
4           ~~settlement, consent order, or default.]~~

5           ~~[(g) The department and the motor carrier may informally dispose of the enforcement action by~~  
6           ~~entering into a settlement agreement or agreeing to stipulations at any time before the director issues a~~  
7           ~~final order. However, the motor carrier must pay any penalty in full prior to the execution of a~~  
8           ~~settlement agreement.]~~

9  
10           ~~[\$218.75. Cost of Preparing Agency Record.]~~

11           ~~[In the event that a final decision is appealed and the department is required to transmit to the~~  
12           ~~court the original or a certified copy of the record, or any part thereof, the appealing party shall pay the~~  
13           ~~costs of preparation of such record, unless waived by the department in whole or in part.]~~

14  
15           ~~[\$218.76. Registration Suspension Ordered under Family Code.]~~

16           ~~[(a) On receipt of a final order issued under Family Code, §232.003, §232.008, or §232.009,~~  
17           ~~regarding child support enforcement, the department will suspend:]~~

18                     ~~[(1) a certificate of registration issued under Subchapter B of this chapter (relating to~~  
19           ~~Motor Carrier Registration); or]~~

20                     ~~[(2) the registration of an interstate motor carrier issued under §218.17 of this title~~  
21           ~~(relating to Unified Carrier Registration System).]~~

22           ~~[(b) The department will charge an administrative fee of \$10 to a person whose registration is~~  
23           ~~suspended under this section.]~~

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1           ~~[(c) A suspension under this section does not require the department to give notice or otherwise~~  
2           ~~follow the administrative process provided under §218.73 of this title (relating to Administrative~~  
3           ~~Proceedings).]~~

4           ~~[(d) A registration suspended under this section may only be reinstated on receipt of an order~~  
5           ~~issued under Family Code, §232.013.]~~

6  
7           ~~[\$218.77. Cease and Desist Order.]~~

8           ~~[(a) The department may issue a cease and desist order to a respondent:]~~  
9                     ~~[(1) who engages or represents itself to be engaged in a motor carrier operation that is~~  
10           ~~in violation of this chapter;]~~

11                     ~~[(2) to prevent a violation of this chapter; and]~~

12                     ~~[(3) to protect the public health and safety.]~~

13           ~~[(b) The order shall:]~~

14                     ~~[(1) be delivered by personal delivery or registered or certified mail, return receipt~~  
15           ~~requested, to the person's or entities last known address; and]~~

16                     ~~[(2) state the effective date of the order.]~~

17           ~~[(c) The department's cease and desist order is final, unless within ten days of the service of the~~  
18           ~~order, the respondent files a written request for hearing to the department.]~~

19           ~~[(d) If a request for hearing is filed, the department shall initiate a contested case with the State~~  
20           ~~Office of Administrative Hearing in accordance with Chapter 206, Subchapter D of this title (relating to~~  
21           ~~Procedures in Contested Cases).]~~

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1           ~~[(e) The cease and desist order shall remain in effect until the respondent comes into complete~~  
2 ~~compliance with department directives and decisions, or unless otherwise provided by an order issued~~  
3 ~~after final review by the department.]~~

4           ~~[(f) If respondent violates a cease and desist order, the department may:]~~

5                     ~~[(1) impose an administrative penalty against the respondent; and]~~

6                     ~~[(2) refer the matter to the appropriate authority to institute actions for:]~~

7                             ~~[(A) an injunction against violation of the cease and desist order;]~~

8                             ~~[(B) collection of any administrative penalty assessed by the department; and]~~

9                             ~~[(C) any other remedy provided by law.]~~

10           ~~[(g) Nothing in this section precludes the department from imposing other administrative~~  
11 ~~sanctions against the respondent while a cease and desist order is in effect.]~~

12  
13 ~~[\$218.78. Appeal of Denial.]~~

14           ~~[(a) Pursuant to Transportation Code, §643.2526, an applicant may appeal the denial of an~~  
15 ~~application for registration, renewal of registration, or reinstatement of registration.]~~

16           ~~[(b) The appeal will be governed by Chapter 206, Subchapter D of this title (relating to~~  
17 ~~Procedures in Contested Cases), which includes §206.64 of this title (relating to Content of Petition).]~~

18           ~~[(c) The applicant's appeal will be considered untimely if it is not filed with the department by~~  
19 ~~the 26th day after the date of the department's denial of the application. The department will not~~  
20 ~~consider an untimely appeal.]~~

21           ~~[(d) An application that is considered to be withdrawn under Transportation Code, §643.055 is~~  
22 ~~not a denial of an application for the purposes of an appeal under Transportation Code, §643.2526.]~~



**Board Meeting Date: 12/14/2023**  
**ACTION ITEM**

**To:** Texas Department of Motor Vehicles Board  
**From:** Jimmy Archer, Motor Carrier Division Director  
**Agenda Item:** 14  
**Subject:** Chapter 219. Oversize and Overweight Vehicles and Loads  
Amendments, §§219.82, 219.120, 219.121, and 219.126  
Repeal, §§219.122, 219.124 and 219.127  
(Relating to Cleanup)

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#### RECOMMENDATION

Action Item. Approval to publish the proposal of amendments and repeals in the *Texas Register*.

#### PURPOSE AND EXECUTIVE SUMMARY

The proposed amendments to 43 Texas Administrative Code (TAC) Chapter 219, as well as the repeals, are necessary to delete language regarding adjudicative practice and procedure and to clean up the rule text.

#### FINANCIAL IMPACT

For each year of the first five years the amendments and repeals will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no significant impact on local employment or the local economy as a result of the proposal. These amendments are also necessary to clean up the rule text.

#### BACKGROUND AND DISCUSSION

The proposed amendments to 43 Texas Administrative Code (TAC) Chapter 219 are necessary to delete language regarding adjudicative practice and procedure and to refer to proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure). The proposed amendments also refer to proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

The department is also proposing the repeal of 43 TAC §219.122 because current subsection (a) repeats language found in statute, and current subsection (b) is not expressly authorized under Transportation Code, Chapter 623. In addition, the department is proposing the repeal of §219.124 and §219.127 because the language from these sections would be incorporated into proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

**PROPOSAL OF REVISIONS TO****SUBCHAPTER F. COMPLIANCE****§219.82****SUBCHAPTER H. ENFORCEMENT****§§219.120, 219.121, AND 219.126****REPEAL OF****SUBCHAPTER H. ENFORCEMENT****§§219.122, 219.124 AND 219.127**

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Subchapter F, Compliance, §219.82; and Subchapter H, Enforcement, §§219.120, 219.121, and 219.126. The department also proposes the repeal of Subchapter H, Enforcement, §§219.122, 219.124, and 219.127.

These amendments and repeals are necessary to delete language regarding adjudicative practice and procedure. In addition, the amendments are necessary to refer to proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure), which the department proposes in this issue of the *Texas Register* to include all department adjudicative practice and procedure rules in one chapter.

**EXPLANATION.**

Amendments to §219.82 would delete the word “enforcement” and add a reference to proposed new Chapter 224, which would apply to any adjudicative practice and procedure under the department’s rules, including Chapter 219.

A proposed amendment to the heading for Subchapter H of Chapter 219 would make the heading consistent with the rules under Subchapter H because the proposed amendments and repeals would

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1 change the contents of this subchapter. Proposed amendments to §219.120 would make the section  
2 consistent with the proposed amendments to and repeals of sections within Subchapter H. A proposed  
3 amendment to §219.120 would also state that the enforcement actions under this chapter are governed  
4 by Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code,  
5 Chapters 621 through 623 for clarity and ease of reference.

6 Proposed amendments to §219.121 would replace the current language with a summary of the  
7 department's authority under Transportation Code, §623.271 to investigate and impose an administrative  
8 penalty or revoke an oversize or overweight permit. Current language in §219.121(a) repeats the language  
9 found in in Transportation Code, §623.271. It is not necessary to repeat statutory language in rules. A  
10 proposed amendment to the title of §219.121 would include sanctions and a reference to Transportation  
11 Code, §623.271 to address the expanded scope of §219.121 due to the proposed amendments and to  
12 distinguish §219.121 from §219.126 of this title (relating to Administrative Penalty for False Information  
13 on Certificate by a Shipper) regarding the administrative penalty under Transportation Code, §623.272.

14 Proposed amendments to §219.121(b) would delete the language regarding the calculation of  
15 administrative penalties under Transportation Code, §623.271, which says the amount of an  
16 administrative penalty imposed under §623.271 is calculated in the same manner as the amount of an  
17 administrative penalty imposed under Transportation Code, §643.251. In this issue of the *Texas Register*,  
18 the department proposes new Chapter 224 of this title (relating to Adjudicative Practice and Procedure).  
19 The language in current §219.121(b) would be addressed in proposed new §224.115 of this title (relating  
20 to Administrative Penalty Assessment and Probation of Suspension).

21 A proposed amendment would repeal §219.122. Current language in §219.122(a) repeats the  
22 language found in Transportation Code, §623.271. It is not necessary to repeat statutory language in rules.  
23 Current language in §219.122(b) is not expressly authorized under Transportation Code, Chapter 623.

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1           A proposed amendment to §219.126 would delete subsection (b) because a proposed  
2 amendment to §219.120 would state that the enforcement actions under this chapter are governed by  
3 Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code,  
4 Chapters 621 through 623. It is not necessary for §219.126 to cite the specific provisions in proposed new  
5 Chapter 224 regarding notice and hearing requirements. A proposed amendment to §219.126 would also  
6 delete subsection (c) regarding the calculation of an administrative penalty under §219.126. In this issue  
7 of the *Texas Register*, the department proposes new Chapter 224 of this title (relating to Adjudicative  
8 Practice and Procedure). The language in current §219.126(c) would be addressed in proposed new  
9 §224.115 of this title (relating to Administrative Penalty Assessment and Probation of Suspension). Due  
10 to the proposed deletions of §219.126(b) and (c), a proposed amendment to §219.126 would delete the  
11 “(a)” because there would only be one subsection in §219.126. An amendment to §219.126 would also  
12 cite to Transportation Code, §623.272 as the authority for the administrative penalty to help distinguish  
13 §219.126 from the provisions in §219.121 regarding the administrative penalty under Transportation  
14 Code, §623.271.

15           Proposed amendments would repeal §219.124 and §219.127. In this issue of the *Texas Register*,  
16 the department proposes new Chapter 224, which would include the language in current §219.124 and  
17 §219.127 with some modifications. Current §219.124 would be addressed in proposed new §224.116 of  
18 this title (relating to Administrative Proceedings). Current §219.127 would be addressed in proposed new  
19 §224.31 of this title (relating to Cost of Record on Appeal).

20 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,  
21 has determined that for each year of the first five years the amendments and repeals will be in effect,  
22 there will be no significant fiscal impact to state or local governments as a result of the enforcement or  
23 administration of the proposal. Jimmy Archer, Director of the Motor Carrier Division (MCD), has

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1 determined that there will be no significant effect on local employment or the local economy as a result  
2 of the proposal.

3 **PUBLIC BENEFIT AND COST NOTE.** Mr. Archer has also determined that, for each year of the first five  
4 years amendments and repeals will be in effect, there is one anticipated public benefit as a result of the  
5 amendments and repeals.

6 Anticipated Public Benefits. The anticipated public benefit is that the repeal of language regarding  
7 adjudicative practice and procedure in Chapter 219 in conjunction with the department's proposed new  
8 Chapter 224 would consolidate all of the department's rules regarding adjudicative practice and  
9 procedure in one chapter that provides more clarity and consistency.

10 Anticipated Costs To Comply With The Proposal. Mr. Archer anticipates that there will be no costs  
11 to comply with these amendments and repeals.

12 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government  
13 Code, §2006.002, the department has determined that the proposed amendments and repeals will not  
14 have an adverse economic effect on small businesses, micro-businesses, and rural communities because  
15 the changes are not sufficient to create an adverse economic effect. The department's current Chapter  
16 219 rules regarding adjudicative practice and procedure are proposed to be repealed, in conjunction with  
17 adding most of the repealed rule text to the proposed new Chapter 224 with some minor modifications.  
18 In addition, the proposed amendments would not change the fact that the contested case procedures and  
19 requirements are primarily governed by Government Code, Chapter 2001 and 1 TAC Chapter 155, which  
20 are the rules of procedure for the State Office of Administrative Hearings (SOAH). Further, the proposed  
21 amendments would not change the fact that Transportation Code, Chapter 623 imposes certain  
22 requirements for a contested case under Chapters 621 through 623, such as the requirements in

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1 Transportation Code, §623.271. Therefore, the department is not required to prepare a regulatory  
2 flexibility analysis under Government Code, §2006.002.

3 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests  
4 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property  
5 that would otherwise exist in the absence of government action and, therefore, does not constitute a  
6 taking or require a takings impact assessment under Government Code, §2007.043.

7 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the  
8 first five years the proposed amendments and repeals are in effect, no government program would be  
9 created or eliminated. Implementation of the proposed amendments and repeals would not require the  
10 creation of new employee positions or elimination of existing employee positions. Implementation would  
11 not require an increase or decrease in future legislative appropriations to the department or an increase  
12 or decrease of fees paid to the department. The proposed amendments and repeals do not create a new  
13 regulation; however, they technically enable the expansion of an existing regulation regarding the  
14 department's adjudicative practice and procedure. The proposed amendments and repeals in Chapter  
15 219 enable the department's proposed new Chapter 224 to govern the adjudicative practice and  
16 procedure under Chapter 219, which results in more detailed requirements and clarity. Lastly, the  
17 proposed amendments and repeals do not affect the number of individuals subject to the rule's  
18 applicability and will not affect this state's economy.

19 **REQUEST FOR PUBLIC COMMENT.**

20 If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on MM,  
21 DD, YYYY. A request for a public hearing must be sent separately from your written comments. Send  
22 written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1 Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is  
2 held, the department will consider written comments and public testimony presented at the hearing.

3 **STATUTORY AUTHORITY.**

4 The department proposes amendments to §§219.82, 219.120, 219.121, and 219.126 and repeals  
5 of §§219.122, 219.124, and 219.127 under Transportation Code §§621.008, 622.002, 623.002, 623.271,  
6 623.272, and 1002.001; and Government Code, §2001.004 and §2001.054, in addition to the statutory  
7 authority referenced throughout this preamble.

8 Transportation Code, §621.008 authorizes the board to adopt rules that are necessary to  
9 implement and enforce Transportation Code, Chapter 621. Transportation Code, §622.002 authorizes the  
10 board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622,  
11 including Transportation Code, §622.051, *et seq.*, which authorize the department to issue a permit for  
12 transporting poles required for the maintenance of electric power transmission and distribution lines.  
13 Transportation Code, §623.002 authorizes the board to adopt rules that are necessary to implement and  
14 enforce Transportation Code, Chapter 623. Transportation Code, §623.271 authorizes the department to  
15 impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation  
16 Code, Chapter 623. Transportation Code, §623.271 also states that the notice and hearing requirements  
17 under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or the  
18 revocation of a permit under §623.271. Transportation Code, §623.272 authorizes the department to  
19 impose an administrative penalty on a shipper who violates a provision under §623.272 or §623.274.  
20 Transportation Code, §623.272 also states that the notice and hearing requirements under Transportation  
21 Code, §643.2525 apply to the imposition of an administrative penalty under §623.272. Transportation  
22 Code, §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement  
23 the powers and the duties of the department under the Transportation Code and other laws of this state.

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature  
2 and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies  
3 the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal  
4 of a license.

5 **CROSS REFERENCE TO STATUTE.** These rule revisions would implement Transportation Code, Chapters  
6 621, 622, and 623; and Government Code, Chapter 2001.



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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1 TEXT.

2 SUBCHAPTER F. COMPLIANCE

3

4 §219.82. Falsification of Information on Application and Permit.

5 (a) A person who provides false information on the permit application or another form required

6 by the department for the issuance of an oversize or overweight permit commits a violation of this

7 chapter and is subject to revocation of an oversize or overweight permit and the [enforcement]

8 provisions of Subchapter H of this chapter and Chapter 224 of this title (relating to Adjudicative Practice

9 and Procedure).

10 (b) A person violates this chapter if the person produces a counterfeit permit or alters a permit

11 issued by the department.

12

13 SUBCHAPTER H. ADMINISTRATIVE PENALTIES AND SANCTIONS [ENFORCEMENT]

14 §219.120. Purpose.

15 The purpose of this subchapter is to provide for administrative penalties and sanctions under

16 Transportation Code, Chapters 621 through 623. The enforcement actions under this chapter are

17 governed by Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and

18 Transportation Code, Chapters 621 through 623. [an efficient and effective system of enforcement of

19 Transportation Code, Chapters 621, 622, and 623 and the rules adopted under those chapters by setting

20 out procedures for administrative penalties, revocation, and denial of oversize or overweight permits.]

21

22 §219.121. Administrative Penalties and Sanctions under Transportation Code, §623.271.

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1           Transportation Code, §623.271 authorizes the department to investigate and impose an  
2   administrative penalty or revoke an oversize or overweight permit issued under Transportation Code,  
3   Chapter 623.

4           ~~[(a) Authority. The department, after notice and opportunity for hearing, may impose an~~  
5   ~~administrative penalty against a person or the holder of the permit who:]~~

6                     ~~[(1) provides false information on a permit application or another form required by the~~  
7   ~~department concerning the issuance of an oversize or overweight permit;]~~

8                     ~~[(2) violates this chapter or Transportation Code, Chapters 621, 622, or 623;]~~

9                     ~~[(3) violates an order adopted under this chapter or Transportation Code, Chapters 621,~~  
10   ~~622, or 623; or]~~

11                    ~~[(4) fails to obtain an oversize or overweight permit that is required under this chapter~~  
12   ~~or Transportation Code, Chapters 621, 622, or 623.]~~

13           ~~[(b) Amount of administrative penalty.]~~

14                    ~~[(1) In an action brought by the department, the aggregate amount of administrative~~  
15   ~~penalty shall not exceed \$5,000 unless it is found that the person or the holder of the permit knowingly~~  
16   ~~committed a violation.]~~

17                    ~~[(2) In an action brought by the department, if it is found that the person or the holder~~  
18   ~~of the permit knowingly committed a violation, the aggregate amount of administrative penalty shall not~~  
19   ~~exceed \$15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation,~~  
20   ~~or acting with deliberate ignorance of or reckless disregard for the violation involved. Actual awareness~~  
21   ~~may be inferred from the conduct of the alleged violator or from the history of previous violations by~~  
22   ~~the alleged violator.]~~

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1                   ~~[(3) In an action brought by the department, if it is found that the person or the holder~~  
2                   ~~of the permit knowingly committed multiple violations, the aggregate amount of administrative penalty~~  
3                   ~~for the multiple violations shall not exceed \$30,000.]~~

4                   ~~[(4) Each day a violation continues or occurs is a separate violation for purposes of~~  
5                   ~~imposing an administrative penalty.]~~

6                   ~~[(5) Any recommendation that an administrative penalty should be imposed must be~~  
7                   ~~based on the following factors:]~~

8                                 ~~[(A) the seriousness of the violation, including the nature, circumstances, extent,~~  
9                                 ~~and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or~~  
10                                ~~economic welfare of the public;]~~

11                               ~~[(B) the economic harm to property or the environment caused by the~~  
12                               ~~violation;]~~

13                               ~~[(C) the history of previous violations;]~~

14                               ~~[(D) the amount necessary to deter future violations;]~~

15                               ~~[(E) efforts made to correct the violation; and]~~

16                               ~~[(F) any other matters that justice may require.]~~

17  
18                   ~~[§219.122. Administrative Sanctions.]~~

19                   ~~[(a) The department may revoke, suspend, or deny an oversize or overweight permit if the~~  
20                   ~~person or permit holder:]~~

21                               ~~[(1) provides false information on the permit application or another form provided to~~  
22                   ~~the department concerning the issuance of an oversize or overweight permit;]~~

23                               ~~[(2) violates this chapter or Transportation Code, Chapters 621, 622, or 623;]~~

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1                   ~~[(3) violates an order adopted under this chapter or Transportation Code, Chapters 621,~~  
2   ~~622, or 623; or]~~

3                   ~~[(4) fails to obtain an oversize or overweight permit that is required under this chapter~~  
4   ~~or Transportation Code, Chapters 621, 622, or 623.]~~

5                   ~~[(b) The department may probate a suspension ordered under this section.]~~

6                   ~~[(1) In determining whether to probate a suspension, the department will review:]~~

7                   ~~[(A) the seriousness of the violation;]~~

8                   ~~[(B) prior violations by the person;]~~

9                   ~~[(C) whether the department has previously probated a suspension for the~~  
10   ~~person;]~~

11                   ~~[(D) cooperation by the person in the investigation and enforcement~~  
12   ~~proceeding; and]~~

13                   ~~[(E) the ability of the person to correct the violations.]~~

14                   ~~[(2) The department shall set the length of the probation based on the seriousness of~~  
15   ~~the violation and previous violations by the person.]~~

16                   ~~[(3) The department will require that the person whose suspension is probated report~~  
17   ~~monthly to the department any information necessary to determine compliance with the terms of the~~  
18   ~~probation.]~~

19                   ~~[(4) The department may revoke the probation and impose a deferred administrative~~  
20   ~~penalty if the person fails to abide by any terms of the probation.]~~

21  
22   ~~[\$219.124. Administrative Proceedings.]~~

## TITLE 43. TRANSPORTATION

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## Part 10. Texas Department of Motor Vehicles

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1           ~~[(a) If the department decides to take an enforcement action under §219.121 of this title~~  
2           ~~(relating to Administrative Penalties) or §219.122 of this title (relating to Administrative Sanctions), the~~  
3           ~~department shall give written notice to the person against whom the action is being taken by first class~~  
4           ~~mail to the person's address as shown in the records of the department.]~~

5           ~~[(b) The notice required by subsection (a) of this section must include:]~~

6                               ~~[(1) a brief summary of the alleged violation;]~~

7                               ~~[(2) a statement of each enforcement action being taken;]~~

8                               ~~[(3) the effective date of each enforcement action;]~~

9                               ~~[(4) a statement informing the person of the person's right to request a~~  
10           ~~hearing;]~~

11                              ~~[(5) a statement describing the procedure for requesting a hearing, including the~~  
12           ~~period during which a hearing request must be made; and]~~

13                              ~~[(6) a statement that the proposed penalties and sanctions will take effect on~~  
14           ~~the date specified in the letter if the person fails to request a hearing.]~~

15           ~~[(c) The person must submit a written request for a hearing to the address provided in the~~  
16           ~~notice not later than the 26th day after the date the notice required by subsection (a) of this section is~~  
17           ~~mailed.]~~

18           ~~[(d) On receipt of the written request for a hearing, the department will refer the matter to the~~  
19           ~~State Office of Administrative Hearings. When the hearing is set, the department will give notice of the~~  
20           ~~time and place of the hearing to the person.]~~

21           ~~[(e) If the person does not make a written request for a hearing or enter into a settlement~~  
22           ~~agreement before the 27th day after the date that the notice is mailed, the department's decision~~  
23           ~~becomes final.]~~

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## Part 10. Texas Department of Motor Vehicles

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

1       ~~[(f) Except as provided by this chapter and Transportation Code, Chapters 621, 622, and 623, any~~  
2       ~~proceeding at the State Office of Administrative Hearings is governed by Government Code, Chapter~~  
3       ~~2001 and 1 TAC Chapter 155, including the authority to informally dispose of the contested case by~~  
4       ~~stipulation, agreed settlement, consent order, or default.]~~

5       ~~[(g) The department and the person may informally dispose of the enforcement action by~~  
6       ~~entering into a settlement agreement or agreeing to stipulations at any time before the director issues a~~  
7       ~~final order. However, the person must pay any penalty in full prior to the execution of a settlement~~  
8       ~~agreement.]~~

9  
10       §219.126. Administrative Penalty for False Information on Certificate by a Shipper.

11       ~~[(a)] Transportation Code, §623.272 authorizes the [The] department to [may] investigate and~~  
12       ~~impose an administrative penalty on a shipper who does not provide a shipper's certificate of weight as~~  
13       ~~required under Transportation Code, §623.274(b) or provides false information on a shipper's certificate~~  
14       ~~of weight that the shipper delivers to a person transporting a shipment.~~

15       ~~[(b) The notice and hearing requirements of §219.124 of this title (relating to Administrative~~  
16       ~~Proceedings) apply to the imposition of an administrative penalty under this section.]~~

17       ~~[(c) The amount of an administrative penalty imposed under this section is calculated in the~~  
18       ~~same manner as the amount of an administrative penalty imposed under §219.121 of this title (relating~~  
19       ~~to Administrative Penalties).]~~

20  
21       ~~[§219.127. Cost of Preparing Agency Record.]~~

## TITLE 43. TRANSPORTATION

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## Chapter 219 – Oversize and Overweight Vehicles and Loads

- 1           ~~[In the event that a final decision is appealed and the department is required to transmit to the~~
- 2 ~~court the original or a certified copy of the record, or any part thereof, the appealing party shall pay the~~
- 3 ~~costs of preparation of such record, unless waived by the department in whole or in part.]~~



Board Meeting Date: 12/14/2023

ACTION ITEM

To: Texas Department of Motor Vehicles Board  
From: Annette Quintero, Vehicle Titles and Registration Division Director  
Agenda Item: 15  
Subject: Chapter 217, Vehicle Titles and Registration  
Amendments, §217.63, Digital License Plates

**RECOMMENDATION**

Action Item. Approval to publish the rule amendments in the *Texas Register* for public comment.

**PURPOSE AND EXECUTIVE SUMMARY**

The amendments are designed to provide an incentive for customers to choose a digital license plate over another type of specialty license plate by reducing the digital license plate administrative fee from \$95 to \$45.

**FINANCIAL IMPACT**

There will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. The legislature authorized the department to charge an administrative fee to recoup its administrative costs, and the department originally proposed a \$95 administrative fee to recoup the state's costs in approximately 15 years. Due to the lack of sales of the digital license plates, the department has decided to provide an incentive for customers to choose a digital license plate by proposing a reduction in the administrative fee paid by customers from \$95 to \$45, which may allow the vendor to have sufficient sales to realize a profit, allow for more of the digital license plates to be on Texas roads, and to allow the department to recoup the investment made to continue to administer the digital license program.

**BACKGROUND AND DISCUSSION**

The amendments:

- §217.63(a)(1) – reduces the administrative fee from \$95 to \$45 upon initial application of a digital license plate and on renewal of registration for a vehicle with a digital license plate.
- §217.63(a)(2) – clarifies that the registration period of the digital license plate will be aligned with the purchaser's vehicle registration period, and the initial administrative fee will be prorated based on the remaining registration period.
- §217.63(b) – clarifies the purpose of the rule by amending the subsection title and language.
- §217.63(b)(2) – corrects the description of the payment process for digital license plate fees to clarify the fees for issuance of digital license plates are paid directly to the state through the digital license plate provider and state systems, in accordance with current practices.



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Chapter 217 - Vehicle Titles and Registration

**PROPOSAL OF****SUBCHAPTER B. MOTOR VEHICLE REGISTRATION****43 TAC §217.63**

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code §217.63, concerning Digital License Plate Fees and Payment. These amendments implement Transportation Code §504.154.

**EXPLANATION.**

Since the digital license plate program began in 2020, digital license plate sales volume has not met the department's estimated targets. This has resulted in the department being unable to cover the administrative costs associated with the program through digital license plate fees, as it is required to do under Texas Transportation Code, §504.154(d)(2). The department has received feedback from stakeholders that the administrative fee associated with the digital license plate is too high and does not incentivize Texans to adopt the new digital license plate technology. To address these concerns, the department proposes an amendment to §217.63(a)(1) to reduce the digital license plate administrative fee from \$95 to \$45. This fee reduction would provide an incentive for customers to choose a digital license plate over another type of specialty plate, which would result in the issuance of more digital license plates. Increased sales of digital license plates would allow the department to recoup the costs of administering the digital license plate program more quickly than it will be able to achieve while relying on the current fees from slow sales of very few plates. The proposed amendment to §217.63(a)(1) would also streamline the description of how the administrative fee is paid to more accurately reflect current practice.

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## Chapter 217 - Vehicle Titles and Registration

1           The proposed amendments to §217.63(a)(2) clarify that the registration period of the digital  
2 license plate will be aligned with the vehicle registration period, and that the initial administrative fee will  
3 be prorated based on the remaining registration period. These proposed amendments would not change  
4 the meaning of the provision but would make it less confusing for the reader.

5           The proposed amendment to §217.63(b) clarifies the purpose of the rule by amending the  
6 subsection title and language. The proposed amendment to §217.63(b)(2) corrects the description of the  
7 payment process for digital license plate fees to clarify that the fees for issuance of digital license plates  
8 are paid directly to the state through the digital license plate provider and state systems, in accordance  
9 with current practices.

10 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,  
11 has determined that for each year of the first five years these rules will be in effect, there will be no  
12 significant fiscal impact to state or local governments as a result of the enforcement or administration of  
13 the proposal. There have been fewer than 10 digital license plates issued to Texas vehicles since the  
14 program began in 2020, so a change in the fee revenue created from their issuance and renewal is not  
15 expected to create a significant fiscal impact. Annette Quintero, Director of the Vehicle Titles and  
16 Registration (VTR) Division, has determined that there will be no measurable effect on local employment  
17 or the local economy as a result of the proposal.

18 **PUBLIC BENEFIT AND COST NOTE.** Ms. Quintero has also determined that, for each year of the first five  
19 years the amended and new section is in effect, there are public benefits anticipated from the  
20 administrative fee reduction for digital license plates.

21           Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include a  
22 reduction in the cost of digital license plates to the public. Additionally, since digital license plates can  
23 serve as screens to broadcast emergency alerts including public safety alerts issued by governmental

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## Chapter 217 - Vehicle Titles and Registration

1 entities, the proposed rules have an anticipated public benefit of increasing the number of digital license  
2 plates on Texas roads that can serve to enhance public awareness of emergency alerts like Amber Alerts,  
3 Silver Alerts, and Blue Alerts.

4 Anticipated Costs to Comply with the Proposal. Ms. Quintero anticipates that there will be no  
5 significant costs to comply with these rules because no one is required to buy a digital license plate and  
6 because the proposal reduces the administrative fees associated with digital license plates.

7 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government  
8 Code §2006.002(c), the department has determined that the amended section will not have an adverse  
9 economic impact on small businesses, micro businesses, and rural communities because there are no  
10 anticipated economic costs for persons required to comply. The department has determined that there  
11 will be no adverse economic impact on rural communities as a result of the proposal. Therefore, the  
12 department is not required to prepare a regulatory flexibility analysis under Government Code §2006.002.

13 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests  
14 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property  
15 that would otherwise exist in the absence of government action and, therefore, does not constitute a  
16 taking or require a takings impact assessment under the Government Code, §2007.043.

17 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that for each year of the  
18 first five years the proposed amendments are in effect, the proposed rules will not create or eliminate a  
19 government program; will not require the creation of new employee positions or the elimination of  
20 existing employee positions; will not require an increase or decrease in future legislative appropriations  
21 to the department; will not create new regulations or expand existing regulations; will not repeal, expand,  
22 or limit existing regulations; will not expand or limit the number of individuals subject to the rule's  
23 applicability; and will not either positively or negatively impact the Texas economy. The department has

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## Chapter 217 - Vehicle Titles and Registration

determined that for each year of the first five years the proposed amendments are in effect, they may create a decrease in fees the department receives if the number of digital license plates does not increase as expected. On the other hand, if the sales volume of digital license plates increases significantly as a result of the reduced digital license plate fees during each year of the first five years the proposed amendments are in effect, the proposed rules may create an increase in total fees paid to the department.

**REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on MM, DD, YYYY. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

**STATUTORY AUTHORITY.** The amendments and new sections are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §§504.151-504.157, which authorize digital license plates while giving the department rulemaking authority to implement the statutory provisions including setting specifications and requirements for digital license plates and establishing a fee.

**CROSS REFERENCE TO STATUTE.** The amendment implements Transportation Code, §§504.151- 504.157.

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## Chapter 217 - Vehicle Titles and Registration

**TEXT.****Subchapter B. Vehicle Titles and Registration****43 TAC §217.63****§217.63. Digital License Plate Fees and Payment.****(a) Fees.**

(1) A person issued a digital license plate must pay an administrative fee of \$45 ~~[95 to the digital license plate provider]~~ upon initial application for a digital license plate~~[,]~~ and ~~[to the county tax-assessor collector or the department, as applicable,]~~ on renewal of registration for a vehicle with a digital license plate.

(2) The registration period ~~[expiration date]~~ of the digital license plate will be aligned with the registration period for the vehicle and the administrative fee due under subsection (a) ~~[of this section]~~ will be prorated ~~[adjusted]~~ to yield the appropriate fee based on the remaining registration period.

(3) A digital license plate administrative fee will be refunded only when registration fees are overcharged under Transportation Code, §502.195.

**(b) Payment of fees.**

(1) All state, county, local, and other applicable fees are due at the time of registration of a vehicle with a digital license plate.

(2) The fees for issuance of digital license plates will be paid directly to the state through the digital license plate provider and state systems. ~~[Digital license plate providers that have received the administrative fee under subsection (a) must submit payment of the administrative fee due in full to the department upon receipt of an application for a digital license plate.]~~



# Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

**Board Meeting Date: 12/14/2023****ACTION ITEM**

**To:** Texas Department of Motor Vehicles Board  
**From:** Corrie Thompson, Enforcement Division Director  
**Agenda Item:** 16  
**Subject:** New Chapter 224, Adjudicative Practice and Procedure  
(Relating to Adjudicative Practice and Procedure, including Contested Cases)

## RECOMMENDATION

Action Item. Approval to publish the proposal in the *Texas Register* for public comment.

## PURPOSE AND EXECUTIVE SUMMARY

This rule item proposes new sections, and, if adopted, would consolidate into one chapter all department contested case rules. This rule item is also proposed concurrently with proposals for amendments to and repeals of related sections in Chapters 206, 215, 217, 218, 219, and 221.

## FINANCIAL IMPACT

None.

## BACKGROUND AND DISCUSSION

### Overview

As part of the department's rule review of Chapters 206, 215, and 221, the department is proposing this new chapter with the following goals in mind:

- to organize and consolidate adjudicative practice and procedure into one chapter for easier reference by license applicants, license holders, permit and registration holders, the public, and the department;
- to modify language to be consistent with current practice including use of electronic systems;
- for consistency with related rules and rule requirements promulgated by the State Office of Administrative Hearings (SOAH);
- to add new rules to address statutory requirements or department adjudicative procedures;
- to improve readability by using consistent terminology;
- to delete unused, archaic, or inaccurate definitions, terms, references, or other language; and
- to modernize and clarify language and improve readability.

### Proposed New Chapter Organization

#### Subchapter A. General Provisions

This proposed subchapter includes definitions and rules that would apply to all contested case matters unless expressly excluded or limited in another subchapter.

#### Subchapter B. Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement

This proposed subchapter applies to department enforcement actions involving motor vehicle, salvage vehicle, and trailer license holders and applicants, and identifies the other subchapters that would apply to these types of contested cases.

#### Subchapter C. Contested Cases Between Motor Vehicle Industry License Holders or Applicants

This proposed subchapter applies to complaints and protests brought by a motor vehicle license holder against another motor vehicle license holder or applicant and identifies the other subchapters that would apply to these types of contested cases.

#### Subchapter D. Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement

This proposed subchapter applies to department enforcement actions involving motor carriers and oversize or overweight vehicle operators and identifies the other subchapters that would apply to these types of contested cases.

#### Subchapter E. Contested Cases Referred to SOAH

This proposed subchapter describes the types of contested cases that are referred to SOAH, and the rules related to the transfer of jurisdiction to SOAH and the transfer of jurisdiction back to the department.

#### Subchapter F. Board Procedures for Contested Cases

This proposed subchapter describes the rules that would apply when the board or a board delegate reviews a contested case and issues a final order.

#### Subchapter G. Lemon Law and Warranty Performance Claims

This proposed subchapter describes the rules that would apply to a lemon law or warranty performance claim brought by a consumer.

#### Advisory Committee Input

The board adopted advisory committee rules in 2019, and advisory committees have since provided valuable input on rule proposals considered by the board for proposal or adoption. In September 2023, the department provided an early draft of these rules to two department advisory committees, the Motor Vehicle Industry Regulation Advisory Committee (MVIRAC) and the Customer Service and Protection Advisory Committee (CSPAC). Committee members voted on formal motions and provided informal comments on other provisions. Input from both committees was incorporated into proposed new §§224.52, Cease and Desist Order; Delegation of Authority, 224.162, Statutory Stay; 224.192, Appeal of an Interlocutory Order; and 224.260, Lemon Law Relief Decisions.

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Chapter 224 – Adjudicative Practice and Procedure

**PROPOSAL OF NEW CHAPTER****SUBCHAPTER A. GENERAL PROVISIONS****43 TAC §§224.1–224.31****SUBCHAPTER B. MOTOR VEHICLE, SALVAGE VEHICLE, AND TRAILER INDUSTRY ENFORCEMENT****43 TAC §§224.50–224.64****SUBCHAPTER C. CONTESTED CASES BETWEEN MOTOR VEHICLE INDUSTRY LICENSE HOLDERS OR****APPLICANTS****43 TAC §§224.80–224.94****SUBCHAPTER D. MOTOR CARRIER AND OVERSIZE OR OVERWEIGHT VEHICLE OR LOAD****ENFORCEMENT****43 TAC §§224.110–224.130****SUBCHAPTER E. CONTESTED CASES REFERRED TO SOAH****43 TAC §§224.150–224.166****SUBCHAPTER F. BOARD PROCEDURES IN CONTESTED CASES****43 TAC §§224.190–224.206****SUBCHAPTER G. LEMON LAW AND WARRANTY PERFORMANCE CLAIMS****43 TAC §§224.230–224.268**

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes new 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §§224.1–224.31; Subchapter B, Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement, §§224.50–224.64; Subchapter C, Contested Cases Between Motor Vehicle Industry License Holders or Applicants, §§224.80–224.94; Subchapter D, Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement, §§224.110–224.130; Subchapter



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## Chapter 224 – Adjudicative Practice and Procedure

1 E, Contested Cases Referred to SOAH, §§224.150–224.166; Subchapter F, Board Procedures in Contested  
2 Cases, §§224.190–224.206; and Subchapter G, Lemon Law and Warranty Performance Claims,  
3 §§224.230–224.268.

4 The proposed new Chapter 224 is necessary to organize and consolidate adjudicative practice and  
5 procedure into one chapter for easier reference by license applicants, license holders, permit and  
6 registration holders, the public, and the department; to modify language to be consistent with current  
7 practice including use of electronic systems; for consistency with related rules and rule requirements  
8 promulgated by the State Office of Administrative Hearings (SOAH), to improve readability through the  
9 use of consistent terminology; to clarify existing language; to delete unused, archaic, or inaccurate  
10 definitions, terms, references or other language; to add new rules to address statutory requirements or  
11 department adjudicative procedures; and to modernize language and improve readability.

12 In 2019, the Sunset Commission recommended the Board of the Texas Department of Motor  
13 Vehicles (board) establish advisory committees and adopt rules regarding standard advisory committee  
14 structure and operating criteria. The board adopted rules in 2019 and advisory committees have since  
15 provided valuable input on rule proposals considered by the board for proposal or adoption. In September  
16 of 2023, the department provided an early draft of these rules to two department advisory committees,  
17 the Motor Vehicle Industry Regulation Advisory Committee (MVIRAC) and the Customer Service and  
18 Protection Advisory Committee (CSPAC). Committee members voted on formal motions and provided  
19 informal comments on other provisions. Input from both committees was incorporated into proposed  
20 new §§224.52 relating to Cease and Desist Order; Delegation of Authority, 224.162 relating to Statutory  
21 Stay, 224.192 relating to Appeal of an Interlocutory Order, and 224.260 relating to Lemon Law Relief  
22 Decisions.

**23 EXPLANATION.**

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## Chapter 224 – Adjudicative Practice and Procedure

1 In this issue of the *Texas Register*, the department proposes revisions that would delete language  
2 regarding adjudicative practices and procedures in current 43 TAC §217.56 and Chapters 206, 215, 218,  
3 219, and 221. The department is proposing to reorganize these rules into proposed new Chapter 224 for  
4 easier reference and to add rules consistent with the department's authority and responsibility under  
5 Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; Transportation Code,  
6 Chapters 502, 503, 621–623, 643, 645, and 1001–1005; and rules promulgated by the State Office of  
7 Administrative Hearings (SOAH). The proposed new rules would be organized into seven subchapters.

8  
9 Subchapter A. General Provisions

10 Proposed new §224.1 would describe the purpose and scope of new Chapter 224, which would  
11 include all contested case matters in which the department has jurisdiction. Subchapter A would apply to  
12 all contested case matters unless expressly excluded or limited in another subchapter. The following  
13 current sections of this title regarding purpose or scope would be incorporated into new Chapter 224:  
14 §206.61, relating to Scope and Purpose; §215.21, relating to Purpose and Scope; §215.201, relating to  
15 Purpose and Scope; §218.70, relating to Purpose; and §219.120, relating to Purpose. These provisions are  
16 all proposed for repeal in this issue of the *Texas Register*.

17 Proposed new §224.3 would include definitions for terms used throughout Chapter 224.  
18 Proposed new §224.3 would incorporate terms defined in relevant content from 1 TAC §155.5, relating to  
19 Definitions, which are definitions used by SOAH. It would also incorporate the provisions of the following  
20 current sections of this title, which are proposed for repeal in this issue of the *Texas Register*: §215.2,  
21 relating to Definitions; Conformity with Statutory Requirements; §221.2, relating to Definitions; and  
22 §206.62, relating to Definitions.

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## Chapter 224 – Adjudicative Practice and Procedure

1 Proposed new §224.5 would address prohibited communication during a contested case,  
2 including ex parte communication, and would incorporate the existing provisions of current section  
3 §215.22 of this title, relating to Prohibited Communications, which is proposed for repeal in this issue of  
4 the *Texas Register*.

5 Proposed new §224.7 would address the appearance by an authorized representative,  
6 intervention in a contested case, and the invitation of a person who is not a contested case party to  
7 participate in mediation. Relevant content would be incorporated into proposed new §224.7 from 1 TAC  
8 §155.201, relating to Representation of Parties, as well as current §215.23 of this title, relating to  
9 Appearances, which is proposed for repeal in this issue of the *Texas Register*.

10 Proposed new §224.9 would provide guidance on computing time consistent with Government  
11 Code, §311.014. Proposed new §224.9 would also incorporate relevant content from the existing  
12 provisions of §215.29 of this title, relating to Computing Time, which is proposed for repeal in this issue  
13 of the *Texas Register*.

14 Proposed new §224.11 would provide general procedures related to filing and service of  
15 documents. Proposed new §224.11 would incorporate relevant content from 1 TAC §155.101 (a-d),  
16 relating to Filing Documents. Proposed new §224.11 would also incorporate other current sections of this  
17 title—§215.30, relating to Filing of Documents, and §215.49, relating to Service of Pleading, Petitions,  
18 Briefs, and Other Documents—that are proposed for repeal in this issue of the *Texas Register*.

19 Proposed new §224.13 would address discovery matters, including the requirement for  
20 cooperation between the contested case parties and criteria and process for a party to request a  
21 commission or subpoena. Proposed new §224.13 would incorporate relevant content from 1 TAC  
22 §155.259, relating to Discovery Motions, and §206.67 of this title, relating to Discovery, which is proposed  
23 for repeal in this issue of the *Texas Register*.

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## Chapter 224 – Adjudicative Practice and Procedure

1 Proposed new §224.15 would address hearing recording and transcription costs. Proposed new  
2 §224.15 would incorporate relevant content from 1 TAC §155.423, relating to Making a Record of the  
3 Proceeding, and §215.37(a–c) of this title, relating to Recording and Transcriptions of Hearing Cost, which  
4 is proposed for repeal in this issue of the *Texas Register*.

5 Proposed new §224.17 would address when proceedings may be consolidated. Proposed new  
6 §224.17 would incorporate relevant provisions from current §215.38 of this title, relating to  
7 Consolidation of Proceedings, which is proposed for repeal in this issue of the *Texas Register*.

8 Proposed new §224.19 would address the timing and criteria for informally disposing of a  
9 contested case. Proposed new §224.19 would incorporate relevant content from current §215.316 of  
10 this title, relating to Informal Disposition, which is proposed for repeal in this issue of the *Texas Register*.

11 Proposed new §224.21 would address criteria for when a party may waive a hearing and  
12 consent to an agreed order. Proposed new §224.21 would incorporate relevant content from current  
13 §215.39 of this title, relating to Waiver of Hearing, which is proposed for repeal in this issue of the *Texas*  
14 *Register*.

15 Proposed new §224.23 would require a contested case hearing to be open to the public.  
16 Proposed new §224.23 would incorporate content from current §215.36 of this title, relating to Hearings  
17 To Be Public, which is proposed for repeal in this issue of the *Texas Register*.

18 Proposed new §224.25 would address when a deadline may or may not be extended. Proposed  
19 new §224.25 would incorporate content from current §215.32 of this title, relating to Extension of Time,  
20 which is proposed for repeal in this issue of the *Texas Register*.

21 Proposed new §224.27 would implement provisions of Government Code 2001, Subchapter F that  
22 govern the issuance of final orders and motions for rehearing. Proposed new §224.27 would include  
23 related content from the following current sections of this title that are proposed for repeal in this issue

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## Chapter 224 – Adjudicative Practice and Procedure

1 of the *Texas Register*: §215.55, relating to Final Decision, §215.501, relating to Final Decisions and Orders;  
2 Motions for Rehearing, §215.505, relating to Denial of Dealer or Converter Access to Temporary Tag  
3 System, and §221.93, relating to Final Decisions and Orders; Motions for Rehearing.

4 Proposed new §224.29 would address delegation of final order authority in accordance with  
5 Occupations Code, §2301.154(c) and §2301.711, and Transportation Code, §1003.005(b), as applicable.  
6 Proposed new §224.29 would incorporate relevant content from the following current sections of this  
7 title that are proposed for repeal in this issue of the *Texas Register*: §215.43, relating to Conduct and  
8 Decorum, §215.58, relating to Delegation of Final Authority, and §221.95, relating to Delegation of Final  
9 Order Authority.

10 Proposed new §224.31 would address the cost of providing a contested case record for appeal  
11 purposes. Proposed new §224.31 would incorporate relevant content from the following current sections  
12 of this title that are proposed for repeal in this issue of the *Texas Register*: §215.37(d), relating to  
13 Recording and Transcriptions of Hearing Cost, §218.75, relating to Cost of Preparing the Agency Record,  
14 and §219.127, relating to Cost of Preparing Agency Record.

15  
16 Subchapter B. Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement

17 Proposed new §224.50 would address the purpose and scope of this subchapter and would  
18 identify the other subchapters that apply to these types of contested cases. Proposed new §224.50  
19 would incorporate relevant content from the following current sections of this title that are proposed  
20 for repeal in this issue of the *Texas Register*: §215.21, relating to Purpose and Scope, and §215.201,  
21 relating to Purpose and Scope.

22 Proposed new §224.52 would address procedures related to cease and desist orders issued under  
23 Occupations Code, Chapters 2301 or 2302, including the notice and opportunity required for due process.

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## Chapter 224 – Adjudicative Practice and Procedure

1 Proposed new §224.52 would also address the delegation of signature authority to the department's  
2 Enforcement Division Director to sign interlocutory cease-and-desist orders. Proposed new §224.52 would  
3 incorporate relevant content from the following current sections of this title that are proposed for repeal  
4 in this issue of the *Texas Register*: §215.314, relating to Cease and Desist Orders, and §221.96, relating to  
5 Cease and Desist Order. The delegation of signature authority for an interlocutory cease-and-desist order  
6 is new text that is not contained in the department's current sections of this title. The delegation of  
7 signature authority is necessary to address a situation in which the facts warrant the issuance of an  
8 interlocutory cease-and-desist order as soon as possible. Additionally, proposed new §224.52 would  
9 clarify the notice and opportunity to respond for an individual who may be subject to a cease-and-desist  
10 order, to ensure consistent due process.

11 Proposed new §224.54 would address criteria used by the department to assess a civil penalty  
12 consistent with and under the authority of Occupations Code, §2301.801 and §2302.354, and  
13 Transportation Code, §503.095. These criteria are currently reflected in the department's disciplinary  
14 matrix for motor vehicle dealers that is published on the department's website. Proposed new §224.54  
15 would create clarity and ease of reference for licensees, administrative law judges, and board members  
16 seeking to determine the appropriate penalty in a contested case.

17 Proposed new §224.56 would address the requirements for a notice of department decision  
18 issued to a person who is alleged to have violated a statute or department rule. Proposed new §224.56  
19 would incorporate relevant content from the following current sections of this title that are proposed for  
20 repeal in this issue of the *Texas Register*: §215.500, relating to Administrative Sanctions and Procedures,  
21 and §221.91, relating to Notice of Department Decision.

22 Proposed new §224.58 would address the process for denying access to the temporary tag  
23 system as authorized under Transportation Code, §503.062(f). Proposed new §224.58 would

## TITLE 43. TRANSPORTATION

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## Part 10. Texas Department of Motor Vehicles

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## Chapter 224 – Adjudicative Practice and Procedure

1 incorporate content from current §215.505 of this title, regarding Denial of Dealer or Converter Access  
2 to Temporary Tag System, that is proposed for repeal in this issue of the *Texas Register*.

3 Proposed new §224.60 would describe the process for filing and service of documents under this  
4 subchapter. Proposed new §224.60 would be incorporate relevant content into from 1 TAC §155.101 (a-  
5 d), relating to Filing Documents, and the following current sections of this title that are proposed for repeal  
6 in this issue of the *Texas Register*: §215.30, relating to Filing of Documents, and §215.49, relating to  
7 Service of Pleading, Petitions, Briefs, and Other Documents.

8 Proposed new §224.62 would address the process for referring a contested case under this  
9 subchapter to SOAH. Proposed new §224.62 would be incorporate relevant content from 1 TAC §155.51,  
10 relating to Jurisdiction, and §155.53, relating to Request to Docket Case, as well as current §215.306 of  
11 this title, relating to Referral to SOAH, that is proposed for repeal in this issue of the *Texas Register*.

12 Proposed new §224.64 would address the process for the department to issue a notice of  
13 hearing for contested cases under this subchapter. Proposed new §224.64 would incorporate relevant  
14 content into from the following current sections of this title that are proposed for repeal in this issue of  
15 the *Texas Register*: §215.34, relating to Notice of Hearing in Contested Case, and §221.92, relating to  
16 Notice of Hearing.

17  
18 Subchapter C. Contested Cases Between Motor Vehicle Industry License Holders or Applicants

19 Proposed new §224.80 would address the purpose and scope of this subchapter and would  
20 identify the other subchapters that would apply to these types of contested cases for clarity and ease of  
21 reference. Proposed new §224.80 incorporates relevant content from the following current sections of  
22 this title that are proposed for repeal in this issue of the *Texas Register*: §215.21, relating to Purpose and  
23 Scope, and §215.201, relating to Purpose and Scope.

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## Chapter 224 – Adjudicative Practice and Procedure

1 Proposed new §224.82 would address the requirements for a franchised dealer to file a protest  
2 or complaint consistent with the department's responsibilities under Occupations Code, Chapter 2301.

3 Proposed new §224.82 would incorporate relevant content would from current §215.106 of this title,  
4 relating to Time for Filing Protest.

5 Proposed new §224.84 would address how a protest, complaint, or other document must be filed,  
6 including the requirement to file and pay any required fee electronically, and include all assigned docket  
7 numbers. Proposed new §224.84 would incorporate relevant content into from 1 TAC §155.101 (a-d),  
8 relating to Filing Documents, and the following current sections of this title that are proposed for repeal  
9 in this issue of the *Texas Register*: §215.24, relating to Petitions, §215.30, relating to Filing of Documents,  
10 §215.49, relating to Service of Pleading, Petitions, Briefs, and Other Documents, and §215.305, relating to  
11 Filing of Complaints, Protests, and Petitions; Mediation.

12 Proposed new §224.86 would describe the process used by the department to review a protest  
13 or complaint to determine if the protest or complaint meets the minimum statutory requirements and is  
14 appropriate to refer to SOAH for a hearing at SOAH consistent with the department's responsibilities  
15 under Occupations Code, Chapter 2301.

16 Proposed new §224.88 would describe the department's procedure for docketing a contested  
17 case under this subchapter, the issuance of a stay as authorized by Occupations Code §2301.803, the  
18 notice to the parties, the opportunity for the parties to accept or decline a department mediator and  
19 retain a private mediator, and the deadline to notify the department regarding the mediator option  
20 chosen by the parties. Mediation is required under Occupations Code, Subchapter K and §2301.703.

21 Proposed new §224.90 would describe the procedures related to mediation including the  
22 timeline for mediation, requirements if a private mediator is selected by the parties, the requirement for  
23 a mediator to submit a written report, and the department's actions upon receiving the report including



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## Chapter 224 – Adjudicative Practice and Procedure

1 notifying SOAH whether a party refused to participate or attend mediation. Proposed new §224.90  
2 would allow a SOAH Administrative Law Judge (ALJ) to recommend a sanction in the final proposal for  
3 decision for refusal to participate or attend statutorily required mediation. Proposed new §224.90  
4 would incorporate relevant content from the following current §215.305 of this title, relating to Filing of  
5 Complaints, Protests, and Petitions; Mediation, that is proposed for repeal in this issue of the *Texas*  
6 *Register*.

7 Proposed new §224.92 would address the process for referring a contested case under this  
8 subchapter to SOAH. Proposed new §224.92 would incorporate relevant content from 1 TAC §155.51,  
9 relating to Jurisdiction, and §155.53, relating to Request to Docket Case, as well as the following current  
10 §215.306 of this title, relating to Referral to SOAH, which is proposed for repeal in this issue of the *Texas*  
11 *Register*.

12 Proposed new §224.94 would address the process for the department to issue a notice of  
13 hearing for contested cases under this subchapter. Proposed new §224.94 would incorporate relevant  
14 content from current §215.34 of this title, relating to Notice of Hearing in Contested Cases, which is  
15 proposed for repeal in this issue of the *Texas Register*.

16  
17 Subchapter D. Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement

18 Proposed new §224.110 would address the purpose and scope of this subchapter and identify  
19 the other subchapters that would apply to these types of contested cases. Proposed new §224.110  
20 would incorporate relevant content from the following current sections of this title: §218.1, relating to  
21 Purpose, §218.70, relating to Purpose, §219.1, relating to Purpose and Scope, and §219.120, relating to  
22 Purpose.

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1 Proposed new §224.112 would reference definitions used in statute and existing rules to avoid  
2 duplication and potential conflict when incorporating definitions from the Transportation Code, and the  
3 following current sections of this title: §218.2, relating to Definitions, and §219.2, relating to Definitions.

4 Proposed new §224.114 would address procedures related to cease-and-desist orders issued  
5 under Transportation Code, §643.256. Proposed new §224.114 would incorporate relevant content from  
6 §218.77, relating to Cease and Desist Order, which is proposed for repeal in this issue of the *Texas*  
7 *Register*.

8 Proposed new §224.115 would address criteria used by the department to assess an  
9 administrative penalty under Transportation Code, §§623.271, 623.272, and 643.251. Transportation  
10 Code, §643.251 provides the dollar caps for administrative penalties, as well as the factors on which the  
11 administrative penalty shall be based. Transportation Code, §623.271 and §623.272 state that the amount  
12 of an administrative penalty imposed under §623.271 and §623.272, respectively, is calculated in the  
13 same manner as the amount of an administrative penalty imposed under Transportation Code, §643.251.  
14 Proposed new §224.115 would also address the criteria the department would use to determine whether  
15 to probate a suspension of a motor carrier's registration, as well as the length of the probation and the  
16 reporting requirements during the probation. Many of these criteria are currently reflected in the  
17 department's disciplinary matrix for motor carriers that is published on the department's website. The  
18 department's disciplinary matrix for motor carriers also includes the factors on which the administrative  
19 penalty shall be based under Transportation Code, §§623.271, 623.272, and 643.251(c). Proposed new  
20 §224.115 would create clarity and provide ease of reference for motor carriers, administrative law judges,  
21 and the Motor Carrier Division Director seeking to determine the appropriate administrative penalty in a  
22 contested case. Proposed new §224.115 would incorporate relevant content from §218.71, relating to  
23 Administrative Penalties; §218.72, relating to Administrative Sanctions; §219.121, relating to

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Administrative Penalties; and §219.126, relating to Administrative Penalty for False Information on Certificate by a Shipper, which are proposed for amendment or repeal in this issue of the *Texas Register*.

Proposed new §224.116 would address procedures when the department decides to take enforcement action under any of the following sections of this title: §218.16, relating to Short-term Lease and Substitute Vehicles; §218.64, relating to Rates; §218.71, relating to Administrative Penalties; §218.72, relating to Administrative Sanctions; §219.121, relating to Administrative Penalties; §219.122, relating to Administrative Sanctions; or §219.126, relating to Administrative Penalty for False Information on Certificate by a Shipper. Proposed new §224.116 would incorporate relevant content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §218.71, relating to Administrative Penalties; §218.73, relating to Administrative Proceedings; and §219.124, relating to Administrative Proceedings.

Proposed new §224.118 would require a person to file a document according to written instructions provided by the department as different systems and methods may be used depending on the party and type of enforcement action.

Proposed new §224.120 would describe the procedures followed by the department upon receiving a final order issued under Family Code, §§232.003, 232.008, or 232.009, regarding child support enforcement. Proposed new §224.120 would incorporate relevant content from current §218.76 of this title, relating to Registration Suspension Ordered Under the Family Code, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.122 would prescribe the requirements for a vehicle registrant that wants to appeal a decision against the registrant of an assessment (a financial penalty under §217.56(c)(2)(G)) or a cancellation or revocation of the registrant's apportioned registration under the International Registration Plan (IRP). Proposed new §224.122 would incorporate relevant content from current

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§217.56(c)(2)(J)(iii) of this title, relating to Registration Reciprocity Agreements, which is proposed for amendment in this issue of the *Texas Register*.

Proposed new §224.124 would describe the appeal process for a person who is denied registration whether it be a new, renewal, or reregistration application under Transportation Code, Chapter 643. Proposed new §224.124 would incorporate relevant content from current §218.78 of this title, relating to Appeal of Denial, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.126 would describe the appeal process for a person whose application for self-insured status is denied under §218.16(d), relating to Insurance Requirements. Relevant content would be incorporated from current §218.16(d), which is proposed for amendment in this issue of the *Texas Register*.

Proposed new §224.128 would address the process for referring a contested case under this subchapter to SOAH. Relevant content would be incorporated from 1 TAC §155.51, relating to Jurisdiction, and §155.53, relating to Request to Docket.

Proposed new §224.130 would address the process for the department to issue a notice of hearing for contested cases under this subchapter consistent with the statutory requirements under Government Code, Chapter 2001, and SOAH's rule regarding notice of hearing in 1 TAC §155.401, relating to Notice of Hearing.

#### Subchapter E. Contested Cases Referred to SOAH

Proposed new §224.150 would describe the types of contested cases that are referred to SOAH, the transfer of jurisdiction from the department to SOAH, and the transfer of jurisdiction from SOAH back to the department. Proposed new §224.150 would incorporate relevant content from the following current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.21,

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1 relating to Purpose and Scope; §215.201, relating to Purpose and Scope; and §215.303, relating to  
2 Application of Board and SOAH Rules.

3 Proposed new §224.152 would describe the department's procedures for referring a contested  
4 case to SOAH consistent with SOAH's rules. Relevant content would be incorporated into proposed new  
5 §224.152 from SOAH's related rules in 1 TAC §155.51, relating to Jurisdiction, and §155.53, relating to  
6 Request to Docket, as well as current §215.306 of this title, relating to Referral to SOAH, which is  
7 proposed for repeal in this issue of the *Texas Register*.

8 Proposed new §224.154 would address notice of hearing requirements applicable under  
9 Government Code, §2001.052; Occupations Code, §2301.705; 1 TAC §155.401, relating to Notice of  
10 Hearing; and Transportation Code, Chapters 621–623 and 643; would provide for service of parties  
11 outside the United States to the extent authorized by applicable law; and would address the amendment  
12 of a notice of hearing under Government Code, §2001.052(b). Proposed new §224.154 would incorporate  
13 relevant content from SOAH's related rules in 1 TAC §155.401, as well as the following current sections of  
14 this title that are proposed for repeal in this issue of the *Texas Register*: §215.34, relating to Notice of  
15 Hearing in Contested Cases; §215.307, relating to Notice of Hearing; §218.73, relating to Administrative  
16 Proceedings; §219.124, relating to Administrative Proceedings; and §221.92, related to Notice of Hearing.  
17 Transportation Code, §643.2525(a) requires the department to give written notice to the motor carrier  
18 by first class mail for an enforcement action under Transportation Code, §643.251 or §643.252 regarding  
19 administrative penalties and sanctions, respectively. Transportation Code, §623.271(b) and §623.272(b)  
20 state that the notice and hearing requirements under Transportation Code, §643.2525 apply to the  
21 imposition of an administrative penalty or revocation of a permit under §623.271 and the imposition of  
22 an administrative penalty under §623.272.

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1 Proposed new §224.156 would describe the process for a party to reply to a notice of hearing  
2 and the consequences for when a party does not appear at a hearing. Proposed new §224.156 would  
3 incorporate relevant content from current §215.308 of this title, relating to Reply to Notice of Hearing  
4 and Default Proceedings, which is proposed for repeal in this issue of the *Texas Register*. Relevant  
5 content would also incorporate applicable sections of SOAH’s rules of procedure for contested cases  
6 within SOAH’s jurisdiction.

7 Proposed new §224.158 would describe the process and deadlines for an ALJ to consider an  
8 amicus brief. The new proposed rule would allow amicus briefs to be incorporated into the  
9 administrative record of the contested case for review and consideration by the ALJ, and the board or  
10 board designate responsible for issuing a final order in the case. Proposed new §224.158 would  
11 incorporate relevant content from current §215.311 of this title, relating to Amicus Briefs, which is  
12 proposed for repeal in this issue of the *Texas Register*.

13 Proposed new §224.162 would address an ALJ’s responsibilities to hear and rule on a request  
14 regarding a statutory stay and the right for a party to file an interlocutory appeal with the board.  
15 Proposed new §224.162 would incorporate relevant content from §215.315 of this title, relating to  
16 Statutory Stay, which is proposed for repeal in this issue of the *Texas Register*.

17 Proposed new §224.164 would describe the ALJ and party responsibilities relating to a proposal  
18 for decision in a contested case. Proposed new §224.164 would be incorporate relevant content from  
19 SOAH’s related rule in 1 TAC §155.507, relating to Proposals for Decision; Exceptions and Replies, and  
20 current §215.310 of this title, relating to Issuance of Proposals for Decision and Orders, which is proposed  
21 for repeal in this issue of the *Texas Register*.

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1 Proposed new §224.166 would describe the process by which jurisdiction transfers back to the  
2 board or board delegate for a final decision, consistent with the requirements of Government Code,  
3 Chapter 2001.

4  
5 Subchapter F. Board Procedures for Contested Cases

6 Proposed new §224.190 would describe the scope of the subchapter, which includes review and  
7 consideration of a contested case and issuance of a final order by the board or board delegate.

8 Proposed new §224.190 would incorporate relevant content from the following current sections of this  
9 title that are proposed for repeal in this issue of the *Texas Register*: §215.21, relating to Purpose and  
10 Scope, and §215.201, relating to Purpose and Scope.

11 Proposed new §224.192 would describe the process for a person to appeal an interlocutory cease-  
12 and-desist or stay order authorized under Occupations Code, Chapter 2301, to comply with the statutory  
13 requirement that the board rule on appeals of such interlocutory orders. Proposed new §224.192 would  
14 incorporate relevant content from the following current sections of this title that are proposed for repeal  
15 in this issue of the *Texas Register*: §215.314, relating to Cease and Desist Orders, and §221.96, relating to  
16 Cease and Desist Order. Proposed new §224.192 would also clarify the timelines and process through  
17 which a party would request to make an oral presentation or to provide written materials to the board  
18 when it reviews the appeal of the interlocutory order. Proposed new §224.192 would also stipulate that  
19 the board's review of an appeal of an interlocutory order is limited to the review and changes allowed  
20 under Texas Government Code, §2001.058(e), to clarify the separate roles of the SOAH ALJ and the board  
21 in reviewing an interlocutory order issued by the department.

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1 Proposed new §224.194 would describe the process for scheduling the review of a contested case  
2 by the board or a board delegate and allow for the decision-making authority to review the case during a  
3 public meeting to increase public insight into the decision-making process.

4 Proposed new §224.196 would describe department's procedures, deadlines, and order of  
5 presentations, if a contested case party wants to make an oral presentation to the board as part of the  
6 board's consideration of the contested case. Proposed new §224.196 would incorporate relevant  
7 content from current §215.59 of this title, relating to Request for Oral Presentation, which is proposed  
8 for repeal in this issue of the *Texas Register*. In addition, language in proposed new §224.196(e) would  
9 clarify that §206.22 of this title, relating to Public Access to Board Meetings, does not authorize a party  
10 to speak as a public commenter regarding the party's contested case before the board during the posted  
11 agenda item or during the open comment period. Proposed new §224.196 complies with Transportation  
12 Code, §1004.002, which requires the board to develop policies that provide the public with a reasonable  
13 opportunity to appear before the board and speak on any issue under the jurisdiction of the board. A  
14 party that complies with the requirements under proposed new §224.196 would be allowed a maximum  
15 of 15 minutes to make their oral presentation to the board unless the board chair increases this time  
16 under proposed new §224.200.

17 Proposed new §224.198 would describe the responsibilities and deadlines for a party that wants  
18 to provide written materials to the board as part of the board's consideration of the contested case.  
19 Proposed new §224.198 would incorporate relevant content from current §215.60 of this title, relating  
20 to Written Materials and Evidence, which is proposed for repeal in this issue of the *Texas Register*.

21 Proposed new §224.200 would describe the responsibilities and limitations for a party making  
22 an oral presentation as part of the board's consideration of the contested case. Proposed new §224.200  
23 would incorporate relevant content from the following current sections of this title that are proposed



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1 for repeal in this issue of the *Texas Register*: §§206.22(f), relating to Public Access to Board Meetings,  
2 §215.61, relating to Limiting Oral Presentation and Discussion to Evidence in the Administrative Record,  
3 and §215.62, relating to Order of Presentations to the Board for Review of a Contested Case.

4 Proposed new §224.202 would describe the order of presentations at the board meeting in  
5 which the board is considering a contested case. Proposed new §224.202 would incorporate relevant  
6 content from the following current sections of this title that are proposed for repeal in this issue of the  
7 *Texas Register*: §§206.22(f), relating to Public Access to Board Meetings, and 215.62, relating to Order of  
8 Presentations to the Board for Review of a Contested Case.

9 Proposed new §224.204 would address board member conduct while reviewing and considering  
10 a contested case. Proposed new §224.204 would incorporate relevant content from current §215.63 of  
11 this title, relating to Board Conduct and Discussion When Reviewing a Contested Case, which is  
12 proposed for repeal in this issue of the *Texas Register*.

13 Proposed new §224.206 would describe the requirements for a final order issued by the board  
14 or a board delegate and when the order is final. Proposed new §224.206 would incorporate relevant  
15 content from §215.501 of this title, relating to Final Decisions and Orders; Motions for Rehearing, which  
16 is proposed for repeal in this issue of the *Texas Register*.

17  
18 Subchapter G. Lemon Law and Warranty Performance Claims

19 Proposed new §224.230 would describe the scope of this subchapter, provide statutory  
20 references, and define terms used in the subchapter. Proposed new §224.230 would be incorporate  
21 relevant content from the following current sections of this title that are proposed for repeal in this  
22 issue of the *Texas Register*: §215.21, regarding Purpose and Scope, and §215.201, regarding Purpose  
23 and Scope.

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1 Proposed new §224.232 would describe the requirements for a person to file a lemon law or  
2 warranty performance claim, the process, and the assistance available from the department to enable a  
3 person to do so. Proposed new §224.232 would incorporate relevant content from the following current  
4 sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.27, relating to  
5 Complaints, and §215.202, relating to Filing of Complaints.

6 Proposed new §224.234 would describe how the department reviews a complaint to determine  
7 if the department has jurisdiction and meets minimum statutory requirements. Proposed new §224.234  
8 would incorporate relevant content from current §215.203 of this title, relating to Review of Complaints,  
9 which is proposed for repeal in this issue of the *Texas Register*.

10 Proposed new §224.236 would describe the process regarding the notification to the  
11 manufacturer, distributor, or converter. Proposed new §224.236 would be incorporate relevant content  
12 from current §215.204 of this title, relating to Notification to Manufacturer, Converter, or Distributor,  
13 which is proposed for repeal in this issue of the *Texas Register*.

14 Proposed new §224.238 would describe the process for mediation, settlement, and referral for  
15 hearing with a hearings examiner. Proposed new §224.238 would incorporate relevant content from  
16 current §215.205 of this title, relating to Mediation; Settlement, which is proposed for repeal in this  
17 issue of the *Texas Register*.

18 Proposed new §224.240 would describe the notice of hearing requirements consistent with  
19 Government Code, Chapter 2001. Proposed new §224.240 would incorporate relevant content from the  
20 current §215.34 of this title, relating to Notice of Hearing in Contested Cases, which is proposed for  
21 repeal in this issue of the *Texas Register*.

22 Proposed new §224.242 would describe the requirements for a party to make a motion, as well  
23 as the fact that a motion is not granted unless a hearings examiner makes a ruling. Proposed new

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§224.242 would incorporate relevant content from current §215.47 of this title, relating to Motions, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.244 would describe the methods by which a document may be filed and served in this subchapter. Proposed new §224.244 would incorporate relevant content from current §215.49 of this title, relating to Service of Pleading, Petitions, Briefs, and Other Documents, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.246 would describe the role and powers of the hearings examiner and the recusal or substitution process. Proposed new §224.246 would incorporate relevant content from current §215.41 of this title, relating to Presiding Officials, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.248 would describe the criteria for the granting of a continuance by a hearings examiner. Proposed new §224.248 would incorporate relevant content from current §215.40 of this title, relating to Continuance of Hearing, which is proposed for repeal in this issue of the *Texas Register*.

Proposed new §224.250 would describe a party's rights during the hearing, provide guidance as to how a hearing will be conducted, and address participant conduct and decorum in a hearing.

Proposed new §224.250 would incorporate relevant content from the following current provisions of this title that are proposed for repeal in this issue of the *Texas Register*: §215.42, relating to Conduct of Hearing, and §215.43, relating to Conduct and Decorum.

Proposed new §224.252 would address the procedure that will be followed during a hearing. Proposed new §224.252 would incorporate related content from current §215.206 of this title, relating to Mediation; Settlement, which is proposed for repeal in this issue of the *Texas Register*.

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1 Proposed new §224.254 would address the standards and handling of evidence during a  
2 hearing. Proposed new §224.254 would incorporate relevant content from the following current  
3 sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.44, relating to  
4 Evidence, and §215.45, relating to Stipulation of Evidence.

5 Proposed new §224.256 would address how objections and exceptions may be handled during a  
6 hearing conducted by a hearings examiner. Proposed new §224.256 would incorporate relevant content  
7 from current §215.46 of this title, relating to Objections and Exceptions, which is proposed for repeal in  
8 this issue of the *Texas Register*.

9 Proposed new §224.258 would specify that the hearings examiner has final order authority in  
10 cases under this subchapter. Proposed new §224.258 would incorporate relevant content from current  
11 §215.55 of this title, relating to Final Decision, which is proposed for repeal in this issue of the *Texas*  
12 *Register*.

13 Proposed new §224.260 would describe how lemon law relief decisions will be evaluated by a  
14 hearings examiner, the presumptions that may be applied, and how refunds may be calculated, in  
15 addition to other important criteria. proposed new §224.260 would incorporate content from current  
16 §215.208 of this title, relating to Lemon Law Relief Decisions, which is proposed for repeal in this issue  
17 of the *Texas Register*. However, language in §215.208 requiring a different presumptive useful life  
18 calculation for a towable recreational vehicle that is lived in full-time would be omitted as useful life  
19 may vary based on whether the towable recreational vehicle is at a fixed location or used for traveling.  
20 Proposed new §224.260 would allow the hearings examiner to consider the evidence presented  
21 regarding usage and adjust the calculation accordingly.

22 Proposed new §224.262 would detail which incidental costs may be included in a final refund  
23 amount ordered by a hearings examiner. Proposed new §224.262 would incorporate relevant content

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1 from current §215.209 of this title, relating to Incidental Expenses, which is proposed for repeal in this  
2 issue of the *Texas Register*.

3 Proposed new §224.264 would describe the requirements for a hearings examiner to issue a  
4 final order, the process for filing and considering a motion for rehearing, and notification of the parties.

5 Proposed new §224.264 would incorporate relevant content from current §215.207 of this title, relating  
6 to Contested Cases: Final Orders, which is proposed for repeal in this issue of the *Texas Register*.

7 Proposed new §224.266 would describe the complainant's option to accept or reject the final  
8 order and the responsibilities of a manufacturer, distributor, or converter if a complainant accepts the  
9 final order. Proposed new §224.266 would incorporate relevant content from current §215.210 of this  
10 title, relating to Compliance with Order Granting Relief, which is proposed for repeal in this issue of the  
11 *Texas Register*.

12 Proposed new §224.268 would describe the process for a party to appeal a final order in Travis  
13 County district court under Government Code, Chapter 2001, and subject to Occupations Code,  
14 §2301.609. Proposed new §224.268 would incorporate relevant content from current §215.207(f) of this  
15 title, relating to Contested Cases: Final Orders, which is proposed for repeal in this issue of the *Texas*  
16 *Register*.

17 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,  
18 has determined that for each year of the first five years the new rules will be in effect, there will be no  
19 significant fiscal impact to state or local governments as a result of the enforcement or administration of  
20 the proposal. Corrie Thompson, Director of the Enforcement Division, has determined that there will be  
21 no significant effect on local employment or the local economy as a result of the proposal.

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1 **PUBLIC BENEFIT AND COST NOTE.** Ms. Thompson has also determined that, for each year of the first five  
2 years the new sections are in effect, there are several anticipated public benefits because of the proposed  
3 new chapter.

4 Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include the  
5 following: consolidation of the department's rules regarding adjudicative practice and procedure into one  
6 chapter that provides more clarity, more detail, easier reference, and more consistency with current  
7 practice.

8 Anticipated Costs To Comply With The Proposal. Ms. Thompson anticipates that no additional  
9 costs beyond those they already incur to comply with current provisions that we are incorporating, to the  
10 extent that is a true statement.

11 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government  
12 Code, §2006.002, the department has determined that the proposed new chapter will not have an adverse  
13 economic effect on small businesses, micro-businesses, and rural communities because the proposed new  
14 chapter primarily consolidates current rules into a new chapter that is consistent with current practice.  
15 Also, for the cases that the department refers to SOAH, the proposed rules would not change the fact that  
16 the contested case procedures and requirements are primarily governed by Government Code, Chapter  
17 2001 and 1 TAC Chapter 155, which are SOAH's rules of procedure.

18 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests  
19 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property  
20 that would otherwise exist in the absence of government action and, therefore, does not constitute a  
21 taking or require a takings impact assessment under Government Code, §2007.043.

22 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the  
23 first five years the new rules are in effect, a government program would not be created or eliminated.

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1 Implementation of the new rules would not require the creation of new employee positions or elimination  
2 of existing employee positions. Implementation would not require an increase or decrease in future  
3 legislative appropriations to the department or an increase or decrease of fees paid to the department.  
4 The proposed new chapter technically creates new regulation; however, most of the new rule text is  
5 consistent with current practice and rule. The proposed rules do not expand, limit or repeal existing  
6 regulations since the entire chapter is new. Lastly, the proposed new rules do not affect the number of  
7 individuals subject to the rule's applicability and will not affect this state's economy.

**8 REQUEST FOR PUBLIC COMMENT.**

9 If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on MM,  
10 DD, YYYY. A request for a public hearing must be sent separately from your written comments. Send  
11 written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General  
12 Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is  
13 held, the department will consider written comments and public testimony presented at the hearing.

14 **STATUTORY AUTHORITY.** The department proposes new Chapter 224 under Government Code,  
15 §2001.004 and §2001.054; Occupations Code, §§2301.151, 2301.152, 2301.155, 2301.651, and 2302.051;  
16 Transportation Code, §§502.0021, 502.091(b), 503.002, 621.008, 622.002, 623.002, 623.271, 623.272,  
17 643.003, 643.102, 643.251, 643.252, 643.2525, 643.2526, 1002.001, and 1003.005; in addition to the  
18 statutory authority referenced throughout this preamble.

19 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature  
20 and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies  
21 the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal  
22 of a license.

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Occupations Code, §2301.151, gives the board authority to regulate the distribution, sale and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority. Occupations Code, §2301.152, authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503. Occupations Code, §2301.155, authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board. Occupations Code, §2301.651, gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle.

Occupations Code, §2302.051, authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302.

Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §502.091(b) authorizes the department to adopt and enforce rules to carry out IRP.

Transportation Code, §503.002, authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503.

Transportation Code, §621.008 authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621. Transportation Code, §622.002 authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622,



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1 including Transportation Code, §622.051, *et seq.*, which authorize the department to issue a permit for  
2 transporting poles required for the maintenance of electric power transmission and distribution lines.  
3 Transportation Code, §623.002 authorizes the board to adopt rules that are necessary to implement and  
4 enforce Transportation Code, Chapter 623. Transportation Code, §623.271 authorizes the department to  
5 impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation  
6 Code, Chapter 623. Transportation Code, §623.271 also states that the notice and hearing requirements  
7 under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or the  
8 revocation of a permit under §623.271. Transportation Code, §623.272 authorizes the department to  
9 impose an administrative penalty on a shipper who violates a provision under §623.272. Transportation  
10 Code, §623.272 also states that the notice and hearing requirements under Transportation Code,  
11 §643.2525 apply to the imposition of an administrative penalty under §623.272.

12 Transportation Code, §643.003 authorizes the department to adopt rules to administer  
13 Transportation Code, Chapter 643. Transportation Code, §643.102 authorizes a motor carrier to comply  
14 with the requirements under Transportation Code, §643.101 through self-insurance if it complies with the  
15 requirements. Transportation Code, §643.251 authorizes the department to impose an administrative  
16 penalty against a motor carrier required to register under Subchapter B of Transportation Code, Chapter  
17 643 that violates Chapter 643 or a rule or order adopted under Chapter 643. Transportation Code,  
18 §643.252 authorizes the department to suspend, revoke, or deny a registration issued under  
19 Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended.  
20 Transportation Code, §643.2525 provides the process for an administrative hearing under Transportation  
21 Code, Chapter 643. Transportation Code, §643.2526 authorizes an applicant to appeal the denial of an  
22 application for registration, renewal of registration, or reregistration under Transportation Code, Chapter  
23 643.

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1           Transportation Code, §1002.001 authorizes the board to adopt rules that are necessary and  
2   appropriate to implement the powers and duties of the department. Transportation Code, §1003.005  
3   authorizes the board by rule to delegate any power relating to a contested case, including the power to  
4   issue a final order, to one or more board members or certain department staff.

5   **CROSS REFERENCE TO STATUTE.** These new rules would implement Government Code, Chapter 2001;  
6   Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 621–623, 643,  
7   645, and 1002–1005.

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## Chapter 224 – Adjudicative Practice and Procedure

1 TEXT.

2 **SUBCHAPTER A. GENERAL PROVISIONS**

3

4 §224.1. Purpose and Scope.

5 This subchapter describes the procedures by which the department will adjudicate a  
6 contested case arising under Occupations Code, Chapters 2301 or 2302, or Transportation Code,  
7 Chapters 502, 503, 621–623, 643, 645, or 1001–1005, consistent with the requirements of  
8 Government Code, Chapter 2001. Unless expressly excluded or limited, this subchapter applies to  
9 every contested case in which the department has jurisdiction.

10

11 §224.3. Definitions.

12 (a) The statutory definitions govern this chapter. In the event of a conflict, the definition or  
13 procedure referenced in statute controls.

14 (b) When used in this chapter, the following words and terms shall have the following  
15 meanings unless the context clearly indicates otherwise.

16 (1) Administrative Law Judge or ALJ--An individual appointed to serve as a presiding  
17 officer by the State Office of Administrative Hearings Chief Judge under Government Code,  
18 Chapter 2003, to conduct a hearing on matters within the department's jurisdiction.

19 (2) APA--The Administrative Procedure Act, Government Code, Chapter 2001.

20 (3) Authorized representative--An attorney authorized to practice law or, if  
21 authorized by the applicable subchapter, a non-attorney designated by a party to represent the  
22 party.

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1                   (4) Board--The board of the Texas Department of Motor Vehicles, including department  
2                   staff personnel to whom the board delegates an assigned duty.

3                   (5) Complaint--A matter filed under Occupations Code, §2301.460 or under  
4                   Subchapters E or M, or under Transportation Code, Chapter 503.

5                   (6) Confidential Information--Information considered to be confidential under  
6                   constitutional or statutory law or by judicial decision.

7                   (7) Contested Case--A proceeding in which the legal rights, duties, or privileges of a  
8                   party are determined by the department after the opportunity for an adjudicative hearing.

9                   (8) Day--A calendar day.

10                  (9) Department--The Texas Department of Motor Vehicles.

11                  (10) Director--The division director of the department authorized by the board or by  
12                  statute to act, including any department personnel to whom the division director delegates a duty  
13                  assigned under this chapter.

14                  (11) Electronic filing or filed electronically--The electronic transmission of  
15                  documents filed in a contested case by uploading the documents to a case docket using a  
16                  department-designated system or department-designated email.

17                  (12) Electronic service or served electronically--The electronic transmission of  
18                  documents filed in a contested case and sent to a party or a party's authorized representative by  
19                  email or a department-designated system.

20                  (13) Electronic signature or signed electronically--An electronic version of a  
21                  person's signature that is the legal equivalent of the person's handwritten signature, unless the  
22                  document is required to be notarized or sworn. Electronic signature formats include:

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1                    (A) an "/s/" and the person's name typed in the space where the signature  
2   would otherwise appear;

3                    (B) an electronic graphical image or scanned image of the signature; or

4                    (C) a "digital signature" based on accepted public key infrastructure  
5   technology that guarantees the signer's identity and data integrity.

6                    (14) Evidence--Testimony and exhibits admitted into the hearing record by an ALJ  
7   or hearings examiner to prove or disprove the existence of an alleged fact.

8                    (15) Ex Parte Communication--Direct or indirect communication between a state  
9   agency, party, person, or representative of those entities and an ALJ, board member, or hearings  
10   examiner in connection with an issue of law or fact in a contested case where the other known  
11   parties to the contested case do not have notice of the communication and an opportunity to  
12   participate. Ex parte communication does not include:

13                    (A) communication where all parties to the contested case have notice of  
14   the communication and an opportunity to participate;

15                    (B) communication concerning uncontested administrative or uncontested  
16   procedural matters;

17                    (C) consultation between a board member or hearings examiner and the  
18   department's general counsel or hearings personnel;

19                    (D) communication required for the disposition of an ex parte matter or  
20   otherwise expressly authorized by law; and

21                    (E) communication between a state agency, party, person, or representative  
22   of those entities and a mediator made in an effort to evaluate a contested matter for mediation or  
23   to mediate or settle a contested matter.

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1                   (16) Exhibit—A document, record, photograph, video, or other form of data  
2   compilation, regardless of media, or other tangible object offered by a party as evidence.

3                   (17) Filed--The receipt by the department of a document and required payment, if  
4   applicable.

5                   (18) Final order authority--The person with authority under statute or a board rule  
6   to issue a final order.

7                   (19) GDN--General distinguishing number as defined in Transportation Code,  
8   Chapter 503.

9                   (20) Hearings Examiner--An individual appointed by the Chief Hearings Examiner to  
10   serve as a presiding officer to hear contested cases under Occupations Code, §2301.204 or  
11   Subchapter M.

12                   (21) License holder--A person holding a license under Occupations Code, Chapters  
13   2301 or 2302, or a GDN or other license issued under Transportation Code, Chapter 503.

14                   (22) Mediation--A confidential, informal dispute resolution process in which a  
15   qualified impartial person facilitates communication between the contested case parties to  
16   promote settlement, reconciliation, or understanding, as defined by Occupations Code, §2301.521.

17                   (23) Party--A person, including the department, named or allowed to participate in  
18   a contested case.

19                   (24) Person--As defined in Occupations Code, §2301.002.

20                   (25) Personal information--As defined by Transportation Code, §730.003(6).

21                   (26) Personal identifying information--As defined by Business and Commerce Code,  
22   §521.002(1).

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1                   (27) Pleading--A filed document that requests procedural or substantive relief,  
2                   makes a claim, alleges a fact, denies an allegation, makes or responds to a legal argument, or  
3                   otherwise addresses a matter involved in a contested case.

4                   (28) Protest--To challenge a person's licensing application or a decision by a license  
5                   holder, as provided under Occupations Code, Chapter 2301.

6                   (29) Redact--To remove a reference from a document.

7                   (30) Sensitive personal information--As defined by Business and Commerce Code,  
8                   §521.002(2).

9                   (31) SOAH--The State Office of Administrative Hearings.

10                  (32) Stipulation--A binding agreement among opposing parties concerning a relevant  
11                  issue or fact.

12                  (33) TAC--The Texas Administrative Code.

13                  (34) TRCP--The Texas Rules of Civil Procedure, which may be found on the website of the  
14                  Supreme Court of Texas.

15                  (35) TRE--The Texas Rules of Evidence, which may be found on the website of the  
16                  Supreme Court of Texas.

17  
18                  §224.5. Prohibited Communication.

19                  (a) No person, party, attorney of record, or authorized representative in any contested  
20                  case shall violate Government Code, §2001.061 by directly or indirectly engaging in ex parte  
21                  communication concerning a contested case with an ALJ, board member, board delegate, or a

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1 hearings examiner assigned to render a decision or make findings of fact and conclusions of law in  
2 a contested case.

3 (b) Unless prohibited by Government Code, §2001.061, department staff who did not  
4 participate in the hearing may advise a board member, a board delegate, or a hearings examiner,  
5 regarding a contested case and any procedural matters.

6 (c) Department staff shall not recommend a final decision to the board unless the  
7 department is a party to the contested case.

8 (d) A violation of this section shall be promptly reported to the board chair or chief  
9 hearings examiner, as applicable, and the general counsel of the department.

10 (e) The general counsel shall ensure that a copy or summary of the ex parte communication  
11 is included with the record of the contested case and that a copy is forwarded to all parties or their  
12 authorized representatives.

13 (f) The general counsel may take any other appropriate action otherwise provided by law.  
14

15 §224.7. Appearance.

16 (a) General. Any party to a contested case may appear in person or by an authorized  
17 representative. An authorized representative may be required to show authority to represent a party.

18 (b) Appearance by authorized representative. An authorized representative who has not entered  
19 an appearance as a matter of record in a contested case shall enter an appearance by filing with the  
20 department appropriate documentation that contains the representative's mailing address, email  
21 address, and telephone number. If the authorized representative's authority is challenged, the  
22 representative must show authority to appear as the party's representative.



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1           (c) Attorney in charge. When more than one attorney makes an appearance in a contested case  
2           on behalf of a party, the attorney whose signature appears first on the initial document filed in the  
3           contested case shall be the attorney in charge for that party unless another attorney is specifically  
4           designated in writing. All communication sent by the department or other party regarding the contested  
5           case shall be sent to the attorney in charge unless otherwise requested by a party.

6           (d) Intervention. Any public official or other person having an interest in a contested case may,  
7           upon request to the ALJ or hearings examiner, be allowed to intervene. A person requesting to intervene  
8           in a contested case may be required to disclose that person's interest in the contested case before  
9           permission to intervene will be granted.

10           (e) A person may be invited to participate in a contested case mediation if all parties and the  
11           mediator agree that the person's participation will facilitate understanding and resolution of the  
12           contested case. However, an invited person who is not a party is not required to participate in a  
13           mediation.

14           (f) This rule does not allow a person to engage in the unauthorized practice of law.

15  
16           §224.9. Computing Time.

17           (a) General. Any time period prescribed or allowed by this chapter, by order of the board, or by  
18           any applicable statute shall be computed in accordance with Government Code, §311.014.

19           (b) Application of this section. This section applies, unless another method is required by statute,  
20           another rule in this chapter, or order.

21           (c) Computing time periods. When computing a time period under this chapter:

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1                   (1) the day of the act, event, or default from which the designated time period begins to  
2 run is not counted; and

3                   (2) the last day of the time period is counted, unless it is a Saturday, Sunday, or legal  
4 holiday, in which case the period is extended to include the next day that is not a Saturday, Sunday, or  
5 legal holiday.

6                   (d) Calendar days. Time shall be computed using calendar days rather than business days, unless  
7 otherwise specified in statute or rule.

8  
9                   §224.11. Filing and Service of Documents.

10                   (a) Each document required or allowed to be filed with the department under this chapter must  
11 be filed as required under this section and the relevant subchapter for the applicable type of contested  
12 case.

13                   (b) A copy of each document filed in a contested case shall be filed or served on the same date  
14 upon:

15                   (1) the department, and

16                   (2) each party or the party's authorized representative or attorney in charge.

17                   (c) A certificate of service shall accompany each document. A certificate of service by the party  
18 or party's authorized representative showing timely service in a manner described in the relevant  
19 subchapter shall be prima facie evidence of timely service. This section does not preclude the  
20 department or any party from offering proof that the document was not timely filed or served.

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1           (d) To be timely filed, a document must be received by the department within the time specified  
2 by statute, rule, or department order. A document received after the specified time, notwithstanding the  
3 means of delivery, shall be deemed untimely. Electronic filing is considered timely if the document is  
4 received by 5:00 p.m. Central Standard Time or Daylight Savings Time when in effect. Electronic filing  
5 after 5:00 p.m. shall be deemed received on the following day or the next business day if filed on a  
6 Saturday, Sunday, or legal holiday.

7           (e) A document filed electronically must:

8                   (1) be legible and in a portable document format (PDF), unless the department requests  
9 a different format;

10                   (2) be directly converted to PDF rather than scanned, to the extent possible;

11                   (3) not be locked;

12                   (4) include the email address of the party or authorized representative who  
13 electronically filed the document;

14                   (5) include the docket number and the name of the contested case in which the  
15 document is filed;

16                   (6) be titled or described in a manner that allows the department and the parties to  
17 reasonably ascertain the contents of the document; and

18                   (7) include an electronic signature.

19           (f) The department is not responsible for a filing party's user, system, transmission, or service  
20 error.

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1           (g) If a document is not filed or served timely due to a system outage of a department-  
2           designated system, the filing party may send the document to a department-designated email address or  
3           seek appropriate relief from the final order authority.

4           (h) A party must redact information in a document before filing if the document contains  
5           personal identifying information, sensitive identifying information, or other confidential information that  
6           is not necessary to the resolution of the case. If the information is necessary to the resolution of the  
7           case, each page of the document must be conspicuously marked as “CONFIDENTIAL – NOT FOR PUBLIC  
8           RELEASE” in bold 12-point or larger type in the document header or footer. A party may request a  
9           document be filed under seal if allowed by other law, order, or rule.

10  
11           §224.13. Discovery.

12           (a) Party Cooperation. The parties and their authorized representatives shall cooperate in  
13           discovery and shall endeavor to make any agreement reasonably necessary for the efficient disposition  
14           of the contested case.

15           (b) Discovery Request. A party may request that the department issue a commission or a  
16           subpoena if the parties cannot agree, or a contested case requires testimony, documents, or information  
17           from a person who is not a party. A party must submit a commission or subpoena request to the  
18           department’s Office of General Counsel for review.

19           (c) Commission to take a deposition. Upon the written request of a party, the executive director  
20           may issue a written commission directed to an officer, authorized by statute, to take a deposition of a  
21           witness.

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1        (d) Subpoena to produce documents. Upon the written request of a party, the executive director  
2        may issue a subpoena for the production of documents. The written request must identify the  
3        documents with as much detail as possible and must include a statement of their relevance to the issues  
4        in the contested case.

5        (e) Subpoena for attendance at a hearing or a deposition. Upon the written request of a party,  
6        the executive director may issue a subpoena for the attendance of a witness at a hearing or a deposition  
7        in a contested case. The subpoena may be directed to any person without regard to the distance  
8        between the location of the witness and the location of the hearing.

9        (f) The executive director is authorized to delegate the authority to department staff to issue a  
10       subpoena and a commission.

11       (g) Limits on discovery. A commission or subpoena will only be issued on a showing of good  
12       cause and receipt of a deposit sufficient to ensure payment of expenses and fees related to the  
13       subpoena, including statutory witness fees. A commission or subpoena will not be issued if it appears to  
14       be duplicative, dilatory, sought for the purpose of harassment, or if it would unduly inconvenience the  
15       person to whom it is directed. Issuance of a commission or subpoena will be subject to the provisions of  
16       Government Code, Chapter 2001, and SOAH rules.

17  
18       §224.15. Hearing Recording and Transcription Cost.

19       (a) Except as provided by Subchapter G of this chapter (relating to Lemon Law and Warranty  
20       Performance Claims), a hearing in a contested case will be transcribed by a court reporter if anticipated  
21       to last longer than one day.

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1           (b) The costs of transcribing the hearing and for the preparation of an original transcript of the  
2 record for the department shall be:

3                     (1) assessed to a party requesting the transcript in a contested case;

4                     (2) shared by the parties in a contested case under Subchapter C of this chapter (relating  
5 to Contested Cases Between Motor Vehicle Industry License Holders or Applicants); or

6                     (3) assessed as directed by the ALJ or hearings examiner.

7           (c) Copies of recordings or transcriptions of a contested case hearing will be provided to any  
8 party upon written request and upon payment for any duplication costs incurred by the department.

9  
10 §224.17. Consolidation of Proceedings.

11           No contested case proceedings including two or more related cases or claims shall be jointly  
12 heard without the consent of all parties, unless the ALJ or hearings examiner finds that justice and  
13 efficiency are better served by the consolidation.

14  
15 §224.19. Informal Disposition.

16           (a) Notwithstanding any other provision in this chapter, at any time during the contested case,  
17 the final order authority may informally dispose of a contested case in whole or in part by stipulation,  
18 agreement, dismissal, or consent order.

19           (b) If the parties have settled or otherwise determined that a contested case proceeding is not  
20 required, the party who initiated the contested case shall file a motion to dismiss the contested case

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1 from the docket and present a proposed agreed order or dismissal order to the final order authority. If  
2 the party who initiated the contested case fails to file a motion to dismiss as required under this  
3 subsection, the final order authority may issue a dismissal order after providing the parties with a 30-day  
4 notice.

5 (c) A proposed agreed order submitted to the final order authority by the parties must contain  
6 proposed findings of fact and conclusions of law.

7 (d) Upon receipt of the proposed agreed order, the final order authority may:

8 (1) adopt the settlement agreement and issue a final order;

9 (2) reject the settlement agreement and remand the contested case for a hearing; or

10 (3) take other action that the final order authority finds just.

11  
12 §224.21. Waiver of Hearing.

13 After the department issues a notice of hearing in a contested case, a party may waive a hearing  
14 and consent to an agreed order. An agreed order proposed by the parties is subject to the approval of  
15 the final order authority.

16  
17 §224.23. Hearings to be Public.

18 A hearing in a contested case shall be open to the public.  
19

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§224.25. Extension of Time.

(a) The final order authority may not extend the time for filing a document when a statute or rule specifies the time period by which a document must be filed with the department.

(b) When an act is discretionary or allowed to be done at or within a specified time in accordance with this chapter and Government Code, Chapter 2001, the final order authority, with good cause shown, may:

(1) order the specific period extended if the extension is requested before the expiration of the period previously specified; or

(2) allow the act to be done after the expiration of the specified period, provided good cause is shown for the failure to act.

§224.27. Final Order; Motion for Rehearing.

(a) The provisions of Government Code, Chapter 2001, Subchapter F, govern the issuance of a final order issued under this subchapter and a motion for rehearing filed in response to a final order.

(b) Except as provided by subsection (c) of this section and §224.29 of this title (relating to Delegation of Final Order Authority), the board has final order authority in a contested case filed under Occupations Code, Chapters 2301 or 2302, or under Transportation Code, Chapters 502, 503, 621-623, 643, 645, and 1001–1005.

(c) The hearings examiner has final order authority in a contested case filed under Occupations Code, §2301.204 or Occupations Code Chapter 2301, Subchapter M.



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1           (d) A department determination and action denying access to the temporary tag database  
2           becomes final within 26 days of the date of the notice denying access to a database, unless the dealer or  
3           converter:

4                     (1) requests a hearing regarding the denial of access, or

5                     (2) enters into a settlement agreement with the department.

6           (e) Unless a timely motion for rehearing is filed with the appropriate final order authority as  
7           provided by law, an order shall be deemed final and binding on all parties. All administrative remedies  
8           are deemed to be exhausted as of the effective date of the final order.

9           (f) If a timely motion for rehearing is not filed, the final order shall be deemed final and binding  
10          in accordance with the provisions of Government Code, §2001.144.

11          (g) If a final and binding order includes an action on a license, the department may act on the  
12          license on the date the final order is deemed final and binding, unless the action is stayed by a court  
13          order.

14  
15          §224.29. Delegation of Final Order Authority.

16          (a) In accordance with Occupations Code, §2301.154(c) and Transportation Code, §1003.005(b),  
17          except as provided by subsection (b) of this section, the director of the division that regulates the  
18          distribution and sale of motor vehicles is authorized to issue, where there has not been a decision on the  
19          merits, a final order in a contested case under Subchapters B and C, including, but not limited to a  
20          contested case resolved:

21                     (1) by settlement;

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1                   (2) by agreed order;

2                   (3) by withdrawal of the complaint;

3                   (4) by withdrawal of a protest;

4                   (5) by dismissal for want of prosecution including:

5                               (A) failure of a complaining or protesting party to participate in scheduling  
6 mediation or to appear at mediation as required under Subchapter C of this chapter (relating to  
7 Contested Cases Between Motor Vehicle Industry License Holders or Applicants);

8                               (B) failure of a complaining or protesting party to respond to department  
9 requests for information or scheduling matters;

10                              (C) failure of a complaining or protesting party to dismiss a contested case that  
11 has been resolved by the parties;

12                   (6) by dismissal for want of jurisdiction;

13                   (7) by summary judgment or summary disposition;

14                   (8) by default judgment; or

15                   (9) when a party waives opportunity for a contested case hearing.

16                   (b) In accordance with Occupations Code, §2301.704 and §2301.711, a hearings examiner is  
17 authorized to issue a final order in a contested case brought under Occupations Code, §2301.204 or  
18 §§2301.601–2301.613.

19                   (c) In accordance with Transportation Code, §1003.005, the director of the department's Motor  
20 Carrier Division is delegated any power relating to a contested case, including the authority to issue a

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1 final order, in contested cases under Subchapter D of this chapter to the extent that delegation of such  
2 authority is not already provided by statute.

3 (d) In a contested case in which the board has delegated final order authority under subsection  
4 (a) or (c) of this section, a motion for rehearing shall be filed with and decided by the final order  
5 authority delegate.

6  
7 §224.31. Cost of Record on Appeal.

8 (a) If a final decision in a contested case is appealed and the department is required to transmit  
9 to the court the original or a certified copy of the administrative record, or any part thereof, the  
10 appealing party shall pay the costs of preparation of the record, unless waived by the department in  
11 whole or in part.

12 (b) A charge imposed as provided by this section is a court cost and may be assessed by the  
13 court in accordance with the TRCP.

14  
15 **SUBCHAPTER B. MOTOR VEHICLE, SALVAGE VEHICLE, AND TRAILER INDUSTRY ENFORCEMENT**

16  
17 §224.50. Purpose and Scope.

18 This subchapter, and Subchapters A, E, and F, describe the procedures by which the  
19 department will adjudicate alleged violations of Occupations Code, Chapter 2301 and 2302, and  
20 Transportation Code, Chapter 503 brought by the department against a license applicant, license

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1 holder, or unlicensed person engaging in an activity or business that requires a license under these  
2 statutes.

4 §224.52. Cease and Desist Order; Delegation of Authority.

5 (a) When a person is alleged to be violating a provision of Occupations Code, Chapter 2301,  
6 or a board rule or order, the department may enter an interlocutory order requiring the person to  
7 cease and desist from the violation under the following procedures.

8 (1) In accordance with Occupations Code, §2301.154(c) and Transportation Code,  
9 §1003.005(b), the department's Enforcement Division director is delegated the authority to issue an  
10 interlocutory cease-and-desist order under the procedures established in this subsection.

11 (2) A person requesting an interlocutory cease-and-desist order must present a  
12 petition or complaint, verified by affidavit, containing a plain statement of the grounds for  
13 seeking the cease-and-desist order to the department's Enforcement Division director in  
14 accordance with the procedures set forth in §224.84 of this section (regarding Filing and Service  
15 of a Protest, Complaint, or Other Document). The department shall not issue an interlocutory  
16 cease-and-desist order without a verified petition or complaint that meets the requirements of  
17 this subsection.

18 (3) At least three days prior to entering an interlocutory order requiring a person to  
19 cease and desist, the department must send a letter notifying the person of the allegations against them  
20 to all current addresses for the person in the department's records by both electronic service and  
21 certified mail, return receipt requested.

22 (4) The notice letter must include a statement of the alleged conduct that forms the  
23 basis for the interlocutory cease-and-desist order and must provide the person the opportunity to

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1 show cause in writing within three days why the department should not issue a cease-and-desist  
2 order.

3 (5) In considering whether to issue an interlocutory cease-and-desist order, the  
4 department must determine if the conditions set forth in Occupations Code, §2301.802(b) are present  
5 and consider the person's written response, if any, to the letter notifying the person of the alleged  
6 violations. The department shall email a copy of the department's decision to the person in addition to  
7 sending a copy by certified mail, return receipt requested.

8 (6) Each interlocutory cease-and-desist order must include:

9 (A) the date and hour of issuance;

10 (B) a statement of which of the conditions in Occupations Code,  
11 §2301.802(b) the department determined were present to necessitate the cease-and-desist order;

12 (C) a notice of hearing at SOAH to determine the validity of the order;

13 (D) the reasons for its issuance; and

14 (E) a description in reasonable detail of the act or acts to be restrained.

15 (7) If the ALJ determines after a hearing that the cease-and-desist order should  
16 remain in place during the pendency of the contested case, the ALJ shall issue an interlocutory  
17 cease-and-desist order.

18 (8) An interlocutory cease-and-desist order remains in effect until vacated or  
19 incorporated in a final order.

20 (9) A party may immediately appeal an interlocutory cease-and-desist order issued by an  
21 ALJ to the board under §224.192 of this title (relating to Appeal of an Interlocutory Order) while the  
22 contested case is at SOAH.

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1        (b) The department may issue a final cease-and-desist order if a person who is not licensed  
2        under Occupations Code, Chapter 2302 is found, after notice and opportunity for a hearing, to  
3        have violated that chapter or a rule or order adopted under that chapter. The department may  
4        also issue a final cease-and-desist order under Occupations Code, Chapter 2301 to a person found,  
5        after notice and opportunity for a hearing, to have violated that chapter, a board rule, or an order.

6                (1) If the department decides to seek a cease-and-desist order under subsection (b) of  
7        this section, the department will send a letter notifying the person of the allegations against them to all  
8        current addresses for the person in the department's records by both electronic service and certified  
9        mail, return receipt requested. The notice letter will contain:

10                        (A) a summary of the factual allegations;

11                        (B) a description of the statutory provision, rule or order the person is  
12        alleged to have violated;

13                        (C) a description in reasonable detail of the act or acts to be restrained by  
14        the cease-and-desist order;

15                        (D) a statement regarding the person's right to request a hearing;

16                        (E) the procedure to request a hearing, including the deadline for filing; and

17                        (F) notice to the person that the department will issue a cease-and-desist  
18        order that will become final on the date specified if the person fails to timely request a hearing.

19                (2) A person to whom a cease-and-desist notice letter under subsection (c) is sent  
20        may file a written request for a hearing before a SOAH ALJ. The person must submit, in writing, a  
21        request for a hearing under this section to the department's contact listed in the notice letter  
22        provided under subsection (c)(1) of this section. The department must receive the request for a  
23        hearing within 26 days of the date the notice letter is mailed.

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1                   (3) If the person does not make a timely written request for a hearing within 26  
2 days of the date the cease-and-desist letter is mailed, the allegations are deemed admitted on the  
3 27th day and a final cease-and-desist order including sanctions may be issued by the final order  
4 authority.

5                   (c) Once jurisdiction for the conduct of a contested case hearing transfers to SOAH, an ALJ  
6 may act on a party's motion regarding an existing cease-and-desist order issued by the department  
7 or consider a new motion for a cease-and-desist order by a party.

8  
9 §224.54. Civil Penalty Assessment.

10                   (a) Occupations Code, §2301.801 and §2302.354, and Transportation Code, §503.095  
11 govern the amount of a civil penalty that may be assessed by the department against a license  
12 holder.

13                   (b) In determining the amount of civil penalty to assess the department will consider the  
14 following aggravating factors:

15                   (1) the seriousness of the violation, including the nature, circumstances, extent,  
16 and gravity of any prohibited act, and the harm or potential harm to the safety of the public;

17                   (2) the economic damage to the public caused by the violation;

18                   (3) any history of previous violations including whether the license holder  
19 previously entered into an agreed order with the department or otherwise received a warning or  
20 reduced penalty;

21                   (4) the amount necessary to deter a future violation; and

22                   (5) any other matter that justice may require, including:

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1                    (A) the number of violations or number of consumers harmed by  
2 violation(s);

3                    (B) whether the consumer received a title;

4                    (C) whether the license holder misused license plates or temporary tags;

5                    (D) whether the license holder attempted to conceal a violation;

6                    (E) whether the act constituting the violation was intentional,  
7 premeditated, knowing, or grossly negligent; and

8                    (F) whether an order issued by the department was violated.

9                    (c) In determining whether license revocation is appropriate, the department will consider  
10 the following factors:

11                    (1) whether the license holder is unfit under standards governing the occupation,  
12 including qualifications for a license;

13                    (2) whether the license holder made a material misrepresentation in any written  
14 communication or information provided to the department;

15                    (3) whether the license holder willfully defrauded a purchaser;

16                    (4) whether the license holder misused license plates or temporary tags, including  
17 whether the license holder attempted to use an internet-down tag to avoid inspection  
18 requirements;

19                    (5) whether the license holder failed to fulfill a written agreement with a retail  
20 purchaser of a vehicle or motor vehicle; and

21                    (6) whether the license holder failed to attend an approved dealer training seminar  
22 as ordered in an agreed final order



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1           (d) The department will consider the following mitigating factors in determining the  
2   amount of civil penalty to assess or whether license revocation is appropriate:

3                   (1) acknowledgment by the licensee of any wrongdoing;

4                   (2) willingness to cooperate with the department; and

5                   (3) efforts to correct a violation.

6           (e) The department will publish a disciplinary matrix on the department website to provide  
7   guidance to license holders on the sanctions that may be assessed for the most common  
8   violations.

9  
10   §224.56. Notice of Department Decision.

11           (a) The department shall issue a Notice of Department Decision to a license applicant,  
12   license holder, or other person by certified mail, return receipt requested, to the last known  
13   address and email address upon a determination under Occupations Code, Chapters 2301 and  
14   2302 or Transportation Code, Chapter 503 that:

15                   (1) an application for a license should be denied; or

16                   (2) an administrative sanction should be imposed.

17           (b) The last known address is the mailing address provided by the person in the  
18   department-designated licensing system.

19           (c) A Notice of Department Decision shall include:

20                   (1) a statement describing the department decision and the effective date;

21                   (2) a description of each alleged violation;

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1                   (3) a description of each administrative sanction being proposed;

2                   (4) a statement which sets out the legal basis for each administrative sanction;

3                   (5) a statement informing the license applicant, license holder, or other person of  
4 the right to request a hearing;

5                   (6) the procedure to request a hearing, including the deadline for filing a request  
6 with the department and the acceptable electronic methods to request a hearing; and

7                   (7) notice to the license applicant, license holder, or other person that the  
8 proposed decision and administrative sanctions in the Notice of Department Decision will become  
9 final on the date specified if the license applicant, license holder, or other person fails to timely  
10 request a hearing in accordance with subsection (d) of this section.

11                  (d) To receive a hearing, the license applicant, license holder, or other person must submit  
12 a written request for a hearing under this section to the department. The department must receive  
13 a hearing request within 26 days of the date of the Notice of Department Decision for the request  
14 to be considered timely.

15                  (e) If the department receives a timely request for a hearing, the department will contact  
16 the license holder and attempt to informally resolve the contested case. If the license holder and  
17 the department cannot informally resolve the contested case, the department will refer the  
18 contested case to SOAH to set a hearing date and will give notice to the license applicant, license  
19 holder, or other person of the date, time, and location of the hearing.

20                  (f) If the license applicant, license holder, or other person does not make a timely request  
21 for a hearing or agree to settle the contested case within 26 days of the date of the Notice of

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Department Decision, the allegations are deemed admitted on the 27th day and a final order including sanctions may be issued by the final order authority.

§224.58. Denial of Dealer or Converter Access to Temporary Tag System.

(a) In this section "fraudulently obtained temporary tags from the temporary tag database" means misuse by a dealer or converter account user of the temporary tag database authorized under Transportation Code, §503.0626 or §503.0631 to obtain:

- (1) an excessive number of temporary tags relative to dealer sales;
- (2) temporary tags for a vehicle or vehicles not in the dealer's or converter's inventory (a vehicle is presumed not to be in the dealer's or converter's inventory if the vehicle is not listed in the relevant monthly Vehicle Inventory Tax Statement);
- (3) access to the temporary tag database for a fictitious user or person using a false identity;
- (4) temporary tags for a vehicle or a motor vehicle when a dealer is no longer operating at a licensed location; or
- (5) temporary tags issued for a vehicle or a motor vehicle not located at a licensed location or a storage lot listed on the application.

(b) The department shall deny a dealer or converter access to the temporary tag database effective on the date the department sends notice electronically and by certified mail to the dealer or converter that the department has determined, directly or through an account user, that the dealer or converter has fraudulently obtained temporary tags from the temporary tag database. A dealer or

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1 converter may seek a negotiated resolution with the department by demonstrating the dealer or  
2 converter took corrective action or that the department's determination was incorrect.

3 (c) Notice shall be sent to the dealer's or converter's last known mailing address and last known  
4 email in the department-designated licensing system.

5 (d) A dealer or converter may request a hearing on the denial of access to the temporary tag  
6 database, as provided by Subchapter O, Chapter 2301, Occupations Code. The request must be in writing  
7 and the dealer or converter must request a hearing under this section. The department must receive the  
8 written request for a hearing within 26 days of the date of the notice denying access to the database.  
9 The request for a hearing does not stay the denial of access under subsection (b) of this section. A dealer  
10 or converter may continue to seek a negotiated resolution with the department after a request for  
11 hearing has been submitted under this subsection by demonstrating the dealer or converter took  
12 corrective action or that the department's determination was incorrect.

13 (e) The department may also issue a Notice of Department Decision stating administrative  
14 violations as provided in §224.56 of this title (relating to Notice of Department Decision) concurrently  
15 with the notice of denial of access under this section. A Notice of Department Decision may include  
16 notice of any violation, including a violation listed under subsection (a) of this section.

17 (f) A department determination and action denying access to the temporary tag database  
18 becomes final if the dealer or converter does not request a hearing or enter into a settlement agreement  
19 with the department within 26 days of the date of the notice denying access to a database.

20  
21 §224.60. Filing and Service of Documents.

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Each document required or allowed to be filed with the department under this subchapter must be filed electronically in a department-designated system or according to written instructions provided by the department.

§224.62. Referral to SOAH.

(a) If the department receives a timely request for a hearing and the parties are unable to informally resolve or dispose of the contested case, the department will refer the contested case to SOAH by filing a Request to Docket form and related documents as required under SOAH rules.

(b) When SOAH accepts the department's request to docket a contested case, jurisdiction transfers to SOAH.

§224.64. Notice of Hearing.

Once SOAH provides the department with the initial hearing date, time, and place, the department notifies the parties. The contested case proceeds according to Subchapter E of this chapter (relating to Contested Cases Referred to SOAH).

**SUBCHAPTER C. CONTESTED CASES BETWEEN MOTOR VEHICLE INDUSTRY LICENSE HOLDERS OR APPLICANTS**

§224.80. Purpose and Scope.

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1        This subchapter, and Subchapters A, E, and F of this chapter describe the procedures by  
2        which the department will adjudicate a protest or complaint filed by a license holder against  
3        another license holder or license applicant under Occupations Code, Chapter 2301, Subchapters H,  
4        I, or J.

5  
6        §224.82. Form of a Protest or Complaint.

7        (a) Protest. A franchised dealer that wishes to protest an application shall give notice in  
8        accordance with Occupations Code, Chapter 2301. The notice of protest shall:

9                (1) be in writing and signed by an owner or officer authorized to sign on behalf of  
10        the protesting dealer filing the notice;

11               (2) state the statutory basis upon which the protest is made;

12               (3) assert how the protesting dealer meets the standing requirements under  
13        §215.119 of this title (relating to Standing to Protest) to protest the application;

14               (4) include the notice of opportunity to protest sent to the dealer; and

15               (5) state that the protest is not made for purposes of delay or for any other  
16        purpose except for justifiable cause.

17        (b) Complaint. If a license holder wishes to file a complaint against another license holder  
18        under Occupations Code, Chapter 2301, Subchapters H, I, or J, the complaint must:

19               (1) be in writing and signed by an owner or officer authorized to sign on behalf of  
20        the complainant;

21               (2) state sufficient facts to enable the department and the party complained  
22        against to know the nature of the complaint and the specific problems or circumstances forming  
23        the basis of the claim for relief under the statute; and

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1                   (3) state the statutory provision under which the complaint is made.

3   §224.84. Filing and Service of a Protest, Complaint, or Other Document.

4                   (a) A party must file and serve a complaint, protest, or other document required or allowed  
5   to be filed with the department under this subchapter electronically in the department-designated  
6   licensing system, and include a Certification of Responsibility, a form provided by the department.

7                   (b) Once a docket number has been assigned to a contested case by either the department or  
8   SOAH, a party must include all assigned docket numbers on a pleading, motion, correspondence, or  
9   other document filed in the contested case.

11   §224.86. Review of a Protest or Complaint.

12                   (a) The department will review a protest or complaint to determine whether:

13                   (1) a hearing is appropriate under Occupations Code, Chapter 2301; Transportation  
14   Code, Chapter 503; or Board rule; and

15                   (2) the protest or hearing document meets minimum requirements.

16                   (b) If the department cannot determine whether a complaint meets minimum requirements, the  
17   department may contact the protestant, complainant, or other person for additional information.

18                   (c) If the department determines that a protest or complaint meets minimum requirements, a  
19   protest or complaint will be processed in accordance with this subchapter.

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§224.88. Docketing and Notice of a Protest or Complaint.

(a) If a protest or complaint meets minimum requirements, the department will docket the contested case and assign a docket number.

(b) The department will notify the contested case parties that a statutory stay under Occupations Code, §2301.803 is in effect.

(c) The department will assign a department mediator and notify the contested case parties. Within seven days of the department notice date, each party must either:

(1) accept the assigned department mediator; or

(2) decline the assigned department mediator and retain a private mediator and comply with the requirements of §224.90 of this title (relating to Mediation).

§224.90. Mediation.

(a) Except as provided by subsection (b), parties to a contested case filed under this subchapter are required to participate in mediation before the department will refer a contested case to SOAH for a hearing.

(b) This section does not limit the parties' ability to settle a case without mediation.

(c) The department will provide mediation services by a staff member qualified to serve as an impartial third party in accordance with Civil Practice and Remedies Code, Chapter 154.

(d) The mediation will conclude within 60 days of the date a contested case is assigned to a department mediator, unless the mediation deadline is extended. The department mediator may extend



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1 the mediation deadline based on a written request by a party or at the department mediator's  
2 discretion.

3 (e) If the parties do not agree on a mediation date within 30 days, the department mediator may  
4 set a date for mediation by notifying the parties in writing at least 10 days before the mediation date.

5 (f) At the discretion of the department mediator, a party may participate in scheduled mediation  
6 either in person or remotely using telephonic or videoconferencing technology.

7 (g) A party that declines to use the assigned department mediator shall:

8 (1) confer with each contested case party; and

9 (2) within 30 days of receiving notice from the department under §224.88 of the title  
10 (relating to Docketing and Notice of a Protest or Complaint), file with the department a joint notice of  
11 intent to retain a private mediator.

12 (h) The joint notice of intent to retain a private mediator must include:

13 (1) the name, address, email address, and telephone number of the private mediator  
14 agreed upon by the parties;

15 (2) a statement that the parties have entered into an agreement with the private  
16 mediator regarding the mediator's rate, method of compensation, and party responsibility for fee  
17 payment;

18 (3) an affirmation that the private mediator qualifies for appointment as an impartial  
19 third party in accordance with Civil Practice and Remedies Code, Chapter 154;

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1                   (4) a statement that the mediation will conclude within 60 days of the department's  
2 notice under §224.88 of the title, unless the mediation deadline is extended at the department's  
3 discretion; and

4                   (5) the signature of each party or authorized representative.

5                   (i) All communication and documents provided by a contested case party or invited person in a  
6 mediation are confidential and subject to the Governmental Dispute Resolution Act, Government Code,  
7 §2009.054.

8                   (j) An agreement reached by the contested case parties in mediation shall be reduced to writing  
9 and signed by the parties.

10                  (k) Within 10 days of the conclusion of a mediation, a mediator shall provide to the department  
11 and to the parties a written report stating:

12                   (1) whether the parties attended and participated in the mediation;

13                   (2) whether the matter settled in part or in whole;

14                   (3) any unresolved issues remaining in the contested case; and

15                   (4) any other stipulations or matters the parties agree to report.

16                  (l) Upon receipt of the mediator's report required under this section, the department shall:

17                   (1) enter an order disposing of resolved issues;

18                   (2) refer unresolved issues to SOAH for a hearing on the merits; and

19                   (3) inform SOAH whether a party refused to attend or participate in a mediation.

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1           (m) If a party refused to participate or attend a mediation, an ALJ may recommend a sanction in  
2           the proposal for decision.

3  
4           §224.92. Referral to SOAH.

5           (a) The department will refer to SOAH unresolved contested case issues by filing all forms and  
6           documents that are required under SOAH rules to docket a case.

7           (b) When SOAH accepts the department's request to docket, jurisdiction of the contested case  
8           transfers to SOAH.

9  
10           §224.94. Notice of Hearing.

11           (a) Once SOAH provides the department with the initial hearing date, time, and place, the  
12           department will issue to the contested case parties a notice of hearing that complies with Occupations  
13           Code, §2301.705, Government Code, Chapter 2001, and 1 TAC §155.401.

14           (b) The contested case proceeds according to Subchapter E of this chapter (relating to Contested  
15           Cases Referred to SOAH).

16  
17           **SUBCHAPTER D. MOTOR CARRIER AND OVERSIZE OR OVERWEIGHT VEHICLE OR LOAD**

18                               **ENFORCEMENT**

19  
20           §224.110. Purpose and Scope.

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## Chapter 224 – Adjudicative Practice and Procedure

This subchapter and Subchapters A, E, and F of this chapter describe the procedures by which the department will adjudicate alleged violations and claims under Transportation Code, Chapters 502, 621–623, 643, and 645. These contested cases involve registrants under the International Registration Plan, motor carriers, motor carrier leasing businesses, motor transportation brokers, and household goods carriers. Contested cases involving persons operating oversize or overweight vehicles or moving oversize or overweight loads are also included.

§224.112. Definitions.

(a) The definitions contained in the relevant Transportation Code chapter apply to the contested cases under this subchapter.

(b) The definitions contained in Chapter 217 of this title (relating to Vehicle Titles and Registration), Chapter 218 of this title (relating to Motor Carriers), and Chapter 219 of this title (relating to Oversize and Overweight Vehicles and Loads) apply to the relevant contested cases under this subchapter.

§224.114. Cease and Desist Order.

(a) The department may issue a cease-and-desist order to a respondent:

(1) who engages or represents itself to be engaged in a motor carrier operation that is in violation of this chapter;

(2) to prevent a violation of Chapter 218 of this title (relating to Motor Carriers); or

(3) to protect public health and safety.

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1           **(b) The order shall:**

2                   **(1) be delivered by personal delivery or registered or certified mail, return receipt**  
3 **requested, to the person's or entity's last known address;**

4                   **(2) include:**

5                           **(A) a summary of the factual allegations;**

6                           **(B) a description of the statutory provision, rule or order the person is**  
7 **alleged to have violated;**

8                           **(C) a description in reasonable detail of the act or acts to be restrained by**  
9 **the cease-and-desist; and**

10                   **(3) state the effective date of the order.**

11           **(c) The department's cease and desist order is final, unless within ten days of the service of**  
12 **the order, the respondent files with the department a written request for hearing.**

13           **(d) If a request for hearing is filed, the department shall initiate a contested case with**  
14 **SOAH in accordance with Chapter 224, Subchapter E of this title (relating to Contested Cases**  
15 **Referred to SOAH).**

16           **(e) The cease-and-desist order shall remain in effect until the respondent comes into**  
17 **complete compliance with department directives and decisions, or unless otherwise provided by**  
18 **an order issued after final review by the department.**

19           **(f) If a respondent violates a cease-and-desist order, the department may:**

20                   **(1) impose an administrative penalty against the respondent; or**

21                   **(2) refer the matter to the appropriate authority to institute actions for:**

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1                    (A) an injunction against violation of the cease-and-desist order;

2                    (B) collection of any administrative penalty assessed by the department; or

3                    (C) any other remedy provided by law.

4                    (g) Nothing in this section precludes the department from imposing other administrative  
5 sanctions against the respondent while a cease-and-desist order is in effect.

6

7 §224.115. Administrative Penalty Assessment and Probation of Suspension

8                    (a) Amount of administrative penalty under Transportation Code, §623.271.

9                    (1) Transportation Code, §623.271 governs the amount of an administrative penalty that  
10 the department may assess against a person or the holder of an oversize or overweight permit, as  
11 applicable.

12                    (2) In an action brought by the department, the aggregate amount of administrative  
13 penalty shall not exceed \$5,000 unless it is found that the person or the holder of the permit knowingly  
14 committed a violation.

15                    (3) In an action brought by the department, if it is found that the person or the holder of  
16 the permit knowingly committed a violation, the aggregate amount of administrative penalty shall not  
17 exceed \$15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation,  
18 or acting with deliberate ignorance of or reckless disregard for the violation involved. Actual awareness  
19 may be inferred from the conduct of the alleged violator or from the history of previous violations by  
20 the alleged violator.

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1                   (4) In an action brought by the department, if it is found that the person or the holder of  
2 the permit knowingly committed multiple violations, the aggregate amount of administrative penalty for  
3 the multiple violations shall not exceed \$30,000.

4                   (5) Each day a violation continues or occurs is a separate violation for purposes of  
5 imposing an administrative penalty.

6                   (b) Amount of administrative penalty under Transportation Code, §623.272.

7                   (1) Transportation Code, §623.272 governs the amount of an administrative penalty that  
8 the department may assess against a shipper.

9                   (2) The amount of an administrative penalty imposed under this subsection is calculated  
10 in the same manner as the amount of an administrative penalty imposed under subsection (a) of this  
11 section.

12                   (c) Amount of administrative penalty under Transportation Code, §643.251.

13                   (1) Transportation Code, §643.251 governs the amount of an administrative penalty that  
14 the department may assess against a motor carrier that is required to register under Subchapter B of  
15 Chapter 643 of the Transportation Code and violates Transportation Code, Chapter 643 or a rule or  
16 order adopted under Chapter 643.

17                   (2) In an action brought by the department, the aggregate amount of administrative  
18 penalty shall not exceed \$5,000 unless it is found that the motor carrier knowingly committed a  
19 violation.

20                   (3) In an action brought by the department, if it is found that the motor carrier  
21 knowingly committed a violation, the aggregate amount of administrative penalty shall not exceed  
22 \$15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation, or  
23 acting with deliberate ignorance of or reckless disregard for the violation involved. Actual awareness

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1 may be inferred from the conduct of the alleged violator or from the history of previous violations by  
2 the alleged violator.

3 (4) In an action brought by the department, if it is found that the motor carrier  
4 knowingly committed multiple violations, the aggregate amount of administrative penalty for the  
5 multiple violations shall not exceed \$30,000.

6 (5) Each day a violation continues or occurs is a separate violation for purposes of  
7 imposing an administrative penalty.

8 (d) Probation of suspension under Transportation Code, §643.252.

9 (1) Transportation Code, §643.252 authorizes the department to place on probation a  
10 motor carrier whose registration is suspended.

11 (2) In determining whether to probate a suspension of a motor carrier's registration, the  
12 department will consider the factors listed in Transportation Code, §643.251 regarding the amount of an  
13 administrative penalty.

14 (3) The department shall set the length of the probation based on the seriousness of the  
15 violation and previous violations by the motor carrier.

16 (4) The department will require that the motor carrier report monthly to the  
17 department any information necessary to determine compliance with the terms of the probation.

18 (e) The department will publish a disciplinary matrix on the department website to provide  
19 guidance to motor carriers on the penalties and sanctions that may be assessed for the most  
20 common violations.

21  
22 §224.116. Administrative Proceedings.



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1        (a) If the department decides to take an enforcement action under §218.16 of this title (relating  
2 to Insurance Requirements) for the revocation of self-insured status, §218.64 of this title (relating to  
3 Rates), §218.71 of this title (relating to Administrative Penalties), §219.121 of this title (relating to  
4 Administrative Penalties and Sanctions under Transportation Code, §623.271), §218.72 of this title  
5 (relating to Administrative Sanctions), or §219.126 of this title (relating to Administrative Penalty for  
6 False Information on Certificate by a Shipper), the department shall mail a Notice of Department  
7 Decision to the person by first class mail to the last known address as shown in department records. If  
8 the enforcement action falls under the Memorandum of Agreement with the Federal Motor Carrier  
9 Safety Administration (FMCSA) under §218.71, the department shall mail the Notice of Department  
10 Decision to the person by first class mail to the last known address as shown in FMCSA's records.

11        (b) The Notice of Department Decision shall include:

12                (1) a brief summary of the alleged violation or enforcement action being proposed;  
13                (2) a statement describing each sanction, penalty, or enforcement action proposed;  
14                (3) a statement informing the person of the right to request a hearing;  
15                (4) a statement of the procedure a person must use to request a hearing, including the  
16 deadline for filing a request with the department and the acceptable methods to request a hearing; and  
17                (5) a statement that a proposed penalty, sanction, or enforcement action will become  
18 final and take effect on a specific date if the person fails to request a hearing.

19        (c) A person must submit to the department a written request for a hearing to the address  
20 provided in the Notice of Department Decision not later than the 26th day after the date the notice is

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1 mailed by the department; however, this requirement does not apply to a contested case that falls under  
2 §218.64 and Transportation Code, §643.154.

3 (d) If a person submits a timely written request for a hearing or the contested case that falls  
4 under §218.64 and Transportation Code, §643.154, the department will contact the person and attempt  
5 to informally resolve the contested case. If the person and the department cannot informally resolve the  
6 contested case, the department will refer the contested case to SOAH to set a hearing date and will give  
7 notice of the time and place of the hearing to the person.

8 (e) Except as provided by Transportation Code, §643.154, if the person does not make a timely  
9 request for a hearing or agree to settle a contested case within 26 days of the date the Notice of  
10 Department Decision was mailed, the allegations are deemed admitted on the 27th day and a final order  
11 including sanctions and penalties may be issued by the final order authority.

12 (f) Except as provided by statute and the applicable provisions of this chapter, any SOAH  
13 proceeding is governed by Government Code, Chapter 2001 and 1 TAC Chapter 155, including the  
14 authority of the department to informally dispose of the contested case by stipulation, agreed  
15 settlement, consent order, or default. The department will follow the process set forth in Transportation  
16 Code, §643.2525 and the applicable provisions of this chapter when enforcing the federal laws and  
17 regulations cited in §218.71 to the extent authorized by applicable federal laws and regulations.

18 (g) The department and the person may informally resolve the contested case by entering into a  
19 settlement agreement or agreeing to stipulations at any time before the director issues a final order.  
20 However, the person must pay any penalty in full prior to the execution of a settlement agreement.

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§224.118. Filing of Documents.

Each document required or allowed to be filed with the department under this subchapter must be filed according to written instructions provided by the department in the applicable notice under this subchapter.

§224.120. Registration Suspension Ordered Under Family Code.

(a) On receipt of a final order issued under Family Code, §§232.003, 232.008, or 232.009, regarding child support enforcement, the department will suspend:

(1) a certificate of registration issued under Chapter 218, Subchapter B (relating to Motor Carrier Registration); or

(2) the registration of an interstate motor carrier issued under §218.17 of this title (relating to Unified Carrier Registration System).

(b) The department will charge an administrative fee of \$10 to a person whose registration is suspended under this section.

(c) A suspension under this section does not require the department to give notice or otherwise follow the administrative process provided under §224.116 of this title (relating to Administrative Proceedings).

(d) A registration suspended under this section may only be reinstated on receipt of an order issued under Family Code, §232.013.

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1 §224.122. Appeal of Decision Regarding Assessment, Cancellation, or Revocation Under §217.56.

2 (a) Pursuant to §217.56(c)(2)(J)(iii) of this title (relating to Registration Reciprocity Agreements),  
3 a registrant may appeal the department's decision regarding an assessment, cancellation, or revocation.

4 (b) The appeal will be governed by Chapter 224, Subchapter E of this title (relating to Contested  
5 Cases Referred to SOAH).

6 (c) The registrant's appeal will be considered untimely if it is not received by the director of the  
7 department's Motor Carrier Division by the 26th day after the date of the department's decision. The  
8 department will not consider an untimely appeal.

9 (d) A timely appeal will abate the assessment pending a final order.

10  
11 §224.124. Appeal of a Denial Under Transportation Code, §643.2526.

12 (a) Pursuant to Transportation Code, §643.2526, an applicant may appeal the denial of an  
13 application for registration, renewal of registration, or reregistration under Transportation Code, Chapter  
14 643.

15 (b) The appeal will be governed by Chapter 224, Subchapter E of this title (relating to Contested  
16 Cases Referred to SOAH).

17 (c) The applicant's appeal will be considered untimely if it is not filed with the department by the  
18 26th day after the date of the department's denial of the application. The department will not consider  
19 an untimely appeal.

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1           (d) An application that is withdrawn under Transportation Code, §643.055 is not a denial of an  
2           application for the purposes of an appeal under Transportation Code, §643.2526.

3  
4           §224.126. Appeal of a Denial of Self-Insured Status.

5           (a) Pursuant to §218.16(d) of this title (relating to Insurance Requirements), an applicant may  
6           appeal the denial of an application for self-insured status.

7           (b) The appeal will be governed by Chapter 224, Subchapter E of this title (relating to Contested  
8           Cases Referred to SOAH).

9           (c) The applicant's appeal will be considered untimely if it is not filed with the department by the  
10          26th day after the date of the department's denial of the application. The department will not consider  
11          an untimely appeal.

12  
13          §224.128. Referral to SOAH.

14          (a) The department will refer a contested case to SOAH by filing a Request to Docket form and  
15          related documents as required under SOAH rules as follows:

16                  (1) if the department receives a timely request for a hearing and the parties are unable  
17          to informally resolve or dispose of the case;

18                  (2) if the department receives a timely appeal under §§224.122, 224.124, or 224.126; or

19                  (3) the contested case falls under §218.64 of this title (relating to Rates) and  
20          Transportation Code, §643.154.

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1           **(b) When SOAH accepts the department’s Request to Docket, jurisdiction of the contested case**  
2 **transfers to SOAH.**

3  
4   **§224.130. Notice of Hearing.**

5           **(a) Once SOAH provides the department with the initial hearing date, time, and place, the**  
6 **department will issue to the contested case parties a notice of hearing that complies with Government**  
7 **Code, Chapter 2001 and SOAH rules.**

8           **(b) The contested case proceeds according to Subchapter E of this chapter (relating to Contested**  
9 **Cases Referred to SOAH).**

10  
11                           **SUBCHAPTER E. CONTESTED CASES REFERRED TO SOAH**

12  
13   **§224.150. Purpose and Scope.**

14           **(a) This subchapter describes department practice and procedures for referring a contested**  
15 **case to SOAH for a hearing, including a contested case under Subchapter B (relating to Motor**  
16 **Vehicle, Salvage Vehicle, and Trailer Industry Enforcement), Subchapter C (relating to Contested**  
17 **Cases Between Motor Vehicle Industry License Holders or Applicants), and Subchapter D (Motor**  
18 **Carrier and Oversize or Overweight Vehicle or Load Enforcement) of this chapter.**

19           **(b) When SOAH accepts a referral from the department, jurisdiction of the contested case**  
20 **transfers to SOAH, and practice and procedure in contested cases heard by SOAH are addressed in:**

21                   **(1) 1 TAC Chapter 155, and**

22                   **(2) subchapter A and this subchapter, where not in conflict with SOAH rules.**

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1           (c) When SOAH disposes of a contested case, jurisdiction transfers from SOAH back to the  
2           department. The department will issue a final order under §224.29 of this title (relating to  
3           Delegation of Final Order Authority) or under Subchapter F of this chapter (relating to Board  
4           Procedures in Contested Cases).

5  
6           §224.152. Referral to SOAH.

7           (a) The department shall refer contested cases to SOAH upon determination that a hearing is  
8           appropriate under Occupations Code, Chapter 2301 or 2302, or Transportation Code, Chapters 502, 503,  
9           621–623, 643, 645, or 1001–1005, including contested cases relating to:

10                   (1) an enforcement complaint on the department's own initiative;

11                   (2) a notice of protest that has been timely filed in accordance with §215.106 of this title  
12           (relating to Time for Filing Protest);

13                   (3) a protest filed under Occupations Code, §2301.360 or a protest or complaint filed  
14           under Occupations Code, Chapter 2301, Subchapters I or J;

15                   (4) a department-issued cease and desist order; or

16                   (5) any other contested matter that meets the requirements for a hearing at SOAH.

17           (b) The department will follow SOAH procedures to file a Request to Docket Case and related  
18           documents and request a setting of a hearing.

19           (c) SOAH will provide the department with the date, time, and place of the initial hearing.

20  
21           §224.154. Notice of Hearing.

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1           (a) In a contested case, each party is entitled to an opportunity for a hearing, in accordance with  
2   Government Code, §2001.051.

3           (b) The requirements for a notice of hearing in a contested case are provided by Government  
4   Code, §2001.052; Occupations Code, §2301.705; the SOAH rules; and Transportation Code, Chapter 623  
5   or 643, as applicable.

6           (c) For service of parties outside of the United States, in addition to service under Occupations  
7   Code, §2301.265, the department may serve a notice of hearing by any method allowed under TRCP or  
8   that provides for confirmation of delivery to the party to the extent authorized by applicable law.

9           (d) The last known address of a license applicant, license holder, or other person is the last  
10   mailing address in department records or Federal Motor Carrier Safety Administration (FMCSA) records,  
11   as applicable.

12           (e) A notice of hearing issued by the department in a contested case shall comply with the  
13   requirements of Government Code, §2001.052(a).

14           (f) The department will serve a notice of hearing upon a license holder by certified mail return  
15   receipt requested to the last known address of the license holder or authorized representative, in  
16   accordance with Occupations Code, §2301.705.

17           (g) The department may serve a notice of hearing upon a person who is not a license holder by  
18   first class mail to the person's last known address as shown in department records or Federal Motor  
19   Carrier Safety Administration (FMCSA) records, as applicable.

20           (h) A notice of hearing in a contested case may be amended in accordance with Government  
21   Code, §2001.052(b).



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§224.156. Reply to Notice of Hearing and Default Proceedings.

(a) A party may file a written reply or pleading to respond to all allegations. The written reply or responsive pleading must be filed with SOAH in accordance with SOAH rules and must identify the SOAH and department docket numbers, as reflected on the notice of hearing.

(b) Any party filing a reply or responsive pleading shall serve a copy of the reply or responsive pleading on each party or party's authorized representative in compliance with SOAH rules.

(c) A party may file an amended or supplemental reply or responsive pleading in accordance with SOAH rules.

(d) If a party properly noticed under this chapter does not appear at the hearing, a party appearing at the hearing may request that the ALJ dismiss the contested case from the SOAH docket. If the contested case is dismissed from the SOAH docket, the case may be presented to the final order authority for disposition pursuant to SOAH rules and §224.29 of this title (relating to Delegation of Final Order Authority).

§224.158. Amicus Briefs.

(a) An interested person may submit an amicus brief for consideration by the ALJ in a contested case by the deadline for filing exceptions in accordance with SOAH rules. A party may submit one written reply to the amicus brief no later than the deadline for filing replies to exceptions under SOAH rules.

(b) An amicus brief and a party's reply to amicus brief must be submitted to the ALJ and be served on all parties.

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1           (c) The ALJ may amend the proposal for decision after considering an amicus brief or a  
2           party's reply to an amicus brief.

3  
4           §224.162. Statutory Stay.

5           (a) A person affected by a statutory stay imposed by Occupations Code, Chapter 2301 may  
6           request a hearing before a SOAH ALJ to modify, vacate, or clarify the extent and application of the  
7           statutory stay.

8           (b) The ALJ shall hold a hearing on a motion to modify, vacate, or clarify a statutory stay,  
9           and prepare a written order, including a justification explaining why the statutory stay should or  
10          should not be modified, vacated, or clarified.

11          (c) A person affected by a statutory stay imposed by Occupations Code, Chapter 2301 may  
12          request a hearing before the board to modify, vacate, or clarify the extent and application of the  
13          statutory stay under §224.192 of this chapter (relating to Appeal of an Interlocutory Order) while  
14          the contested case is at SOAH.

15  
16          §224.164. Issuance of a Proposal for Decision.

17          (a) After a hearing on the merits, the ALJ shall submit a proposal for decision in a contested  
18          case to the department and all parties.

19          (b) The parties may submit to the ALJ exceptions to the proposal for decision and replies to  
20          exceptions to the proposal for decision in accordance with the SOAH rules.

21          (c) The ALJ will review all exceptions and replies and notify the department and parties  
22          whether the ALJ recommends any changes to the proposal for decision.

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1        (d) The parties are not entitled to file exceptions or briefs in response to an amended  
2 proposal for decision but may raise an issue before the board as allowed at the time of oral  
3 presentation under Subchapter F of this chapter.

4  
5        §224.166. Transfer of Jurisdiction for Final Decision.

6        (a) A party may appeal an interlocutory order issued under Occupations Code, Chapter  
7 2301 to the board under §224.192 of this title (relating to Appeal of an Interlocutory Order). SOAH  
8 retains jurisdiction on all other pending matters in the contested case, except as provided  
9 otherwise in this chapter.

10       (b) If a contested case includes a hearing on the merits, SOAH's jurisdiction transfers to the  
11 board when the ALJ confirms that the proposal for decision is final.

12       (c) Once jurisdiction transfers, no new testimony, witnesses, or information may be  
13 considered by the board or board delegate with final order authority.

14       (d) After SOAH transfers the SOAH administrative record to the department, the board or  
15 board delegate with final order authority will consider the contested case under the provisions of  
16 Subchapter F of this chapter (relating to Board Procedures in Contested Cases).

17  
18        **SUBCHAPTER F. BOARD PROCEDURES FOR CONTESTED CASES**

19  
20       §224.190. Purpose and Scope.

21       This subchapter describes procedures for the board to review and issue a final order in a  
22 contested case in which:

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1                   (1) a SOAH ALJ has submitted a final proposal for decision for consideration by the  
2 board or board delegate with final order authority,

3                   (2) a party has appealed an interlocutory cease-and-desist order issued by an ALJ,  
4 or

5                   (3) a party affected by a statutory stay order issued by an ALJ requested a hearing  
6 to modify, vacate, or clarify the extent and application of the statutory stay order.

7  
8 §224.192. Appeal of an Interlocutory Order.

9                   (a) A party affected by an interlocutory cease-and-desist order or a statutory stay order under  
10 Occupations Code, Chapter 2301 may appeal the order to the board by submitting to the department's  
11 general counsel a motion requesting that the board modify, vacate, or clarify the order.

12                   (b) The party requesting that the board modify, vacate, or clarify an order must also  
13 simultaneously serve the request on the other parties and the ALJ in accordance with §224.11 of this  
14 title (relating to Filing and Service of Documents).

15                   (c) The board will consider the interlocutory appeal and issue a final order at a public meeting as  
16 soon as practicable. Notwithstanding the deadline listed in §224.196 of this title (relating to Request for  
17 Oral Presentation), the department shall give the parties written notice at least seven days prior to the  
18 board meeting at which the board is scheduled to consider the appeal. The notice shall notify the parties  
19 regarding the opportunity to attend and provide an oral presentation concerning an order before the  
20 board, and the opportunity to provide written materials to the board.

21                   (1) Notwithstanding the deadline listed in §224.196, if a party seeks to provide an oral  
22 presentation at the board meeting, the party must submit a written request for an oral presentation to  
23 the department's contact listed in the notice provided under this subsection and copy all other parties in

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1 accordance with §224.11 at least three days prior to the date of the board meeting at which the board is  
2 scheduled to consider the party's contested case.

3 (2) Notwithstanding the deadline listed in §224.198 of this title (relating to Written  
4 Materials and Evidence), if a party wants to provide written materials at the board meeting, the party  
5 must provide the written materials to the department and all other parties in accordance with §224.11  
6 at least three days prior to the date of the board meeting at which the board is scheduled to consider  
7 the party's contested case.

8 (d) An appeal to the board of an interlocutory cease-and-desist order or a statutory stay order is  
9 governed by Government Code, §2001.058(e).

10  
11 §224.194. Contested Case Review.

12 (a) After SOAH submits a final proposal for decision and transfers SOAH's administrative  
13 record to the department, the board has jurisdiction and the record required to issue a final order  
14 and will review the contested case during the public session of a board meeting, in accordance  
15 with the APA.

16 (b) For a contested case in which the board has delegated final order authority to the  
17 Director of the Motor Carrier Division, a special public meeting may be scheduled.

18  
19 §224.196. Request for Oral Presentation.

20 (a) At least 30 days prior to the scheduled date of a board meeting, the department shall notify  
21 the parties regarding the opportunity to attend and provide an oral presentation concerning a proposal  
22 for decision before the board. The department will deliver notice electronically to the last known email

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1 address provided to the department by the party or party's authorized representative in accordance with  
2 §224.11 of this title (relating to Filing and Service of Documents).

3 (b) If a party wants to make an oral presentation at the board meeting, a party must submit a  
4 written request for an oral presentation to the department's contact listed in the notice provided under  
5 subsection (a) of this section and copy all other parties in accordance with §224.11 at least 14 days prior  
6 to the date of the board meeting at which the party's contested case will be reviewed.

7 (c) If more than one party was not adversely affected by the proposal for decision, such parties  
8 may agree on the order of their presentations in lieu of the order prescribed under §224.202 of this title  
9 (relating to Order of Oral Presentations to the Board). The order of presentations will be determined  
10 under §224.202 of this title if the parties who were not adversely affected by the proposal for decision  
11 do not timely provide the department and the other parties with notice under subsection (b) of this  
12 section regarding their agreed order of presentation.

13 (d) If a party timely submits a written request for an oral presentation, that party may make an  
14 oral presentation at the board meeting. If a party fails to timely submit a written request for an oral  
15 presentation, that party shall not make an oral presentation at the board meeting.

16 (e) Section 206.22 of this title (relating to Public Access to Board Meetings) does not authorize a  
17 party to speak as a public commenter regarding the party's contested case before the board during the  
18 posted agenda item or during the open comment period.

19  
20 §224.198. Written Materials and Evidence.

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1        (a) If a party wants to provide written materials at the board meeting, the party must provide  
2        the written materials to the department and all other parties in accordance with §224.11 of this title  
3        (relating to Filing and Service of Documents) at least 21 days prior to the date of the board meeting. If a  
4        party fails to timely provide written materials to the department or any other party, the department  
5        shall not provide the written materials to the board and the party shall not provide the written materials  
6        to the board at the board meeting. Non-parties are not authorized to provide written materials to the  
7        board.

8        (b) For the purposes of this section, written materials are defined as language or images  
9        including photographs or diagrams, that are contained in the SOAH administrative record and recorded  
10       in paper form except as stated otherwise in this subsection. The language or images in the written  
11       materials must be taken without changes from the SOAH administrative record; however, proposed final  
12       orders and draft motions for possible board action are allowed to be included in a party's written  
13       materials even if they contain arguments or requests that aren't contained in the SOAH administrative  
14       record. Written materials shall be limited to evidence contained in the SOAH administrative record and  
15       consistent with the scope of the board's authority to act under Government Code, §2001.058(e) and  
16       Occupations Code, Chapters 2301 and 2302, and Transportation Code, Chapters 502, 503, 621–623, 643,  
17       645, or 1001–1005, as applicable.

18       (c) All information in the written materials shall include a citation to the SOAH administrative  
19       record on all points to specifically identify where the information is located. The citations may be  
20       provided in an addendum to the written materials that is not counted against the 15-page limit under  
21       subsection (d) of this section; however, the addendum must not include any information other than a  
22       heading that lists the name of the party, the caption for the contested case, and text that lists the  
23       citations and page numbers.

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1        (d) Written materials shall be 8.5 inches by 11 inches and single-sided. Written materials must be  
2        double-spaced and at least 12-point type if in text form. Written materials are limited to 15 pages per  
3        party. If a party provides the department with written materials that contain more pages than the  
4        maximum allowed, the department shall not provide the written materials to the board and a party shall  
5        not provide the written materials to the board at the board meeting.

6  
7        §224.200. Oral Presentation Limitations and Responsibilities.

8        (a) A party to a contested case under review by the board shall limit oral presentation and  
9        discussion to evidence in the SOAH administrative record. Also, oral presentation and discussion shall be  
10       consistent with the scope of the board's authority to act under Government Code, §2001.058(e);  
11       Occupations Code, Chapters 2301 and 2302; and Transportation Code Chapter 502, 503, 621–623, 643,  
12       645, or 1001–1005, as applicable.

13       (b) A party may argue that the board should remand the contested case to SOAH.

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

16       (d) A party's presentation to the board is subject to the following limitations and conditions:

17                (1) Each party shall be allowed a maximum of 15 minutes for their oral presentation. The  
18        board chair may increase this time.

19                (2) No party is allowed to provide a rebuttal or a closing statement.

20                (3) An intervenor of record from the SOAH proceeding supporting another party shall  
21        share that party's time.



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1                   (4) Time spent by a party responding to a board question is not counted against their  
2 presentation time.

3                   (5) During an oral presentation, a party to the contested case before the board may  
4 object that a party presented material or argument that is not in the SOAH administrative record. Time  
5 spent discussing such objections is not counted against the objecting party's time.

6  
7 §224.202. Order of Oral Presentations to the Board.

8                   (a) The department will present the procedural history and summary of the contested case.

9                   (b) The party that is adversely affected may present first. However, the board chair is authorized  
10 to determine the order of each party's presentation if:

11                   (1) it is not clear which party is adversely affected;

12                   (2) it appears that more than one party is adversely affected; or

13                   (3) different parties are adversely affected by different portions of the contested case  
14 under review.

15                   (c) The other party or parties not adversely affected will then have an opportunity to make a  
16 presentation. If more than one party is not adversely affected, each party will have an opportunity to  
17 respond in alphabetical order based on the name of the party in the pleadings in the SOAH  
18 administrative record, except as stated otherwise in §224.196 of this title (relating to Request for Oral  
19 Presentation).

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§224.204. Board Conduct and Discussion When Reviewing a Contested Case or Interlocutory Order.

(a) The board shall conduct its contested case review in compliance with Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code Chapters 502, 503, 621–623, 643, 645, or 1001–1005, as applicable, including the limitations on changing a finding of fact or conclusion of law made by a SOAH ALJ, and the prohibition on considering evidence outside of the SOAH administrative record.

(b) A board member may question a party or the department on any matter that is relevant to the proposal for decision; however, a question shall be consistent with the scope of the board's authority to take action under Government Code, §2001.058(e); Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 621–623, 643, 645, or 1001–1005, as applicable; a question must be limited to evidence contained in the SOAH administrative record; and the communication must comply with §224.5 of this title (relating to Prohibited Communication). In considering a contested case, a board member is authorized to ask a question regarding a request to remand the case to SOAH, including a remand to SOAH for further consideration of the evidence.

(c) A board member may use personal expertise in the industry to understand a contested case and make effective decisions, consistent with the scope of the board's authority to act under Government Code, §2001.058(e); Occupations Code, Chapters 2301 and 2302; and Transportation Code Chapters 502, 503, 621–623, 643, 645, or 1001–1005, as applicable. However, a board member is not an advocate for a particular industry. A board member is an impartial public servant who takes an oath to preserve, protect, and defend the Constitution and laws of the United States and Texas.

§224.206. Final Orders.

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1        (a) A final decision or order in a contested case reviewed by the board or board delegate with  
2        final order authority shall be in writing and shall be signed by the board chair or board delegate, as  
3        applicable.

4        (b) The department shall email a copy of the final order to the parties in the contested case in  
5        addition to sending a copy of the final order certified mail, return receipt requested.

6        (c) The provisions of Government Code, Chapter 2001, Subchapter F govern:

7                (1) the issuance of a final order issued under this subchapter; and

8                (2) motions for rehearing filed in response to a final order.

9        (d) A decision or order in a contested case is final in accordance with Government Code,  
10       §2001.144.

11  
12                **SUBCHAPTER G. LEMON LAW AND WARRANTY PERFORMANCE CLAIMS**

13  
14       §224.230. Purpose, Scope, and Definitions.

15        (a) Subchapter A and this subchapter apply to contested cases filed under Occupations  
16       Code, §2301.204 or Subchapter M, to the extent they do not conflict with state law, rule, or court  
17       order.

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

20                (1) Case advisor--A department staff member responsible for evaluating,  
21       investigating, and mediating lemon law and warranty performance complaints prior to a hearing.

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1                   (2) Comparable motor vehicle--A new motor vehicle, with comparable mileage,  
2 from the same manufacturer, distributor, or converter's product line and the same model year or  
3 newer as the motor vehicle to be replaced or as reasonably equivalent to the motor vehicle to be  
4 replaced.

5                   (3) Lemon law--Refers to Occupations Code, Chapter 2301, Subchapter M  
6 (§§2301.601–2301.613).

7                   (4) Warranty performance--Refers to Occupations Code, §2301.204.

8  
9 §224.232. Filing a Complaint.

10                  (a) The department will provide information concerning the complaint procedure and a  
11 complaint form to a person requesting assistance. A person may call the department or visit the  
12 department website for information or to file a complaint electronically.

13                  (b) A complaint alleging a violation of Occupations Code, §2301.204 or Subchapter M, must be in  
14 writing and signed by the complainant, and:

15                         (1) state sufficient facts to enable the department and the party complained against to  
16 know the nature of the complaint and the specific problems or circumstances forming the basis of the  
17 claim for relief under the lemon law or warranty performance statute;

18                         (2) provide the following information:

19                                 (A) the name, address, and telephone number of the motor vehicle owner;

20                                 (B) the make, model, year, and Vehicle Identification Number or VIN of the  
21 motor vehicle;

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1                    (C) the type of warranty coverage;

2                    (D) the name and address of the dealer or other person from whom the motor

3 vehicle was purchased or leased, including the name and address of the vehicle lessor, if applicable;

4                    (E) the original date of delivery of the motor vehicle to the owner and in the

5 case of a demonstrator, the date the motor vehicle was placed into demonstrator service;

6                    (F) the motor vehicle mileage at the time when:

7                            (i) the motor vehicle was purchased or leased;

8                            (ii) problems with the motor vehicle were first reported; and

9                            (iii) the complaint was filed;

10                   (G) the name of the dealer or the name of the manufacturer's, converter's, or

11 distributor's agent to whom the problems were first reported;

12                   (H) identification of the motor vehicle's existing problems and a brief description

13 of the history of problems and repairs on the motor vehicle, including:

14                            (i) the date and mileage of each repair; and

15                            (ii) a copy of each repair order where possible;

16                   (I) the date the motor vehicle manufacturer, distributor, or converter first

17 received written notice of the alleged defect or nonconformity;

18                   (J) the date and results of the motor vehicle inspection, if the motor vehicle was

19 inspected by the manufacturer, distributor, or converter; and

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1                   (K) any other information the complainant deems relevant to the complaint.

2           (c) A person may file a complaint with the department:

3                   (1) by mail sent to the mailing address listed on the department website at TxDMV.gov,

4   or

5                   (2) electronically in the Motor Vehicle Dealer Online Complaint System which may be

6   accessed on the department website.

7           (d) Before investigating a claim, the department may require the complainant to provide  
8   additional information necessary to evaluate whether the department has jurisdiction to pursue the  
9   complaint.

10          (e) The following provisions apply to lemon law complaints.

11                  (1) The filing fee required under the lemon law should be paid when the complaint is  
12   submitted to the department and may be paid online by credit card if filing a claim electronically or by  
13   check if mailing a complaint to the department. The filing fee is nonrefundable, but a complainant that  
14   prevails in a case is entitled to reimbursement of the filing fee from the nonprevailing party. Failure to  
15   pay the filing fee when submitting a complaint will delay the start of the 150-day period in paragraph (3)  
16   of this subsection and may result in dismissal of the complaint.

17                  (2) A lemon law proceeding commences on the date the filing fee is received by the  
18   department.

19                  (3) If the hearings examiner has not issued an order within 150 days after the  
20   commencement of the lemon law proceeding in accordance with paragraph (2) of this subsection, the  
21   department shall notify the parties by certified mail that the complainant may file a civil action in state

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district court to seek relief under the lemon law. The notice will inform the complainant of the complainant's right to continue the lemon law complaint with the department. The department shall extend the 150-day period upon request of the complainant or if a delay in the proceedings is caused by the complainant.

(f) The following provisions apply to warranty performance complaints (repair-only relief).

(1) A filing fee is not required for a complaint that is subject to a warranty performance claim.

(2) A complaint may be filed with the department in accordance with this section if the defect in the motor vehicle subject to the warranty performance complaint was reported to the manufacturer, distributor, or converter prior to the expiration of the warranty period.

(3) If the defect is not resolved pursuant to §224.238 of this title (relating to Mediation; Settlement or Referral for Hearing), the department will schedule a hearing to be conducted in accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O and this subchapter.

(4) A hearings examiner will issue a final order on a warranty performance complaint. A party who disagrees with the order may oppose the order in accordance with §224.264 of this title (relating to Final Orders).

§224.234. Complaint Review.

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1           (a) A case advisor will review a complaint to determine if the department has jurisdiction to  
2           consider the complaint and whether the complaint meets the minimum statutory requirements for a  
3           lemon law or a warranty performance complaint.

4           (b) If a case advisor cannot determine if the department has jurisdiction or whether a complaint  
5           meets the lemon law or warranty performance minimum statutory requirements, the case advisor will  
6           contact the complainant for additional information.

7           (c) The case advisor will notify the complainant if the department does not have jurisdiction over  
8           the complaint.

9           (d) If a case advisor determines that the department has jurisdiction and the complaint meets  
10          the minimum lemon law or warranty performance requirements, the complaint will be processed in  
11          accordance with this subchapter.

12  
13          §224.236. Notification to Manufacturer, Distributor, or Convertor.

14          (a) Once a case advisor determines that a complaint meets the minimum statutory requirements  
15          the case advisor will:

16                  (1) notify the appropriate manufacturer, distributor, or converter of the complaint and  
17          request a response; and

18                  (2) provide a copy of the complaint to the selling dealer and any other dealer involved  
19          with the complaint and may request a response.

20          (b) Upon request by the department, the manufacturer shall provide a copy of the warranty for  
21          the motor vehicle subject to the lemon law or warranty performance complaint.



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1           (c) The case advisor will provide a copy of any responses or documents received from the  
2           manufacturer, distributor, or converter to the complainant.

3  
4           §224.238. Mediation; Settlement or Referral for Hearing.

5           (a) A case advisor will attempt to settle or resolve a lemon law or warranty performance  
6           complaint through nonbinding mediation before a hearing on the complaint is scheduled.

7           (b) The parties must participate in the nonbinding mediation process in good faith.

8           (c) In a case filed under Occupations Code, §2301.204 or §§2301.601–2301.613, a case advisor  
9           shall qualify for appointment as an impartial third party in accordance with Civil Practice and Remedies  
10          Code, Chapter 154.

11          (d) If the parties cannot resolve the complaint, a case advisor will refer the complaint for a  
12          hearing with a hearings examiner.

13  
14          §224.240. Notice of Hearing.

15          (a) Each party is entitled to an opportunity for a hearing, in accordance with Government Code,  
16          §2001.051.

17          (b) A notice of hearing in a contested case shall comply with the requirements of Government  
18          Code, §2001.052(a) and the department shall serve the notice upon the parties by certified mail, return  
19          receipt requested to the last known address of a party or the party's authorized representative in  
20          accordance with Occupations Code, §2301.705.

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1           (c) The last known address of a party is the last mailing address provided to the department.

2           (d) A notice of hearing in a contested case may be amended in accordance with Government

3   Code, §2001.052(b).

4

5   §224.242. Motions.

6           (a) Unless made during a contested case hearing, each motion in a contested case shall be in  
7   writing and shall state:

8                   (1) the relief sought; and

9                   (2) the specific reasons and grounds for the relief requested.

10          (b) A motion not made during a contested case hearing shall be filed with the hearings examiner  
11   and a copy shall be served on all parties or their authorized representatives at least five days prior to the  
12   hearing absent a showing of good cause.

13          (c) A motion is not granted until it has been ruled on by the hearings examiner, even if the  
14   motion is uncontested or agreed.

15

16

17

18   §224.244. Service of Documents.

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1           (a) A copy of each document filed in a contested case shall be served upon all parties or their  
2           authorized representatives by sending a copy properly addressed to each party by:

3                     (1) first-class mail; or

4                     (2) email.

5           (b) A copy of each document must also be filed with the department by:

6                     (1) email;

7                     (2) fax; or

8                     (3) first-class mail.

9           (c) A certificate of service shall accompany each document.

10  
11           §224.246. Presiding Official.

12           (a) Hearings examiner. A hearings examiner will preside over a hearing for a lemon law or  
13           warranty performance complaint.

14           (b) Powers and duties. A hearings examiner shall conduct fair hearings and shall take all  
15           necessary action to administer the disposition of contested cases. A hearings examiner's powers include,  
16           but are not limited to the authority to:

17                     (1) administer oaths;

18                     (2) examine witnesses;

19                     (3) rule upon the admissibility of evidence;

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1                   (4) rule upon motions; and

2                   (5) regulate the course of the contested case hearing and the conduct of the parties and

3 their authorized representative.

4                   (c) Expert Inspection. If a hearings examiner determines that an expert opinion may assist in  
5 arriving at a decision, a hearings examiner may have the motor vehicle in question inspected by an  
6 expert prior to the hearing. An inspection under this subsection shall be made only upon prior notice to  
7 all parties, who shall have the right to be present at the inspection. A copy of any findings or report from  
8 the expert inspection will be provided to all parties before or at the hearing.

9                   (d) Recusal.

10                   (1) If a hearings examiner determines that the hearings examiner should be recused  
11 from a particular contested case hearing, the hearings examiner shall withdraw from the contested case  
12 by giving notice on the record and by notifying the chief hearings examiner.

13                   (2) A party may file a motion to recuse the hearings examiner. The motion to recuse shall  
14 be supported by an affidavit setting forth the alleged grounds for disqualification. A copy of the motion  
15 shall be served on the hearings examiner who shall have 10 days to reply, and a copy shall be served on  
16 all parties or their authorized representatives.

17                   (3) If the hearings examiner contests the alleged grounds for disqualification, the chief  
18 hearings examiner shall promptly determine the validity of the grounds alleged and render a decision.

19                   (e) Substitution of hearings examiner. If the hearings examiner is disqualified, dies, becomes  
20 disabled, or withdraws during any contested case proceeding, the chief hearings examiner may appoint  
21 another hearings examiner to preside over the remainder of the contested case proceeding.

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1

2 §224.248. Hearing Continuance.

3 (a) A continuance of the contested case hearing will be granted by the hearings examiner only  
4 upon a showing of good cause.

5 (b) A motion for continuance of a contested case hearing shall be filed and served on all parties  
6 at least five days before the hearing date, except when good cause is shown to consider a motion for  
7 continuance filed after the deadline.

8

9 §224.250. Conduct of Hearing.

10 (a) Each party in a contested case shall have the right to notice, cross examination, present  
11 evidence, object, make a motion or argument, and all other rights essential to a fair contested case  
12 hearing. Except as provided by this chapter or in the notice of hearing, the TCRP as applied to non-jury  
13 civil cases shall be applicable to hearings in contested cases as far as reasonably practical.

14 (b) Parties, representatives, and other participants in a contested case shall:

15 (1) conduct themselves with dignity;

16 (2) show courtesy and respect for one another and the hearings examiner;

17 (3) follow any additional guidelines of decorum prescribed by the hearings examiner;

18 and

19 (4) adhere to the time schedule.

20 (c) If a participant violates this section, the hearing examiner may:

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1                   (1) issue a warning;

2                   (2) recess the hearing; or

3                   (3) exclude a person from the contested case hearing for such period and upon such  
4 conditions as are just.

5

6 §224.252. Hearings.

7                   (a) Depositions, interrogatories, and requests for admission shall not be allowed.

8                   (b) When possible, an in-person hearing will be held in the city in which the complainant resides.  
9 A hearing may also be conducted by telephone or videoconference.

10                  (c) A hearing will be scheduled at the earliest date possible, provided that a 10-day notice or  
11 other notice required by law is given to all parties.

12                  (d) A hearing will be conducted expeditiously by a hearings examiner in accordance with  
13 Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, and this subchapter.

14                  (e) If a party fails to appear for the hearing, relief may be granted to the party that appears.

15                  (f) Absent a showing of good cause, a complaint may be dismissed if the complainant repeatedly  
16 fails to respond or communicate with the department.

17                  (g) The complainant shall have the burden of proof by a preponderance of the evidence.

18                  (h) Hearings will be conducted informally. A party has a right to be represented by an attorney at  
19 a hearing, although an attorney is not required. A party who intends to be represented at a hearing by  
20 an attorney or other authorized representative must notify the hearings examiner and any other party in

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1 writing at least five business days prior to the hearing. Failure to provide notice will result in  
2 postponement of the hearing if requested by another party.

3 (i) Subject to a hearings examiner ruling, a party may present that party's case in full, including  
4 testimony from witnesses and documentary evidence such as repair orders, warranty documents, and  
5 the motor vehicle sales contract.

6 (j) With written approval of the hearings examiner, a hearing may be conducted by written  
7 submission only or by telephone or videoconference.

8 (k) Upon notice to the parties, a hearings examiner may conduct a hearing or prehearing  
9 conference by telephone or videoconference.

10 (l) Except for a hearing conducted by written submission, a party may be questioned by another  
11 party at the discretion of the hearings examiner.

12 (m) Except for a hearing conducted by written submission, telephone, or videoconference, the  
13 complainant may bring the motor vehicle in question to the hearing so that the motor vehicle may be  
14 inspected and test driven by Respondent.

15 (n) Except for a hearing conducted by written submission, a hearing will be recorded by the  
16 hearings examiner. A copy of the recording will be provided to any party upon request and upon  
17 payment of the cost of the copy as provided by statute or rules.

18  
19 §224.254. Evidence.

20 (a) General. The TRE shall apply in all contested cases, in accordance with Government Code,  
21 Chapter 2001.

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1           **(b) Documents in department files. The hearings examiner may take official notice of documents**  
2           **or information in the department's files, in accordance with Government Code, Chapter 2001.**

3           **(c) Exhibits. Exhibits shall be limited to the relevant and material issues involved in a particular**  
4           **contested case. If an offered exhibit has been excluded after objection and the party offering the exhibit**  
5           **withdraws the offer, the hearings examiner shall return the exhibit. If the excluded exhibit is not**  
6           **withdrawn, it shall be given an exhibit number for identification and be included in the record only for**  
7           **the purpose of preserving the exception together with the hearings examiner's ruling.**

8           **(d) Evidence may be stipulated by agreement of all parties.**

9  
10           **§224.256. Objections and Exceptions.**

11           **A party is not required to make a formal exception to a ruling of the hearings examiner.**

12  
13           **§224.258. Final Order Authority.**

14           **(a) The hearings examiner has final order authority in a contested case filed under Occupations**  
15           **Code, §2301.204 or Occupations Code, Chapter 2301, Subchapter M.**

16           **(b) This authority includes a contested case in which a case is resolved:**

17                   **(1) by settlement;**

18                   **(2) by agreed order;**

19                   **(3) by withdrawal of the complaint;**



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1                   (4) by dismissal for want of prosecution or continued failure to communicate with the  
2 department;

3                   (5) by dismissal for want of jurisdiction;

4                   (6) by summary judgment or summary disposition;

5                   (7) by a default judgment; or

6                   (8) when a party waives the opportunity for a contested case hearing.

7  
8                   §224.260. Lemon Law Relief Decisions.

9                   (a) Unless otherwise indicated, this section applies to decisions that relate to lemon law  
10 complaints. Decisions shall give effect to the presumptions provided in Occupations Code, §2301.605,  
11 where applicable.

12                   (1) If a hearings examiner finds that the manufacturer, distributor, or converter is not  
13 able to conform the motor vehicle to an applicable express warranty by repairing or correcting a defect  
14 in the complainant's motor vehicle, creating a serious safety hazard or substantially impairing the use or  
15 market value of the motor vehicle after a reasonable number of attempts, and that the affirmative  
16 defenses provided under Occupations Code, §2301.606 are not applicable, the hearings examiner shall  
17 issue a final order to the manufacturer, distributor, or converter to:

18                   (A) replace the motor vehicle with a comparable motor vehicle; or

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1                                (B) accept the return of the motor vehicle from the owner and refund the full  
2   purchase price of the motor vehicle to the owner, less a reasonable allowance for the owner's use of the  
3   motor vehicle and any other allowances or refunds payable to the owner.

4                                (2) In a decision in favor of the complainant, the hearings examiner will, to the extent  
5   possible, accommodate the complainant's request with respect to replacement or repurchase of the  
6   motor vehicle.

7                                (b) This subsection applies only to the repurchase of motor vehicles.

8                                (1) When a refund is ordered, the purchase price shall be the total purchase price of the  
9   motor vehicle, excluding the amount of any interest, finance charge, or insurance premiums. The refund  
10   amount to the motor vehicle owner shall include reimbursement of the amount of the lemon law  
11   complaint filing fee paid by, or on behalf of, the motor vehicle owner. The refund shall be made payable  
12   to the motor vehicle owner and to any lienholder, respective to each person's ownership interest in the  
13   motor vehicle.

14                                (2) There is a rebuttable presumption that the expected useful life of a motor vehicle is  
15   120,000 miles. Except in cases where the preponderance of the evidence shows the motor vehicle has a  
16   longer or shorter expected useful life than 120,000 miles, the reasonable allowance for the owner's use  
17   of the motor vehicle shall be the sums of the amounts obtained by adding subparagraphs (A) and (B) of  
18   this paragraph.

19                                (A) The product obtained by multiplying the total purchase price, as defined in  
20   paragraph (1) of this subsection, of the motor vehicle by a fraction having as its denominator 120,000  
21   and having as its numerator the number of miles that the motor vehicle traveled from the time of

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1 delivery to the owner to the date of the first report of the defect or condition forming the  
2 basis of the repurchase order; and

3 (B) 50% of the product obtained by multiplying the total purchase price by a  
4 fraction having as its denominator 120,000 and having as its numerator the number of miles that the  
5 motor vehicle traveled after the first report of the defect or condition forming the basis of the  
6 repurchase order through the date of the hearing.

7 (3) There is a rebuttable presumption the expected useful life of a towable recreational  
8 vehicle is 5,475 days or 15 years. Except in cases where a preponderance of the evidence shows that the  
9 vehicle has a longer or shorter expected useful life than 5,475 days or 15 years, the reasonable  
10 allowance for the owner's use of the towable recreational vehicle shall be the sum of the amount  
11 obtained by adding subparagraphs (A) and (B) of this paragraph.

12 (A) The product obtained by multiplying the total purchase price, as defined in  
13 paragraph (1) of this subsection, of the towable recreational vehicle by a fraction having as its  
14 denominator 5,475 days or 15 years and having as its numerator the number of days from the time of  
15 delivery to the owner to the first report of the defect or condition forming the basis of the repurchase  
16 order.

17 (B) 50% of the product obtained by multiplying the purchase price by a fraction  
18 having as its denominator 5,475 days or 15 years and having as its numerator the number of days of  
19 ownership after the date of the first report of the defect or condition forming the basis of the repurchase  
20 order through the date of the hearing.

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1                                (C) Any day or part of a day that the vehicle is out of service for repair will be  
2   deducted from the numerator in determining the reasonable allowance for use of a towable recreational  
3   vehicle in this paragraph.

4                                (c) This subsection applies only to the repurchase of a leased motor vehicle.

5                                (1) Except in cases involving unusual and extenuating circumstances supported by a  
6   preponderance of the evidence, when a refund of the total purchase price of a leased motor vehicle is  
7   ordered, the refund shall be allocated and paid to the lessee and the vehicle lessor, respectively, in  
8   accordance with subparagraphs (A) and (B) of this paragraph.

9                                (A) The lessee shall receive the total of:

10                               (i) all lease payments previously paid by the lessee to the vehicle lessor  
11   under the terms of the lease; and

12                               (ii) all sums previously paid by the lessee to the vehicle lessor in  
13   connection with entering into the lease agreement, including, but not limited to any capitalized cost  
14   reduction, down payment, trade-in, or similar cost, plus sales tax, license, registration fees, and other  
15   documentary fees, if applicable.

16                               (B) The vehicle lessor shall receive the total of:

17                               (i) the actual price paid by the vehicle lessor for the motor vehicle,  
18   including tax, title, license, and documentary fees, if paid by the vehicle lessor and evidenced in a bill of  
19   sale, bank draft demand, tax collector's receipt, or similar instrument; and

20                               (ii) an additional 5.0% of the purchase price plus any amount or fee paid  
21   by the vehicle lessor to secure the lease or interest in the lease.

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1                   (C) A credit reflecting all of the payments made by the lessee shall be deducted  
2 from the actual purchase price that the manufacturer, distributor, or converter is required to pay the  
3 vehicle lessor, as specified in subparagraph (B)(i) and (ii) of this paragraph.

4                   (2) When the hearings examiner orders a manufacturer, distributor, or converter to  
5 refund the purchase price in a leased vehicle transaction, the motor vehicle shall be returned to the  
6 manufacturer, distributor, or converter with clear title upon payment of the sums indicated in paragraph  
7 (1)(A) and (B) of this subsection. The vehicle lessor shall transfer title of the motor vehicle to the  
8 manufacturer, distributor, or converter, as necessary to effectuate the lessee's rights. The lease shall be  
9 terminated without penalty to the lessee.

10                  (3) Refunds shall be made to the lessee, vehicle lessor, and to any lienholder, respective  
11 to their ownership interest in the motor vehicle. The refund to the lessee under paragraph (1)(A) of this  
12 subsection shall be reduced by a reasonable allowance for the lessee's use of the motor vehicle. A  
13 reasonable allowance for use shall be computed in accordance with subsection (b)(2) or (3) of this  
14 section, using the amount in paragraph (1)(B)(i) of this subsection as the applicable total purchase price.

15                  (d) This subsection applies only to replacement of motor vehicles.

16                  (1) Upon a hearing examiner's issuance of a final order to a manufacturer, distributor, or  
17 converter to replace a motor vehicle, the manufacturer, distributor, or converter shall:

18                         (A) promptly authorize the exchange of the complainant's motor vehicle with  
19 the complainant's choice of any comparable motor vehicle; and

20                         (B) instruct the dealer to contract the sale of the selected comparable motor  
21 vehicle with the complainant under the following terms.

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1                                    (i) The sales price of the comparable motor vehicle shall be the vehicle's  
2   Manufacturer's Suggested Retail Price or Distributor's Suggested Retail Price (MSRP/DSRP), as applicable;

3                                    (ii) The trade-in value of the complainant's motor vehicle shall be the  
4   MSRP/DRSP, as applicable, at the time of the original transaction, less a reasonable allowance for the  
5   complainant's use of the complainant's motor vehicle.

6                                    (iii) The reasonable allowance for replacement relief shall be calculated  
7   in accordance with subsection (b)(2) and (3) of this section.

8                                    (2) Upon a replacement of a complainant's motor vehicle, the complainant shall be  
9   responsible for payment or financing of the reasonable allowance for use of the complainant's vehicle,  
10   any outstanding liens on the complainant's vehicle, and applicable taxes and fees associated with the  
11   new sale of a comparable motor vehicle, excluding documentary fees.

12                                   (A) If the comparable motor vehicle has a higher MSRP/DSRP, as applicable, than  
13   the complainant's vehicle, the complainant shall be responsible at the time of sale to pay or finance the  
14   difference in the two vehicles' MSRPs/DSRPs, as applicable, to the manufacturer, converter or distributor.

15                                   (B) If the comparable motor vehicle has a lower MSRP/DSRP, as applicable, than  
16   the complainant's vehicle, the complainant will be credited the difference in the MSRP/DSRP, as  
17   applicable, between the two motor vehicles. The difference credited shall not exceed the amount of the  
18   calculated reasonable allowance for use for the complainant's vehicle.

19                                   (3) The complainant is responsible for obtaining financing, if necessary, to complete the  
20   transaction.

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1                   (4) The replacement transaction, as described in paragraphs (2) and (3) of this  
2                   subsection, shall be completed as specified in the final order. If the replacement transaction cannot be  
3                   completed within the ordered time period, the manufacturer shall repurchase the complainant's motor  
4                   vehicle in accordance with the repurchase provisions of this section. If repurchase relief occurs, a party  
5                   may request calculation of the refund price by the hearings examiner.

6                   (e) If the hearings examiner finds that a complainant's motor vehicle does not qualify for  
7                   replacement or repurchase, the hearings examiner may enter an order requiring repair work to be  
8                   performed or other action taken to obtain compliance with the manufacturer's, converter's, or  
9                   distributor's warranty obligations.

10                  (f) If the motor vehicle is substantially damaged or if there is an adverse change in the motor  
11                  vehicle's condition beyond ordinary wear and tear, from the date of the hearing to the date of  
12                  repurchase, and the parties are unable to agree on an amount allowed for such damage or condition,  
13                  either party may request reconsideration by the hearings examiner of the refund amount contained in  
14                  the final order.

15                  (g) In any award in favor of a complainant, the hearings examiner may require the dealer  
16                  involved to reimburse the complainant, manufacturer, distributor, or converter for the cost of any items  
17                  or options added to the motor vehicle by the dealer if one or more of those items or options contributed  
18                  to the defect that is the basis for the final order. This subsection shall not be interpreted to require a  
19                  manufacturer, distributor, or converter to repurchase a motor vehicle due to a defect or condition that  
20                  was solely caused by an item or option added by the dealer.

21  
22                  §224.262. Incidental Costs.

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1           (a) When a refund of the purchase price or replacement of a motor vehicle is ordered, the  
2   complainant shall be reimbursed for certain incidental costs incurred by the complainant from loss of  
3   use of the motor vehicle because of the defect or nonconformity which is the basis of the complaint. The  
4   costs must be reasonable and verifiable. Reimbursable incidental costs include, but are not limited to the  
5   following costs:

6                   (1) alternate transportation;

7                   (2) towing;

8                   (3) telephone calls or mail charges directly attributable to contacting the manufacturer,  
9   distributor, converter, or dealer regarding the motor vehicle;

10                  (4) meals and lodging necessitated by the motor vehicle's failure during out-of-town  
11   trips;

12                  (5) loss or damage to personal property;

13                  (6) attorney fees if the complainant retains counsel after notification that the  
14   respondent is represented by counsel; and

15                  (7) items or accessories added to the motor vehicle at or after purchase, less a  
16   reasonable allowance for use.

17           (b) Incidental costs shall be included in the final refund amount required to be paid by a  
18   manufacturer, distributor, or converter to a prevailing complainant, or in the case of a motor vehicle  
19   replacement, shall be tendered to the complainant at the time of replacement.

20           (c) When awarding reimbursement for the cost of items or accessories presented under  
21   subsection (a)(7) of this section, the hearings examiner shall consider the permanent nature,



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1 functionality, and value added by the items or accessories and whether the items or accessories are  
2 original equipment manufacturer (OEM) parts or non-OEM parts.

3  
4 §224.264. Final Orders.

5 (a) A hearings examiner shall prepare a final order as soon as possible, but not later than 60 days  
6 after the hearing is closed, or as otherwise provided by law. The final order shall include the hearings  
7 examiner's findings of fact and conclusions of law. The final order shall be sent by the department to all  
8 parties by certified mail.

9 (b) A party who disagrees with the final order may file a motion for rehearing in accordance with  
10 Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O. A motion  
11 for rehearing of a final order must:

12 (1) be filed with the chief hearings examiner;

13 (2) include the specific reasons, exceptions, or grounds asserted by a party as the basis  
14 of the request for a rehearing; and

15 (3) recite, if applicable, the specific findings of fact, conclusions of law, or any other  
16 portions of the final order to which the party objects.

17 (c) Replies to a motion for rehearing must be filed with the chief hearings examiner in  
18 accordance with Government Code, Chapter 2001, subject to Occupations Code, §2301.713.

19 (d) If the chief hearings examiner or designee grants a motion for rehearing, the parties will be  
20 notified by mail and a rehearing will be scheduled promptly. After rehearing, a final order shall be issued  
21 with any additional findings of fact or conclusions of law, if necessary to support the final order.

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1           (e) A hearings examiner may issue a final order granting the relief requested in a motion for  
2           rehearing or requested in a reply to a motion for rehearing without the need for a rehearing.

3           (f) If a motion for rehearing is denied, the chief hearings examiner or designee will issue a final  
4           order and notify the parties.

5  
6           §224.266. Compliance with Order Granting Relief.

7           (a) Compliance with a final order will be monitored by the department.

8           (b) A complainant is not bound by a final order.

9           (c) If a complainant does not accept the final order, the proceeding before the hearings examiner  
10          will be deemed concluded and the complaint file closed.

11          (d) If the complainant accepts the final decision, then the manufacturer, distributor, or converter,  
12          and the dealer to the extent of the dealer's responsibility, if any, shall immediately take such action as is  
13          necessary to implement the final order.

14          (e) If a manufacturer, distributor, or converter replaces or repurchases a motor vehicle pursuant  
15          to a final order, then the manufacturer, distributor, or converter shall, prior to the resale of such motor  
16          vehicle, retitle the vehicle in Texas and shall:

17                  (1) issue a disclosure statement on a form provided by or approved by the department;  
18          and

19                  (2) affix a department-approved disclosure label in a conspicuous location in or on the  
20          motor vehicle.

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1        (f) The disclosure statement and disclosure label required under subsection (e) of this section  
2        shall accompany the motor vehicle through the first retail purchase. No person holding a license or GDN  
3        issued by the department under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503  
4        shall remove or cause the removal of the disclosure label until delivery of the motor vehicle to the first  
5        retail purchaser.

6        (g) A manufacturer, distributor, or converter shall provide to the department the name, address,  
7        and telephone number of the transferee to whom the manufacturer, distributor, or converter transfers  
8        the motor vehicle on the disclosure statement within 60 days of a transfer. A dealer that sells the vehicle  
9        to the first retail purchaser shall return the completed disclosure statement to the department within 60  
10       days of the sale.

11       (h) The manufacturer, distributor, or converter must repair the defect or condition in the motor  
12       vehicle that resulted in the vehicle being reacquired and issue a basic warranty excluding non-original  
13       equipment manufacturer items or accessories, for a minimum of 12 months or 12,000 miles, whichever  
14       comes first. The warranty shall be provided to the first retail purchaser of the motor vehicle.

15       (i) In the event this section conflicts with the terms contained in a cease and desist order, the  
16       terms of the cease and desist order shall prevail.

17       (j) The failure of any manufacturer, distributor, converter, or dealer to comply with a final order  
18       within the time period prescribed in the order may subject the manufacturer, converter, distributor, or  
19       dealer to formal action by the department, including the assessment of civil penalties of up to \$10,000  
20       per day per violation or other sanctions prescribed by Occupations Code, Chapter 2301.

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§224.268. Judicial Appeal of a Final Order.

(a) A party who has exhausted all administrative remedies may appeal a final order in a Travis County district court under Government Code, Chapter 2001, and subject to Occupations Code, §2301.609.

(b) A party appealing a final order must serve a copy of the petition for judicial review on the department and all parties of record. After service of the petition and within the time allowed for filing an answer, the department shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding. If the court orders that new evidence be presented to a hearings examiner, the hearings examiner may modify the findings and decision or order by reason of the new evidence and shall transmit the additional record to the court.



# Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

Board Meeting Date: 12/14/2023

ACTION ITEM

To: Texas Department of Motor Vehicles Board  
From: Charles Bacarisse, Chair  
Agenda Item: 17  
Subject: Board Governance Documents Update

## RECOMMENDATION

Action Item. Adopt proposed updates to the Board's policies for Operational Boundaries, Governance, Strategic Planning, and Board Vision, Goals and Objectives.

## PURPOSE AND EXECUTIVE SUMMARY

The Board currently has the following policy documents:

- **Operational Boundaries** establishes the Board's responsibility for setting the policy direction of the department.
- **Governance Policy** establishes the Board's governing style, how the Board achieves each objective and how each member is part of the process.
- **Strategic Planning** establishes the expectations and processes for department staff to develop the biennial Strategic Plan for the department.
- **Board Vision, Goals and Objectives** addresses the maintenance of the department's goals and objectives, mission, vision, values, and goals.

## FINANCIAL IMPACT

N/A

## BACKGROUND AND DISCUSSION

It has been several years since the board last updated its governance policies. The proposed changes would update areas where the policies are no longer factually accurate, create consistency in tone, and reflect the Board's values of collaboration, professionalism, and positive culture. The board last approved updates to these policies as follows:

- **Operational Boundaries**—September 13, 2012
- **Governance**—October 12, 2011
- **Strategic Planning**—October 12, 2011
- **Board Vision, Goals and Objectives**—April 7, 2016

**TxDMV Operational Boundaries****Department Policies of the TxDMV Board****Last Date Approved: September 13, 2012**

Texas Department of Motor Vehicles (TxDMV) Board is responsible for setting the policy direction of the department. The Board's ~~official~~formal connection to the day-to-day operations of TxDMV and the conduct of its business is through the department's Executive Director ~~of TxDMV~~ (ED) who is appointed by, and reports to, the Board ~~and serves at its pleasure. The authority.~~ Authority and accountability for the day-to-day operations of TxDMV and all staff, except those few who report directly or jointly to the Board, is the ~~sole~~ responsibility of the ED and their management team.

In accordance with its policy-making authority responsibilities, the Board has established the following policy boundaries for the department. The intent of the boundaries is not to limit the ability of the ED and staff to manage the day-to-day operations of the department. ~~The intent of the boundaries is, but~~ to define the roles and responsibilities of the Board and the ED more clearly ~~so as to liberate and reduce~~ staff ~~from any~~ uncertainty ~~as to about~~ limitations on their authority to act in the best interest of the department. ~~That is the Board's intent that the~~ ED and staff ~~should~~ have clarity to operate ~~daily as they see fit in the best interests of the department and the state~~ without having to ~~worry about prior seek~~ daily Board consultation or ~~subsequent Board reversal of their acts approval~~.

The ED and all department employees shall always act in an exemplary manner consistent with the responsibilities and expectations vested in their positions. The ED and all department 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 department employees understand and adhere to these boundaries.

Accordingly, the TxDMV operational boundaries are as follows:

1. The day-to-day operations of the department 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.~~
2. A team-oriented approach ~~must~~should be followed on all enterprise-wide decisions to ensure openness, high-performance success, and transparency both internally and externally.
3. Department staff ~~must guard against allowings~~should fully consider any financial conditions and decisions which risk adverse fiscal consequences, compromise Board financial priorities, or fail to show an acceptable level of foresight as related to the resource needs and benefits of department initiatives.
4. Department staff ~~must~~should provide timely, accurate, and honest information ~~that will~~ afford allowing the Board, public, stakeholders, executive branch officials, and the legislature the ~~best~~greatest ability to evaluate all sides of an issue or opportunity before forming an opinion or acting on it. ~~Any information provided that is intentionally untimely, inaccurate, misleading, or one-~~

**TxDMV Operational Boundaries****Department Policies of the TxDMV Board****Last Date Approved: September 13, 2012**

~~sided will not be tolerated.~~  
taking action.

5. Department staff ~~must~~should take ~~all~~ reasonable care to avoid or identify ~~all~~ conflicts of interest or ~~even~~ the appearance of impropriety in a timely manner, especially when awarding purchases, negotiating contracts, or hiring employees.

6. Department staff ~~must~~should maintain adequate administrative policies and procedures that are understandable and aid in staff recruitment, development, and retention.

7. Department staff ~~must~~should maintain an organizational structure that ~~develops~~supports and promotes ~~the~~all program areas from an enterprise-wide perspective. No organizational silos or subagencies ~~will~~should be allowed. ~~We are all TxDMV. to prevent the overall success of the organization or disproportionately impact resources.~~

8. Department staff ~~must~~should empower ~~its entire~~and encourage all staff to deliver a positive experience to every TxDMV customer, stakeholder, ~~or~~and vendor ~~to reduce their effort and make it easier for them to do business~~interacting with TxDMVthe department.

~~9. Department staff must always look to flattening its organizational structure to reduce cost as technology advances allow.~~

~~10.9.~~ Department staff shall ~~should work to~~ anticipate and resolve ~~all~~ issues in a timely and responsive manner.

~~11.10.~~ Department staff ~~must~~should maximize the effective deployment and utilization of ~~all~~ ~~its~~department assets – people, processes, and capital equipment to fully succeed.

~~12.11.~~ Department staff ~~must not waste~~should protect and build the goodwill and respect of our customers, stakeholders, executive branch, and legislature. All ~~communication shall~~communications should be ~~proper, honest~~clear, accurate, and transparent with timely follow-up.

~~13.12.~~ Department staff should ~~focus efforts~~leverage identified opportunities to create additional stakeholder value, ~~make sure; to ensure~~ that processes, programs, and projects are properly designed, budgeted, and vetted ~~as appropriate~~ with outside ~~stakeholders~~impacted parties; and to ensure clarify expectations ~~are correct~~and plans so positive value ~~the TxDMV~~ continues to ~~be created by the actions of TxDMV.~~ support all stakeholders.

**TxDmv Operational Boundaries****Department Policies of the TxDmv Board****Last Date Approved: September 13, 2012**

~~14.13.~~ The ED ~~through his or her staff~~ is responsible for the ongoing monitoring of all program and fiscal ~~authorities~~department performance and providing information to the Board ~~to keep it apprised of all program progress and fiscal activities. This self-assessment. Performance reporting~~ must result in ~~a product~~products that adequately ~~describes~~describe the ~~accomplishment~~accomplishments of ~~all~~ program goals, objectives, and outcomes, as well as proposals to correct ~~any~~ identified problems.

~~15.14.~~ In advance of ~~all~~Board-involved policy decisions ~~the Board makes~~, the ED will provide ~~pertinent~~relevant information and ensure Board members comprehensively 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 a~~ policy decision and the timeframe for conducting these planning activities. It is imperative the planning process describes ~~when Board consideration will be the~~ expected, ~~but also when prior timing of~~ Board deliberations, consultation, and involvement in each ~~planning activity will occur~~.

~~16.15.~~ ~~When~~ seeking clarification on informational items, Board members may directly approach the ED ~~or and~~ his or her designee(s) to obtain information to supplement, upgrade, or enhance their knowledge of the issue and improve the Board's decision-making capacity. Any Board member requests that require ~~substantive~~significant additional work should ~~come be~~ presented to the Board or related Committee ~~Chairs~~Chair for further direction.

~~17.16.~~ Department staff ~~must~~should seek stakeholder input ~~as appropriate~~ on matters that ~~might~~ affect ~~them~~stakeholders prior to public presentation of recommendations or proposals to the Board.

~~18.17.~~ Department staff ~~must~~should measure results, track progress, and report ~~out~~ timely and consistentlyconsistent performance metrics for primary department programs, and for operational areas identified as specific interests of Board members.

~~19.18.~~ The ~~ED and staff shall~~department will have the courage to admit a mistake or failure, ~~and work to address the issue as quickly and effectively as possible.~~

~~20.19.~~ The ~~ED and staff shall~~department will celebrate successes.

The Board expects the ED to work with department staff to ~~develop their written interpretation of~~present any concerns, proposals or revisions to each boundary, ~~as identified.~~ The ED will then consult with the Board on the interpretation. ~~The intent is the Board and the ED will~~ and adjust this document as necessary so it remains mutually ~~agree on department boundaries that will then form~~understood and



**TxDMV Operational Boundaries****Department Policies of the TxDMV Board****Last Date Approved: September 13, 2012**

agreed to by both the ~~basis of additional written thought on Board and~~ the ~~part of the ED and staff as to~~  
~~how these boundaries will influence the actions of the department.~~

department.

**TxDmv Board Governance Policy**

Last Date Approved: October 12, 2011

**1. PURPOSE**

The directives presented in this policy address ~~board-the~~ governance of the Texas Department of Motor Vehicles (TxDMV) Board.

**2. SCOPE**

The directives presented in this policy apply to the TxDMV Board and TxDMV agency-department personnel who interact with the Board. The ~~TxDmv Board Governance Policy~~ shall-is intended to be ~~one that is~~ comprehensive and pioneering-forward-thinking in its scope.

**3. POLICY****3.1. TxDMV Board Governing Style**

The Board ~~shall-will~~ govern department activities according to the following general principles: (a) promoting a common vision for the agency-department, (b) seeking diversity ~~in~~ of points of view, (c) developing strategic leadership, ~~providing to provide~~ day-to-day detailmanagement as necessary to achieve the agency-department vision, (d) defining clear distinction ~~of-between~~ Board and Executive Director roles, (e) relying on collective ~~decision-makingdecision-making~~, and (f) reacting proactively ~~swiftly rather than reactively and with a strategic approach~~ to operational issues or challenges identified. Accordingly:

- 3.1.1. The Board ~~shall-will~~ provide strategic leadership to TxDMV by: ~~In order to To do this, the Board shall:~~
  - ~~3.1.1.1. Being proactive and visionary in its thinkingperspective.~~
  - ~~3.1.1.2-3.1.1.1.~~ Encourage ing thoughtful deliberation, and incorporating ~~a-diversity~~ ofdiverse viewpoints in decision-making processes.
  - ~~3.1.1.3-3.1.1.2.~~ Working together-cohesively as colleagues, encouraging mutual support and good humor.
  - ~~3.1.1.4-3.1.1.3.~~ Haveing the courage to lead and make difficult decisions.
  - ~~3.1.1.5-3.1.1.4.~~ Listening to the customers and ~~stakeholdersstakeholders'~~ needs and objectivesgoals.
  - ~~3.1.1.6. Anticipateing the future, keeping staying informed of issues and trends that may affect the mission and organizational health of the TxDMV.~~
  - ~~3.1.1.7-3.1.1.5.~~ Makinging 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 operational best practices in accordance with the mission and vision of the agency-department.
  - ~~3.1.1.8.~~ Committing to excellence in governance, including periodic-regular monitoring, ~~assessingassessingevaluation~~, and performance improvement improving its own performance.
  - ~~3.1.1.9-3.1.1.6.~~
- 3.1.2. The Board ~~shall-will create-see~~ a comprehensive understanding of the linkagea link between the Board and the operations of the agency-department, via the Executive Director when a policy or a directive is ~~in-order~~ necessary.
- ~~3.1.3.~~ The Board ~~shall-will~~ cultivate a sense of group-shared responsibility, ~~accepting~~ responsibility for excellence indepartment governance. The Board ~~shall-will be the initiator-initiate~~ of policy, not merely respond to staff initiativesproposals. ~~The Board shall-will~~ not use the expertise of individual members to substitute for the judgment of

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Last Date Approved: October 12, 2011

the ~~board~~Boardgroup, although the expertise of individual members ~~may~~will be used to enhance the understanding of the Board as a ~~body~~whole.

**3.1.4.3.1.3.**

**3.1.5.3.1.4.** The Board ~~shall~~will govern the ~~agency~~department through ~~the~~ careful establishment of policies reflecting the ~~board's~~Board's values and perspectives, ~~always~~ focusing on the specific goals to be achieved and not the day-to-day administrative functions.

**3.1.6.3.1.5.** Continual Board development ~~shall~~will include orientation of new Board members in the board's governance process and periodic board discussion of how to improve its governance ~~process~~.

**3.1.7.3.1.6.** ~~The~~ Board members ~~shall~~will fulfill group obligations, encouraging member involvement.

**3.1.8.3.1.7.** The Board ~~shall~~will evaluate ~~its~~governance processes and ~~performances~~performance periodically and make improvements ~~as necessary~~ to achieve ~~premier~~accepted governance standards.

**3.1.9.3.1.8.** Members ~~shall~~will respect confidentiality ~~as is appropriate to~~for issues of a sensitive nature.

**3.2. TxDmv Board Primary Functions ~~/~~ and Characteristics**

TxDmv Board Governance ~~can be seen as~~will constantly evolve ~~ing~~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~~department.
- 3.2.2.2. Maintaining a ~~forward looking~~forward-looking perspective.
- 3.2.2.3. Ensuring the evolution, capacity and ~~robustness-strength~~ of the ~~agency~~department so ~~it~~operations remains flexible and ~~nimble~~responsive.

**3.2.3. Oversight of Operational Structure and Operations**

- 3.2.3.1. Accountability for administrative functions.
- 3.2.3.2. Fiduciary responsibility for financial results.
- 3.2.3.3. Checks and balances on operations from a policy perspective.
- 3.2.3.4. Protecting the integrity and reputation of the ~~agency~~department.

**3.2.4. ~~Ambassadorial and Legitimizing~~ External Relations**

- 3.2.4.1. Promotion of the organization's vision to ~~the~~ external stakeholders, ~~including the Texas Legislature, and political oversight entities or offices based on the vision of the~~ agency~~department~~.
- 3.2.4.2. Ensuring the interests of a broad network of stakeholders are represented in decision-making processes.

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- 3.2.4.3. Board members lend their ~~positional~~, professional and personal credibility to the organization through their position and engagement on the ~~board~~Board.

**3.2.5. Self-~~reflection-evaluation~~ and Assessment**

- 3.2.5.1. Regular reviews of the functions and effectiveness of ~~the~~ Board itselfoperations.
- 3.2.5.2. Assessing the level of trust within ~~the~~ Board membership and the effectiveness of ~~the~~ group deliberation processes.

**3.3. Board Governance Investment**

~~Because poor~~Poor governance costs more than learning to govern well, the Board ~~shall~~will invest in its governance capacity. Accordingly:

- 3.3.1. Board skills, methods, and ~~supports~~support shall be sufficient to ensure effective governing governance with excellence of the department.
- 3.3.1.1. Training ~~and retraining shall~~will be used ~~liberally~~ to orient new members, as well as to maintain and increase existing member skills and understanding of core department operations and administrative functions.
- 3.3.1.2. Outside monitoring assistance shall be arranged as appropriate so ~~that~~ the ~~board~~Board can exercise confident control over agency department performance. This includes, but is not limited to, financial and performance audits.
- ~~3.3.1.3.~~ Outreach mechanisms ~~shall~~will 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.~~
- ~~3.3.1.5.~~3.3.1.3.
- ~~3.3.2.~~ The Board ~~shall~~will establish its cost of governance and ~~it will be integrated~~direct department staff to integrate approved funding into strategic planning and the ~~agency's department's~~ annual operating budgeting process.

**3.4. Practice Discipline and Assess Performance**

The Board ~~shall~~will ensure the integrity of the ~~board's~~Board's governance 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 will operates consistently with its ~~own~~ rules and those legitimately standards imposed on it from outside the organization.
- 3.4.1.1. Meeting ~~discussion~~deliberation content shall consist solely of issues ~~that~~ clearly belong under to the Board's authority to decide or to monitor according to policy, ~~rule~~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~~rulemaking and discussion, and approval of all strategic planning and fiscal matters of the agency.

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- 3.4.1.2. Board ~~discussion-deliberations~~ during meetings shall be limited to topics posted on the agenda.
- ~~3.4.1.3.~~ Adequate time shall be given for respectful deliberation ~~which shall be respectful, brief, and to the point necessary to understand the issue being considered and make appropriate consensus decisions.~~
- 3.4.2. The Board ~~shall will~~ 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~~ Board members clear and in agreement about mission and purpose?
- 3.4.2.2. Are values shared?
- 3.4.2.3. ~~Does the we~~ Board have a strong orientation process 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~~ Board to improve our performance in these areas?
- ~~3.4.2.6.~~ Are we providing clear and relevant direction to the ~~Executive Director~~ ED department, stakeholders and operational partners ~~of the TxDMV~~?
- 3.4.3. The Board Chair ~~shall will~~ periodically promote ~~regular~~ evaluation and feedback to the whole Board on the level of its governance effectiveness.

**TxDmv Board Strategic Planning Policy****Last Date Approved: October 12, 2011****1. PURPOSE**

~~The directives presented in t~~This policy addresses ~~es the intended governance expectations of the annual~~ biennial Strategic Planning process ~~at of~~ the Texas Department of Motor Vehicles (TxDMV).

**2. SCOPE**

The directives presented in this policy apply to the TxDMV Board and ~~TxDmv agency department~~ personnel who interact with the Board. ~~TxDmv Strategic Planning Policy~~ attempts to develop, ~~documentdocument~~, and expand ~~its policyoperational guidance for the organization~~ that is comprehensive in ~~its scope in regardsregarding to the strategic planning process of the Board and the Department beyond that of the state strategic planning process and supports continuous improvement of department operations.~~

**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 includesincluding~~ the vision, mission, values, strategic goals, and strategic objectives.
- 3.1.2. ~~TxDmvThe department~~ shall use a ~~5-yearfive-year~~ strategic planning cycle, ~~which shall be reviewed and updated annually, or as needed each biennium.~~
- 3.1.3. The ~~5-yearfive-year~~ strategic plan shall be ~~informed by but not confined bystructured based on the~~ requirements and directions of ~~appropriate state and other fundingoversight~~ bodies.
- 3.1.4. In ~~developing-determining~~ strategic directions, the Board shall seek input from stakeholders, ~~the motor vehicle industry representativesindustries 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 principal~~ stakeholders at least annually.
  - 3.1.5.2. ~~Discuss~~ Seek input from Deliberate with agency department staff, representatives of ~~the~~ industries served, and the public before determining or substantially changing strategic directions.
  - 3.1.5.3. Ensure ~~it receivesreceipt of~~ continuous input about strategic ~~directionsdirection~~ and agency department performance through ~~periodic defined~~ reporting processes.
- 3.1.6. The Board is responsible for development of a 5-yearfive-year strategic plan ~~that shall identifying 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.

**TxDMV Board Strategic Planning Policy****Last Date Approved: October 12, 2011**

- 3.1.6.4. An assessment of external factors or trends impacting operational success (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~~ department must achieve and a timeline for ~~action~~ achievement.
- 3.1.6.6. Identification of ~~the~~ key performance indicators to measure success and the initiatives that ~~shall~~ drive results for the organization.
- ~~3.1.6.7.~~ Engage staff at all levels of the organization, through the ~~e~~Executive ~~d~~Director, in the development of the strategic plan, using through surveys, interviews, focus groups, and ~~regular~~ direct communications.
- ~~3.1.6.7.~~
- ~~3.1.6.8.~~ Ensure the strategic planning process produces the data necessary for the Legislative Budget Board (LBB/) and Governor's Office of Budget and Policy Division (GOBPD) ~~GOBPP to implement~~ perform state-required state-required compliance activities while expanding and enhancing the strategic plan to support the needs of the TxDMV ~~the department~~. ~~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 TxDMV's ~~department's~~ strategic direction through the development and execution of agency ~~department-wide and~~ divisional operational plans.

**TxDmv Board Vision, Goals and Objectives**

Last Date Approved: April 7, 2016

**1. PURPOSE**

~~The information presented in this~~ This policy addresses the goals and ~~key~~ objectives of the Texas Department of Motor Vehicles (TxDMV) Board as they relate to the mission, vision, and values of the department.

**2. SCOPE**

~~The scope of this policy is to define~~ defines the desired state the Board is working to achieve. ~~This policy and is designed to be inspirational in outlining the desired state of the department that supports the Board vision and toward effectively~~ meeting ~~department~~ organizational goals.

**3.2. TxDMV MISSION**

To serve, protect and advance the citizens and industries in the state with quality motor vehicle related services.

**4.3. TxDMV VISION**

The Texas Department of Motor Vehicles sets the standard as the premier provider of customer service in the nation.

**5.4. TxDMV VALUES**

To earn the trust and faith of all citizens of Texas with transparency, efficiency, excellence, accountability, and putting stakeholders first.

**5.1.4.1. Transparency** – Being open and inclusive in all we do.

**5.2.4.2. Efficiency** – Being good stewards of state resources by providing products and services in the most cost-effective manner possible.

**5.3.4.3. Excellence** – Working diligently to achieve the highest standards.

**5.4.4.4. Accountability** – Accepting responsibility for all we do, collectively and as individuals.

**5.5.4.5. Stakeholders** – Putting customers and stakeholders first, always.

**6.5. TxDMV GOALS****6.1.5.1. GOAL 1 – Performance Driven**

~~TxDmv~~ ~~The department~~ shall be a performance-driven ~~department~~ organization in its operations ~~whether it is in customer service, licensing, permitting, enforcement, or rulemaking. At all times~~ ~~TxDmv. The department~~ shall ~~mirror in its performance~~ seek to perform to the expectations of its customers and stakeholders by effective, efficient, customer-focused, on-time, fair, predictable and thorough ~~service or decisions~~ services.

**6.1.1.5.1.1. Key Objective 1**

~~TxDmv shall be a~~ ~~The~~ department ~~that is~~ shall be retail-oriented in its approach to service. To accomplish this orientation, TxDMV shall concentrate the focus of the ~~agency~~ organization on:

**6.1.1.1.5.1.1.1.** Delivering ~~its~~ products and services to ~~all its~~ customers and stakeholders in a manner that ~~recognizes that their~~ prioritizes external 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.



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Last Date Approved: April 7, 2016

~~6.1.1.2-5.1.1.2.~~ Operating the department's licensing and registration functions in a manner similar to ~~how a~~ private, for-profit business. As ~~a private, for-profit~~ effective business, TxDMV should 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. Employees are encouraged to act and react in a manner that understands how to perform without a government safety net and with a risk of "going out of business."

~~6.1.1.3-5.1.1.3.~~ Simplify ~~Simplifying~~ the production and distribution processes and ease of doing business ~~with TxDMV.~~ Adapting and maintaining a business value of continuous improvement is central to TxDMV operations and processes.

~~6.1.1.4-5.1.1.4.~~ All department operations ~~of TxDMV shall stand~~ standing 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 effectively as possible in terms of financial and personnel resource 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.~~

~~6.1.1.6-5.1.1.5.~~ Decisions Basing decisions regarding TxDMV ~~divisions should be based~~ operations on the overriding business need of each division to meet or provide a specific service demand, with the understanding and coordination of overarching department needs.

~~6.1.1.7-5.1.1.6.~~ Developing and regularly updating a long-range ~~Statewide Plan~~ strategic plan describing total system needs, establishing overarching statewide goals, and ensuring progress toward those goals.

~~6.1.1.8-5.1.1.7.~~ ~~TxDmv shall establish~~ Establishing a transparent, well-defined, and understandable system of project management ~~within the department~~ that integrates project milestones, forecasts, and priorities.

~~6.1.1.9.~~ ~~TxDmv shall develop detailed work programs driven by milestones for major projects~~ Measuring and ~~other statewide goals for all divisions.~~

~~6.1.1.10-5.1.1.8.~~ TxDmv, with input from stakeholders and policymakers, shall measure and report reporting on department progress in meeting goals and milestones for major projects and other statewide goals initiatives, with input from stakeholders and policymakers.

**6.2.5.2. GOAL 2 – Optimized Services and Innovation**

~~TxDmv~~ The department shall be an innovative, forward-thinking agency organization that ~~looks for~~ seeks ways to promote the economic well-being and development of both the industries it serves as well as and the State of Texas within ~~the established~~ legislative and legal boundaries ~~that have been established for the department.~~

**TxDmv Board Vision, Goals and Objectives**

Last Date Approved: April 7, 2016

**6.2.1.5.2.1. Key Objective 1**

~~TxDmv~~The department shall achieve ~~operational, cultural, structural~~ meaningful brand identification and ~~financial independence from other~~ represent a unique perspective within state ~~agencies~~ government.

~~6.2.1.1-5.2.1.1.~~ Build the TxDmv identity. This means TxDmv shall ~~make~~ transparently educate customers ~~aware of on~~ what services we offer and how they can take advantage of those services.

~~6.2.1.2-5.2.1.2.~~ Build the TxDmv brand- ~~and reputation.~~ This means TxDmv shall reach out to the stakeholders, industries we serve, and the public, ~~being proactive in addressing and anticipating to address and anticipate~~ 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, It is operationally critical for~~ the department shall identify efficient and effective ways to pay for them without unduly burdening either the state, its ~~to maintain facilities and IT systems necessary to effectively serve our~~ customers, ~~or and~~ stakeholders.

~~6.2.1.4-5.2.1.3.~~ All ~~department~~ regulations, enforcement actions and decisions ~~at~~ TxDmv shall be ~~made~~ determined in a timely, fair, and predictable manner.

**6.2.2.5.2.2. Key Objective 2**

Provide continuous education ~~training~~ on business trends in the industry with a particular emphasis on activities in Texas.

**6.2.3.5.2.3. Key Objective 3**

Provide continuous outreach ~~services~~ activities to all customers and stakeholders to ~~access~~ identify their respective needs and wants. This includes helping frame legislative or regulatory issues for consideration by ~~other~~ oversight bodies ~~including the legislature.~~

**6.2.4.5.2.4. Key Objective 4**

Examine all fees to determine their individual worth and reasonableness ~~of amount.~~ No fee shall be charged that cannot be ~~defended~~ justified financially and operationally.

**6.3.5.3. GOAL 3 – Customer-Centric**

~~TxDmv~~The department shall be ~~managed in~~ a customer-centric ~~department~~ way 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.

**6.3.1.5.3.1. Key Objective 1**

~~TxDmv~~The department shall seek to serve its customer base through a creative and retail-oriented approach ~~to support the needs of its industries and customers.~~

**6.3.2.5.3.2. Key Objective 2**

~~TxDmv~~The department shall develop and implement ~~a public involvement policy~~ policies that ~~guides~~ guide and ~~encourages~~ encourage meaningful public involvement ~~efforts department wide.~~

**6.3.3.5.3.3. Key Objective 3**

**TxDMV Board Vision, Goals and Objectives****Last Date Approved: April 7, 2016**

~~TxDMV~~The department 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.

**~~6.3.4.5.3.4.~~ Key Objective 4**

~~TxDMV~~The department shall provide a formal process for staff with similar responsibilities to share best practices information.

**~~6.3.5.5.3.5.~~ Key Objective 5**

~~TxDMV~~The department shall provide central coordination of ~~the department's~~external outreach campaigns.

**~~6.3.6.5.3.6.~~ Key Objective 6**

~~TxDMV~~The department shall develop and expand user friendly, convenient, and efficient website applications.

**~~6.3.7.5.3.7.~~ Key Objective 7**

~~TxDMV~~The department shall timely meet all legislative requests and mandates.

**TxDMV Operational Boundaries****Department Policies of the TxDMV Board****Last Date Approved: September 13, 2012**

Texas Department of Motor Vehicles (TxDMV) Board is responsible for setting the policy direction of the department. The Board's formal connection to the day-to-day operations of TxDMV and the conduct of its business is through the department's Executive Director (ED) who is appointed by, and reports to, the Board. Authority and accountability for the day-to-day operations of TxDMV and all staff, except those few who report directly or jointly to the Board, is the responsibility of the ED and their management team.

In accordance with its policy-making responsibilities, the Board has established the following policy boundaries for the department. The intent of the boundaries is not to limit the ability of the ED and staff to manage the day-to-day operations of the department, but to define the roles and responsibilities of the Board and the ED more clearly and reduce staff uncertainty about limitations on their authority to act in the best interest of the department. It is the Board's intent that the ED and staff have the right to operate in the best interests of the department and the state without having to seek daily Board consultation or approval.

The ED and all department employees shall always act in an exemplary manner consistent with the responsibilities and expectations vested in their positions. The ED and all department 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 department employees understand and adhere to these boundaries.

Accordingly, the TxDMV operational boundaries are as follows:

1. The day-to-day operations of the department should be conducted in a manner consistent with the vision, mission, values, strategic framework, and performance metrics established by the Board.
2. A team-oriented approach should be followed on all enterprise-wide decisions to ensure openness, high-performance success, and transparency both internally and externally.
3. Department staff should fully consider any financial conditions and decisions which risk adverse fiscal consequences, compromise Board financial priorities, or fail to show an acceptable level of foresight as related to the resource needs and benefits of department initiatives.
4. Department staff should provide timely, accurate, and honest information allowing the Board, public, stakeholders, executive branch officials, and the legislature the greatest ability to evaluate all sides of an issue or opportunity before forming an opinion or taking action.
5. Department staff should take reasonable care to avoid or identify conflicts of interest or the appearance of impropriety in a timely manner, especially when awarding purchases, negotiating contracts, or hiring employees.

**TxDmv Operational Boundaries****Department Policies of the TxDmv Board****Last Date Approved: September 13, 2012**

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6. Department staff should maintain adequate administrative policies and procedures that are understandable and aid in staff recruitment, development, and retention.
7. Department staff should maintain an organizational structure that supports and promotes all program areas from an enterprise-wide perspective. No organizational silos or subagencies should be allowed to prevent the overall success of the organization or disproportionately impact resources.
8. Department staff should empower and encourage all staff to deliver a positive experience to every TxDmv customer, stakeholder, and vendor interacting with the department.
9. should work to anticipate and resolve issues in a timely and responsive manner.
10. Department staff should maximize the effective deployment and utilization of department assets – people, processes, and capital equipment to fully succeed.
11. Department staff should protect and build the goodwill and respect of our customers, stakeholders, executive branch, and legislature. All communications should be clear, accurate, and transparent with timely follow-up.
12. Department staff should leverage identified opportunities to create additional stakeholder value; to ensure that processes, programs, and projects are properly designed, budgeted, and vetted with outside impacted parties; and to clarify expectations and plans so the TxDmv continues to support all stakeholders.
13. The ED is responsible for the ongoing monitoring of all program and fiscal department performance and providing information to the Board. Performance reporting must result in products that adequately describe the accomplishments of program goals, objectives, and outcomes, as well as proposals to correct identified problems.
14. In advance of Board-involved policy decisions, the ED will provide relevant information and ensure Board members comprehensively understand issues/matters related to the pending policy decision. Additionally, the ED will develop a process for planning activities to be performed leading up to a policy decision and the timeframe for conducting these planning activities. It is imperative the planning process describes the expected timing of Board deliberations, consultation, and involvement in each activity.
15. When seeking clarification on informational items, Board members may directly approach the ED and his or her designee(s) to obtain information to supplement, upgrade, or enhance their

**TxDMV Operational Boundaries****Department Policies of the TxDMV Board****Last Date Approved: September 13, 2012**

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knowledge of the issue and improve the Board's decision-making capacity. Any Board member requests that require significant additional work should be presented to the Board or related Committee Chair for further direction.

16. Department staff should seek stakeholder input on matters that affect stakeholders prior to public presentation of recommendations or proposals to the Board.
17. Department staff should measure results, track progress, and report timely and consistent performance metrics for primary department programs, and for operational areas identified as specific interests of Board members.
18. The department will have the courage to admit a mistake or failure and work to address the issue as quickly and effectively as possible.
19. The department will celebrate successes.

The Board expects the ED to work with department staff to present any concerns, proposals or revisions to each boundary as identified. The ED will then consult with the Board on the interpretation and adjust this document as necessary so it remains mutually understood and agreed to by both the Board and the department.

**TxDmv Board Governance Policy****Last Date Approved: October 12, 2011****1. PURPOSE**

The directives presented in this policy address the governance of the Texas Department of Motor Vehicles (TxDMV) Board.

**2. SCOPE**

The directives presented in this policy apply to the TxDMV Board and TxDMV department personnel who interact with the Board. The policy is intended to be comprehensive and forward-thinking in its scope.

**3. POLICY****3.1. TxDMV Board Governing Style**

The Board will govern department activities according to the following general principles: (a) promoting a common vision for the department, (b) seeking diversity of points of view, (c) developing strategic leadership to provide day-to-day management to achieve the department vision, (d) defining clear distinction between Board and Executive Director roles, (e) relying on collective decision-making, and (f) reacting swiftly to operational issues or challenges identified. Accordingly:

- 3.1.1. The Board will provide strategic leadership to TxDMV by:
  - 3.1.1.1. Encouraging thoughtful deliberation and incorporating diverse viewpoints in decision-making processes.
  - 3.1.1.2. Working cohesively as colleagues, encouraging mutual support and good humor.
  - 3.1.1.3. Having the courage to lead and make difficult decisions.
  - 3.1.1.4. Listening to customer and stakeholder needs and goals.
  - 3.1.1.5. Making decisions based on an understanding developed by appropriate and complete stakeholder participation in the process of identifying the needs of the motoring public, motor vehicle industries, and operational best practices in accordance with the mission and vision of the department.
  - 3.1.1.6. Committing to excellence in governance, including regular monitoring, evaluation, and performance improvement .
- 3.1.2. The Board will seek a comprehensive understanding of the operations of the department when a policy or directive is necessary.
- 3.1.3. The Board will cultivate a sense of shared responsibility for department governance. The Board will initiate policy, not merely respond to staff proposals. The Board will not use the expertise of individual members to substitute for the judgment of the group, although the expertise of individual members will be used to enhance the understanding of the Board as a whole.
- 3.1.4. The Board will govern the department through careful establishment of policies reflecting the Board's values and perspectives, focusing on the specific goals to be achieved and not the day-to-day administrative functions.
- 3.1.5. Continual Board development will include orientation of new Board members in the board's governance process and periodic board discussion of how to improve its governance.
- 3.1.6. Board members will fulfill group obligations, encouraging member involvement.
- 3.1.7. The Board will evaluate governance processes and performance periodically and make improvements to achieve accepted governance standards.
- 3.1.8. Members will respect confidentiality for issues of a sensitive nature.

**TxDMV Board Governance Policy****Last Date Approved: October 12, 2011****3.2. TxDMV Board Primary Functions and Characteristics**

TxDMV Board Governance will constantly evolve. The system must be flexible and evolutionary. The functions and characteristics of the 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 department.
- 3.2.2.2. Maintaining a forward-looking perspective.
- 3.2.2.3. Ensuring the evolution, capacity and strength of the department so operations remain flexible and responsive.

**3.2.3. Oversight of Operational Structure and Operations**

- 3.2.3.1. Accountability for administrative functions.
- 3.2.3.2. Fiduciary responsibility for financial results.
- 3.2.3.3. Checks and balances on operations from a policy perspective.
- 3.2.3.4. Protecting the integrity and reputation of the department.

**3.2.4. External Relations**

- 3.2.4.1. Promotion of the organization's vision to external stakeholders and political oversight entities or offices.
- 3.2.4.2. Ensuring the interests of a broad network of stakeholders are represented in decision-making processes.
- 3.2.4.3. Board members lend their professional and personal credibility to the organization through their position and engagement on the Board.

**3.2.5. Self-evaluation and Assessment**

- 3.2.5.1. Regular review of the functions and effectiveness of Board operations.
- 3.2.5.2. Assessing the level of trust within Board membership and the effectiveness of group deliberation processes.

**3.3. Board Governance Investment**

Poor governance costs more than learning to govern well, the Board will invest in its governance capacity. Accordingly:

- 3.3.1. Board skills, methods, and support shall be sufficient to ensure effective governance of the department.
  - 3.3.1.1. Training will be used to orient new members, as well as to maintain and increase existing member skills and understanding of core department operations and administrative functions.
  - 3.3.1.2. Outside monitoring assistance shall be arranged as appropriate so the Board can exercise confident control over department performance. This includes, but is not limited to, financial and performance audits.



**TxDmv Board Governance Policy****Last Date Approved: October 12, 2011**

- 3.3.1.3. Outreach mechanisms will be used as needed to ensure the Board's ability to listen to stakeholder viewpoints and values.

The Board will establish its cost of governance and direct department staff to integrate approved funding into strategic planning and the department's annual operating budget.

**3.4. Practice Discipline and Assess Performance**

The Board will ensure the integrity of the governance process by practicing discipline and continuously working to improve its performance. Accordingly:

- 3.4.1. The Board will operate consistently with its rules and those standards imposed on it from outside the organization.
  - 3.4.1.1. Meeting deliberation content shall consist solely of issues clearly under the Board's authority to decide or to monitor according to policy, rule, and law.
  - 3.4.1.2. Board deliberations during meetings shall be limited to topics posted on the agenda.

Adequate time shall be given for respectful deliberation necessary to understand the issue being considered and make appropriate consensus decisions.
- 3.4.2. The Board will strengthen its governing capacity by periodically assessing performance with respect to its governance model. Possible areas of assessment include, but are not limited to:
  - 3.4.2.1. Are Board members clear and in agreement about mission and purpose?
  - 3.4.2.2. Are values shared?
  - 3.4.2.3. Does the Board have a strong orientation process for 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 department, stakeholders and operational partners?
- 3.4.3. The Board Chair will periodically promote evaluation and feedback to the whole Board on the level of governance effectiveness.

**TxDMV Board Strategic Planning Policy****Last Date Approved: October 12, 2011****1. PURPOSE**

This policy addresses governance expectations of the biennial Strategic Planning process of the Texas Department of Motor Vehicles (TxDMV).

**2. SCOPE**

The directives presented in this policy apply to the TxDMV Board and department personnel who interact with the Board. Strategic planning attempts to develop, document, and expand operational guidance for the organization that is comprehensive in scope and supports continuous improvement of department operations.

**3. POLICY****3.1. TxDMV Board Strategic Planning**

- 3.1.1. The Board is responsible for the strategic direction of the organization, including the vision, mission, values, strategic goals, and strategic objectives.
- 3.1.2. The department shall use a five-year strategic planning cycle, reviewed and updated each biennium.
- 3.1.3. The five-year strategic plan shall be structured based on the requirements and directions of appropriate state oversight bodies.
- 3.1.4. In determining strategic direction, the Board shall seek input from stakeholders, motor vehicle industry representatives, and the public.
- 3.1.5. The Board shall:
  - 3.1.5.1. Ensure identification of and communication with principal stakeholders at least annually.
  - 3.1.5.2. Seek input from department staff, representatives of industries served, and the public before determining or substantially changing strategic directions.
  - 3.1.5.3. Ensure receipt of continuous input about strategic direction and department performance through defined reporting processes.
- 3.1.6. The Board is responsible for development of a five-year strategic plan identifying key priorities and objectives of the organization, including:
  - 3.1.6.1. The creation of vision, mission, and values statements.
  - 3.1.6.2. The establishment of a Customer Value Proposition that 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 impacting operational success (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 achievement.
  - 3.1.6.6. Identification of key performance indicators to measure success and the initiatives that drive results for the organization.

**TxDMV Board Strategic Planning Policy****Last Date Approved: October 12, 2011**

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- 3.1.6.7. Engage staff at all levels of the organization, through the Executive Director, in the development of the strategic plan, using surveys, interviews, focus groups, and direct communications.

Ensure the strategic planning process produces the data necessary for the Legislative Budget Board (LBB) and Governor's Office of Budget and Policy (GOBP) to perform state-required compliance activities while expanding and enhancing the strategic plan to support the needs of the department.

- 3.1.7. The Board delegates to the Executive Director the responsibility for implementing the department's strategic direction through the development and execution of divisional operational plans.

**TxDMV Board Vision, Goals and Objectives****Last Date Approved: April 7, 2016****1. PURPOSE**

This policy addresses the goals and objectives of the Texas Department of Motor Vehicles (TxDMV) Board as they relate to the mission, vision, and values of the department. The policy defines the desired state the Board is working to achieve and is designed to be inspirational toward effectively meeting organizational goals.

**2. TxDMV MISSION**

To serve, protect and advance the citizens and industries in the state with quality motor vehicle related services.

**3. TxDMV VISION**

The Texas Department of Motor Vehicles sets the standard as the premier provider of customer service in the nation.

**4. TxDMV VALUES**

To earn the trust and faith of all citizens of Texas with transparency, efficiency, excellence, accountability, and putting stakeholders first.

- 4.1. Transparency** – Being open and inclusive in all we do.
- 4.2. Efficiency** – Being good stewards of state resources by providing products and services in the most cost-effective manner possible.
- 4.3. Excellence** – Working diligently to achieve the highest standards.
- 4.4. Accountability** – Accepting responsibility for all we do, collectively and as individuals.
- 4.5. Stakeholders** – Putting customers and stakeholders first, always.

**5. TxDMV GOALS****5.1. GOAL 1 – Performance Driven**

The department shall be a performance-driven organization in its operations. The department shall seek to perform to the expectations of its customers and stakeholders by effective, efficient, customer-focused, on-time, fair, predictable and thorough services.

**5.1.1. Key Objective 1**

The department shall be retail-oriented in its approach to service. To accomplish this orientation, TxDMV shall concentrate the focus of the organization on:

- 5.1.1.1. Delivering products and services to customers and stakeholders in a manner that prioritizes external needs first. These needs must be positively and proactively met. TxDMV works for and with its customers and stakeholders, not the other way around.
- 5.1.1.2. Operating the department's licensing and registration functions in a manner similar to private, for-profit business. As an effective business, TxDMV should listen to its customers and stakeholders and implement best practices to meet their needs. Employees are encouraged to act and react in a manner that understands how to perform without a government safety net and with a risk of "going out of business."

**TxDmv Board Vision, Goals and Objectives****Last Date Approved: April 7, 2016**

- 5.1.1.3. Simplifying the production and distribution processes and ease of doing business. Adapting and maintaining a business value of continuous improvement is central to TxDmv operations and processes.
- 5.1.1.4. All department operations standing 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. TxDmv shall operate as efficiently and effectively as possible in terms of financial and resource 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.
- 5.1.1.5. Basing decisions regarding TxDmv operations on the overriding business need of each division to meet or provide a specific service demand, with the understanding and coordination of overarching department needs.
- 5.1.1.6. Developing and regularly updating a long-range strategic plan describing total system needs, establishing overarching statewide goals, and ensuring progress toward those goals.
- 5.1.1.7. Establishing a transparent, well-defined, and understandable system of project management that integrates project milestones, forecasts, and priorities.
- 5.1.1.8. Measuring and reporting on department progress in meeting goals and milestones for major projects and other statewide initiatives, with input from stakeholders and policymakers.

**5.2. GOAL 2 – Optimized Services and Innovation**

The department shall be an innovative, forward-thinking organization that seeks ways to promote the economic well-being and development of both the industries it serves and the State of Texas within established legislative and legal boundaries.

**5.2.1. Key Objective 1**

The department shall achieve meaningful brand identification and represent a unique perspective within state government.

- 5.2.1.1. Build the TxDmv identity. This means TxDmv shall transparently educate customers on what services we offer and how they can take advantage of those services.
- 5.2.1.2. Build the TxDmv brand and reputation. This means TxDmv shall reach out to the stakeholders, industries we serve, and the public to address and anticipate their needs.
- 5.2.1.3. Determine immediate, future, and long-term facility and capital needs. It is operationally critical for the department to maintain facilities and IT systems necessary to effectively serve our customers and stakeholders. All department regulations, enforcement actions and decisions shall be determined in a timely, fair, and predictable manner.

**5.2.2. Key Objective 2**

Provide continuous education on business trends in the industry with a particular emphasis on activities in Texas.

**TxDmv Board Vision, Goals and Objectives****Last Date Approved: April 7, 2016**

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**5.2.3. Key Objective 3**

Provide continuous outreach activities to all customers and stakeholders to identify their respective needs and wants. This includes helping frame legislative or regulatory issues for consideration by oversight bodies.

**5.2.4. Key Objective 4**

Examine all fees to determine their individual worth and reasonableness. No fee shall be charged that cannot be justified financially and operationally.

**5.3. GOAL 3 – Customer-Centric**

The department shall be managed in a customer-centric way that delivers 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.

**5.3.1. Key Objective 1**

The department shall seek to serve its customer base through a creative and retail-oriented approach.

**5.3.2. Key Objective 2**

The department shall develop and implement policies that guide and encourage meaningful public involvement.

**5.3.3. Key Objective 3**

The department 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 improve customer facing processes.

**5.3.4. Key Objective 4**

The department shall provide a formal process for staff with similar responsibilities to share best practices information.

**5.3.5. Key Objective 5**

The department shall provide central coordination of external outreach campaigns.

**5.3.6. Key Objective 6**

The department shall develop and expand user friendly, convenient, and efficient website applications.

**5.3.7. Key Objective 7**

The department shall timely meet all legislative requests and mandates.

**Board Meeting Date: 12/14/2023**  
**ACTION ITEM**

**To:** Texas Department of Motor Vehicles Board  
**From:** Annette Quintero, Vehicle Titles & Registration Division Director  
**Agenda Item:** 18  
**Subject:** Specialty Plate Designs

#### RECOMMENDATION

Action Item. The Vehicle Titles and Registration Division seeks board approval or denial for four plate designs submitted for your consideration. Each plate design is from the marketing vendor, My Plates.

#### PURPOSE AND EXECUTIVE SUMMARY

Florida A&M University, Premium Embossed Black and Gold, Premium Embossed Black and Yellow, and Premium Embossed Blue and Gold are new plate designs.

#### FINANCIAL IMPACT

Costs incurred by the department related to the My Plates program and an \$8 administrative fee per plate are recouped from the My Plates vendor. Revenue generated from the sale of vendor specialty license plates is split between the state (General Revenue Fund) and My Plates. The details of the revenue splits can be found in Section IV (State/Contractor Revenue Sharing) of the Specialty License Plate Marketing contract.

#### BACKGROUND AND DISCUSSION

Statutory authority for the board to approve vendor specialty license plates and invite the public's comment on proposed vendor plate designs is in Texas Transportation Code §504.851(g) and (g-1) (1). Statutory authority for a sponsor of a specialty license plate under Texas Transportation Code Chapter 504, Subchapter J, to contract with the private vendor authorized under Texas Transportation Code §504.851 for the marketing and sale of the specialty license plate is in Texas Transportation Code §504.6011. Statutory authority for the board to approve non-profit organization specialty license plates and invite the public's comment on proposed plate designs is in Texas Transportation Code §504.801. The board's approval criteria are clarified in Texas Administrative Code §217.45 Specialty License Plates, Symbols, Tabs, and Other Devices, and §217.52 Marketing of Specialty License Plates through a Private Vendor.

The vendor contract (Statement of Work paragraph #2, Marketing Services) specifies that following the board's contingent approval of a plate, the vendor must get at least 200 commitments within six months of the approval for a plate to be produced (*existing* plates must also maintain 200 registrations to stay in the program). My Plates' procedure is to first offer a plate to the public to register their interest. Following the board's contingent approval, My Plates then offers a plate online for prepaid orders and confirms when 200 prepaid orders are achieved.

TxDMV's procedure is to invite comments on all proposed plates ahead of the board's review. The department's intent is to determine if there are any unforeseen public concerns about a plate design. The department publishes a 10-day

“like/dislike/comment-by-email” survey, called an eVIEW, on its website. Although the survey counts the public’s “likes” and “dislikes,” it is unscientific and not used as an indicator of a plate’s popularity.

Each plate design listed below was presented to the public in a November 2023 eVIEW. No negative comments were received. The count of the public’s “like/dislikes” are noted below with each design.

<b>Florida A&amp;M University</b>	<b>NEW</b>
1046 people liked this design and 626 did not	
<b>Premium Embossed – Black and Gold</b>	<b>NEW</b>
1105 people liked this design and 338 did not	
<b>Premium Embossed – Black and Yellow</b>	<b>NEW</b>
892 people liked this design and 445 did not	
<b>Premium Embossed – Blue and Gold</b>	<b>NEW</b>
752 people liked this design and 560 did not	





## Florida A&M University (New)



## Premium Embossed Black and Gold (New)



### Premium Embossed Black and Yellow (New)



### Premium Embossed Blue and Gold (New)



# TEXAS SPECIALTY PLATE BUSINESS

Vehicle Titles and  
Registration Division  
Special Plates Unit (5FTEs) 11/23



VTR Director  
Annette Quintero

## DEC. 2023



TX HUMANITARIAN SM



LONE STAR DIST SM



TX HOMELAND DEF SM



TX MEDAL OF MERIT



TX OUTSTANDING SM



TX SUPERIOR SM



DV TX HUMANITARIAN SM



DV LONE STAR DIST SM



DV TX HOMELAND DEF SM



DV TX MEDAL OF MERIT



DV TX OUTSTANDING SM



DV TX SUPERIOR SM

# DECEMBER NEW PLATES



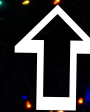
TX TEACHER



TX RETIRED TEACHER



K9S4KIDS



## STATE MYPLATES



SUPPORT ADOPTION  
CROSSOVER

### TOP TEN DATA 10-2023

**SLP AVAILABLE** \_\_\_\_\_ **554**  
**MILITARY AND DV** \_\_\_\_\_ **220**  
**RESTRICTED USE** \_\_\_\_\_ **64**  
**STATE SPECIALTY** \_\_\_\_\_ **126**  
**VENDOR SPECIALTY** \_\_\_\_\_ **144**



1. ANIMAL FRIENDLY	7,013	229	7,242
2. STATE OF THE ARTS	6,441	733	7,174
3. CONSERVATION: HORNED LIZARD	5,955	255	6,210
4. CONSERVATION: BLUEBONNET	4,461	196	4,657
5. CONSERVATION: WHITE-TAILED DEER	3,089	168	3,257
6. TEXAS A & M UNIVERSITY	2,078	041	2,119
7. CONSERVATION: HUMMINGBIRD	1,970	090	2,060
8. BIG BEND NATIONALM PARK	1,928	097	2,025
9. CONSERVATION: LARGE MOUTH BASS	1,834	109	1,943
10. CONSERVATION: CAMPING	1,775	095	1,870



1. CLASSIC BLACK	61,566	10,838	72,404
2. LARGE STAR WHITE-BLACK	38,617	5,853	44,470
3. TEXAS BLACK 1845	16,759	3,423	20,182
4. LONE STAR BLACK	14,714	2,988	17,702
5. CARBON FIBER	14,242	2,849	17,091
6. CLASSIC BLACK-SILVER	12,927	2,414	15,341
7. LONE STAR 1836	5,306	887	6,193
8. TEXAS A&M (MAROON)	4,212	561	4,773
9. TEXAS VINTAGE BLACK	4,177	625	4,802
10. LONE STAR BLK-SILVER	4,103	905	5,008



1. DISABLED VETERAN	210,977	6,731	217,708
2. DV U.S. ARMY	54,367	1,770	56,137
3. DV U.S. MARINE CORPS	30,515	840	31,355
4. DV U.S. AIR FORCE	24,835	710	25,545
5. DV U.S. NAVY	22,052	638	22,690
6. DV BRONZE STAR MEDAL	14,812	363	15,175
7. MERITORIOUS SERVICE MEDAL	13,290	546	13,836
8. PURPLE HEART	12,760	358	13,118
9. U.S. MARINE CORPS	12,120	475	12,595
10. U.S. ARMY	10,466	462	10,928



### SPECIAL PLATES UNIT CUSTOMER SERVICE STATISTICS FY 2024

**13,288**

Personalized Plate  
Applications Reviewed  
(96% Approved)

**4,362**

Telephone Calls

**20**

Walk-in  
Customers

**2,016**

Emails

**659**

Refunds

**8**

Public Information  
Open Records

**1,009**

Correspondence  
(Including Plate  
Applications)



**Board Meeting Date: 12/14/2023**  
**ACTION ITEM**

**To:** Texas Department of Motor Vehicles Board  
**From:** David Richards, Associate General Counsel  
**Agenda Item:** 19  
**Subject:** Advisory Committee Appointments  
Appointment of New Advisory Committee Members

#### RECOMMENDATION

Action Item. That the Texas Department of Motor Vehicles Board (board) appoint the individuals from the list of potential members presented to the board by the executive director as members of the Household Goods Rules Advisory Committee (HGRAC).

#### PURPOSE AND EXECUTIVE SUMMARY

To implement Texas Transportation Code §643.155, which requires the department establish a rules advisory committee consisting of the public, the department, and representatives of motor carriers transporting household goods using small, medium, and large equipment, the Board has established the HGRAC. This agenda item gives the Board an opportunity to appoint HGRAC members.

#### FINANCIAL IMPACT

N/A

#### BACKGROUND AND DISCUSSION

At the October 2023 board meeting, the Board adopted rules to create HGRAC as a separate advisory committee, to fulfill the requirement of Texas Transportation Code §643.155 that the Board create a rules advisory committee specifically to advise on issues relating to motor carriers transporting household goods. Under Texas Transportation Code §643.155(a), the HGRAC must be composed of “representatives of motor carriers transporting household goods using small, medium, and large equipment, the public, and the department.” Under Texas Government Code §2110.002(b), the HGRAC must include balanced representation from motor carriers that transport homegoods and consumers of services provided by motor carriers that transport homegoods. Finally, 43 Texas Administrative Code §206.93(d) provides that the members of the HGRAC should represent diverse geographical regions of the state to the extent practicable.

In accordance with 43 Texas Administrative Code §206.93(b), the board appoints advisory committee members by selecting potential members from a list provided to the board by the executive director. The appointment of the potential new HGRAC members identified by the executive director would add four members who represent motor carriers that transport household goods and four members who are not affiliated with the industry:

- Three motor carrier and mover representatives;
- One moving and storage representative;

- These proposed eight members would represent three separate geographic regions of the state: regions 4, 6 and 11.



No.	Potential Member	GeoRegion	County	Employer	License Affiliation
1	Rodney Baumgartner	11	Llano	US Department of Transportation, Federal Motor Carrier Safety Administration -	Federal Regulatory
2	Christopher Vinson	04	Ellis	Midlothian Police Department - Police Officer	Law Enforcement
3	Bill R. Andis	04	Dallas	Texas Moving Co., Inc. - Executive Vice President	Motor Carrier/Mover Representative
4	Dana C. Moore	11	Williamson	Texas Trucking Association - Vice President of Policy & Government Relations	Motor Carrier/Mover Representative
5	Dorothy Brooks	11	Travis	Texas Trucking Association/Southwest Movers Association (SMA) - Director of Operations	Motor Carrier/Mover Representative
6	Traci McCullah	06	Harris	Westar Moving & Storage, Inc. - Vice President	Moving & Storage
7	Christian Hertzberg	11	Travis	TxDMV - Enforcement Attorney	Public
8	Chelsea Ellis	11	Travis	Better Business Bureau serving the Heart of Texas - VP of Customer Development	Public

**Texas Department of Motor Vehicles**

HELPING TEXANS GO. HELPING TEXAS GROW.

**Board Meeting Date: 12/14/2023****BRIEFING ITEM**

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**To:** Texas Department of Motor Vehicles Board  
**From:** Keith Yawn, Government & Strategic Communications Division Director  
**Agenda Item:** 20.A  
**Subject:** Legislative Activity Update

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**RECOMMENDATION**

Briefing Only.

**PURPOSE AND EXECUTIVE SUMMARY**

Provide an update on legislative activity related to the department.

**FINANCIAL IMPACT**

N/A

**BACKGROUND AND DISCUSSION**

The Texas Legislature concluded the 88<sup>th</sup> Regular Session on May 29, 2023. Since that time, the Governor has called four special sessions related to property tax, education, and border security. The special sessions have not included any items directly related to the Texas Department of Motor Vehicles, or state transportation policy more generally. While additional special sessions could be called, there is no indication they would impact issues pertaining to department operations.

In addition to ongoing work informing legislative offices about department operations and aiding their constituents with motor vehicle transactions, Government Relations staff have also had conversations with various offices about possible interim charges. Interim charges are research and policy review assignments given to House and Senate committees for the time between regular legislative sessions. Such charges usually include oversight of implementation for significant pieces of legislation passed during the prior regular session.



## Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

**Board Meeting Date: 12/14/2023**

**BRIEFING ITEM**

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**To:** Texas Department of Motor Vehicles Board  
**From:** Keith Yawn, Government & Strategic Communications Division Director  
**Agenda Item:** 20.B  
**Subject:** 88<sup>th</sup> Texas Legislature Bill Implementation Status Report

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### RECOMMENDATION

Briefing Only.

### PURPOSE AND EXECUTIVE SUMMARY

Provide updates on bill implementation projects and activities.

### FINANCIAL IMPACT

N/A

### BACKGROUND AND DISCUSSION

The 88th Texas Legislature's regular Session resulted in 68 bills becoming law that impact TxDMV core programs or general state agency administrative functions.

No active implementation efforts are needed for 18 bills. Of the remaining 50 bills, 59 active implementation projects have been identified, including multiple projects for House Bill 718 (replacing paper tags) and House Bill 1 (General Appropriations Act). Of those projects, 37 were complete as of November 28. Twenty-three projects remain in progress. The requirements of three have been implemented by program divisions and are awaiting the completion of related rule revisions.



## Texas Department of Motor Vehicles Legislative Implementation Tracking Report - 88th Regular Session

**Completed Implementation Projects**

1	HB 53	Thompson, Ed	Relating to the exemption from registration fees of certain vehicles used by nonprofit disaster relief organizations.
2	HB 108	Cortez	Relating to the issuance of specialty license plates for certain classroom teachers and retired classroom teachers; imposing fees.
3	HB 139	Klick	Relating to the provision of notice of certain proposed rules by state agencies.
4	HB 198	Noble	Relating to vehicle safety inspections of certain travel trailers.
5	HB 282	Swanson	Relating to the issuance of specialty license plates for Gold Star family members and recipients of certain Texas military awards.
6	HB 433	VanDeaver	Relating to the definition of a commercial fleet.
7	HB 567	Bowers	Relating to discrimination on the basis of hair texture or protective hairstyle associated with race.
8	HB 627	Harris, Cody	Relating to the issuance of specialty license plates to the surviving spouse of a posthumous recipient of certain awards.
9	HB 628	Harris, Cody	Relating to issuance of specialty license plates to honor fallen law enforcement officers.
10	HB 659	Cook	Relating to specialty license plates issued for recipients of the Commendation Medal.
11	HB 1315	Herrero	Relating to the creation of the open burn pit registry fund and the issuance of specialty license plates to honor members of the United States armed forces exposed to open burn pits.
12	HB 1633	Ortega	Relating to certain offenses regarding parking privileges of veterans with disabilities.
13	HB 2157	Metcalfe	Relating to the salary of certain employees who transfer within a state agency.
14	HB 2195	Noble	Relating to wrong, fictitious, altered, or obscured license plates; increasing a criminal penalty.
15	HB 2503	Lujan	Relating to the issuance of specialty license plates for veterans with disabilities and recipients of the Texas Humanitarian Service Medal and federal Humanitarian Service Medal.
16	HB 2754	Bell, Cecil	Relating to the issuance of specialty license plates for retired peace officers.
17	HB 2876	Cain	Relating to the issuance of specialty license plates for industrial firefighters; authorizing a fee.
18	HB 2921	Paul	Relating to the issuance of Antarctica Service Medal specialty license plates.
19	HB 3033	Landgraft	Relating to the public information law.
20	HB 3130	Guerra	Relating to the protection of certain occupational licensing information regarding clients of family violence shelter centers, victims of trafficking shelter centers, and sexual assault programs and survivors of family violence, domestic violence, and sexual assault.
21	HB 3224	Guillen	Relating to the status of the registration of a vehicle after a failure to establish financial responsibility.
22	HB 3288	Canales	Relating to notice of transfer of a used motor vehicle.
23	HB 3599	Thierry	Relating to an exemption from certain motor fuel taxes for, and registration fees for motor vehicles owned by, certain nonprofit food banks.
24	HB 3730	Wilson	Relating to the directory of users of the centralized telephone service for entities in the capitol complex.
25	HB 3860	Goldman	Relating to the liability of county tax assessor-collectors for certain acts of deputies.
26	HB 4559	Darby	Relating to the application of statutes that classify political subdivisions according to population.
27	HB 5135	Kacal	Relating to the issuance of K9s4KIDs specialty license plates.
28	SB 222	Nichols	Relating to paid leave by certain state employees for the birth or adoption of a child.
29	SB 280	Zaffirini	Relating to the issuance of specialty license plates for members of the military who served in Operation Freedom's Sentinel.
30	SB 505	Nichols	Relating to imposing an additional fee for the registration of an electric vehicle.

## Texas Department of Motor Vehicles Legislative Implementation Tracking Report - 88th Regular Session

31	SB 702	Perry	Relating to the sourcing, marketing, and sale of certain license plates.
32	SB 904	Springer	Relating to the offense of the unauthorized use of parking designated for persons with disabilities.
33	SB 1115	Hancock	Relating to the titling, registration, and operation of an autocycle.
34	SB 1364	Alvarado	Relating to weight limitations for certain natural gas or electric vehicles.
35	SB 1376	Parker	Relating to an employment preference for members of the military and their spouses for positions at state agencies.
36	SB 2221	Schwertner	Relating to issuance of specialty license plates to honor personnel of sheriff's offices.
37	SB 2376	Campbell	Relating to the issuance of Support Adoption specialty license plates and to the Support Adoption account and certain voluntary contributions to that account.

**Implementation Projects In-Progress**

1	HB 1	Bonnen	General Appropriations Bill
2	HB 1	Bonnen	General Appropriations Bill - Camp Hubbard Renewal
3	HB 1	Bonnen	General Appropriations Bill - RTS Replacement (Phase 1)
4	HB 1	Bonnen	General Appropriations Bill - RSC Office Expansions (Dallas/Houston)
5	HB 1	Bonnen	General Appropriations Bill - License Plate Production
6	HB 1	Bonnen	General Appropriations Bill - RSC Facilities Master Plan Review
7	HB 718	Goldman	Relating to the issuance of certain tags, permits, and license plates authorizing the movement of vehicles.
8	HB 718	Goldman	Metal Plates: Rule Implementation
9	HB 718	Goldman	Access Management and Identity Validation
10	HB 718	Goldman	Inventory Management System
11	HB 718	Goldman	Update Existing Systems
12	HB 915	Craddick	Relating to the creation of a workplace violence hotline and a requirement that employers post notice regarding the hotline.
13	HB 2190	Canales	Relating to the terminology used to describe transportation-related accidents.
14	HB 2323	Hayes	Relating to the issuance of specialty license plates commemorating the 100th anniversary of the writing of the state song.
15	HB 3297	Harris, Cody	Relating to the elimination of regular mandatory vehicle safety inspections for noncommercial vehicles and the imposition of replacement fees.
16	HB 4510	Smithee	Relating to reporting of certain information by state agencies and counties, including information related to appropriated money, activities of certain consultants, and tax revenue.
17	SB 30	Huffman	Relating to supplemental appropriations and reductions in appropriations and giving direction and adjustment authority regarding appropriations.
18	SB 224	Alvarado	Relating to catalytic converters, including criminal conduct involving catalytic converters; providing an administrative penalty; creating a criminal offense; increasing a criminal penalty; increasing a fee.
19	SB 422	Paxton	Relating to the authority of certain military service members to engage in a business or occupation in this state.
20	SB 510	Perry	Relating to the confidentiality of certain information maintained by state licensing agencies.
21	SB 2102	Miles	Relating to the initial registration and inspection period for certain rental vehicles; authorizing fees.
22	SB 2304	LaMantia	Relating to the regulation of driver education courses and driving safety courses and the provision of information regarding the Texas Driving with Disability Program to certain public school students.

## Texas Department of Motor Vehicles Legislative Implementation Tracking Report - 88th Regular Session

**Bills Not Requiring Active Implementation Efforts**

1	HB 679	Bell, Keith	Relating to limitations on the use of workers' compensation insurance experience modifier values in soliciting and awarding public construction contracts.
2	HB 1778	Hinojosa	Relating to the issuance of specialty license plates to certain professional sports teams.
3	HB 1817	Capriglione	Relating to the validity of a contract for which a disclosure of interested parties is required.
4	HB 2453	Guillen	Relating to the issuance of a digital occupational license by a state agency, county, or municipality.
5	HB 2518	Bell, Keith	Relating to required lease terms for public property leased to a nongovernmental entity; creating a criminal offense.
6	HB 3013	Slawson	Relating to exempting certain contracts from procurement notice requirements.
7	HB 3014	Harris, Caroline	Relating to the motor vehicle safety inspection of electric vehicles.
8	HB 3461	Bonnen	Relating to the creation and re-creation of funds and accounts, the dedication and rededication of revenue and allocation of accrued interest on dedicated revenue, and the exemption of unappropriated money from use for general governmental purposes.
9	HB 3485	Bell, Keith	Relating to a contractor's or subcontractor's right to elect not to proceed with additional work under a contract.
10	HB 4012	Kitzman	Relating to the administration of the electronic state business daily.
11	HB 4123	Guillen	Relating to access to and use of certain criminal history record information.
12	HB 4595	Leach	Relating to nonsubstantive additions to, revisions of, and corrections in codes and to the nonsubstantive codification or disposition of various laws omitted from codes.
13	SB 29	Birdwell	Relating to prohibited governmental entity implementation or enforcement of a vaccine mandate, mask requirement, or private business or school closure to prevent the spread of COVID-19.
14	SB 271	Johnson	Relating to state agency and local government security incident procedures.
15	SB 493	Hughes	Relating to qualifications for certain individuals for veterans benefits.
16	SB 768	Parker	Relating to the process for notifying the attorney general of a breach of security of computerized data by persons doing business in this state.
17	SB 1045	Huffman	Relating to the creation of the Fifteenth Court of Appeals with jurisdiction over certain civil cases, the compensation of the justices of that court, and the jurisdiction of the courts of appeals in this state.
18	SB 1893	Birdwell	Relating to prohibiting the use of certain social media applications and services on devices owned or leased by state agencies.

**Board Meeting Date: 12/14/2023**  
**BRIEFING ITEM**

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**To:** Texas Department of Motor Vehicles Board  
**From:** Keith Yawn, Government & Strategic Communications Division Director  
**Agenda Item:** 20.C  
**Subject:** Proposed Development Schedule for Statutory Change Recommendations to the 89<sup>th</sup> Legislature

---

#### RECOMMENDATION

Briefing Only.

#### PURPOSE AND EXECUTIVE SUMMARY

Provide the proposed development schedule for Texas Department of Motor Vehicles (TxDMV)'s statutory change recommendations to the 89<sup>th</sup> Texas Legislature.

#### FINANCIAL IMPACT

N/A

#### BACKGROUND AND DISCUSSION

Under Transportation Code, Section 1001.025, the TxDMV Board may recommend to the Texas Legislature statutory changes that would improve the operation of the department.

The 89th Texas Legislature will convene in regular session on January 14, 2025. Developing recommendations for such proposed changes typically begins a year out from the start of the session. The proposed schedule facilitates this work and ensures proposed recommendations are available for appropriate consideration by the next legislature.

In January 2024, the Government and Strategic Communications (GSC) Division will work with department program divisions and the Board to identify potential statutory changes. Such changes could range from minor adjustments, or clean-up of statutory language to align with existing operations, to new authorizations for regulating motor vehicle-related functions. Potential changes will be reviewed and vetted through various department offices before presentation of final recommendations to the Legislative and Public Affairs Committee in June 2024 for initial review. Using Board and stakeholder input, the department will refine the recommendations before final consideration and approval by the Board in August 2024. After approval by the Board, the recommendations will be presented to legislative offices.

### **Statutory Change Recommendations Development Schedule for the 89R Legislative Session**

**December 2023:** Brief TxDMV Legislative and Public Affairs Committee members on the proposed development schedule for statutory change recommendations.

**January – May 2024:** Government Relations staff develops recommendations for statutory changes provided by department program staff. Ideas for recommendations are reviewed and vetted through department program areas and preliminary drafts of statutory changes and background materials are drafted. Staff will also seek stakeholder input on recommendations.

This stage will include the identification of statutory clean-up needs related to ongoing implementation projects such as House Bill 718 and House Bill 3297.

**June 2024:** Initial review of proposed recommendations by the Legislative and Public Affairs Committee.

**June – July 2024:** Finalization of recommendations and incorporation of board input.

**August 2024:** Consideration and approval of final recommendations by the full board.

**Sept. – Dec. 2024:** Communication of board recommendations to legislative offices.

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**January 2025:** The 89<sup>th</sup> Regular Texas Legislature convenes. Department serves as a resource for board legislative recommendations through the regular session process.

**May 2025:** The 89<sup>th</sup> Regular Legislative Session adjourns. Department begins work to implement enacted legislation.

**Texas Department of Motor Vehicles**

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**Board Meeting Date: 12/14/2023****BRIEFING ITEM**

**To:** Texas Department of Motor Vehicles Board  
**From:** Glenna Bowman, Chief Financial Officer  
and Annette Quintero, Vehicle Titles & Registration Division Director  
**Agenda Item:** 20.D  
**Subject:** New Facilities Update

**RECOMMENDATION**

Briefing Only.

**PURPOSE AND EXECUTIVE SUMMARY**

To provide an update on activities related to the Camp Hubbard Renewal project, the addition of new service centers in Dallas and Houston, and the Long-Range Facilities Plan for the regional service centers.

**FINANCIAL IMPACT**

The 87<sup>th</sup> Legislature appropriated \$143,000,000 in the FY 2024-25 biennium for the Camp Hubbard Renewal project and provided financial authority to make debt service payments related to debt issued to finance the project. The Legislature also provided approximately \$3.5 million in appropriations and eight (8.0) full-time equivalent staff positions (FTEs) for the addition of two, new Regional Service Centers, one in Dallas and one in Houston.

**BACKGROUND AND DISCUSSION*****Camp Hubbard Renewal Project***

Department staff are currently working with the Texas Public Finance Authority (TPFA), the Texas Facilities Commission (TFC), and private vendors to complete financing and contractual agreements to implement the construction phase of the project.

**TPFA Financing**

- Final comments on the TPFA agreements have been returned to TPFA's bond council for final review.

**Interagency Contract (IAC) with TFC for Construction Phase services**

- TFC is reviewing TxDMV's requested changes to its standard service contract. The anticipated timeline for contract completion is early December 2023.

**Construction – Phase 0 Enabling Project (Data Center move to Building CH6)**

- A request for Competitive Sealed Proposals (CSP) was issued on 9/20/23 and 5 proposals were received on 10/31/23. TFC Procurement anticipates the evaluations will be completed by the end of November, followed by two weeks for negotiations and a contract execution in early January.

**Construction – Phases 1-5 (CH6 Reno/Demo/New Building/Site)**

- TFC Procurement will solicit a contractor via a Request for Quote (RFQ) for a Construction Manager at Risk (CMR) Solicitation 60 days after the Comptroller's required Notice of Intent to Solicit is posted on the Electronic State Business Daily (ESBD). The posting is pending the execution of the IAC with TFC.

***New Regional Service Centers in Dallas and Houston***

The 88<sup>th</sup> Legislature approved the department's request for funding to open new RSC locations in both Dallas and Houston. This expansion will result in two RSC locations in each of those geographic areas. These projects began with data collection to map customer travel distances to the existing RSCs. This exercise provides crucial information about where to locate the second RSC in each geographic area. Upcoming project phases include the collection of customer transaction data, including wait and service times, reviews of current staffing, assessment of infrastructure needs, reviews of existing leases and contracts, financial considerations, and property buildout. The department anticipates these offices will be operational by January 1, 2025.

***Long Range Facilities Plan***

This is a five-phase project with scheduled completion by August 2024. Department staff have completed service mapping (Phase 1) for the 16 existing RSCs and are in the process of analyzing transaction data (Phase 2) and are also beginning location reviews (Phase 3). Phase 2 includes review of customer volume, wait and service times, and costs per transaction. Phase 3 includes assessment of staffing needs, office needs, customer drive times, population growth, and architectural space studies conducted by TFC. Phase 4 is a project cost analysis and is expected to begin in February 2024. Phase 5 is the development of the final recommendation for presentation to the 89<sup>th</sup> Legislature and is expected to begin in March 2024 and continue through June 2024.

**Board Meeting Date: 12/14/2023**  
**BRIEFING**

**To:** Texas Department of Motor Vehicles Board  
**From:** Wendy Barron, Chief Information Officer  
**Agenda Item:** 20.E  
**Subject:** RTS Update

### **RECOMMENDATION**

Briefing item.

### **PURPOSE AND EXECUTIVE SUMMARY**

To brief the Legislative & Public Affairs Committee on the Registration & Titling System (RTS) Replacement and Ecosystem Modernization.

### **FINANCIAL IMPACT**

N/A

### **BACKGROUND AND DISCUSSION**

RTS was originally designed and built by the Texas Department of Transportation (TxDOT) in the mid-1990s to process vehicle registration and title transactions. RTS has undergone continuous rebuilding, upgrades, and process improvements over time to maintain primary system functionality. While the system is stabilized for continued near-term use, advancements in technology and application development, as well as the workload demands of a growing state, are rendering this system obsolete. In the years since RTS was placed in service, the cost of maintaining the system has increased while the department's ability to adapt and change its use to better serve the evolving needs of the motoring public and state regulatory structures has decreased. For these reasons, the department must begin the process of replacing RTS and its associated applications.

Phase One will include the following major deliverables and is projected to be completed by the end of the 2024-2025 fiscal year biennium. Planned updates to existing systems include, but are not limited to, the following:

- Assessment of the existing RTS ecosystem and development of a transition plan.
- Assessment and evaluation of available technology solutions.
- Documentation for Quality Assurance Team (QAT) review and approval.
- Development of procurement documents.

Phase Two is projected to begin in Fiscal Year 2026 and will include implementation and buildout of the replacement ecosystem following the plans developed in Phase One.

### **Overall Project Status:**

- Software updates of existing systems have been started and are in progress.
- Statement of Work (SOW) draft is being finalized for external assessment of the RTS environment and procurement will be initiated by December 2023.
- Demand submitted to DIR Data Center Services (DCS) Technology Solution Services (TSS) to conduct internal assessment of RTS environment. First meeting with TSS team is scheduled December 4, 2023.
- Contract Project Manager procurement is complete with contractor starting December 4, 2023.

Project End Date: Phase One end date August 2025.



**Board Meeting Date: 12/14/2023**  
**ACTION ITEM**

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**To:** Texas Department of Motor Vehicles Board  
**From:** Annette Quintero, Vehicle Titles & Registration Division Director  
**Agenda Item:** 21.A  
**Subject:** Delegation of Authority to the Executive Director to Approve and Execute the Contract for the Regional Service Centers' Queueing System

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#### **RECOMMENDATION**

Action Item. The Texas Department of Motor Vehicles (TxDMV) recommends that the board delegate to the department's executive director to approve and execute the contract with Nemo-Q for the provision of queue management services at the regional service centers (RSC).

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

The contract with Nemo-Q should be approved to allow the department to continue to optimize the customer experience at each of the RSCs.

#### **FINANCIAL IMPACT**

The initial term of the contract is for one year, and the contract may be extended or renewed for a term not to exceed five years. The annual cost of the contract is \$53,030, or a total of \$265,150 over five years.

#### **BACKGROUND AND DISCUSSION**

Nemo-Q is a vendor who provides specialized hardware and software to manage customer appointments and customer flow, to compile data and analytics, and to solicit customer feedback. The contract with Nemo-Q will allow the RSCs to continue to provide superior customer service by allowing customers to schedule appointments online, organizing customer intake once they arrive at an RSC, alerting customers when RSC staff are ready to assist them, compiling data and analytics, and capturing customer feedback. Each RSC is outfitted with display monitors, intake kiosks, and survey tablets.

In addition to online appointment scheduling and visual cueing for customers, the use of queue management solutions in the RSCs allows leadership to monitor customer wait times and customer service times, and capture transaction types, which provide valuable data for decision making and long-range planning.

This contract is the result of a solicitation that was posted in late summer 2023. Approval of this contract will allow continuity of queue management services in the RSCs.

**Board Meeting Date: 12/14/2023**  
**BRIEFING ITEM**

**To:** Texas Department of Motor Vehicles Board  
**From:** Eric Horn, Director of Accounting Operations  
**Agenda Item:** 21.B  
**Subject:** Fiscal Year 2023 Annual Financial Report

### **RECOMMENDATION**

Briefing item with no recommendation.

### **PURPOSE AND EXECUTIVE SUMMARY**

The Annual Financial Report for State Fiscal Year (FY) 2023 (the “Annual Report”) is prepared in accordance with Section 2101.011 of the Texas Government Code and the reporting requirements established by the Texas Comptroller of Public Accounts (CPA). The Annual Report is not audited though the Texas State Auditor’s Office may in its sole discretion consider auditing the Annual Report as part of the State of Texas Comprehensive Annual Financial Report. The Annual Report was submitted to the CPA by the November 20, 2023, deadline, as required by law.

### **FINANCIAL IMPACT**

In FY 2023, TxDMV reported revenue of \$1.96 billion dollars in state funds, as follows:

State Highway Fund (0006)	\$1,758,943,981
TxDMV Fund (0010)	\$ 190,770,055
General Revenue (0001) (MVCPA Appropriations)	\$ 15,198,919

As noted in the Annual report, FY 2023 expenditures totaled \$209,390,565, including \$16,356,926 paid from the General Revenue Fund 0001 and \$193,033,639 paid from the Texas Department of Motor Vehicle Fund 0010.

Revenues and Expenditures are detailed on Exhibits A-2 of the Annual Report for All General and Consolidated Funds and B-2 of the Annual report for Special Revenue Funds.

### **BACKGROUND AND DISCUSSION**

*Exhibit I of the Annual Report – Combined Balance Sheet (Statement of Net Assets)*

TxDMV closed FY 2023 with a net asset balance increase of \$34,058,462 over FY 2022. The total net asset amount as of August 31, 2023, was \$372.7 million.

- Cash in State Treasury is the net of revenues collected and deposited less appropriated expenses in the TxDMV Fund.
- Legislative Appropriations represents unspent appropriations in the General Revenue (Fund 0001), including any benefits appropriations. Motor Vehicle Crime Prevention Authority (MVCPA) is the main item funded from Fund 0001.
- Accounts Receivable (A/R) represents the amounts due from County Tax Assessor-Collectors and Regional Offices less collections. The increase of \$7.05 million in A/R compared to the prior year is primarily a timing difference in counties processing deposits at year end.



## Texas Department of Motor Vehicles

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- In Capital Assets, the non-current assets had a net increase of \$24.54 million over FY 2022 primarily due to the transfer of the Camp Hubbard property from TxDOT and the inclusion of software-as-a-service agreements per implementation of Governmental Accounting Standards Board (GASB) Statement No. 96, *Subscription-Based Information Technology Arrangements* in FY 2023.

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

#### **Revenues**

TxDMV collected \$1.96 billion in FY 2023 with an increase in revenue of approximately \$61.93 million or 3.25% over the previous year.

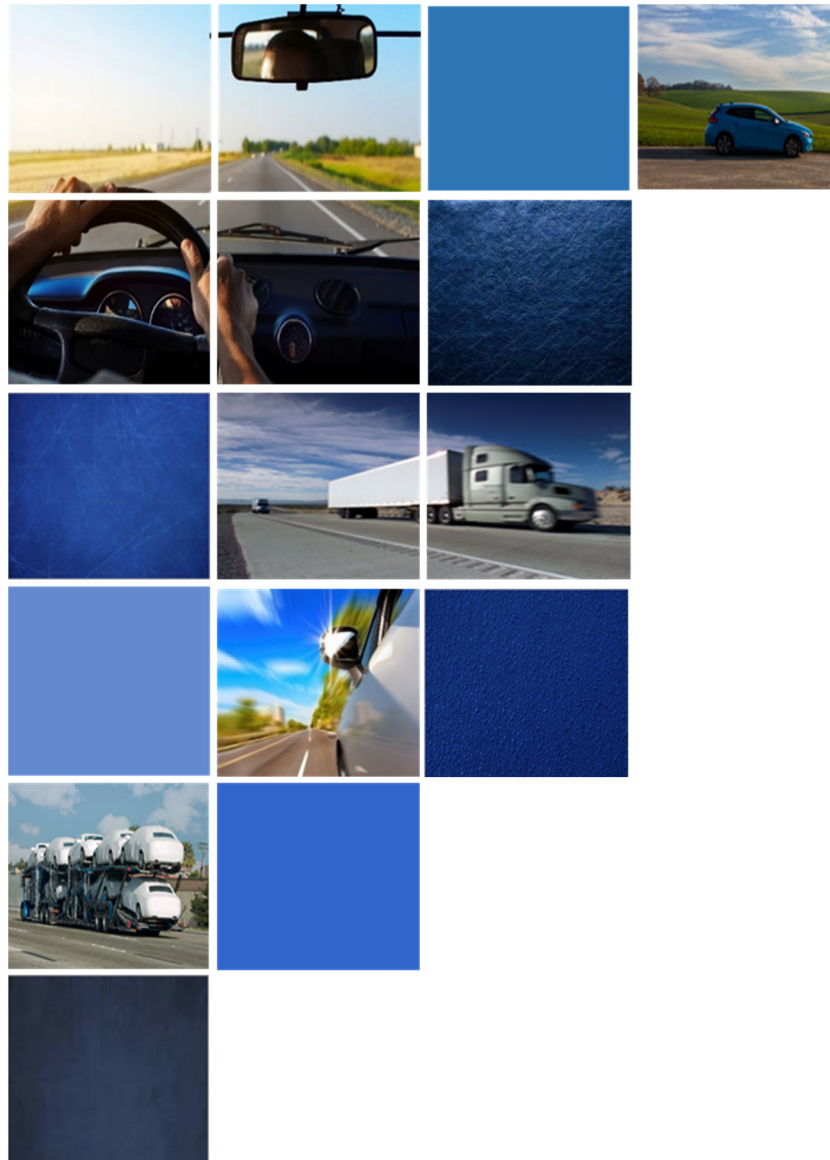
- Federal Revenues increased \$454,170 in FY 2023 due to a higher volume of reimbursements related to the Commercial Vehicle Information Systems and Networks (CVISN) grants.
- Licenses, Fees and Permits reflects only the revenue collected and reportable by the TxDMV. In FY 2023, TxDMV Fund 0010 revenue from the issuance of licenses, fees, and permits totaled approximately \$182.7 million. Revenue deposited to the State Highway Fund increased by approximately \$57.42 million, or 3.37% compared to FY 2022.

#### **Expenditures**

TxDMV expenditures totaled \$209.39 million (after adjustments) and increased approximately \$31.94 million compared to the prior year primarily due to an increase in Depreciation Expense (\$5.19 million) for the transfer of the Camp Hubbard property and an adjusting entry for the reclassification of expenditures related to software-as-a-service agreements (\$16.5 million) in FY 2023.

- Salaries and Wages & Payroll Related Costs increased \$7.36 million compared to the prior year as a result of salary increase for eligible employees, as well as fewer vacancies in FY 2023.
- Communications and Utilities reflect an increase of \$1.27 million primarily due higher data circuit expenditures from the Department of Information Resources.

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# **Annual Financial Report**

## **Fiscal Year Ended August 31, 2023**



**Texas Department *of* Motor Vehicles**

Prepared by the  
Finance & Administrative Services Division

November 20, 2023

**Texas Department of Motor Vehicles Board**

Charles Bacarisse, Chair

Christian Alvarado  
Stacey Gillman  
Brett Graham  
Tammy McRae

Sharla Omumu  
John M. Prewitt  
Darren Schlosser  
Paul R. Scott

Daniel Avitia  
Executive Director

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November 20, 2023

Honorable Greg Abbott, Governor  
Honorable Glenn Hegar, Texas Comptroller  
Mr. Jerry McGinty, Director, Legislative Budget Board  
Ms. Lisa Collier, State Auditor

Ladies and Gentlemen:

We are pleased to submit the annual financial report of the Texas Department of Motor Vehicles for the year ended August 31, 2023, in compliance with Texas Government Code Annotated, Section 2101.011, and in accordance with the requirements established by the Texas Comptroller of Public Accounts.

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

If you have any questions, please contact Mr. Eric Horn, Director of Accounting, at (512) 465-4203, or Ms. Glenna Bowman, Chief Financial Officer, at (512) 465-4125.

Sincerely,

Daniel Avitia  
Executive Director

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## **COMBINED FINANCIAL STATEMENTS**

-UNAUDITED-

**EXHIBIT I**  
**COMBINED BALANCE SHEET**  
**Statement of Net Assets - Governmental Funds**  
**For the Year Ended August 31, 2023**

	<b>Governmental Fund Types</b>			<b>Capital</b>	<b>Long Term</b>	
	<b>General Revenue</b>	<b>Special Revenue</b>	<b>Total</b>	<b>Asset</b>	<b>Liabilities</b>	<b>Statement of</b>
	<b>(EXH A-1)</b>	<b>(EXH B-1)</b>	<b>Governmental</b>	<b>Adjustments</b>	<b>Adjustments</b>	<b>Net Assets</b>
<b>Assets</b>						
<b>Current Assets:</b>						
Cash on Hand	\$ 0.00	\$ 39,100.00	\$ 39,100.00	\$	\$	\$ 39,100.00
Cash in Bank	0.00	0.00	0.00			0.00
Cash in State Treasury	33,304,666.11	205,260,182.39	238,564,848.50			238,564,848.50
Legislative Appropriations	11,770,335.37	0.00	11,770,335.37			11,770,335.37
Receivables:						
Federal	0.00	198,464.66	198,464.66			198,464.66
Accounts Receivable	0.00	135,967,747.70	135,967,747.70			135,967,747.70
Due From Other Funds (Note 12)	0.00	204,863.38	204,863.38			204,863.38
Consumable Inventories	0.00	3,377,902.40	3,377,902.40			3,377,902.40
<b>Total Current Assets</b>	<b>45,075,001.48</b>	<b>345,048,260.53</b>	<b>390,123,262.01</b>			<b>390,123,262.01</b>
<b>Non - Current Assets:</b>						
Capital Assets:						
Non - Depreciable						
Land and Land Improvements				957,642.04		957,642.04
Depreciable						
Buildings and Building Improvements				29,367,568.24		29,367,568.24
Less - Accumulated Depreciation				(21,200,522.22)		(21,200,522.22)
Facilities and Other Improvements				1,743,561.08		1,743,561.08
Less - Accumulated Depreciation				(443,154.63)		(443,154.63)
Right to Use Asset- Buildings (Note 2)				3,318,444.40		3,318,444.40
Less - Accumulated Amortization (Note 2)				(1,463,226.04)		(1,463,226.04)
Furniture and Equipment				5,282,418.37		5,282,418.37
Less - Accumulated Depreciation				(4,297,433.64)		(4,297,433.64)
Vehicles, Boats, & Aircraft				1,271,436.16		1,271,436.16
Less - Accumulated Depreciation				(867,356.24)		(867,356.24)
Intangibles Computer Software				3,763,402.91		3,763,402.91
Less - Accumulated Amortization				(3,763,402.91)		(3,763,402.91)
Intangible Right to Use Asset- Subscriptions (Note 2)				19,798,419.64		19,798,419.64
Less - Accumulated Amortization (Note 2)				(4,950,879.22)		(4,950,879.22)
<b>Total Non Current Assets</b>				<b>28,516,917.94</b>		<b>28,516,917.94</b>
<b>Total Assets</b>	<b>\$ 45,075,001.48</b>	<b>\$ 345,048,260.53</b>	<b>\$ 390,123,262.01</b>	<b>\$ 28,516,917.94</b>	<b>\$ 0.00</b>	<b>\$ 418,640,179.95</b>

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

-UNAUDITED-

**EXHIBIT I**  
(Continued)

	Governmental Fund Types			Capital Asset	Long Term	
	General Revenue	Special Revenue	Total	Asset	Liabilities	Statement of
	(EXH A-1)	(EXH B-1)	Governmental	Adjustments	Adjustments	Net Assets
Liabilities						
Current Liabilities:						
Payables:						
Vouchers Payable	\$ 657,731.75	\$ 873,527.43	\$ 1,531,259.18	\$	\$	\$ 1,531,259.18
Accounts Payable	1,828,086.52	7,195,908.38	9,023,994.90			9,023,994.90
Payroll Payable	53,944.04	5,434,607.51	5,488,551.55			5,488,551.55
Due to Other Funds (Note 12)	204,863.38	0.00	204,863.38			204,863.38
Due to Other Agencies (Note 12)	286,408.18	0.00	286,408.18			286,408.18
Unearned Revenue	(160,360.62)	674,417.93	514,057.31			514,057.31
Other Intergovernment Payable	6,798,059.41		6,798,059.41			6,798,059.41
Employees Compensable Leave (Note 5)					3,445,322.73	3,445,322.73
Right to Use Lease Obligations (Note 5)					734,143.43	734,143.43
Right to Use Subscription Liability (Note 5)					5,175,106.66	5,175,106.66
Interest Payable					231,789.16	231,789.16
Total Current Liabilities	9,668,732.66	14,178,461.25	23,847,193.91	0.00	9,586,361.98	33,433,555.89
Non-Current Liabilities:						
Employees' Compensable Leave (Note 5)					2,041,056.68	2,041,056.68
Right to Use Lease Obligations (Note 5)					1,141,491.61	1,141,491.61
Right to Use Subscription Liability (Note 5)					9,292,605.76	9,292,605.76
Total Non-Current Liabilities				0.00	12,475,154.05	12,475,154.05
Total Liabilities	9,668,732.66	14,178,461.25	23,847,193.91	0.00	22,061,516.03	45,908,709.94
Fund Financial Statement						
Fund Balances:						
Non Spendable (Inventory)	0.00	3,377,902.40	3,377,902.40			3,377,902.40
Restricted	0.00	327,491,896.88	327,491,896.88			327,491,896.88
Committed	25,834,241.02	0.00	25,834,241.02			25,834,241.02
Assigned	0.00	0.00	0.00			0.00
Unassigned	9,572,027.80	0.00	9,572,027.80			9,572,027.80
Total Fund Balances	35,406,268.82	330,869,799.28	366,276,068.10			366,276,068.10
Total Liabilities and Fund Balance	\$ 45,075,001.48	\$ 345,048,260.53	\$ 390,123,262.01			
Government-Wide Statement of Net Assets						
Restatements						
Net Assets:						
Invested in Capital Assets, Net of Related Debt				\$ 28,516,917.94	\$	\$ 28,516,917.94
Unrestricted					(22,061,516.03)	(22,061,516.03)
Total Net Assets				\$ 28,516,917.94	\$ (22,061,516.03)	\$ 372,731,470.01

-UNAUDITED-

**EXHIBIT II**  
**COMBINED STATEMENT OF REVENUES, EXPENDITURES,**  
**AND CHANGES IN FUND BALANCES**  
**Statement of Activities - Governmental Funds**  
**For the Year Ended August 31, 2023**

	Governmental Fund Types			Capital	Long-Term	Statement of
	General	Special Revenue	Total	Assets	Liabilities	Activities
	(EXH A-2)	(EXH B-2)	Governmental	Adjustments	Adjustments	
<b>Revenues</b>						
Legislative Appropriations:						
Original Appropriations	\$ 14,979,605.00	\$ 0.00	\$ 14,979,605.00	\$	\$	\$ 14,979,605.00
Additional Appropriations	196,173.01	0.00	196,173.01			196,173.01
Federal Revenues	0.00	675,137.02	675,137.02			675,137.02
Federal Pass-Through Revenues	204,863.38	0.00	204,863.38			204,863.38
State Grant Pass- Through	0.00	0.00	0.00			0.00
Licenses, Fees and Permits	(2,449.61)	1,941,631,874.88	1,941,629,425.27			1,941,629,425.27
Interest & Investment Income	9,662.79	6,940,236.47	6,949,899.26			6,949,899.26
Settlement of Claims	0.00	0.00	0.00			0.00
Sales of Goods and Services	0.00	246,359.97	246,359.97			246,359.97
Other	(188,935.15)	220,427.19	31,492.04			31,492.04
<b>Total Revenues</b>	<b>15,198,919.42</b>	<b>1,949,714,035.53</b>	<b>1,964,912,954.95</b>			<b>1,964,912,954.95</b>
<b>Expenditures</b>						
Salaries and Wages	424,019.93	45,724,026.30	46,148,046.23		600,069.30	46,748,115.53
Payroll Related Costs	198,066.14	20,760,487.97	20,958,554.11			20,958,554.11
Professional Fees and Services	2,861,905.39	17,754,680.31	20,616,585.70			20,616,585.70
Travel	27,362.46	409,936.54	437,299.00			437,299.00
Materials and Supplies	9,863.01	20,889,903.98	20,899,766.99			20,899,766.99
Communications and Utilities	19,638.13	6,491,400.25	6,511,038.38			6,511,038.38
Repairs and Maintenance	0.00	3,406,698.58	3,406,698.58			3,406,698.58
Rentals and Leases	13,408.38	302,805.65	316,214.03			316,214.03
Printing and Reproduction	97.20	5,033,141.69	5,033,238.89			5,033,238.89
State Grant Pass-Through Expenditures	30,000.00	0.00	30,000.00			30,000.00
Intergovernmental Payments	12,542,176.08	0.00	12,542,176.08			12,542,176.08
Public Assistance Programs	209,980.74	0.00	209,980.74			209,980.74
Other Operating Expenditures	20,409.06	45,175,870.65	45,196,279.71		230,341.77	45,426,621.48
Debt Service Principal- RTU Leases/SBITA	0.00	6,056,146.60	6,056,146.60		13,742,273.04	19,798,419.64
Capital Outlay	0.00	20,285,178.25	20,285,178.25	(20,285,178.25)		0.00
Depreciation Expense	0.00	0.00	0.00	6,455,855.48		6,455,855.48
<b>Total Expenditures</b>	<b>16,356,926.52</b>	<b>192,290,276.77</b>	<b>208,647,203.29</b>	<b>(13,829,322.77)</b>	<b>14,572,684.11</b>	<b>209,390,564.63</b>
Excess (Deficit) of Revenues over Expenditures	(1,158,007.10)	1,757,423,758.76	1,756,265,751.66	13,829,322.77	(14,572,684.11)	1,755,522,390.32
<b>Other Financing Sources (Uses)</b>						
Transfers In (Note 12)	619,610.81	0.00	619,610.81			619,610.81
Transfers Out (Note 12)	(49,862.89)	(1,752,384,325.55)	(1,752,434,188.44)	(242.47)		(1,752,434,430.91)
Increase in Obligations - Leases/SBITA	0.00	19,798,419.64	19,798,419.64			19,798,419.64
Sale of Capital Assets	2,020.19	0.00	2,020.19	(2,020.19)		0.00
Legislative Financing Sources	0.00	0.00	0.00			0.00
Insurance Recoveries	0.00	0.00	0.00			0.00
Legislative Transfers In (Note 12)	0.00	0.00	0.00			0.00
Legislative Transfers Out (Note 12)	0.00	0.00	0.00			0.00
Gain (Loss) on Capital Assets	0.00	0.00	0.00	(2,478.24)		(2,478.24)
Inc (Dec) in Net Assets Due to Interagency Transfer	0.00	0.00	0.00	10,685,275.46		10,685,275.46
<b>Total Other Financing Sources (Uses)</b>	<b>571,768.11</b>	<b>(1,732,585,905.91)</b>	<b>(1,732,014,137.80)</b>	<b>10,680,534.56</b>	<b>0.00</b>	<b>(1,721,333,603.24)</b>
<b>Net Change in Fund Balances/Net Assets</b>	<b>(586,238.99)</b>	<b>24,837,852.85</b>	<b>24,251,613.86</b>	<b>24,509,857.33</b>	<b>(14,572,684.11)</b>	<b>34,188,787.08</b>
<b>Fund Financial Statement - Fund Balance</b>						
<b>Fund Balance - Beginning</b>	<b>36,133,931.37</b>	<b>306,031,946.43</b>	<b>342,165,877.80</b>			<b>342,165,877.80</b>
Restatements (Note 14)	0.00	0.00	0.00	31,400.96	(20,903.56)	10,497.40
<b>Fund Balance as Restated</b>	<b>36,133,931.37</b>	<b>306,031,946.43</b>	<b>342,165,877.80</b>	<b>31,400.96</b>	<b>(20,903.56)</b>	<b>342,176,375.20</b>
Appropriations Lapsed	(141,423.56)	0.00	(141,423.56)			(141,423.56)
<b>Fund Balances - August 31, 2023</b>	<b>\$ 35,406,268.82</b>	<b>\$ 330,869,799.28</b>	<b>\$ 366,276,068.10</b>			<b>\$ 376,223,738.72</b>
<b>Government-wide Statement of Net Assets</b>						
Net Change in Net Assets			\$ 366,276,068.10	\$ 24,509,857.33	\$ (14,572,684.11)	\$ 376,213,241.32
Net Assets-Beginning				3,975,659.65	(7,467,928.36)	(3,492,268.71)
Restatements (Note 14)				31,400.96	(20,903.56)	10,497.40
Net Assets, September 1, 2023, as Restated and Adjusted				4,007,060.61	(7,488,831.92)	(3,481,771.31)
<b>Net Assets-August 31, 2023</b>			<b>\$ 366,276,068.10</b>	<b>\$ 28,516,917.94</b>	<b>\$ (22,061,516.03)</b>	<b>\$ 372,731,470.01</b>

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## **NOTES TO THE FINANCIAL STATEMENTS**



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## NOTES TO THE FINANCIAL STATEMENTS

### NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### Scope of Entity

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

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

#### Basis of Presentation

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

#### Fund Structure

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

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

##### General Revenue Funds

General Revenue Fund (0001) – This fund is used to account for all financial resources of the State except those required to be accounted for in another fund.

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

##### Suspense Funds

Suspense Funds, known as Agency Funds in prior years, are used to account for assets held in a custodial capacity for the benefit of other agencies or individuals. These funds had previously been classified as fiduciary activities. However, with the State of Texas implementing GASB Statement No. 84, *Fiduciary Activities*, in Fiscal Year 2020, these funds are now classified as governmental and are consolidated with General Revenue Funds.

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

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Intermodal Container & Milk Transport TxDMV Fund (1623) – This fund is used as a holding account for the county and/or municipality portions of three new oversize/overweight permit fees created in FY 2018. The fees are held until they can be disbursed to the appropriate county or municipality.

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

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

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

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

**Special Revenue Funds**

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

Texas Department of Motor Vehicles Fund (0010) – This fund is used by the department for operations, administration, enforcement, accounting costs and related liabilities for the fund. Revenue includes fees from motor vehicle registration, title certificates, special vehicle permits, specialty license plates and other transportation-related permits. This fund was initially enacted by H.B. 2202, 83<sup>rd</sup> Legislature; however, it was not exempted from funds consolidation. The 84<sup>th</sup> Legislature recreated the fund through S.B. 1512, and it was exempted in funds consolidation.

**Capital Assets Adjustments Fund Type**

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

**Long Term Liabilities Adjustments Fund Type**

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

**Basis of Accounting**

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

Governmental fund types that build the fund financial statements are accounted for using the modified accrual basis of accounting. Under the modified accrual basis, revenues are recognized in the period in which they become measurable and available to finance operations of the fiscal year or liquidate liabilities existing at fiscal year-end. The State of Texas considers receivables collected within sixty days after year-end to be available and recognizes them as revenues of the current year for Fund Financial Statements prepared on the modified accrual basis. For

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federal contracts and grants, revenues have been accrued to the extent earned by eligible expenditures within each fiscal year. Expenditures and other uses of financial resources are recognized when the related liability is incurred.

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

## **Budgets and Budgetary Accounting**

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

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

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

### **Assets**

#### Cash and Cash Equivalents

Short-term highly liquid investments with an original maturity of three months or less are considered cash equivalents.

#### Receivables

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

#### Inventories and Prepaid Items

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

#### Capital Assets

Assets that meet the reporting threshold and useful life are capitalized. The capitalization threshold and the estimated useful life vary depending on the asset type. These assets are capitalized at cost or, if purchased, at appraised fair value as of the date of acquisition. Purchases of assets by governmental funds are reported as expenditures. Depreciation is reported on all "exhaustible" assets. Assets are depreciated over the estimated useful life of the asset using the straight-line method.

#### Right to Use Assets

Refers to leases. This represents the value of the lessee's right to control the use of the underlying asset, typically property or equipment, over the duration of an agreed-upon lease term.

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## Liabilities

### Accounts Payable

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

### Payroll Payable

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

### Employees' Compensable Leave Balances

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

### Other Intergovernmental Payable

Other Intergovernmental Payable represents a liability that becomes due every month due to the International Registration Plan netting process. Each month, the Texas Department of Motor Vehicles either owes or receives money from the Plan, which is a registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions.

### Lease Liabilities

Lease liability represents the amount recognized by a lessee on its financial statements regarding its leases. It is initially measured at the present value of lease payments and is remeasured whenever there is a change in lease payments or lease modification. Liabilities are reported separately as either current or noncurrent.

## Fund Balance/Net Assets

"Fund balance" is the difference between assets plus deferred outflows of resources and liabilities plus deferred inflows of resources on the governmental fund statements. "Net position" is the difference between assets plus deferred outflows of resources and liabilities plus deferred inflows of resources on the government-wide, proprietary, and fiduciary fund statements.

### **Fund Balance Components**

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

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

Committed fund balance can only be used for specific purposes pursuant to constraints imposed by formal action of the State's highest level of decision-making authority (the Legislature). Those committed amounts cannot be used for any other purposes unless the Legislature removes or changes the specified use by taking the same action it employed to previously commit those amounts.

Assigned fund balance amounts are constrained by the agency's intent to use them for specific purposes that are neither restricted nor committed.

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

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

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

**Unrestricted Net Assets**

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

**Interfund Activities and Balances**

The agency has the following types of transactions between funds:

Transfers

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

Reimbursements

Reimbursements are repayments from funds responsible for expenditures or expenses to funds that made the actual payment. Reimbursements of expenditures made by one fund for another that are recorded as expenditures in the reimbursing fund and as a reduction of expenditures in the reimbursed fund. Reimbursements are not displayed in the financial statements.

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

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## NOTE 2: CAPITAL ASSETS- GOVERNMENTAL ACTIVITIES

Revenue received from the sale of surplus property has been transferred to unappropriated general revenue in accordance with HB7, Section 20. A summary of changes in Capital Assets for the year ended August 31, 2023, is presented below:

PRIMARY GOVERNMENT							
	Reclassifications						
	Balance 09/01/22	Adj.	Inc-Int'gy Trans	Dec- Int'gy Trans	Additions	Deletions	Balance 08/31/23
<b>Non-Depreciable or Non-Amortizable Assets:</b>							
Land & Land Improvements			957,642.04				957,642.04
Infrastructure							
Construction in Progress							
Other Capital Assets							
Land Use Rights - Permanent							
Total Non-Depreciable and Non-Amortizable Assets			957,642.04				957,642.04
<b>Depreciable Assets:</b>							
Buildings & Building Improvements			29,367,568.24				29,367,568.24
Infrastructure							
Facilities & Other Improvements			1,743,561.08				1,743,561.08
Furniture & Equipment	5,176,022.98	38,571.35	16,346.78	(11,996.35)	486,758.61	(423,285.00)	5,282,418.37
Vehicles, Boats, & Aircraft	1,292,757.16					(21,321.00)	1,271,436.16
Other Capital Assets							
Total Depreciable Assets at Historical Cost	6,468,780.14	38,571.35	31,127,476.10	(11,996.35)	486,758.61	(444,606.00)	37,664,983.85
<b>Less Accumulated Depreciation for:</b>							
Buildings & Improvements			(20,964,598.98)		(235,923.24)		(21,200,522.22)
Infrastructure							
Facilities & Other Improvements			(421,360.14)		(21,794.49)		(443,154.63)
Furniture & Equipment	(4,334,645.23)	(23,431.11)	(9,797.51)	7,910.30	(360,278.39)	422,808.30	(4,297,433.64)
Vehicles, Boats, & Aircraft	(729,045.92)				(155,367.12)	17,056.80	(867,356.24)
Other Capital Assets							
Total Accumulated Depreciation	(5,063,691.15)	(23,431.11)	(21,395,756.63)	7,910.30	(773,363.24)	439,865.10	(26,808,466.73)
Depreciable Assets, Net	1,405,088.99	15,140.24	9,731,719.47	(4,086.05)	(286,604.63)	(4,740.90)	10,856,517.12

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	Balance 09/01/22	Adj.	Inc-Int'agy Trans	Dec- Int'agy Trans	Additions	Deletions	Balance 08/31/23
<b>Amortizable Assets – Intangible:</b>							
Land Use Rights- Term							
Computer Software- Intangible							
Other Intangible Capital Assets - Term	3,763,402.91						3,763,402.91
Total Intangible Assets at Historical Cost	3,763,402.91						3,763,402.91
<b>Less Accumulated Amortization for:</b>							
Land Use Rights- Term							
Computer Software- Intangible	(3,763,402.91)						(3,763,402.91)
Other Intangible Capital Assets- Term							
Total Accumulated Amortization	(3,763,402.91)						(3,763,402.91)
Amortizable Assets – Net	0.00						0.00
<b>Governmental Activities Capital Assets, Net</b>	<b>1,405,088.99</b>	<b>15,140.24</b>	<b>10,689,361.51</b>	<b>(4,086.05)</b>	<b>(286,604.63)</b>	<b>(4,740.90)</b>	<b>11,814,159.16</b>

## Note 2, continued: INTANGIBLE RIGHT TO USE ASSETS- GOVERNMENTAL ACTIVITIES

In accordance with the implementation of GASB 87, leased assets are presented separately in Note 2. A summary of Intangible Right to Use Assets for the year ended August 31, 2023, is presented below:

	PRIMARY GOVERNMENT				
	Balance 09/01/22	Adjustments	Additions	Deletions	Balance 08/31/23
<b>Intangible Right to Use (RTU) Assets - Amortizable:</b>	\$	\$	\$	\$	\$
Building & Building Improvements	3,297,665.90	20,778.50			3,318,444.40
Facilities & Other Improvements					
Land & Land Improvements					
Infrastructure					
Equipment					
Vehicles					
Subscription Assets			19,798,419.64		19,798,419.64
<b>Total Amortizable RTU Assets</b>	<b>3,297,665.90</b>	<b>20,778.50</b>	<b>19,798,419.64</b>		<b>23,116,864.04</b>

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	Balance 09/01/22	Adjustments	Additions	Deletions	Balance 08/31/23
Less Accumulated Amortization RTU for:	\$	\$	\$	\$	\$
Building & Building Improvements	(727,095.24)	(2,190,321.28)		1,454,190.48	(1,463,226.04)
Facilities & Other Improvements					
Land & Land Improvements					
Infrastructure					
Equipment					
Vehicles					
Subscription Assets			(4,950,879.22)		(4,950,879.22)
Total Accumulated Amortization – RTU Assets	(727,095.24)	(2,190,321.28)	(4,950,879.22)	1,454,190.48	(6,414,105.26)
<b>Governmental Activities, RTU Assets, Net</b>	<b>2,570,570.66</b>	<b>(2,169,542.78)</b>	<b>14,847,540.42</b>	<b>1,454,190.48</b>	<b>16,702,758.78</b>

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

Not Applicable

### NOTE 4: SHORT-TERM DEBT

Not Applicable



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## NOTE 5: LONG-TERM LIABILITIES

### Changes in Long-Term Liabilities

The following changes occurred in liabilities during the fiscal year ended August 31, 2023:

Governmental Activities	Balance 9/01/22	Additions	Reductions	Balance 8/31/23	Amounts Due Within One Year	Amounts Due Thereafter
Employees' Compensable Leave	\$4,886,310.11	5,599,348.05	4,999,278.75	5,486,379.41	3,445,322.73	2,041,056.68
Right to Use Lease Obligations	\$2,580,170.86	20,903.56	725,439.38	1,875,635.04	734,143.43	1,141,491.61
Right to Use Subscription Obligations	-	19,798,419.64	5,330,707.22	14,467,712.42	5,175,106.66	9,292,605.76
<b>Total Long-Term Liabilities</b>	<b>\$7,466,480.97</b>	<b>\$25,418,671.25</b>	<b>\$11,055,425.35</b>	<b>\$21,829,726.87</b>	<b>\$9,354,572.82</b>	<b>\$12,475,154.05</b>

### Employees' Compensable Leave

If a state employee had continuous employment with the state for at least six months, the state employee is entitled to be paid for all unused vacation time accrued in the event of the employee's resignation, dismissal or separation from state employment. Expenditures for accumulated annual leave balances are recognized in the period paid or taken in governmental fund types. For these fund types, the liability for unpaid benefits is recorded in the statement of net position. No liability is recorded for non-vesting employees accumulating rights to receive sick pay benefits. This obligation is usually paid from the same funding source(s) from which the employee's salary or wage compensation was paid.

### Right to Use Lease Obligations

According to GASB Statement No. 87, Leases, a lease is a contract that conveys control of the right to use another entity's nonfinancial asset (the underlying asset) as specified by the contract, for a period of time, in an exchange or exchange-like transaction. Leases include contracts that, although not explicitly identified as leases, meet this definition. The numbers above represent lease obligations for the seven Regional Service Centers that TxDMV leases: Corpus Christi, Dallas, El Paso, Fort Worth, Houston, San Antonio, and Waco.

### Right to Use Subscription Obligations

According to GASB Statement No. 96, *Subscription-Based Information Technology Arrangements*, a SBITA is defined as a contract that conveys control of the right to use another party's (a SBITA vendor's) information technology (IT) software, alone or in combination with tangible capital assets (the underlying IT assets), as specified in the contract for a period of time in an exchange or exchange-like transaction. The numbers above represent SBITAs with five vendors.

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## NOTE 6: BONDED INDEBTEDNESS

Not Applicable

## NOTE 7: DERIVATIVE INSTRUMENTS

Not Applicable

## NOTE 8: LEASES/ SBITAs

### Leases

#### Lease Liability

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

#### Fiscal 2023

Fund Type	Amount
12 (GAAP Fund 9997)	\$743,597.84

The TxDMV entered various leases for RSC buildings and equipment (copiers and meters). These agreements range in terms up to FY 2032. In fiscal 2023, the total lease payments were \$1.02 million; \$744k is RSC building leases and \$276k is copiers/meters leases.

The TxDMV entered additional leases that have not yet commenced as of Aug. 31, 2023, including leases for equipment (copiers and meters). The terms range is 2024 — 2028 with a future commitment of \$496k.

Note: Minimum future lease payments for noncancelable building leases of more than one year for each of the next five fiscal years and five-year increments thereafter are as follows:

#### Future Lease Payments

#### Year Ended Aug. 31, 2023

Primary Government			
Year Ended August 31,	Governmental Activities		
	Principal	Interest	Total Future Min. Lease Payments
2024	\$734,143.43	\$14,366.16	\$748,509.59
2025	\$421,583.20	\$10,872.07	\$432,455.27
2026	\$200,226.44	\$8,512.17	\$208,738.61
2027	\$166,105.25	\$6,558.53	\$172,663.78
2028	\$64,902.48	\$5,175.28	\$70,077.76
2029-2032	\$288,674.24	\$9,863.25	\$298,537.49
<b>Totals</b>	<b>\$ 1,875,635.04</b>	<b>\$ 55,347.46</b>	<b>\$ 1,930,982.50</b>

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## SBITAs

### Subscription Liability

Included in the expenditures reported in the financial statements are the following amounts of subscription fees paid under the noncancelable liability:

#### Fiscal 2023

Fund Type	Amount
12 (GAAP Fund 9997)	\$5,602,633.81

The TxDMV entered various agreements for IT subscriptions. These agreements range in terms up to year 2032. In fiscal 2023, the total subscription payments were \$5.6 million.

The TxDMV entered additional subscription agreements that have not yet commenced as of Aug. 31, 2023. The terms range is 2024—2027 with a future commitment of \$15.3 million.

### Future Subscription Payments

#### Year Ended Aug. 31, 2023

Primary Government			
	Governmental Activities		
Year Ended August 31,	Principal	Interest	Total Future Min. Lease Payments
2024	\$5,175,106.66	\$427,527.15	\$5,602,633.81
2025	\$5,327,398.81	\$275,235.00	\$5,602,633.81
2026	\$2,548,570.72	\$117,854.47	\$2,666,425.19
2027	\$1,416,636.23	\$42,363.78	\$1,459,000.01
2028	-	-	-
2029-2032	-	-	-
<b>Totals</b>	<b>\$14,467,712.42</b>	<b>\$862,980.40</b>	<b>\$15,330,692.82</b>

## NOTE 9: DEFINED BENEFIT PENSION PLANS AND DEFINED CONTRIBUTION PLAN

Not Applicable

## NOTE 10: DEFERRED COMPENSATION

Not Applicable

## NOTE 11: POSTEMPLOYMENT BENEFITS OTHER THAN PENSIONS

Not Applicable

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## NOTE 12: INTERFUND ACTIVITY AND TRANSACTIONS

The agency experienced routine transfers with other State agencies, which were consistent with the activities of the fund making the transfer. Repayment of interfund balances will occur within one year from the date of the financial statement. Individual balances and activity at August 31, 2023, are as follows:

	Transfer In	Transfer Out	Source
<b>General Revenue (01)</b>			
Appd Fund 0802, D23 fund 0802			
Agy 300, D23 fund 0803		(6,149.72)	Shared Fund
Agy 300, D23 fund 0804	11,629.69		Shared Fund
Agy 300, D23 fund 0805	(8,555.40)		Shared Fund
Agy 300, D23 fund 0807	(1,268.44)		Shared Fund
Agy 300, D23 fund 0808	117.86		Shared Fund
Agy 300, D23 fund 0809	1,852.32		Shared Fund
Agy 302, D23 fund 0804		(4,659.99)	Shared Fund
Agy 302, D23 fund 0805		1,784.24	Shared Fund
Agy 305, D23 fund 0015	2,085.30		Shared Fund
Agy 306, D23 fund 0802	2,684.33		Shared Fund
Agy 307, D23 fund 0802	956.39		Shared Fund
Agy 332, D23 fund 0802	(1,693.65)		Shared Fund
Agy 403, D23 fund 3005	827.09		Shared Fund
Agy 403, D23 fund 3006	772.10		Shared Fund
Agy 403, D23 fund 3009	790.57		Shared Fund
Agy 407, D23 fund 0802		(1,766.48)	Shared Fund
Agy 411, D23 fund 0802	(1,266.87)		Shared Fund
Agy 506, D23 fund 0802	1,535.43		Shared Fund
Agy 529, D23 fund 0802	3,165.22	(10,220.68)	Shared Fund
Agy 530, D23 fund 0802		(13.13)	Shared Fund
Agy 537, D23 fund 0802	6,642.87		Shared Fund
Agy 537, D23 fund 0803	18,867.37		Shared Fund
Agy 537, D23 fund 0804	1,749.57		Shared Fund
Agy 537, D23 fund 0805	5,149.65		Shared Fund
Agy 542, D23 fund 0802	16,526.90		Shared Fund
Agy 542, D23 fund 4100	(8,530.25)	622.78	Shared Fund
Agy 542, D23 fund 4200	1,544.32		Shared Fund
Agy 551, D23 fund 0802	76,334.33		Shared Fund
Agy 555, D23 fund 1802		(3,689.71)	Shared Fund
Agy 555, D23 fund 2802	(1,237.03)		Shared Fund
Agy 555, D23 fund 3802	131.44		Shared Fund
Agy 555, D23 fund 4802	11,518.23		Shared Fund
Agy 576, D23 fund 0802	25,033.81		Shared Fund
Agy 582, D23 fund 0802	(2,529.62)	723.03	Shared Fund
Agy 701, D23 fund 2242	259.69	259.69	Shared Fund
Agy 701, D23 fund 2250	(196.70)	(196.70)	Shared Fund
Agy 701, D23 fund 2260	44.93	44.93	Shared Fund
Agy 701, D23 fund 2270	344.90	344.90	Shared Fund

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	Transfer In	Transfer Out	Source
Agy 701, D23 fund 2271	(43.55)	(43.55)	Shared Fund
Agy 701, D23 fund 2273	249.91	249.91	Shared Fund
Agy 701, D23 fund 2274	454.38	454.38	Shared Fund
Agy 701, D23 fund 2275	102.85	102.85	Shared Fund
Agy 711, D23 fund 0802	51,310.61	51,310.61	Shared Fund
Agy 714, D23 fund 0802		8,584.09	Shared Fund
Agy 715, D23 fund 0802		(7,729.07)	Shared Fund
Agy 717, D23 fund 0802	5,867.67		Shared Fund
Agy 718, D23 fund 0802	49,768.60	49,768.60	Shared Fund
Agy 721, D23 fund 0802		88,142.08	Shared Fund
Agy 724, D23 fund 0802		(3,229.85)	Shared Fund
Agy 730, D23 fund 0802		546.25	Shared Fund
Agy 732, D23 fund 0802	2,166.35		Shared Fund
Agy 733, D23 fund 0802	2,943.10	1,000.00	Shared Fund
Agy 734, D23 fund 0802	25.70		Shared Fund
Agy 737, D23 fund 0802	946.05		Shared Fund
Agy 738, D23 fund 0802	3,386.64		Shared Fund
Agy 746, D23 fund 0802	728.02		Shared Fund
Agy 751, D23 fund 0802	1,313.82	2,044.30	Shared Fund
Agy 752, D23 fund 0802		(1,740.18)	Shared Fund
Agy 753, D23 fund 0802	6,196.25		Shared Fund
Agy 754, D23 fund 0802		(22,590.67)	Shared Fund
Agy 755, D23 fund 0802	3,612.43		Shared Fund
Agy 756, D23 fund 0802	2,576.23		Shared Fund
Agy 759, D23 fund 0802		(703.05)	Shared Fund
Agy 765, D23 fund 0802		(328.58)	Shared Fund
Agy 781, D23 fund 4001	67.32		Shared Fund
Agy 781, D23 fund 4003	5,920.83		Shared Fund
Agy 781, D23 fund 4004	(51.65)		Shared Fund
Agy 781, D23 fund 4005	233.82		Shared Fund
Agy 781, D23 fund 4006	60.01		Shared Fund
Agy 781, D23 fund 4007	(327.62)		Shared Fund
Agy 781, D23 fund 4008	82.50		Shared Fund
Agy 781, D23 fund 4009	1,279.60		Shared Fund
Agy 781, D23 fund 4010	44.26		Shared Fund
Agy 781, D23 fund 4011	994.37		Shared Fund
Agy 781, D23 fund 4012	(422.39)		Shared Fund
Agy 781, D23 fund 4013	(91.05)		Shared Fund
Agy 781, D23 fund 4014	144.11		Shared Fund
Agy 781, D23 fund 4015	(83.51)		Shared Fund
Agy 781, D23 fund 4016	3.12		Shared Fund
Agy 781, D23 fund 4017	(124.45)		Shared Fund
Agy 781, D23 fund 4018	183.31		Shared Fund
Agy 781, D23 fund 4019	291.82		Shared Fund
Agy 781, D23 fund 4020	113.06		Shared Fund
Agy 781, D23 fund 4021	(32.72)		Shared Fund
Agy 781, D23 fund 4022	(142.68)		Shared Fund

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	Transfer In	Transfer Out	Source
Agy 781, D23 fund 4023	(163.97)		Shared Fund
Agy 781, D23 fund 4025	23.10		Shared Fund
Agy 781, D23 fund 4026	(235.31)		Shared Fund
Agy 781, D23 fund 4027	1,082.78		Shared Fund
Agy 781, D23 fund 4028	564.43		Shared Fund
Agy 781, D23 fund 4029	2,242.20		Shared Fund
Agy 783, D23 fund 0802	2,300.39		Shared Fund
Agy 802, D23 fund 3030		(562.13)	Shared Fund
Agy 802, D23 fund 3042	3,475.11	(3,467.11)	Shared Fund
Agy 802, D23 fund 3043		(43,067.66)	Shared Fund
Agy 802, D23 fund 3044	21,292.65	(37,375.54)	Shared Fund
Agy 802, D23 fund 3045		(11,077.95)	Shared Fund
Agy 802, D23 fund 3046	(5,627.00)	14,967.20	Shared Fund
Agy 802, D23 fund 3047		(2,147.81)	Shared Fund
Agy 802, D23 fund 3048	8,028.74	872.91	Shared Fund
Agy 802, D23 fund 3049	14,074.73	(1,723.04)	Shared Fund
Agy 802, D23 fund 3050	10,107.95	8,628.46	Shared Fund
Agy 802, D23 fund 3051	8,647.43		Shared Fund
Agy 802, D23 fund 3052	2,081.51		Shared Fund
Agy 802, D23 fund 3057		(1,004.35)	Shared Fund
Agy 802, D23 fund 3116		(5,927.97)	Shared Fund
Agy 802, D23 fund 3120	8,871.32		Shared Fund
Agy 802, D23 fund 3142	(592.43)		Shared Fund
Agy 802, D23 fund 3151	267.34	(4,938.88)	Shared Fund
Agy 802, D23 fund 3152	2,208.75	(8,848.84)	Shared Fund
Agy 802, D23 fund 3153	389.97		Shared Fund
Agy 802, D23 fund 3154	268.67		Shared Fund
Agy 808, D23 fund 0802	(2,879.66)	594.13	Shared Fund
Agy 813, D23 fund 0802	237,195.19		Shared Fund
Agy 902, D23 fund 8020	953.45		Shared Fund
Appd Fund 0001, D23 fund 0001			
Agy 902, D23 fund 0001		2,020.19	Surplus Property
<b>Total Transfer In/Out Other Agencies</b>	<b>619,610.81</b>	<b>49,862.89</b>	
<b>Special Revenue (02)</b>			
Appd Fund 0006, D23 fund 0006			
Agy 601, D23 fund 0006		1,752,384,325.55	Shared Cash
Appd Fund 0006, D23 fund 0006			
Agy 454, D23 fund 0006			TexasSure
<b>Total Transfers In/Out</b>	<b>619,610.81</b>	<b>1,752,434,188.44</b>	

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	Due from Other Agencies	Due to Other Agencies	Source
<b>General Revenue (01)</b>			
Appd Fund 0001, D23 fund 0001			
Agy 711, D23 fund 0001		7,500.00	State Pass-Through
Agy 608, D23 fund 0001		204,863.38	Federal Pass-Through
Appd Fund 0802, D23 fund 0802			
Agy 701, D23 fund 2242		1,178.04	Shared Fund
Agy 701, D23 fund 2250		2,235.90	Shared Fund
Agy 701, D23 fund 2260		88.93	Shared Fund
Agy 701, D23 fund 2270		2,696.64	Shared Fund
Agy 701, D23 fund 2271		1,540.54	Shared Fund
Agy 701, D23 fund 2273		4,893.09	Shared Fund
Agy 701, D23 fund 2274		3,500.91	Shared Fund
Agy 701, D23 fund 2275		124.85	Shared Fund
Agy 711, D23 fund 0802		108,216.75	Shared Fund
Agy 718, D23 fund 0802		74,519.01	Shared Fund
Agy 733, D23 fund 0802		1,000.00	Shared Fund
Agy 751, D23 fund 0802		2,044.30	Shared Fund
Agy 802, D23 fund 3043		5,660.82	Shared Fund
Agy 802, D23 fund 3044		37,127.30	Shared Fund
Agy 802, D23 fund 3045		4,600.67	Shared Fund
Agy 802, D23 fund 3046		17,506.02	Shared Fund
Agy 802, D23 fund 3048		2,595.95	Shared Fund
Agy 802, D23 fund 3050		9,378.46	Shared Fund
<b>Total Due From/ To Other Agencies</b>		<b>491,271.56</b>	

#### NOTE 13: CONTINUANCE SUBJECT TO REVIEW

Under the Texas Sunset Act, the agency will be abolished effective September 1, 2031, unless continued in existence by the Legislature as provided by the Act. If abolished, the agency may continue until September 1, 2032, to close out its operations.

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

During Fiscal Year 2023, a net increase in the amount of \$31,400.96 was made to the Capital Assets Fund. This adjustment was necessary due to inventory items in FY 2022 that were not previously recorded, as well as changes to the lease schedule of a building that is considered an intangible capital asset.

##### Fund Balance for 2023

	Capital Assets Fund (Fund 0998)	Total
Total Fund Balance, Aug. 31, 2022	\$3,975,659.65	\$3,975,659.65
Current Year's Restatements	31,400.96	31,400.96
Change in Net Position Aug. 31, 2022 as Restated	\$4,007,060.61	\$4,007,060.61

During Fiscal Year 2023, a net decrease in the amount of \$20,903.56 was made the Long-Term Liabilities Fund. This adjustment was necessary due to a change to the lease schedule of a building in FY 2022 that was not previously recorded.

##### Fund Balance for 2023

	Long-Term Liabilities Fund (Fund 0997)	Total
Total Fund Balance, Aug. 31, 2022	\$(7,467,928.36)	\$(7,467,928.36)
Current Year's Restatements	(20,903.56)	(20,903.56)
Change in Net Position Aug. 31, 2022 as Restated	\$(7,488,831.92)	\$(7,488,831.92)

#### NOTE 15: CONTINGENCIES AND COMMITMENTS

##### Federal Assistance

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

##### Encumbrances

As of August 31, 2023, the department had encumbered the following amounts in governmental funds for signed contracts and purchase orders:

	General Revenue Fund (0001)	Texas Department of Motor Vehicle Fund (0010)
Encumbrances	\$6,718,235.30	\$8,416,625.10



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**NOTE 16: SUBSEQUENT EVENTS**

Not Applicable

**NOTE 17: RISK MANAGEMENT**

Not Applicable

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## NOTE 18: MANAGEMENT DISCUSSION AND ANALYSIS

The Texas Department of Motor Vehicles (TxDMV) is self-supporting and funds most of its expenditures through revenues collected and deposited to the TxDMV Fund (0010), with the exception of the Motor Vehicle Crime Prevention Authority (MVCPA), which is fully funded through fees deposited to the General Revenue Fund (0001).

Fiscal Year (FY) 2023 revenues for all funds totaled \$1.96 billion. This represents an increase of \$61.94 million or 3.25% more compared to FY 2022 revenues of \$1.90 billion. Of the FY 2023 total amount collected, \$1.76 billion was deposited into the State Highway Fund (0006), \$190.77 million was deposited into the TxDMV Fund (0010), and \$15.19 million was deposited into the General Revenue Fund (0001).

Increased total revenue collections in FY 2023 were primarily attributable to increased registration-related collections and increased motor-carrier oversize/overweight permit revenue related to increased activity in the oil-and-gas and construction sectors. The increases were offset by decreases in certain title-related collections, primarily related to original-title and rebuilt-salvage title fees.

FY 2023 expenditures totaled \$187.23 million, an increase of \$9.78 million, or 5.51% more compared to FY 2022 expenditures of \$177.45 million. The primary factor contributing to the increase in expenditures was due to significant increases in postage expenditures due to a combination of continued growth in registrations and continual price increases from USPS (\$7.27M). Other factors contributing to overall increases in FY 2023 include: implementation of the five percent wage increase effective July 1, which increased the cost of salaries for the final two months of FY 2023 (approximately \$447.65K); the implementation of a new "TxDMV minimum salary" (raised to \$37,200 annually) for new hires effective January 1, 2023 (cost of \$218.00K); and increased salary expenses associated with more positions being filled and the overall vacancy rate decreasing (24% decrease).

The Comptroller's of Public Accounts (CPA) implementation of GASB Statement No. 96, SBITAs (GASB 96) in FY 2023 had a material impact on TxDMV's financial statements. Subscription-Based Information Technology Arrangements (SBITAs) are now classified as intangible right-to-use asset subscriptions, totaling \$19.80 million (Exhibit I) and as a result of this change, corresponding long-term liabilities (Note 5) and amortization expenses (Note 2) also increased. Exhibit II includes offsetting increases of \$19.80 million in expenditures and other financing sources compared to FY 2022 due to the new reporting requirements of GASB 96.

In January 2023, the Texas Department of Transportation (TxDOT) officially signed over land, buildings, and improvements located in central Austin (TxDMV headquarters), totaling an estimated \$32.07 million. This impact is shown on Exhibit I.

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**NOTE 19: THE FINANCIAL REPORTING ENTITY**

Not Applicable

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

Not Applicable

**NOTE 21:**

Not Applicable to the reporting requirement process.

**NOTE 22: DONOR RESTRICTED ENDOWMENTS**

Not Applicable

**NOTE 23: EXTRAORDINARY AND SPECIAL ITEMS**

Not Applicable

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

Not Applicable

**NOTE 25: TERMINATION BENEFITS**

Not Applicable

**NOTE 26: SEGMENT INFORMATION**

Not Applicable

**NOTE 27: PUBLIC-PRIVATE AND PUBLIC-PUBLIC PARTNERSHIPS**

Not Applicable

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

Not Applicable

**NOTE 29: TROUBLED DEBT RESTRUCTURING**

Not Applicable

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

Not Applicable

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## NOTE 31: TAX ABATEMENTS

Not Applicable

## NOTE 32: GOVERNMENTAL FUND BALANCES

The TxDMV has the following restrictions/covenants causing fund balances to be restricted:

GAAP Fund	Fund	AFR 54 Class	Amount	Citation	Purpose
0010	0010	Restricted	\$202,340,107.00	TEXAS TRANSPORTATION CODE ANNOTATED SECTION 1001.151, 1001.152	Used by the department for operations, administration, enforcement, accounting costs and related liabilities for the fund. Revenue includes fees from motor vehicle registration, title certificates, special vehicle permits, specialty license plates, and other transportation-related permits.
0010	0010	Restricted	\$675,137.02	FEDERAL ALN 20.237	Federal funds, restrictions are externally imposed by federal government agencies.
0010	0010	Restricted	\$204,863.38	FEDERAL ALN 97.036	Federal funds, restrictions are externally imposed by federal government agencies.

## **COMBINING FINANCIAL STATEMENTS**

-UNAUDITED-

**EXHIBIT A-1**  
**COMBINING BALANCE SHEET**  
**All General and Consolidated Funds**  
**For the Year Ended August 31, 2023**

	General Revenue Account (0001)	License Plate Trust Fund Account (0802)	Deposit Default Fund (9000)	USPS Overpayments to Employees Account (9015)	General Revenue Agency Funds (1001)
<b>Assets</b>					
Current Assets:					
Cash on Hand	\$	\$	\$	\$	\$
Cash in Bank					
Cash in State Treasury		4,546,945.24		0.02	
Legislative Appropriations	11,770,335.37				
Receivables:					
Federal					
Accounts Receivable					
Due From Other Funds (Note 12)					
Due From Other Agencies (Note 12)					
Consumable Inventories					
<b>Total Current Assets</b>	<b>11,770,335.37</b>	<b>4,546,945.24</b>	<b>0.00</b>	<b>0.02</b>	<b>0.00</b>
<b>Liabilities</b>					
Current Liabilities					
Payables:					
Vouchers Payable	108,016.56				
Accounts Payable	1,828,086.52				
Payroll Payable	49,240.34				
Due to Other Funds (Note 12)	204,863.38				
Due to Other Agencies (Note 12)	7,500.00	278,908.18			
Unearned Revenue				0.02	(160,360.64)
Other Intergovernmental Payable					
<b>Total Current Liabilities</b>	<b>2,197,706.80</b>	<b>278,908.18</b>	<b>0.00</b>	<b>0.02</b>	<b>(160,360.64)</b>
<b>Fund Balances</b>					
Non Spendable (Inventory)					
Restricted					
Committed		4,268,037.06	71.66		160,889.75
Assigned					
Unassigned	9,572,628.57		(71.66)		(529.11)
<b>Total Fund Balance</b>	<b>9,572,628.57</b>	<b>4,268,037.06</b>	<b>0.00</b>	<b>0.00</b>	<b>160,360.64</b>
<b>Total Liabilities and Fund Balances</b>	<b>\$ 11,770,335.37</b>	<b>\$ 4,546,945.24</b>	<b>\$ 0.00</b>	<b>\$ 0.02</b>	<b>\$ 0.00</b>

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**EXHIBIT A-1 (CONTINUED)**  
**COMBINING BALANCE SHEET**  
**All General and Consolidated Funds**

	Suspense Type Activities Account (0900)	Intermodal Container & Milk Transport Account (1623)	Proportional Registration Distributive Fund Account (0021)	Child Support Employee Deduction Account (8070)	Total
<b>Assets</b>					
Current Assets:					
Cash on Hand	\$	\$	\$	\$	0.00
Cash in Bank					0.00
Cash in State Treasury	630,989.90	394,780.00	27,727,247.25	4,703.70	33,304,666.11
Legislative Appropriations					11,770,335.37
Receivables:					0.00
Federal					0.00
Accounts Receivable					0.00
Due From Other Funds (Note 12)					0.00
Due From Other Agencies (Note 12)					0.00
Consumable Inventories					0.00
<b>Total Current Assets</b>	<b>630,989.90</b>	<b>394,780.00</b>	<b>27,727,247.25</b>	<b>4,703.70</b>	<b>45,075,001.48</b>
<b>Liabilities</b>					
Current Liabilities					
Payables:					
Vouchers Payable	549,715.19				657,731.75
Accounts Payable					1,828,086.52
Payroll Payable				4,703.70	53,944.04
Due to Other Funds (Note 12)					204,863.38
Due to Other Agencies (Note 12)					286,408.18
Unearned Revenue					(160,360.62)
Other Intergovernmental Payable	(13,287.87)	383,257.60	6,428,089.68		6,798,059.41
<b>Total Current Liabilities</b>	<b>536,427.32</b>	<b>383,257.60</b>	<b>6,428,089.68</b>	<b>4,703.70</b>	<b>9,668,732.66</b>
<b>Fund Balances</b>					
Non Spendable (Inventory)					0.00
Restricted					0.00
Committed	94,562.58	11,522.40	21,299,157.57		25,834,241.02
Assigned					0.00
Unassigned				-	9,572,027.80
<b>Total Fund Balance</b>	<b>94,562.58</b>	<b>11,522.40</b>	<b>21,299,157.57</b>	<b>0.00</b>	<b>35,406,268.82</b>
<b>Total Liabilities and Fund Balances</b>	<b>\$ 630,989.90</b>	<b>\$ 394,780.00</b>	<b>\$ 27,727,247.25</b>	<b>\$ 4,703.70</b>	<b>\$ 45,075,001.48</b>

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**EXHIBIT B-1**  
**COMBINING BALANCE SHEET**  
**Special Revenue Funds**

For Fiscal Year Ended August 31, 2023

	State Highway Fund (0006)	Texas Department of Motor Vehicles Fund (0010)	Suspense Type Activities Fund (0900)	Total
<b>Assets</b>				
Current Assets:				
Cash on Hand	\$	\$ 39,100.00	\$	\$ 39,100.00
Cash in Bank				0.00
Cash in State Treasury		205,260,182.39		205,260,182.39
Legislative Appropriations				0.00
Receivables:				0.00
Federal		198,464.66		198,464.66
Accounts Receivable	125,151,789.88	10,815,957.82		135,967,747.70
Due From Other Funds (Note 12)		204,863.38		204,863.38
Due From Other Agencies (Note 12)				0.00
Consumable Inventories		3,377,902.40		3,377,902.40
<b>Total Current Assets</b>	<b>125,151,789.88</b>	<b>219,896,470.65</b>	<b>0.00</b>	<b>345,048,260.53</b>
<b>Liabilities</b>				
Current Liabilities				
Payables:				
Vouchers Payable		873,527.43		873,527.43
Accounts Payable		7,195,908.38		7,195,908.38
Payroll Payable		5,434,607.51		5,434,607.51
Unearned Revenues		674,417.93		674,417.93
Due to Other Funds (Note 12)				0.00
Due to Other Agencies (Note 12)				0.00
<b>Total Current Liabilities</b>	<b>0.00</b>	<b>14,178,461.25</b>	<b>0.00</b>	<b>14,178,461.25</b>
<b>Fund Balances</b>				
Non Spendable (Inventory)		3,377,902.40		3,377,902.40
Restricted	125,151,789.88	202,340,107.00		327,491,896.88
Committed				0.00
Assigned				0.00
Unassigned				0.00
<b>Total Fund Balance</b>	<b>125,151,789.88</b>	<b>205,718,009.40</b>	<b>0.00</b>	<b>330,869,799.28</b>
<b>Total Fund Balance as Restated</b>	<b>125,151,789.88</b>	<b>205,718,009.40</b>	<b>0.00</b>	<b>330,869,799.28</b>
<b>Total Liabilities and Fund Balances</b>	<b>\$ 125,151,789.88</b>	<b>\$ 219,896,470.65</b>	<b>\$ 0.00</b>	<b>\$ 345,048,260.53</b>



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**EXHIBIT A-2**  
**COMBINING STATEMENT OF REVENUES,**  
**EXPENDITURES AND CHANGES IN FUND BALANCES**  
**All General and Consolidated Funds**  
**For the Year Ended August 31, 2023**

	General Revenue Account (0001)	License Plate Trust Fund Account (0802)	Deposit Default Fund (9000)	Suspense Type Activities Account (0900)
<b>Revenues</b>				
Legislative Appropriations:				
Original Appropriations	\$ 14,979,605.00	\$	\$	\$
Additional Appropriations	196,173.01			
Federal Pass-Through	204,863.38			
State Grant Pass -Through				
Licenses, Fees and Permits		11,239.64		
Interest & Investment Income		9,662.79		
Settlement of Claims				
Sales of Goods and Services				
Other Revenues	(204,863.38)		(71.66)	(263.00)
<b>Total Revenues</b>	<b>15,175,778.01</b>	<b>20,902.43</b>	<b>(71.66)</b>	<b>(263.00)</b>
<b>Expenditures</b>				
Salaries and Wages	424,019.93			
Payroll Related Costs	198,066.14			
Professional Fees and Services	2,861,905.39			
Travel	27,362.46			
Materials and Supplies	9,863.01			
Communications and Utilities	19,638.13			
Repairs and Maintenance				
Rentals and Leases	13,408.38			
Printing and Reproduction	97.20			
State Grant Pass-Through Expenditures	30,000.00			
Intergovernmental Payments	12,542,176.08			
Public Assistance Payments	209,980.74			
Other Operating Expenditures	20,409.06			
Capital Outlay				
<b>Total Expenditures</b>	<b>16,356,926.52</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
Excess (Deficit) of Revenues over Expenditures	(1,181,148.51)	20,902.43	(71.66)	(263.00)
<b>Other Financing Sources (Uses)</b>				
Operating Transfers In (Note 12)		619,610.81		
Operating Transfers Out (Note 12)	(2,020.19)	(47,842.70)		
Insurance Recoveries				
Sale of Capital Assets	2,020.19			
Legislative Financing Sources				
Legislative Financing Uses				
Legislative Transfers In (Note 12)				
Legislative Transfers Out (Note 12)				
<b>Total Other Financing Sources (Uses)</b>	<b>0.00</b>	<b>571,768.11</b>	<b>0.00</b>	<b>0.00</b>
Excess (Deficit) of Revenues and other Sources Over Expenditures and Other Uses	(1,181,148.51)	592,670.54	(71.66)	(263.00)
<b>Fund Balance - Beginning</b>	<b>10,895,200.64</b>	<b>3,675,366.52</b>	<b>71.66</b>	<b>94,825.58</b>
Restatements (Note 14)				
<b>Fund Balance As Restated</b>	<b>\$ 10,895,200.64</b>	<b>3,675,366.52</b>	<b>71.66</b>	<b>94,825.58</b>
Appropriations Lapsed	(141,423.56)			
<b>Fund Balance - Ending</b>	<b>9,572,628.57</b>	<b>4,268,037.06</b>	<b>0.00</b>	<b>94,562.58</b>

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**EXHIBIT A-2 (CONTINUED)**  
**COMBINING STATEMENT OF REVENUES,**  
**EXPENDITURES AND CHANGES IN FUND BALANCES**  
**All General and Consolidated Funds**  
**For the Year Ended August 31, 2023**

	Intermodal Container & Milk Transport Account (1623)	Proportional Registration Distributive Fund Account (0021)	General Revenue Fund- Agency Funds Account (1001)	Total
<b>Revenues</b>				
Legislative Appropriations:				
Original Appropriations	\$	\$	\$	\$ 14,979,605.00
Additional Appropriations				196,173.01
Federal Pass-Through				204,863.38
State Grant Pass -Through				0.00
Licenses, Fees and Permits			(13,689.25)	(2,449.61)
Interest & Investment Income				9,662.79
Settlement of Claims				0.00
Sales of Goods and Services				0.00
Other Revenues		536.00	15,726.89	(188,935.15)
<b>Total Revenues</b>	<b>0.00</b>	<b>536.00</b>	<b>2,037.64</b>	<b>15,198,919.42</b>
<b>Expenditures</b>				
Salaries and Wages				424,019.93
Payroll Related Costs				198,066.14
Professional Fees and Services				2,861,905.39
Travel				27,362.46
Materials and Supplies				9,863.01
Communications and Utilities				19,638.13
Repairs and Maintenance				0.00
Rentals and Leases				13,408.38
Printing and Reproduction				97.20
State Grant Pass-Through Expenditures				30,000.00
Intergovernmental Payments				12,542,176.08
Public Assistance Payments				209,980.74
Other Operating Expenditures				20,409.06
Capital Outlay				0.00
<b>Total Expenditures</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>16,356,926.52</b>
Excess (Deficit) of Revenues over Expenditures	0.00	536.00	2,037.64	(1,158,007.10)
<b>Other Financing Sources (Uses)</b>				
Operating Transfers In (Note 12)				619,610.81
Operating Transfers Out (Note 12)				(49,862.89)
Insurance Recoveries				0.00
Sale of Capital Assets				2,020.19
Legislative Financing Sources				0.00
Legislative Financing Uses				0.00
Legislative Transfers In (Note 12)				0.00
Legislative Transfers Out (Note 12)				0.00
<b>Total Other Financing Sources (Uses)</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>571,768.11</b>
Excess (Deficit) of Revenues and other Sources				0.00
Over Expenditures and Other Uses	0.00	536.00	2,037.64	(586,238.99)
				0.00
<b>Fund Balance - Beginning</b>	<b>11,522.40</b>	<b>21,298,621.57</b>	<b>158,323.00</b>	<b>36,133,931.37</b>
Restatements (Note 14)				
<b>Fund Balance As Restated</b>	<b>11,522.40</b>	<b>21,298,621.57</b>	<b>158,323.00</b>	<b>36,133,931.37</b>
Appropriations Lapsed				(141,423.56)
<b>Fund Balance - Ending</b>	<b>\$ 11,522.40</b>	<b>\$ 21,299,157.57</b>	<b>\$ 160,360.64</b>	<b>\$ 35,406,268.82</b>

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**EXHIBIT B-2**  
**COMBINING STATEMENT OF REVENUES,**  
**EXPENDITURES AND CHANGES IN FUND BALANCES**  
**Special Revenue Funds**  
**For the Year Ended August 31, 2023**

	State Highway Fund (0006)	Texas Department of Motor Vehicles Fund (0010)	Totals
<b>Revenues</b>			
Legislative Appropriations:			
Original Appropriations	\$	\$	\$ 0.00
Additional Appropriations			0.00
Federal Revenues		675,137.02	675,137.02
Federal Pass-Through			0.00
State Grant Pass -Through			0.00
Licenses, Fees and Permits	1,758,942,051.27	182,689,823.61	1,941,631,874.88
Interest & Investment Income		6,940,236.47	6,940,236.47
Settlement of Claims			0.00
Sales of Goods and Services		246,359.97	246,359.97
Other Revenues	1,929.44	218,497.75	220,427.19
<b>Total Revenues</b>	<b>1,758,943,980.71</b>	<b>190,770,054.82</b>	<b>1,949,714,035.53</b>
<b>Expenditures</b>			
Salaries and Wages		45,724,026.30	45,724,026.30
Payroll Related Costs		20,760,487.97	20,760,487.97
Professional Fees and Services		17,754,680.31	17,754,680.31
Travel		409,936.54	409,936.54
Materials and Supplies		20,889,903.98	20,889,903.98
Communications and Utilities		6,491,400.25	6,491,400.25
Repairs and Maintenance		3,406,698.58	3,406,698.58
Rentals and Leases		302,805.65	302,805.65
Printing and Reproduction		5,033,141.69	5,033,141.69
Intergovernmental Payments			0.00
Public Assistance Programs			0.00
Other Operating Expenditures		45,175,870.65	45,175,870.65
Debt Service Principal- RTU Leases/SBITA		6,056,146.60	6,056,146.60
Capital Outlay		20,285,178.25	20,285,178.25
<b>Total Expenditures</b>	<b>0.00</b>	<b>192,290,276.77</b>	<b>192,290,276.77</b>
Excess (Deficit) of Revenues over Expenditures	1,758,943,980.71	(1,520,221.95)	1,757,423,758.76
<b>Other Financing Sources (Uses)</b>			
Operating Transfers In (Note 12)			0.00
Operating Transfers Out (Note 12)	(1,752,384,325.55)		(1,752,384,325.55)
Increase in Obligations- Leases/SBITA		19,798,419.64	19,798,419.64
Sale of Capital Assets			0.00
Legislative Financing Sources			0.00
Insurance Recoveries			0.00
Legislative Transfers In (Note 12)			0.00
Legislative Transfers Out (Note 12)			0.00
<b>Total Other Financing Sources (Uses)</b>	<b>(1,752,384,325.55)</b>	<b>19,798,419.64</b>	<b>(1,732,585,905.91)</b>
Excess (Deficit) of Revenues and other Sources			
Over Expenditures and Other Uses	6,559,655.16	18,278,197.69	24,837,852.85
<b>Fund Balance - Beginning</b>	<b>118,592,134.72</b>	<b>187,439,811.71</b>	<b>306,031,946.43</b>
			0.00
<b>Fund Balance As Restated</b>	<b>118,592,134.72</b>	<b>187,439,811.71</b>	<b>306,031,946.43</b>
Appropriations Lapsed			0.00
<b>Fund Balance - Ending</b>	<b>\$ 125,151,789.88</b>	<b>\$ 205,718,009.40</b>	<b>\$ 330,869,799.28</b>

## **SCHEDULES**

-UNAUDITED-

**SCHEDULE 1A**  
**SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS**  
**For the Fiscal Year Ended August 31, 2023**

Federal Grantor/ Pass-Through Grantor/ Program Title	Pass-Through From			
	ALN Number	Agency Number	State Agency or University Amount	Non-State Entities Amount
<b>U.S. Department of Homeland Security</b>				
<u>Pass-Through From:</u>				
COVID-19 Disaster Grants - Public Assistance (Presidentially Declared Disasters)	97.036			
<u>Pass-Through From:</u>				
Texas Division of Emergency Management		575	\$ 204,863.38	
Totals- U.S. Department of Homeland Security			\$ 204,863.38	0.00
<u>Federal Motor Carrier Safety Assistance Cluster</u>				
<b>U.S. Department of Transportation</b>				
<u>Direct Programs:</u>				
Motor Carrier Safety Assistance High Priority Activities	20.237			
Grants and Cooperative Agreements				
Totals- U.S. Department of Transportation			0.00	0.00
<b>Total Expenditure of Federal Awards</b>			<u>204,863.38</u>	<u>0.00</u>
<b>TOTAL FEDERAL FINANCIAL ASSISTANCE</b>			<u><u>\$ 204,863.38</u></u>	<u><u>0.00</u></u>

**Note 2 - Reconciliation**

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

Exhibit II

Federal Revenues	\$ 675,137.02
Federal Pass-Through Revenues	204,863.38
<b>Total</b>	<u><u>\$ 880,000.40</u></u>

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**SCHEDULE 1A**  
**SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS**  
**For the Fiscal Year Ended August 31, 2023**  
**(Continued)**

Direct Program Amount	Total Pass Through From & Direct Program	Pass-Through To		Expenditures Amount	Total Pass Through To & Expenditures
		Agency Number	State Agency or University Amount		
	\$ 204,863.38			\$ 204,863.38	\$ 204,863.38
0.00	\$ 204,863.38		0.00	0.00	\$ 204,863.38
\$ 675,137.02	\$ 675,137.02			\$ 675,137.02	\$ 675,137.02
\$ 675,137.02	\$ 675,137.02		0.00	0.00	\$ 675,137.02
675,137.02	880,000.40		0.00	0.00	880,000.40
<u>\$ 675,137.02</u>	<u>\$ 880,000.40</u>		<u>0.00</u>	<u>0.00</u>	<u>\$ 880,000.40</u>

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**SCHEDULE 1B**  
**SCHEDULE OF STATE GRANT PASS-THROUGHS FROM/TO STATE AGENCIES**  
**For the Fiscal Year Ended August 31, 2023**

Pass-Through Grantor/ Program Title	Pass-Through From			Total Pass-Through From	Pass-Through To			Total Pass-Through To
	Grant ID	Agency	State Agency		Agency	State Agency		
		Number	or University		Amount	Number	or University	
Motor Vehicle Crime Prevention Authority (MVCPA)								
<u>Programs:</u>								
Texas A&M University- Grant Management and Tracking System	608.0004			\$0.00	711	\$ 35,000.00	\$ 35,000.00	
Total		0.00		\$0.00	\$ 35,000.00		\$ 35,000.00	
TOTAL PASS-THROUGH TO OTHER AGENCIES		0.00		\$0.00	\$ 35,000.00		\$ 35,000.00	

**Note 2 - Reconciliation**

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

Exhibit II

State Grant Pass-Through Expenditures

	\$ 35,000.00
<b>Total</b>	<b>\$ 35,000.00</b>



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**Board Meeting Date: 12/14/2023**  
**BRIEFING ITEM**

**To:** Texas Department of Motor Vehicles Board  
**From:** Salem Chuah, Internal Audit Division Director and Jason Gonzalez, Principal Internal Auditor  
**Agenda Item:** 21.C  
**Subject:** Internal Audit Division Status Update

### **RECOMMENDATION**

Briefing Only.

### **PURPOSE AND EXECUTIVE SUMMARY**

This status update provides information on current Internal Audit Division (IAD) activities including internal engagements, external engagements, and administrative items.

### **FINANCIAL IMPACT**

N/A

### **BACKGROUND AND DISCUSSION**

#### ***Internal Engagements***

The audit of selected Regional Service Centers (RSCs) is in the reporting phase. IAD concluded its site visits of all four RSCs within the audit scope (Houston, Dallas, Abilene, and El Paso). The audit team reviewed bonded title applications for uniformity across the RSCs, observed key processes on site, talked with customers to gain their perspective, and administered an internal culture questionnaire. The audit draft is with the Vehicle Title and Registration division for management responses.

IAD completed its annual Internal Audit Quality Assurance Review. This review is conducted as part of the Quality Assurance and Improvement Program, which is required by auditing standards to be conducted every year. This internal review is in addition to the external assessment (peer review) that is conducted once every three years. There were five results and two recommendations:

- **Result #1 and #2:** IAD met compliance and performance audit standards
- **Result #3:** IAD met all metrics in its key performance indicators
- **Result #4:** IAD maintained an overall level 4 on the capability model
- **Result #5:** IAD received and tracked 57 fraud, waste, and abuse allegations

#### ***External Engagements***

The Comptroller of Public Accounts completed its Statewide Desk Audit of Payment Approval Authority and Security. TxDMV was one agency selected out of 131 state agencies and institutions. The audit's objective was to determine whether agencies and institutions complied with Comptroller requirements for terminated and transferred employee authorization and Comptroller system access. Specifically, the audit looked at whether individuals who could approve or release payments were properly authorized with a signature card and authorization letter and if agencies timely notified the Comptroller for terminated employees to remove their security access and signature. TxDMV had no findings.

**Administrative Reports**

IAD posted its Request for Qualifications (RFQ) for a qualified vendor to perform performance and information technology audit and advisory services in October 2023 to replace the previous contract for these services which expired in August 2023. The RFQ submission deadline was in November 2023. The selection panel is evaluating the seven proposals.

IAD welcomed two new team members in October 2023.

## Internal Audit Division Status

### Internal Engagements

	<b>Planning</b>	N/A
	<b>Fieldwork</b>	N/A
	<b>Reporting</b>	<ul style="list-style-type: none"><li>Regional Service Centers Audit</li></ul>
	<b>Completed</b>	<ul style="list-style-type: none"><li>Quality Assurance Improvement Program</li></ul>

### External Engagements

	<b>In-Progress</b>	<ul style="list-style-type: none"><li>N/A</li></ul>
	<b>Completed</b>	<ul style="list-style-type: none"><li>Statewide Desk Audit of Payment Approval Authority and Security by the Comptroller of Public Accounts</li></ul>



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

# Quality Assurance and Improvement Program Report 24-02

Internal Audit Division  
November 2023



## Quality Assurance and Improvement Program Report, 24-02

### Executive Summary

The Internal Audit Division (IAD) at the Texas Department of Motor Vehicles (TxDMV or Department) follows (1) the audit standards prescribed by the Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing (IIA Standards), (2) U.S. Government Accountability Office's (GAO) Generally Accepted Government Auditing Standards (GAGAS); and (3) Texas Internal Auditing Act, Texas Government Code. These audit standards require IAD to develop and maintain a Quality Assurance and Improvement Program (QAIP) that includes both internal and external assessments.

Internal assessments include ongoing monitoring of the performance of the internal audit activity as well as annual self-assessment reviews. The IIA Standards require the results of internal assessments be communicated to the governing board annually.

### WHAT WE FOUND

IAD issued five results from its internal assessment:



**Result #1 and #2:** IAD met compliance and performance audit standards.



**Result #3:** IAD met all metrics in its key performance indicators.



**Result #4:** IAD maintained its level 4 on the capability model.



**Result #5:** IAD received and tracked 57 fraud, waste, and abuse allegations.

### WHAT WE RECOMMEND



**Recommendation #1:** IAD should continue tracking all internal and external audit recommendations and ensure that divisions are providing status updates on the progress of outstanding recommendations.



**Recommendation #2:** IAD should continue to ensure clear and timely communication to divisions in all engagements through regular status meetings



## Texas Department of Motor Vehicles

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<b>Background</b>	<b>1</b>
<b>Assessment Results</b>	<b>2</b>
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Assessment Result #2: IAD met performance audit standards	3
Assessment Result #3: IAD met all metrics in its key performance indicators audit standards	3
Assessment Result #4: IAD maintains its level 4 on the capability model	5
Assessment Result #5: IAD received and tracked 57 fraud, waste, and abuse allegations	7
<b>Appendix 1: Objective, Scope, and Methodology</b>	<b>A-1</b>

## Background

---

The Internal Audit Division (IAD) at the Texas Department of Motor Vehicles (TxDMV or Department) follows audit standards prescribed by:

- (1) the audit standards prescribed by the Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing (IIA Standards), the Definition of Internal Auditing, the Core Principles for the Professional Practice of Internal Auditing and the Code of Ethics;
- (2) U.S. Government Accountability Office's (GAO) Generally Accepted Government Auditing Standards (GAGAS); and
- (3) Texas Internal Auditing Act, Texas Government Code, Chapter 2102 (Act).

These audit standards require IAD to develop and maintain a Quality Assurance and Improvement Program (QAIP) that includes both internal and external assessments:

[Internal assessments](#) are ongoing monitoring of the performance of the internal audit activity, as well as annual self-assessment reviews. The IIA Standards require the results of the internal assessments be communicated to the governing board annually. Internal assessments include a review of all audit documentation, audit recommendations, and reports for each engagement conducted by IAD in a fiscal year (FY) prior to finalizing an engagement file. The annual self-assessment includes verifying that IAD followed all required compliance and performance audit standards. In addition, IAD provides progress and results on the following:

- Key Performance Indicators (KPIs)
- Institute of Internal Auditors (IIA) – Internal Audit Capability Model for the Public Sector (Capability Model)
- Fraud, waste, and abuse allegations and disposition

[External assessment \(Peer Review\)](#) is a review of the IAD conducted by a qualified, knowledgeable external party (Peer Review team). This review results in a report rendering an overall opinion on whether IAD complied with audit standards. The external assessment may also provide feedback on operational or strategic issues. IAD received its most recent Peer Review in March 2021. IAD implemented the Peer Review recommendation in FY2022.

### Audit Engagement Team

The assessment was performed by Jason Gonzalez (Principal Internal Auditor) and Salem Chuah (Internal Audit Director).

## Assessment Results

---

### Assessment Result #1: IAD met compliance standards

IAD met all compliance standards based on a review of the IAD's audit charter, standard operating procedures, and engagement control programs. IAD was in adherence with all compliance standards:

- **Purpose, Authority, and Responsibility** - The internal audit function must be formally defined in an internal audit charter, consistent with the Mission of Internal Audit and the mandatory elements of the International Professional Practices Framework (the Core Principles for the Professional Practice of Internal Auditing, the Code of Ethics, the Institute of Internal Auditors (IIA) Standards, and the Definition of Internal Auditing). The IAD internal audit charter covering FY2023 was approved by the TxDMV Board in August 2022.
- **Independence and Objectivity** - The internal audit function must be independent and perform work in an objective manner.
- **Proficiency and Due Professional Care** - Engagements must be performed by staff who are proficient and have due professional care.
- **Quality Assurance and Improvement Program** - A quality assurance and improvement program must be established and must enable an evaluation of the internal audit function's conformance with the audit standards and any applicable other requirements. The program should also assess the efficiency and effectiveness of the internal audit function and identify opportunities for improvement for the function.
- **Managing the Internal Audit Activity** - The internal audit function must be effectively managed to ensure it adds value to the organization.
- **Nature of Work** - The internal audit function must evaluate and contribute to the improvement of the organization's governance, risk management, and control processes using a systematic, disciplined, and risk-based approach.
- **Monitoring Progress** - A system to monitor the disposition of results must be established, maintained, and communicated.



## Assessment Result #2: IAD met performance audit standards

IAD reviewed the FY2023 Business Continuity Audit to determine compliance with performance standards when planning, performing, and communicating engagement. IAD adhered to all performance audit standards:

- **Engagement Planning** - A plan must be developed and documented for each engagement.
- **Performing the Engagement** - Internal auditors must identify, analyze, evaluate, and document sufficient information to achieve the engagement's objectives.
- **Communicating Results** - Results from the audit engagements must be communicated to management and others in charge of governance. Audit results were communicated to the Department's Information Technology Services Division and in the December 2022 Department Board meeting.

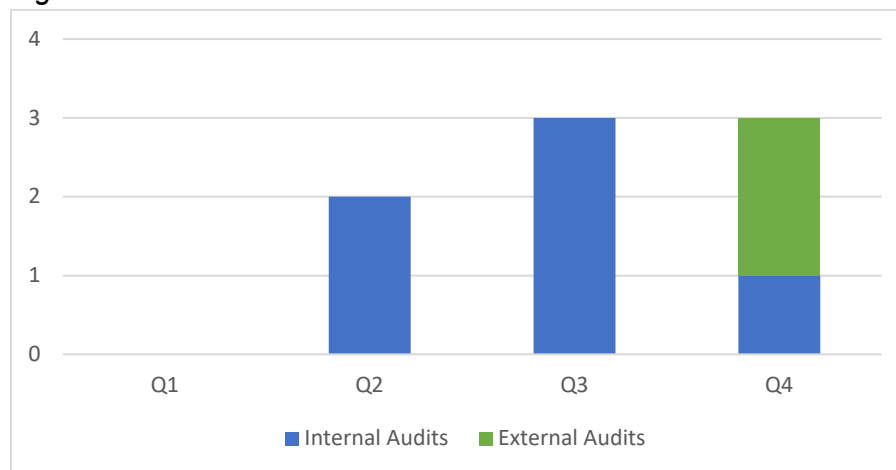
## Assessment Result #3: IAD met all metrics in its key performance indicators audit standards

IAD has seven key performance indicators (KPIs) to measure the audit function's effectiveness and efficiency. IAD met all KPIs.

**KPI #1: Percentage of audit recommendations validated by IAD within 90 days of implementation** – IAD monitors the Department's implementation for internal and external audit recommendations. As of the end of FY2023, IAD is tracking 31 total audit recommendations consisting of 26 *internal* and 5 *external* audit recommendations.

In FY2023, IAD validated 8 (100 percent) of 8 audit recommendations within 90 days, exceeding the goal of 80%. This validation consisted of 6 *internal* and 2 *external* audit recommendations as depicted in Figure 1.

Figure 1: FY2023 Internal and External Audit Recommendation Validation



IAD should continue tracking all internal and external audit recommendations and ensure that divisions are providing status updates on the progress of outstanding recommendations.

**KPI #2: Percentage of audit plan completed** – IAD completed 9 (90%) of 10 engagements listed in the FY2023 Internal Audit Plan, exceeding the 80% goal. The one engagement is an audit that started in FY2023 but will not be completed until FY2024.

**KPI #3: Percentage of investigations closed within 90 days** – IAD conducted one investigation during FY2023. The investigation was completed in 84 days, exceeding the 80% goal.

**KPI #4: Number of internal audit education efforts conducted annually** – IAD has a goal of completing four educational and outreach efforts. In FY2023, IAD met its goal by conducting four educational and outreach efforts as seen in Figure 2.

*Figure 2: Educational and Outreach Efforts Conducted*

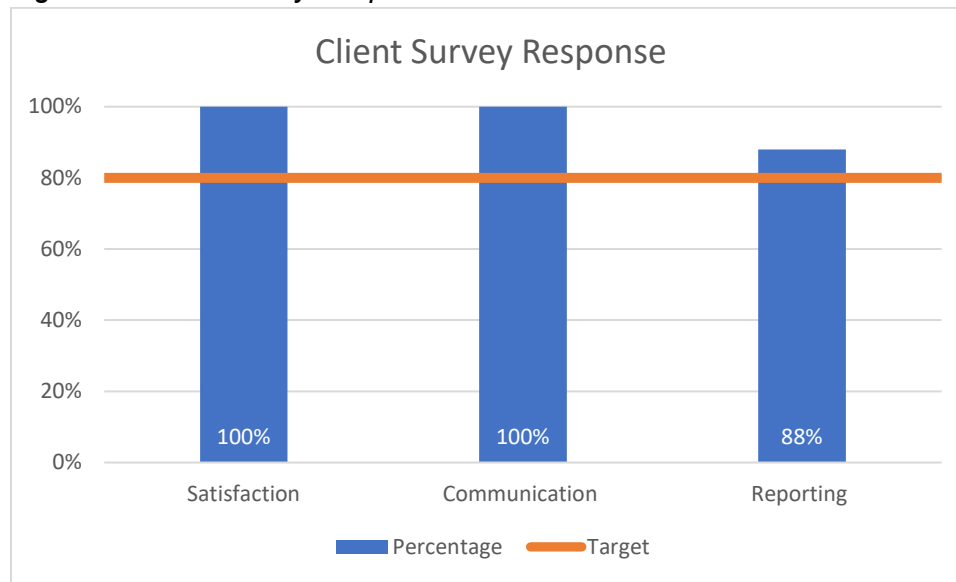
Number	Quarter	Topic	Audience
1	2	Fraud Pulse Survey Results	Internal
2	2	Role of Internal Audit Podcast	Internal
3	2	Participation in the Internal Audit Director Panel for the Texas State Agency Internal Audit Forum's Internal Audit Leadership Development Program	External
4	3	Internal Audit Lunch and Learn	Internal

**KPI #5, #6, #7: Survey results on client satisfaction, communication, and reporting** – For three KPIs, IAD uses post-engagement surveys to determine Department staff's overall satisfaction with the engagement. The three metrics are:

- **Satisfaction:** Percentage in client survey who agree IAD provided value for the Department and/or Division
- **Communication:** Percentage in client survey who agree IAD communicated the status of audit work throughout the audit
- **Reporting:** Percentage in client survey who agree that the audit report was accurate, clear, and engaging to read.

Figure 3 below depicts the survey results with satisfaction at 100%, communication at 100%, and reporting at 88%, exceeding the goal of 80% for each area. These survey results are based on the Contract Development Audit, the Business Continuity Audit, and the Hiring Process Audit, all of which were completed in FY2023. Based on survey results, IAD can continue its efforts in the reporting category by continuously communicating results to Department auditees.

Figure 3: Client Survey Responses



## Assessment Result #4: IAD maintained its level 4 on the capability model

Since the 2018 Peer Review, IAD tracks its effectiveness progress through the *Capability Model for the Public Sector*. The goal for the division is to achieve *Level 5, Optimizing*. After the 2018 Peer Review, IAD was at a *Level 2, Informal and Reactive*. Since then, IAD has consistently improved with each fiscal year. In FY2023, IAD maintained a capability model of *Level 4, Predictable*. For example, IAD supports professional bodies, including for external participants in education and outreach efforts as mentioned above. Also, IAD reports to top-level authority in the Department for governance structure and there is IAD provides management with insights into organizational risks.

Figure 4: FY2023 TxDMV IAD Capability Model

	Services and Role of IAD	People Management	Professional Practices	Performance Management and Accountability	Organizational Relationships and Culture	Governance Structures
Level 5 – Optimized	IAD Recognized as Key Agent of Change	Leadership Involvement with Professional Bodies Workforce Projection	Continuous Improvement in Professional Practices Strategic IAD Planning	Outcome Performance and Value to Organization Achieved	Effective and Ongoing Relationships	Independence, Power, and Authority of the IAD Activity

	Services and Role of IAD	People Management	Professional Practices	Performance Management and Accountability	Organizational Relationships and Culture	Governance Structures
<b>Level 4 – Predictable</b>	Overall Assurance on Governance, Risk Management, and Control	Contributes to Management Development  IAD Activity Supports Professional Bodies  Workforce Planning	Audit Strategy Leverages Organization's Management of Risk	Integration of Qualitative and Quantitative Performance Measures	Chief Audit Executive Advises and Influences Top-level Management	Independent Oversight of the IAD Activity  Chief Audit Executive Reports to Top-level Authority
<b>Level 3 – Established</b>	Advisory Services  Performance and Value-for-Money Audits	Team Building and Competency  Professionally Qualified Staff	Quality Management Framework  Risk-based Audit Plans	Performance Measures  Cost Information  IAD Management Reports	Coordination with Other Review Groups  Integral Component of Management Team	Management Oversight of the IAD Activity  Funding Mechanism
<b>Level 2 – Informal and Reactive</b>	Compliance Auditing	Individual Professional Development  Skilled People Identified and Recruited	Professional Practices and Processes Framework  Audit Plan Based on Management/ Stakeholder Priorities	IAD Operating Budget  IAD Business Plan	Managing within the IAD Activity	Full Access to the Organization's Information, Assets, and People  Reporting Relationship Established
<b>Level 1 – Minimal</b>	Ad hoc and unstructured; isolated single audits or reviews of documents and transactions for accuracy and compliance; outputs dependent upon the skills of specific individuals holding the position; no specific professional practices established other than those provided by professional associations; funding approved by management, as needed; absence of infrastructure; auditors likely part of a larger organizational unit; no established capabilities; therefore, no specific key process areas					

## Assessment Result #5: IAD received and tracked 57 fraud, waste, and abuse allegations

IAD tracks and investigates fraud, waste, and abuse (FWA) allegations. The allegations are received from multiple sources: internal sources (employees), external sources, and the State Auditor's Office (SAO). In FY2023, IAD received a total of 57 complaints compared to 90 in FY2022 and 223 in FY2021.

*Figure 5: Fraud, Waste, and Abuse Allegations in FY2021 thru FY2023*

Allegation Type	FY2021	FY2022	FY2023
Internal	13	9	0
External	3	2	8
SAO	207	79	49
<b>Total</b>	<b>223</b>	<b>90</b>	<b>57</b>

Of the 57 allegations received in FY2023, 45 were referred, 11 were reviewed and closed, and 1 was investigated. In FY2023, the top categories of FWA allegations pertain to dealers (12) and titles (17).

## Appendix 1: Objective, Scope, and Methodology

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### Objective

To provide a summary of the Internal Audit Division activities and compliance with applicable audit standards.

### Scope and Methodology

The scope of the assessment included fiscal year 2023 Internal Audit Division activities. Information and documents reviewed in the assessment included the following:

- End of engagement survey results
- August 2022 approved Internal Audit Charter
- IAD Standard Operating Procedures
- IAD Engagement Control Programs
- TxDMV Operational Plan
- TeamMate+ Audit Programs
- IIA's Capability Model
- Contract Development Audit
- Business Continuity Audit
- Hiring Process Audit

### Report Distribution

This report is distributed to the Board of the Texas Department of Motor Vehicles.

**Glenn Hegar**

Texas Comptroller of Public Accounts

December 4, 2023

Good Afternoon:

The Texas Comptroller of Public Accounts has completed its first annual Payment Approval Authority and Security Desk Audit for 131 state agencies (agencies) and institutions of higher education (institutions). The objective of this review was to assess compliance with pertinent statutes, rules and Comptroller requirements. Attached please find the related statewide report.

In the past, these authorization and security reviews were conducted as part of a post-payment audit. Starting in fiscal 2023, the Comptroller's office began to perform weekly and quarterly compliance reviews and to report results annually at the end of the review period.

The first annual report covered employee terminations and transfers from Sept. 1, 2022, to Aug. 31, 2023. The audit scope included a review of:

- Statewide systems ad hoc reports.
- Signature cards database entries.
- Staff system access.

Additionally, auditors determined whether agencies and institutions complied with requirements to:

- Revoke terminated/transferred employee authorization to approve payments.
- Remove terminated/transferred employee access to Comptroller systems.

We intend for this report to be used by agency management and certain state officials and agencies as listed in Texas Government Code, Section 403.071. However, this report is a public record and its distribution is not limited.

The agencies and institutions may inquire about and register for training related to expenditure approval and authorization through the Fiscal Management [Training Center](#). For immediate training needs, staff may review our current [web-based training and tutorials](#) and [CAPPs training options](#) or contact your [Fiscal Management contact](#) for assistance.



Comptroller.Texas.Gov

P.O. Box 13528

Austin, Texas 78711-3528

512-463-4444

Toll Free: 1-800-531-5441 ext: 3-4444

Fax: 512-463-4902

December 4, 2023

Page Two

We would like input from you or your designee on the quality of the audit process and the service the audit staff provided while conducting this audit. Please take our [Fiscal Management Audit Survey](#) to rate and comment on the payment approval authority and security desk audit process. Your feedback is greatly appreciated.

Thank you for your cooperation. If you have any questions or comments regarding this audit, please contact Roslyn Harris at (512) 463-4258 or Ly Griffin at (512) 463-4825, or email [EASignatureCards@cpa.texas.gov](mailto:EASignatureCards@cpa.texas.gov).

Sincerely,



Jennifer Smith  
Payment Operations Area Manager  
Fiscal Management Division

#### Attachments

cc: Rob Coleman, Fiscal Management Division Director, Texas Comptroller of Public Accounts  
Agency heads and CFOs at all audited agencies







# **Statewide Desk Audit**

## **Payment Approval Authority and Security**

**Audit Report #001-23-01**  
**December 4, 2023**

**Glenn Hegar**  
Texas Comptroller of Public Accounts



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# Executive Summary

## Purpose and Scope

The Texas Comptroller of Public Accounts (Comptroller's office) performed a desk audit of payment approval authorization and security at state agencies (agencies) and institutions of higher education (institutions).

The objectives of the audit were to determine whether agencies and institutions complied with Comptroller requirements for terminated and transferred employee authorization and Comptroller system access from Sept. 1, 2022, through Aug. 31, 2023. The audit was conducted in accordance with Texas Government Code, Section 403.071.

The audit scope included reviews of statewide system ad hoc reports, signature card database entries and staff system access. These included reviews of:

- A weekly Comptroller Statewide Security Administration (SSA) termination/transfer report to determine whether agencies and institutions notified the Comptroller's office to remove terminated employees authorized to approve payments from the agency's signature card.
- The weekly Comptroller SSA termination/transfer report to determine whether agencies and institutions requested system security access removal for terminated employees.
- An ad hoc report for payments released by unauthorized users to determine whether any of the terminated employees approved payments without authorization (after termination).
- A quarterly ad hoc report showing all users with access to the statewide systems at the time the report was run. Auditors compare users with access to approve payments to authorized users on the signature card database to determine whether there were any users with payment approval access who were never added to the signature card database. Failure to add a user may be the result of an agency or institution not notifying the Comptroller's office that the user would be approving agency payments at the time systems access was requested.
- A quarterly termination ad hoc report from the Standardized Payroll/Personnel Reporting System (SPRS) and the Human Resource Information System (HRIS) and comparison to weekly termination reports. This comparison allows auditors to determine whether all terminations were captured and addressed in this annual report if a related issue was discovered.
- An ad hoc report to verify that no employees who approved agency payments during this audit period also entered the same payments in the system without oversight.





## Background

**Expenditure Approvals and Certification (FPP B.007)** requires an individual who approves/releases payments (or payment batches) in the Uniform Statewide Accounting System (USAS), the Centralized Accounting and Payroll/Personnel System (CAPPS) or SPRS to be properly authorized. The agency or institution must complete and submit a voucher signature card and authorization letter to authorize staff to approve expenditures.

**Access Requirements for Comptroller Systems (FPP K.015)** requires the agency security coordinator (ASC) to ensure that no user has payment release/approval capabilities in USAS, SPRS or the Uniform Statewide Payroll/Personnel System (USPS) unless the user is authorized, is listed on a voucher signature card, and the Comptroller's office has been notified about the authorization.

## Audit Results

Auditors reviewed termination/transfer information at 131 agencies and institutions for 1,692 employees (1,211 terminated; 481 transferred). Auditors identified one to three findings in 31 of the 131 agencies and institutions involving 47 of the terminated/transferred employees. See Table 1 for a list of audited agencies and institutions. See Table 2 for results by agency and institution.



# Detailed Findings

## Failure to Notify Comptroller to Remove Terminated Employees from Signature Card

During the audit period, 29 agencies and institutions failed to timely notify the Comptroller's office about the termination of 36 employees designated to approve expenditures. The requests to remove the employees from the signature cards were sent two to 669 days late.

**34 Texas Administrative Code Section 5.61(k)(3)(B)** requires an agency to notify the Comptroller's office whenever a designated employee's authority to approve expenditures is revoked for any reason. The Comptroller's office must receive notification of the employee's termination no later than the fifth day after the effective date of the termination. Any officer or employee may send the Comptroller's office notification of termination or revocation.

Since the statute does not specify how the Comptroller's office must be notified about the terminations, the Comptroller's office accepts emails, faxes, letters, memorandums, or other written notices before the expiration date. The written notification must indicate:

- The designated employee has terminated employment.
- The agency revoked (or will revoke) the employee's security access.
- The effective date of the revocation or termination.

The risk of a terminated employee remaining on the signature card is that the employee could approve paper vouchers submitted to the Comptroller's office during that time. Any payment produced by a paper voucher that was approved by the terminated employee would constitute an unapproved expenditure. Auditors determined no unapproved documents were processed by these 36 employees during the audit period. See **34 Texas Administrative Code Section 5.61(k)(3)(B)** and **Expenditure Approvals and Certification (FPP B.007)**.

See Table 2 for agencies and institutions with this issue.

## Recommendation/Requirement

Agencies and institutions must ensure compliance with the terminated employee security revocation requirements. They must also ensure that the staff member responsible for sending the revocation notifications to the Comptroller's office is aware of any terminations on or before the dates the revocations become effective. The staff member also must follow up with the Comptroller's office to ensure it received the notifications and revoked system access.



## Failure to Request Security Access Removal for Terminated Employees

During the audit period, seven agencies and institutions failed to submit timely notice to remove security access for nine employees who were either terminated or whose authority to approve expenditures was revoked.

The lack of timely notice meant the employees retained security access to Comptroller systems for 11 to 376 days after termination. The employees could have approved expenditures submitted to the Comptroller's office during that time. Any expenditure that was approved under the employees' expired authority would have constituted an unapproved expenditure. Auditors ran a report to determine whether any expenditure was approved by the employees and noted that no expenditures were submitted after their termination dates.

When an employee's authority to approve an agency's expenditures is revoked for any reason, the employee's security profile must be changed not later than the effective date of the revocation or termination to prevent the employee from executing electronic approvals for the agency. See [34 Texas Administrative Code Section 5.61\(k\)\(5\)\(A\)-\(B\)](#).

When an employee's authority to approve an agency's expenditures is revoked for any reason, the employee's security profile must be changed no later than the effective date of the revocation or termination to prevent the employee from executing electronic approvals for the agency. Also see [Access Requirements for Comptroller Systems \(FPP K.015\)](#).

### Recommendation/Requirement

Agencies and institutions must ensure compliance with the terminated employee security revocation requirements. They must also ensure that the staff member responsible for sending the revocation notifications to the Comptroller's office is aware of any employee terminations on or before the dates the revocations become effective. The staff member also must follow up with the Comptroller's office to ensure it received the notifications and revoked system access.

## Employee Approved Payment Without Authority

During the audit period, one institution did not notify the Comptroller's office about the termination of one employee designated to approve expenditures. Additionally, the institution did not request system security access removal for the terminated employee.

The employee terminated on Jan. 1, 2022, but was rehired by the same institution on March 8, 2022. The Comptroller's office was not notified about the employee's termination or the rehiring. The lack of timely notification meant the employee remained listed on the institution's voucher signature cards and theoretically



retained access to the Comptroller's systems for 422 days after termination. Any payment produced by an electronic or paper voucher approved under the employee's expired authority would have constituted an unapproved expenditure since both the termination and the re-establishment of the employee access after rehiring were not reported. Auditors ran a report to determine whether any vouchers were approved by the employee between the original termination date and the audit review date. Between the rehire date and the date of the ad hoc report, the unauthorized employee approved 122 transactions totaling \$3,306,004.59.

Whenever a designated employee terminates employment with an agency, the Comptroller's office must receive notification of the employee's termination. See [34 Texas Administrative Code Section 5.61\(k\)](#).

### Recommendation/Requirement

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The institution must enhance its controls to ensure compliance with [34 Texas Administrative Code Section 5.61](#). The institution must ensure the staff member responsible for sending these notifications to the Comptroller's office is aware of the employee's termination on or before the termination becomes effective. The staff member also must follow up with the Comptroller's office to ensure it received the notifications and revoked system access.



# Tables

**Table 1: Audited Agencies and Institutions**

Agency #	Agency Name
101	Senate
102	House of Representatives
104	Legislative Budget Board
116	Sunset Advisory Commission
212	Office of Court Administration
215	Office of Capital and Forensic Writs
228	Court of Appeals - Eighth Court of Appeals District
229	Court of Appeals - Ninth Court of Appeals District
230	Court of Appeals - Tenth Court of Appeals District
234	Court of Appeals - Fourteenth Court of Appeals District
242	State Commission on Judicial Conduct
301	Governor - Executive
302	Attorney General
303	Texas Facilities Commission
304	Comptroller of Public Accounts
305	General Land Office
306	Texas State Library and Archives Commission
307	Secretary of State
308	State Auditor
320	Texas Workforce Commission
323	Teacher Retirement System of Texas
326	Texas Emergency Services Retirement System
327	Employees Retirement System of Texas
329	Texas Real Estate Commission – Semi-Independent
332	Texas Department of Housing and Community Affairs
347	Texas Public Finance Authority
356	Texas Ethics Commission
359	Office of Public Insurance Counsel
360	State Office of Administrative Hearings
362	Texas Lottery Commission
401	Texas Military Department
403	Texas Veterans Commission
405	Department of Public Safety





Agency #	Agency Name
409	Commission on Jail Standards
411	Texas Commission on Fire Protection
448	Office of Injured Employee Counsel – Administered by 454
450	Department of Savings and Mortgage Lending – Semi-Independent
451	Texas Department of Banking – Semi-Independent
452	Texas Department of Licensing and Regulation
454	Texas Department of Insurance
455	Railroad Commission of Texas
456	Texas State Board of Plumbing Examiners
457	Texas State Board of Public Accountancy – Semi-Independent
458	Texas Alcoholic Beverage Commission
460	Texas Board of Professional Engineers and Land Surveyors – Semi-Independent
466	Office of Consumer Credit Commissioner – Semi-Independent
469	Credit Union Department – Semi-Independent
473	Public Utility Commission of Texas
475	Office of Public Utility Counsel
476	Texas Racing Commission
477	Commission on State Emergency Communications
479	State Office of Risk Management
506	University of Texas M. D. Anderson Cancer Center
515	Texas State Board of Pharmacy
529	Health and Human Services Commission
530	Department of Family and Protective Services
537	Department of State Health Services
551	Department of Agriculture
554	Texas Animal Health Commission
555	Texas A&M AgriLife Extension Service
556	Texas A&M AgriLife Research
557	Texas A&M Veterinary Medical Diagnostic Laboratory
575	Texas Division of Emergency Management
576	Texas A&M Forest Service
578	State Board of Veterinary Medical Examiners
580	Texas Water Development Board
582	Texas Commission on Environmental Quality
601	Texas Department of Transportation
608	Texas Department of Motor Vehicles
644	Texas Juvenile Justice Department



Agency #	Agency Name
696	Texas Department of Criminal Justice
701	Texas Education Agency
706	Texas Permanent School Fund Corporation
710	Texas A&M University System
711	Texas A&M University
713	Tarleton State University
714	University of Texas at Arlington
715	Prairie View A&M University
716	Texas A&M Engineering Extension Service
717	Texas Southern University
718	Texas A&M University at Galveston
720	University of Texas System
721	University of Texas at Austin
723	University of Texas Medical Branch at Galveston
724	University of Texas at El Paso
727	Texas A&M Transportation Institute
729	University of Texas Southwestern Medical Center
730	University of Houston
731	Texas Woman's University
732	Texas A&M University - Kingsville
734	Lamar University
735	Midwestern State University
737	Angelo State University
738	University of Texas at Dallas
739	Texas Tech University Health Sciences Center
742	University of Texas of the Permian Basin
743	University of Texas at San Antonio
744	University of Texas Health Science Center at Houston
745	University of Texas Health Science Center at San Antonio
746	University of Texas Rio Grande Valley
750	University of Texas at Tyler
751	Texas A&M University - Commerce
752	University of North Texas
753	Sam Houston State University
754	Texas State University
755	Stephen F. Austin State University, a member of The University of Texas System
756	Sul Ross State University



Agency #	Agency Name
757	West Texas A&M University
759	University of Houston - Clear Lake
760	Texas A&M University - Corpus Christi
761	Texas A&M International University
763	University of North Texas Health Science Center at Fort Worth
764	Texas A&M University - Texarkana
765	University of Houston - Victoria
769	University of North Texas System
770	Texas A&M University - Central Texas
771	Texas School for the Blind and Visually Impaired
772	Texas School for the Deaf
773	University of North Texas at Dallas
774	Texas Tech University Health Sciences Center - El Paso
781	Texas Higher Education Coordinating Board
783	University of Houston System
784	University of Houston - Downtown
785	University of Texas Health Science Center at Tyler
789	Lamar Institute of Technology
802	Parks and Wildlife Department
808	Texas Historical Commission
809	State Preservation Board
902	Comptroller - State Fiscal
909	Comptroller - Texas Broadband Development Office
930	Texas Treasury Safekeeping Trust Company
Total — 131 State Agencies and Higher Education Institutions	

**Table 2: Audit Results by Agency and Institution**

Agency #	Agency Name	Audit Results
228	Court of Appeals - Eighth Court of Appeals District	Failed to timely remove one employee from signature cards.
230	Court of Appeals - Tenth Court of Appeals District	Failed to timely remove one employee from signature cards.
303	Texas Facilities Commission	Failed to timely remove one employee from signature cards.
304	Comptroller of Public Accounts	Failed to timely remove one employee from signature cards.
320	Texas Workforce Commission	Failed to timely remove one employee from signature cards.
327	Teacher Retirement System of Texas	<ul style="list-style-type: none"> <li>Failed to timely remove one employee from signature cards.</li> <li>Failed to timely request removal of systems access for one employee.</li> </ul>
332	Texas Department of Housing and Community Affairs	Failed to timely remove two employees from signature cards.
356	Texas Ethics Commission	Failed to timely request removal of systems access for one employee.
359	Office of Public Insurance Counsel	Failed to timely remove one employee from signature cards.
401	Texas Military Department	Failed to timely remove one employee from signature cards.
403	Texas Veterans Commission	<ul style="list-style-type: none"> <li>Failed to timely remove one employee from signature cards.</li> <li>Failed to timely request removal of systems access for one employee.</li> </ul>
405	Department of Public Safety	Failed to timely remove one employee from signature cards.
455	Railroad Commission of Texas	Failed to timely remove one employee from signature cards.
473	Public Utility Commission of Texas	Failed to timely remove one employee from signature cards.
476	Texas Racing Commission	Failed to timely request removal of systems access for one employee.
537	Department of State Health Services	Failed to timely remove one employee from signature cards.
554	Texas Animal Health Commission	<ul style="list-style-type: none"> <li>Failed to timely remove four employees from signature cards.</li> <li>Failed to timely request removal of systems access for three employees.</li> </ul>
578	State Board of Veterinary Medical Examiners	<ul style="list-style-type: none"> <li>Failed to timely remove one employee from signature cards.</li> <li>Failed to timely request removal of systems access for one employee.</li> </ul>
580	Texas Water Development Board	Failed to timely remove one employee from signature cards.
582	Texas Commission on Environmental Quality	Failed to timely remove two employees from signature cards.
713	Tarleton State University	Failed to timely remove one employee from signature cards.



Agency #	Agency Name	Audit Results
716	Texas A&M Engineering Extension Service	<ul style="list-style-type: none"> <li>Failed to timely remove one employee from signature cards.</li> <li>Failed to timely request removal of systems access for one employee.</li> <li>One employee approved 122 payments without authority.</li> </ul>
718	Texas A&M University at Galveston	Failed to timely remove one employee from signature cards.
730	University of Houston	Failed to timely remove one employee from signature cards.
732	Texas A&M University - Kingsville	Failed to timely remove one employee from signature cards.
742	University of Texas of the Permian Basin	Failed to timely remove one employee from signature cards.
744	University of Texas Health Science Center at Houston	Failed to timely remove one employee from signature cards.
752	University of North Texas	Failed to timely remove two employees from signature cards.
755	Stephen F. Austin State University, a member of The University of Texas System	Failed to timely remove one employee from signature cards.
771	Texas School for the Blind and Visually Impaired	Failed to timely remove one employee from signature cards.
773	University of North Texas at Dallas	Failed to timely remove two employees from signature cards.
Total – 31 State Agencies and Higher Education Institutions With 46 Issues Identified		



Texas Department  
*of* Motor Vehicles