



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

TxDMV Board Meeting

9:00 a.m.

Thursday, April 11, 2024

AGENDA
BOARD MEETING
TEXAS DEPARTMENT OF MOTOR VEHICLES
4000 JACKSON AVE., BUILDING 1, LONE STAR CONFERENCE ROOM
AUSTIN, TEXAS 78731
THURSDAY, APRIL 11, 2024
9:00 A.M.

The presiding officer of the Board of the Texas Department of Motor Vehicles (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 April 11, 2024, 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. 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. Recognition of Service - Paul Scott
 - B. Appointments to the Legislative and Public Affairs Committee
4. **Executive Director's Reports** - Daniel Avitia (BRIEFING ONLY)
 - 8 A. [Texas Independent Automobile Dealers Association \(TIADA\) Town Hall Meetings Update](#)
 - 9 B. [Advisory Committee Meetings Update](#)
 - 10 C. [Recognition of Donna Willis, Lynn County Tax Assessor-Collector](#)
 - 11 D. [Awards, Recognition of Years of Service, and Announcements](#)

CONTESTED CASE

- 12 5. **Proposal for Decision: Franchised Dealer's Notice of Protest of Dealership License Application; SOAH Docket No. 608-22-0344.LIC; Texas Department of Motor Vehicles No. 21-0017-LIC; [Doggett Auto Group, LLC d/b/a Doggett Ford, Protestant v. Chastang Enterprises-Houston, LLC d/b/a Chastang Ford, Applicant](#) - Laura Moriaty (ACTION ITEM)**
-

RULE ADOPTIONS

- 171 6. **Rule Review**
Rule Review Adoptions under Government Code, §2001.039: Chapter 206, Management; Chapter 215, Motor Vehicle Distribution; and Chapter 221, Salvage Vehicle Dealers - Laura Moriaty (ACTION ITEM)
(Published 12/29/23 - 48 TexReg 8393)
- 173 7. **Chapter 206, Management - David Richards (ACTION ITEM)**
Amendments: Subchapters A, B, C, E, F, G and H
New: §206.101
Repeal: Subchapter D
(Relating to Cleanup)
(Published 12/29/23 - 48 TexReg 8192)
- 218 8. **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)
(Published 12/29/23 - 48 TexReg 8202)
- 537 9. **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)
(Published 12/29/23 - 48 TexReg 8278)
- 613 10. **Chapter 217, Vehicle Titles and Registration - Annette Quintero (ACTION ITEM)**
Amendments: §217.63
(Relating to Digital License Plates)
(Published 12/29/23 - 48 TexReg 8265)
- 617 11. **Chapter 217, Vehicle Titles and Registration - Jimmy Archer (ACTION ITEM)**
Amendments: §217.56
(Relating to Cleanup)
(Published 12/29/23 - 48 TexReg 8262)
- 630 12. **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 Cleanup)
(Published 12/29/23 - 48 TexReg 8267)

- 658 13. **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)
(Published 12/29/23 - 48 TexReg 8274)

- 671 14. **New Chapter 224, Adjudicative Practice and Procedure** – Corrie Thompson
(ACTION ITEM)
(Relating to Adjudicative Practice and Procedure, including Contested Cases)
(Published 12/29/23 - 48 TexReg 8298)

RULE PROPOSALS

- 802 15. **Rule Review**
Rule Review Proposals under Government Code, §2001.039: Chapter 208, Employment Practices; and Chapter 223, Compliance and Investigations Division
- Laura Moriaty (ACTION ITEM)
- 804 16. **Chapter 223, Compliance and Investigations Division** - Corrie Thompson
(ACTION ITEM)
Amendments: §§223.1, 223.2 and 223.3
New: §223.5
Repeal: Subchapter B
(Relating to Cleanup)

BRIEFING AND ACTION ITEMS

- 819 17. **Specialty Plate Design** - Annette Quintero (ACTION ITEM)
Phi Beta Sigma - New Design Proposed under Transportation Code, §504.851
- 822 18. **Projects and Operations Committee Update** - Committee Chair John Prewitt
(BRIEFING ONLY)
- 834 A. Enterprise Projects (BRIEFING ONLY)
- 836 i. **Camp Hubbard Renewal Project**
- ii. **House Bill (HB) 718 Implementation**
- iii. **Regional Service Center (RSC) Expansions, Moves, and Renovations**
- RSC Expansions
- Odessa Remodel
- San Antonio Move
-

PAGE

837

B. Technology Projects - (BRIEFING ONLY)
i. [Registration and Title System \(RTS\) Replacement and Ecosystem Modernization](#)

839

ii. [Other Projects](#)
- Tax Assessor-Collectors (TAC) T1 Upgrade
- Okta
- Motor Carrier Credentialing System (MCCS) Rewrite
- Texas International Registration Plan (TxIRP) System Upgrade

841

iii. [Credit Cards in the RSCs](#)

842

iv. [Accounts Receivables Project](#)

19. Finance and Audit

843

A. [Semi-Annual Financial Report](#) - John Ralston (BRIEFING ONLY)

857

B. [Internal Audit Division Status Update](#) - Salem Chuah (BRIEFING ONLY)
- Internal Engagements
- Internal Audit and Advisory Services Contract

CLOSED SESSION

20. **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 551.074 - Personnel matters.

- Discussion relating to the appointment, employment, evaluation, reassignment, duties, discipline, and dismissal of personnel.
- Performance evaluation of Internal Auditor, including any modifications to compensation.

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.

21. Action Items from Closed Session

Performance evaluation of Internal Auditor, including any modifications to compensation

22. Public Comment

23. 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 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.

Board Meeting Date: 4/11/2024
BRIEFING ITEM

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 Updates

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

Update Board on stakeholder activities related to legislative implementation of House Bill 718.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

TxDMV staff has continued to participate in TIADA town hall events throughout the state. The association has invited department staff to continue participating in these events to share evolving information on the implementation of HB 718 – which replaces various temporary tags with metal plates – with dealers in diverse parts of the state. These events have been held in Corpus Christi, Donna (2 events), Abilene, Arlington, Lubbock and El Paso. An eighth event is scheduled for Austin at the end of April.

Department leadership and program staff have used these events as an opportunity to explain elements of the bill's implementation that will ultimately impact dealers directly, including mandated use of webDEALER, allocation of license plates, and plate security requirements and compliance. The feedback received from dealers participating in these events has provided the department with an opportunity to identify areas of the implementation requiring further consideration or development to properly address the dealer community's concerns.

To: Texas Department of Motor Vehicles Board
From: Daniel Avitia, Executive Director
Agenda Item: 4.B
Subject: Executive Director's Report - Advisory Committee Meetings Update

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

Update on advisory committee meetings that occurred in February and March 2024.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

The Vehicle Titles and Registration Advisory Committee (VTRAC), the Motor Vehicle Industry Regulation Advisory Committee (MVIRAC) and the Customer Service and Protection Advisory Committee (CSPAC) each met during February or March to consider and make recommendations on draft rule amendments to Chapter 215, Motor Vehicle Distribution, Chapter 217, Vehicle Titles and Registration, and Chapter 221, Salvage Vehicle Dealers. The draft changes were recommended by staff to implement HB 718 and HB 3297, 88th Legislature, Regular Session (2023); and to update Chapter 217, Vehicle Titles and Registration, as part of a quadrennial rule review.

The VTRAC, MVIRAC and CSPAC each provided staff with feedback and voted on recommendations for presentation to the Texas Department of Motor Vehicles Board (board). Department staff continues to seek feedback from stakeholders to further refine the draft amendments. Staff plans to present the draft amendments, the rule reviews, and the advisory committees' recommendations to the board at its June meeting.

Board Meeting Date: 4/11/2024
BRIEFING ITEM

To: Texas Department of Motor Vehicles Board
From: Daniel Avitia, Executive Director
Agenda Item: 4.C
Subject: Executive Director's Report - Recognition of Donna Willis, Lynn County Tax Assessor-Collector

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

TxDMV would like to commemorate the legacy of Donna Willis. Donna was elected as tax assessor-collector in 2013 and served the community and those around her with heart. As a member of the Tax Assessor-Collectors Association of Texas (TACA), Donna served in a leadership role, and worked very closely with TxDMV during legislative sessions, during monthly meetings, and with TxDMV staff to develop solutions to challenges and operations.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

No additional background and discussion.

To: Texas Department of Motor Vehicles Board
From: Daniel Avitia, Executive Director
Agenda Item: 4.D
Subject: Executive Director’s Report – Awards, Recognition of Years of Service, and 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 April 11, 2024, Board Meeting for state service awards and retirements include:

- Claudia Leal – Executive Director’s Office – achieved 20 years of state service.
- Stacy Steenken – Executive Director’s Office – achieved 20 years of state service.
- Robert Blech – Office of General Counsel Division – achieved 20 years of state service.
- Robert Rice – Enforcement Division – achieved 20 years of state service.
- Terina Buentello – Motor Vehicle Division – achieved 20 years of state service.
- Kenneth Fatheree – Enforcement Division – achieved 25 years of state service.
- Alicia Beck – Motor Carrier Division – achieved 40 years of state service.

The following individuals recently retired from the agency:

- Jennifer Schrier – Vehicle Titles and Registration Division - achieved 31 years of state service.
- Brenda Shelton – Enforcement Division – achieved 23 years of state service.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

No additional background and discussion.

Board Meeting Date: 4/11/2024
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Laura Moriaty, General Counsel
Agenda Item: 5
Subject: Proposal for Decision: Franchised Dealer’s Notice of Protest of Dealership License Application; SOAH Docket No. 608-22-0344.LIC; Texas Department of Motor Vehicles No. 21-0017-LIC; *Doggett Auto Group, LLC d/b/a Doggett Ford, Protestant v. Chastang Enterprises-Houston, LLC d/b/a Chastang Ford, Applicant*

RECOMMENDATION

No staff recommendation is being made. The contested matter is between a license holder and a license applicant.

PURPOSE AND EXECUTIVE SUMMARY

This contested case involves the protest of an application to relocate operations filed by Chastang Enterprises-Houston, LLC, d/b/a Chastang Ford (Chastang). The protest was filed Doggett Auto Group, LLC, d/b/a Doggett Ford (Doggett), a licensed Ford dealer. Doggett is licensed to sell one of the Ford truck line-makes for which Chastang is licensed.

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision (PFD). The parties submitted to the board a proposed Joint Motion to Dismiss and For Entry of a Final Order of Dismissal with Prejudice, along with a proposed Final Order of Dismissal with Prejudice. The Board is required to issue a final order in this case.

The Board may:

1. accept the agreed order of dismissal with prejudice; or
2. consider the PFD to determine whether Chastang established good cause for the relocation as required by Texas Occupations Code §2301.652 and issue an order in accordance with that determination.

Both parties provided timely notice of their intent to make oral presentations but did not submit written materials.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

On or about October 10, 2019, Chastang Ford submitted its application to TxDMV to relocate its Ford dealership from 6200 North Loop East, Houston, Texas 77026 (current site), to 3625 & 3669 Eastex Freeway, Houston, Texas 77026 (relocation site).

Doggett Ford filed a protest with TxDMV of Chastang Ford’s application to relocate. On October 4, 2021, TxDMV referred Doggett Ford’s protest to the State Office of Administrative Hearings (SOAH) for a contested case hearing and issued a Notice of Hearing to the parties.

A panel of two administrative law judges (ALJs) conducted a hearing on the merits on March 27–31 and April 3–4, 2023. The ALJs closed the record on August 22, 2023, and issued the PFD on October 17, 2023. The PFD found that Chastang met its burden of showing good cause for the relocation of its Ford dealership from its current site to the relocation site.

On November 1, 2023, Doggett filed exceptions to the PFD. Chastang filed a reply to Doggett's exceptions on November 8, 2023. The ALJs considered the exceptions and issued their exceptions letter on November 9, 2023, recommending no changes to the PFD.

The Board has jurisdiction to consider the contested case and to enter a final order. In determining whether Chastang established good cause for its relocation, Texas law requires the Board to consider seven factors listed in Texas Occupations Code §2301.652(a)(1)-(7).

Board Authority in this Contested Case

1. Texas Government Code §2001.056 allows for informal disposition of a contested case by an agreed settlement.
2. 43 Texas Administrative Code §215.316 provides that upon receipt of an agreed order, the board may adopt the settlement and issue a final order, reject the settlement, or take other action that the board finds just.
3. Texas Occupations Code §2301.652 (a)(1)-(7) sets out the requirements for a dealer to establish good cause for a license application following a protest:
 - a. whether the manufacturer or distributor of the same line-make of new motor vehicle is being adequately represented as to sales and service;
 - b. whether the protesting franchised dealer representing the same line-make of new motor vehicle is in substantial compliance with the dealer's franchise, to the extent that the franchise is not in conflict with this chapter;
 - c. the desirability of a competitive marketplace;
 - d. any harm to the protesting franchised dealer;
 - e. the public interest;
 - f. any harm to the applicant; and
 - g. current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area.
4. Texas Occupations Code §2301.709 requires the Board to issues a final order in this case.
5. Texas Government Code §2001.058(e) allows an agency to change a finding of fact or a conclusion of law made by the ALJ 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 a change made 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. October 17, 2023 SOAH ALJ PFD
2. November 1, 2023 Doggett's exceptions to the PFD
3. November 8, 2023 Chastang's Reply to Doggett's Exceptions to the PFD



Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

4. November 9, 2023 SOAH ALJs' Exceptions Letter
5. February 23, 2024 Joint Motion to Dismiss and Proposed Final Order

FILED
608-22-0344 TxDMV Board Meeting eBook
10/17/2023 1:38 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
April Bermea , CLERK

April 11, 2024

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

October 17, 2023

Mark A. Bankston and Philip Brashier
Attorneys for Protestant
Doggett Auto Group L.L.C., DBA Doggett Ford

VIA EFILE TEXAS

Leon V. Komkov and J. Bruce Bennett
Attorneys for Respondent
Chastang Enterprises-Houston L.L.C., DBA Chastang Ford

VIA EFILE TEXAS

**RE: Docket Number 608-22-0344.LIC; Texas Department of Motor
Vehicles No. 21-0017; *Doggett Auto Group, LLC d/b/a Doggett Ford*
*v. Chastang Enterprises-Houston, LLC d/b/a Chastang Ford***

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.

CC: Service List

SOAH Docket No. 608-22-0344

Suffix: LIC

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**DOGGETT AUTO GROUP, LLC D/B/A DOGGETT FORD,
PROTESTANT
V.
CHASTANG ENTERPRISES-HOUSTON, LLC, D/B/A
CHASTANG FORD,
APPLICANT**

TABLE OF CONTENT

- I. Legal Background2
- II. Jurisdiction, Notice, and Procedural History9
- III. Factual Background 13
 - A. Chastang Ford and its Current Location 13
 - B. The Proposed Relocation Site.....22
 - C. Doggett Ford 25
- IV. Key Disputed Issues28
 - A. Chastang Ford’s Need to Relocate29
 - 1. Chastang Ford’s Position29
 - 2. Doggett Ford’s Position42
 - 3. ALJs’ Analysis48

| | | |
|------|---|-----|
| B. | Relocation Distance and Significance of the Two-Mile Standing Requirement | 51 |
| C. | Chastang Ford’s Business Model | 54 |
| 1. | Market Position..... | 55 |
| 2. | The New Retail Locality | 60 |
| 3. | Doggett Ford’s Position | 63 |
| 4. | Chastang Ford’s Position..... | 67 |
| 5. | ALJs’ Analysis | 72 |
| D. | Competitive Impact on Doggett Ford | 78 |
| 1. | Chastang Ford’s Position..... | 78 |
| 2. | Doggett Ford’s Position | 83 |
| 3. | ALJs’ Analysis | 89 |
| V. | Good-Cause Factors | 94 |
| A. | Harm to Doggett Ford | 94 |
| B. | Harm to Chastang Ford | 96 |
| C. | Desirability of a Competitive Marketplace..... | 96 |
| D. | Substantial Compliance with Franchise | 97 |
| E. | Adequacy of Ford’s Representation..... | 100 |
| F. | The Public Interest | 100 |
| G. | Projected Economic, Financial, and Market Conditions | 102 |
| H. | Conclusion..... | 102 |
| VI. | Findings of Fact | 103 |
| A. | Procedural Background..... | 103 |
| B. | The Parties | 104 |
| C. | Chastang Ford’s Need to Relocate | 108 |
| D. | Relocation Site..... | 114 |
| E. | Impact of Relocation..... | 115 |
| F. | Additional Findings Regarding Section 2301.652 Factors | 118 |
| VII. | Conclusions of Law..... | 120 |

SOAH Docket No. 608-22-0344**Suffix: LIC**

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**DOGGETT AUTO GROUP, LLC D/B/A DOGGETT FORD,
PROTESTANT**

V.

**CHASTANG ENTERPRISES-HOUSTON, LLC, D/B/A
CHASTANG FORD,
APPLICANT**

PROPOSAL FOR DECISION

Chastang Enterprises-Houston, LLC, d/b/a Chastang Ford, a franchised Ford Motor Company (Ford) truck dealer presently licensed to operate at a location in northeast Houston, filed an application with the Texas Department of Motor Vehicles (DMV) for the license required to relocate those operations to a site elsewhere in that city. Chastang Ford's application was protested by Doggett Auto Group, LLC, d/b/a Doggett Ford, a Houston-based franchised Ford dealer that is licensed to sell one of the Ford truck line-makes for which Chastang Ford is licensed. The matter was referred to the State Office of Administrative Hearings (SOAH),

where the undersigned Administrative Law Judges (ALJs) conducted a contested-case hearing and prepared this Proposal for Decision (PFD) to DMV's governing body (Board).

As discussed further below, the ultimate issue to be determined in this proceeding is whether "good cause" exists for relocating Chastang Ford's dealership, considering the factors prescribed in Texas Occupations Code § 2301.652 and with Chastang Ford, as the applicant, bearing the burden of proof. Having considered those factors in light of the evidence presented, the ALJs conclude that Chastang Ford established good cause for the relocation. Accordingly, the ALJs recommend that the Board dismiss Doggett Ford's protest and direct DMV to continue processing Chastang Ford's application.

I. LEGAL BACKGROUND

Through Chapter 2301 of the Texas Occupations Code, the Legislature has delegated authority to the Board and DMV to regulate sales and distribution of motor vehicles in this State through means that include licensing several distinct categories of market participants.¹ These categories include a "franchised dealer," generally described as an individual or entity who is engaged in the business of buying, selling, or exchanging new motor vehicles, or repairing or servicing motor vehicles under a manufacturer's warranty, at a permanent place of business, pursuant to a contract with the manufacturer.² To engage in those activities, a franchised dealer must, in

¹ See generally Tex. Occ. Code ch. 2301.

² See Tex. Occ. Code § 2301.002(15)-(16), (27); Tex. Transp. Code § 503.001(8).

addition to obtaining a general distinguishing number under Chapter 503 of the Transportation Code, apply for and obtain a license from DMV under Chapter 2301 permitting it to sell and/or service the particular line-make for which it has contracted with the manufacturer.³ A franchised dealer must obtain a separate license for each separate and distinct physical premises and business facility at which it conducts those operations, termed a “dealership.”⁴ Similarly, before making any change in the location of a dealership, a franchised dealer must apply for and obtain a license for the new location.⁵

An application for a new motor vehicle dealer’s license, whether to create an entirely new dealership (also termed an “add point”) or relocate an existing one, is subject to protest by competing franchised dealers under certain circumstances. For either type of application, the Legislature has limited “standing” to protest to “a franchised dealer of the same line-make” whose dealership is located within either the same county in which the proposed dealership will be located or a fifteen-mile radius of that site.⁶ But for applications to relocate a dealership, the Legislature has imposed the further limitations, both as a general rule and specifically in an metropolitan “affected county” like Harris, that “[a] franchised dealer may not protest . . . if the proposed relocation site is not: (1) more than two miles from the

³ See Tex. Occ. Code §§ 2301.251(a)–(b), .252(a).

⁴ See Tex. Occ. Code §§ 2301.002(8), .257(c), .355.

⁵ See Tex. Occ. Code § 2301.257(c); 43 Tex. Admin. Code §§ 215.104(g), .108, .110.

⁶ See Tex. Occ. Code §§ 2301.652(b), .6521(b).

site where the dealership is currently located; or (2) closer to the franchised dealer than the site from which the dealership is being relocated.”⁷

Upon receipt of an application to relocate a dealership or create a new one, DMV “shall give notice of the filing of the application to each franchised dealer that may have standing to protest the application” and does not give any such notice “[i]f it appears to [DMV] that there are no dealers with standing to protest.”⁸ A dealer seeking to protest must then file with DMV a “notice of protest” in writing, signed by an authorized officer, explaining how that dealer meets the applicable standing requirements, asserting statutory grounds for the protest, and stating that the protest “is not made for purposes of delay or for any other purpose except for justifiable cause.”⁹ Upon receiving a timely protest, DMV is to refer the protest to SOAH, whose ALJs are to conduct a contested-case hearing, prepare a PFD, and recommend a final order on the protest.¹⁰ The Board or its delegee issues the final administrative order.¹¹

The issue to be decided in the protest proceeding, per Section 2301.652 of the Occupations Code, is whether “good cause” exists “for establishing the dealership”

⁷ Tex. Occ. Code §§ 2301.652(c), .6521(d); *see also id.* § 2301.6521(a) (defining “affected county” at relevant times to include a county with a population of one million or more, a bracket recently amended to 1.2 million). In either case, there is no dispute that Harris County is an “affected county,” such that § 2301.6521 governs standing to protest Chastang Ford’s application to relocate.

⁸ 43 Tex. Admin. Code § 215.105(b)–(c).

⁹ *See id.* §§ 215.105–.106, .119(a)–(b).

¹⁰ *See* Tex. Occ. Code §§ 2301.703–.704; 43 Tex. Admin. Code § 215.306(2).

¹¹ *See* Tex. Occ. Code §§ 2301.709, .711.

(whether in connection with relocating or as an add-point).¹² “In determining good cause,” Section 2301.652 further directs that the Board (and by extension SOAH ALJs) “shall consider” the following factors:

- (1) “whether the manufacturer or distributor of the same line-make of new motor vehicle is being adequately represented as to sales and service”;
- (2) “whether the protesting franchised dealer representing the same line-make of new motor vehicle is in substantial compliance with the dealer’s franchise, to the extent that the franchise is not in conflict with . . . [C]hapter [2301]”;
- (3) “the desirability of a competitive marketplace”;
- (4) “any harm to the protesting franchised dealer”;
- (5) “the public interest”;
- (6) “any harm to the applicant”; and
- (7) “current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for the new motor vehicles in the relevant market area.”¹³

¹² Tex. Occ. Code § 2301.652.

¹³ *Id.* § 2301.652(a).

But while these factors must be “consider[ed],” they are not in themselves elements that must each be proven in order for the applicant to prevail; rather, the “sole relevant issue” is the ultimate inquiry of whether “good cause” exists.¹⁴

Nor does Section 2301.652 explicitly prescribe any particular weight to be given any factor or factors; rather, such weighing is left to the Board’s discretion.¹⁵ However, precedent of the Board or its predecessors (Board) has recognized that the factors collectively—and most directly in the first, third, and fifth factors (adequate representation, desirability of a competitive market, and public interest, respectively)—reflect a primary overarching objective of promoting a competitive marketplace.¹⁶ Such benefits as “lower prices and better service naturally result[] from increased competition.”¹⁷ It follows that the public interest strongly favors as many dealers to choose from as possible, albeit to a point—if dealerships oversaturate the market, competition can render them financially inviable or unable to serve the public, to a degree that ultimately harms competition and, in turn,

¹⁴ E.g., *Grubbs Nissan Mid-Cities, Ltd. v. Nissan N. Am., Inc.*, No. 03-06-00357-CV, 2007 WL 1518115, at *4 (Tex. App.—Austin 2007, pet. denied) (mem. op.); *Gene Hamon Ford, Inc. v. David McDavid Nissan, Inc.*, 997 S.W.2d 298, 306 (Tex. App.—Austin 1999, pet. denied).

¹⁵ See *Grubbs Nissan Mid-Cities, Ltd.*, No. 03-06-00357, 2007 WL 1518115, at *4 (citing *Austin Chevrolet, Inc. v. Motor Vehicle Bd.*, 212 S.W.3d 425, 432 (Tex. App.—Austin 2006, pet. denied)); *Meier Infinity Co. v. Motor Vehicle Bd.*, 918 S.W.2d 95, 100 (Tex. App.—Austin 1996, writ denied).

¹⁶ See, e.g., *UV Country, Inc. v. Mainland Cycle Center, LLC*, Docket No. 10-0045-LIC (2011), Final Order at 3; *Allen Samuels Austin Dodge, Inc. d/b/a Allen Samuels Dodge d/b/a Allen Samuels Heart of Tex. Dodge v. Prestige Chrysler Northwest, Ltd. d/b/a Maxwell Dodge*, Docket No. 04-0011.LIC (2006), Proposal for Decision (PFD) at 37 (quoting *Williams Chrysler-Plymouth, Inc. d/b/a Williams Jeep-Eagle v. French Jeep/Eagle, Inc. & Chrysler Corp.*, Docket No. 91-171 (1993), PFD at 9–10).

¹⁷ *Rockwall Imports v. The Allee Corp.*, Docket No. 09-0014.LIC (2012), PFD at 87 (citing *Austin Chevrolet, Inc.*, 212 S.W.3d at 433–34).

consumer welfare.¹⁸ Accordingly, “[i]f increased competition can be shown to be unhealthy and ultimately harmful to consumers, it may weigh against granting an application.”¹⁹ This context also informs the meaning and weighing of Section 2301.652’s other factors, particularly “any harm to the protesting franchised dealer” and “any harm to the applicant.”²⁰

Further, drawing a distinction also implicit in the Legislature’s differing standing requirements for protests, the Board has recognized that an application to relocate a dealership would tend to impact competition in a different and more limited way than an add-point application. As the Board has observed,

[T]he impact of adding another dealer in a market area and thereby increasing the number of dealers to serve the market[] presents issues that are considerably different than the issues concerning the effect of simply moving a dealer from point A to point B, particularly when the distance between points A and B is small . . . [I]n [the latter] situation . . . the competitive nature of the market place remains unchanged as the number of dealers is not altered.²¹

That is to say, an add-point case would entail market resegmentation among a larger pool of competing dealerships, whereas a relocation case would entail, all other things being equal, merely a geographic repositioning of a single existing dealership

¹⁸ See, e.g., *Rockwall Imports*, PFD at 87 (citing *Austin Chevrolet, Inc.*, 212 S.W.3d at 433–34); *UV Country, Inc.*, Final Order at 3; *Don Davis Nissan Grapevine, Inc. v. Grubbs Nissan Mid-Cities, Ltd.*, Docket No. 03-0023.LIC (2006), PFD at 15; *Lone Star Cadillac v. Rodger Meier Cadillac*, Docket No. 344 (1985), PFD at 8.

¹⁹ *UV Country, Inc.*, Final Order at 3.

²⁰ *UV Country, Inc.*, Final Order at 3; see also, e.g., *Ochsner v. Ochsner*, 517 S.W.3d 717, 721 (Tex. 2016) (“We look to the statutory scheme as a whole in order to establish the meaning of [the provision at issue], not to snippets taken in isolation.”).

²¹ *Williams Chrysler-Plymouth, Inc.*, PFD at 5–6; see also Final Order (July 10, 1991) (adopting PFD).

within the same market.²² In light of these differences, the Board in dealership-relocation cases has placed primary emphasis on whether the relocation of the existing dealership (as opposed to adding a new dealership) is in the public interest and the potential harm it would cause to the protesting dealer, with adequacy of representation also coming into play as a counter to a protestant's claim of harm.²³ However, this does not mean that the potential competitive effects of the relocation are viewed in a vacuum, as if the applicant dealership with its currently existing operations and facilities was simply picked up and placed unaltered at the new location. For example, the effects of constructing a new and improved facility for a relocating dealership may be relevant in assessing the competitive harm to the protesting dealer.²⁴

The applicant (here, Chastang Ford) bears the burden of proof (*i.e.*, of persuading the fact-finder) on the ultimate issue that good cause exists for the relocation, although each party would bear the burden of production (*i.e.*, of coming forward) as to any evidence relevant to a good-cause factor that would be favorable to it.²⁵ The standard of proof is by a preponderance of the evidence.²⁶

²² *Momentum BMW, Ltd., d/b/a Momentum Porsche v. Don McGill Imports, Inc., d/b/a Don McGill Porsche*, Docket No. 91-091 (1991), PFD at 3.

²³ *Maund, Inc., d/b/a Maund Toyota v. Apple Imports, Inc., d/b/a Apple Toyota*, Docket No. 93-126 (1993), PFD at 2; *Momentum BMW, Ltd.*, PFD at 3.

²⁴ *Allen Samuels Austin Dodge, Inc.*, PFD at 44.

²⁵ See Tex. Occ. Code § 2301.652; 1 Tex. Admin. Code § 155.427.

²⁶ See *Granek v. Tex. St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.); *Sw. Pub. Serv. Co. v. Pub. Util. Comm'n of Tex.*, 962 S.W.2d 207, 213–14 (Tex. App.—Austin 1998, pet. denied).

II. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Chastang Ford presently holds a franchised-motor-vehicle-dealer license authorizing it to sell and provide warranty service on the Ford Light Truck (LT) and Ford Medium Truck (MT) line-makes at the physical location of 6200 North Loop East (*i.e.*, Loop 610) in Houston, Harris County, Texas.²⁷ On October 10, 2019, Chastang Ford submitted the application at issue to DMV, in which it seeks to relocate its dealership operations to 3625 and 3669 Eastex Freeway (a/k/a Interstate 69 and U.S. 59), also in Houston.²⁸ In connection with the application, Ford has issued an Evidence of Relocation Approval certifying to DMV its approval of the proposed relocation.²⁹ Ford has also issued an initial and superseding Conditional Letter of Approval to Chastang Ford, the latter of which sets a deadline of December 31, 2025, for Chastang Ford to complete and occupy the new dealership facilities.³⁰ According to Joe Chastang, Chastang Ford's President and Dealer Principal, Ford has advised him that it will grant further extensions of this deadline so long as they are made necessary by the pendency of protests to the relocation.

Although DMV determined initially that no dealers were eligible to protest the application,³¹ in fact the distance of the proposed relocation is measured as 2.089 miles, or roughly 152.5 feet beyond the two-mile minimum referenced in the

²⁷ Ex. A-86. Chastang Ford's exhibits are identified by the letter A (for Applicant), while Doggett Ford's are identified by the letter P (for Protestant).

²⁸ Exs. P-1, P-2.

²⁹ Ex. A-12; *see* Tex. Occ. Code § 2301.464.

³⁰ Ex. A-11.

³¹ Ex. P-3.

applicable standing requirements.³² Ultimately, two dealers filed protests, including Doggett Ford.

Doggett Ford is a franchised Ford dealer that, like Chastang Ford, is licensed to sell and perform warranty service on the Ford Light Truck line-make.³³ However, unlike Chastang Ford, Doggett Ford is presently not licensed for the Ford Medium Truck line-make but is licensed for the Ford AA-Passenger Auto line-make.³⁴ Doggett Ford's licensed location is 9225 North Freeway (Interstate 45) in Houston,³⁵ which is within Harris County, approximately seven miles from Chastang Ford's proposed relocation site, and about 0.9 air miles closer to that site than Chastang Ford's current location.³⁶ There is no dispute that these facts, together with the just-over-two-miles distance of Chastang Ford's proposed relocation, establish Doggett Ford's standing to bring its protest, at least with respect to the Ford Light Truck line-make.³⁷

³² Ex. A-28.

³³ Exs. A-87, A-88.

³⁴ Exs. A-87, A-88.

³⁵ Exs. A-87, A-88.

³⁶ Exs. A-21 at A21-0071, P-11.

³⁷ See Tex. Occ. Code §§ 2301.652-.6521; 43 Tex. Admin. Code § 215.119(a), (b)(3), (e)(1)-(3). However, while Doggett Ford had standing under either construction, the parties disagree as to whether "may not protest . . . if the proposed relocation site is not: (1) more than two miles from the site where the dealership is currently located; or (2) closer to the franchised dealer than the site from which the dealership is being relocated" imposes two alternative requirements, either of which may be met to establish standing, or requires that the protestant meet both requirements. The ALJs address that issue as it becomes relevant to the merits. See *infra* Section IV.B.

DMV referred Doggett Ford's protest to SOAH on October 4, 2021, and issued a Notice of Hearing on the following day.³⁸ The hearing on the merits was held on March 27–31 and April 3–4, 2023, before ALJs Robert Pemberton and Joshua C. Fiveson. Chastang Ford was represented by counsel Leon V. Komkov and J. Bruce Bennett, while Doggett Ford was represented by counsel Mark Allan Bankston, Philip C. Brashier, and George A. Kurisky, Jr. The proceedings were recorded stenographically by certified shorthand reporters from Kennedy Reporting Services, Inc., who prepared a transcript that serves as the official record.³⁹

At the outset of the hearing, the ALJs admitted exhibits from each party, having ruled on admissibility and any objections during a prehearing conference.⁴⁰ In its direct case, Chastang Ford presented the live testimony of (1) Joe Chastang; (2) its General Manager, Patrick Chastang; (3) its Parts Manager, John Smith; (4) its Vice President of Sales, Dan Miller; (5) and expert witness Joseph R. Roesner. Doggett presented the live testimony of (1) its Chief Executive Officer, Brian McLemore; (2) its Controller, Shawn Lewis; (3) expert witness Cristina Benton, Ph.D.; and (4) its General Manager, Jason Mosley. In rebuttal, Chastang presented (1) further live testimony from Mr. Joe Chastang; (2) live testimony from expert

³⁸ The second protest to Chastang Ford's relocation, made by Tommie Vaughn Motors, Inc., was referred and docketed as SOAH Docket No. 608-22-0643.LIC and assigned to ALJ Rebecca Smith. A subsequent motion by the protesting dealers to consolidate the two proceedings, opposed by Chastang Ford, was denied by ALJs Pemberton and Smith.

³⁹ The proceedings were transcribed in a separate volume for each day, respectively numbered 1–7 and each daily volume having its own internal pagination. References will be cited as “[volume number] Tr. [page].”

⁴⁰ 1 Tr. 4–9; *see also* 7 Tr. 2–3 (recap of the exhibits that were admitted); Chastang Ford's “Amended Exhibit List” filed on March 30, 2023; Doggett Ford's “Fifth Amended Exhibit List” filed on March 29, 2023. In addition to admitting these exhibits, the ALJs have taken official notice of the referral materials, orders, and other contents of the SOAH case file.

witness Stephen Pearse; and (3) further expert testimony from Mr. Roesner.

In addition to the live testimony, each party's exhibits also included excerpts of deposition testimony from these witnesses and others. Chastang Ford presented deposition testimony from its employees Miller and Smith; from additional Chastang Ford employees Amanda Chastang Venghaus, Dennis Venghaus, Tony Rodriguez, and Greg Whitworth; from its expert Pearse; from Doggett Ford employees McLemore, Lewis, and Mosley; and from two Ford Motor Company employees, Adam Tidwell and Kevin McGuirk.⁴¹ Doggett Ford presented deposition testimony from its employees McLemore, Lewis, and Mosley; from its expert Benton; from Chastang personnel Joe Chastang, Patrick Chastang, the Venghauses, Miller, Rodriguez, Smith, and Whitworth; from Chastang Ford expert Pearse; and from the Ford employees Tidwell and McGuirk.⁴²

By agreement, the ALJs ordered the record held open until August 22, 2023, to allow for the preparation and filing of the transcript, post-hearing briefs, and proposed findings of fact and conclusions of law.⁴³

⁴¹ Exs. A-95 (Ms. Venghaus), A-96 (Mr. Venghaus), A-97 (Rodriguez), A-98 (Whitworth), A-99 (Miller), A-100 (Smith), A-101 (McLemore), A-102 (Pearse), A-103 (Mosley), A-104 (Lewis), A-105 (Tidwell), A-106 (McGuirk).

⁴² Exs. P-217 (McLemore), P-218 (Mosley), P-219 (Lewis), P-220 (Dr. Benton), P-221 (Joe Chastang), P-222 (Patrick Chastang), P-223 (Mandy Chastang Venghaus), P-224 (Dennis Venghaus), P-225.2 (Miller), P-226 (Rodriguez), P-227 (Smith), P-228 (Whitworth), P-229 (Tidwell), P-230 (McGuirk), P-234 (Pearse).

⁴³ Counsel requested this extended briefing period because they were also representing the respective sides in the Tommie Vaughn Motors protest proceeding and were anticipating the demands of an imminent contested-case hearing in that case.

III. FACTUAL BACKGROUND

A. CHASTANG FORD AND ITS CURRENT LOCATION

As the entity's name suggests, Chastang Ford is owned directly or indirectly by members of the Chastang family—Joe Chastang; his wife, Mary; and their adult children, Patrick Chastang and Amanda (Mandy) Chastang Venghaus.⁴⁴ Family members are also actively involved in operating the business.⁴⁵ Currently, Joe, the founder, is President and Dealer Principal, while son Patrick is General Manager.⁴⁶ Daughter Mandy, a CPA, served as the business's Chief Financial Officer before assuming a vice-president role that allows her more flexibility in devoting time to her young children.⁴⁷ In Mandy's stead, her husband (and Joe and Mary's son-in-law), Dennis Venghaus, has assumed the CFO role.⁴⁸ In total, Chastang Ford employed approximately ninety-five to one hundred individuals by time of hearing.⁴⁹ At present, the company leadership is transitioning toward Patrick, Mandy, and Dennis "running everything" and Joe "stepping back" from day-to-day business

⁴⁴ 1 Tr. 124-26; Ex. A-79 at A79-0001 through 0002 (printout from "About Chastang" webpage); Ex. P-1 at 283-84; Ex. P-221 at 58-61. The website also notes that the family's roots in the auto industry date back to 1933, when Joe's father, "Louisiana native Claude Chastang[,] decided that the family business of being a carpenter wasn't for him and instead found a job selling vehicles in downtown Houston." Ex. A-79 at A79-0001.

⁴⁵ Given the prevalence of the Chastang surname among the witnesses and participants in the underlying events, the ALJs will sometimes dispense with the customary formality and use their first names for clarity.

⁴⁶ 1 Tr. 48, 258; 2 Tr. 2-4; Ex. A-79 at A1-0001 through 0002.

⁴⁷ 1 Tr. 258-59; Ex. A-79 at A79-0002; Ex. P-233 at 8, 13, 18-20.

⁴⁸ Ex. P-223 at 18-20.

⁴⁹ 2 Tr. 30.

operations,⁵⁰ a new phase of a more-than-forty-year auto-industry career that has also included serving in leadership roles among his professional peers.⁵¹

Chastang Ford's current licensed location, 6200 North Loop East, consists of a 5.992-acre lot with improvements that it leases from a corporation controlled by Joe Chastang that originally also owned the dealership.⁵² An aerial photograph depicting the property and its environs is provided below.⁵³



⁵⁰ 1 Tr. 259; Ex. P-221 at 55.

⁵¹ 1 Tr. 48-52; Ex. A-79 at A79-0001 through 0002. These roles have included serving two terms as President of the Houston Auto Dealers Association, elected board membership and chairmanship for the Texas Auto Dealers Association, and board membership and chairmanship for the Ford Minority Dealers Association. 1 Tr. 51-52.

⁵² The corporation, Chastang Ford, Inc., initially owned both the realty and the dealership business but subsequently conveyed the business to the LLC that is the party here. 1 Tr. 51-52, 124-26; Ex. P-221 at 59. For ease of reference, the ALJs have used "Chastang Ford" when discussing actions and events involving both the current and predecessor dealership entities unless the distinction is material. Similarly, they have not belabored intervening changes in the dealership's trade name. Ex. A-1 at A1-0001; Ex. P-22. The ALJs have also used "the Chastangs" occasionally when describing events that may involve multiple family members and/or family-owned entities.

⁵³ Ex. A-26.

The lot, outlined in red, is bordered toward the north (the top in the photo) by a public roadway that carries exiting traffic one-way eastbound from Loop 610. Running alongside the lot's eastern boundary (the right side in the photo) is another public roadway, Blaffer Street, that provides the sole access via a driveway that is visible at roughly the midpoint of that side; there is no access from the Loop 610 frontage. To the south (bottom) is a private roadway owned by a neighboring business, Utility Trailer, whose facilities are located to the west (left) and south.⁵⁴ Along portions of the lot's southern and western boundaries, in what appears in the photo as a darker "L" shape, is a retention pond and adjacent drainage features that reduce the lot's usable space to approximately five acres.⁵⁵ Also visible are many vehicles parked throughout the property, including a number of large vehicles that are double- and triple-parked toward the northwest corner. As discussed below, Chastang Ford asserts that the double- and triple-parking of vehicles is typical of conditions during business hours and illustrates overcrowding problems it is experiencing.

Before housing the Chastang Ford dealership, the property at 6200 North Loop East had been the location of a Volvo White GMC "heavy truck" dealership that Joe Chastang had managed and later acquired, along with the realty, during the 1990s.⁵⁶ That business reportedly grew to become the largest Volvo truck dealership in the nation,⁵⁷ and under Chastang ownership the buildings were renovated and

⁵⁴ 1 Tr. 103; 2 Tr. 29, 132.

⁵⁵ 1 Tr. 66-67; Ex. A-26.

⁵⁶ 1 Tr. 49-52, 98-99; Ex. A-79 at A79-0001.

⁵⁷ Ex. A-79 at A79-0001.

expanded to have essentially the same dimensions as today. This included, in 2002, a significant addition to the structure that houses the repair shop (the gray building located to the north in the photo, with an adjacent sales and office area shown in white) and the construction of a parts warehouse (the rectangular building toward the south).⁵⁸ With the expansion of the repair shop, the dealership had thirty-one service bays.⁵⁹ The then-new parts warehouse was build to accommodate about \$700,000 worth of parts.⁶⁰

Following a corporate restructuring of Volvo White GMC, the Chastangs ended their business relationship with that company but continued at the same location as a franchised heavy-truck dealer for Autocar, which Joe Chastang described as an “offshoot” of Volvo that manufactures, as pertinent here, the chassis or “truck part” of a garbage truck.⁶¹ Additionally, in 2003, the Chastangs acquired a franchised Ford truck dealership formerly known as Bayou City Ford—today’s Chastang Ford.⁶² Somewhat ironically, as future events would transpire, the location of Bayou City Ford and predecessor Ford dealerships had been, for over thirty years, at 3625 Eastex Freeway—a portion of the very site to which Chastang Ford now

⁵⁸ 1 Tr. 63-66; Ex. A-26.

⁵⁹ See Applicant’s Reply Brief (App. Reply Br.) at 8 (citing Ex. A-17 at A17-0007). This differed slightly from a rough figure given by Joe Chastang, who had indicated “[a]round 29.” 1 Tr. 109.

⁶⁰ 2 Tr. 189-90.

⁶¹ 1 Tr. 51-52, 188-89; 2 Tr. 19; Ex. P-221 at 148-49. As of time of hearing, the Chastangs had not applied to relocate their Autocar dealership. Joe Chastang testified that he had not yet decided whether they would do so, adding that this decision would be made after the Chastang Ford protests were resolved. 1 Tr. 193-95.

⁶² 1 Tr. 51-52, 124-26.

seeks to relocate.⁶³ And, in connection with the acquisition, Joe Chastang caused the Ford dealership to make the obverse relocation successfully, to the Chastang-owned facilities at 6200 North Loop East.⁶⁴ Explaining his decision to make that move, Mr. Chastang observed that the 6200 North Loop East facilities had then recently been “redone” and were “up-to-date,” whereas the Bayou City Ford facilities, which had not been part of the acquisition, were “rundown [and] would have been more expensive . . . to buy . . . and redo.”⁶⁵ He added that the 6200 North Loop East facilities were “plenty big enough and very adequate” relative to the volume of business that the Ford dealership was doing “at the start,” in 2003.⁶⁶

Under both its Bayou City Ford and Chastang Ford iterations, the dealership has been classified by Ford as a “truck center” (also termed a “900 store,” an allusion to its Ford dealer code), a specialized type of Ford dealership dedicated exclusively to selling and servicing new trucks and no cars; it is the sole such dealership in the Greater Houston area and one of only four or five in Texas.⁶⁷ From its inception, Chastang Ford’s franchise agreement with Ford (termed Sales and Service Agreement) has authorized it to sell or perform warranty service on only new “trucks” manufactured by that company, or more specifically those below the F-850

⁶³ 1 Tr. 97–98, 182–83.

⁶⁴ *Id.*

⁶⁵ 1 Tr. 98–99.

⁶⁶ *Id.*

⁶⁷ 1 Tr. 52–54; 2 Tr. 209–10; Ex. A-105 at A105-19.

series.⁶⁸ Correspondingly, Chastang Ford’s license with DMV to sell and service the Ford Medium Truck line includes the F-650 and F-750 “Super Duty” truck models, while its license for the Ford Light Truck line encompasses the “Super Duty” truck models from F-550 down to F-250, the F-150 pickup truck, and smaller pickups like the Ranger. However, the Light Truck license also encompasses a variety of other vehicles considered by Ford to fall within this “truck” line, including vans, sports-utility vehicles like the Bronco or Explorer, and “crossover” utility vehicles like the Edge and Mustang Mach-E.⁶⁹ Chastang Ford is not, nor has it ever been, licensed to sell or service new Ford passenger cars, although this would exclude only the gasoline-powered Mustang today.⁷⁰

In addition to its truck specialization, Chastang Ford, like Bayou City Ford before it, has historically differed from other Ford dealerships in having a primary focus on “fleet” business.⁷¹ As the parties seem to agree, “fleet” sales or customers, at least as Ford defines them, refers to new-vehicle purchases made by customers that have obtained a “fleet ID” account with Ford by virtue of owning multiple vehicles (the minimum apparently being fifteen) and enjoy volume-based incentives

⁶⁸ 1 Tr. 54; Ex. A-1 at A0001 through 0003, 0007 (“Ford Truck Sales and Service Agreement” with Chastang Enterprises, Inc., dated October 20, 2003). Incident to the intervening restructuring of the business, Chastang Ford was substituted for the corporation as the dealership party through an otherwise-nonsubstantive addendum. 1 Tr. 62.

⁶⁹ 1 Tr. 24–26, 58–60; Ex. A-86; 2 Tr. 77–78; *see also* Ex. A-3 (“The Family of Ford Trucks” brochure illustrating various truck and van models). That is to say, as Doggett Ford’s counsel noted during his cross-examination of Joe Chastang, the Chastangs cannot sell new Mustangs, at least of the traditional or “classic” variety, despite the seeming potential for clever rhymed marketing. 1 Tr. 247.

⁷⁰ 1 Tr. 176; 2 Tr. 77.

⁷¹ 1 Tr. 53, 57.

when making new-vehicle purchases under that account.⁷² Given the scale required, fleet customers typically consist of businesses and municipalities of substantial size that are purchasing work vehicles.⁷³ For example, Chastang Ford’s fleet customers include CenterPoint Energy, a large electric and gas utility.⁷⁴ In contrast, a new-vehicle purchase that is not a fleet purchase is classified by Ford as a “retail” purchase.⁷⁵

Along with fleet sales, Chastang Ford has also focused more broadly on selling trucks intended for use as work vehicles, whether made as fleet purchases or as non-fleet purchases by smaller enterprises like plumbers or electricians. The parties have used the term “commercial” sales to denote this broader universe of work-related purchases,⁷⁶ and the ALJs will also. Joe Chastang estimated that 85 percent of the dealership’s new-vehicle sales from 2019 to the time of hearing were fleet or other commercial business.⁷⁷ These would encompass, in his view, “probably half” of the sales that were reported to Ford as “retail” (*i.e.*, non-fleet sales), including all sales of the largest Ford trucks it carries, the F-650s through F-750s, *i.e.*, the Medium Truck line-make, which as a practical matter would be intended for a work

⁷² Applicant’s Opening Brief (App. Op. Br.) at 3 n.1; Protestant’s Post-Hearing Response Brief (Prot. Br.) at 16 n.1; *see* 1 Tr. 55–57, 244–45; 2 Tr. 61–63.

⁷³ 1 Tr. 55.

⁷⁴ 1 Tr. 57, 68.

⁷⁵ 1 Tr. 56–57, 244–45, 265; 2 Tr. 59–63, 84, 236–37; *see, e.g.*, Ex. A-18 at A18-0003 through 0005 (financial statements distinguishing between fleet and retail sales within various vehicle categories).

⁷⁶ 1 Tr. 55; 2 Tr. 59–60, 61–63, 202.

⁷⁷ 1 Tr. 57.

application.⁷⁸ (In fact, in financial statements, Ford categorizes this range of truck models, together with the largest trucks in the Light Truck line-make, the F-450s through F-550s, as “commercial” trucks).⁷⁹ He added that Chastang Ford’s retail sales in recent years included “a lot” of trucks that fleet customers bought at retail, foregoing their fleet accounts and incentives, due to Pandemic-related supply shortages.⁸⁰

A comparison of Ford financial statements in evidence confirms that Chastang Ford’s fleet sales of new trucks and both its fleet and retail sales of models F-450 and above have characteristically been much higher, both numerically and percentagewise, than the averages of Houston-area Ford dealers (more specifically those in “Zone A” of Ford’s “Houston region”).⁸¹ In fact, on a dealership website, Chastang Ford represents that it “became one of the top 100 commercial and fleet vehicle Ford dealerships in the country” within less than a decade of opening at 6200 North Loop East.⁸² Conversely, Chastang Ford’s retail sales of the smaller Light Truck models have been below Zone A average levels, including models popular with retail consumers purchasing for personal use, like the F-150 and Super

⁷⁸ 1 Tr. 57, 60-61.

⁷⁹ See, e.g., Ex. A-18 at A18-0004 (showing Ford’s classification of the two truck categories within “Commercial Trucks”).

⁸⁰ 1 Tr. 56-57.

⁸¹ See Exs. A-13 at A13-0004, A-14 at A14-0004, A-15 at A15-0004, A-16 at A16-0003, A-17 at A17-0003 through 0004, A-18 at A18-0003 through 0004, A-92 at A92-0004, A-93 at A93-0003 through 0004, A-94 at A94-0003 through 0004. See generally Ex. A-102 at A102-0029 (Zone A of Houston Region consists of Chastang Ford, Doggett Ford, Tommie Vaughn Motors, Joe Myers Ford, Russell & Smith Ford, Tomball Ford, Helfman Ford, Randall Reed’s Planet Ford, Gullo Ford of Conroe, Bill Fick Ford, Planet Ford Lincoln, Sterling McCall Ford, and Henson Ford).

⁸² Ex. A-79 at A79-0001.

Duty 250 pickups and SUVs such as the Explorer, Expedition, or recently resurrected Bronco.⁸³ The differences reflect that the other Ford dealerships have generally been focused on selling new vehicles to retail consumers for personal use, in the manner of what might be termed the “normal” or “typical” type of “car dealer” most familiar to the populace at large, whereas Chastang Ford has focused on selling work vehicles. For example, Patrick Chastang acknowledged that Chastang Ford’s sales of new SUVs were barely half of the Ford Houston region’s overall average, observing that such sales were “just not something we focus on.”⁸⁴

Fleet and commercial customers have also been a foundation of Chastang Ford’s service business. Joe Chastang estimated that an even higher percentage than with new-vehicle sales, exceeding eighty-five percent, had come from fleet and other commercial customers during the last five years.⁸⁵ Chastang Ford also does significant business in selling parts used to repair Ford trucks, ninety percent of which is wholesale, selling to fleet customers that have their own in-house service departments and to independent garages throughout the Greater Houston area.⁸⁶

As a final introductory note, Chastang Ford, its witnesses, and others during the hearing or briefing have used the term “retail” sales at times to refer more specifically to vehicles purchased for personal rather than work use, *i.e.*, as a term of

⁸³ See Exs. A-15 at A15-0004, A-16 at A16-0003, A-17 at A17-0003, A-18 at A18-0003, A-92 at A92-0004, A-93 at A93-0003, A-94 at A94-0003.

⁸⁴ 2 Tr. 54-56; Ex. A-6 at A6-0001.

⁸⁵ 1 Tr. 57-58.

⁸⁶ 1 Tr. 75, 190; 2 Tr. 158-61, 195-96; Ex. A-100 at A100-0019.

contrast with commercial purchases.⁸⁷ That is to say, “retail” in this sense refers to one type of non-fleet sales that, along with commercial non-fleet sales, would be included in the sales that Ford terms “retail” sales (or as Joe Chastang put it, to denote the “retail-retail” sales that get included along with “commercial-retail” sales in what Ford considers “retail” sales).⁸⁸ This divergent usage of “retail” is potentially confusing, and the ALJs have done their best to ascertain and be clear about the sense in which each material reference to “retail” sales is being made. They would initially note, however, that Ford’s usage—“retail” in the broader sense of non-fleet sales—will ultimately have greater significance for the disputed issues in this case.

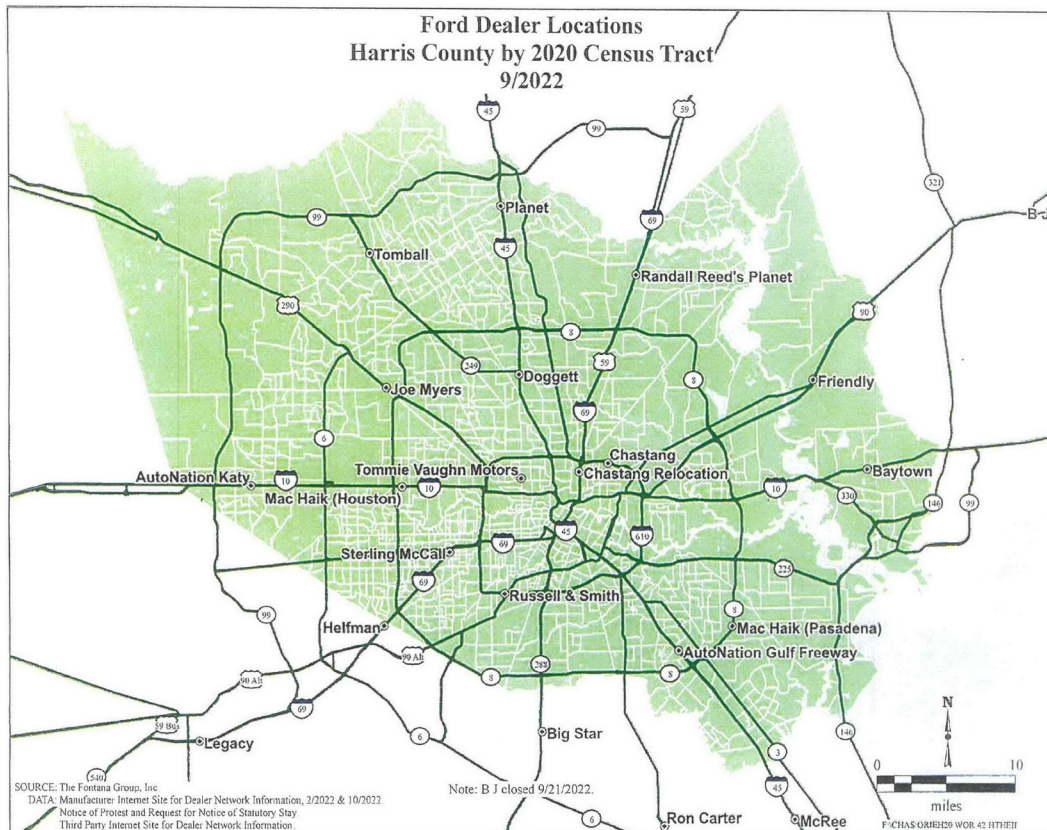
B. THE PROPOSED RELOCATION SITE

The proposed relocation site—the original Bayou City Ford location at 3625 Eastex Freeway plus the adjacent 3669 Eastex Freeway—collectively consists of 11.81 acres situated along the west (southbound) frontage road of the Eastex Freeway south of that roadway’s intersection with Loop 610 but north of its intersection with Interstate 10. A map depicting that location, Chastang Ford’s current location, and the licensed locations of other Houston-area Ford dealers is provided below.⁸⁹

⁸⁷ 1 Tr. 24–26, 55; 2 Tr. 59–63, 202.

⁸⁸ 1 Tr. 245.

⁸⁹ Ex. A-29; *see also* Ex. A-27 (aerial photograph of proposed relocation lot).



An entity owned by Joe and Mary Chastang, Chastang Real Estate, acquired the proposed relocation site in September 2019 for \$7.5 million.⁹⁰ Although no specific plans have been drawn up, as that process would entail consultation with Ford occurring only if and after the relocation were approved, Joe Chastang anticipates that he would either renovate existing facilities at the site or construct entirely new ones and lease them to Chastang Ford.⁹¹ In either case, the Chastangs intend that the resultant completed facilities would be built larger and with more means of access than the current ones, so as to increase the dealership's capacities for sales of new and used vehicles, service, parts sales, and other operations.⁹² This includes

⁹⁰ 1 Tr. 106, 198.

⁹¹ 1 Tr. 119–21, 124, 163; Ex. A-106 at A106-0021 through 0023.

⁹² 1 Tr. 107, 110–11, 161, 259–60; 2 Tr. 76, 134, 148, 184–85.

constructing the necessary facilities to participate in the Ford “Pro Elite” program, an initiative aimed at drawing service business from fleet and other commercial customers through means that include providing thirty or more service bays dedicated exclusively to their needs.⁹³ Participating in Ford Pro Elite, Joe Chastang agreed, would be a “natural fit” for Chastang Ford’s business.⁹⁴

The new facilities would also be required to conform to Ford’s current “Signature” design criteria.⁹⁵ While precise application to a given dealership would vary, in general the Signature criteria emphasize architectural and technological elements that are intended to foster an inviting, open, and engaging experience for a Ford dealership’s sales and service customers, so as to draw them in.⁹⁶ As Joe Chastang acknowledged, the Signature design is aimed at, and would be chiefly important for attracting, retail customers (in the sense of buyers of vehicles for personal use) and would be less impactful on fleet customers, as most of Chastang Ford’s fleet sales occur at the customer’s place of business rather than the dealership.⁹⁷ However, he also recounted that he had visited a Ford truck center that had implemented the Signature criteria and described it as “a little different” than depicted for Ford dealerships generally, “[a] little more utilitarian,” with less high-tech displays and other gadgetry.⁹⁸

⁹³ 1 Tr. 154–55; Exs. A-105 at A105-0079 through 0080, A-106 at A106-0041 through 0042, P-74.

⁹⁴ 1 Tr. 249–50.

⁹⁵ Ex. A-11 at A11-0003.

⁹⁶ Ex. A-83.

⁹⁷ 1 Tr. 163–64.

⁹⁸ 1 Tr. 204–07.

C. DOGGETT FORD

Doggett Ford is a Houston-based automotive dealership owned principally by its namesake, Leslie Doggett.⁹⁹ It shares some common ownership and administrative affiliation with the Doggett Company, which was reportedly Houston’s ninth largest private company and largest family-owned business as of 2020, with over 1,400 full-time employees and interests in several dealerships trading in heavy equipment like commercial trucks, construction machinery, cranes, and forklifts in Texas and other states.¹⁰⁰

Doggett Ford’s history traces back to May 2018, when it acquired Lone Star Ford, a longtime Houston Ford dealership then located at 8477 North Freeway. Although the dealership had been performing poorly, the purchase price of roughly \$6.6 million included \$3 million for “good will” or, as it is often termed in the industry, “blue sky”—*i.e.*, value that goes above and beyond the tangible assets acquired, reflecting future earnings potential. The remainder was to acquire Lone Star Ford’s new vehicle inventory, purchased parts inventory, and service department “work in process.” The transaction did not include the realty or fixed

⁹⁹ Mr. Brian McLemore, who serves as Chief Executive Officer of Doggett Ford and apparently other Doggett business entities, indirectly owns 10 percent of Doggett Ford. 4 Tr. 3–4. Mr. McLemore previously worked for Group 1 Automotive, a large, publicly traded auto dealership consolidator. 4 Tr. 6. He has worked with the Doggett businesses for about fifteen-and-a-half years. 4 Tr. 6–7.

¹⁰⁰ Ex. A-84 at A84-0043 through 0044. Though Doggett Ford is said to operate independently of the Doggett Company, the two share administrative overhead (*e.g.*, human resources, information technology, legal, etc.) and maintain various financial ties. 4 Tr. 108 (referencing “management fee” paid by Doggett Ford to Doggett Company), 133–35 (referencing shared administrative overhead).

assets (*i.e.*, land, improvements, fixtures, furniture, computers), and it was agreed that Doggett Ford would be relocating the dealership within three months.¹⁰¹

Another Doggett business had previously purchased, in 2010, for \$5 million, a twenty-three-acre tract along the North Freeway, located about one mile to the north, that had formerly been the site of another dealership, Landmark Chevrolet, before that entity went into bankruptcy. The ownership separated the realty into tracts of fifteen and eight acres and used the latter (having an estimated pro rata valuation of \$1.7 million of the original purchase price) as the site for the new Doggett Ford location, 9225 North Freeway. At the time of relocation, around August 1, 2018, there were no improvements on that property aside from concrete or pavement, and Doggett Ford operated out of temporary trailers while permanent facilities were being constructed. Those new facilities, conforming to Ford's Signature guidelines and said to be 62,000 square feet in total dimensions, including an air-conditioned service center, all under an "iconic gigantic American flag," were completed and opened in late 2020.¹⁰² Doggett Ford rents the facilities from the ownership and also pays a monthly management fee of around \$33,000.¹⁰³

According to the Doggett businesses' Chief Executive Officer, Brian McLemore, the "all-in" cost for constructing the new dealership facilities was \$15 million, or a total of \$23.3 million including that cost, the cost of the realty (\$1.7

¹⁰¹ 4 Tr. 8, 15-17, 21-24, 27.

¹⁰² 4 Tr. 25-28, 31-33; 6 Tr. 21-22; Ex. A-84 at A84-0043; Ex. A-105 at A105-0047 through 0048.

¹⁰³ 4 Tr. 108; *see, e.g.*, Ex. A-55 at A55-0007 (showing rental).

million), and the \$6.6 million paid to acquire the dealership itself.¹⁰⁴ He further attested that Doggett Ford or its ownership had expended another \$3.5 million to acquire new fixed assets, \$3 or \$4 million for used-car inventory, and \$850,000 in additional working-capital contribution to cover operating losses incurred while the dealership was operating out of temporary facilities—all told, around \$31 or \$32 million to date.¹⁰⁵

Meanwhile, as will be discussed further subsequently, Doggett Ford lost money in both 2018 and 2019, but began earning a profit in 2020, although Mr. McLemore attributed the “turnaround in the profitability” to a \$1 million “PPP” loan received that year, amid the COVID-related disruptions, and subsequently forgiven.¹⁰⁶ Yet, Doggett Ford urges, the owners have not yet recouped their investments. According to Mr. McLemore, Doggett Ford’s total pretax profits between 2018 through 2022 were slightly over \$14 million, which were “pushed down” to the owners because the dealership entity is disregarded for tax purposes. Over that same period, he added, about \$9.5 million was paid in distributions to the owners, much of which went to pay their taxes on the \$14 million in income, leaving only the net as return on capital to them. “[W]hatever that number is,” he observed, would be “significantly less” than the amounts of investments they had made.¹⁰⁷

¹⁰⁴ 4 Tr. 33–34.

¹⁰⁵ 4 Tr. 39–42.

¹⁰⁶ 4 Tr. 51–52.

¹⁰⁷ 4 Tr. 49–51.

And Doggett Ford or its owners anticipate investing still more millions in the dealership. Although Doggett Ford’s financial statements thus far have reflected relative percentages of retail (non-fleet) versus fleet sales and types of vehicles sold that resemble the Zone A averages,¹⁰⁸ the dealership has made some sales of truck models F-450 and above—including, it admits, some F-650s despite lacking the necessary licensing to sell the Ford Medium Truck line-make¹⁰⁹—and it has plans to move further into the commercial- and fleet-truck space, viewing it as complementary to other Doggett businesses. To this end, Doggett Ford has enrolled in the Ford Pro Elite Program—the service program that caters to commercial customers that Chastang Ford also hopes to pursue, if it can relocate—which will require Doggett Ford or ownership to spend \$10.5 million to build the necessary facilities on the adjacent Doggett-owned realty. Doggett Ford also anticipates participating in Ford’s electric vehicle program, which will obligate it to make roughly \$1.2 million in additional investments to install charging stations and other associated upgrades.¹¹⁰

IV. KEY DISPUTED ISSUES

In their evidence and arguments, the parties join issue on the following matters that prove to have primary significance in the ALJs’ weighing of the good-cause factors.

¹⁰⁸ Compare Exs. A65 at A93-0003 through 0004 (2022 financial statement through September), A57 at A57-0003 through 0005 (2021 financial statement), A56-0003 through 0005 (2020 financial statement), and A55-0003 through 0005 (2019 financial statement), with Exs. A-92 (Zone A, 2019), A-93 (Zone A, 2020), and A-94 (Zone A, 2021).

¹⁰⁹ Compare 6 Tr. 20, with 4 Tr. 125, and 6 Tr. 138.

¹¹⁰ 4 Tr. 46–50.

A. CHASTANG FORD'S NEED TO RELOCATE

1. Chastang Ford's Position

A primary theme of Chastang Ford's case is that its current facilities at 6200 North Loop East have become inadequate to meet its current and prospective business needs or current Ford standards. These problems, Chastang Ford contends, justify its move to the relocation site and the contemplated new and larger facilities that could be constructed there.

Although deeming the current facilities sufficient for its initial operations, Chastang Ford presented evidence that these are among the smallest of any Ford dealer in the Houston metro area.¹¹¹ For example, Chastang Ford points out, its thirty-one repair stalls is several fewer than the Zone A dealership average of forty-eight, as of 2021.¹¹² Further, Joe Chastang testified, the prior expansions to the facilities made while still a Volvo dealership had left no room to augment the "footprint" any further within the property's usable space.¹¹³ This rules out, importantly, constructing the additional bays and dedicated service facilities necessary for Chastang Ford to participate in the Ford Pro Elite service program for fleet and commercial customers, as Doggett Ford has acknowledged.¹¹⁴

¹¹¹ Ex. A-105 at A105-0064.

¹¹² App. Reply Br. at 8 (citing Exs. A-17 at A17-0007, A-94 at A94-0009).

¹¹³ 1 Tr. 66-67; Ex. A-105 at A105-0064.

¹¹⁴ Ex. A-105 at A105-0080; *see also* 1 Tr. 32 ("On Ford Pro Elite, on the service side, Mr. Tidwell is accurate. [Chastang Ford] can't build a Ford Pro Elite Center where they are.").

A further constraint, in Chastang Ford’s view, is poor ingress and egress, with the sole means of access being Blaffer Street. As Joe Chastang observed, the facilities are situated in an industrialized area, with nearby businesses including, in addition to the Utility Trailer enterprise, a Peterbilt leasing business, a diesel distributor, warehouses, and a “pallet company.”¹¹⁵ Consequently, he explained, Blaffer sees “a lot” of heavy-truck traffic that not only shares the roadway with Chastang Ford’s traffic but also “put[s] chug holes in the street.”¹¹⁶ And, Chastang Ford emphasizes, there is only a single access point into the dealership facilities from Blaffer—a driveway consisting of three lanes, two incoming and one outgoing, to be shared by anyone having business at the facilities, whether for delivery and unloading of new trucks or parts inventory, vehicles brought in for service, customers of parts or sales departments, or dealership employees.¹¹⁷ These same functions and purposes likewise create competing demands on the space that can be used for vehicle parking, storage, or display elsewhere on the property.¹¹⁸

Essentially, Chastang Ford contends that its business has since “outgrown” the current facilities’ already-constrained capacity. Joe Chastang attested that in 2004, the dealership’s first full year there, Chastang Ford had sold a total of about 485 new trucks, a fraction of what its sales would be in 2022.¹¹⁹ He acknowledged that large fleet sales are typically made off-site and the vehicles ordered rather than

¹¹⁵ 1 Tr. 103, 114, 144–45.

¹¹⁶ 1 Tr. 103, 114, 144–45.

¹¹⁷ 2 Tr. 37–38, 39–40, 176–77, 180–82.

¹¹⁸ *E.g.*, Ex. A-26.

¹¹⁹ 1 Tr. 67; Ex. A-18 at A18-0003 through 0005.

being sold from stocks of inventory, but attested that these activities nevertheless create demands for space at the dealership because the purchased trucks are shipped there, often “com[ing] in at once” and have to be unloaded and stored until the customer takes delivery.¹²⁰ Further, Joe added, the dealership needs to maintain new-vehicle inventories to cater to its smaller and medium-sized fleet customers, which are “more like a retail buyer” and tend to purchase only if the trucks are in stock.¹²¹ And to further address the needs of its fleet and commercial customers, according to Patrick Chastang, the dealership needs to keep an inventory of trucks suited to meet the emergency replacement needs of fleet and other commercial customers, such as when trucks on which those customers depend to perform work functions and earn revenue are lost due to accidents or mechanical breakdowns.¹²²

To similar effect, Joe Chastang contrasted the dealership’s dollar volume of repair orders in 2004 versus 2022—\$2 million as compared to \$4 million.¹²³ One consequence of this business growth, according to Patrick Chastang, is that daily demand for service has come to exceed the dealership’s thirty-one-bay capacity—thirty to thirty-five repair orders on a typical day—necessitating that vehicles awaiting service be stored until they can be accommodated.¹²⁴ He further attested that incoming vehicles brought in for service are usually already lined up five-to-

¹²⁰ 1 Tr. 68, 202–03.

¹²¹ 1 Tr. 202–03.

¹²² 2 Tr. 213–16.

¹²³ 1 Tr. 70–71.

¹²⁴ 2 Tr. 21–22, 35, 38–39; Exs. A-26, A-37.

seven deep in the driveway each day when the dealership opens.¹²⁵ And the vehicles seeking service characteristically include very large trucks, Patrick noted, citing the example of an F-650 or F-750 truck with a “picker” mounted in back as “typical” dimensions.¹²⁶ The resultant congestion from this service traffic and others using the driveway, Patrick added, has also undermined the effectiveness of a “Quick Lane” intended for use by customers seeking routine maintenance (*e.g.*, oil changes, brakes, batteries, tires, etc.). Because there is no “external” or separate access for it, he explained, the Quick Lane is left “fighting for space” within the single driveway off Blaffer, resulting in, *e.g.*, “a picker truck next to an Escape in the mornings” and a “Quick Lane” where “sometimes we’re not quick.”¹²⁷

And due to other demands on the available space for storing vehicles awaiting service, Patrick testified, employees had resorted to parking them two or three-deep (as also visible in the above aerial photo of the current facilities).¹²⁸ This means that, in addition to the delays attributable to the bay capacity alone, service is further slowed by the need for employees to “d[i]g out” the “big” and “not very nimble” trucks from parking and “into the shop.”¹²⁹ Those demands and delays, Patrick observed, diverted employee time from revenue-producing activities, which in the case of service technicians paid on commission represents “money coming out of

¹²⁵ 2 Tr. 35.

¹²⁶ 2 Tr. 21; *see* Exs. A-31 through A-37 (photos of service area and vehicles).

¹²⁷ 2 Tr. 25–27.

¹²⁸ 2 Tr. 21–22, 35, 38–39; Exs. A-26, A-37.

¹²⁹ 2 Tr. 23–25.

their pocket[s].”¹³⁰ He estimated that dealership employees expend about 200 hours per month on those tasks, representing \$20,000 per month in “extra expense.”¹³¹ And, he noted, the tasks also brought a risk of “lot damage,” which “happens more than I’d like it to.”¹³²

Further, according to Parts Manager John Smith, the dealership’s wholesale parts business has also grown to have an inventory exceeding \$1.8 million, more than twice the original capacity of the parts warehouse.¹³³ To accommodate the additional inventory, Chastang Ford has spent what Patrick Chastang believed to be “several hundred thousand dollars” in attempting to expand its storage capacity.¹³⁴ These measures, he attested, included modifying the internal structure of the parts warehouse by extending an “awning” to add space for more storage.¹³⁵ The dealership also resorted to storing parts in what had formerly been parking areas outside, some in a converted “shed” previously used for service parking, others in two cargo containers.¹³⁶ And when combined with the other traffic in the driveway, Patrick added, parts deliveries, some of which come in on eighteen-wheelers, can create a “real cluster” while being unloaded there.¹³⁷ On the other hand, as

¹³⁰ 2 Tr. 23–25.

¹³¹ 2 Tr. 24.

¹³² 2 Tr. 40–41.

¹³³ 2 Tr. 189–90.

¹³⁴ 2 Tr. 15–16.

¹³⁵ 2 Tr. 13–15.

¹³⁶ 2 Tr. 9–13; Ex. A-39.

¹³⁷ 2 Tr. 176–77.

Mr. Smith acknowledged, only about one-third of the Chastang Ford's wholesale parts customers come to the dealership to pick up their purchases "will call," while the other two-thirds have parts delivered to them.¹³⁸

Meanwhile, Patrick Chastang further testified, the dealership had come to employ around ninety-five to one hundred employees, though could provide parking spaces at the North Loop East facilities for only eighty-six of them.¹³⁹ Those spaces, he noted, had come at the expense of what formerly had been service parking and display space for new or used vehicles.¹⁴⁰ Similarly, he added, the dealership now has available only about five or six parking spaces for parts customers and at most eight or ten spaces for other customers, although the latter is also shared with vehicles displayed for sale.¹⁴¹ There is also an indoor vehicle showroom, but Patrick observed that it can accommodate only two vehicles and is not visible from the customer parking area, being located in a "back section" of the sales area behind dealership offices.¹⁴²

These difficulties, Chastang Ford insists, have persisted despite efforts to ameliorate them by shifting some non-sales and non-service operations to an off-site location. In 2013, the same Joe Chastang-controlled corporation that now owns the North Loop East facilities acquired an additional 3.1-acre lot located on East Park

¹³⁸ 2 Tr. 184-86.

¹³⁹ 2 Tr. 30.

¹⁴⁰ 2 Tr. 31-34.

¹⁴¹ 2 Tr. 34.

¹⁴² 2 Tr. 46-49; Ex A-38.

Drive, about a mile distant, which it leases to Chastang Ford.¹⁴³ According to Joe Chastang, these steps were aimed chiefly at difficulties being encountered in the transport and unloading of new vehicles at the by-then “overcrowded” North Loop East facilities.¹⁴⁴ Chastang Ford uses the East Park lot for that purpose, receiving incoming new vehicles there, as well as for performing state inspections and “make-ready” cleanings prior to delivery of those vehicles to customers (which occurs at North Loop East), storing vehicle inventory, and service overflow.¹⁴⁵ According to Patrick Chastang, the dealership had also considered using the East Park lot for employee parking and busing them over, but determined the better option to be parking employees at North Loop East at the expense of service parking and other uses, then making do by “jockeying vehicles in service around” and transporting some of those vehicles to East Park.¹⁴⁶ But with the more recent shortage of employee parking at North Loop East, Patrick feared that “we’re probably going to have to start parking employees over at the East Park facility too and shuttle them back and forth throughout the day.”¹⁴⁷

In addition to the rent for East Park, \$10,500 per month (\$130,000 annually), Patrick Chastang attested that Chastang Ford pays about \$30,000 in annual salary to each of two dedicated porters (or about \$60,000 total) who, along with “multiple” other employees who get called upon to help, must shuttle vehicles between the two

¹⁴³ 1 Tr. 72, 74, 100, 102; 2 Tr. 16, 31.

¹⁴⁴ 1 Tr. 100-02.

¹⁴⁵ 1 Tr. 72-74, 102; 2 Tr. 16, 213-14, 222-23.

¹⁴⁶ 2 Tr. 31.

¹⁴⁷ 2 Tr. 219.

dealership properties.¹⁴⁸ In addition to these direct costs, he and other Chastang Ford witnesses noted the loss of employee time on these non-revenue-producing activities; logistical complications in storing vehicle inventory off-site rather than on-hand for customers to view or use, requiring retrieval as needed; and other inefficiencies like having to repeat pre-delivery cleaning after the vehicles are driven from East Park to North Loop East.¹⁴⁹ And, Patrick added, East Park has itself become overcrowded, with its own lot-damage problems.¹⁵⁰

While acknowledging that the dealership has succeeded in growing its business, Joe Chastang maintained that those successes have been “in spite of the [current] facility.”¹⁵¹ In his assessment, those facilities had reached their maximum service capacity “years ago,” that the constraints and attendant delays were upsetting customers and impeding its service business, and that the dealership’s service business would eventually decrease as a result.¹⁵² Joe further observed that losing the service business of fleet customers, Chastang Ford’s staple, would have multiplied adverse economic impacts as compared to losing individual retail customers.¹⁵³

¹⁴⁸ 2 Tr. 22–23.

¹⁴⁹ 1 Tr. 73; 2 Tr. 17–18, 214, 216.

¹⁵⁰ 2 Tr. 17, 214, 216–18.

¹⁵¹ 1 Tr. 67–68.

¹⁵² 1 Tr. 67–69, 108, 122, 142.

¹⁵³ 1 Tr. 68–69.

As further evidence of these asserted effects, Chastang Ford cites financial statements reflecting that its service department lost \$132,278 in 2020 and another \$168,693 in 2021.¹⁵⁴ By comparison, the dealerships in Zone A of Ford's Houston region on average earned profits from their service departments of \$829,170 in 2020 and \$872,946 in 2021.¹⁵⁵ (Figures from 2022 also reflect that Chastang Ford's service department lost another \$484,090, although there was no Zone A comparator average in evidence.¹⁵⁶) Patrick Chastang also noted customer-survey results concerning the service department. To summarize, Chastang Ford received ratings of around 4.8 on a five-star scale for overall customer experience in 2019, 2020, and 2021, but had ratings for getting vehicles scheduled and in and out of service that fell from that range down to well below four stars during 2019, remained around 3.4 stars during 2020, and rose to around four stars before falling again in 2021.¹⁵⁷

Similarly, while acknowledging that its parts business had turned profits in 2019, 2020, and 2021—\$393,466, \$168,588, and \$702,081, respectively¹⁵⁸—Chastang Ford points out that the Zone A average profits were substantially higher each year—\$998,486 in 2019, \$844,997 in 2020, and \$1,076,990 in 2021.¹⁵⁹ (Chastang Ford also made a profit of \$512,118 in 2022, but again there was no Zone A

¹⁵⁴ Exs. A-16 at A16-0002, A-17 at A17-0002.

¹⁵⁵ Exs. A-93 at A93-0002, A-94 at A94-0002.

¹⁵⁶ Ex. A-18 at A18-0002.

¹⁵⁷ 2 Tr. 42-45; Ex. A-77 at A77-0011.

¹⁵⁸ Exs. A-15 at A15-0002, A-16 at A16-0002, A-17 at A17-0002.

¹⁵⁹ Exs. A-92 at A92-0002, A-93 at A93-0002, A-94 at A94-0002.

average in evidence to compare for that year.¹⁶⁰) Chastang Ford attributes the differences to having a smaller parts capacity than the Zone A average, despite its efforts at expansion, as well as reduced relative demand from its service department.¹⁶¹ In this regard, it points out that its parts inventories for 2019, 2020, and 2021 were each smaller than the Zone A averages—about \$1.1 million versus \$3.7 million in 2019, about \$1.2 million versus \$3.7 million in 2020, and around \$1.7 million versus \$2.1 million in 2021.¹⁶² In Joe Chastang’s view, the dealership was operating at its maximum capacity in its parts business.¹⁶³

Lagging even farther behind were Chastang Ford’s used-vehicle sales—in this portion of the business, the dealership had lost \$484,104 in 2019, compared to a Zone A average profit of \$192,097; lost \$266,200 in 2020, compared to a Zone A average profit of \$787,337; and lost \$40,827 in 2021, compared to a Zone A average profit of \$1,399,080.¹⁶⁴ In terms of units, Chastang Ford sold 232 used vehicles in 2021, compared to a Zone A average of 1,095; and 318 used vehicles in 2022, compared to a Zone A average of 729.¹⁶⁵ Chastang Ford attributes this performance to its inability to stock more than about twenty-five or thirty used vehicles for display at the North Loop East facilities, a fraction of the forty-five-day supply (110-115) that

¹⁶⁰ Ex. A-18 at A18-0002.

¹⁶¹ App. Reply Br. at 21–22.

¹⁶² Exs. A-15 at A15-0001, A-16 at A16-0001, A-17 at A17-0001, A-92 at A92-0001, A-93 at A93-0001, A-94 at A94-0001.

¹⁶³ 1 Tr. 68.

¹⁶⁴ Exs. A-15 at A15-0002, A-16 at A16-0002, A-17 at A17-0002, A-92 at A92-0002, A-93 at A93-0002, A-94 at A94-0002.

¹⁶⁵ Exs. A-6 at A6-0005, A-17 at A17-0005, A-94 at A94-0006.

Joe Chastang regarded as optimal.¹⁶⁶ With such limited inventory, Chastang Ford was, as Joe put it, “not really in the used car business” as a practical matter.¹⁶⁷ He further observed that a dealership’s used-vehicle sales business is typically “[v]ery profitable.”¹⁶⁸ In fact, Joe believed that Chastang Ford could cover the costs of a hypothetical \$25 million new facility at the relocation site, to be passed on through rent, merely by increasing its used-vehicle sales to levels closer to the Zone A averages.¹⁶⁹

Of final note regarding space constraints, Chastang Ford’s witnesses acknowledged that some of the activities at the North Loop East facilities involved Autocar trucks,¹⁷⁰ but attested that those operations did not contribute materially to the problems. Joe Chastang explained that the Autocar dealership does not stock those vehicles because the sales transactions entail having the truck chassis as manufactured shipped to a body company to add components, and then on to customers (chiefly cities) located throughout the country.¹⁷¹ Similarly, he testified that most Autocar customers service those vehicles in their own in-house repair shops, and Patrick Chastang estimated that Autocar trucks comprised only about five

¹⁶⁶ 1 Tr. 72, 110–11.

¹⁶⁷ 1 Tr. 110–11.

¹⁶⁸ 1 Tr. 111.

¹⁶⁹ 1 Tr. 125–33.

¹⁷⁰ 2 Tr. 128–29; Ex. A-18 at A18-0004 (2022 sales figures including approximately 550 fleet sales and 100 non-fleet sales of those vehicles).

¹⁷¹ 1 Tr. at 189–90.

percent of the service business.¹⁷² Likewise, Mr. Smith estimated that Autocar parts comprised only about five percent of the facilities' parts inventory.¹⁷³

In addition to their space constraints, Chastang Ford emphasizes that the facilities do not comply with Ford's present-day Signature design criteria—as Joe Chastang put it, the “only similarity is that they both have Ford signs.”¹⁷⁴ Ford's regional manager for the Houston market, Adam Tidwell, agreed that Chastang Ford's facilities were “outdated” and would not be approved as a Ford dealership were it to apply today.¹⁷⁵ Joe Chastang further perceived that the “way below average” condition of the facilities, combined with their overcrowding and other logistical difficulties that were arising, was making it “way harder to hire people and keep people,” as “[e]verybody wants to work at a nicer place.”¹⁷⁶ And were the proposed relocation to be denied, he expected that Ford would “definitely” still require the Chastangs to expend funds on upgrading the existing facilities, despite their limitations, to “look like . . . a proper Ford store.”¹⁷⁷

Joe Chastang further testified that, in addition to the aforementioned measures the dealership had attempted to address its space constraints, he had consulted with Ford about remodeling the facilities and obtained a proposed design.

¹⁷² 1 Tr. 190; 2 Tr. 20.

¹⁷³ 2 Tr. 194.

¹⁷⁴ 1 Tr. 143–44.

¹⁷⁵ Ex. A-105 at A105-0041, A105-0063 through 0064.

¹⁷⁶ 1 Tr. 146–47.

¹⁷⁷ 1 Tr. 142–43.

But that design, Joe recounted, failed to provide additional room to the dealership, instead merely “shuffling stuff around.”¹⁷⁸ He also perceived it “impossible” for the dealership to build “up” (*i.e.*, erecting multi-story facilities) given the size of the trucks in which the dealership dealt.¹⁷⁹ Similarly, Patrick Chastang concluded that constructing a parking garage for employees or inventory was infeasible due to the expense and because it would require ramps that would consume more space than the garage would add.¹⁸⁰

Consequently, Joe Chastang testified, he had approached the owners of adjacent properties about purchasing additional realty from them—Utility Trailers, the Peterbilt leasing company, and the “pallet company”—but none would sell.¹⁸¹ He then began looking for realty to which Chastang Ford could be relocated, more specifically having at least ten acres and located within two miles of the current facility, so as not to be subject to protest.¹⁸² As Joe described the search, he “would be on LoopNet [a commercial real-estate site] multiple times weekly,” consulted real-estate professionals to see if they knew of properties that matched his criteria, contacted “anybody I saw that had a [for sale] sign around,” and even asked other landowners with suitable properties whether they would sell.¹⁸³ He professed that “I

¹⁷⁸ 1 Tr. 104, 133.

¹⁷⁹ 1 Tr. 104.

¹⁸⁰ 2 Tr. 133–34.

¹⁸¹ 1 Tr. 103, 105.

¹⁸² 1 Tr. 103–04.

¹⁸³ 1 Tr. 103–07.

didn't care which way I moved," the key consideration instead being "having enough land to be able to have the dealership on it."¹⁸⁴

Ultimately, Joe Chastang continued, these efforts to find suitable property within two miles were unsuccessful, and he concluded that the former Bayou City Ford property with adjacent lot were the best options available. He explained that "it was as close as I could get to being within two miles" and also "figured since there had been a Ford dealership there before, there was more chance that I wouldn't get protested."¹⁸⁵ "But," as he observed, "I was wrong."¹⁸⁶

2. Doggett Ford's Position

During the hearing, the ALJs understood Doggett Ford to concede that Chastang Ford needs to move to new and larger facilities at a different location and was disputing only whether there was good cause for that move being to the proposed relocation site considering the Section 2301.652 factors as a whole.¹⁸⁷ Yet in its written closing arguments, Doggett Ford also challenges the extent to which

¹⁸⁴ 1 Tr. 106-07.

¹⁸⁵ 1 Tr. 106.

¹⁸⁶ 1 Tr. 106.

¹⁸⁷ See 1 Tr. 26-27 ("Doggett Ford is not disputing that Mr. Chastang and Chastang Ford need newer facilities, that they need more space. That's not the issue. The issue is should they locate those new facilities and that bigger space . . . more than two miles away from where it's currently located and closer to Doggett Ford"), 32 ("On Ford Pro Elite, on the service side, Mr. Tidwell is accurate. [Chastang Ford] can't build a Ford Pro Elite Center where they are."), 40 ("We think that . . . the evidence is going to show that it is in the public interest for Chastang Ford to have new facilities, to have better ingress and egress, to be able to better serve their customers. There's no dispute about that. The question again is whether the public interest is better served by moving it to the west and closer to Doggett Ford."); 2 Tr. 148-48 ("Mr. [Patrick] Chastang, do you understand that Doggett Ford is not taking issue with you guys wanting to do more business and wanting to ease the kind of space restrictions that you're under right now? . . . Are you aware that what really Doggett Ford is saying is, 'Don't move closer to us?'").

Chastang Ford is suffering any detriment from its current facilities that would warrant relocation of dealership operations to some other site.

Doggett Ford observes that some of Chastang Ford's asserted difficulties regarding service capacity are not necessarily unique to it. Doggett Ford emphasizes that it, like Chastang Ford, has a single three-lane service drive, two incoming and one outgoing; no separate Quick Lane facility; and (currently) thirty-four service bays, which it suggests is comparable to Chastang Ford's capacity.¹⁸⁸ It also points to testimony by Joe Chastang acknowledging that all Ford dealers in the Houston market had more service business than any can accommodate, such that he viewed Chastang Ford's "competition" for service business as more "internal" than "external," simply "getting vehicles in and out in a reasonable length of time," "because there's plenty of work no matter what store."¹⁸⁹ Joe similarly noted other common impediments with parts availability and a lack of trained technicians.¹⁹⁰

Doggett Ford further insists that Chastang Ford's arguments about service-department losses since 2020 are "severely misleading" and that the state of the current facilities "cannot be the only reason [the] service department started losing money."¹⁹¹ Doggett Ford points out that Chastang Ford's service department earned profits in 2017, 2018, and 2019 (respectively, \$149,957, \$64,933, and \$146,165) on total sales that had grown from approximately \$3.8 million to over

¹⁸⁸ Protestant's Post-Hearing Response Br. (Prot. Br.) at 43-44 (citing 6 Tr. 18-20).

¹⁸⁹ Prot. Br. at 44; *see* 1 Tr. 237-39.

¹⁹⁰ Prot. Br. at 44; *see* 1 Tr. 239-44.

¹⁹¹ Prot. Br. at 45-46.

\$4.2 million over that same period.¹⁹² Beginning in 2020, Doggett Ford acknowledged, Chastang Ford’s service department began incurring losses, but attributes the initial downturn to “an almost \$1 million setback” in total service department sales—which dropped to around \$3.52 million¹⁹³—amid the Pandemic.¹⁹⁴ In this regard, Doggett Ford emphasizes an acknowledgment by Chastang Ford’s comptroller, Dennis Venghaus, that the Pandemic had negatively impacted both the dealership’s service and parts businesses during the first half of 2020.¹⁹⁵ But thereafter, Doggett Ford argues, Chastang Ford’s service business began to grow again, with financial statements reflecting total sales of around \$3.92 million in 2021 and about \$4 million in 2022.¹⁹⁶ In Doggett Ford’s view, Chastang Ford “offer[s] no good explanation why its service department profits disappeared” despite higher total sales, and would infer from the dealership’s hiring of a new service manager in March 2022, Greg Whitworth, that “management played a key role” in incurring the operating losses.¹⁹⁷

Similarly, Doggett Ford downplays the significance of the customer-service ratings from Chastang Ford’s service customers. In its view, these surveys

¹⁹² Prot. Br. at 45–46; *see* Exs. A-13 at A13-0002, A-14 at A14-0002, A-15 at A15. In lieu of the exhibits cited by Doggett Ford, the ALJs have referenced the same financial statements as they appear in Chastang Ford’s exhibits because the pagination is clearer.

¹⁹³ Ex. A-16 at A16-0002.

¹⁹⁴ Prot. Br. at 46.

¹⁹⁵ Prot. Br. at 46; *see* Ex. P-224 at 40.

¹⁹⁶ Prot. Br. at 46; *see* Exs. A-17 at A17-0002, A-18 at A18-0002. The figure shown in Chastang Ford’s financial statement for 2021 differs from that cited in Doggett Ford’s brief, being significantly higher, but the basic point is the same to the extent of observing that Chastang Ford’s total service revenues have increased in each year since 2020.

¹⁹⁷ Prot. Br. at 46; Ex. P-228 at 42.

demonstrate both that Chastang Ford generally receives “high scores” in its current facilities and that the upward fluctuation in 2021 would rule out capacity limitations as the sole cause, as “the same space constraints” would have existed throughout the period.¹⁹⁸ Moreover, as Doggett Ford points out, Patrick Chastang acknowledged that space constraints in the service department were not the sole cause of the lower ratings that began in 2019—he cited other contributing factors such as Pandemic-related parts shortages, congestion in the driveway from other traffic, and “some issues internally.”¹⁹⁹ It further notes an observation by Patrick that “the big issue” in crowding of the outgoing lane of driveway was that employees were now using it for ingress and egress to their parking in what had formerly been service parking, so as to compete for space with parts delivery and pickup traffic, along with service customers.²⁰⁰

Doggett Ford further insists that the profitability of Chastang Ford’s parts department, including during the Pandemic slowdowns of 2020, belies Chastang Ford’s contentions that its current facilities are hindering growth.²⁰¹ In addition to the aforementioned figures from 2019 through 2022,²⁰² Doggett Ford points out Chastang Ford’s parts department also turned profits during the preceding years

¹⁹⁸ Prot. Br. at 44.

¹⁹⁹ Prot. Br. at 44; *see* 2 Tr. 139–40.

²⁰⁰ Prot. Br. at 44; *see* 2 Tr. 39–40.

²⁰¹ Prot. Br. at 48–49.

²⁰² Though the profit figure Doggett Ford cites for 2021 differs from the \$702,081 reflected Chastang Ford’s financial statement. Ex. A17 at A17-0002.

2017 (\$261,773) and 2018 (\$382,027).²⁰³ All told, Doggett Ford insists, Chastang Ford's parts business "is a highly profitable business growing steadily since 2017."²⁰⁴ More generally, Doggett Ford insists that Chastang Ford is "thriving" despite any limitations of its current facilities and is in no danger of failure, pointing to the continued growth in the dealership's business since 2003.²⁰⁵

Doggett Ford also dismisses Chastang Ford's "anecdotal testimony about occasional traffic issues," such as congestion in the driveway or lot damage, as lacking documentary support or specificity regarding frequency, extent, or how that dealership compared to others in the Houston market.²⁰⁶ It also faults Chastang Ford for not presenting "feasibility studies, plans, projections, or other evidence to corroborate" Joe Chastang's assessments that the dealership's operations are at the facilities' maximum capacity for business growth.²⁰⁷ Similarly, Doggett Ford accuses Chastang Ford of giving "only cursory consideration" to and having presented "virtually no testimony" regarding "what it tried to do to remedy the problems it claimed to have" at the current facilities.²⁰⁸ This includes, in Doggett Ford's view, having "practiced studied ignorance" regarding the possibility of constructing underground detention in order to recapture the acreage lost to its retention pond,

²⁰³ Prot. Br. at 48-49; *see* Exs. A-13 at A13-0002, A-14 at A14-0002.

²⁰⁴ Prot. Br. at 49.

²⁰⁵ Prot. Br. at 7, 73.

²⁰⁶ Prot. Br. at 46-47.

²⁰⁷ Prot. Br. at 45.

²⁰⁸ Prot. Br. at 24, 47.

and having merely “assumed” that it could not construct multi-story facilities to expand square footage.²⁰⁹

Yet Doggett Ford ultimately acknowledges that Chastang Ford “is outgrowing its facilities” and needs to expand.²¹⁰ And that expansion, Doggett Ford also seems to acknowledge, must entail relocating at least some dealership operations to a different site.²¹¹ Similarly, as Doggett Ford also conceded during the hearing, Chastang Ford would need to acquire some other location if it is to build the service facilities required to participate in the Ford ProElite program.²¹² But, Doggett Ford insists, this does not mean that Chastang Ford need or should also relocate its sales functions to that same location.

Doggett Ford posits that Chastang Ford could seek a license to operate a service-only facility at the proposed relocation site or elsewhere.²¹³ If approved, it suggests, Chastang Ford could build at that location a new, larger service center, including Ford ProElite infrastructure, and perhaps also new parts facilities and vehicle storage.²¹⁴ And by moving service or these other functions to the new location, Doggett Ford reasons, Chastang Ford would free up space for sales

²⁰⁹ Prot. Br. at 47.

²¹⁰ Prot. Br. at 73.

²¹¹ Prot. Br. at 73.

²¹² Prot. Br. at 45; *see* 1 Tr. 32 (“On Ford Pro Elite, on the service side, Mr. Tidwell is accurate. [Chastang Ford] can’t build a Ford Pro Elite Center where they are.”).

²¹³ Prot. Br. at 45; *see* 43 Tex. Admin. Code § 215.003 (authorizing license for “service-only” facility at a site that is separate and noncontiguous from the dealership’s licensed location for sales).

²¹⁴ Prot. Br. at 45.

functions at the current facilities, which could then be revamped in accord with the Signature requirements or even built multi-story, “because the heavy trucks would no longer come there.”²¹⁵

3. ALJs’ Analysis

The ALJs will begin by noting that the material issue before the Board is not, as Doggett Ford suggests, whether it would be preferable for Chastang Ford, in lieu of relocating its operations to 3625 and 3669 Eastex Freeway as proposed, to instead relocate to some other site or divide its operations between some combination of current and/or new sites. Aside from the operating inefficiencies that would seemingly be inherent in dividing operations (as with the East Park arrangement), any such proposals would require Chastang Ford to file a separate license application, which would independently be subject to protest by competing Ford dealers, and in that event give rise to a yet another contested-case proceeding before SOAH and the Board.²¹⁶ That is to say, Doggett Ford’s asserted alternatives to the relocation Chastang Ford now seeks would each be a different case, not the present one. And in the present case, it is not for the Board or ALJs to determine where or how Chastang Ford should relocate its operations, but rather to evaluate the

²¹⁵ Prot. Br. at 45, 73.

²¹⁶ See Tex. Occ. Code §§ 2301.251, .252, .652; 43 Tex. Admin. Code § 215.103(b)-(c).

dealership relocation that Chastang Ford has proposed to determine whether there is good cause for same, considering the factors in Section 2301.652.²¹⁷

As Doggett Ford ultimately concedes in its briefing, and as it did more readily during the hearing, Chastang Ford's current facilities are inadequate to accommodate the dealership's current operations and future growth. Contrary to Doggett Ford's assertions, Chastang Ford has given much more than "cursory consideration" to ways in which it could expand its capacity within the constraints of its current location. In fact, Chastang Ford has been remarkably innovative in the measures it has implemented—*e.g.*, moving incoming and stocked new-vehicle inventory off-site (albeit with the attendant inefficiencies), double-and-triple parking vehicles awaiting service, and improvisations to expand its parts storage. The same is true of other options it has considered but ruled out for good reason—a redesign, building multi-story, or adding a parking garage. Similarly infeasible is any expansion into adjoining realty—as Joe Chastang testified, he approached each of the adjacent landowners about purchasing their properties but none would sell. And on this record, converting the less-than-one acre of retention pond to usable space would make no material difference in resolving Chastang Ford's problems, leaving aside the expense such measures would require.

²¹⁷ See *Four Way Chevrolet, Inc. v. Courtesy Chevrolet, Inc.*, Docket No. 303, Proposal for Decision (July 24, 1984) at 5 ("Protestants suggest that the Applicant should remain in the northeast sector of Harris County, and that if the dealership must be relocated then it should relocate within the northeast area. However, it is not for the Commission to attempt to determine where the Applicant should relocate, but rather to evaluate the location where the Applicant proposes to relocate its dealership to determine whether the application should be granted or denied under the standards [now] set forth in [Section 2301.652] and the Commission's prior decisions in such matters.").

In short, Chastang Ford finds itself straining if not exceeding the capacity of its current facilities, landlocked, and relegated to measures that Patrick Chastang aptly compared to a “Band-aid” in attempting to make do there.²¹⁸ Add to this the prospect that Chastang Ford will have to build or renovate its facilities so to comply with Ford’s Signature guidelines regardless of whether it relocates. Incurring the time, trouble, and expense to do so within the current facilities’ confined dimensions would seem a wasteful if not somewhat futile endeavor.

The evidence further demonstrates that the constraints of Chastang Ford’s current facilities are causing tangible, adverse impacts on its competitive position in the market. Its service and parts departments, even when profitable, are lagging behind the Zone A averages. And Chastang Ford has all but conceded its used-car business for lack of display space. But perhaps more critically, Chastang Ford lacks room to grow its business and serve its customers better in the future. This includes, importantly, having room to construct the infrastructure required to participate in Ford’s ProElite program, so as to cater to the service needs of the fleet and commercial customers that have always been the core of Chastang Ford’s business.

In sum, Chastang Ford has compelling need to relocate to a new site that can accommodate its current and future demands. And the proposed relocation site would fit the bill.

²¹⁸ 2 Tr. 10, 14.

B. RELOCATION DISTANCE AND SIGNIFICANCE OF THE TWO-MILE STANDING REQUIREMENT

Citing Board decisions to the effect that dealership relocations of a “short” distance would have minimal or no competitive impact, Chastang Ford emphasizes that the distance of its proposed relocation is measured at 2.0289 miles—2 miles, 152.50 feet—only narrowly exceeding the two miles specified in the standing requirements for protesting dealership relocations.²¹⁹ That two-mile requirement, it adds, is effectively a determination that any dealership relocation of two miles or less is an “insignificant distance as a matter of law,” *per se* having no competitive effect warranting redress through a protest.²²⁰ Thus, Chastang Ford concludes, “a key issue in this case is whether 152.50 feet changes the competitive nature of the Houston Metro market.”²²¹

Doggett Ford disputes both this framing of the issue and Chastang Ford’s underlying construction of the standing requirements.²²² In Doggett Ford’s view, the two-mile standard is merely one of two alternative standing requirements, “phrased in the disjunctive,” such that “[e]ven if the applicant dealer moves two miles or less from the current location, another dealer would have standing to protest where the proposed relocation site is ‘closer to the franchised dealer than the site from which the dealership is being relocated.’”²²³ Doggett Ford is mistaken.

²¹⁹ App. Op. Br. at 21–22 (citing *Williams Chrysler-Plymouth, Inc.*, PFD at 5–6; *Maund, Inc.*, PFD at 5).

²²⁰ *Id.* at 22.

²²¹ *Id.*

²²² Prot. Br. at 40–41.

²²³ *Id.* (quoting Tex. Occ. Code § 2301.6521(c)).

While Doggett Ford is correct that the two requirements are phrased in the disjunctive, it overlooks the preceding negative limitation (“may not”) that is conditioned on a further negative (“is not”):

A franchised dealer *may not* protest an application to relocate a dealership under this section if the proposed relocation site *is not*: (1) more than two miles from the site where the dealership is currently located; *or* (2) closer to the franchised dealer than the site from which the dealership is being relocated.²²⁴

While the negative phrasing is potentially confusing, the effect of this textual structure (known as “disjunctive negative proof”) is to *negate* standing where either of the two requirements is *not* met, as opposed to affirmatively *granting* standing where either requirement *is* met, as Doggett Ford assumes.²²⁵ Or stated more directly, a franchised dealer must meet both requirements, not just either one, in order to have standing to protest a relocation application.

And the Board agrees—it has adopted the same construction in its implementing rules. For purposes of applications governed by the general standard of Section 2301.652, the Board has restated the requirements as follows:

[A] person has standing to protest an application to relocate a dealership . . . if: . . . the proposed relocation site is more than two miles from the location where the dealership is currently licensed; and . . .

²²⁴ Tex. Occ. Code § 2301.6521(d) (emphases added); *see also id.* § 2301.652(c) (identical language).

²²⁵ *See* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 120–21 (discussing disjunctive negative proof).

nearer to the protesting franchised dealer than the location from which the relocating dealership is currently licensed.²²⁶

Similarly, for applications governed by Section 2301.6521, as here, the rules state:

No dealer has standing to protest an application . . . if the proposed relocation site is two miles or less from the relocating dealer’s existing licensed location,” and that “[n]o dealer has standing to protest an application . . . if the proposed relocation site is farther from the protesting dealer’s licensed location than the relocating dealer’s existing licensed location.²²⁷

In the very least, these rules are reasonable constructions of and not inconsistent with the underlying statutory language, such that the ALJs (and courts) would defer to them.²²⁸

Chastang Ford also urges that the relocation would have little impact on the relative drive times between the two dealerships, such as a prospective customer would travel to cross-shop.²²⁹ Using Google Maps, which he testified derives weighted averages of drive times from different times and days, Mr. Roesner determined that the average drive time between Chastang Ford to Doggett Ford would be reduced from 14.8 minutes to 12.4 minutes—a difference of 2.4 minutes. As for consumers driving from Doggett Ford to Chastang Ford, he determined that the average drive time would be reduced from 11.6 minutes to 11.1—0.5 minutes, *i.e.*,

²²⁶ 43 Tex. Admin. Code § 215.119(d).

²²⁷ *Id.* § 215.119(e).

²²⁸ *E.g., R.R. Comm’n v. Tex. Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 625 (Tex. 2011).

²²⁹ App. Op. Br. at 22–23.

a mere 30 seconds.²³⁰ Although Doggett Ford questioned the route identified by Google Maps, suggesting that one might reach the site more quickly by taking an earlier exit from the Eastex Freeway and using the feeder road, Mr. Roesner pointed out that the proposed alternative entailed stoplights and lower speeds than the other.²³¹ In any event, the central point remains the same—the relocation would have a fairly minimal impact on the relative drive times between the two dealerships.

In sum, the ALJs must agree with Chastang Ford to the extent that the distance of its proposed relocation, so narrowly beyond that which would not even be cognizable in a protest, and having so minimal an impact on relative driving time and distance, would tend not to have any impacts on competition considered material under Texas law, let alone adverse ones. But then again, each case must be evaluated based on its own facts and circumstances.

C. CHASTANG FORD’S BUSINESS MODEL

In that regard, Doggett Ford insists that this case is not a typical or “pure relocation case” but has attributes of an add-point case that render it a “hybrid” of the two.²³²

²³⁰ 3 Tr. 43–48, 172–76; Ex. A-21 at A21-0071.

²³¹ 3 Tr. 123–30.

²³² Prot. Br. at 40.

1. Market Position

Doggett Ford’s arguments on that point respond in part to a key theme of Chastang Ford at the hearing—essentially, that it competes in a different marketplace, and in a different way, than does Doggett Ford or other “typical” Ford dealers, such that its relocation is unlikely to have any impact on them. Chastang Ford’s evidence in support included the testimony from Mr. Roesner, whose professional background and expertise includes analyzing the impact of a proposed addition or relocation of a dealership within a “network” of a manufacturer’s dealerships serving an urban area, as with Chastang Ford’s relocation among the other Houston-area Ford dealerships.²³³ He also noted that he typically worked for protesting dealers and believed this to be the first relocation case in which he, after performing initial analysis, opted to work on the relocating dealer’s side.²³⁴

Mr. Roesner presented analyses comparing Doggett Ford and Chastang Ford’s fleet and retail (non-fleet) sales based on data compiled by IHS Markit (formerly R.L. Polk) from nationwide vehicle-registration data and employing a numerically-based definition of “fleet” sales (more than ten vehicle registered by that purchaser in a single year) that differed slightly from Ford’s account-based definition.²³⁵ He observed, similar to the Ford financial statements noted previously, that only about thirty-three percent of Chastang Ford’s new-vehicle sales from 2019

²³³ 3 Tr. 6–12.

²³⁴ 3 Tr. 14–15.

²³⁵ 3 Tr. 54–63.

to August 2022 were non-fleet (1,771 versus 3,626 units), as compared to almost ninety percent of Doggett Ford’s sales during this period (4,800 versus 555).²³⁶

Furthermore, Mr. Roesner emphasized, Chastang Ford sold many more “heavy duty” and “medium duty” trucks (respectively, Classes Seven and Eight and Classes Three to Six by gross vehicle weight) than did Doggett Ford during this period, and correspondingly fewer smaller trucks.²³⁷ Some examples include:

| <u>GVW Class</u> | <u>Model</u> | <u>Chastang Ford</u> <u>(# units /% of total sales)</u> | <u>Doggett Ford</u> <u>(# units/% of total sales)</u> |
|------------------|--------------|--|--|
| 8 | F-750 | 8 / 0.1% | 0 / 0% |
| 7 | F-750 | 65 / 1.2% | 11 / 0.2% |
| 6 | F-750 | 163 / 2.9% | 0 / 0% |
| | F-650 | 66 / 1.2% | 2 / 0% |
| 5 | F-550 | 514 / 9.2% | 57 / 1.0% |
| | F-450 | 170 / 3.0% | 14 / 0.2% |
| 4 | F-450 | 16 / 0.3% | 0 / 0% |
| 3 | F-450 | 15 / 0.3% | 31 / 0.5% |
| | F-350 | 547 / 9.8% | 197 / 3.3% |
| | F-250 | 32 / 0.6% | 122 / 2.1% |
| 2 | F-350 | 14 / 0.3% | 0 / 0% |

²³⁶ Ex. A-22 at A22-0015. The respective percentages varied slightly year by year. Chastang Ford’s sales in 2019 were 32.1 percent retail (453 retail versus 959 fleet); in 2020, 34.4 percent (426 versus 813); in 2021, 37.7 percent (578 versus 954); and in January-August 2022, 32.8 percent (314 versus 900). By contrast, Doggett Ford’s sales in 2019 were 91.6 percent retail (1,120 retail versus 103 fleet); in 2020, 93.1 percent (1,316 versus 98); in 2021, 89.6 percent (1,677 versus 195); and in January-August 2022, 81.2 percent (687 versus 159).

²³⁷ 3 Tr. 63–65; Ex. A-22 at A22-0016.

| | | | |
|---|------------|---------------|---------------------------|
| | F-250 | 1,155 / 20.7% | 669 / 11.3% |
| | F-150 | 1,453 / 26.1% | 2,276 / 38.5% |
| | Explorer | 120 / 2.2% | 131 / 2.2% |
| | Expedition | 178 / 3.2% | 432 / 7.3% |
| 1 | Explorer | 141 / 3.5% | 342 / 5.8% ²³⁸ |

Mr. Roesner also compared data about the two dealerships' repair orders and noted that, likewise, larger trucks have been a much more significant component of Chastang Ford's service business than Doggett Ford's and smaller vehicles a correspondingly smaller one. For example, he noted, repairs on F-750s represented over ten percent of Chastang Ford's service business (1,171) while Doggett Ford had only three such repairs. Conversely, repairs on F-150s represented over thirty-eight percent of Doggett Ford's service business (4,200), compared to about twenty-one percent of Chastang Ford's business (2,430).²³⁹

This data, Mr. Roesner opined, reflected that Chastang Ford and Doggett Ford are targeting different market segments, the former pursuing fleet and commercial truck buyers, the latter the ordinary retail consumer buying a vehicle for personal use. He further deduced that Chastang Ford differed from Doggett Ford and the typical motor-vehicle dealer in having a "relationship-driven" business model that focused on cultivating customers who would make multiple purchases of

²³⁸ Ex. A-22 at A22-0016.

²³⁹ 3 Tr. 65-67; Ex. A-22 at A22-0017. As Mr. Roesner explained, the data sets were not identical, as he received data for Chastang Ford extending through August 2022 but only through 2021 for Doggett Ford. However, his material point—that the composition of the two dealerships' service business differ markedly—had merit regardless.

goods and services going forward, as opposed to the one-time or occasional business of individual retail consumers.²⁴⁰ In this regard, Mr. Roesner echoed testimony by various Chastang Ford fact witnesses, who attested that building and maintaining relationships with customers is an integral part of the dealership's business model not only in sales and service, but also in wholesale parts.²⁴¹ In fact, according to a Chastang Ford website in evidence, eighty-five percent of the dealership's new-vehicle sales have come from repeat and referral clients.²⁴² Dan Miller, the dealership's Vice President of Sales, also termed it "fairly routine" for Chastang Ford to make retail, personal-use sales to individual employees of fleet or commercial customers who had "a comfort level because we've proven ourselves" to their company.²⁴³

A key implication of this relationship-driven model, according to Mr. Roesner, was that Chastang Ford's proximity relative to other Ford dealers or a given customer played much less of a role in intra-brand competition than it might for the typical retail-focused Ford dealership.²⁴⁴ To further support that premise, Mr. Roesner presented data showing the relative geographic distribution, at census-tract level, of the Harris County registrations of new and used Ford trucks sold by Chastang Ford between 2019 through August 2022, as well as the census tract of each Harris County repair-order customer during that period, and compared them

²⁴⁰ 3 Tr. 61–62, 69–70.

²⁴¹ 2 Tr. 74, 143, 160, 203–05.

²⁴² Ex. A-79 at A79-001.

²⁴³ 2 Tr. 205–06.

²⁴⁴ Ex. A-21 at A21-0011.

to Doggett Ford's relative distributions. As Mr. Roesner observed, each aspect of Chastang Ford's business, including its retail sales, was distributed throughout Harris County, with no discernable concentration near its current location, and little or none anywhere else aside from the locations of its fleet customers, whereas Doggett Ford's business was more concentrated near its location.²⁴⁵

Mr. Roesner similarly compared the "penetration" of each dealership's new-vehicle registrations, as a percentage of total Ford registrations from 2019 through August 2022, within "rings" at two-mile-distance intervals out to twenty miles away. Mr. Roesner determined that Doggett Ford had much higher penetration in areas near its location than did Chastang Ford, and with much steeper decreases as the distance became greater.²⁴⁶ He concluded that Doggett Ford had "a typical penetration profile for a metropolitan dealer," "where the people close to the dealership are more likely to visit that dealership versus other Ford dealers," whereas Chastang Ford's was "more evenly spread" and reflected that it has not been a "traditional retail dealership."²⁴⁷ Mr. Roesner also compared Chastang Ford and Doggett Ford's respective registrations within "dealer areas" he identified for each Harris County Ford dealer other than Chastang Ford by assigning them the census tracts that are closest by driving distance.²⁴⁸ He determined that Doggett Ford had 18.1 percent of the Ford new-vehicle registrations in its "dealer

²⁴⁵ 3 Tr. 67-79; Ex. A-22 at A22-0018 through 0024.

²⁴⁶ 3 Tr. 79-83; Ex. A-22 at A22-0025 through 0026.

²⁴⁷ 3 Tr. 80-83.

²⁴⁸ 3 Tr. 84-87; Ex. A-21 at A21-0075.

area” (649) during the period and Chastang Ford only 1.62 percent (58).²⁴⁹ In used-car registrations, which has a much larger pool of dealers, Doggett Ford had 0.68 percent (157 of 22,965 total) in its “dealer area,” compared to Chastang Ford’s 0.09 percent (20).²⁵⁰ Once again, Mr. Roesner concluded that the data reflected that Doggett Ford was operating as a “typical retail dealer,” selling primarily in areas closest to it, whereas proximity was not an important factor in Chastang Ford’s sales.²⁵¹

Based on his review of Chastang Ford’s sales patterns and the underlying relationship-driven business model he identified, Mr. Roesner concluded that the dealership’s proposed relocation was “highly unlikely to have any impact on the sales of Doggett.”²⁵²

2. The New Retail Locality

Since its inception, Chastang Ford’s Sales and Service Agreement with Ford has obligated it to “promote vigorously and aggressively the sale at retail . . . of TRUCKS to private and fleet customers within the DEALER’S LOCALITY, and [to] develop energetically and satisfactorily the potential for such sales and obtain a reasonable share thereof.”²⁵³ The agreement defines “DEALER’S LOCALITY” as

²⁴⁹ Ex. A-22 at A22-0027, 0029.

²⁵⁰ Ex. A-22 at A22-0028, 0030.

²⁵¹ 3 Tr. 87–92.

²⁵² 3 Tr. 92–93.

²⁵³ Ex. A-1 at A1-0009.

“the locality designated in writing to the Dealer by [Ford] from time to time as the area of the Dealer’s sales and service responsibility for COMPANY PRODUCTS,” although “the Dealer shall not be limited to the DEALER’S LOCALITY in making sales.”²⁵⁴ The Agreement further contemplates that Ford will measure Chastang Ford’s “performance of [its] sales responsibility for TRUCKS” by “reasonable criteria” that include comparisons of its sales to “all private and all fleet registrations” in its locality of both Ford trucks and those of other manufacturers.²⁵⁵ Ford assigns dealer localities by census tracts, based on the air-mile proximity of centroids to dealership locations (thus differing from Mr. Roesner’s “dealer areas” assigned by driving distance), making adjustments with each decennial census that are subject to protest by affected dealers.²⁵⁶ While dealer localities are not exclusive sales territories, Ford uses them to derive benchmarks for assessing dealer sales performance. Essentially, Ford ascertains the number of new-vehicle registrations for particular lines or models that are made within the locality, then multiplies that number by Ford’s statewide market share to obtain an “expectancy,” which dealers are then expected to meet or exceed through that sales that may come from either within or beyond the locality.²⁵⁷

Historically, Chastang Ford’s assigned dealer locality has encompassed the entirety of Harris County and portions of Fort Bend, Montgomery, Brazoria, Liberty, and Galveston Counties, territory that includes the locations of the

²⁵⁴ Ex. A-1 at A1-0008 through 0009.

²⁵⁵ Ex. A-1 at A1-0009.

²⁵⁶ 1 Tr. 87-88; Ex. A-2; *see* Tex. Occ. Code §§ 2301.454-.455.

²⁵⁷ 1 Tr. 81-87; Ex. P-229 at 58-60, 71-73.

approximately twenty other Houston-area Ford dealers.²⁵⁸ Chastang Ford's sales expectancy measures derived from that locality have apparently looked to its total sales of new trucks, including fleet purchases.²⁵⁹ These methods differ from those Ford has used with its franchised dealers generally and reflect differing treatment due to Chastang Ford's status as a truck center. With other dealers, Ford has assigned them a much smaller "retail sales locality" not shared with any other Ford dealer, with a corresponding "retail sales expectancy" derived from retail registrations (*i.e.*, from non-fleet sales) made within that locality. Ford heretofore has not imposed a retail (non-fleet) sales expectancy of its truck centers this way.²⁶⁰

However, when adjusting its dealer localities following the 2020 Census, Ford has also decided to assign its truck centers nationwide, including Chastang Ford, a retail sales locality in the same manner as with its other dealers.²⁶¹ Accordingly, by letter dated June 28, 2022, Ford notified Chastang Ford of the proposed assignment, subject to its protest rights, of a retail sales locality comprised of census tracts in northeast Harris County.²⁶² This retail sales locality would be "new" or "added" in the sense that localities formerly shared by other Houston-area dealers have been redivided among a pool that now includes Chastang Ford for the first time, with portions of Chastang Ford's proposed locality consisting of areas formerly assigned

²⁵⁸ 1 Tr. 87-90; Ex. A-2 at A2-0003.

²⁵⁹ See Exs. A-72 through A-76.

²⁶⁰ Ex. P-229 at 53-54.

²⁶¹ 1 Tr. 179; Exs. P-229 at 49-50, P-230 at 52-54. Which also differed from Mr. Roesner's "dealer area" analysis, as he did not assign Chastang Ford one because Ford had not then assigned it a retail locality. Ex. A-21 at A21-0075.

²⁶² Ex. P-10.

to Doggett Ford or Tommie Vaughn Motors.²⁶³ As with its prior locality, however, Chastang Ford could meet its retail sales expectancies through sales made either within or beyond the locality, as is true of other Ford dealers and their respective retail sales expectancies.²⁶⁴

Chastang Ford opted not to protest the new locality, nor did Doggett Ford, although the change has yet to take effect due to a still-pending protest made by Tommie Vaughn Motors.²⁶⁵ Although some version of the change will occur regardless of whether Chastang Ford relocates, approval of the relocation would cause the locality's configuration to be changed again, as it would impact the relative proximity of census tracts to it *vis à vis* the other Ford dealerships.²⁶⁶

3. Doggett Ford's Position

While acknowledging that Chastang Ford has heretofore operated with different business emphases than “Ford ‘car stores’ like Doggett,” Doggett Ford urges that these are “historical differences only and obfuscate[] the fact that Chastang must change its focus because of Ford’s assignment of a retail locality.”²⁶⁷ That is, Doggett Ford contends that Chastang Ford, in order to meet its new retail sales expectancies, must shift from its historical focus on fleet and commercial sales

²⁶³ 1 Tr. 159; Ex. P-230 at 53–55, 58–59; *compare* Ex. A-45, *with* Ex. P-10.

²⁶⁴ 1 Tr. 86–87; Ex. A-105 at A105-0034 through 0035, 0071 through 0072.

²⁶⁵ 1 Tr. 91–93, 159; Ex. P-230 at 59.

²⁶⁶ Ex. P-230 at 60–61.

²⁶⁷ Prot. Br. at 11, 36; *see also id.* at 16, 19–21, 56–58, 63.

to aggressively pursue retail sales in the manner of Doggett Ford and most other Ford dealers. “To deny that Chastang’s new retail sale expectancies will affect its approach to selling and servicing retail vehicles,” Doggett Ford insists, “is to deny reality.”²⁶⁸ To the same effect, Doggett Ford points to testimony from Dr. Benton estimating a “5 percent impact” on its retail sales by virtue of Chastang Ford’s new retail locality and accompanying “loss” of a portion of Doggett Ford’s former locality.²⁶⁹ And because of this anticipated shift in the dealership’s business model, Doggett Ford reasons, this case is not merely about the proposed relocation of an existing Chastang Ford dealership but a “hybrid” akin to adding what will effectively be an entirely new Ford retail dealership to the Houston market.²⁷⁰

In fact, Doggett Ford asserts, Chastang Ford is already “in the process of transitioning from a truck store to a full-fledged retail competitor.”²⁷¹ It points to “strong recent growth” in Chastang Ford’s retail sales it perceives to be evident in Ford “Daily Sales Reports” that, in pertinent part, provide quarterly comparisons of the retail sales of each Houston market Ford dealer from a year-by-year standpoint.²⁷² These reflect the following retail sales performance of Chastang Ford as compared to Doggett Ford:

²⁶⁸ Prot. Br. at 57.

²⁶⁹ Prot. Br. at 70–71; *see* 5 Tr. 109–12.

²⁷⁰ Prot. Br. at 40.

²⁷¹ Prot. Br. at 32.

²⁷² Prot. Br. at 21–23; *see* Ex. P-83.

| 12-Month Period | Chastang Ford (# retail units sold) | Prior yr. (# retail units sold/pct. change) | Doggett Ford (# retail units sold) | Prior yr. (# retail units sold/pct. change) |
|---------------------------|--|--|---|--|
| Mar. 2020– Mar. 2021 | 156 | 87 (+79.3%) | 533 | 397 (+34.3%) |
| June 2020– June 2021 | 313 | 189 (+65.6%) | 933 | 762 (+22.4%) |
| Sept. 2020– Sept. 2021 | 456 | 316 (+44.3%) | 1222 | 1163 (+5.1%) |
| Dec. 2020– Dec. 2021 | 612 | 457 (+33.9%) | 1652 | 1663 (-0.7%) |
| Mar. 2021– Mar. 2022 | 131 | 156 (-16.0%) | 259 | 533 (-51.6%) |
| June 2021– June 2022 | 291 | 313 (-7.0%) | 603 | 933 (-35.4%) ²⁷³ |

Further, while downplaying the significance of comparisons between a single dealership and a group average without the context of relative dealership sizes, Doggett Ford points to a December 2022 comparison between Chastang Ford’s retail sales versus other Ford dealers in what it states to be Zone A as proof that “Chastang’s retail performance in 2022 was strong compared to the other dealers.”²⁷⁴ The comparators, as Chastang Ford points out, appear instead to be averages for Ford’s entire Houston region, which encompasses 106 Ford dealers

²⁷³ See Ex. P-83 at P063, P065, P067, P069, P071, P073.

²⁷⁴ Prot. Br. at 22 & n.132; see Ex. A-6.

spread across the southern half of Texas, including rural areas and small towns.²⁷⁵ But in looking to these figures, they reflect Chastang Ford's fleet sales of "heavy trucks," "light trucks," and SUVs that far exceeded the group averages, as did Chastang Ford's retail sales of "heavy trucks," but that its retail sales of SUVs were barely half the group average (as noted previously) and that its retail sales of "light trucks" were below but closer to the group average (421 units versus 454 units, or 33 fewer).²⁷⁶ Doggett Ford also notes that Chastang Ford's gross profit on SUV retail sales was "close" to the group average (\$3,473 versus \$3,517), and posits that the relocation "would increase retail competition in this segment," as "Chastang can sell Ford's entire line of SUVs in direct competition with Doggett."²⁷⁷

Aside from its views of this sales data and the likely effects of the new retail locality, Doggett Ford repeatedly accuses Chastang Ford of trying to mask its "true reason" for seeking to relocate—to "make significant moves into the retail market in central Houston," aided by the contemplated new, larger, Signature-style facilities that would front the Eastex Freeway.²⁷⁸ In support, Doggett Ford quotes portions of testimony from various Chastang Ford witnesses that, it insists, demonstrate that intent. Among these is an excerpt from Joe Chastang's testimony in which he referenced the dealership getting "a little bigger piece of the pie" (which became a prominent theme of Doggett Ford's brief); testimony by Patrick Chastang that he

²⁷⁵ App. Reply Br. at 13; *see* Ex. A-106 at A106-0017. As Doggett Ford seemed to agree during the hearing. 2 Tr. 93-95.

²⁷⁶ Ex. A-6 at A6-0001.

²⁷⁷ Prot. Br. at 22-23; Ex. A-6 at A6-0001.

²⁷⁸ Prot. Br. at 7-8, 11, 17-19, 21, 23, 26-27, 29-32, 56, 64.

anticipated the new location on the Eastex Freeway could help draw some of the business from the Kingwood-Humble area to the north who were shopping the Planet Ford dealership there (said to be an “admission” that “reveals Chastang’s intent to draw business from other Ford dealers, including Doggett, by moving to the Eastex Freeway”); an observation by Mr. Miller that “[g]rowth has to come from somewhere” and that if Chastang Ford won a customer’s business over Doggett Ford, “[i]t just means that we’ve done a better job than the personnel [at] Doggett have” (termed “a tacit admission of the harm to Doggett posed by the relocation”); and various other asserted “admissions” by Chastang Ford witnesses that the new facilities could help attract retail customers or other business.²⁷⁹ Doggett Ford also deems “not credible” testimony by Joe Chastang that he had no desire for Chastang Ford to apply for a passenger-car license. In Doggett Ford’s view, “it stands to reason” the dealership would “want to be able to sell the full product line its competitors can sell.”²⁸⁰

4. Chastang Ford’s Position

Chastang Ford insists that its new retail dealer locality and accompanying retail sales expectations are “irrelevant” to this proceeding because these will be implemented whether it relocates or not.²⁸¹ To the extent these would be relevant as a factor potentially bearing upon how Chastang Ford would compete in the market

²⁷⁹ 1 Tr. 260; 2 Tr. 79, 229–30, 257–59; *see* Prot. Br. at 6, 8, 19, 27, 29–30.

²⁸⁰ 1 Tr. 177–79; Prot. Br. at 55 n.375.

²⁸¹ App. Op. Br. at 40–41; App. Reply Br. at 4.

after relocating, it denies a prospective shift in focus from commercial sales to retail personal-use sales.²⁸²

Mr. Roesner thought Chastang Ford would be “silly” if it abandoned its focus on the commercial realm and customer relationships in order to pursue a “pure retail model” in the mode of other Ford dealers, though he acknowledged that he could not speak for the dealership’s business plans.²⁸³ He dismissed as mere “conjecture” Dr. Benton’s opinion that Ford’s assignment of a retail locality would cause such a change in Chastang Ford’s behavior.²⁸⁴ Mr. Roesner also pointed out that only twenty-four of Doggett Ford’s retail truck sales between 2019 and 2021—just over one half of one percent of its nationwide retail sales—came from census tracts “lost” to Chastang Ford’s retail locality.²⁸⁵

As for Chastang Ford’s witnesses who could speak to its business plans, Joe Chastang testified that “giving us a locality isn’t going to change anything in the way that we do business.”²⁸⁶ He elaborated that a locality had nothing to do with where Chastang Ford’s sales were made or came from, but was merely “a Ford internal measurement” based on “imaginary lines” to which he had “never paid a lot of attention” in the past. Joe added, “Because I figure if we’re doing good, they

²⁸² App. Reply Br. 4.

²⁸³ 3 Tr. 145.

²⁸⁴ Ex. A-24 at A24-0004.

²⁸⁵ 7 Tr. 20–24; Ex. A-24 at A24-0004 through 0005, 0016.

²⁸⁶ 1 Tr. 94–95.

[Ford] don't say anything [and if] we're not doing good, somebody will call me," and Ford never had previously.²⁸⁷

Regarding carrying passenger cars because retail competitors would, Joe testified that he didn't care to risk protests merely "to have a two-door Mustang," and that, "I can do good with what we've got to sell. I'm a lot better at the commercial end of the business than most [other Ford dealers], so I can more than make up for it there."²⁸⁸ Joe also did not perceive "a disadvantage at all," as Chastang Ford would "only be measured on the products that [it is] licensed to sell." He reiterated, "I don't pay a lot of attention to the locality thing," and added, "We're going to sell all the vehicles that we can sell []regardless of where we're located," but insisted that the dealership "can better serve the public at 3625 Eastex Freeway than [it] can where [its] currently located."²⁸⁹

Similarly, Patrick Chastang dispelled the notion that Chastang Ford's lower retail SUVs sales in 2022 compared to the Houston region averages necessarily meant that it would need to focus on increasing those sales going forward. He observed that Chastang Ford was profitable without regard to those sales and that they were "not a focus unless Ford asked me to do those," but "then I don't know that I would change what we're doing." Instead, he testified, he would look to grow

²⁸⁷ 1 Tr. 78-94.

²⁸⁸ 1 Tr. 177.

²⁸⁹ 1 Tr. 178.

retail sales of light trucks “over the SUV number” because the former is “a number that I know we’re good at [and] my people understand it.”²⁹⁰

Likewise, in testimony that provides the context for what Doggett Ford terms his “tacit admission of the harm to Doggett posed by the relocation,” Mr. Miller explained that Chastang Ford’s future growth would be grounded in its longstanding emphasis on building and maintaining customer relationships, as opposed to a shift from that strategy:

I don’t feel like I have to apologize [for] being successful in taking care of our customers and finding growth. That’s exactly what we want to try to do is try to take care of our customers. And [growth is] our customers speaking. They like how we do business. They want to continue doing business. And we plan on trying to grow our business.²⁹¹

Mr. Miller added that Chastang Ford’s relationship-driven model helped distinguish it from the twenty-or-so other Ford dealers in the Houston market, all of whom are competing with each other:

[W]hat I think what we do different, what my sales team does different, is we’re very consultative in our approach. We learn about the customers, their business, how they use their vehicles, why it’s important, [are] there ways we can improve it, and then we sell all facets of our dealer[ship], whether that’s just the sales, parts, service, F&I products, our invoicing process, our delivery process, delivering trucks to the customer, we tr[y] to stand apart from everybody else. And I

²⁹⁰ 2 Tr. 84–87.

²⁹¹ 2 Tr. 254.

think this is what has allowed us to be so successful and grow our business in the past, and I'm going to continue doing it.

...

Growth has to come from somewhere. I think the growth will come from all dealerships throughout the Houston area. If we're going to have growth, we're not targeting one individual dealership. We're just, again, doing the same thing we've always done. We're going out and finding customers, and we're going to continue trying to do the[] same consultative sales approach and bring value to those relationships as we always have.²⁹²

And if a customer came to Chastang Ford rather than Doggett Ford, Mr. Miller opined, “[i]t just means that [Chastang Ford has] done a better job than the personnel [at] Doggett have.”²⁹³ However, though acknowledging that Chastang Ford’s customers had been “speaking” through the retail sales figures emphasized by Doggett Ford, Mr. Miller disagreed that the dealership had “outperformed” Doggett Ford in terms of units sold, as he indicated that Chastang Ford is “nowhere close” to Doggett Ford’s volume.²⁹⁴ He similarly observed that he would gauge performance based only on unit sales rather than percentage growth, agreeing with counsel that a dealership selling only two vehicles annually could claim “100-percent growth” if it had sold only one vehicle during the prior year.²⁹⁵

²⁹² 2 Tr. 255–56, 258.

²⁹³ 2 Tr. 258–59.

²⁹⁴ 2 Tr. 237–51, 254.

²⁹⁵ 2 Tr. 253–54.

Of further note, Joe Chastang observed that Ford's changing of Chastang Ford's dealer locality from a multi-county region to a much smaller area would translate to a much lower number of vehicle registrations within the new locality, the figures to which Ford's market share would be applied to yield the new retail sales expectancies. Moreover, he observed, the demographics around both its current and proposed locations would tend to have a relatively lower number registrations compared to other areas of Houston.²⁹⁶ Both locations, he noted, were in industrialized areas within Kashmere Gardens (a/k/a Houston's Fifth Ward), whose residents tended to have lower incomes.²⁹⁷ As Joe put it, "[i]f you were picking, you wouldn't pick that to be your prime audience for selling new vehicles."²⁹⁸ The implication was that Chastang Ford's retail sales expectancies will tend not to be very demanding, making them even less likely to be a potential influence on the dealership's business model.

5. ALJs' Analysis

Although Chastang Ford is correct in observing that Ford will be assigning it a retail dealer locality regardless of whether it relocates or not, the ALJs disagree with Chastang Ford that this event is categorically irrelevant to this case for that reason. The change could become relevant if, as Doggett Ford argues, it will cause Chastang Ford to alter its longtime business model to emphasize retail sales of vehicles to consumers for personal use, thereby competing more directly in the space

²⁹⁶ 1 Tr. 80-81, 96-97.

²⁹⁷ 1 Tr. 111-17; *see* Ex. A-81.

²⁹⁸ 1 Tr. 116.

presently occupied by Doggett Ford and most other Houston-area Ford dealers. In that event, the competitive impact of Chastang Ford’s proposed relocation would properly be evaluated based on that so-evolved form of the dealership rather than the current one.²⁹⁹ The same would be true if, as Doggett Ford insists, Chastang Ford is already “in the process of transitioning from a truck store to a full-fledged retail competitor” and/or has designs to do so at the proposed relocation site. However, the evidence weighs against the occurrence of any such seismic shift in Chastang Ford’s business model.

Joe Chastang and other Chastang Ford employees testified to the effect that the dealership will continue to pursue the commercially-focused, relationship-driven business model that has yielded it much success and differentiated it from the typical consumer-retail-focused dealerships like Doggett Ford—or in the phrasing often used by the late Coach Darrell Royal, continuing to dance with who brung ’em—unless and only if Ford raises some complaint about its performance relative to the new retail sales expectation. Indeed, as Mr. Roesner suggested, such a change would seemingly make little sense otherwise. And the prospect of Ford raising any such complaint is unlikely on this record.

Although neither party presented evidence as to precisely what the new retail sales expectancies would be, the evidence does establish that they would be derived

²⁹⁹ Cf. *Allen Samuels Austin Dodge, Inc.*, PFD at 44 (effects of constructing new and improved facility for relocating dealership may be relevant in assessing competitive harm to protesting dealer). That is not to say that Doggett Ford can use this proceeding to *de facto* mount a back-door challenge to the parameters Ford has currently proposed for the dealer localities themselves; that would properly be the subject of a different proceeding that Doggett Ford has opted not to pursue. See Tex. Occ. Code §§ 2301.454–.455.

(whether at the current location or the proposed relocation site) from registrations made within a lower-income area of Houston, which will tend to be correspondingly lower, and yield less demanding retail sales expectations, than perhaps other Houston-area Ford retail sales localities. Moreover, Chastang Ford could meet those expectations (whatever they prove to be) through sales made anywhere in Harris County, or in Texas, or anywhere else, in the manner that Chastang Ford has done business heretofore. And importantly, those “retail” sales need only be “retail” in the sense that Ford uses that term—*non-fleet* sales, thus “counting” Chastang Ford’s strength in non-fleet commercial sales—and not merely “retail” sales in the sense of vehicle sales to consumers for personal use. Further, even if Chastang Ford’s retail (in the sense of non-fleet) sales were still to come up short with respect to some product line on which it is being measured (*e.g.*, SUVs), the evidence permits no more than speculation that Ford would take any action with respect to this established, profitable dealership that has excelled in fleet and other commercial truck sales, and its representation of the Ford brand, for so many years. That matter would be within Ford’s discretion, and Joe Chastang testified without dispute that Ford has never previously complained of Chastang Ford’s sales.

And especially against this backdrop, Dr. Benton’s opinion assigning a “5 percent” retail sales impact to the new retail locality is unpersuasive as proof that this will actually occur. Dr. Benton apparently grounded her opinion in an observation that Chastang Ford’s Sales and Service Agreement obligates it to “promote vigorously and aggressively the sale at retail . . . of TRUCKS to private and fleet customers within the DEALER’S LOCALITY,” and deduced that because about 11.7 percent of Doggett Ford’s former dealer locality was “lost” to Chastang

Ford's new dealer locality, *ergo* Chastang Ford will (1) increase its retail sales efforts in the "lost" census tracts *and* (2) correspondingly "take" those sales "away" from Doggett Ford.³⁰⁰ Among other things, this reasoning overlooks that Ford's retail dealer localities are not exclusive sales territories, that sales expectancies may be satisfied through sales made either within or beyond the locality, that Chastang Ford has heretofore had those same contractual duties with respect to a locality encompassing the same area plus all of Harris County and beyond, and that Chastang Ford does not intend to (and is unlikely to need to) change the way it does business. And even assuming that Chastang Ford would increase its sales in the "lost" census tracts, these could come at the expense of other brands and in any event represent a relatively miniscule share of Doggett Ford's retail sales. Moreover, it remains unclear to the ALJs how any of the effects Dr. Benton anticipates from the new retail dealer locality translate to the "5 percent" loss in sales she forecasts for Doggett Ford. Although Dr. Benton refers generally to her "experience" and "judgment," the Texas Supreme Court has made clear that "mere *ipse dixit* of a credentialed witness" is not competent evidence under Texas law,³⁰¹ and in the very least does not sway the ALJs here.

Nor are the sales figures that Doggett Ford cites persuasive, controverting proof that a shift toward retail consumer sales is already underway at Chastang Ford. Aside from the fallacy of looking to percentage growth from Chastang Ford's much lower numbers of unit sales as compared to Doggett Ford's, as noted by Mr. Miller,

³⁰⁰ 5 Tr. 110-13; *see* Ex. A-1 at A1-0009.

³⁰¹ *See, e.g., City of San Antonio v. Pollock*, 284 S.W.3d 809, 816 (Tex. 2009) (compiling authorities).

both Joe and Patrick Chastang attested that Chastang Ford’s recent “retail” sales figures included purchases by fleet customers who could not buy in that usual manner due to Pandemic-related supply shortages.³⁰² And as for the testimony that Doggett Ford portrays as somewhat malevolent manifestations of Chastang Ford’s “true reason” in relocating to “make significant moves into the retail market in central Houston,” these prove to be snippets taken out of context—and to an extent that also weakens the persuasiveness of Doggett Ford’s broader arguments.

In addition to Mr. Miller’s testimony, as described previously, what is termed Patrick Chastang’s “admission” of “intent to draw business from other Ford dealers . . . by moving to the Eastex Freeway” proves merely to be an acknowledgment that the move “could be” advantageous in obtaining business from Kingwood-Humble-area customers who had already been shopping Chastang Ford due to personal friendships with him, as he had grown up in Kingwood and continued to reside in that area.³⁰³ Similarly, when read in context, Joe Chastang’s “bigger piece of the pie” comment was merely to the effect that the dealership could weather any future challenges or uncertainties in the market over the long term, such as supply constraints and rising interest rates, such that those conceivable future events should not deter it from relocating. Joe observed, “There’s always something. There has been for 50 years. There will be for the next 50 years,” and that “just because business is goes down and the pie is smaller, doesn’t mean we’re less hungry. We just go to, you know, get a little bigger piece of the pie.”³⁰⁴ Other testimony cited by

³⁰² 1 Tr. 56–57; 2 Tr. 91.

³⁰³ 2 Tr. 71–72, 79.

³⁰⁴ 1 Tr. 258–60.

Doggett Ford amounts merely to innocuous acknowledgments that, *e.g.*, Signature-style facilities, a location on the Eastex Freeway, or a larger showroom could conceivably help it increase retail sales. But there is no throwing-down-of-the-gauntlet or declarations of intent to pursue retail consumer sales, as Doggett Ford attempts to portray, and nothing that materially or persuasively controverts Chastang Ford’s testimony that it intends to operate as it has in the past.

Indeed, the gravamen of Doggett Ford’s arguments about Chastang Ford’s supposed “true reasons” for relocating would be that Joe Chastang and other dealership employees are simply lying—under oath, no less—when attesting to Chastang Ford’s motivation instead of resolving the space constraints that are impeding the dealership’s business and future growth going forward, including in its longstanding core of fleet and commercial business. The ALJs are not persuaded; Chastang Ford’s witnesses instead testified credibly about the dealership’s plans doing forward.

In short, the ALJs find that the assignment of a retail sales locality to Chastang Ford will not cause it to shift its business model away from its longstanding commercial, relationship-focused model. Nor does it desire to do so, let alone have any such pivot underway already. Consequently, this case does not present any equivalent or “hybrid” of adding a new Ford retail-focused dealership to the Houston market, as Doggett Ford insists. Rather, it involves the much more ordinary scenario of an existing Ford dealership—and one that competes in different market segments and in different ways than the protesting dealer—repositioning itself

barely beyond the two-mile minimum at which any legally cognizable competitive impact could possibly occur.

D. COMPETITIVE IMPACT ON DOGGETT FORD

1. Chastang Ford's Position

It would follow from the preceding discussion that Mr. Roesner's opinion—that Chastang Ford's proposed relocation was “highly unlikely to have any impact on the sales of Doggett”³⁰⁵—would continue to hold weight without respect to the impeding assignment of a retail sales locality to Chastang Ford, as the two dealerships will continue to target and compete in different segments of the market, and in different ways. However, in the alternative, Mr. Roesner assumed that relative proximity would be a factor in Chastang Ford's competitiveness *vis à vis* Doggett Ford—*i.e.*, that it was operating like a traditional retail-focused dealership—and performed an “impact analysis,” which he described as a “common” method used to model the likely competitive impact of relocating an existing retail-focused dealership within a market. The method, he explained, was founded on identified similarities between consumer behavior and gravity, in that the gravity or attraction between two bodies is directly proportional to their mass (*i.e.*, the bigger a given body, the more attraction it has) and inversely proportional to the squares of the distances between them (*i.e.*, the closer a body is, the more gravity it has, and *vice versa*). Essentially, the model determined the extent of relationship between the sales being made by Doggett Ford and its distances relative to other Houston-area Ford

³⁰⁵ 3 Tr. 92–93.

dealers, then predicated through a regression analysis how Doggett Ford's retail sales between 2019 and August 2022 would have differed had Chastang Ford relocated to the proposed site and operated as a conventional retail-focused dealer.³⁰⁶

Mr. Roesner determined that approximately seventy-five percent of the variation in Doggett Ford's retail new-vehicle sales was attributable to the drive time to it from a given census tract relative to the other Houston-area Ford dealers and that Chastang Ford's relocation would have caused Doggett Ford to lose only two retail sales.³⁰⁷ If relative drive distances were considered, Mr. Roesner determined that about fifty-four percent of Doggett Ford's retail new-vehicle sales were attributable to that variable and that Chastang Ford's relocation would have reduced Doggett Ford's retail sales by thirty units during the period, or only about one percent of its total retail sales.³⁰⁸ Further, while maintaining that the modeling accounting for all Houston dealers was more accurate because all competed in the market, Mr. Roesner also ran a version of these analyses that isolated the competitive relationship between Doggett Ford and Chastang Ford. He determined that Doggett Ford would have gained seven retail sales on a drive-time basis and lost fifty-eight on a drive-distance basis.³⁰⁹ Mr. Roesner concluded that Chastang Ford's relocation—and again with the assumption that it would have operated like a traditional retail-

³⁰⁶ 3 Tr. 93–101; Ex. A-21 at A21-0093 through 0095.

³⁰⁷ 3 Tr. 101–03, 115–16; Ex. A22-0031 through 0032.

³⁰⁸ 3 Tr. 106–09; Ex. A22-0035 through 0036.

³⁰⁹ 3 Tr. 103–06, 109–10; Exs. A-22 at A22-0033 through 0034, A22-0037 through 0038.

focused dealer there—would have had a *de minimus* effect on Doggett Ford’s retail sales, at most, and could have even increased those sales slightly.³¹⁰

Mr. Roesner acknowledged that his modeling attempted to isolate the effects of the proximity changes from the proposed relocation, controlling for all other potential variables, and thus did not purport to directly examine any effects of other potential variables that could also increase Chastang Ford’s “gravity” relative to Doggett Ford, such as new facilities that are larger, improved, and more visible and accessible.³¹¹ However, he maintained that any such effects were nonetheless accounted for in his calculations that included Doggett Ford’s competition against all Houston-area Ford dealers. This was so, according to Mr. Roesner, because the calculations incorporated the “mass” of all those dealers, including those with new facilities, and in the aggregate represented a sort of “average” Ford dealership that Chastang Ford was effectively assumed to be.³¹²

Moreover, Mr. Roesner attested that market conditions bode well for both Doggett Ford and Chastang Ford to operate profitably into the future, with the Houston market projected to grow and the lingering effects of COVID-related supply-chain shortages relative to demand enabling dealerships to garner above-average profits for at least the next few years.³¹³ To similar effect, Ford’s Mr. Tidwell

³¹⁰ 3 Tr. 113.

³¹¹ 3 Tr. 200–05, 211–12.

³¹² 3 Tr. 204–05, 211–12.

³¹³ 3 Tr. 30–31, 122, 169–71; 7 Tr. 47, 90–92; Ex. A-21 at A21-0014 through 0015.

testified that as of the time of his deposition, in February 2023, Ford expected the its market in Houston to grow eighteen percent during the course of that year.³¹⁴

In the further alternative, Chastang Ford also presented expert testimony from Stephen Pearse concerning Doggett Ford's financial wherewithal to respond to any perceived increase in competition from Chastang Ford, assuming for sake of the analysis it were to occur.³¹⁵ Relying on Ford financial statements,³¹⁶ Mr. Pearse compared the performance of Doggett Ford to the composite averages for both Ford's Zone A (Houston-area) dealers and for the larger Houston region during 2019 through 2021, including return on sales (net profits before income tax divided by total dealership sales), a measure intended to account for differences in the respective sizes of dealerships (*i.e.*, normalize them). He observed that while Doggett Ford had negative net pre-tax profits and return on sales in 2019 (corresponding with the period while it was still operating out of temporary facilities), it had reported net pre-tax profits of about \$3.1 million in 2020 and \$8.4 million in 2021 (its first full year in the new facilities), with returns on sales in those two years approaching the composite averages.³¹⁷ Mr. Pearse further determined that Doggett Ford's net pre-tax profits had exceeded its reported dealership investment,

³¹⁴ Ex. A-105 at A105-0049 through 0050.

³¹⁵ Mr. Pearse is a Senior Expert Analyst with Urban Science, a consulting and software-development firm that provides services principally to motor-vehicle manufacturers. He attests that he has conducted hundreds of analyses of dealer financial performance and networks. 6 Tr. 161-66; Ex. A-84 at A84-0017 through 0019.

³¹⁶ See Exs. A-55 through A-57, A-89 through A-94.

³¹⁷ 6 Tr. 175-82; Ex. A-84 at A84-0006 through 0007, 0020 through 0024.

as reflected in the equity shown, by 70.30 percent in 2020 and 131.60 percent in 2021.³¹⁸

Mr. Pearse also determined that Doggett Ford’s net working capital—current assets less current liabilities, a measure of liquidity—had grown to over \$10 million in 2021, which he attested to far exceed Ford’s recommended levels.³¹⁹ Meanwhile, according to Mr. Pearse, Doggett Ford’s net worth had grown to roughly \$14 million in that year.³²⁰ Mr. Pearse additionally performed what he termed a “breakeven analysis” intended to determine the amount of Doggett Ford’s fixed expenses that would need to be absorbed by its new-vehicle sales before it began to make a profit (which differed from a “breakeven” calculation in Ford financial statements). He determined that in 2020, Doggett Ford had sold 1,514 more new Ford vehicles above the required level, 1,907 more in 2021, and that the dealership would have made a profit even without making any new-vehicle sales in 2021.³²¹

The basic takeaway from Mr. Pearse was that Doggett Ford is well positioned to withstand and adjust operationally to any loss of new-vehicle sales by virtue of increased retail competition from Chastang Ford (assuming, contrary to Mr. Roesner’s testimony, that this would actually occur), would remain profitable, and could continue serving the public.³²² This was especially so, Mr. Pearse added,

³¹⁸ 6 Tr. 196–201; Ex. A-84 at A84-006 through 007, 0024 through 25.

³¹⁹ 6 Tr. 182–83; Ex. A-84 at A84-0027.

³²⁰ 6 Tr. 183; Ex. A-84 at A84-0029.

³²¹ 6 Tr. 183–94; Ex. A-84 at A84-0008 through 0010.

³²² 6 Tr. 192–94.

because he also determined that Doggett Ford began pricing its vehicles substantially above the Zone A averages.³²³

2. Doggett Ford's Position

In the view that Chastang Ford would wage aggressive competition for retail consumer sales from its proposed relocation site and larger, better facilities there— it disclaims concern about fleet sales³²⁴—Doggett Ford insists that the result would be *unhealthy* intra-brand competition—a “race to the bottom,” as General Manager Jason Mosley put it³²⁵—creating an “existential threat” to Doggett Ford’s business.³²⁶ Doggett Ford emphasizes three general areas of professed concern: (1) that the Houston market is already hypercompetitive and cramped in the sense of being served by multiple Ford dealers; (2) that dealers are or will soon face various economic headwinds; and (3) that Chastang Ford’s proposed relocation to new, closer facilities will make matters worse and have a negative impact on its business.

Regarding the first set of concerns, Doggett Ford observes that Houston is home to eight of the top one-hundred Ford dealerships in the nation. It further perceives itself to be at a disadvantage against many of these large and successful Ford dealers because they are situated in “dealership clusters” (a/k/a “auto rows”) of dealers representing multiple brands, and thus benefit from geographically closer

³²³ 6 Tr. 202–06; Ex. A-84 at A84-0011 through 0012.

³²⁴ Prot. Br. at 32 (“Competition for fleet sales is not the crux of the issue in this relocation protest.”).

³²⁵ See 6 Tr. 45.

³²⁶ Prot. Br. at 32.

opportunities for inter-brand shopping, whereas Doggett Ford is “standalone.”³²⁷ In that regard, it emphasizes that both Chastang Ford, whether currently or relocated, and a third area Ford dealership located a few miles away from both, Tommie Vaughn Motors, would also be “standalone.” And because both it and Chastang Ford are located in lower-income areas, Doggett Ford reasons that each must fight for sales outside its immediate vicinity.³²⁸ In this respect, Doggett Ford would analogize its competitive environment to be less like a metro area than a rural setting, where “the slightest move can [prove] significant,”³²⁹ and it must “struggle for each and every retail sale.”³³⁰ Making matters even worse, Doggett Ford adds, is what it anticipates to be a decade of construction on I-45 that will not only change its freeway frontage but divert traffic away from their facilities and toward Chastang Ford’s proposed location.³³¹ In Mr. Mosley’s opinion, the construction could “cut [Doggett Ford’s] business by 30, 40 percent.”³³²

³²⁷ A dealership cluster or, as it is sometimes termed “auto row” or “auto mall,” corresponds to a “concentration of dealerships . . . [that] are located in general pretty close to each other.” 5 Tr. 138 (noting that “[s]ometimes they’re next to each other on the road,” and “[s]ometimes they’re just . . . really close to each other on more like a cul-de-sac”).

³²⁸ In particular, Doggett Ford argues that this selling pressure would increase in two primary areas—near Tommie Vaughn Ford and the region bounded by I-45, Sam Houston Tollway, I-69, and Loop 10—and thereby create unhealthy, head-to-head competition between the three standalone Ford dealers. Prot. Br. at 32–33.

³²⁹ Prot. Br. at 35 (quoting *Maund, Inc. d/b/a Maund Toyota v. Apple Imports, Inc. d/b/a Apple Toyota*, Docket No. 93-126 at 5 (Tex. Dep’t Motor Veh. Bd. Sept. 2, 1993)); see also 6 Tr. 12 (explaining that “90 percent of [Doggett Ford’s] business comes through an e-channel,” which typically match customers with dealerships based on their zip code).

³³⁰ Prot. Br. at 35.

³³¹ Traffic-volume data from 2019 to 2021 reveals the segment of Highway 69 nearest to Chastang Ford’s proposed location enjoys higher retail-customer volume than Highway 610, where they are presently situated. Ex. P-161 at B7–B9, B14.

³³² 6 Tr. 115.

As for economic headwinds, Doggett Ford cites a host of factors—ranging from rising interest rates to the ongoing effects of the COVID-19 pandemic, to war in Europe—which it believes to paint a realistically grim future for the retail car industry. Doggett Ford’s expert, Dr. Christina Benton,³³³ voiced similar concerns and added that Houston is not immune to economic fluctuation and that Ford has lost market share in Harris County over the past three years.³³⁴ Moreover, Doggett Ford urges that its profitability and that of other dealers in recent years was anomalous, being “distorted due to . . . large amounts of stimulus money from the government and extraordinary profits due to a supply and demand imbalance” amid the COVID-related shortages.³³⁵ In the view of Mr. Mosley, within twelve months profit margin will return to pre-pandemic levels (according to him, about \$500 per vehicle), renewing what he described as a “cutthroat environment” that once prevailed.³³⁶ Also of note for Doggett Ford is the continued trend toward electric vehicles. This shift, in Doggett Ford’s view, not only carries significant investment requirements for infrastructure like charging stations, etc., but also “cuts into dealers’ bread-and-butter service business” due to the difference in maintenance requirements between electric and gas-powered vehicles.

³³³ Dr. Benton is Director of Market Analysis for Anderson Economic Group. She specializes in economic consulting, including market and industry analysis, economic analysis, public policy, business valuations, and damages assessments across various industries, and her work in the automotive industry involves assisting dealers with economic analysis related to franchise disputes, market assessments, territory assignments, incentives, allocations, lost sales, business damages, and valuations.

³³⁴ Dr. Benton also highlights that there was a 13% decline in light vehicle (*i.e.*, cars, crossovers, SUV, and light truck) sales across the entire industry and there has been a continued decline in production following the first stage of the COVID-19 pandemic—resulting in sustained, low inventory levels—among other challenges, going forward.

³³⁵ Prot. Br. at 7.

³³⁶ 6 Tr. 45–46 (Mr. Mosley explained that “inventory is starting to flow a little bit again” and forecasted that the market will “be right back to that 4 or \$500 range[] . . . within the next 12 months”).

Finally, Doggett Ford relies on Dr. Benton’s testimony as proof that its new-vehicle sales would suffer from Chastang Ford’s relocation. Dr. Benton posited that the following five factors, implicating the behavior of typical retail consumers, would cause decreases in Doggett Ford’s new-vehicle sales *vis à vis* Chastang Ford’s:

- Encroachment Area: resulting in a ~1% impact.

Dr. Benton concluded that Doggett Ford would “lose some sales to residents of its current Primary Service Area” because a portion of customers would be closer to Chastang Ford after the relocation.³³⁷ This “Primary Service Area” was independently generated by Dr. Benton and is based largely on proximity, which itself turns on the current dealer and transportation networks.³³⁸

- Commute Patterns: resulting in a 4% impact.

Dr. Benton concluded that Doggett Ford would also lose new-vehicle sales to a portion of residents in its “Primary Service Area” because Chastang Ford’s relocation would make them “very proximate . . . for a portion of the day.”³³⁹ Among other things, Dr. Benton explained that “[a]bout 4.1% of workers in the [Primary Service Area] travel to downtown Houston for work.”³⁴⁰

- Increased Visibility: resulting in a 10% impact.

Dr. Benton also concluded that, in addition to individuals within its “Primary Service Area,” “[a]ny Ford customer driving to [or] from downtown Houston

³³⁷ Ex. P-202 at 12; *see also* 5 Tr. 54.

³³⁸ 5 Tr. 52; *see also* Ex. P-202 at 12 (incorporating discussion from Ex. P-100 at 34). *See generally* Ex. P-100 at 34 (explaining that “[a] primary service area . . . is the area in which a dealership is expected to have the greatest geographic advantage relative to competitors offering the same products and services” and “is not determined by artificial market territory boundaries set by the manufacturer” but instead “by distance, drive-times, the road networks, and other geographic factors that determine the ease of travel to a dealership”).

³³⁹ Ex. P-202 at 12; *see also* 5 Tr. 66–68.

³⁴⁰ Ex. P-100 at 37; *see also* Ex. P-202 at 12 (citing to the original report).

on US-59/I-69 will see Chastang Ford if moved to the proposed location” and, as a result, would find themselves “very proximate . . . for a portion of the day.”³⁴¹ This, Dr. Benton explained, would make Chastang Ford “more convenient for them.”³⁴²

- Chastang Ford’s New Building Costs: resulting in a 6% impact.

Dr. Benton further assessed that the costs associated with a new facility at the proposed location, which she estimated at roughly \$10 million,³⁴³ would require Chastang Ford to “generate . . . additional [new vehicle] sales to [sic] break-even.”³⁴⁴ Dr. Benton’s associated analysis indicated that “Chastang [Ford] would need to make an additional ~290 [new vehicle] sales . . . to break even after relocation,” and also require it to “tak[e] a portion of sales from other Ford dealers in the market.”³⁴⁵

- Loss of Dealer Locality: resulting in a 5% impact.

Finally, as noted previously, Dr. Benton concluded that Doggett Ford would “lose a portion of its sales” once Ford’s newly assigned dealer localities are implemented, which she expects will reduce Doggett Ford’s current locality by 11.7% in population.³⁴⁶

According to Dr. Benton, these factors, though each having an independent projected impact on new-vehicle sales, would cumulatively result in a five percent drop in Doggett Ford’s new-vehicle sales. When asked to explain how these

³⁴¹ Ex. P-202 at 12; *accord* 5 Tr. 68.

³⁴² 5 Tr. 68.

³⁴³ 5 Tr. 70 (explaining that Dr. Benton believed \$10 million was a conservative estimate).

³⁴⁴ Ex. P-202 at 12; 5 Tr. 68–69.

³⁴⁵ Ex. P-202 at 12; 5 Tr. 68–69.

³⁴⁶ Ex. P-202 at 12.

independent projections result in a cumulative forecast that is less than their average, Dr. Benton explained as follows:

When we are looking at what's happening in this market and the relocation and what we are trying to look at in the future, there is no formula like in physics that will tell us exactly what's happening. We are looking at people and social phenomena. So there is no formula looking at the future lost sales for Doggett, but we do have good information on the market and on these indicators. So it is professional judgment for me to say it's a combined 5% effect.³⁴⁷

Dr. Benton also acknowledged that, if someone else at her firm were to take the individual impacts of each factor and forecast the cumulative impact on Doggett Ford's sales, their conclusion "could be different" because "there's no formula when we are looking at the future sales and there is overlap" between the factors.³⁴⁸

Dr. Benton further posited that the forecasted five percent loss in new-vehicle sales would result in similar losses across other dealership departments. As an example, Dr. Benton explained that a customer who is interested in purchasing a new vehicle might also have a trade-in vehicle that would then become inventory for the used-vehicle department. This dynamic, she reasoned, also impacts the service and parts departments because that business overlaps with the number of new and used vehicle sales, as well as with products like add-ons or extended warranties and insurance.³⁴⁹

³⁴⁷ 5 Tr. 219–20.

³⁴⁸ 5 Tr. 221–22 (explaining, however, that she would "expect them to be close . . . but they might not be identical").

³⁴⁹ 5 Tr. 76–80.

But notably, Dr. Benton stopped short of opining that any such losses would cause Doggett Ford to cease being profitable. Whereas Dr. Benton’s “base case” model (*i.e.*, projections if Chastang Ford does *not* relocate) forecasts roughly \$3 million in annual net profits for Doggett Ford between 2024 to 2026,³⁵⁰ she forecasted that Doggett Ford would still earn \$2.5 million in annual net profits from new-vehicle sales even after Chastang Ford’s relocation.³⁵¹ While certainly a half-million reduction in anticipated profits would be substantial, it remains that Dr. Benton is forecasting remaining profits of several times more, hardly the dealership’s financial demise.³⁵²

3. ALJs’ Analysis

There can be no question that Chastang and Doggett Ford paint vastly different pictures of the future. Whereas Chastang Ford maintains that its relocation will result in little or no impact on Doggett Ford’s slice of the Houston automotive market, Doggett Ford argues that relocation would irrevocably prompt a “race to the bottom” in which everyone loses. But reality, as is often the case, lies somewhere in between. As explained in detail below, the record reveals that relocating Chastang Ford would not create the “unhealthy” competition prophesied by Doggett Ford.

³⁵⁰ Ex. P-202 at B-1 (Revised Base Case Table).

³⁵¹ Ex. P-202 at B-2 (Revised “Potential Harm” Table, noting that the loss in net profits for 2024 is \$441,415.00, for 2025 is \$459,249.00, and for 2026 is \$477,802.00); *accord* 5 Tr. 158-59 (“It’s a significant amount, more than \$1 million over three years, and that’s significant for the dealership.”).

³⁵² *Compare* Ex. P-202 at B-1 (line f, years 2024 to 2026), *with* Ex. P-202 at B-2 (line g, years 2024 to 2026); *accord* Ex. P-202 at C-3 (Table 8).

First, in terms of the economic landscape on which both parties operate, the record reveals a future that is brighter than Doggett Ford foretells. All parties appear to agree that Houston is, and will remain, a competitive market.³⁵³ Furthermore, whether Mr. Tidwell correctly projected a growth of eighteen percent in 2023 is somewhat beside the point when *both parties' experts* agree that Doggett Ford will remain profitable in the coming years.³⁵⁴ Not only did Dr. Benton's base-case analysis conclude that Doggett Ford can expect over three million dollars in net profits from 2024 to 2026 (notwithstanding acknowledged concerns with "high inflation, high gas prices, interest rate increases, and supply chain disruptions caused by the war in Ukraine and the COVID-19 pandemic") but she also determined that Chastang Ford's relocation would only reduce Doggett Ford's new-vehicle net profits by a roughly \$1.3 million spread over three years, *i.e.*, under half a million dollars a year.³⁵⁵ This does not square with an economy so precariously balanced that a single dealership's 2.0289-mile move would spurn a "race to the bottom."

Neither can Dr. Benton's analyses, viewed more critically, bear the weight of

³⁵³ Compare, *e.g.*, 1 Tr. 137 (testimony of Mr. Chastang, explaining that "Houston is a very highly competitive market"), and 6 Tr. 63 (testimony of Mr. Mosley, describing the market as "supercompetitive").

³⁵⁴ Compare 3 Tr. 30-31, 122, 169-71, 7 Tr. 47, 90-92, and Ex. A-21 at A21-0014 through 0015, *with* Ex. P-202 at B-2 (base case projections), and Ex. P-202 at B-3 (noting that the loss in net profits for 2024 is \$441,415.00, for 2025 is \$459,249.00, and for 2026 is \$477.802.00); *see also, e.g.*, 6 Tr, 195-96 ("You know, even in [Dr. Benton's] world, taken at face value, we're talking about a dealership that's still making \$23 million, still has the ability to . . . [be] profitable, reinvest in its dealership, and serve its customers.").

³⁵⁵ Compare Ex. P-202 at B-2 (base case), D-9 (addressing macroeconomic considerations and acknowledging "fuel economy and electric vehicle legislation[] will . . . impact the industry in the next years"), *with* Ex. P-202 at B-3 (noting that the loss in net profits for 2024 is \$441,415.00, for 2025 is \$459,249.00, and for 2026 is \$477.802.00). Though Dr. Benton did not analyze whether planned construction on I-45 would affect these figures, Mr. Mosley's personal opinion that construction will "cut [Doggett Ford's] business by 30, 40 percent," 6 Tr. 115, is not persuasive evidence of that fact. It is particularly hard to credit this uncorroborated figure when Mr. Mosley also testified that "90 percent of [Doggett Ford's] business comes through an e-channel of some sort." 6 Tr. 12.

Doggett Ford’s position. In this regard, a prior observation bears renewed emphasis: there is little reason to believe that Chastang Ford will be forced to contradict the sworn, credible testimony of its leadership and change its target demographic if allowed to relocate.³⁵⁶ Yet a resonant thread throughout Dr. Benton’s projections assumes otherwise. Her dealer-locality analysis, for one, presumes that Chastang Ford’s contractual obligation will force it to pursue *retail customers* within the 11.7% of households that once contributed to Doggett Ford’s annual sales expectations.³⁵⁷ Her break-even analysis, too, suggests that Chastang Ford “will need to make an additional ~290 annual sales” in order to recoup its increased overhead, which Dr. Benton suggests will have a 6% impact on Doggett Ford’s *retail sales*.³⁵⁸ That is to say, Dr. Benton assumes that Chastang Ford will decide to increase its revenue exclusively by shifting its longtime business model toward trying to grow its smallest, least-profitable demographic. Such departures between the predicates or assumptions underlying an expert’s opinion and the actual facts as proven render that opinion merely another species of conclusory *ipse dixit*, having no probative value.³⁵⁹

Making matters worse, the record provides no basis for the ALJs to segregate these flawed categories from others—like commute patterns or increased

³⁵⁶ See *supra* Section IV.B.5 (“[T]he ALJs find that the assignment of a retail sales locality to Chastang Ford will not cause it to shift its business model away from its longstanding commercial, relationship-focused model. Nor does it desire to do so, let alone have any such pivot underway already.”).

³⁵⁷ Ex. P-202 at 12; 5 Tr. 110–11.

³⁵⁸ Ex. P-202 at 12; 5 Tr. 68–69.

³⁵⁹ See, e.g., *Pollock*, 284 S.W.3d at 816–18.

visibility,³⁶⁰ whose projected effect is inherently driven by geography rather than a calculated sales decision—for the simple reason that Dr. Benton’s aggregate projection of harm is replicable by her alone. As she candidly testified, “it is professional judgment for me to say [the five categories result in] a combined 5% effect” on Doggett Ford’s retail sales and that others might reach a different conclusion.³⁶¹

This, of course, spotlights a broader problem in Doggett Ford’s position: the connective tissue animating its bottom-line projections ultimately rest solely upon Dr. Benton’s “professional judgment” (and assumptions) rather than a replicable, verifiable methodology. That is to say, more “mere *ipse dixit* of a credentialed witness.”³⁶² Not only is Dr. Benton’s aggregate projection of lost sales methodologically replicable by her alone—again, because it turns on her “professional judgment”—but even if overlapping effects of 1%, 4%, 10%, 6%, and 5%

³⁶⁰ And to be clear, the opinions regarding the respective categories also suffer from internal flaws—all unrelated to Chastang Ford’s decision-making. Dr. Benton’s commute-patterns figure, for example, concludes that Doggett Ford would lose four percent of its new-vehicle sales to a portion of residents in its “Primary Service Area” because Chastang Ford’s relocation would make them “very proximate” to a portion of residents in Doggett Ford’s “Primary Service Area . . . for a portion of the day.” Ex. P-202 at 12; *see also* 5 Tr. 66–68. But the raw data on which Dr. Benton relies indicates that “[a]bout 4.1% of workers in the [Primary Service Area] travel to downtown Houston for work,” meaning that they travel “near or past the proposed Chastang location.” Ex. P-100 at 37 (original report); *see also* Ex. P-202 at 12 (citing to the original report). This, of course, begs several questions: How many of these commuters are prospective Ford customers? How many of these commuters are Doggett Ford customers? What portion of either population will pass by *both* Chastang and Doggett Ford? Dr. Benton does not say; instead, the ALJs are asked simply to accept her opinion that the figure is somehow correct.

³⁶¹ *See* 5 Tr. 221–22 (noting that if someone else at Anderson Economic Group were to take her data and calculate the same metric of harm, she would “expect them to be close . . . but they might not be identical”).

³⁶² *Pollock*, 284 S.W.3d at 818 (internal quotation marks and citation omitted).

can reliably produce a cumulative figure that is less than their average, *arguendo*,³⁶³ Dr. Benton then coupled this figure to other unanalyzed areas of Doggett Ford’s revenue. Take the repeated assertion that a 5% decrease in Doggett Ford’s sales would identically manifest in its service revenue, for example. Dr. Benton offered no data to support this claim—whether drawn from Doggett Ford’s prior financials or from documented industry trends, writ large—and instead assumed it to be true.³⁶⁴ Neither did she undertake to calculate the loss in net profits resulting from this assumed relationship.³⁶⁵ Suffice it to say that Dr. Benton laid assumption upon assumption in reaching her conclusions, and the ALJs cannot join this venture.

Against this backdrop, the ALJs are left with the more-credible and weightier testimony of Chastang Ford’s experts. Not only was Mr. Roesner’s “gravity” analysis persuasive in confirming that the relocation’s impact on Doggett Ford would be minimally adverse and perhaps even positive,³⁶⁶ Mr. Pearse persuasively explained why Doggett Ford could withstand any loss of new-vehicle sales, remain

³⁶³ Though this could prove true mathematically if, for example, the overlapping figures were individually weighted. But Dr. Benton was asked, and rejected, this precise methodology. 5 Tr. 218 (stating “[t]hey are all equally important” when asked whether “the 10 percent increased visibility weights somewhat less than some of these other factors”).

³⁶⁴ See, e.g., Exs. P-202 at 5 (“We assume that any loss in new truck retail sales cause[s] a similar loss in used car, service, and part sales.”), B-3 (“We assume that the loss in revenue and earnings from used car sales, service and body shop, and part sales will be affected at the same magnitude as the revenue and earning loss in new truck retail sales.”).

³⁶⁵ Instead, Dr. Benton’s cumulative projection purported to account for interdepartmental loss by vaguely adding the word “over” to forecasted losses in new-car profits. Compare, e.g., Ex. P-202 at B-3 (noting the expected loss in net profits for new-car sales in 2024 is \$441,415.00, in 2025 is \$459,249.00, and in 2026 is \$477.802.00), with Ex. P-202 at 13 (“This loss in new vehicle sales and a similar loss in other departments, such as service, used, and parts, would imply a loss of *over* \$441,000 in earnings per year.” (emphasis added)).

³⁶⁶ Although Doggett Ford correctly points out that Mr. Roesner applied his gravity analysis to historical sales figures and did not explicitly take account of any intervening changes that would increase Chastang Ford’s perceived “mass,” Mr. Roesner persuasively explained that his calculations nonetheless yielded an approximation through the aggregation or “average” of the dealers and their facilities of varying sizes and conditions.

profitable, and continue serving the public.³⁶⁷ This is not to say that Chastang Ford’s relocation would have *zero* effect on Doggett Ford’s business, but the governing law does not require Chastang Ford or the ALJs to go that far. The salient point, rather, is that the relocation would not create the “unhealthy” retail competition with which Doggett Ford professed to be concerned.

V. GOOD-CAUSE FACTORS

Informed by the preceding analyses of key disputed issues, the ALJs now turn to the ultimate question of whether Chastang Ford has met its burden to prove good cause for relocating to the proposed site, considering the factors prescribed in Section 2301.652.

A. HARM TO DOGETT FORD

For essentially the reasons set forth in Parts IV.B–D above, the ALJs conclude that any harm that could result from Chastang Ford’s relocation would not rise to a level that would impede competition by financially debilitating Doggett Ford and preventing it from continuing to serve the public. Chastang Ford and Doggett Ford compete in different market segments, in different ways, and that is unlikely to change in any material way after the relocation—regardless of the new retail sales locality emphasized by Doggett Ford.

To the extent Chastang Ford would shift its business focus to compete in the manner of a “typical” dealership pursuing the retail consumer sales that have

³⁶⁷ 6 Tr. 192–94; *see also* 6 Tr. 202–06; Ex. A-84 at A84-0011 through 0012.

heretofore been the staple of Doggett Ford’s business, Mr. Roesner’s alternative “gravity” analysis tends to show that the impact on Doggett Ford would be minimally adverse and perhaps even positive instead. Although Doggett Ford is correct in observing that Mr. Roesner applied his gravity analysis to historical sales figures and thus did not explicitly take account of any intervening changes that would increase Chastang Ford’s “mass” in the model, he explained that his calculations taking account of competition with all Houston-area Ford dealers nonetheless yielded an approximation through the aggregation or “average” of the dealers and their facilities of varying sizes and conditions.

At bottom, this case does not present any realistic prospect of the “unhealthy,” self-defeating competition for retail sales that Doggett Ford professes to foresee—just as one would expect when an existing dealership is relocated merely a few feet beyond the two-mile threshold at which any competitive impacts would even be deemed cognizable in a protest. Moreover, even taking the opinions of Dr. Benton at face value, she concludes that Doggett Ford can expect over two-and-a-half million dollars in net profits from new-vehicle sales during 2024, 2025, and 2026—regardless of whether Chastang Ford relocates.³⁶⁸

³⁶⁸ As detailed in Section IV.D.3 *supra*, Dr. Benton concluded that Chastang’s relocation would reduce Doggett Ford’s new-vehicle net profits by a roughly \$1.3 million spread over three years—a figure that, while significant on its face, is eclipsed by the remaining annual profits in that category alone. *Compare* Ex. P-202 at B-2 (base case, projecting over three million dollars in net profit from new vehicle sales), *with* Ex. P-202 at B-3 (noting that the post-relocation, projected loss in new-vehicle net profits for 2024 is \$441,415.00, for 2025 is \$459,249.00, and for 2026 is \$477.802.00).

B. HARM TO CHASTANG FORD

Conversely, for substantially the same reasons set forth in Part IV.A above, denying Chastang Ford’s application would cause it material competitive harm by confining it to its constrained and disadvantaged current facilities. These limitations include the lack of room to construct the infrastructure required to participate in Ford’s ProElite program, which is aimed at the fleet and commercial customers that have always been the core of its business.

C. DESIRABILITY OF A COMPETITIVE MARKETPLACE

Similarly—and contrary to Doggett Ford’s insistence that “Chastang’s retail new vehicle business is the real issue in this protest”³⁶⁹ and that “[c]ompetition for fleet sales is not the crux of the issue in this relocation protest”³⁷⁰—denying Chastang Ford’s application in the guise of preventing supposed “unhealthy” retail competition would instead do more to erect a protectionist barrier unfairly favoring Doggett Ford as it endeavors to pursue fleet and commercial sales. In this regard, Chastang Ford argues that Doggett Ford’s protest is calculated to “keep Chastang confined to its cramped, aging facility, while Doggett pursues its plan to become a large fleet and commercial truck dealer by building a new multi-million-dollar Ford ProElite Commercial Service facility to capture fleet and commercial truck customers from Chastang.”³⁷¹ Considering the severity of the constraints that imperil Chastang Ford’s ongoing competitiveness so long as it remains in its current

³⁶⁹ Prot. Br. at 48.

³⁷⁰ Prot. Br. at 32.

³⁷¹ App. Op. Br. at 3.

facilities, including the inability to construct ProElite facilities, the ALJs must acknowledge their recollection of an old saying to the effect that a good offense (protesting out of professed concern with Chastang Ford’s retail sales) is the best defense (of Doggett Ford’s “lane” toward expanding its fleet and commercial business).

D. SUBSTANTIAL COMPLIANCE WITH FRANCHISE

The preceding discussion also implicates an additional Section 2301.652 factor whose substance the ALJs have not yet addressed. As explained previously, Doggett Ford’s standing to bring its protest requires in part that it be a “franchised dealer of the same-line make” as Chastang Ford.³⁷² While this is unquestionably true of Doggett Ford with respect to the Ford Light Truck line-make, as it is both contractually authorized by Ford and licensed by DMV for that line-make, it is not also licensed for the Ford Medium Truck line-make for which Chastang Ford is licensed and does substantial business. However, it is undisputed that Doggett Ford’s actual dealership operations have included selling and servicing Ford Medium Trucks despite lacking that license.³⁷³ The parties take issue as to the significance of Doggett Ford’s unlicensed activities.

Chastang Ford argues that Doggett Ford’s trade in Ford Medium Trucks amounts to a material breach of that dealership’s Sales and Service Agreement with

³⁷² See Tex. Occ. Code §§ 2301.652(b) (requiring that protestant be “a franchised dealer *of the same line-make*” as the applicant (emphasis added)), .6521(b) (same).

³⁷³ 4 Tr. 125–26; 5 Tr. 188; 6 Tr. 136–38; see Ex. A-22 at A22-0016.

Ford, the antithesis of substantial compliance.³⁷⁴ Chastang Ford points to language in the agreement’s Standard Provisions requiring that “[t]he Dealer shall comply with all applicable federal, state, and local laws, rules and regulations in the ordering, sale and service of COMPANY PRODUCTS,” that the Dealer’s “responsibilities under this agreement” are each “fundamental to the purpose of this agreement” and that “failure to fulfill any of them would constitute a material breach of this agreement.”³⁷⁵ Further, Chastang Ford points out, the Standard Provisions specifically make licensing deficiencies grounds for termination:

If the Company or the Dealer requires a license for the performance of any responsibility under this agreement in any jurisdiction where this agreement is to be performed and if either party shall fail to secure such license, or if such license is suspended or revoked irrespective of the cause or reason, either party may terminate or not renew this agreement by giving the other at least fifteen (15) days prior written notice thereof.³⁷⁶

In response, Doggett Ford insists that its activities comply with its franchise agreement because Ford Medium Trucks are among the line-makes it can permissibly sell under that agreement. While acknowledging that its dealer license omits the “‘MT’ designation,” Doggett Ford dismisses that deficiency as an “administrative error” or “administrative glitch” that “can be resolved easily,” further insinuating that the problem could have stemmed from the actions of DMV

³⁷⁴ App. Op. Br. at 74–75.

³⁷⁵ Ex. A-1 at A1-0017, 0024. Although the entirety of Doggett Ford’s Sales and Service Agreement with Ford is not in evidence, the excerpt in evidence would appear to incorporate materially the same Standard Provisions as with Chastang Ford. *See* Ex. P-19 at P008. Doggett Ford does not appear to contend otherwise.

³⁷⁶ Ex. A-1 at A1-0023.

or Ford personnel rather than its own. Doggett Ford also asserts that neither DMV nor Ford has ever sent it a notice-of-deficiency letter raising the issue and suggests that this sort of problem is somewhat commonplace, citing the example of another Houston-area Ford dealer that supposedly lacked a Light Truck license even while becoming a top seller of those vehicles in that market.³⁷⁷

As between a defense to the effect that “everyone’s doing it” versus the texts of the franchise agreement and applicable law, the ALJs will rely on the latter. That language, as Chastang Ford demonstrates persuasively, establishes that a licensing deficiency like Doggett Ford’s here would be a material breach of its franchise agreement. Whether Ford chose to enforce its rights in that event (assuming it even knew of the licensing deficiency), let alone whether DMV chose to raise it, is simply beside the point. Nor is the discrepancy necessarily “resolved easily,” as if Doggett Ford could remedy the “administrative glitch” merely with a quick phone call or email to DMV to make a clerical or ministerial correction. Rather, as Chastang Ford observes, the governing law requires Doggett Ford to submit an application to DMV to amend its license to add the Medium Truck line-make, which would then be subject to protest by other Ford dealers in Harris County³⁷⁸—similar to the posture of Chastang Ford in this proceeding.

The same conclusions resolve any doubt as to whether Doggett Ford could have standing to complain of any competitive injury concerning any present or

³⁷⁷ Prot. Br. at 31, 75.

³⁷⁸ App. Reply Br. at 23; *see* Tex. Occ. Code §§ 2301.356, .652; 43 Tex. Admin. Code §§ 215.104(a), .108.

anticipated business it would do in Ford Medium Trucks—it does not. This further reduces the weight of Doggett Ford’s interests *vis à vis* benefits of enabling Chastang Ford to relocate to the proposed site, where it can construct ProElite facilities and others enabling it to serve its customers and the public better.

E. ADEQUACY OF FORD’S REPRESENTATION

Along with other benefits of relocating, Chastang Ford urges that enabling it to replace its current overcrowded and outdated sales and service facilities with up-to-date, larger, and more easily accessible ones, as described previously, will also benefit Ford by enhancing the representation of its brand relative to competitors.³⁷⁹ The ALJs agree. In arguing otherwise, Doggett Ford merely reurges its basic contentions to the effect that relocation will equal “unhealthy,” zero-sum intra-brand retail competition,³⁸⁰ which the ALJs have found unpersuasive.

F. THE PUBLIC INTEREST

Likewise, considering the incident benefits—*e.g.*, larger and more easily accessible facilities, with greater capacities to stock inventories of new, used, and emergency-needs vehicles, provide service and parts, and accommodate parking for customers and employees—the ALJs conclude that Chastang Ford’s relocation is in the public interest. In insisting otherwise, aside from the arguments already addressed, Doggett Ford relies on an opinion of Dr. Benton to the effect that

³⁷⁹ App. Op. Br. at 72–73 (citing *Allen Samuels Austin Dodge, Inc. v Prestige Chrysler NW, Ltd.*, Docket No. 04-0011 LIC, PFD at 41, 55 (2006)).

³⁸⁰ Prot. Br. at 73–74.

Chastang Ford’s relocation would worsen “customer convenience” for 21,000 households in Harris County. Dr. Benton predicated her assessment on a measure or concept of “customer convenience” based principally on whether a Ford dealer is located within a ten road-mile drive, which in turn was said to be derived from her understanding of consumer behavior in a dense, urbanized area. Yet this figure is not an industry standard or backed with any data; instead, it is a number used by Dr. Benton and her colleagues at Anderson Economic Group.³⁸¹ Neither did Dr. Benton attempt to identify how many Ford vehicles were registered to those 21,000 households over the past three years or the purchasing power of these households.³⁸² Even more, as Mr. Roesner correctly highlighted, one would reasonably expect Chastang Ford to have previously dominated these 21,000 households—since Chastang Ford would be *the* convenient dealership for this demographic—if it were true that the average consumer considers anything over ten miles to be inconvenient. But this, of course, was not the case.³⁸³ The ALJs therefore reject Dr. Benton’s uncorroborated ten-mile standard and conclude that Chastang Ford’s relocation would serve the public interest, and much more so than denying it.

³⁸¹ Compare 5 Tr. 173–75, with 6 Tr. 216 (describing the figure as an “arbitrary number”), Ex. A-23 at A23-0004 (explaining that Dr. Benton “provides no discussion or cites to any authoritative source as to what differentiates a 10 road-mile drive from say an 11 road-mile drive”), and Ex. A-85 at A85-0011 (emphasizing the same).

³⁸² 5 Tr. 175–79.

³⁸³ See, e.g., Ex. A-23 at A23-0042 (revealing that Chastang Ford had the smallest number of light-truck sales among its competitors for the census tracts that are within ten miles of Chastang Ford but greater than ten miles from either the proposed relocation site or another Ford dealer).

G. PROJECTED ECONOMIC, FINANCIAL, AND MARKET CONDITIONS

Finally, the ALJs conclude that the reasonably foreseeable economic, financial, and market conditions are such that both parties in this case can remain viable, profitable competitors. It bears repeating that both parties' experts ultimately agree Doggett Ford's sales profitability will not vanish if Chastang Ford is allowed to relocate.³⁸⁴ Even taking Dr. Benton's opinions at face value, Doggett Ford will continue earning millions in profits, and many times more than the reductions she predicts, even despite professed concerns with "high inflation, high gas prices, interest rate increases, and supply chain disruptions caused by the war in Ukraine and the COVID-19 pandemic." And while Doggett might sell *more* new vehicles if Chastang Ford remains in its current location, *arguendo*, this does not reveal a market that is delicately rested on the precipice of a "race to the bottom." On this backdrop, it is clear that Houston's economy can reasonably sustain a single Ford's dealership's 2.0289-mile relocation without foreseeable calamity to its fellow Ford dealers.

H. CONCLUSION

Weighing the foregoing factors, and mindful that the extent of harm to Doggett Ford and the public interest are of primary importance in this relocation

³⁸⁴ Compare 3 Tr. 30–31, 122, 169–71, 7 Tr. 47, 90–92, and Ex. A-21 at A21-0014 through 0015, with Ex. P-202 at B-2, and Ex. P-202 at B-3. See generally 6 Tr. 195–96 ("You know, even in [Dr. Benton's] world, taken at face value, we're talking about a dealership that's still making \$23 million, still has the ability to . . . [be] profitable, reinvest in its dealership, and serve its customers. Again, no matter if I look at my number, Ford's number, Dr. Benton's result, I mean, it's all the same . . .").

case,³⁸⁵ the ALJs conclude that Chastang Ford has established good cause for its proposed relocation. In further support of that conclusion, the ALJs make the following findings of fact and conclusions of law.³⁸⁶

VI. FINDINGS OF FACT

A. PROCEDURAL BACKGROUND

1. Chastang Enterprises-Houston, LLC d/b/a Chastang Ford is a franchised Ford Motor Company (Ford) dealer, licensed by the Texas Department of Motor Vehicles (DMV) to sell and perform warranty service on vehicles within the Ford Light Truck (LT) line-make and the Ford Medium Truck (MT) line-make.
2. Chastang Ford's current licensed dealership location is 6200 North Loop East, Houston, Texas 77026 (the Current Location).
3. On September 20, 2019, Ford issued an Evidence of Relocation certifying to DMV that it approved Chastang Ford's relocation of its Ford dealership from the Current Location to 3625 & 3669 Eastex Freeway, Houston, Texas 77026 (the Relocation Site).
4. On or about October 10, 2019, Chastang Ford submitted its application to DMV for the license required to relocate its Ford dealership to the Relocation Site.
5. On May 5, 2020, Ford issued a conditional letter of approval for Chastang Ford's relocation. Ford subsequently issued a superseding conditional letter of approval dated July 19, 2022, and extending until December 31, 2025, the

³⁸⁵ *Maund, Inc.*, PFD at 2; *Momentum BMW, Ltd.*, PFD at 3.

³⁸⁶ To the extent the ALJs have not adopted the substance of a finding of fact or conclusion of law proposed by a party, they have rejected it as immaterial, unnecessary, and/or inconsistent with the preceding analysis.

- deadline by which Chastang Ford must complete and occupy its facilities at the Relocation Site.
6. Doggett Auto Group, LLC, d/b/a Doggett Ford is a franchised Ford dealer licensed by DMV to sell and perform warranty service on vehicles within the Ford Light Truck line-make and the Ford Passenger Auto (AA) line-make, but not the Ford Medium Truck line-make.
 7. Doggett Ford's licensed location is 9225 North Freeway, Houston, Texas 77037.
 8. Doggett Ford's licensed location is within Harris County, Texas, as is the Relocation Site; is also within fifteen miles of the Relocation Site; and is closer to the Relocation Site than to Chastang Ford's current licensed location.
 9. The Relocation Site is more than two miles from Chastang Ford's Current Location.
 10. Doggett Ford filed a protest with DMV of Chastang Ford's application to relocate.
 11. On October 4, 2021, DMV referred Doggett Ford's protest to the State Office of Administrative Hearings (SOAH) for contested-case hearing, and issued a Notice of Hearing to the parties.
 12. The hearing on the merits was held on March 27–31 and April 3–4, 2023, before Administrative Law Judges (ALJs) Robert Pemberton and Joshua C. Fiveson. Chastang Ford was represented by its counsel, Leon V. Komkov and J. Bruce Bennett, while Doggett Ford was represented by counsel Mark Allan Bankston, Philip C. Brashier, and George A. Kurisky, Jr.
 13. The record was closed on August 22, 2023.

B. THE PARTIES

14. Chastang Ford and Doggett Ford are among 106 Ford dealers in Ford's "Houston Region," which encompasses essentially the southern half of Texas, from Austin to the Mexican border.

15. Chastang Ford and Doggett Ford are each within “Zone A” of Ford’s Houston Region, defined to include them and several other Houston-area Ford dealers—Tommie Vaughn Motors, Joe Myers Ford, Russell & Smith Ford, Tomball Ford, Helfman Ford, Randall Reed’s Planet Ford, Gullo Ford of Conroe, Bill Fick Ford, Planet Ford Lincoln, Sterling McCall Ford, and Henson Ford.
16. Chastang Ford (hereafter also including predecessor entities) became a franchised Ford truck dealer in 2003, when it purchased the assets of Bayou City Ford.
17. When Chastang Ford purchased its assets, Bayou City Ford had been located 3625 Eastex Freeway—part of the Relocation Site—for over thirty years.
18. At the time of purchase, the Bayou City Ford dealership facilities were rundown.
19. At the time of purchase, Chastang Ford’s principal owned realty and improvements at the Current Location that had formerly housed a Volvo heavy-truck dealership.
20. The Current Location was sufficiently large to handle the volume of business the dealership was doing in 2003.
21. Chastang Ford was successfully relocated to the Current Location in 2003.
22. Under both its Bayou City Ford and Chastang Ford iterations, the dealership has been classified by Ford as a “truck center,” a specialized type of Ford dealership dedicated exclusively to selling and servicing new trucks and no cars.
23. Chastang Ford is the sole Ford truck center in the Greater Houston area and one of only four or five in Texas, with the closest being in Austin and San Antonio.
24. As a truck center, Chastang Ford has historically differed from other Ford dealerships in having a primary focus on “fleet” business.

25. “Fleet” sales or customers, at least as Ford defines them, refers to new-vehicle purchases made by customers that have obtained a “fleet ID” account with Ford by virtue of owning multiple vehicles and enjoy volume-based incentives when making new-vehicle purchases under that account. Given the scale required, fleet customers typically consist of businesses and municipalities of substantial size that are purchasing work vehicles.
26. A new-vehicle purchase that is not a fleet purchase is classified by Ford as a “retail” purchase.
27. Along with fleet sales, Chastang Ford has also focused more broadly on “commercial” trucks, those purchased for use as work vehicles, whether made as fleet purchases or as non-fleet purchases by smaller enterprises like plumbers or electricians.
28. From 2019 to time of hearing, approximately eighty-five percent of Chastang Ford’s new-vehicle sales were made to fleet or other commercial customers.
29. During this period, roughly half of Chastang Ford’s new-truck sales reported to Ford as “retail” (non-fleet) were commercial sales, including all sales of trucks in the Ford Medium Truck line-make.
30. The Ford Medium Truck line-make includes the F-650 through F-750 models.
31. The Ford Light Truck line-make includes truck models F-450 through F-550 (which, along with the F-650 through F-750 models, Ford terms “commercial trucks”), smaller trucks down to the F-150, vans, sports-utility vehicles, and crossover-utility vehicles.
32. Over eighty-five percent of Chastang Ford’s service business consists of fleet and other commercial customers.
33. Approximately ninety percent of Chastang Ford’s parts business is wholesale, with approximately sixty to seventy percent of those sales being made to fleet customers with in-house service departments, such as the City of Houston, and the remainder to independent garages.

34. Doggett Ford is owned principally by its namesake, Leslie Doggett. It shares some common ownership and administrative affiliation with the Doggett Company, which has interests in several dealerships trading in heavy equipment like commercial trucks, construction machinery, cranes, and forklifts in Texas and other states.
35. Doggett Ford became a franchised Ford dealer in 2018, when it purchased, from Sonic Automotive Group, the assets of Lone Star Ford, a longtime Houston Ford dealership located at 8477 North Freeway.
36. The purchase price paid to Sonic included \$3 million for the dealership's "goodwill," reflecting future earnings potential.
37. Doggett Ford did not purchase the realty and improvements on which Lone Star Ford had operated.
38. After about three months of operations at 8477 North Freeway, Doggett Ford relocated in August 2018 to its current location, 9225 North Freeway, a little less than one mile to the north.
39. Doggett Ford's current location is an eight-acre tract that is owned by another Doggett entity, which also owns an adjacent fifteen-acre tract.
40. Doggett Ford initially operated from temporary quarters on the eight-acre tract while new dealership facilities were being constructed there.
41. The new dealership facilities were completed in December 2020, at a cost of approximately \$15 million.
42. The new dealership facilities are approximately 62,000 square feet in dimensions, including an air-conditioned service facility, and conform to Ford's current "Signature" brand-image requirements.
43. The entirety of the eight-acre site is usable for dealer operations.
44. Doggett Ford primarily sells light-duty trucks and passenger cars to individual retail consumers for personal use.

45. However, Doggett Ford intends to expand its fleet and commercial business, which it perceives would complement other Doggett businesses.
46. To that end, Doggett Ford has applied to participate in Ford's ProElite program, which caters to the needs of fleet and other commercial customers.
47. Participation in Ford's ProElite program requires a dealership to provide at least thirty service bays in a service facility dedicated exclusively to fleet and commercial customers, as well as entrances and exits for those customers that are separate from those used by other customers.
48. Doggett Ford or its ownership plans to spend around \$10.5 million to build the infrastructure necessary to participate in the Ford ProElite program.
49. There is sufficient available space for Doggett Ford's planned Ford ProElite facilities, which would be constructed on the adjacent Doggett-owned realty.

C. CHASTANG FORD'S NEED TO RELOCATE

50. Chastang Ford's Current Location is a tract of approximately six acres, roughly one acre of which is not usable for dealer operations because it is occupied by a water detention pond and drainage features, and improvements that have been constructed on the usable realty.
51. Chastang Ford's dealership facilities at the Current Location are among the smallest of any Ford dealership in the Houston metro.
52. Prior additions to the dealership facilities while housing a Volvo heavy truck dealership left no room at the Current Location to materially expand the building "footprints" any farther.
53. Although the Current Location borders a one-way eastbound frontage road that parallels North Loop 610, there is no entrance into the dealership or exit from it onto the frontage road.
54. The sole means of ingress and egress for all dealership traffic at the Current Location is from Blaffer Street, a heavily traveled, two-lane road used

- primarily by large commercial and industrial vehicles that dead ends into the Loop 610 frontage road.
55. Chastang Ford lacks the ability to create another entrance to its Current Location.
 56. Ease of access and safety are important to a dealership.
 57. Chastang Ford's dealership facilities at the Current Location are cramped, overcrowded and unsuitable to the volume of business the dealership currently conducts.
 58. In 2004, its first full year at the Current Location, Chastang Ford sold about 485 new trucks per year. By 2022, Chastang was selling around 1,400 new Ford trucks annually.
 59. In 2004, the volume of repair orders at Chastang Ford was approximately \$2 million.
 60. Chastang Ford's current volume of repair orders is approximately \$4 million annually.
 61. Service business at Chastang's Ford's Current Location has grown more slowly than the new vehicle and parts departments due to the lack of space to add additional service capacity.
 62. Chastang Ford achieved its maximum service department capacity in approximately 2014-2015.
 63. Currently, Chastang Ford creates 30-35 repair orders per day and commonly has five to seven vehicles stacked up in the service lane each morning.
 64. Vehicles awaiting service are frequently double- or triple-parked in a crowded service storage area.
 65. The vehicles awaiting service are typically large trucks, such as F-750s with lifts mounted on back, which consume substantial space and are difficult to maneuver.

66. Employee time devoted to maneuvering vehicles awaiting service in and around the service storage area, including that of service technicians, costs Chastang Ford roughly \$240,000 per year.
67. The service storage area at the Current Facility cannot be expanded without taking needed space from employee parking, or from parts department parking and delivery areas.
68. The single access point at the Current Location means that service customers, parts customers, parts delivery vehicles, new vehicle customers, used vehicle customers, customers seeking maintenance and minor repairs at the Quick Lane facility, and others accessing the dealership will cause blockages in the driveway and must be rearranged to permit egress and ingress at the dealership.
69. Chastang Ford's parts warehouse was built in 2000 to accommodate about \$700,000 worth of parts.
70. As of 2022, Chastang Ford's parts inventory was worth approximately \$1.8 million—more than twice the original capacity of the building.
71. The lack of space at Chastang Ford's current facility is constraining its ability to expand its service and parts operations.
72. In the past ten years, Chastang Ford has spent several hundred thousand dollars trying to improvise solutions to its parts-storage limitations at the Current Location.
73. Chastang Ford is lagging behind other Houston Ford dealers in operating profit on parts and service. In 2020, Chastang Ford's service department lost \$132,278 while the service department of the average Zone A Ford dealership made a profit of \$829,170.
74. In 2021, Chastang Ford's service department lost \$168,693 while the service department of the average Zone A Ford dealership made a profit of \$872,946.
75. In 2020 and 2021, Chastang Ford's parts department was profitable, but substantially less profitable than the average Zone A Ford dealership.

76. Chastang Ford's Current Location lacks sufficient parking for its customers and its 95 employees.
77. Chastang Ford has only eight to ten spaces for customer parking for its sales department and only five to six spaces for customer parking at the parts warehouse.
78. To provide parking spaces for its employees, Chastang Ford took away space used previously for service parking and for displaying new vehicles.
79. It is not feasible for Chastang Ford to build a parking garage at the Current Location to provide for employee parking or vehicle display. The ramps necessary for safety purposes would take up more space that the garage would provide.
80. In an attempt to alleviate increasing overcrowding issues at the Current Location, particularly with unloading new truck inventory from the large transport vehicles Ford uses, Chastang Ford in 2013 began leasing a 3.1-acre lot on Eastpark Drive, about one mile distant from the Current Location.
81. Chastang Ford pays \$130,000.00 per year to rent the Eastpark site.
82. Chastang Ford uses the Eastpark site to receive new truck deliveries, to inspect and prepare new vehicles for sale to customers, to store new truck inventory that will not fit at the Current Location, to store some vehicles awaiting service work, and to store some vehicles that have been serviced but are awaiting return to customers.
83. The vehicles stored at the Eastpark site are not displayed for sale; nor is any warranty service work done there.
84. Chastang Ford anticipates that it may have to begin using the Eastpark site for employee parking also, as there are insufficient spaces at the Current Location.
85. Using the Eastpark site increases Chastang's operating expenses both through direct rent expense and in inefficiencies caused by shuttling vehicles and employees back and forth to the Current Location.

86. Chastang Ford employs two dedicated porters at a cost of approximately \$60,000.00 per year whose sole job is to move vehicles back and forth between the Eastpark site and the Current Location.
87. The Eastpark site has itself become overcrowded and cannot accommodate additional functions.
88. Because of the lack of space to display used vehicles at the Current Location, Chastang Ford lags far behind other Houston Ford dealers in used vehicle sales, which typically is a very profitable business for a dealership.
89. In 2021, Chastang Ford sold only 232 used retail vehicles while the Zone A average Ford dealership sold 877.
90. In 2022, Chastang Ford sold 318 used retail vehicles, when the Houston Region average Ford dealership sold 729.
91. In 2019, Chastang Ford's used vehicle department lost \$498,104 while the used vehicle department of the Zone A average Ford dealership made an operating profit of \$192,097; in 2020, lost \$266,200 while the Zone A average dealership made an operating profit of \$787,337; and in 2021, lost \$40,827 while the Zone A average dealership made an operating profit of \$1,399,080.
92. The underperformance of Chastang Ford's used vehicle department is caused largely by its lack of display and storage space for used vehicles at the Current Location.
93. Chastang Ford cannot materially increase its used vehicle sales at the Current Location because it lacks the space relative to the dealership's other functions.
94. The limitations of the facilities at the Current Location impede Chastang Ford's ability to provide prompt and efficient service.
95. Although Chastang Ford has received generally high scores from its service customers, customers have indicated dissatisfaction with delays in getting their vehicles in for service work and the length of time taken to complete service work.

96. The space constraints and resulting inefficiencies and delays are damaging Chastang Ford's relationships with service customers, particularly fleet customers, and have caused it to lose some of that business.
97. Chastang Ford will risk losing service customers and revenues if it cannot relocate from its Current Location.
98. In approximately 2014–15, Chastang Ford realized that growth in the volume of its business was threatening to exceed the capacity of the facilities at the Current Location.
99. Chastang Ford consulted with Ford about the feasibility of building new improvements at the Current Location to address the space constraints there; however, Ford could not create a design that provided Chastang Ford with any more operational space at the Current Location.
100. The size of the trucks sold and serviced by Chastang Ford prevents effective use of multi-story structures to alleviate overcrowding.
101. Chastang Ford explored acquiring land adjacent to the Current Location, but that effort was unsuccessful because none of the owners of adjacent properties were willing to sell.
102. Chastang Ford's President and Dealer Principal, Joe Chastang, searched for a potential relocation site of approximately ten acres of land, so as to provide sufficient space, that was located within two miles of the Current Location, so as to avoid a protest.
103. Joe Chastang did not care in which direction the prospective relocation site was located as long as it was at least ten acres and within two miles of the Current Location.
104. Joe Chastang made inquiries regarding the purchase of several potential properties, including properties that were not being offered for sale.
105. Joe Chastang's efforts to acquire a site with at least ten acres and located within two miles of the Current Location were unsuccessful.

106. The closest suitable property for sale that Joe Chastang could purchase was the Relocation Site.
107. Chastang Real Estate, which is owned by Joe Chastang and his wife, bought the Relocation Site in September 2019 for \$7.5 million.
108. Ford approved Chastang Ford's move to the Relocation Site, subject to DMV approval of its application to relocate.
109. Chastang Ford's dealership facilities at the Current Location are outdated, no longer meet Ford's brand-image requirements (now the "Signature" design requirements), and would not be approved as a Ford dealership today.
110. If Chastang Ford is not successful in relocating, Ford will likely require it to spend substantial sums upgrading the facilities at its Current Location to conform to current requirements, even though this would not materially expand its capacity to conduct business.
111. At its Current Location, Chastang Ford lacks the necessary space to construct the additional facilities required for its to participate in the Ford ProElite program and provide those services to its fleet and commercial customers.
112. Chastang Ford desires to participate in the Ford ProElite program and anticipates doing so if it can relocate to the Relocation Site.

D. RELOCATION SITE

113. The Relocation Site consists of almost twelve acres, with the potential for multiple entry and exit points for customers, employees, and deliveries of vehicles and parts.
114. The Relocation Site has adequate space for Chastang Ford to build the facilities required to participate in Ford's ProElite program.
115. If allowed to relocate, Chastang Ford would lease the Relocation Site from Chastang Real Estate.

E. IMPACT OF RELOCATION

116. The Relocation Site is 2.089 miles, or roughly 152.5 feet beyond two miles, from Chastang Ford's Current Location.
117. The Relocation Site is less than one mile closer in air distance to Doggett Ford than the Current Location.
118. The average drive time from the Relocation Site to Doggett Ford is about 2.4 minutes shorter than the average drive time from the Current Location to Doggett Ford.
119. The average drive time from Doggett Ford to the Relocation Site will be about 30 seconds shorter than from Doggett Ford to the Current Location.
120. If Chastang Ford relocates to the Relocation Site, the average drive time for a Harris County resident to reach their nearest Ford dealership would change by only 1.8 seconds, and their average drive distance would change by only 52 feet.
121. Chastang Ford's business is focused on different market segments—fleet and commercial customers—than Doggett Ford, which has focused on customers who make retail purchases for personal use.
122. Chastang Ford's business also centers on building and maintaining relationships with customers as sources of repeat and/or volume business, as opposed to Doggett Ford, which operates in the manner more typical of car dealerships and for which proximity and visibility to consumers play much more significant roles.
123. Many of Chastang Ford's non-commercial retail sales are also a product of its relationships with fleet and commercial customers.
124. While about ninety percent of Doggett Ford's new vehicle sales come from an e-channel, only about seven to eight percent of Chastang Ford's sales result from those factors.

125. In 2012, Ford assigned Chastang Ford a dealer locality that consisted of the entirety of Harris County and portions of Fort Bend, Montgomery, Brazoria, Liberty, and Galveston Counties.
126. Other Ford dealerships, including Doggett Ford, are located within the dealer locality assigned to Chastang Ford in 2012.
127. A Ford dealer locality is not an exclusive sales territory or market area and does not impact where a dealer may sell vehicles.
128. Ford uses its dealer localities to establish expected sales numbers for its dealers.
129. Ford establishes a dealer's sales expectancy by (1) ascertaining the number of new-vehicle registrations for all brands made within the dealer locality, and (2) applying Ford's statewide market share. For example, if there are one hundred total registrations of relevant vehicles in a dealer locality and Ford's statewide market share is twelve percent, the sales expectancy would be twelve vehicles.
130. Consequently, the lower the new-vehicle registrations within a dealer's locality, the lower the dealer's sales expectancy will be.
131. A dealer may meet its sales expectancy through sales made anywhere in the United States, not just within its locality, and need not make any within that locality.
132. Ford has never previously complained to Chastang Ford about its sales performance relative to expectancies.
133. As a Ford truck center, both Chastang Ford's fleet and retail (non-fleet) sales have counted toward its sales expectancies.
134. Recently, Ford has determined to assign dealer localities and sales expectancies to its truck centers, including Chastang Ford, in the same manner as with its other dealers. Under that method, dealers are assigned a much smaller geographic area, termed a "retail dealer locality," from which is derived an expectancy for retail (non-fleet) sales.

135. As with its prior dealer locality, Chastang Ford could meet the retail sales expectancy to be derived from its retail dealer locality through retail sales made within or beyond that locality.
136. Ford adjusts its dealer localities approximately every ten years, following the U.S. Census, assigning census tracts to the dealer most proximate to the tract's centroid as measured in air miles.
137. Chastang Ford will be assigned a retail dealer locality regardless of whether it relocates.
138. If Chastang Ford relocates, Ford will redetermine its retail dealer locality based on the census tracts that are then most proximate to the Relocation Site.
139. No party offered evidence as to what census tracts would be included in Chastang Ford's retail dealer locality based on the Relocation Site.
140. Non-fleet commercial sales are considered by Ford to be "retail" sales.
141. Chastang Ford has no intention of shifting its business model away from its commercial focus.
142. The assignment of a retail dealer locality to Chastang Ford and accompanying retail sales expectancies will not cause Chastang Ford to shift its business model away from its commercial focus to household and individual retail sales.
143. Because Chastang Ford primarily serves different market segments than Doggett Ford, and in different ways, it is unlikely that Chastang Ford's relocation would harm Doggett Ford with respect to its retail sales, and could even help it.
144. Even if Chastang Ford shifted its business model to become more consumer-focused at the Relocation Site, it would likely cause no more than a 1.8 percent loss in Doggett Ford's retail new truck sales.
145. Doggett Ford has been profitable since 2020 and achieved higher profit margins on its vehicle than the Zone A averages.

146. Doggett Ford's net pre-tax profits had exceeded its reported dealership investment by 70.30 percent in 2020 and 131.60 percent in 2021.
147. Doggett Ford's net working capital—current assets less current liabilities, a measure of liquidity—had grown to over \$10 million in 2021, a level far exceeding Ford's recommended levels.
148. In 2020, Doggett Ford sold 1,514 more new vehicles than the “breakeven” level needed for the dealership to begin making a profit, and in 2021, 1,907 more than that level.
149. In 2021, Doggett Ford would have made a profit even if had made no new vehicle sales.
150. Doggett Ford is well-positioned to withstand and adjust operationally to any loss of new-vehicle sales by virtue of increased retail competition from Chastang Ford, were it to occur.
151. Dr. Benton's expert analyses and testimony were unreliably predicated on a series of amalgamated assumptions and irreplicable calculations that turned ultimately on her “professional judgment” alone.
152. Even were Dr. Benton's analyses assumed probative, she concludes that Chastang Ford's relocation would only reduce Doggett Ford's new-vehicle net profits by a roughly \$1.3 million spread over three years, *i.e.*, under half a million dollars a year.

F. ADDITIONAL FINDINGS REGARDING SECTION 2301.652 FACTORS

153. The underlying findings demonstrate that Doggett Ford will not suffer any impacts from Chastang Ford's proposed relocation that would imperil it financially, prevent it from serving the public, or ultimately harm competition and consumer welfare.
154. The underlying findings demonstrate that Chastang Ford will suffer substantial financial and competitive harm if it is not permitted to relocate to the Relocation Site.

155. The underlying findings demonstrate that denying Chastang Ford's application to relocate would harm competition by preventing it from participating in the Ford ProElite program while Doggett Ford is able to do so.
156. The underlying findings demonstrate that Chastang Ford's relocation will lead to healthy, constructive, intrabrand and interbrand competition.
157. The underlying findings demonstrate that Chastang Ford's relocation will have no negative effect on Ford's representation in the Houston market, and will be positive in enabling Chastang Ford to replace its outdated, overcrowded, and poorly accessible facilities at the Current Location with new, larger, and more accessible facilities at which it can better serve its customers and the public.
158. The underlying findings demonstrate that Chastang Ford's relocation will serve the public interest by enabling it to replace its outdated, overcrowded, and poorly accessible facilities at the Current Location with new, larger, and more accessible facilities at which it can better serve its customers and the public.
159. Doggett Ford has been selling and performing warranty service on vehicles in the Ford Medium Truck line-make despite lacking a license to do so.
160. Doggett Ford's franchise agreement with Ford provides that the dealership's responsibilities under that agreement, which include compliance with DMV licensing requirements, are "fundamental to the purpose of [that] agreement" and that "failure to fulfill any of them would constitute a material breach."
161. Doggett Ford's franchise agreement with Ford also permits either party to terminate that agreement if the other party fails to secure and maintain proper licensing.
162. Doggett Ford's unlicensed activity involving Ford Medium Trucks is a material breach of its franchise agreement with Ford.
163. The reasonably foreseeable economic, financial, and market conditions are such that both parties in this case can remain viable, profitable competitors despite Chastang Ford's desire to move 2.0289 miles closer to Doggett Ford.

VII. CONCLUSIONS OF LAW

1. DMV and its governing board (Board) have jurisdiction and authority over the subject matter of this case. Tex. Occ. Code ch. 2301, subchs. N, O.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this matter, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Occ. Code § 2301.704; Tex. Gov't Code ch. 2003.
3. With respect to the Ford Light Truck line-make, Doggett Ford has standing to protest Chastang Ford's application to relocate. Tex. Occ. Code §§ 2301.652, .6521; 43 Tex. Admin. Code § 215.119(b)(3), (e).
4. Doggett Ford timely filed its notice of protest. 43 Tex. Admin. Code § 215.106.
5. Notice of Hearing was properly provided to Doggett Ford. Tex. Occ. Code §§ 2301.705, .707; Tex. Gov't Code §§ 2001.051-.052; 43 Tex. Admin. Code § 215.34.
6. Chastang Ford bears the burden to prove that "good cause" exists for its proposed relocation to the Relocation Site. Tex. Occ. Code § 2301.652(a).
7. In determining whether "good cause" exists, the Board and ALJs "shall consider":
 - (1) "whether the manufacturer or distributor of the same line-make of new motor vehicle is being adequately represented as to sales and service";
 - (2) "whether the protesting franchised dealer representing the same line-make of new motor vehicle is in substantial compliance with the dealer's franchise, to the extent that the franchise is not in conflict with . . . [C]hapter [2301]";
 - (3) "the desirability of a competitive marketplace";
 - (4) "any harm to the protesting franchised dealer";

- (5) “the public interest”;
- (6) “any harm to the applicant”; and
- (7) “current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for the new motor vehicles in the relevant market area.”

Tex. Occ. Code § 2301.652(a).

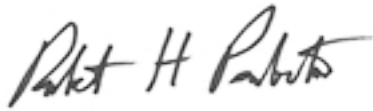
8. While each of the foregoing factors must be “consider[ed],” they are not in themselves elements that must each be proven in order for the applicant to prevail; rather, the “sole relevant issue” is the ultimate inquiry of whether “good cause” exists. *E.g.*, *Grubbs Nissan Mid-Cities, Ltd. v. Nissan N. Am., Inc.*, No. 03-06-00357-CV, 2007 WL 1518115, at *4 (Tex. App.—Austin 2007, pet. denied) (mem. op.); *Gene Hamon Ford, Inc. v. David McDavid Nissan, Inc.*, 997 S.W.2d 298, 306 (Tex. App.—Austin 1999, pet. denied).
9. Nor does Section 2301.652 explicitly prescribe any particular weight to be given any factor or factors; rather, such weighing is left to the Board’s discretion. *See Grubbs Nissan Mid-Cities, Ltd.*, 2007 WL 1518115, at *4 (citing *Austin Chevrolet, Inc. v. Motor Vehicle Bd.*, 212 S.W.3d 425, 432 (Tex. App.—Austin 2006, pet. denied); *Meier Infinity Co. v. Motor Vehicle Bd.*, 918 S.W.2d 95, 100 (Tex. App.—Austin 1996, writ denied).
10. However, precedent of the Board or its predecessors has recognized that the factors collectively—and most directly in the first, third, and fifth factors (adequate representation, desirability of a competitive market, and public interest, respectively)—reflect a primary overarching objective of promoting a competitive marketplace. *See, e.g.*, *UV Country, Inc. v. Mainland Cycle Center, LLC*, Docket No. 10-0045-LIC (2011), Final Order at 3; *Allen Samuels Austin Dodge, Inc. d/b/a Allen Samuels Dodge d/b/a Allen Samuels Heart of Tex. Dodge v. Prestige Chrysler Nw., Ltd. d/b/a Maxwell Dodge*, Docket No. 04-0011.LIC (2006), Proposal for Decision (PFD) at 37 (quoting *Williams Chrysler-Plymouth, Inc. d/b/a Williams Jeep-Eagle v. French Jeep/Eagle, Inc. & Chrysler Corp.*, Docket No. 91-171 (1993), PFD at 9–10). Such benefits as “lower prices and better service naturally result[] from increased competition.” *Rockwall Imports v. The Allee Corp.*, Docket No. 09-0014.LIC (2012), PFD at 87 (citing *Austin Chevrolet, Inc.*, 212 S.W.3d at 433–34).

11. It follows that the public interest strongly favors as many dealers to choose from as possible, albeit to a point—if dealerships oversaturate the market, competition can render them financially inviable or unable to serve the public, to a degree that ultimately harms competition and, in turn, consumer welfare. *See, e.g., Rockwall Imports*, PFD at 87 (citing *Austin Chevrolet, Inc.*, 212 S.W.3d at 433–34); *UV Country, Inc.*, Final Order at 3; *Don Davis Nissan Grapevine, Inc. v. Grubbs Nissan Mid-Cities, Ltd.*, Docket No. 03-0023.LIC (2006), PFD at 15; *Lone Star Cadillac v. Rodger Meier Cadillac*, Docket No. 344 (1985), PFD at 8. Accordingly, “[i]f increased competition can be shown to be unhealthy and ultimately harmful to consumers, it may weigh against granting an application.” *UV Country, Inc.*, Final Order at 3.
12. The Board has also recognized that an application to relocate a dealership would tend to impact competition in a different and more limited way than an add-point application. Namely, “the impact of adding another dealer in a market area and thereby increasing the number of dealers to serve the market[] presents issues that are considerably different than the issues concerning the effect of simply moving a dealer from point A to point B, particularly when the distance between points A and B is small . . . [I]n [the latter] situation . . . the competitive nature of the market place remains unchanged as the number of dealers is not altered.” *Williams Chrysler-Plymouth, Inc.*, PFD at 5–6. That is to say, an add-point case would entail market resegmentation among a larger pool of competing dealerships, whereas a relocation case would entail, all other things being equal, merely a geographic repositioning of a single existing dealership within the same market. *Momentum BMW, Ltd., d/b/a Momentum Porsche v. Don McGill Imports, Inc., d/b/a Don McGill Porsche*, Docket No. 91-091 (1991), PFD at 3.
13. In light of these differences, the Board in dealership-relocation cases has placed primary emphasis on whether the relocation of the existing dealership (as opposed to adding a new dealership) is in the public interest and the potential harm it would cause to the protesting dealer, with adequacy of representation also coming into play as a counter to a protestant’s claim of harm. *Maund, Inc., d/b/a Maund Toyota v. Apple Imports, Inc., d/b/a Apple Toyota*, Docket No. 93-126 (1993), PFD at 2; *Momentum BMW, Ltd.*, PFD at 3. However, this does not mean that the potential competitive effects of the relocation are viewed in a vacuum, as if the applicant dealership with its

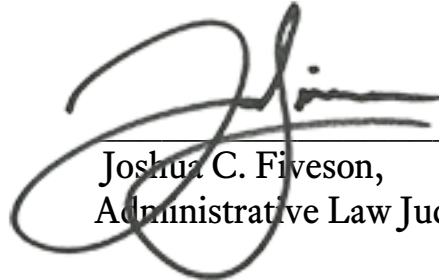
- currently existing operations and facilities was simply picked up and placed unaltered at the new location. *Allen Samuels Austin Dodge, Inc.*, PFD at 44.
14. A dealership relocation of two miles or less does not present a legally cognizable basis for a protest in this case. Tex. Occ. Code §§ 2301.652(c), .6521(d); 43 Tex. Admin. Code § 215.119(d)(3), (e)(1).
 15. The standard of proof on the ultimate issue of good cause is by a preponderance of the evidence. *See Granek v. Tex. St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App. — Austin 2005, no pet.); *Sw. Pub. Serv. Co. v. Pub. Util. Comm'n of Tex.*, 962 S.W.2d 207, 213–14 (Tex. App. — Austin 1998, pet. denied). However, each party would have the burden of production with respect to any evidence favorable to it on a given factor. 1 Tex. Admin. Code § 155.427.
 16. The relocation of Chastang Ford to the Relocation Site will improve Ford's representation as to sales and service in the Houston metro market. Tex. Occ. Code § 2301.652(a)(1).
 17. Doggett Ford is not in substantial compliance with its dealer franchise agreement. Tex. Occ. Code § 2301.652(a)(2).
 18. Doggett Ford lacks a legally cognizable interest with respect of any claimed competitive injury by virtue of Chastang Ford's business with Ford Medium Trucks. Tex. Occ. Code §§ 2301.652, .6521; 43 Tex. Admin. Code § 215.119(b)(3), (e).
 19. The relocation of Chastang Ford to the Relocation Site will promote healthy interbrand and intrabrand competition in the relevant market, whereas denying relocation would impede competition, particularly in fleet and commercial sales and service. Tex. Occ. Code § 2301.652(a)(3).
 20. The relocation of Chastang Ford to the Relocation Site will not cause any harm to Doggett Ford that would impede competition by financially debilitating it or preventing it from continuing to serve the public. Tex. Occ. Code § 2301.652(a)(4).
 21. The relocation of Chastang Ford to the Relocation Site is in the public interest. Tex. Occ. Code § 2301.652(a)(5).

22. Chastang Ford will suffer financial and competitive harm if its application to relocate is denied. Tex. Occ. Code § 2301.652(a)(6).
23. Current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area favor the relocation of Chastang Ford. Tex. Occ. Code § 2301.652(a)(7).
24. Chastang Ford met its burden of demonstrating good cause for the relocation of its Ford dealership from its Current Site to the Relocation Site. Tex. Occ. Code § 2301.652(a).
25. Chastang Ford's application to relocate to the Relocation Site should be processed by DMV.

Signed October 17, 2023



Robert Pemberton,
Administrative Law Judge



Joshua C. Fiveson,
Administrative Law Judge

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 80676780

Filing Code Description: Proposal for Decision

Filing Description: PROPOSAL FOR DECISION

Status as of 10/17/2023 1:50 PM CST

Associated Case Party: Doggett Auto Group, LLC d/b/a Doggett Ford

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------------|-----------|-----------------------|-----------------------|--------|
| George A.Kurisky | | gkurisky@jdkglaw.com | 10/17/2023 1:38:50 PM | SENT |
| Mark AllanBankston | | mbankston@jdkglaw.com | 10/17/2023 1:38:50 PM | SENT |
| Clinton WayneRaney | | craney@jdkglaw.com | 10/17/2023 1:38:50 PM | SENT |
| Lisa MichelleWard | | lward@jdkglaw.com | 10/17/2023 1:38:50 PM | SENT |
| Marni LBlythe | | mblythe@jdkglaw.com | 10/17/2023 1:38:50 PM | SENT |
| Susan E.Smith | | ssmith@jdkglaw.com | 10/17/2023 1:38:50 PM | SENT |
| Mark B.King | | mking@jdkglaw.com | 10/17/2023 1:38:50 PM | SENT |

Associated Case Party: Chastang Enterprises-Houston, LLC d/b/a chastang Ford

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------|-----------|------------------------|-----------------------|--------|
| Marie Medina | | Marie.Medina@TxDMV.gov | 10/17/2023 1:38:50 PM | SENT |

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---------------------|-----------|-----------------------|-----------------------|--------|
| Philip C. Brashier | 796243 | pbrashier@jdkglaw.com | 10/17/2023 1:38:50 PM | SENT |
| James Bruce Bennett | 2145500 | jbb.chblaw@me.com | 10/17/2023 1:38:50 PM | SENT |
| George A. Kurisky | 11767700 | gkurisky@jdkglaw.com | 10/17/2023 1:38:50 PM | SENT |
| Leon Vadim Komkov | 11670500 | leonkomkov@gmail.com | 10/17/2023 1:38:50 PM | SENT |
| Mark A. Bankston | 24001430 | mbankston@jdkglaw.com | 10/17/2023 1:38:50 PM | SENT |

FILED TxDMV Board Meeting eBook
608-22-0344
11/1/2023 12:19 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Amy Robles, CLERK

April 11, 2024

ACCEPTED
608-22-0344 143
11/1/2023 12:21:59 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Amy Robles, CLERK

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

| | | |
|--------------------------------------|---|------------------------------------|
| DOGGETT AUTO GROUP, LLC d/b/a | § | |
| DOGGETT FORD, | § | |
| | § | |
| Protestant, | § | |
| | § | SOAH DOCKET NO. 608-22-0344 |
| v. | § | MVD DOCKET NO. 21-0017-LIC |
| | § | |
| CHASTANG ENTERPRISES-HOUSTON, | § | |
| LLC d/b/a CHASTANG FORD, | § | |
| | § | |
| Applicant. | § | |

PROTESTANT’S EXCEPTIONS TO PROPOSAL FOR DECISION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES NOW Doggett Auto Group, LLC d/b/a Doggett Ford (“Doggett” or “Protestant”) and files Protestant’s Exceptions to Proposal for Decision signed on October 17, 2023 (the “PFD”), pursuant to 43 TEX. ADMIN. CODE § 155.507(b), and in support hereof, would respectfully show the Administrative Law Judges (“AJLs”) as follows:

**I.
PRELIMINARY STATEMENT**

1. Doggett excepts to the PFD’s Findings of Fact and Conclusions of Law that it was not in substantial compliance with its franchise agreement because there was no evidence to support that finding and conclusion. The PFD ignored Doggett’s financial statements showing it recorded no sales of Ford F-650s or F-750s, and it further assumed that the language in Doggett’s franchise agreement was the same as language in the franchise agreement of Chastang Enterprises – Houston, LLC d/b/a Chastang Ford (“Chastang” or “Applicant”). Doggett’s entire franchise agreement is not in the record and a finding of failure to comply with a franchise agreement should not rest on an assumption.

2. Doggett excepts to the PFD's Findings of Fact and Conclusions of Law that Chastang's business model would not change after the proposed relocation to 3625 and 3669 Eastex Freeway, Houston, Texas 77026 (the "Proposed Location") because the objective data shows Chastang is already evolving toward a traditional retail outlet. Moreover, Chastang's own witnesses testified that increased retail sales were specifically contemplated in its quest for "a bigger piece of the pie."¹ Joe Chastang was asked whether having a new Chastang Ford on the Eastex Freeway would be a legacy for him as operations transition to the next generation.² It was within this context that Mr. Chastang made this comment.

3. Doggett excepts to the PFD's Findings of Fact and Conclusions of Law that Chastang would suffer harm if the application to relocate is denied because there was no evidence to support these findings and conclusions. To the contrary, Chastang generated \$242.5 million in revenues in 2022 and the record showed steady revenue growth in its used vehicle, service and parts departments in its current location.

4. Finally, Doggett excepts to the PFD's Findings of Fact and Conclusions of Law that the opinions of Doggett's expert, Dr. Cristina Benton ("Dr. Benton"), were not reliable because her professional judgment was based on sufficient underlying data and it was not an analytical leap.

II. **DOGGETT'S EXCEPTIONS TO PFD**

¹ 1 RR 259:15:15 – 260:20.

² *Id.*

Exception No. 1.

5. Chastang had the burden to prove that Doggett was not in substantial compliance with its franchise agreement, and it did not meet that burden. Doggett excepts to the PFD's reliance on testimony from Joseph Roesner ("Roesner") regarding Exhibit A-22 at A22-0015 on page 56 of the PFD because this exhibit purports to show that Doggett sold 2 F-650 and 11 F-750 trucks from 2019 through 2022.³ It was undisputed at the hearing that F-650 and F-750 are Ford's medium truck models.⁴ The financial statements prepared by Doggett, which are forms provided by Ford, reflect no such sales."⁵ In 2019 and 2020, the Ford financial statements include fields on line 28 of page 37 to report "F-Super Duty (F650-750)" above the heading for "Total Ford Commercial Trucks Retail" on Line 29.⁶ Line 37 provides fields to report "F-Super Duty (F650-750) Fleet" sales above the heading "Total Ford Commercial Fleet Trucks" on Line 38.⁷ Doggett did not sell any retail or fleet Ford F-650 and F-750 trucks in 2019 and 2020.⁸

6. Doggett's 2021 financial statement, which has a slightly different format, also shows no sales of Ford F-650 and Ford F-750 trucks.⁹ Lines 45 and 54 on page 3 of the 2021 Financial Statement show Doggett did not sell any "Super Duty F600-750" at retail or fleet.¹⁰ Likewise, Doggett's 2022 financial statement shows no retail or fleet sales of Super Duty F-650 or F-750 as reflected on Lines 14 and 23 of page 3TRK.¹¹

³ Ex. A-22 at A22-0015.

⁴ 4 RR 125:10-12.

⁵ Ex. A-55 through A-58; Ex. P-93 through Ex. P-96.

⁶ Ex. A-55, Ex. A-56; Ex. P-93; Ex. P-94.

⁷ *Id.*

⁸ *Id.*

⁹ Ex. A-57; Ex. P-95.

¹⁰ *Id.* Only the 2021 financial statement refers to "F-600s."

¹¹ Ex. A-58; Ex. P-96.

Exception No. 2

7. Doggett excepts to Paragraph Nos. 159, 160, 161, and 162 the ALJ's Finding of Fact and paragraph 17 of the Conclusions of Law that Doggett is not in substantial compliance with its franchise agreement because there is no evidence to support the findings and conclusions. Chastang failed to meet its burden to show Doggett was not in compliance with its franchise agreement because Ford MT: Medium Truck does not appear on its license. As noted in footnote 375 on page 98 of the PFD, the entirety of Doggett's Ford Sales and Service Agreement dated May 1, 2018 ("Doggett's Franchise Agreement"), is not in evidence.¹² In support of its argument that Doggett was in material breach of its franchise, Chastang cited to language from its own Ford Truck Sales and Service Agreement Standard Provisions, Ex. A-1, which was executed on October 20, 2003 ("Chastang's Franchise Agreement").¹³

8. Paragraph C of Chastang's Ford Truck Sales and Service Agreement incorporates by reference the Ford Motor Company Ford Truck Sales and Service Agreement Standard Provisions (form "FD925-AT GEN. SALES 8-73").¹⁴ Exhibit A-1 includes the Ford Truck Sales and Service Agreement Standard Provisions in their entirety, upon which Chastang misplaced its reliance.

9. By contrast, Paragraph C of Doggett's Franchise Agreement refers to Ford Motor Company Ford Sales and Service Agreement Standard Provisions (Form "FD925-A"). Form FD925-A was not included in Exhibit P-19. The forms referred to as "Standard Provisions" in Doggett and Chastang's respective franchise agreements have different form designations and cannot be construed to have the same terms without evidence in the record demonstrating the same

¹² Ex. P-19.

¹³ Ex. A-1.

¹⁴ Ex. A-1.

language is in both Form FD925-AT GEN. SALES 8-73 and Form FD925-A. This is purely an unproven assumption on Chastang's part, which the PFD adopted in finding that Doggett is not in substantial compliance with its franchise agreement.

10. In *Continental Imports, Inc. v. Mercedes-Benz USA, LLC*,¹⁵ the ALJs in that case held that a manufacturer failed to meet its burden of demonstrating a dealer's non-compliance with its franchise agreement, in part, because the franchise agreement was not introduced in evidence.¹⁶ The *Continental Imports* court also noted that the manufacturer had not sent the dealer any "franchise noncompliance or cure notices."¹⁷ Without Standard Provisions Form FD925-A to review, there is no evidence that its language is the same as Chastang's Franchise Agreement. Further, there is no evidence that Ford sent Doggett any franchise noncompliance or cure notices regarding the sale of medium trucks. To the contrary, as testified to by Jason Mosely, Doggett's General Manager, Ford's expectation is that Doggett *will* sell medium trucks.¹⁸ Doggett is enrolled in Ford's Pro Elite Program and it intends to move forward with that program no matter the outcome of this protest.¹⁹ A finding as serious as failure to comply with a franchise agreement cannot rest on an assumption that "the excerpt would appear to incorporate materially the same Standard Provisions as with Chastang Ford."²⁰ The different form designations in Chastang's Franchise Agreement and Doggett's Franchise Agreement, executed 15 years apart, imply that the forms may be materially different. The PFD should not conclude the language is materially the same without reviewing both Standard Provisions forms. Doggett respectfully requests the ALJs reconsider and vacate their finding that Doggett is not in substantial compliance with its Franchise

¹⁵ *Continental Imports, Inc. v. Mercedes-Benz USA, LLC*, No. 03-21-00377-CV, 2023 WL 114876 * (Tex. App.—Austin Jan. 6, 2023, pet. denied).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 6 RR 140:25 – 141:9.

¹⁹ 6 RR 108:6-23.

²⁰ PFD at n. 375.

Agreement, especially in light of the fact Doggett did not sell any Ford F-650s or F-750s from 2019 to 2022, as demonstrated above.

11. Doggett excepts to Findings of Fact Nos. 159, 160, 161, and 162 because there was no evidence in the record proving by a preponderance of the evidence that Doggett performed warranty service on medium trucks and that it was in material breach of its franchise agreement.

Exception No. 3

12. Doggett excepts to paragraph 142 of the Findings of Fact that the assignment of a retail dealer locality to Chastang with the accompanying retail sales expectancies will not cause Chastang to shift its business model away from its commercial focus to household and individual retail sales. In this connection, Doggett also excepts to the following passage on page 77 of the PFD:

Indeed, the gravamen of Doggett Ford's arguments about Chastang Ford's supposed "true reasons" for relocating would be that Joe Chastang and other dealership employees are simply lying—under oath, no less—when attesting to Chastang Ford's motivation instead of resolving the space constraints that are impeding the dealership's business and future growth going forward, including in its longstanding core of fleet and commercial business. The ALJs are not persuaded; Chastang Ford's witnesses instead testified credibly about the dealership's plans going forward.

Doggett disagrees with the suggestion that it accused Joe Chastang and other dealership employees of lying under oath. Doggett's argument is that Chastang's stated plans to continue business as usual should be viewed in the context of data showing it is already operating more as a traditional Ford retailer and the relocation closer to Doggett will harm its business. While Chastang's witnesses testified that Chastang does not intend to operate differently at the Proposed Location than it has since its inception, with a focus on commercial and fleet sales, the numbers show that its retail business is already growing while its fleet business slows.

13. The PFD dismisses Doggett’s argument that Chastang’s percentage growth in retail sales in recent years shows it is transitioning toward a more traditional retail outlet, calling it a “fallacy.”²¹ Ford’s Regional Manager, Adam Tidwell, acknowledged that “percentages can move pretty significantly when you have a smaller baseline.”²² However, Tidwell, in the same answer about Chastang’s growth from 2020 to 2021, testified that “Chastang is amongst the leaders in terms of growth from a year-over-year standpoint.”²³ The following chart (based on Chastang’s financial statements) show in terms of units sold that Chastang is selling more retail light trucks & SUV and fewer fleet units:²⁴

| Year | New Vehicle Sales Dept. | Total Light Retail Trucks & SUV | Total Fleet Trucks |
|------|-------------------------|---------------------------------|--------------------|
| 2017 | Not on statement | 308 | 1,517 |
| 2018 | Not on statement | 328 | 1,585 |
| 2019 | Not on statement | 381 | 1,520 |
| 2020 | Not on statement | 363 | 1,159 |
| 2021 | \$178,178,692 | 504 | 1,433 |
| 2022 | \$203,225,912 | 565 | 1,313 |

Chastang’s light retail trucks and SUV’s increased from 308 units in 2017 to 565 units in 2022, while its fleet sales went down from 1,517 units in 2017 to 1,313 units in 2022.²⁵ The increased retail behavior reflected in Chastang’s sales data is the reason for Doggett’s concern about Chastang moving closer to its location, building a Signature design store on the Eastex Freeway, and getting assigned a retail dealer locality from Ford.

14. The growth in Chastang’s retail sales, as seen in its financials, is consistent with Tidwell’s testimony that he has had conversations with all Ford dealers in the Houston market,

²¹ PFD at 75.

²² Ex. P-229, Tidwell Depo. at 165:20 – 166:14.

²³ *Id.*

²⁴ Ex. A-13 through A-19. Note that prior to 2021, Ford grouped SUV’s with light trucks on its financial statements.

²⁵ *Id.* In the 2022 Financial Statement, Ford grouped light trucks, SUVs and alternative energy vehicles in separate sections of the statement. Chastang sold at retail 144 SUVs, 380 light trucks and 41 alternative energy vehicles.

“[t]o go actively after retail sales, correct . . . and take retail orders.”²⁶ As noted in the PFD, Chastang eventually will be assigned a retail dealer locality that Ford will use to measure its retail performance. Kevin McGuirk (“McGuirk”), Ford’s Network Development Manager, agreed that building a new facility, getting freeway frontage on a major thoroughfare like the Eastex Freeway will help Chastang meet its new sales expectancies.²⁷ As the sole judges of credibility, the ALJs may take Chastang’s witnesses at their word, but Doggett respectfully asks the ALJs to reconsider whether pressure from Ford to increase focus on retail sales as shown in the testimony and the data will force Chastang to change its business model.

Special Exception No. 4

15. Doggett excepts to paragraph 22 of the Conclusions of Law holding that Chastang Ford will suffer financial and competitive harm if its application to relocate is denied because there is no evidence to support this conclusion. Neither Chastang nor its experts prepared any forecast modeling of harm to Chastang if it remains in its current location. In paragraphs 73, 74 and 88-97 of the Findings of Fact, the PFD makes findings that do not raise more than a scintilla that Chastang would suffer harm if the application to relocate is denied. For example, these findings ignore contrary data showing that revenues increased in Chastang’s service and parts department from 2017 to 2022.

| Chastang Ford Service Department Performance 2017-2022²⁸ | | | | |
|--|--------------------|--------------------|------------------------------|----------------------------|
| Year | Total Sales | Total Gross | Total Selling Expense | Total Fixed Expense |
| 2017 | \$3,844,290 | \$2,343,463 | \$1,056,568 | \$1,070,166 |
| 2018 | \$3,976,576 | \$2,388,115 | \$1,160,192 | \$1,095,972 |
| 2019 | \$4,244,651 | \$2,580,771 | \$1,142,879 | \$1,224,700 |
| 2020 | \$3,518,385 | \$2,140,124 | \$1,050,516 | \$1,151,542 |
| 2021 | \$3,565,720 | \$2,236,944 | \$1,118,162 | \$1,160,043 |
| 2022 | \$3,995,616 | \$2,423,039 | \$1,337,071 | \$1,500,344 |

²⁶ Ex. P-229, Tidwell Depo. at p. 137:10-22.

²⁷ Ex. P-230, McGuirk Depo. at p. 54:9-13.

²⁸ Ex. P-52, Ex. P-53, Ex. P-54, Ex. P-55, Ex. P-56, Ex. P-58.

Based on these revenues, Chastang continues to generate a profit. In 2017, Chastang's service business generated a \$149,957.00 profit; its parts department made \$261,773.00.²⁹ In 2018, the service department made \$64,933 profit, while parts generated \$382,027 in profit.³⁰ The next year, 2019, Chastang's service department profit was \$146,165, while parts was \$393,466.³¹ While the service department started losing money in 2020 and 2021, the parts department continued generating profits.³² Chastang's parts department generated large profits of \$589,765.00 in 2021 and \$512,118 in 2022.³³

16. Chastang's used vehicle revenues started growing in 2020. In 2017, Chastang's used vehicle total gross was \$456,140.00.³⁴ In 2020, Chastang's used vehicle department grossed \$620,482.³⁵ By 2021, Chastang's total grosses in the used vehicle department topped \$1.1 million.³⁶ The used vehicle department's total gross reached \$1.48 million in 2022.³⁷ While these numbers are below the Zone A average, they nevertheless fall short of demonstrating foreseeable harm to Chastang if it cannot relocate.³⁸

17. As a whole, Chastang's dealership revenues grew from \$175.5 million in 2017 to \$242.5 million in 2022.³⁹ Using the same standard applied to Doggett's complaint of harm, an increase in business of almost \$50 million in six years is hardly demonstrative of a dealership that will suffer harm if not allowed to relocate. To the contrary, Chastang will remain a profitable

²⁹ Ex. P-52.

³⁰ Ex. P-53.

³¹ Ex. P-54.

³² Ex. P-55, Ex. P-56.

³³ Ex. P-56; Ex. P-58.

³⁴ Ex. A-13.

³⁵ Ex. A-16.

³⁶ Ex. A-17.

³⁷ Ex. A-18.

³⁸ Ex. A-92 through A-94.

³⁹ Ex. A-13 through A-18.

business capable of competing in the Houston market. The record is devoid of evidence showing that Chastang will suffer a decline in dealership revenues or profits if it must stay in its current location. Because there is no evidence to prove Chastang would suffer economic and competitive harm if its application is denied, Doggett asks the ALJs to sustain its exception to paragraph 22 of the conclusions of law.

Exception No. 5.

18. Finally, Doggett excepts to paragraph 151 of the Findings of Fact because Dr. Benton's expert analyses and testimony were reliable and based on forecast modeling she prepared from the underlying data. While claiming they could not replicate Dr. Benton's indicators of cannibalization model, Chastang's experts attempted very little predictive modeling of their own. Citing *City of San Antonio v. Pollock*, the PFD notes that "the Texas Supreme Court has made clear that 'mere *ipse dixit* of a credentialed witness' is not competent evidence under Texas law, and at the very least does not sway the ALJs here."⁴⁰ The PFD seems to imply that Dr. Benton using "professional judgment" to interpret her indicators of cannibalization model is tantamount to her opinion having too large of an analytical gap from the underlying data. The PFD too easily agrees with Chastang's criticism of Dr. Benton's work as being based solely on her "professional judgment."

19. Dr. Benton based her opinions within a reasonable degree of certainty in the field of economic analysis of franchise dealerships in relevant market areas.⁴¹ Dr. Benton's indicators of cannibalization model considers that consumer behavior is driven by different aspects of the proposed relocation. For example, Dr. Benton analyzed the encroachment area, which was a proximity driven factor, and considered a smaller segment of consumers who may decide to choose

⁴⁰ PFD at p. 75 (citing *City of San Antonio v. Pollock*, 284 S.W.3d 809, 816 (Tex. 2009) (compiling authorities)).

⁴¹ 5 RR 107:1 – 108:2; 5 RR 160:22 – 161:8.

to shop at Chastang instead of Doggett because of proximity as opposed to the overall population of potential consumers. Based on her analysis of the underlying data and market, she concluded that approximately 1% of the population would choose to shop Chastang instead of Doggett because of proximity. Similarly, one of Roesner's regression analyses using his gravity model reached a similar conclusion if Chastang were to operate more like a "regular retail dealership."⁴² Roesner's conclusion was that Doggett would lose 30 of 3,032 sales, approximately one percent, based on proximity.⁴³ Dr. Benton went further and looked at other factors that drive consumer behavior to predict that Doggett would lose 5 percent of sales and service if Chastang moved to the Proposed Location and built a new dealership with freeway frontage on the Eastex Freeway. As Justice Pemberton correctly observed during the hearing, "So what you're saying is, with respect each of these percentage measurements you're really referring to the population of customers or potential customers who would make decisions based on that variable. And then the 5 percent at the end is speaking to the entire customer base."⁴⁴ Doggett respectfully requests the ALJs reconsider Dr. Benton's testimony and reports without the gloss of Chastang's criticism and find that Doggett will suffer harm if Chastang moves west, builds a new Signature design Ford store on the Eastex Freeway, and operates more as a traditional retail dealership because Ford's changes will force it to do so.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Doggett respectfully requests the ALJs sustain each of its exceptions, vacate the PFD issued on October 17, 2023, and issue a revised PFD

⁴² 3 RR 107:16 – 28:15.

⁴³ *Id.*

⁴⁴ 5 RR. 243:15-25.

consistent with the exceptions, and for such and further relief, at law or in equity, to which Doggett may show itself to be justly entitled.

Respectfully Submitted,

JOHNSON DELUCA KURISKY & GOULD, P.C.

By: _____

GEORGE A. KURISKY, JR.

TBA No. 11767700

gkurisky@jdkglaw.com

MARK ALLAN BANKSTON

TBA No. 24001430

mbankston@jdkglaw.com

PHILIP C. BRASHIER

TBA No. 00796243

pbrashier@jdkglaw.com

1221 Lamar, Suite 1000

Houston, Texas 77010

(713) 652-2525 – Telephone

(713) 652-5130 – Facsimile

**ATTORNEYS FOR PROTESTANT
DOGGETT AUTO GROUP, LLC d/b/a DOGGETT
FORD**

CERTIFICATE OF SERVICE

This is to certify that pursuant to TEX. R. CIV. P. 21 and 21a, a true and correct copy of the foregoing document was served on the following on November 1, 2023.

Via Email Transmission: leonkomkov@gmail.com; jbb.chblaw@me.com

Mr. Leon V. Komkov

Mr. J. Bruce Bennett

CARDWELL, HART & BENNETT, LLP

807 Brazos, Suite 1001

Austin, Texas 78701



Mark Allan Bankston

**DOGGETT AUTO GROUP, LLC
d/b/a DOGGETT FORD,**

§
§
§
§
§
§
§
§
§
§
§
§
§
§

Protestant,

v.

**CHASTANG ENTERPRISES-HOUSTON,
LLC d/b/a CHASTANG FORD,**

Applicant.

**SOAH DOCKET NO. 608-22-0344
MVD DOCKET NO. 21-0017-LIC**

**APPLICANT’S REPLY TO PROTESTANT’S EXCEPTIONS
TO PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

Applicant Chastang Enterprises-Houston, LLC d/b/a Chastang Ford (“Chastang”) replies to the Exceptions filed by Doggett Auto Group, LLC d//b/a Doggett Ford (“Doggett”) to the Proposal for Decision (“PFD”).

**I.
Summary of the Argument**

None of Doggett’s Exceptions is meritorious. Doggett simply asks your Honors to re-weigh evidence that already has been considered and evaluated. Doggett also tardily raises questions about certain aspects of the evidence that it could have addressed at the hearing or in its post-hearing brief, but which it failed to do. This belated attempt lacks merit. The PFD is well-reasoned and properly supported by the credible evidence admitted at the evidentiary hearing.

**II.
The “Substantial Compliance” Exceptions**

A. Doggett is illegally selling and servicing medium duty Ford trucks without a license.

At the evidentiary hearing, Doggett’s chief executive officer, Brian McLemore, testified as follows:

“Q. Has Doggett Ford been selling any new Ford medium duty . . . F650s and F-750s?”

A. *We have.*” (4 RR 125).

....

“Q. . . . So right now ya’ll are selling these F-650s and 750s and doing warranty repair work without a license? Right?

A. Well, we’re authorized from Ford to sell those. *But, yeah, you’re right. . .*” (Emphasis added). (4 RR 126).

Doggett’s general manager, Jason Moseley, testified that Doggett was doing service work on Ford medium duty trucks. (6 RR 20). Moseley also testified that “there was a glitch at Ford corporate that did not put on our license to sell medium trucks. *However, we do that . . .*” (Emphasis added). (6 RR 107). Moseley confirmed again that “*We sell medium trucks . . .*” (Emphasis added). (6 RR 138).

Doggett’s expert witness, Dr. Cristina Benton, testified that “I understand that *Doggett is also selling . . . medium trucks right now.*” (Emphasis added). (5 RR 188). Dr. Benton testified that her understanding came from Doggett’s website and from Mr. Roesner’s analysis of registration data from 2019 through August 2022 showing that Doggett was selling medium duty trucks. (5 RR 188; Ex. A-22_A22-0015).¹

In its Post-Hearing Brief, Doggett did not deny selling medium duty Ford trucks or performing warranty service work on those trucks. Doggett’s post-hearing argument was that the absence of a medium truck license was an “administrative error” or “glitch” by Ford Motor Company or the Texas Department of Motor Vehicles.

¹ Once a dealer sells a new motor vehicle, the dealer registers the sale with the state of Texas. (1 RR 82, 110; 3 RR 57).

In its Exceptions, Doggett argues, for the first time in this case, that the absence of medium duty truck sales from its Ford dealership financial statements proves no such sales were made. Doggett's financial statements are not conclusive proof that it made no sales of medium duty trucks. That Doggett actually made such sales is established by the clear and positive testimony of Doggett's own officials and its expert witness, Dr. Benton, and also by the fact that Doggett registered medium truck sales with the State. What Doggett reported to the State of Texas carries far more weight than what Doggett *failed* to report to Ford. To advance the argument Doggett now makes in its exceptions, Doggett necessarily must urge that its senior officers gave false testimony at the hearing and that Doggett made false filings with the State when registering the sale of new motor vehicles.

Doggett had the burden to explain why the medium truck sales its officials admitted had occurred were missing from its dealership financial statements. *See* 35 Tex. Jur.3d *Evidence* §110 (Oct. 2023) ("The burden of producing evidence as to a particular fact rests, at any particular time, on the party against whom a finding on that fact would then be required in the absence of further evidence."). *See also, Griffin Industries, Inc. v. Thirteenth Court of Appeals*, 934 S.W.2d 349, 352(Tex. 1996) ("To overcome a prima facie showing, an opposing party must offer evidence to rebut what has been established."). Doggett failed to provide any such explanation at the evidentiary hearing. Instead, Doggett's senior officials admitted that it was selling Ford medium trucks without a license.

B. Ford's "Standard Provisions."

In its Exceptions, Doggett argues, for the first time in this case, that the Standard Provisions of the Ford Sales and Service Agreement ("Standard Provisions") admitted into evidence as Ex.

A-1 and Ex. P. 18.2 are not applicable to Doggett. Doggett's failure to make this argument at the evidentiary hearing or in its Post-Hearing Brief undermines its credibility.

Doggett did not object to Chastang's use of the Standard Provisions "Form 925-AT" at the evidentiary hearing or in its post-hearing briefing because a dealer's obligation to comply with applicable law (including a state's licensing requirements), and Ford's grounds for terminating a dealer agreement because of the dealer's failure to comply with applicable law, are the same for all Ford dealers.² Doggett's "Ford Sales and Service Agreement" states that "[b]oth parties recognize the rights of the Dealer (Doggett) and the Company (Ford) under this agreement are defined and limited by the terms of this agreement and applicable law." (Ex. P-19 at p. 3). It defies belief to accept the assumption underlying Doggett's argument that the Standard Provisions in "Form FD925-A," referenced in Doggett's sales and service agreement, negate the requirement in Standard Provisions "FD925-AT" that a dealer be licensed by the State or render a dealer's failure to obtain a required license a non-material breach of the dealer's sales and service agreement.

The credible evidence establishes that Doggett has been illegally selling and servicing Ford medium duty trucks. This illegal activity constitutes a material breach of Doggett's dealership agreement with Ford. For these reasons, your Honors should reject Doggett's exceptions on the substantial compliance issue.

² The record shows that Doggett's counsel helpfully shared a copy of Protestant's Ex. P-18.2, when, during Mr. McLemore's cross-examination, Chastang's counsel was searching in the evidentiary record for Ford's Standard Provisions applicable to its franchised dealers. (4 RR 144). No claim was made at that time by Doggett's counsel that the Standard Provisions requiring compliance with applicable law and grounds for termination for non-compliance were not applicable to Doggett.

III. **The “Business Model” Exceptions**

Doggett argues that Chastang is “already operating more as a traditional Ford retailer” as “the numbers show.” (Exceptions at 6). Doggett ignores the fact that Ford classifies a sale to a non-fleet commercial customer as a retail sale. (1 RR 55, 56, 244, 245). The testimony showed that many of Chastang’s light truck and SUV “retail sales” are actually sales for business use made to commercial customers that do not have a fleet number from Ford.

Doggett references “pressure from Ford to increase retail sales,” but there is no evidence in the trial record that Ford is pressuring Chastang to increase such sales or that Chastang has agreed to abandon the business model on which it has built its reputation as one of Texas’s leading commercial truck dealers. Doggett’s Exceptions are without merit and should be rejected.

IV. **The “Harm to Applicant” Exceptions**

Doggett denies that keeping Chastang from relocating will cause Chastang to suffer any financial and competitive harm. Missing from Doggett’s Exceptions is any mention that Chastang cannot build a Ford Pro Elite Commercial Service facility at Chastang’s current location. Doggett’s goal in this protest is to keep Chastang from building a Pro Elite facility while Doggett does so. The competitive harm to Chastang is palpable and well documented in the trial record. Being able to build a Pro Elite facility is crucial to Chastang’s survival as a Ford commercial truck dealership.

As to financial harm, Doggett points to Chastang’s increasing gross *revenues* in its used and service departments and asserts that the Zone A averages “fall short of demonstrating foreseeable harm to Chastang if it cannot relocate.” (Exceptions at 9). That assertion is false.

Doggett ignores the significant losses in *profits* that Chastang's used and service departments have been sustaining at Chastang's current location.

Zone A Ford dealerships operating without the space constraints Chastang is laboring under are making more used vehicle sales and higher profits on such sales than Chastang. In 2020, the Zone A average dealership sold 1,802 total used vehicles for a total gross profit of \$3,873,629, with an operating profit of \$787,337. (Ex. A-93_A93-0002, lines 4, 14; Ex. A93-0006, line 18). That same year, Chastang sold only 367 total used vehicles for a total gross profit of \$620,482, with an operating *loss* of \$266,200. (Ex. A-16_A16-0002, lines 4, 14, Ex. A16-0005, line 18). In 2021, the Zone A average dealership sold 1,736 total used vehicles for a total gross profit of \$5,007,458, with an operating profit of \$1,399,080. (Ex. A-94_A94-0002, lines 4, 14; Ex. A94-0006, line 18). That same year, Chastang sold only 432 total used vehicles for a total gross profit of \$1,101,673, with an operating *loss* of \$40,827. (Ex. A-17_A17-0002, lines 4, 14, Ex. A17-0005, line 18). If Chastang had the space it needs to display more used vehicles, then its used department not only could be profitable, but highly profitable. (1 RR 111, 133; 2 RR 134).

In 2020, Chastang's service department *lost* \$132,278, while the service department of the average Zone A Ford dealership made a profit of \$829,170. (Ex.A-16_A16-0002, line 14; Ex. A-93_A93-0002, line 14). In 2021, Chastang's service department *lost* \$168,693, while the service department of the average Zone A Ford dealership made a profit of \$872,946. (Ex.A-17_A16-0002, line 14; Ex. A-94_A94-0002, line 14). Because of its existing space constraints, Chastang is losing hundreds of thousands of dollars in service profits.

Doggett says that Chastang's parts department "generated large profits of \$589,765.00 in 2021 and \$512,118 in 2022." (Exceptions at 9). But Doggett ignores the fact that the operating profit of the parts department of the Zone A average dealership in 2021 was \$1,076,990 – almost

twice as much as the operating profit of Chastang's parts department. (Ex. A- 94_A94-0002, line 14).

Doggett also points out that Chastang's dealership gross revenues have been increasing each year. But Doggett fails to acknowledge that Chastang's net profits after income taxes are far below those of the Zone A average dealership. In 2021, Chastang's net profit was \$5,097,087 while that of the Zone A average dealership was \$9,150,098 – \$4 million higher than Chastang. (Ex. A-17_A17-0001, line 43; Ex. A-94_A94-0001, line 43).

The evidence proves overwhelmingly that being unable to relocate will cause Chastang to suffer both competitive and financial harm.

V. The "Dr. Benton" Exceptions

Doggett argues that Dr. Benton's analyses are reliable. Your Honors correctly concluded they are not. Dr. Benton's analyses are riddled with unreasonable or false assumptions and calculations that cannot be replicated. The fact that one of Dr. Benton's five indicators of cannibalization may have had some validity does not save her ultimate conclusion that Doggett would lose 5% of its sales and service revenues if Chastang were to relocate. Dr. Benton's opinion that a 5% loss in Doggett's retail new vehicle sales would cause a corresponding 5% loss in Doggett's used vehicle sales, parts sales, and service sales is simply contrary to reality – as conclusively shown by the dealership financial statements in evidence and by her own financial projections.

CONCLUSION AND PRAYER

Your Honors' PFD is comprehensive, well-reasoned, and fully supported by the credible evidence. For those reasons, Chastang filed no exceptions to the PFD. Doggett' Exceptions are meritless. Accordingly, Chastang prays that your Honors deny Doggett's Exceptions.

Respectfully submitted,

/s/ Leon V. Komkov

Leon V. Komkov

State Bar No. 11670500

J. Bruce Bennett

State Bar No. 02145500

Cardwell, Hart & Bennett, LLP

807 Brazos, Suite 1001

Austin, TX 78701

(512) 322-0011 ext. 3

Attorneys for Applicant

lvk@cardwellhartbennett.com

jbb.chblaw@me.com

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above foregoing has been served on the counsel of record listed below by email and by e-service on this 8th day of November 2023.

George A. Kurisky, Jr.

Mark Allan Bankston

Philip C. Brashier

Johnson DeLuca, Kurisky and Gould, P.C.

4 Houston Center, 1221 Lamar Street, Suite 1000,

Houston, Texas 77010

ATTORNEYS FOR PROTESTANT

/s/ J. Bruce Bennett

J. Bruce Bennett

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

J. Bennett on behalf of J. Bennett

Bar No. 2145500

jbb.chblaw@me.com

Envelope ID: 81446472

Filing Code Description: Reply to Exceptions

Filing Description: Applicant's Reply to Protestant's Exceptions to PFD

Status as of 11/8/2023 3:46 PM CST

Associated Case Party: Doggett Auto Group, LLC d/b/a Doggett Ford

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------------|-----------|-----------------------|----------------------|--------|
| George A.Kurisky | | gkurisky@jdkglaw.com | 11/8/2023 3:23:58 PM | SENT |
| Mark AllanBankston | | mbankston@jdkglaw.com | 11/8/2023 3:23:58 PM | SENT |
| Lisa MichelleWard | | lward@jdkglaw.com | 11/8/2023 3:23:58 PM | SENT |
| Susan E.Smith | | ssmith@jdkglaw.com | 11/8/2023 3:23:58 PM | SENT |
| Clinton WayneRaney | | craney@jdkglaw.com | 11/8/2023 3:23:58 PM | SENT |
| Mark B.King | | mking@jdkglaw.com | 11/8/2023 3:23:58 PM | SENT |
| Marni LBlythe | | mblythe@jdkglaw.com | 11/8/2023 3:23:58 PM | SENT |

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---------------------|-----------|-----------------------|----------------------|--------|
| Philip C. Brashier | 796243 | pbrashier@jdkglaw.com | 11/8/2023 3:23:58 PM | SENT |
| James Bruce Bennett | 2145500 | jbb.chblaw@me.com | 11/8/2023 3:23:58 PM | SENT |
| George A. Kurisky | 11767700 | gkurisky@jdkglaw.com | 11/8/2023 3:23:58 PM | SENT |
| Leon Vadim Komkov | 11670500 | leonkomkov@gmail.com | 11/8/2023 3:23:58 PM | SENT |
| Mark A. Bankston | 24001430 | mbankston@jdkglaw.com | 11/8/2023 3:23:58 PM | SENT |

Associated Case Party: Chastang Enterprises-Houston, LLC d/b/a chastang Ford

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------|-----------|------------------------|----------------------|--------|
| Marie Medina | | Marie.Medina@TxDMV.gov | 11/8/2023 3:23:58 PM | SENT |

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 9, 2023

Mark A. Bankston and Philip Brashier

VIA EFILE TEXAS

Leon V. Komkov and J. Bruce Bennett

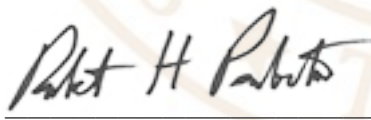
VIA EFILE TEXAS

RE: Docket Number 608-22-0344.LIC; *Doggett Auto Group, LLC d/b/a Doggett Ford v. Chastang Enterprises-Houston, LLC d/b/a Chastang Ford*

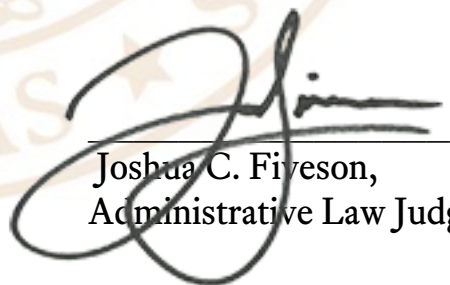
Parties:

The undersigned ALJs issued a Proposal for Decision (PFD) in this case on October 17, 2023. Protestant timely filed exceptions, and Applicant timely responded thereto. After reviewing both filings, the ALJs recommend no changes to the PFD. Accordingly, the PFD is ready for consideration by the Texas Department of Motor Vehicles Board.

Signed November 9, 2023



Robert Pemberton,
Administrative Law Judge



Joshua C. Fiveson,
Administrative Law Judge

CC: Service List

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 81481799

Filing Code Description: Exceptions Letter

Filing Description: EXCEPTIONS LETTER

Status as of 11/9/2023 1:07 PM CST

Associated Case Party: Doggett Auto Group, LLC d/b/a Doggett Ford

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------------|-----------|-----------------------|-----------------------|--------|
| George A.Kurisky | | gkurisky@jdkglaw.com | 11/9/2023 12:52:38 PM | SENT |
| Mark AllanBankston | | mbankston@jdkglaw.com | 11/9/2023 12:52:38 PM | SENT |
| Lisa MichelleWard | | lward@jdkglaw.com | 11/9/2023 12:52:38 PM | SENT |
| Susan E.Smith | | ssmith@jdkglaw.com | 11/9/2023 12:52:38 PM | SENT |
| Clinton WayneRaney | | craney@jdkglaw.com | 11/9/2023 12:52:38 PM | SENT |
| Mark B.King | | mking@jdkglaw.com | 11/9/2023 12:52:38 PM | SENT |
| Marni LBlythe | | mblythe@jdkglaw.com | 11/9/2023 12:52:38 PM | SENT |

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---------------------|-----------|-----------------------|-----------------------|--------|
| Philip C. Brashier | 796243 | pbrashier@jdkglaw.com | 11/9/2023 12:52:38 PM | SENT |
| James Bruce Bennett | 2145500 | jbb.chblaw@me.com | 11/9/2023 12:52:38 PM | SENT |
| George A. Kurisky | 11767700 | gkurisky@jdkglaw.com | 11/9/2023 12:52:38 PM | SENT |
| Leon Vadim Komkov | 11670500 | leonkomkov@gmail.com | 11/9/2023 12:52:38 PM | SENT |
| Mark A. Bankston | 24001430 | mbankston@jdkglaw.com | 11/9/2023 12:52:38 PM | SENT |

Associated Case Party: Chastang Enterprises-Houston, LLC d/b/a chastang Ford

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------|-----------|------------------------|-----------------------|--------|
| Marie Medina | | Marie.Medina@TxDMV.gov | 11/9/2023 12:52:38 PM | SENT |

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

**DOGGETT AUTO GROUP, LLC
D/B/A DOGGETT FORD,
Protestant**

§
§
§
§ MVD DOCKET NO. 21-0017- LIC
§ SOAH DOCKET NO. 608-22-0344
§

v.

**CHASTANG ENTERPRISES -
HOUSTON, LLC D/B/A CHASTANG
FORD,
Applicant,**

§
§
§
§
§
§


**JOINT MOTION TO DISMISS
AND FOR ENTRY OF A FINAL ORDER OF DISMISSAL WITH PREJUDICE**

TO THE HONORABLE BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES:

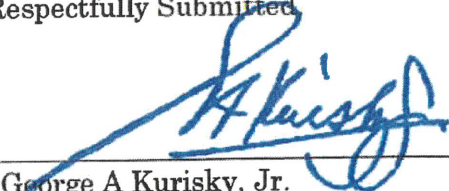
1. The parties to the above-styled and numbered contested case consensually have resolved all contested issues in this matter, and hereby jointly move that the Board of the Texas Department of Motor Vehicles (TxDMV) dismiss this contested case with prejudice.

2. Having considered Tex. Gov't. Code §2001.144(a)(4), both parties hereby waive their rights to file any motion for rehearing of the Board's order dismissing this protest with prejudice, and both parties request that the Board's dismissal order become final when signed.

Respectfully Submitted,



Leon Komkov
Attorney for Chastang Enterprises-
Houston, LLC d/b/a Chastang Ford
Cardwell, Hart & Bennett, LLP
807 Brazos, Suite 1001
Austin, TX 78701



George A Kurisky, Jr.
Attorney for Doggett Auto Group, LLC
d/b/a Doggett Ford
Johnson DeLuca Kurisky & Gould P.C.
1221 Lamar St, Suite 1000
Houston, TX 77010

(512)322-0011 Ext. #3
lvk@cardwellhartbennett.com

713.652.2525
gkurisky@jdkglaw.com

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

**DOGGETT AUTO GROUP, LLC
D/B/A DOGGETT FORD,
Protestant**

v.

**CHASTANG ENTERPRISES -
HOUSTON, LLC
D/B/A CHASTANG FORD,
Applicant,**

§
§
§
§
§
§
§
§
§
§
§

**MVD DOCKET NO. 21-0017-
LIC
SOAH DOCKET NO. 608-22-
0344**

FINAL ORDER OF DISMISSAL WITH PREJUDICE

The Board of the Motor Vehicle Division of the Texas Department of Motor Vehicles has been advised that the parties fully resolved all contested issues; Doggett Auto Group, LLC d/b/a Doggett Ford withdrew its statutory protest against Relocation Application No. 000576026 filed by Chastang Enterprises - Houston, LLC d/b/a Chastang Ford; the parties jointly moved for entry of a final order of dismissal with prejudice; the parties both waived in writing all rights to filing any appeal or motion for rehearing; and the parties desire for the Board's order to become final when signed.

Findings of Facts

1. On October 10, 2019, Chastang Enterprises - Houston, LLC d/b/a Chastang Ford (Chastang) filed Application No. 000576026 to relocate sales and service of the Ford (LT) and Ford Medium Truck (MT) line-makes from 6200 North E Loop, Houston, TX, 77026, to 3625 Eastex Fwy, Houston, TX, 77026.
2. On May 11, 2021, Doggett Auto Group, LLC d/b/a Doggett Ford filed a timely statutory protest.
3. On October 1, 2021, the parties actively and faithfully participated in formal mediation, satisfying the requirements of Tex. Occ. Code § 2301.703(c).

4. On October 4, 2021, the department referred the contested case matter to the State Office of Administrative Hearings for the conduct of a hearing on the merits of the relocation application.

5. The hearing on the merits was conducted March 27-31 and April 3-4, 2023, by SOAH administrative law judges (ALJ).

6. The ALJs issued their Proposal for Decision (PFD) on October 17, 2023.

7. On November 9, 2023, the SOAH ALJs issued their Exceptions Letter and returned the contested case matter to the Texas Department of Motor Vehicles for consideration by the Board.

8. On February 23, 2024, the parties filed with the Board a Joint Motion to Dismiss and for Entry of a Final Order of Dismissal, with Prejudice, to become final when signed by the Board.

9. On April 11, 2024 the Board considered the parties' Agreed Joint Motion to Dismiss.

Conclusions of Law

1. The TxDMV Board has jurisdiction over the referenced parties and over the subject matter of this contested case. Tex. Occ. Code §2301.151.

2. Disposition of this contested case may be made by agreed settlement. Tex. Gov't Code §2001.056.

3. The Board of the Motor Vehicle Division is authorized to issue this Order of Dismissal. Tex. Occ. Code §2301.153.

4. The statutory stay imposed in this contested case proceeding remains in effect until vacated or until the proceeding is concluded by a final order or decision. Tex. Occ. Code §2301.803.

It is therefore ORDERED:

1. This proceeding is hereby dismissed with prejudice and is terminated in all respects;

2. MVD licensing staff shall continue to process Application No. 000576026;

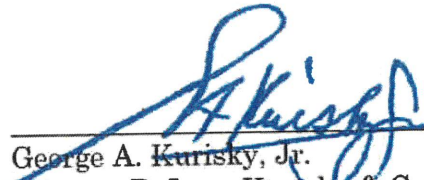
3. The statutory stay imposed in this contested case under Texas Occupations Code §2301.803 is lifted; and

4. All remaining motions, exceptions, or objections, of any party, if any, are hereby denied.

Dated: _____.

Charles Bacarisse, Chair
Texas Department of Motor Vehicles

APPROVED AS TO FORM AND SUBSTANCE:



George A. Kurisky, Jr.
Johnson DeLuca Kurisky & Gould P.C.
1221 Lamar St, Suite 1000
Houston, TX 77010
713.652.2525
gkurisky@jdkglaw.com

ATTORNEYS FOR PROTESTANT
DOGGETT AUTO GROUP, LLC



Leon Komkov
Cardwell, Hart & Bennett, LLP
807 Brazos, Suite 1001
Austin, TX 78701
(512)322-0011 Ext. #3
lvk@cardwellhartbennett.com

ATTORNEYS FOR APPLICANT
CHASTANG ENTERPRISES – HOUSTON, LLC

To: Texas Department of Motor Vehicles Board
From: Laura Moriaty, General Counsel
Agenda Item: 6
Subject: Rule Review Adoptions under Government Code, §2001.039:
Chapter 206, Management; Chapter 215, Motor Vehicle Distribution; and Chapter 221, Salvage Vehicle Dealers

RECOMMENDATION

Action Item. Approval to publish the notice of readoption of Chapters 206, 215, and 221 for publication in the *Texas Register*.

PURPOSE AND EXECUTIVE SUMMARY

The department conducted a review of Chapters 206, 215 and 221 to comply with Government Code, §2001.039.

FINANCIAL IMPACT

There will be no fiscal implications related to the readoption of Chapters 206, 215, and 221.

BACKGROUND AND DISCUSSION

Government Code, §2001.039 requires state agencies to review their rules every four years and to readopt, readopt with amendments, or repeal the current rules. The department has determined that the reasons for initially adopting the rules in Chapters 206, 215, and 221 continue to exist. The department therefore recommends readoption of Chapters 206, 215, and 221 with amendments.

The notice of the department's intention to review was published in the *Texas Register* on December 29, 2023. The comment period closed on January 28, 2024. No comments were received on the rule review.

As a result of the review, the department identified necessary amendments and repeals in Chapters 206, 215, and 221. Those amendments and repeals are also presented to the board at this meeting for consideration of adoption.

TITLE 43. TRANSPORTATION

Adopted Rule Review

Part 10. Texas Department of Motor Vehicles

Chapter 206, 215, and 221

Intention to Readopt

The Texas Department of Motor Vehicles (department) files this notice of re-adoption of Title 43 Texas Administrative Code (TAC), Part 10, Chapter 206, Management; Chapter 215, Motor Vehicle Distribution; and Chapter 221, Salvage Vehicle Dealers. The review was conducted pursuant to Government Code, §2001.039.

Notice of the department's intention to review was published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8393). The department did not receive any comments on the rule reviews.

As a result of the review, the department has determined that the reasons for initially adopting the rules continue to exist. The department readopts Chapters 206, 215, and 221 in accordance with the requirements of Government Code, §2001.039. In this issue of the *Texas Register*, the department adopts amendments and repeals in Chapters 206, 215, and 221 resulting from the rule review.

This concludes the review of Chapters 206, 215, and 221.

Board Meeting Date: 4/11/2024
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: David Richards, Associate General Counsel
Agenda Item: 7
Subject: Chapter 206, Management
Amendments: Subchapters A, B, C, E, F, G and H
New: §206.101
Repeal: Subchapter D
(Relating to Cleanup)

RECOMMENDATION

Action Item. Adopt new §206.101, and amendments to and repeals of sections in 43 Texas Administrative Code (TAC) Chapter 206 with an effective date of June 1, 2024.

PURPOSE AND EXECUTIVE SUMMARY

The department conducted a review of its rules under Chapter 206 in compliance with Government Code, §2001.039. New §206.101, the amendments and the repeals are necessary to clean up the language in Chapter 206.

FINANCIAL IMPACT

For each year of the first five years new §206.101, the amendments and the 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 these rules. There will be no significant impact on local employment or the local economy.

BACKGROUND AND DISCUSSION

The amendments to Chapter 206 are necessary to do the following:

1. bring the department's rules into alignment with statute;
2. remove language that is redundant with statute;
3. cite to statutory authority when helpful;
4. clarify existing requirements;
5. modernize language;
6. improve readability through the use of consistent terminology;
7. clarify or delete unused, archaic, or inaccurate definitions, terms and references;
8. re-letter subdivisions in Chapter 206 due to deletions and repeals; and
9. 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), and public access to advisory committee meetings.

New §206.101 is necessary to clarify the requirements and parameters for public comment during advisory committee meetings. The repeal of Chapter 206, Subchapter D enables the consolidation of all the department's contested case rules into new Chapter 224, Adjudicative Practice and Procedure. Chapter 224 contains modified portions of Subchapter D, as applicable.

Proposed new §206.101, and the amendments to and the repeals of sections in Chapter 206 were published for comment in the December 29, 2023, issue of the *Texas Register*. The department received one comment. The Texas Independent Automobile Dealers Association (TIADA) submitted the attached comments. The department considered the comments and recommended changes to certain rule text in response to the comments.

If the board adopts new §206.101, the amendments and the repeals during its April 11, 2024, open meeting, staff anticipates:

- Publication in the April 26, 2024, issue of the *Texas Register*; and
- An effective date of June 1, 2024.

| | |
|----|---|
| 1 | ADOPTION OF REVISIONS TO |
| 2 | SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES |
| 3 | 43 TAC §206.1 AND §206.2 |
| 4 | SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS |
| 5 | 43 TAC §206.22 AND §206.23 |
| 6 | SUBCHAPTER C. PROCEDURE FOR PETITION TO ADOPT RULES |
| 7 | 43 TAC §206.41 |
| 8 | SUBCHAPTER E. ADVISORY COMMITTEES |
| 9 | 43 TAC §§206.92, 206.93 AND 206.101 |
| 10 | SUBCHAPTER F. DEPARTMENT VEHICLE FLEET MANAGEMENT |
| 11 | 43 TAC §206.111 |
| 12 | SUBCHAPTER G. ELECTRONIC SIGNATURES |
| 13 | 43 TAC §206.131 |
| 14 | SUBCHAPTER H. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY |
| 15 | 43 TAC §206.151 |
| 16 | REPEAL OF |
| 17 | SUBCHAPTER D. PROCEDURES IN CONTESTED CASES |

18 **INTRODUCTION.** The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas
19 Administrative Code (TAC) Chapter 206, Subchapter A, Organization and Responsibilities, §206.1 and
20 §206.2; Subchapter B, Public Meetings and Hearings, §206.22 and §206.23; Subchapter C, Procedure for
21 Petition to Adopt Rules, §206.41; Subchapter E, Advisory Committees, §206.92 and §206.93; Subchapter
22 F, Department Vehicle Fleet Management, §206.111; Subchapter G, Electronic Signatures, §206.131; and
23 Subchapter H, Risk-Based Monitoring and Preventing Fraudulent Activity, §206.151. In conjunction with
24 these amendments, the department adopts the repeal of Subchapter D, Procedures in Contested Cases.
25 In addition, the department adopts new §206.101 in Subchapter E.

26 The department adopts amendments to §§206.1, 206.41, and 206.111 without changes to the
27 proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8192) and
28 will not be republished. The department adopts §§206.2, 206.22, 206.23, 206.92, 206.93, 206.101,
29 206.131 and 206.151 with changes to the proposed text as published in the December 29, 2023, issue of
30 the *Texas Register* (48 TexReg 8192) and will be republished. In response to comments made by the Texas
31 Independent Automobile Dealers Association (TIADA), the department made a nonsubstantive
32 amendment to §206.2(a)(2)(C) to delete the word “and” at the end of the clause, and the department
33 made a substantive amendment to §206.22(a)(1) to clarify that a person speaking before the board on an
34 agenda item will be allowed an opportunity to speak prior to any motion by the board on the agenda item.
35 The remainder of the changes made at adoption are described in the following paragraphs of this
36 preamble.

37 **REASONED JUSTIFICATION.**

38 Subchapter A. Organization and Responsibilities

39 The adopted amendments to Subchapter A clarify the authority of the executive director and
40 delete rule text that is redundant with statute. The adopted amendments to §206.1 cite the statutory
41 provision from which the executive director receives authority to delegate certain functions to staff within
42 the department and clarify that such delegation must be consistent with applicable law.

43 The adopted amendments to §206.2(a) clarify that the executive director hires and oversees the
44 department's general counsel, and align the rule text with Transportation Code, §1001.041 and
45 §1001.0411. In response to a comment from TIADA, the department adopts §206.2(a)(2)(C) with a change
46 at adoption to remove the misplaced "and" after the semicolon at the end of the clause. The adopted
47 amendment to §206.2(a)(3) removes unnecessary limitations on the executive director's powers to
48 delegate to staff. The adopted amendment to §206.2(b) removes an unnecessary and redundant citation
49 to the title of Government Code, Chapter 551. The adopted amendments strike §206.2(c) because it is
50 duplicative of Transportation Code, §1001.004.

51 Subchapter B. Public Meetings and Hearings

52 In response to a comment from TIADA, the department adopts §206.22(a)(1) with a change at
53 adoption to substitute the word "motion" for the word "vote" to require the board to take public comment
54 on an agenda item before entertaining a motion on that agenda item. This change will give the board
55 members the benefit of any public comments on an agenda item, which may impact the board members'
56 decisions regarding a proposed motion. Adopted amendments to §206.22 delete subsection (f) and
57 remove a cross-reference to it because its provisions on contested cases are combined with the
58 department's other rules on contested cases in new Chapter 224, Adjudicative Practice and Procedure,
59 which is adopted in this issue of the *Texas Register*. Adopted amendments to §206.22(b) and (c) simplify
60 and clarify the language, revise existing terminology for consistency with other department rules, and
61 revise the rule text for consistency with current practice. Adopted amendments to §206.22(b)(3) and (d)

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 4 of 10

Chapter 206 - Management

62 clarify that public comments, rather than full presentations by the public, are allowed at board meetings.

63 The department adopts §206.22(c) with changes at adoption to clarify that a person who has special
64 communication or accommodation needs and who plans to attend a board meeting may contact the
65 department's contact listed in the posted meeting agenda for the purpose of requests for auxiliary aids or
66 services. At adoption, the department also deleted reference to contacting the department in Austin
67 because the language was vague.

68 The department adopts amendments to §206.23(b) to clarify and streamline the language
69 without changing its meaning. An adopted amendment to §206.23(c)(1) allows the executive director to
70 designate another person to ask questions of speakers at a public hearing, to allow the executive director
71 flexibility to delegate. The adopted amendments to §206.23(c)(4) clarify that the executive director or his
72 designee may represent the department in a public hearing, as well as the board chair or presiding officer.
73 Amendments to §206.23(d) are necessary to remove the term "with disabilities" and to clarify that anyone
74 with special communication or accommodation needs who plans to attend public hearings under this
75 section may contact the department to request auxiliary aids or services. The department adopts
76 §206.23(d) with changes at adoption to clarify that a person who has special communication or
77 accommodation needs and who plans to attend a public hearing under this section may contact the
78 department's contact listed in the public hearing notice for the purpose of requests for auxiliary aids or
79 services, regardless of whether the public hearing will be conducted by the board, the executive director,
80 or the executive director's designee. There is no need to have a different process for a person to request
81 auxiliary aids or services for a public hearing, depending on whether the public hearing will be conducted
82 by the board or the executive director or designee. At adoption, the department also deleted reference to
83 contacting the department in Austin because the language was vague.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 5 of 10

Chapter 206 - Management

84 Subchapter C. Procedure for Petition to Adopt Rules

85 The adopted amendments to Subchapter C, §206.41 streamline and clarify the procedure for
86 submitting to the department a petition to adopt rules under Texas Government Code, §2001.021, clarify
87 the required content of a petition, and remove unnecessary language.

88 Subchapter D. Procedures in Contested Cases

89 The department adopts the repeal of Subchapter D, Procedures in Contested Cases, to consolidate
90 all of the department's contested case rules into new Chapter 224, Adjudicative Practice and Procedure,
91 which the department adopts in this issue of the *Texas Register*. Adopted amendments also reletter the
92 remaining subchapters in Chapter 206.

93 Subchapter E. Advisory Committees

94 An adopted amendment reletters Subchapter E to Subchapter D because the department adopts
95 the repeal of current Subchapter D and reletters the subsequent subchapters accordingly.

96 An adopted amendment to §206.92 deletes the definition of "division director" because the term
97 is not used elsewhere in the subchapter. An adopted amendment to §206.92 also renumbers the
98 paragraphs accordingly due to the deletion of the definition of "division director."

99 The department adopts §206.92(1) with changes at adoption. The department decapitalized the
100 word "committee" in §206.92(1) because the term "advisory committee" isn't capitalized in the
101 subchapter, except when it is used as part of the name of an advisory committee. The department also
102 added the word "to" before the words "the executive director" in §206.92(1).

103 The department adopts §206.93(a) with a change at adoption to indicate that the department is
104 deleting the word "the" before the term "executive director." The department adopts amendments to
105 §206.93(b) and the deletion of §206.93(c) to streamline and clarify the qualifications and appointment

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 6 of 10

Chapter 206 - Management

106 requirements for advisory committee members into one subsection. The department adopts §206.93(b)
107 with a change at adoption to replace the reference to subsection (i) with a reference to subsection (h) of
108 this section regarding the reporting of the advisory committee's recommendations to the board. The
109 department also adopts the deletion of §206.93(c) to remove certain language that is redundant with
110 statutory requirements. Adopted amendments to relettered §206.93(f) and (g), remove unnecessary
111 statutory titles. The department adopts the deletion of subsection (i) because new §206.101 addresses
112 public access to advisory committee meetings. The adopted amendments to relettered §206.93(i) clarify
113 that both the executive director and the board shall consider an advisory committee's recommendations
114 in developing policy, and remove an unnecessary reference to an advisory committee's reports. The
115 adopted amendments delete §206.93(m) to remove unnecessary language that is duplicative of Texas
116 Government Code, §2110.008. Adopted amendments reletter the subsections of §206.93 due to deletions
117 of subsections.

118 Adopted new §206.101 clarifies the requirements and parameters for public comment during
119 advisory committee meetings. Adopted new §206.101 closely parallels the requirements for public
120 comments during board meetings in §206.22 (relating to Public Access to Board Meetings). Additionally,
121 adopted new §206.101 allows each public commenter three minutes to comment on any advisory
122 committee agenda item or in an open comment period on any topic within the scope of the specific
123 advisory committee. The department adopts new §206.101(a)(1) with a change at adoption to clarify that
124 a person speaking before the advisory committee on an agenda item will be allowed an opportunity to
125 speak prior to any motion by the advisory committee on the agenda item. This change to new §206.101
126 will give the advisory committee members the benefit of any public comments on an agenda item, which
127 may impact the advisory committee members' decisions regarding a proposed motion. This change to new
128 §206.101(a)(1) makes the language consistent with §206.22(a)(1), which the department amends at

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 7 of 10

Chapter 206 - Management

129 adoption in response to a comment from TIADA that requested public comment be allowed prior to a
130 board motion. The department adopts new §206.101(a)(1) with a change at adoption to clarify that a
131 person who has special communication or accommodation needs and who plans to attend an advisory
132 committee meeting may contact the department's contact listed in the posted meeting agenda for the
133 purpose of requests for auxiliary aids or services. This change at adoption is consistent with the changes
134 the department made to §206.22(c) and §206.23(d). Adopted new §206.101(d) sets requirements for
135 conduct and decorum at advisory committee meetings to assist the acting advisory committee chair in
136 maintaining order; these requirements mirror the same requirements for conduct and decorum at board
137 meetings under §206.22(d). Adopted new §206.101(e) allows the acting advisory committee chair
138 flexibility to waive any requirements of §206.101 as necessary to allow the advisory committee or the
139 department to perform their responsibilities. Adopted new §206.101 allows the acting advisory committee
140 chairs to remain responsive to the need for public comment without unnecessarily encumbering the public
141 comment process. Adopted new §206.101 does not allow written public comment for advisory committee
142 meetings to streamline the process, provide a consistent method of receiving comments, and ensure that
143 advisory committee members are able to ask follow-up questions of the commenters.

144 Subchapter F. Department Vehicle Fleet Management

145 An adopted amendment reletters Subchapter F to Subchapter E because the department adopts
146 the repeal of current Subchapter D and reletters the subsequent subchapters accordingly.

147 An adopted amendment to §206.111 clarifies that a written documented finding must be signed
148 by the executive director to support an assignment of a department fleet vehicle to an individual employee
149 on an everyday basis.

150 Subchapter G. Electronic Signatures

151 An adopted amendment reletters Subchapter G to Subchapter F because the department adopts
152 the repeal of current Subchapter D and reletters the subsequent subchapters accordingly. An adopted
153 amendment to §206.131 also renames the title of the subchapter from “Electronic Signatures” to “Digital
154 Certificates” for accuracy and consistency.

155 Adopted amendments to §206.131(d)(2)(A) clarify that a personal identification certificate with a
156 photograph must be unexpired to qualify as an acceptable form of identity verification. An adopted
157 amendment to §206.131(d)(2)(B) deletes a concealed handgun license as an acceptable form of
158 identification because such license is no longer required by law. Adopted amendments to
159 §206.131(d)(2)(E) and (G) correct the name of the federal agency that issues a Form I-94. An adopted
160 amendment to §206.131(g) clarifies that the rule refers to digital certificates. The department adopts
161 §206.131(h)(1) with a change at adoption to add the word “digital” before the word “certificate” for
162 clarity. Adopted amendments to §206.131(i) substitute the word "certificate" for "signature" and reword
163 the second sentence to increase consistency and accuracy.

164 Subchapter H. Risk-Based Monitoring and Preventing Fraudulent Activity

165 An adopted amendment reletters Subchapter H to Subchapter G because the department adopts
166 the repeal of Subchapter D and reletters the subsequent subchapters accordingly.

167 Adopted amendments to §206.151 clarify and specify the department’s internal risk-based
168 monitoring system required by Transportation Code, §520.004(4). The department adopts §206.151(a)
169 with changes at adoption to clarify that it applies to the department’s users of the department’s
170 Registration and Title System (RTS), regardless of whether the department’s users are accessing RTS at the
171 one of the department’s offices or remotely from a non-department location. At adoption, the department

172 moved the phrase "Texas Department of Motor Vehicles (department)" from the middle of the first
173 sentence to the beginning portion of the first sentence after the word "All."

174 The adopted amendments to §206.151 will subject internal users of the department's RTS to
175 periodic examination to determine whether to classify the user as priority or nonpriority. The adopted
176 amendments to §206.151 are necessary to allow the department to prioritize those examinations based
177 on each user's assigned classification of priority or non-priority. Adopted amendments to §206.151 set
178 out the factors the department considers in classifying an internal RTS user as a priority or non-priority
179 user. Additionally, the adopted amendments set minimum goals for frequency of inspections to create
180 more predictability for RTS users, providing that RTS users who are classified as a priority will be inspected
181 not less than twice per year, and that RTS users classified as a non-priority will be inspected not less than
182 once per year. The adopted amendments further provide that the inspections may be virtual, on premises
183 at the RTS user's location, or a combination of both, to give the department flexibility to conserve
184 resources when possible.

185 Additional nonsubstantive amendments are adopted throughout Chapter 206 to correct
186 punctuation, grammar, and capitalization; and to renumber or reletter as necessary.

187 **SUMMARY OF COMMENTS.**

188 The department received comments from TIADA.

189 **Comment:** TIADA recommended the deletion of the word "and" at the end of §206.2(a)(2)(C).

190 **Response:** The department agrees. The department adopts a change to the proposed text at adoption to
191 remove the word "and" at the end of §206.2(a)(2)(C).

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 10 of 10

Chapter 206 - Management

192 **Comment:** TIADA recommends that the department modify §206.22(a)(1) to ensure that public comment
193 is allowed prior to board members making motions on an agenda item.

194 **Response:** The department agrees. The department adopts a change to the proposed text at adoption to
195 replace the word “vote” with “motion” in §206.22(a)(1).

1 **SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES**

2 **43 TAC §206.1 AND §206.2**

3 **STATUTORY AUTHORITY.**

4 The department adopts amendments to Chapter 206 under Transportation Code, §1001.041,
5 which requires the executive director to appoint deputies, assistants and other personnel, including a
6 general counsel; Transportation Code, §1001.0411(b), which allows the executive director to delegate
7 duties or responsibilities; Transportation Code, §1001.0411(c), which requires the executive director to
8 hire and oversee a general counsel to advise the department; Transportation Code, §1002.001, which
9 provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are
10 necessary and appropriate to implement the powers and the duties of the department; Government Code,
11 §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements
12 of all available formal and informal procedures; and the statutory authority referenced throughout this
13 preamble and in the rule text, which is incorporated by reference.

14 **CROSS REFERENCE TO STATUTE.** The adopted amendments implement Government Code, §2001.004;
15 and Transportation Code, Chapters 1001 and 1002.

16
17 Text.

18 §206.1. Delegation.

19 The Board of the Texas Department of Motor Vehicles (board) may, consistent with applicable law,
20 delegate any agency function to the executive director. The executive director may, consistent with
21 applicable law, [further] delegate duties or responsibilities pursuant to Transportation Code, §1001.0411
22 [such functions to one or more employees of the department].

23

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 2 of 32

Chapter 206 - Management

1 §206.2. Texas Department of Motor Vehicles.

2 (a) Executive director.

3 (1) To assist in discharging the duties and responsibilities of the executive director, the
4 executive director may organize, appoint, and retain administrative staff.

5 (2) The executive director shall:

6 (A) serve the board in an advisory capacity, without vote;

7 (B) submit to the board quarterly, annually, and biennially, detailed reports of the
8 progress of the divisions and a detailed statement of expenditures;

9 (C) hire, promote, assign, reassign, transfer, and, consistent with applicable law
10 and policy, terminate staff necessary to accomplish the roles and missions of the department; ~~and~~

11 (D) hire and oversee a general counsel to advise the department; and

12 (E) ~~(D)~~ perform other responsibilities as required by law or assigned by the
13 board.

14 (3) The executive director may, consistent with applicable law, delegate one or more of
15 the functions listed under paragraph (2) ~~[(2)(B)-(D)]~~ of this subsection to the staff of the department.

16 (b) Department staff. The staff of the department, under the direction of the executive director, is
17 responsible for:

18 (1) implementing the policies and programs of the board by:

19 (A) formulating and applying operating procedures; and

20 (B) prescribing such other operating policies and procedures as may be consistent
21 with and in furtherance of the roles and missions of the department;

22 (2) providing the chair and board members administrative support necessary to perform
23 their respective duties and responsibilities;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 3 of 32

Chapter 206 - Management

1 (3) preparing an agenda under the direction of the chair and providing notice of board
2 meetings and hearings as required by ~~[the Texas Open Meetings Act,]~~ Government Code, Chapter 551;
3 and

4 (4) performing all other duties as prescribed by law or as assigned by the board.

5 ~~[(c) Divisions. The executive director shall organize the department into divisions reflecting the
6 various functions and duties assigned to the department.]~~

7

8 **SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS**

9 **43 TAC §206.22 AND §206.23**

10 **STATUTORY AUTHORITY.**

11 The department adopts amendments to Chapter 206 under Transportation Code, §1001.0411(b),
12 which allows the executive director to delegate duties or responsibilities; Transportation Code, §1004.002,
13 which requires the board and the department to develop and implement policies that provide the public
14 with a reasonable opportunity to appear before the board or the department and to speak on any issue
15 under the jurisdiction of the board or the department; Transportation Code, §1002.001, which provides
16 the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary
17 and appropriate to implement the powers and the duties of the department; Government Code,
18 §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements
19 of all available formal and informal procedures; and the statutory authority referenced throughout this
20 preamble and in the rule text, which is incorporated by reference.

21 **CROSS REFERENCE TO STATUTE.** The adopted amendments implement Government Code, §2001.004; and
22 Transportation Code, Chapters 1001, 1002 and 1004.

23

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 4 of 32

Chapter 206 - Management

1 Text.

2 §206.22. Public Access to Board Meetings.

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

7 (1) prior to a motion [~~vote~~] by the board on the item; and

8 (2) for a maximum of three minutes, except as provided in subsections (d)(6) [~~;~~] and (e)
9 [~~and (f)~~] of this section.

10 (b) Open comment period.

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

14 (2) A person wanting [~~desiring~~] to speak to the board [~~appear~~] under this subsection
15 shall complete a registration form, as provided by the department, prior to the beginning of the open
16 comment period.

17 (3) Except as provided in subsections (d)(6) and (e) of this section, each person shall be
18 allowed to speak for a maximum of three minutes [~~for each presentation~~] in the order in which requests
19 to speak were received [~~the speaker is registered~~].

20 (c) Disability accommodation. Persons [~~with disabilities,~~] who have special communication or
21 accommodation needs and who plan to attend a meeting, may contact the department's contact listed
22 in the posted meeting agenda for the purpose of requests for auxiliary aids or services. [~~department in~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 5 of 32

Chapter 206 - Management

1 ~~Austin to request auxiliary aids or services.]~~ Requests shall be made at least two days before a meeting.

2 The department shall make every reasonable effort to accommodate these needs.

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

5 (1) Questioning of speakers ~~[those making presentations]~~ shall be reserved to board
6 members and the department's administrative staff.

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

9 (3) Comments ~~[Presentations]~~ shall remain pertinent to the issue being discussed.

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

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

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

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

19 ~~[(f) Contested Cases. The parties to a contested case under review by the board shall be allowed
20 an opportunity to provide an oral presentation to the board, subject to the following limitations and
21 conditions.]~~

22 ~~[(1) Each party shall be allowed a maximum of 15 minutes for their oral presentation.]~~

23 ~~[(2) No party is allowed to provide a rebuttal or a closing statement.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 6 of 32

Chapter 206 - Management

1 ~~[(3) Any party that is intervening in support of another party shall share that party's time;~~
2 ~~however, this provision is limited to intervenors of record from the State Office of Administrative~~
3 ~~Hearings proceeding.]~~

4 ~~[(4) Time spent by a party responding to any board questions is not counted against their time.]~~

5 ~~[(5) The parties to a contested case under review by the board shall limit their oral presentation~~
6 ~~and discussion to evidence in the State Office of Administrative Hearings' administrative record.]~~

7 ~~[(6) During an oral presentation, a party to a contested case before the board may orally claim~~
8 ~~that a presenting party talked about evidence that is not contained in the State Office of Administrative~~
9 ~~Hearing's administrative record; time spent discussing such claims is not counted against the objecting~~
10 ~~party's time.]~~

11 ~~[(7) A party must timely comply with the requirements of §215.59 of this title (relating to~~
12 ~~Request for Oral Presentation) before it is authorized to provide an oral presentation to the board.]~~

13

14 §206.23 Public Hearings.

15 (a) The board may hold public hearings:

16 (1) to consider the adoption of rules;

17 (2) in accordance with the programs operated by the department; and

18 (3) to provide, when deemed appropriate by the board or when otherwise required by

19 law, for public input regarding any other issue under the jurisdiction of the board.

20 (b) The executive director or designee may hold ~~conduct~~ public hearings ~~held~~ under
21 subsection (a)(2) and (3) of this section.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 7 of 32

Chapter 206 - Management

1 (c) Public hearings shall be conducted in a manner that maximizes public access and input while
2 maintaining proper decorum and orderliness, and shall be governed by the following guidelines:

3 (1) Questioning of those making presentations shall be reserved to board members, the
4 executive director, the executive director's designee, or if applicable, the presiding officer.

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

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

8 (4) A person who disrupts a public hearing shall leave the hearing room and the
9 premises if ordered to do so by the chair, the executive director, the executive director's designee, or, if
10 applicable, the presiding officer.

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

12 (d) Persons [~~with disabilities,~~] who have special communication or accommodation needs and
13 who plan to attend a public hearing under this section may contact the department's contact listed in
14 the public hearing notice for the purpose of requests for auxiliary aids of services. [~~hearing to be held by~~
15 ~~the board, may contact the department in Austin. In the case of a hearing conducted by the department,~~
16 ~~those persons may contact the public affairs officer, whose address and telephone number appear in~~
17 ~~the public notice for that hearing, to request auxiliary aids or services.] Requests shall be made at least
18 two days before the hearing. The department shall make every reasonable effort to accommodate these
19 needs.~~

20

21

SUBCHAPTER C. PROCEDURE FOR PETITION TO ADOPT RULES

1 **43 TAC §206.41**

2 **STATUTORY AUTHORITY.**

3 The department adopts amendments to Chapter 206 under Government Code, §2001.004, which
4 requires state agencies to adopt rules of practice stating the nature and requirements of all available
5 formal and informal procedures; Government Code, §2001.021(b), which requires state agencies to adopt
6 rules that prescribe the form and procedures for a petition for rulemaking; Transportation Code,
7 §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to
8 adopt rules that are necessary and appropriate to implement the powers and the duties of the
9 department; and the statutory authority referenced throughout this preamble and in the rule text, which
10 is incorporated by reference.

11 **CROSS REFERENCE TO STATUTE.** The adopted amendments implement Government Code, §2001.021(b);
12 and Transportation Code, Chapters 1001 and 1002.

13

14 Text.

15 §206.41. Petition.

16 Any interested person may petition the department requesting the adoption of a rule. The [Such]
17 petition must be in writing ~~[directed]~~ to the executive director ~~[at the department's headquarters building~~
18 ~~in Austin]~~ and ~~[shall]~~ contain the person's physical address in Texas, ~~[and]~~ a clear and concise statement
19 of the substance of the requested [proposed] rule, and [together with] a brief explanation of the purpose
20 of the requested rule [to be accomplished through such adoption]. Within 60 days after receipt, the
21 department will either deny the petition in writing, stating its reasons therefore, or will initiate rulemaking
22 proceedings in accordance with ~~[the Administrative Procedure Act-]~~ Government Code, Chapter 2001,
23 Subchapter B[)].

1

2

SUBCHAPTER D. PROCEDURES IN CONTESTED CASES

3

STATUTORY AUTHORITY.

4

The department adopts repeals to Chapter 206 under Government Code, §2001.039 which

5

requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing

6

the rule; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating

7

the nature and requirements of all available formal and informal procedures; and Transportation Code,

8

§1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to

9

adopt rules that are necessary and appropriate to implement the powers and the duties of the

10

department.

11

CROSS REFERENCE TO STATUTE. The adopted repeals implement Government Code, §2001.004 and

12

§2001.039; and Transportation Code, Chapters 1001 and 1002.

13

14

Text.

15

~~[SUBCHAPTER D. PROCEDURES IN CONTESTED CASES]~~

16

~~[\$206.61. Scope and Purpose.]~~

17

~~[This subchapter describes the procedures to be followed in contested cases arising under Government~~

18

~~Code, Chapter 2001. Contested cases shall be governed by the procedural rules of the State Office of~~

19

~~Administrative Hearings.]~~

20

21

~~[\$206.62. Definitions.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 10 of 32

Chapter 206 - Management

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

3 [(1) Administrative Law Judge--A person appointed by the State Office of Administrative
4 Hearings to conduct a hearing on matters within the department's jurisdiction.]

5 [(2) Claim--A claim made pursuant to Occupations Code, Chapter 2302, Salvage Vehicle
6 Dealers; Transportation Code, §681.012, Seizure and Revocation of Placard; Transportation Code,
7 Chapter 643, Motor Carrier and Leasing Company Registration; and Transportation Code, Chapter 645,
8 Single State Registration for Motor Carriers.]

9 [(3) Department--The Texas Department of Motor Vehicles.]

10 [(4) Executive director--The chief administrative officer of the department or, if
11 permitted by law, the director's designee.]

12 [(5) Party--The department or a person named or permitted to participate in a contested
13 case.]

14 [(6) Petition--The document that initiates a contested case.]

15 [(7) Petitioner--A party who files a petition.]

16

17 [§206.63. Filing of Petition.]

18 [An individual, representative, partnership, corporation, association, governmental subdivision, or public
19 or private organization, the department, or any other entity may seek to initiate a contested case by

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 11 of 32

Chapter 206 - Management

1 filing an original, and one copy of a petition, with the executive director at the department's
2 headquarters building in Austin.]

3

4 [~~§206.64. Content of Petition.~~]

5 [(a) A petition must include:]

6 [(1) the name of the petitioner;]

7 [(2) the names of all other known persons with an interest in the outcome of the
8 contested case;]

9 [(3) a concise statement of the facts on which the petitioner relies, including as an
10 attachment, if applicable, the document issued by the department that notified the petitioner of the
11 decision or action challenged by the petitioner;]

12 [(4) a statement of the relief demanded by the petitioner;]

13 [(5) any other matter required by statute;]

14 [(6) the signature of the petitioner or the petitioner's authorized representative; and]

15 [(7) a department reference number, if applicable.]

16 [(b) No document including a settlement offer by a party may be enclosed with the petition, and
17 the petition may not refer to the substance of a settlement offer]

18

19 [~~§206.65. Examination by Executive Director.~~]

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 12 of 32

Chapter 206 - Management

1 ~~[(a) The executive director will examine a petition and make a preliminary determination~~
2 ~~whether the petition states a claim that entitles the petitioner to initiate a contested case and whether~~
3 ~~the petition meets the procedural requirements of §206.63 and §206.64 of this subchapter (relating to~~
4 ~~Filing of Petition and Content of Petition) and of Government Code, Chapter 2001.]~~

5 ~~[(b) If the executive director finds that the petition does not meet all legal requirements, the~~
6 ~~executive director will return the petition to the petitioner along with a statement of the reasons for~~
7 ~~rejecting it. The petitioner will be given at least 10 days in which to file a corrected petition.]~~

8 ~~[(c) If a corrected petition is rejected under this section, the executive director will return the~~
9 ~~corrected petition to the petitioner along with a statement of the reasons for rejecting it. The petitioner~~
10 ~~will not be given an opportunity to file another corrected petition.]~~

11 ~~[(d) The executive director's preliminary determination of a petition's legal sufficiency is without~~
12 ~~prejudice to the department's right to assert, in litigation, that a contested case should be dismissed for~~
13 ~~any reason.]~~

14

15 ~~[§206.66. Initiation of Contested Cases, Service of Notice of Hearing, Standard of Review, and Burden of~~
16 ~~Proof.]~~

17 ~~[(a) Initiation.]~~

18 ~~[(1) If the executive director finds that a petition meets all legal requirements, the~~
19 ~~department will initiate a contested case in accordance with the rules of the State Office of~~
20 ~~Administrative Hearings.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 13 of 32

Chapter 206 - Management

1 ~~[(2) The department may initiate a contested case on its own initiative in accordance~~
2 ~~with the rules of the State Office of Administrative Hearings.]~~

3 ~~[(b) Service of notice of hearing. Service of the notice of hearing shall be accomplished by~~
4 ~~certified or registered mail to the party's last known address as shown in the department's records. A~~
5 ~~notice of a hearing in a contested case is sufficient for purposes of notice if it includes a copy of the~~
6 ~~petition, prepared in accordance with §206.64 of this subchapter (relating to Content of Petition), and~~
7 ~~the following information, unless it is included in the petition:]~~

8 ~~[(1) a statement of the time, place, and nature of the hearing;]~~

9 ~~[(2) a statement of the legal authority and jurisdiction under which the hearing is to be~~
10 ~~held; and]~~

11 ~~[(3) reference to the particular sections of the statutes and rules involved.]~~

12 ~~[(c) Standard of review for department's decision or action.]~~

13 ~~[(1) The standard of review is whether the department was reasonable for claims made~~
14 ~~pursuant to Transportation Code, §681.012, Seizure and Revocation of Placard, and other claims not~~
15 ~~specified in paragraph (2) of this subsection.]~~

16 ~~[(2) The standard of review is whether the department's decision or action was based on~~
17 ~~fraud, misconduct, or such gross mistake as would imply bad faith or failure to exercise an honest~~
18 ~~judgment for:]~~

19 ~~[(A) claims related to Occupations Code, Chapter 2302, Salvage Vehicle Dealers;]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 14 of 32

Chapter 206 - Management

1 ~~[(B) claims related to motor carrier and leasing company registration,~~
2 ~~Transportation Code, Chapter 643; and]~~

3 ~~[(C) claims related to single state registration for motor carriers, Transportation~~
4 ~~Code, Chapter 645.]~~

5 ~~[(d) Burden of proof. A party seeking monetary damages or penalties shall bear the burden of~~
6 ~~proof. In all other instances, the party challenging a department decision or action shall bear the burden~~
7 ~~of proof.]~~

8

9 ~~[\$206.67. Discovery.]~~

10 ~~[(a) Commissions to take depositions. At the written request of a party, the executive director~~
11 ~~will issue a written commission directed to officers, authorized by statute, to take a deposition of a~~
12 ~~witness.]~~

13 ~~[(b) Subpoenas for the production of documents. At the verified written request of a party, the~~
14 ~~executive director will issue a subpoena for the production of documents. The written request must~~
15 ~~identify the documents with as much detail as possible and must include a statement of their relevance~~
16 ~~to the issues in the case.]~~

17 ~~[(c) Subpoenas for attendance at hearings. At the written request of a party, the executive~~
18 ~~director will issue a subpoena for the attendance of a witness at a hearing in a contested case. The~~
19 ~~subpoena may be directed to any person within the department's jurisdiction, without regard to the~~
20 ~~distance between the location of the witness and the location of the hearing.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 15 of 32

Chapter 206 - Management

1 ~~[(d) Limits on discovery. A commission or subpoena will only be issued on a showing of good~~
2 ~~cause and receipt of a deposit sufficient to ensure payment of expenses and fees related to the~~
3 ~~subpoena, including statutory witness fees. A commission or subpoena will not be issued if it appears~~
4 ~~that it is sought for the purpose of harassment or if it would unduly inconvenience the person to whom~~
5 ~~it is directed. Issuance of a commission or subpoena will be subject to the provisions of Government~~
6 ~~Code, Chapter 2001, and the rules of the State Office of Administrative Hearings.]~~

7

8 ~~[\$206.68. Evidence.]~~

9 ~~[The admissibility of evidence in a contested case shall be governed by Government Code,~~
10 ~~Chapter 2001, and by the rules of the State Office of Administrative Hearings, except that a settlement~~
11 ~~offer shall not be admissible for any purpose.]~~

12

13 ~~[\$206.69. Withdrawal or Amendment of Proposal for Decision.]~~

14 ~~[The administrative law judge may withdraw or amend a proposal for decision at any time before~~
15 ~~a final order is issued.]~~

16

17 ~~[\$206.70. Filing of Exceptions and Replies.]~~

18 ~~[(a) A party may file exceptions to an administrative law judge's proposal for decision or an~~
19 ~~amended proposal for decision no more than 20 days after service of the proposal for decision. A reply~~
20 ~~to exceptions must be filed no more than 15 days after the filing of the exceptions.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 16 of 32

Chapter 206 - Management

1 ~~[(b) Exceptions and replies to exceptions must be filed with the executive director at the~~
2 ~~department's headquarters building in Austin. A copy must be filed simultaneously with the~~
3 ~~administrative law judge.]~~

4 ~~[(c) A request for an extension of time in which to file exceptions or a reply must be filed with~~
5 ~~the executive director no later than three days before the date sought to be extended. The request must~~
6 ~~be served on all parties by facsimile or hand delivery on the date on which it is filed, or if that is not~~
7 ~~feasible, by overnight delivery service. A request for an extension of time will be granted only in~~
8 ~~extraordinary circumstances when it is necessary in the interest of justice.]~~

9
10 ~~[\$206.71. Form of Exceptions and Replies.]~~

11 ~~[Exceptions and replies must conform to the following standards:]~~

12 ~~[(1) Exceptions and replies must be typewritten or printed on paper 8 1/2 inches wide by~~
13 ~~11 inches long with an inside margin at least one inch wide. Reproductions are acceptable if all copies~~
14 ~~are legible.]~~

15 ~~[(2) Exceptions and replies must contain:]~~

16 ~~[(A) the names of all parties;]~~

17 ~~[(B) a concise statement of the facts and law on which the submitting party~~
18 ~~relies;]~~

19 ~~[(C) a statement of the relief desired;]~~

20 ~~[(D) a certificate of service;]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 17 of 32

Chapter 206 - Management

1 ~~[(E) the signature of the submitting party or the submitting party's authorized~~
2 ~~representative; and]~~

3 ~~[(F) any other matter required by statute.]~~

4 ~~[(3) Each specific exception must be separately numbered, separately set forth, and~~
5 ~~concisely stated, and it must incorporate all facts and law relating to that specific exception.]~~

6

7 ~~[\$206.72. Motions for Rehearing.]~~

8 ~~[(a) A party may file a motion for rehearing no more than 20 days after service of the final order.~~

9 ~~A reply to a motion for rehearing must be filed no more than 15 days after the filing of the motion.]~~

10 ~~[(b) A request for an extension of time in which to file a motion for rehearing will not be~~
11 ~~granted.]~~

12 ~~[(c) A motion for rehearing must conform to the standards for exceptions and replies set forth in~~
13 ~~§206.71 of this subchapter (relating to Form of Exceptions and Replies).]~~

14

15 ~~[\$206.73. Extension of Time for Final Order.]~~

16 ~~[When the administrative law judge determines that a final order cannot reasonably be issued~~

17 ~~within 60 days after the date on which the hearing is finally closed, the administrative law judge shall~~

18 ~~announce, at the conclusion of the hearing, that the time for a final order will be extended. The proposal~~

19 ~~for decision shall include a reference to the announced extension. The extension shall be for a period~~

1 ~~extending at least 45 days after the issuance of the proposal for decision to ensure enough time for the~~
2 ~~filing of exceptions and replies. A longer extension shall be granted in matters of unusual complexity.]~~

3

4

SUBCHAPTER E. ADVISORY COMMITTEES

5

43 TAC §§206.92, 206.93 AND NEW 206.101

6

STATUTORY AUTHORITY.

7 The department adopts amendments to Chapter 206 and adopts new §206.101 under
8 Transportation Code, §643.155, which authorizes the department to adopt rules to create a rules advisory
9 committee consisting of the public, the department, and representatives of motor carriers transporting
10 household goods using small, medium, and large equipment; Transportation Code, §1001.031, which
11 requires the board to establish advisory committees; Transportation Code, §1002.001, which provides the
12 board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and
13 appropriate to implement the powers and the duties of the department; Government Code, §2001.004,
14 which requires state agencies to adopt rules of practice stating the nature and requirements of all available
15 formal and informal procedures; Government Code, Chapter 2110, which sets out the requirements for
16 advisory committees and requires that the agency make rules to establish the purpose and tasks of the
17 committee and the manner in which the committee will report to the agency; and the statutory authority
18 referenced throughout this preamble and in the rule text, which is incorporated by reference.

19 **CROSS REFERENCE TO STATUTE.** The adopted amendments implement Government Code, §2001.004 and
20 Chapter 2110; and Transportation Code, §643.155 and Chapters 1001 and 1002.

21

22 Text.

23

SUBCHAPTER D[E]. ADVISORY COMMITTEES

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 19 of 32

Chapter 206 - Management

1 §206.92. Definitions.

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

4 (1) Advisory committee [~~Committee~~]-Any committee created by the board to make
5 recommendations to the board or to the executive director pursuant to Transportation Code, §1001.031
6 and §643.155.

7 (2) Board--The board of the Texas Department of Motor Vehicles.

8 (3) Department--The Texas Department of Motor Vehicles.

9 [~~(4) Division director--The chief administrative officer in charge of a division of the
10 department.]~~

11 (4) [(5)] Executive director--The chief executive officer of the Texas Department of
12 Motor Vehicles.

13 (5) [(6)] Member--An appointed member of an advisory committee created under this
14 subchapter.

15 (6) [(7)] Presiding officer--The presiding officer of an advisory committee elected by the
16 membership of the advisory committee created under this subchapter.

17

18 §206.93. Advisory Committee Operations and Procedures.

19 (a) Role of advisory committee. The role of an advisory committee under this subchapter is to
20 provide advice and recommendations to the board or [the] executive director. Advisory committees
21 shall meet and carry out their functions upon a request from the department or board for advice and
22 recommendations on any issues.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 20 of 32

Chapter 206 - Management

1 (b) Appointment and qualifications of advisory committee members. The board shall appoint
2 members to an advisory committee in accordance with Transportation Code, §643.155 and
3 §1001.031(b) by selecting potential members from a list provided to the board by the executive
4 director. Board members shall not serve as advisory committee members. Each advisory committee
5 shall elect from its members a presiding officer, who shall report the advisory committee's
6 recommendations to the board or the executive director in accordance with subsection (h) of this
7 section. The executive director may designate a division or divisions of the department to participate
8 with, or to provide subject-matter expertise, guidance, or administrative support to the advisory
9 committee as necessary.

10 ~~[(c) Member qualifications. Members shall have knowledge about and interests in, and~~
11 ~~represent a broad range of viewpoints about, the work of the committee or applicable division(s). Board~~
12 ~~members shall not serve as advisory committee members.]~~

13 (c) ~~[(d)]~~ Composition of advisory committees. In making appointments to the advisory
14 committees, the board shall, to the extent practical, ensure representation of members from diverse
15 geographical regions of the state.

16 (d) ~~[(e)]~~ Committee size and quorum requirements. An advisory committee shall be composed
17 of a reasonable number of members not to exceed 24 as determined by the board. A simple majority of
18 advisory committee members will constitute a quorum. An advisory committee may only deliberate on
19 issues within the jurisdiction of the department or any public business when a quorum is present.

20 (e) ~~[(f)]~~ Terms of service. Advisory committee members will serve terms of four years. A member
21 will serve on the committee until the member resigns, is dismissed or replaced by the board, or the
22 member's term expires.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 21 of 32

Chapter 206 - Management

1 (f) ~~(g)~~ Member training requirements. Each member of an advisory committee must receive
2 training regarding ~~[the Open Meetings Act,]~~ Government Code, Chapter 551; and ~~[the Public~~
3 ~~Information Act,]~~ Government Code, Chapter 552.

4 (g) ~~[(h)]~~ Compliance with Open Meetings ~~[Act]~~. The advisory committee shall comply with ~~[the~~
5 ~~Open Meetings Act,]~~ Government Code, Chapter 551.

6 ~~[(i) Public input and participation. The advisory committee shall accept public comments made~~
7 ~~in person at advisory committee meetings or submitted in writing. Public comments made in writing~~
8 ~~should be submitted to the advisory committee five business days in advance of the advisory committee~~
9 ~~meeting with sufficient copies for all members.]~~

10 (h) ~~[(j)]~~ Reporting recommendations. Recommendations of the advisory committee shall be
11 reported to the board at a board meeting prior to board action on issues related to the
12 recommendations. The recommendations shall be in writing and include any necessary supporting
13 materials. The presiding officer of the advisory committee or the presiding officer's designee may
14 appear before the board to present the committee's advice and recommendations. This subsection does
15 not limit the ability of the advisory committee to provide advice and recommendations to the executive
16 director as necessary.

17 (i) ~~[(k)]~~ Board and executive director use of advisory committee recommendations. In
18 developing department policies, the board and the executive director shall consider the written
19 recommendations ~~[and reports]~~ submitted by advisory committees.

20 (j) ~~[(l)]~~ Reimbursement. The department may, if authorized by law and the executive director,
21 reimburse advisory committee members for reasonable and necessary travel expenses.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 22 of 32

Chapter 206 - Management

1 ~~[(m) Expiration dates for advisory committees. Unless a different expiration date is established~~
2 ~~by the board for the advisory committee, each advisory committee is abolished on the fourth~~
3 ~~anniversary of its creation by the board.]~~

4

5 §206.101. Public Access to Advisory Committee Meetings.

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

10 (1) prior to a motion by the advisory committee on the item; and

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

13 (b) Open comment period.

14 (1) At each regular advisory committee meeting, the advisory committee shall allow an
15 open comment period, not to exceed one hour, to receive public comment on any other matter that is
16 within the scope of the specific advisory committee under §206.94(a) of this title (relating to Motor
17 Vehicle Industry Regulation Advisory Committee (MVIRAC)), §206.95(a) of this title (relating to Motor
18 Carrier Regulation Advisory Committee (MCRAC)), §206.96(a) of this title (relating to Vehicle Titles and
19 Registration Advisory Committee (VTRAC)), §206.97(a) of this title (relating to Customer Service and
20 Protection Advisory Committee (CSPAC)), or §206.98(a) of this title (relating to Household Goods Rules
21 Advisory Committee (HGRAC)).

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

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 23 of 32

Chapter 206 - Management

1 (3) Except as provided in subsections (d)(6) and (e) of this section, each person shall be
2 allowed to speak for a maximum of three minutes for each comment in the order in which the requests
3 to speak were received.

4 (c) Disability accommodation. Persons who have special communication or accommodation
5 needs and who plan to attend a meeting, may contact the department's contact listed in the posted
6 meeting agenda for the purpose of requests for auxiliary aids or services. Requests shall be made at
7 least two days before a meeting. The department shall make every reasonable effort to accommodate
8 these needs.

9 (d) Conduct and decorum. An advisory committee shall receive public input as authorized by this
10 section, subject to the following guidelines:

11 (1) questioning of speakers shall be reserved to advisory committee members and the
12 department's administrative staff;

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

15 (3) comments shall remain pertinent to the issue being discussed;

16 (4) a person who disrupts an advisory committee meeting shall leave the meeting room
17 and the premises if ordered to do so by the acting advisory committee chair;

18 (5) time allotted to one speaker may not be reassigned to another speaker; and

19 (6) the time allotted for comments under this section may be increased or decreased by
20 the acting advisory committee chair, as may be appropriate to assure opportunity for the maximum
21 number of persons to appear.

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

4

5

SUBCHAPTER F. DEPARTMENT VEHICLE FLEET MANAGEMENT

6

43 TAC §206.111

7

STATUTORY AUTHORITY.

8 The department adopts amendments to Chapter 206 under Government Code, §2171.1045,
9 which requires state agencies to adopt rules relating to the assignment and use of the agency's vehicles,
10 including a requirement that an agency may assign a vehicle to an individual administrative or executive
11 employee on a regular or everyday basis only if the agency makes a written documented finding that the
12 assignment is critical to the needs and mission of the agency; Transportation Code, §1002.001, which
13 provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are
14 necessary and appropriate to implement the powers and the duties of the department; and Government
15 Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and
16 requirements of all available formal and informal procedures.

17 **CROSS REFERENCE TO STATUTE.** The adopted amendments implement Government Code, §2001.004 and
18 §2171.1045; and Transportation Code, Chapters 1001 and 1002.

19

20 Text.

21

SUBCHAPTER E [F]. DEPARTMENT VEHICLE FLEET MANAGEMENT

22 §206.111. Restrictions on Assignment of Vehicles.

1 (a) Definitions. The following words and terms, when used in this section, shall have the
2 following meanings, unless the context clearly indicates otherwise.

3 (1) Department--The Texas Department of Motor Vehicles.

4 (2) Division director--The chief administrative officer in charge of a division of the
5 department.

6 (3) Executive Director--The executive director of the Texas Department of Motor
7 Vehicles or the executive director's designee not below the level of division director.

8 (b) Motor pool. Each department vehicle, with the exception of a vehicle assigned to a field
9 employee, shall be assigned to the department's motor pool and be available for checkout.

10 (c) Regular vehicle assignment. The department may assign a vehicle to an individual
11 administrative or executive employee on a regular or everyday basis only if the executive director makes
12 a signed, written documented finding that the assignment is critical to the needs and mission of the
13 department.

14

15 **SUBCHAPTER G. ELECTRONIC SIGNATURES**

16 **43 TAC §206.131**

17 **STATUTORY AUTHORITY.**

18 The department adopts amendments to Chapter 206 under Government Code, §2001.004, which
19 requires state agencies to adopt rules of practice stating the nature and requirements of all available
20 formal and informal procedures; Government Code, §2054.060, which authorizes a digital signature to be
21 used to authenticate a written electronic communication sent to a state agency if the digital signature
22 complies with rules adopted by the Texas Department of Information Resources; and Transportation Code,
23 §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to

1 adopt rules that are necessary and appropriate to implement the powers and the duties of the
2 department.

3 **CROSS REFERENCE TO STATUTE.** The adopted amendments implement Government Code, §2001.004 and
4 §2054.060; and Transportation Code, Chapter 1002.

5

6 Text.

7 **SUBCHAPTER F [G]. DIGITAL CERTIFICATES [ELECTRONIC SIGNATURES]**

8 §206.131. Digital Certificates.

9 (a) General. This section prescribes the requirements that govern the issuance, use, and
10 revocation of digital certificates issued by the Texas Department of Motor Vehicles (department) for
11 electronic commerce in eligible department programs. The provisions of 1 TAC Chapter 203, Subchapter
12 B govern this section in the event of a conflict between that subchapter and a provision of this section.

13 (b) Definitions. The following words and terms, when used in this section, shall have the
14 following meanings, unless the context clearly indicates otherwise.

15 (1) Business entity--An entity recognized by law through which business is conducted
16 with the department, including a sole proprietorship, partnership, limited liability company, corporation,
17 joint venture, educational institution, governmental agency, or non-profit organization.

18 (2) Certificate holder--An individual to whom a digital certificate is issued.

19 (3) Digital certificate--A certificate, as defined by 1 TAC §203.1, issued by the
20 department for purposes of electronic commerce.

21 (4) Digital signature--Has the same meaning assigned by 1 TAC §203.1.

22 (5) Division director--The chief administrative officer of a division of the department.

1 (c) Program authorization. A division director may authorize the use of digital signatures for a
2 particular program based on whether the applicable industries or organizations are using such
3 technology, the frequency of document submission, and the appropriateness for the program. The
4 solicitation documentation for eligible programs will include the information that digital signatures may
5 be used.

6 (d) Application and issuance of digital certificate.

7 (1) A request for a digital certificate shall be in writing and shall be signed by the
8 individual authorized by the business entity to request a digital certificate.

9 (2) The department may request information necessary to verify the identity of the
10 individual requestor or the identity of the individual to whom the certificate is to be issued. To verify
11 identity under this paragraph a person shall present:

12 (A) an unexpired Texas driver's license or unexpired personal identification
13 certificate with a photograph;

14 (B) an unexpired [~~concealed handgun license or~~] license to carry a handgun
15 issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

16 (C) an unexpired United States passport;

17 (D) a United States citizenship (naturalization) certificate with identifiable
18 photograph;

19 (E) an unexpired United States Customs and Border Protection [~~Bureau of~~
20 ~~Citizenship and Immigration Services~~] document that:

21 (i) was issued for a period of at least one year;

22 (ii) is valid for not less than six months from the date it is presented to
23 the department with a completed application; and

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 28 of 32

Chapter 206 - Management

- 1 (iii) contains verifiable data and an identifiable photograph;
- 2 (F) an unexpired United States military identification card for active duty,
- 3 reserve, or retired personnel with an identifiable photograph; or
- 4 (G) a foreign passport with a valid or expired visa issued by the United States
- 5 Department of State with an unexpired United States Customs and Border Protection ~~[Bureau of~~
- 6 ~~Citizenship and Immigration Services]~~ Form I-94:
- 7 (i) that was issued for a period of at least one year, is marked valid for a
- 8 fixed duration, and is valid for not less than six months from the date it is presented to the department
- 9 with a completed application; or
- 10 (ii) that is marked valid for the duration of the person's stay and is
- 11 accompanied by appropriate documentation.
- 12 (3) The department may take actions necessary to confirm that the individual who
- 13 signed the request is authorized to act on behalf of the business entity, including requiring the individual
- 14 requestor or the person authorizing the request to personally appear at the department location
- 15 responsible for the issuing of the certificate.
- 16 (4) The department shall issue a digital certificate only to an individual. Information
- 17 identifying the business entity that authorized the issuance of the certificate may be embedded in the
- 18 digital certificate.
- 19 (e) Refusal to issue a digital certificate. The department shall not issue a digital certificate if the
- 20 identity of the individual to whom the certificate is to be issued, or the identity of the individual
- 21 requesting the certificate on behalf of a business entity, cannot be established. The department will not
- 22 issue a digital certificate if the business entity on whose behalf the request is allegedly being made does
- 23 not authorize its issuance.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 29 of 32

Chapter 206 - Management

1 (f) Responsibilities of certificate holder. A certificate holder shall:

2 (1) maintain the security of the digital certificate;

3 (2) use the certificate solely for the purpose for which it was issued; and

4 (3) renew the certificate in a timely manner, if continued use is intended.

5 (g) Responsibilities of business entity. A business entity is responsible for:

6 (1) determining what individual may request a certificate for the business entity;

7 (2) determining to what individual a certificate is to be issued; and

8 (3) requesting within a reasonable time the revocation of the business entity's digital

9 certificate if the security of the certificate has been compromised or if the business entity is changing its
10 certificate holder.

11 (h) Revocation of certificate. The department shall revoke a digital certificate:

12 (1) upon receipt of a written request for revocation of the business entity's digital

13 certificate, signed by an individual authorized to act on behalf of the business entity for which it was
14 issued;

15 (2) for suspension or debarment of the individual or business entity; or

16 (3) if the department has reason to believe that continued use of the digital certificate
17 would present a security risk.

18 (i) Use of digital certificate.

19 (1) A digital certificate [~~signature~~] issued by the department shall only be used for the

20 purpose of digitally signing electronic documents filed with the department. Use of a [A] digital

21 certificate [~~signature~~] is binding on the individual to whom the certificate was issued and the

22 represented business entity, as if the document were signed manually.

1 (2) The department may use the digital certificate to identify the certificate holder when
2 granting or verifying access to secure computer systems used for electronic commerce.

3 (j) Forms. The department may prescribe forms to request, modify, or revoke a digital
4 certificate.

5

6 **SUBCHAPTER H. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY**

7

43 TAC §206.151

8

STATUTORY AUTHORITY.

9 The department adopts amendments to Chapter 206 under Transportation Code, §520.004, which
10 requires the department by rule to establish a risk-based system of monitoring and preventing fraudulent
11 activity related to vehicle registration and titling in order to efficiently allocate resources and personnel;
12 Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles
13 with the authority to adopt rules that are necessary and appropriate to implement the powers and the
14 duties of the department; and Government Code, §2001.004, which requires state agencies to adopt rules
15 of practice stating the nature and requirements of all available formal and informal procedures.

16 **CROSS REFERENCE TO STATUTE.** The adopted amendments implement Government Code, §2001.004;
17 and Transportation Code, §520.004 and Chapters 1001 and 1002.

18

19 Text.

20 **SUBCHAPTER G [H]. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY**

21 §206.151. Internal Risk-Based Monitoring System.

22 (a) All Texas Department of Motor Vehicle (department) users of the Registration and Title
23 System (RTS) are subject to periodic examination by the department. As a result of the examination, the

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 31 of 32

Chapter 206 - Management

1 department will assign each RTS user a classification of priority or non-priority for the purposes of
2 prioritizing inspections to determine whether there is evidence of fraud by the user. In classifying an RTS
3 user, the department may consider factors including, but not limited to:

4 (1) the RTS user's transaction volume;

5 (2) the RTS user's past violations of the department's rules and procedures within the
6 last five years;

7 (3) title error investigations performed by the department on titles issued by the RTS
8 user;

9 (4) public complaints received by the department against the RTS user; and

10 (5) discrepancies in data reflecting the RTS user's transactions.

11 (b) It is the department's goal to inspect each RTS user as follows:

12 (1) if the RTS user is classified as priority, the RTS user will be inspected not less than
13 twice per year; or

14 (2) if the RTS user is classified as non-priority, the RTS user will be inspected not less
15 than once per year.

16 (c) Inspections under this section may be virtual, on premises at the RTS user's location, or a
17 combination of both.

18 ~~[The department shall establish a risk-based system of monitoring and preventing fraudulent~~
19 ~~activity related to vehicle registration and titling in order to efficiently allocate resources and personnel,~~
20 ~~including:]~~

21 ~~[(1) establishing a risk-based system of monitoring the department's regional service~~
22 ~~centers;]~~

TITLE 43. TRANSPORTATION

Part 10. Texas Department of Motor Vehicles

Chapter 206 - Management

- 1 ~~[(2) developing criteria to determine varying risk levels for the department's internal~~
- 2 ~~fraud monitoring functions to strategically allocate resources and personnel;]~~
- 3 ~~[(3) reviewing the department's methods for collecting and evaluating related~~
- 4 ~~information; and]~~
- 5 ~~[(4) developing and providing training to department staff.]~~



TIADA
TEXAS INDEPENDENT AUTOMOBILE
DEALERS ASSOCIATION

January 23, 2024

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

Re: 43 TAC 206, Texas Register December 29, 2023

Dear Ms. Moriaty:

The Texas Independent Automobile Dealers Association (TIADA) respectfully submits the following comments in response to the Texas Department of Motor Vehicles (TxDMV) proposed changes to 43 Texas Administrative Code Chapter 206. TIADA represents over 1,000 independent automobile dealers throughout the state of Texas which range in size from large publicly traded companies to small and micro-businesses.

TIADA after reviewing the purposed rules has the following suggestions:

The purposed rule fails to delete the word “and” when adding §206.2(a)(2)(D). §206.2(a)(2)(C) states “hire, promote, assign, reassign, transfer, and, policy, terminate staff to accomplish the roles and missions of the department; and” as it was originally the second to last item in the list, however when §206.2(a)(2)(D) was added it was no longer the second to last and §206.2(a)(2)(D) now acts as the last connector. Therefore, TIADA recommends deleting the word “and” before §206.2(a)(2)(D).

§206.22(a)(1) should be modified to ensure public testimony is allowed prior to the completion of meaningful consideration and discussion amongst the Board, which in practice is often finished once a motion and amendments to an offered motion are made. Therefore, TIADA recommends replacing §206.22 (a)(1) with “(1) prior to any motion by the board on the item; and”.

Respectfully,

A handwritten signature in black ink, appearing to read "Earl Cooke".

Earl Cooke
Director of Compliance and Business Development
earl.cooke@txiada.org

Board Meeting Date: 4/11/2024
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Monique Johnston, Motor Vehicle Division Director
Agenda Item: 8
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. Adopt proposed amendments to, repeals of and new sections in 43 Texas Administrative Code (TAC) Chapter 215 with an effective date of June 1, 2024.

PURPOSE AND EXECUTIVE SUMMARY

This rule item would adopt amendments, new sections, and repeals to Chapter 215, Motor Vehicle Distribution in conjunction with a review of Chapter 215 in compliance with Government Code, §2001.039. This rule item is considered for adoption concurrently with new Chapter 224, Adjudicative Practice and Procedure, which consolidates into one chapter all contested case rules, including relevant rules in Chapter 215.

FINANCIAL IMPACT

No significant impact.

BACKGROUND AND DISCUSSION

As part of the department's rule review of Chapter 215, Motor Vehicle Distribution, the department has considered and recommends adopting amendments, new sections and repeals to sections of Chapter 215 to achieve the following goals:

- 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 with 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 proposed for adoption in Chapter 224, Adjudicative Practice and Procedure.

The following paragraphs highlight significant adoptions in Chapter 215.

Legislation Implementation

Adopted 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.

Fingerprint Requirements

Fingerprint requirements are a proven, effective way to prevent application fraud. The adopted rule would expand fingerprint requirements to drive-a-way operators who apply for or renew an in-transit license under Transportation Code, Chapter 503.

New Sections

For manufacturers, distributors, converters, and franchised dealers, adopted sections would document and clarify current licensing application requirements, procedures for issuing industry license plates, and sanctions. For drive-a-way operators, adopted sections would document and clarify application requirements and procedures for issuing industry license plates.

Proposed Repeals

Adopted repeals implement statutory changes in Senate Bill (SB) 604, 86th Legislature, Regular Session (2019), which eliminated department approval for shows and exhibitions; move an existing rule to the subchapter designated for that license type; and allow relevant adjudicative rules in Subchapters B, G, I, and J to be moved to new Chapter 224, Adjudicative Practice and Procedure, which the board is concurrently considering for adoption.

COMMENTS

The proposed rules were published for comment in the December 29, 2023, issue of the Texas Register. The comment period closed on January 28, 2024.

The department received nine written comments (attached). The department received written comments from six individuals, the Texas Independent Automobile Dealers Association (TIADA), the Texas Automobile Dealers Association (TADA), and the Texas Recreational Vehicle Association (TRVA). The department considered all nine written comments and is recommending changes to the rule text at adoption in response to many of these comments.

If the board adopts the amendments, new sections and repeals during its April 11, 2024, open meeting, staff anticipates:

- Publication in the April 26, 2024, issue of the *Texas Register*; and
- An effective date of June 1, 2024.

| | |
|----|---|
| 1 | ADOPTION OF REVISIONS TO |
| 2 | SUBCHAPTER A. GENERAL PROVISIONS |
| 3 | 43 TAC §215.1 and §215.2 |
| 4 | SUBCHAPTER C. LICENSES, GENERALLY |
| 5 | 43 TAC §§215.82–215.89 |
| 6 | SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS |
| 7 | 43 TAC §§215.101, 215.103–215.106, 215.108–215.111, 215.113, and 215.115–215.117 |
| 8 | SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS |
| 9 | 43 TAC §§215.131–215.133, 215.135–215.141, 215.144, 215.145, 215.147–215.152, 215.154–215.155, |
| 10 | and 215.160–161 |
| 11 | SUBCHAPTER F. LESSORS AND LEASE FACILITATORS |
| 12 | 43 TAC §§215.171–215.180 |
| 13 | SUBCHAPTER H. ADVERTISING |
| 14 | 43 TAC §§215.242, 215.244, 215.249, 215.250, 215.257, 215.261, 215.264, 215.268, and 215.270 |
| 15 | SUBCHAPTER J. ADMINISTRATIVE SANCTIONS |
| 16 | 43 TAC §215.500 |
| 17 | NEW SECTIONS |
| 18 | SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS |
| 19 | 43 TAC §§215.112, 215.120, and 215.121 |
| 20 | SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS |
| 21 | 43 TAC §§215.134 and 215.143 |
| 22 | REPEAL OF |
| 23 | SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

43 TAC §§215-21–215.63

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

43 TAC §215.112

SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §215.146

SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS

43 TAC §§215.201–215.210

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 §§215.501, 251.502, and 251.505

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to Subchapter A, General Provisions, §215.1 and §215.2; repeal of Subchapter B, relating to Adjudicative Practice and Procedure, §§215.21–215.24, 215.27, 215.29, 215.30, 215.32, 215.35–215.49, 215.55, 215.56, 215.58–215.63; amendments to Subchapter C. Licenses, Generally, §§215.82, 215.83, 215.84, 215.85, 215.87, and 215.89; in Subchapter D, Franchised Dealers, Manufacturers, Distributors, and Converters, amendments to §§215.101, 215.103–215.111, 215.113, and 215.115–215.217, repeal of §215.112, and new §§215.102, 215.120, and §215.121; in Subchapter E, General Distinguishing Numbers, amendments to §§215.131–133; 215.135, 215.137–215.141; 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; amendments to Subchapter F, Lessors and Lease Facilitators, §§215.171–215.180; repeal of Subchapter

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 3 of 45

Chapter 215 – Motor Vehicle Distribution

1 G, Warranty Performance Obligations, §§215.201–215.210; amendments to Subchapter H, Advertising,
2 §§215.242, 215.244, 215.249, 215.250, 215.257, 215.261, 215.264, 215.268, and 215.270; repeal of
3 Subchapter I, Practice and Procedure for Hearings Conducted by The State Office of Administrative
4 Hearings, §§215.301–215.303, 215.305–215.308, 215.310, 215.311, 215.314–215.317; and in Subchapter
5 J, Administrative Sanctions, amendments to §215.500, and repeal of §§215.501, 215.502, and 215.505.

6 The following amended sections are adopted without changes to the proposed text as published
7 in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8202) and will not be republished:
8 §§215.2, 215.83–215.85, 215.89, 215.101, 215.103, 215.108, 215.110, 215.115–215.117, 215.131,
9 215.132, 215.137, 215.139, 215.143, 215.149–215.152, 215.155, 215.161, 215.171, 215.173, 215.177,
10 215.179, 215.180, 215.242, 215.244, 215.257, 215.261, 215.264, 215.268, 215.270, and 215.500.

11 The following sections are adopted with changes at adoption to the proposed text as published in
12 the December 29, 2023, issue of the *Texas Register* (48 TexReg 8202) and will be republished: §§215.1,
13 215.82, 215.87, 215.102, 215.104, 215.105, 215.106, 215.109, 215.111, 215.113, 215.120, 215.121,
14 215.133, 215.134, 215.135, 215.138, 215.140, 215.141, 215.144, 215.145, 215.147, 215.148, 215.154
15 215.160, 215.174, 215.175, 215.176, 215.178, 215.179, 215.249, and 215.250.

16 The following sections are adopted with substantive changes to the proposed text: §§215.82,
17 215.87, 215.102, 215.105, 215.111, 215.120, 215.121, 215.140, 215.141, 215.144, 215.175, and 215.178.
18 Each substantive change is described in the Explanation of Adopted Amendments and Repeals below and
19 some of these changes are also referenced in the department’s response to comments.

20 The following sections are adopted with nonsubstantive changes to the proposed text: §§215.1,
21 215.82, 215.102, 215.104, 215.105, 215.106, 215.109, 215.111, 215.113, 215.120, 215.121, 215.133,
22 215.134, 215.135, 215.138, 215.140, 215.141, 215.144, 215.145, 215.147, 215.148, 215.154, 215.160,

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 4 of 45

Chapter 215 – Motor Vehicle Distribution

1 215.174, 215.175, 215.176, 215.178, 215.179, 215.249, and 215.250. Each nonsubstantive change is
2 described in the Explanation of Adopted Amendments and Repeals below.

3

4 EXPLANATION OF ADOPTED AMENDMENTS AND REPEALS**5 Subchapter A. General Provisions**

6 Adopted amendments to §215.1 and §215.2(a) delete a stray reference to Transportation Code,
7 Chapter 1000, which does not exist. Adopted amendments to §215.1 delete an incomplete list of license
8 types regulated by the department, delete the word “motor” from the phrase “motor vehicle,” and add
9 the word “industry” to more accurately reflect the scope of the department’s responsibility which
10 encompasses all vehicles including trailers and all license types under Occupations Code, Chapter 2301,
11 and Transportation Code, Chapter 503. An adopted amendment to §215.1 clarifies the scope of the rules
12 in Chapter 215, which is to describe licensing requirements and rules governing license holder operations.
13 The missing phrase “the vehicle industry” is added at adoption to the text of the last sentence in §215.1
14 because the proposed sentence was incomplete.

15 Adopted amendments to §215.2(b) delete definitions for terms used in contested cases because
16 rules using those terms are adopted for repeal in this chapter and are included in adopted new Chapter
17 224, (relating to Adjudicative Practice and Procedure), which is published for adoption in this issue of the
18 *Texas Register*. The deleted definitions include the terms ALJ, executive director, final order authority,
19 hearing officer, motion for rehearing authority, and SOAH. The remaining definitions are renumbered
20 accordingly. Adopted amendments in renumbered §215.2(b)(1) clarify that only a board member or a
21 person employed by the department may be authorized to serve as a board delegate as provided under
22 Occupations Code, §2301.154. An adopted amendment to renumbered §215.2(b)(2) adds a definition for
23 “day” and for standardization and consistency throughout the chapter. Adopted amendments to

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 5 of 45

Chapter 215 – Motor Vehicle Distribution

1 §215.2(b)(3) substitute the term “division” for “department” to correctly refer to the responsible
2 organizational unit in the department and substitute the term “department staff” for “personnel” for
3 clarity and consistency. An adopted amendment to renumbered §215.2(b)(4) adds a reference to
4 Transportation Code, Chapter 503, which defines the types of general distinguishing numbers that the
5 department may issue. An adopted amendment to renumbered §215.2(b)(5) clarifies that any state
6 agency other than the department is included in the definition of a governmental agency. Adopted
7 §215.2(b)(6) adds a new definition for standard license plate. This definition is necessary to differentiate
8 a standard license plate issued to a dealer under Transportation Code, §503.061 from a personalized
9 prestige license plate issued to a dealer under Transportation Code, §503.0615, and recognizes that each
10 plate has a different statutorily prescribed term and cost and is obtained from the department through a
11 different process.

12

13 Subchapter B. (relating to Adjudicative Practice and Procedure)

14 The department adopts the repeals of all sections of Subchapter B, (relating to Adjudicative
15 Practice and Procedure), in this same issue of the *Texas Register* because the substance of each rule and
16 any amendments are incorporated into adopted new Chapter 224, (relating to Adjudicative Practice and
17 Procedure), which is also published for adoption in this issue of the *Texas Register*. The adopted repeals
18 include §§215.21–215.24, 215.27, 215.29, 215.30, 215.32, 215.35–215.49, 215.55, 215.56, and 215.58–
19 215.63.

20

21 Subchapter C. Licenses, Generally

22 This subchapter is adopted to be relettered as Subchapter B because the department is adopting
23 the repeal of former Subchapter B, (relating to Adjudicative Practice and Procedure).

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 6 of 45

Chapter 215 – Motor Vehicle Distribution

1 The adopted amendment to the title of §215.82 replaces “Duplicate” from the proposed language
2 with “Replacement Standard” to clarify the section’s purpose. Adopted amendments delete §215.82(a)
3 and (b) and reletter the remaining subsections as necessary, because §215.82(a) and (b) refer to an archaic
4 process that the department no longer follows. A license holder may print a license copy on demand by
5 accessing the department’s electronic licensing system. Adopted amendments to §215.82(c) delete the
6 subsection designation and substitute “standard” for “metal” to identify the plate type to which the
7 replacement process applies. Adopted amendments to §215.82(c) clarify that the same process applies
8 for obtaining a replacement sticker, and that a request for a replacement standard license plate or sticker
9 must be submitted electronically in the department-designated licensing system. In §215.82(c)(3), the
10 department adopts a nonsubstantive change to the text at adoption to rephrase “system for licensing” to
11 “licensing system” for improved readability.

12 In the adopted amendments §215.82 and §215.134, the proposed text is changed at adoption to
13 move the license plate type descriptor “standard” before the term “license plate” for consistency.

14 Adopted amendments to §215.83(a)(1) and (d) modernize the rule by clarifying that an application
15 for a new license, a license amendment, or a license renewal must be filed electronically. An adopted
16 amendment to §215.83(a)(3) specifies which electronic payment forms are accepted. Paper checks are no
17 longer accepted because fee payment must be completed before an application may be submitted and
18 processed. An adopted amendment to §215.83(b) clarifies that an authorized representative who files an
19 application on behalf of an applicant or license holder may be required to provide written proof of
20 authority to act. An adopted amendment to §215.83(c) clarifies that a pending new license number will
21 not be released to a person who is not an applicant, license holder, or authorized representative unless
22 that person files a written request under Government Code, Chapter 552. Once a license is approved and
23 issued, the license number may be published on the department’s website or otherwise provided in

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 7 of 45

Chapter 215 – Motor Vehicle Distribution

1 response to an inquiry consistent with Government Code, §552.11765 and other requirements in
2 Government Code, Chapter 552.

3 An adopted amendment to §215.83(d)(2) deletes an archaic reference to an envelope postmark
4 for a renewal application to comport with §215.133(c), which requires a license application be submitted
5 electronically in the department’s designated licensing system.

6 Adopted amendments to §215.83(e) delete redundant language and combine the language in
7 §215.83(e) and §215.83(f) for consistency and ease of understanding without changing the meaning.
8 Other adopted amendments reletter the remaining subsections and internal references accordingly.

9 Adopted amendments to relettered §215.83(i) add the phrase “military service members or” in
10 multiple places in subparagraphs (1), (2), and (3). These amendments implement Senate Bill (SB) 422, 88th
11 Legislature, Regular Session (2023), which added military service members who hold out-of-state licenses
12 as persons eligible for special business or occupational authorization or licensing consideration. An
13 adopted amendment to relettered §215.83(i) clarifies that the requirements and procedures authorized
14 under Texas law do not modify or alter rights under federal law.

15 In relettered §215.83(i)(1), adopted amendments delete two duplicative references to
16 Occupations Code, §55.0041. Also, in relettered §215.83(i)(1), an adopted amendment substitutes the
17 phrase “being stationed” for “residency” to clarify that eligibility for special licensing consideration for
18 both the military member and military spouse is based on the military member being stationed in Texas,
19 rather than on the spouse’s residency.

20 Additional adopted amendments to relettered §215.83(i)(3) are adopted to implement SB 422
21 which amended certain provisions of Occupations Code, Chapter 55. Adopted amendments change the
22 word “may” to “shall” and add the phrase “within 30 days” to set a deadline by which the department
23 must issue a license to a military service member or spouse. This adopted amendment implements

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 8 of 45

Chapter 215 – Motor Vehicle Distribution

1 Occupations Code, §55.005(a), which requires a state agency to issue a license no later than the 30th day
2 after an application is filed and Occupations Code, §55.0041, which requires that the department confirm
3 within 30 days that the military service member or military spouse is authorized to engage in the licensed
4 business or occupation. Another adopted amendment to relettered §215.83(i)(3) adds the phrase
5 “modified or” to recognize that provisions of Occupations Code, Chapter 55 may require the department
6 to modify standard licensing processes when processing an application for a military service member or
7 military spouse and to clarify that the department’s licensing process for military service members and
8 military spouses will be in accordance with all Occupations Code, Chapter 55 requirements.

9 An adopted amendment to relettered §215.83(j) adds a reference to Government Code,
10 §2001.054 for ease of reference. An adopted amendment to relettered §215.83(k) increases the time
11 from 10 to 15 days in which a license holder may dispute whether a renewal application was timely
12 received by the department to provide a license holder.

13 Adopted amendments to relettered §215.83(n) substitute the term “standard” for “metal” to
14 more accurately describe the type of dealer’s license plate addressed in this subsection and add the
15 phrase “is canceled” to clarify that a standard dealer’s license plate expires on the date the dealer’s
16 General Distinguishing Number (GDN) is canceled under Transportation Code, §503.038.

17 An adopted amendment to §215.84(a) inserts an introductory paragraph with a statutory citation
18 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 reletters the remaining
20 subparagraphs accordingly. Adopted amendments to relettered §215.84(b) add two clarifying phrases “in
21 the definition of broker” and “acting as a” for consistency with the statute and delete duplicate phrasing
22 to improve readability. Adopted amendments to relettered §215.84(c) add the term “franchised” in
23 §215.84(c)(3) to more accurately describe the type of dealer to which a buyer referral service, program,

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 9 of 45

Chapter 215 – Motor Vehicle Distribution

1 or club may refer a potential new vehicle buyer. The adopted amendments to §215.84(c) also correct
2 punctuation in relettered §215.84(c), move a requirement from §215.84(d) regarding compliance with
3 advertising rules to relettered §215.84(c)(7) for completeness and ease of reference, and update a
4 reference to the relettered subchapter containing the advertising rules. Adopted amendments to
5 relettered §215.84(d) clarify that §215.84 does not apply to a person who is not a broker as defined in
6 Occupations Code, §2301.002, and delete a redundant phrase “or entity” as entities are included in the
7 definition of “person” in Occupations Code, §2301.002. An adopted amendment deletes current
8 §215.84(d) because the content of that subsection is incorporated into adopted relettered §215.84(c)(7).

9 Adopted amendments to §215.85(b) correct punctuation and move language from §215.85(c) to
10 §215.85(b)(7) for completeness and clarity without changing the meaning. An adopted amendment to
11 §215.85(c) deletes the redundant subsection moved to §215.85(b)(7). Adopted amendments to
12 §215.85(d) reletter the subsection to (c) and delete redundant terms “licensed” and “independent motor
13 vehicle” from this subsection.

14 Adopted amendments to §215.87 substitute the term “standard” for the phrase “metal dealer’s”
15 in the rule title and in §215.87(a)–(c) to more accurately describe the type of dealer’s license plate
16 addressed in this subsection. An adopted amendment to §215.87(a) adds a list of license types eligible to
17 request a standard license plate and is necessary for completeness and clarity. A proposed amendment
18 to §215.87(b) clarified that a standard license plate expires when the associated license is canceled, and
19 at adoption, the phrase “closed, or revoked” was added to clarify all the circumstances under which a
20 license plate issued by the department to a license holder expired. An adopted amendment to §215.87(c)
21 clarifies that a license holder may be required to pay tax when ordering a standard license plate as
22 required under Tax Code, §152.027. Another adopted amendment creates new §215.87(d), which

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 10 of 45

Chapter 215 – Motor Vehicle Distribution

1 describes for clarity and ease of reference the process a dealer must use to apply for or renew a
2 personalized prestige license plate issued under Transportation Code, §503.0615.

3 Adopted amendments to §215.89(a) and (b) delete the redundant “or department” because the
4 word “board” is defined to include department staff to whom the board delegates a duty. An adopted
5 amendment to §215.89(a)(2) adds a reference for clarity and ease of reference to Transportation Code,
6 §503.034, which authorizes the department to deny a new or renewal application for a dealer general
7 distinguishing number or a wholesale motor vehicle auction general distinguishing number if the applicant
8 is guilty of conduct that would result in the cancellation of the general distinguishing number under
9 Transportation Code, §503.038. An adopted amendment to §215.89(b)(6) adds the phrase “or other legal
10 entity” for completeness because legal entities other than a corporation can fail to maintain authority to
11 conduct business in Texas. Adopted amendments to §215.89(b)(10) add “final” and substitute “after” for
12 “through” for clarity and consistency with department contested case procedures, and replace “citizens”
13 with “residents” for consistency with statute and the rest of the chapter.

14

15 Subchapter D. Franchised Dealers, Manufacturers, Distributors, and Converters

16 This subchapter is adopted to be relettered as Subchapter C because the department has adopted
17 the repeal of current Subchapter B in this issue of the *Texas Register*.

18 Adopted amendments to §215.101 delete an incorrect reference to a non-existent Transportation
19 Code, Chapter 1000 and add the license types to which this subchapter applies for clarity.

20 Adopted new §215.102 sets out in one rule for clarity and ease of reference the application
21 requirements for manufacturers, distributors, converters, and franchised dealers for new, renewal, and
22 amendment license applications, including the requirement to attach documents, pay statutorily required
23 fees, and submit applications electronically on a prescribed form in the department's designated licensing

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 11 of 45

Chapter 215 – Motor Vehicle Distribution

1 system. Occupations Code, §2301.257 and §2301.258 authorize the department to prescribe the
2 application form and require any information necessary to determine the applicant's qualifications to
3 adequately serve the public. Occupations Code, §2301.651(b) gives the board authority to deny an
4 application for an act or omission by an officer, director, partner, trustee, or other person acting in a
5 representative capacity that would be cause for denying a license. Adopted new §215.102(a)–(d) includes
6 requirements that apply to all franchised dealers, manufacturers, distributors, and converters. Adopted
7 new §215.102(c) requires a license holder renewing or amending a license to review current license
8 information, update information that has changed, provide related supporting information or documents
9 for any change or new requirement, and allows the department to implement its responsibilities under
10 Occupations Code §§2301.251, 2301.252, 2301.256–2301.260, 2301.303, and 2301.304.

11 Adopted new §215.102(e)(1) describes the information that must be submitted in the application,
12 denoting any differences by license type. In adopted new §215.102(e)(1)(L)(ii), the adopted text differs
13 from the proposed text as an “and” was added at the end, and in §215.102(e)(1)(L)(iii), the adopted text
14 differs from the proposed text as an “and” was deleted and a period substituted for a semicolon. These
15 changes were necessary at adoption because the content of §215.102(e)(1)(L)(iv) “the terms of the
16 contract under which the distributor will act for the manufacturer,” was moved at adoption to
17 §215.102(e)(1)(N)(iv) for clarity. Adopted §215.102(e)(1)(L) describes the information that an applicant
18 must provide when applying for either a manufacturer’s or a distributor’s license. Not all manufacturers
19 have a distributor, so for added clarity the requirement to provide terms of a distributor’s contract is
20 moved at adoption to §215.102(e)(1)(N) which describes the additional information that an applicant
21 must provide when applying for a distributor’s license. In adopted new §215.102(e)(1)(N)(iv), the adopted
22 text differs from the proposed text as language in that provision duplicates the following language in
23 §215.102(e)(1)(L)(iii): “if a franchise agreement for each line-make being applied for exists which states

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 12 of 45

Chapter 215 – Motor Vehicle Distribution

1 the obligations of a Texas franchised dealer to the applicant and the obligations of the applicant to the
2 Texas franchised dealer.” At adoption the department deleted the unnecessary duplicate language and
3 replaced this language with “the terms of the contract under which the distributor will act for the
4 manufacturer” for clarity. At adoption, the department changed the proposed text to replace “if” with
5 “whether” in §215.102(e)(1)(P)(iii) for consistency. In adopted new §215.102(e)(1)(P)(v), the adopted text
6 differs from the proposed text to correct a referenced section title, §215.133 to “GDN Application
7 Requirements for a Dealer or a Wholesale Motor Vehicle Auction.”

8 Adopted new §215.102(e)(2) describes the documents that must be attached to the application
9 and denotes differences by license type. The adopted information and attachment requirements vary for
10 each license type based on different statutory requirements and related consumer fraud or public safety
11 considerations resulting from the applicant’s operation, the applicant’s business model, including
12 distribution methods, and the specific new vehicle types manufactured, distributed, or offered for sale by
13 the applicant. At adoption, the department changed the proposed text of §215.102(e)(2)(C) to remove
14 the phrase “at least” because it is unnecessary. In adopted new §215.102(e)(2)(E)(i), the adopted text
15 differs from the proposed text in that “offers for sale or sales of motor vehicle in Texas” is changed to
16 “motor vehicle sales or offers to sell to Texas residents, “dealer” is changed to “person,” and “product” is
17 changed to “new motor vehicle” to add clarity and consistency. This adopted amendment to
18 §215.102(e)(2)(E)(i) incorporates best practice recommendations from the American Association of Motor
19 Vehicle Administrators (AAMVA) to prevent public harm that may result from sales to Texas residents by
20 out-of-state dealers authorized by a manufacturer or distributor to sell new vehicles in Texas exclusively
21 through an online sales model. In adopted new §215.102(e)(2)(G), the department changed the text at
22 adoption to narrow the specific information or pages from the distribution agreement that the
23 department requires an applicant for a distributor’s license to provide, to avoid unnecessary disclosure of

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 13 of 45

Chapter 215 – Motor Vehicle Distribution

1 confidential business information. At adoption the department also clarified that if a completed
2 questionnaire was provided, a manufacturer’s authorized representative may sign the questionnaire,
3 however, the applicant or applicant’s authorized representative may not sign on behalf of a manufacturer.

4 Adopted new §215.102(e)(3) describes the fees that must be paid when an applicant applies for
5 a license. Adopted new §215.102(f) prohibits a license applicant from using a name or assumed name that
6 could be confused with a governmental entity or could be deceptive or misleading to the public to prevent
7 consumer fraud and abuse. Adopted new §215.102(g) describes the process through which a
8 manufacturer or distributor may add a new line make to an existing license during the license period. The
9 department adopts nonsubstantive changes to the text at adoption throughout §215.102 to change
10 license type references to the singular possessive form “manufacturer’s,” “distributor’s,” “converter’s,”
11 and “franchised dealer’s” for consistency with Occupations Code, Chapter 2301 and in §215.120(f) to
12 change “must” to “shall” for consistency within the subsection.

13 In §§215.102, 215.104, 215.105, 215.109, 215.111, 215.113, and 215.121, the
14 department adopts a nonsubstantive change to the text at adoption to rephrase “system for licensing” to
15 “licensing system” to improve readability. In adopted amendments to §§215.102(b), 215.104(g), and
16 215.105(e), a change to the text at adoption substitutes “must” for “shall” for consistency with drafting
17 standards. In §215.104(c) and (d) a change to the text at adoption substitutes “must” for “is required to”
18 for consistency in terminology. In adopted amendments to §§215.105(b), 215.106(b), 215.113(c)–(e), and
19 215.120(h), a change in the text at adoption substitutes “shall” for “will” for consistency in terminology.
20 In §215.111(a) and §215.120(e), (f), and (i) adopted amendments substitute “shall” for “must” for
21 consistency in terminology.

22 Adopted amendments to §215.103(a) substitute “performs” for the phrase “will only perform”
23 and add the phrase “and not new motor vehicle sales” to clarify and emphasize that the franchised dealer

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 14 of 45

Chapter 215 – Motor Vehicle Distribution

1 activity that may not be performed at a service-only facility is new motor vehicle sales. The phrase “and
2 nonwarranty” is deleted because the department does not license non-warranty repair services. Similarly,
3 the last sentence in §215.103(a) is deleted in the adopted amendments because Occupations Code,
4 Chapter 2301 does not require warranty repair services to be performed only at a licensed dealer location.
5 Offsite sales are limited in Occupations Code, §2301.362, but no statutory provision limits the location in
6 which warranty services may be provided. This change conforms the rule text with statutory language and
7 provides franchised dealers with the flexibility allowed by statute to perform warranty repairs using
8 mobile services managed out of a licensed location. Adopted amendments to §215.103(b) delete a
9 redundant word and change the term “line” to “line-make” for consistency. An adopted amendment to
10 §215.103(d) deletes the word “only” as this term is not required by statute and a franchised dealer may
11 prefer to have contracting flexibility to obtain more attractive commercial terms.

12 Adopted amendments to §215.104(a) and §215.104(b)(3) delete unnecessary words to improve
13 readability without changing the meaning. Adopted amendments throughout §215.104 update and
14 modernize the license amendment process by requiring a franchised dealer to submit an amendment
15 application electronically in the designated licensing system. An adopted amendment in §215.104(a)(1)
16 clarifies and modernizes the rule by requiring that amendment application attachments must be legible
17 and accurate electronic images. An adopted amendment in §215.104(a)(2) adds a reference to new
18 adopted Chapter 224, (relating to Adjudicative Practice and Procedure), which includes procedures
19 related to processing protests of a franchised dealer’s application and is published for adoption in this
20 issue of the *Texas Register*. An adopted amendment in §215.104(b)(3) modernizes and standardizes the
21 process through which a publicly held corporation informs the department of an ownership change by
22 requiring that corporation to file an amendment application electronically when a person or entity
23 acquires a 10% ownership share. An adopted amendment to §215.104(c)(5) deletes an archaic

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 15 of 45

Chapter 215 – Motor Vehicle Distribution

1 requirement for a franchised dealer to notify the department if the dealer’s facsimile number has
2 changed, and to renumber accordingly. An adopted amendment to §215.104(d)(1) substitutes “oversees”
3 with “is in charge of” for consistency and clarity without changing the meaning of the provision. Adopted
4 amendments to §215.104(e) and §215.104(f) add “franchised” and delete the phrase “licensed new motor
5 vehicle” for consistency in describing a dealer under this subchapter and add the word “amendment” to
6 describe the type of application required to process the referenced change to the franchised dealer’s
7 license.

8 In an adopted amendment to §215.105(b), the department changed the text at adoption to
9 specify the forms of notice the department will use to notify a franchised dealer about an opportunity to
10 protest an application, including certified mail and email. Adopted amendments to §215.105(b) and
11 §215.105(c) add “franchised” and delete the phrase “licensed new motor vehicle” for consistency in
12 describing a dealer under this subchapter. An adopted amendment to §215.105(d) clarifies and
13 modernizes the process for a franchised dealer to file a protest by specifying that a franchised dealer with
14 standing to protest must file a timely protest “electronically in the department-designated licensing
15 system” and pay the required fee.

16 An adopted amendment to §215.106(a)(1) clarifies that a notice of protest must be received by
17 5:00 p.m. Central Time, which will be either Central Standard Time or Central Daylight Time as applicable,
18 and clarifies that a notice of protest must be filed within 15 days after the date in the department’s notice.
19 An adopted amendment to §215.106(a)(2) modernizes the protest process by requiring the notice of
20 protest to be filed in the department’s designated electronic system, and an adopted amendment to
21 §215.106(a)(3) clarifies that the fee must be paid at the time the application is submitted. An adopted
22 amendment to §215.106(b)(2) clarifies that the protest will be rejected if payment is not made or is later
23 dishonored.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 16 of 45

Chapter 215 – Motor Vehicle Distribution

1 Adopted amendments to §§215.108, 215.109, 215.110, and 215.113 add the word “franchised”
2 and delete the phrase “licensed new motor vehicle,” for consistency in describing a dealer under this
3 subchapter.

4 An adopted amendment to §215.109(4) requires a franchised dealer to submit a dealership
5 replacement application electronically in the designated department licensing system to modernize the
6 process.

7 Adopted amendments to §215.110(a) split the subsection into three separate subsections
8 lettered (a) through (c), modify internal references in relettered (b) and (c) from “subsection” to “section”
9 to reflect the new organization, and reletter current subsection (b) to subsection (d) accordingly to
10 improve readability. Adopted amendments in §215.110(a) remove unnecessary language and clarify that
11 the applicant must submit legible and accurate electronic images of the franchise agreement pages that
12 identify the parties, the parties’ signatures, each line-make listed in the application, and the address of
13 the franchised dealership’s physical location. An adopted amendment to relettered §215.110(b) clarifies
14 that an applicant may submit temporary evidence of franchise electronically. Adopted amendments to
15 relettered §215.110(c) clarify that an applicant is required to provide the designated franchise agreement
16 pages to the department before a license may be issued.

17 Adopted amendments to §215.111 organize the existing language into two subsections to
18 improve readability. An adopted amendment to new §215.111(a) clarifies that a manufacturer or
19 distributor must provide notice of termination or discontinuation as required under Occupations Code,
20 §2301.453 and removes language that duplicates the statute. Adopted amendments to new §215.111(b)
21 require a franchised dealer to file a written notice of protest electronically in the department’s designated
22 licensing system. The department changed the text of §215.111(b) at adoption to add a clarifying
23 reference to the minimum number of days that a manufacturer or distributor must provide a franchised

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 17 of 45

Chapter 215 – Motor Vehicle Distribution

1 dealer to file a protest before terminating or discontinuing a franchise agreement. The amendments to
2 §215.111(b) modernize the process and conform the rule to the statute.

3 SB 604, 86th Legislature, Regular Session (2019) eliminated the department's authority to
4 approve a vehicle show or exhibition under Occupations Code, §2301.358, effective September 1, 2019.

5 As a result, §215.112 is adopted for repeal in this issue of the *Texas Register* because §215.112(a)
6 expressly limits applicability of the rule to motor home shows requiring department approval.

7 An adopted amendment §215.113(a) replaces "new motor vehicle dealer" with "franchised
8 dealer" as the statutory term in Occupations Code, §2301.002 is "franchised dealer." Adopted
9 amendments to §215.113(a), (d), and (e) require the notice of protest to be filed electronically in the
10 department's designated licensing system to modernize the process. Adopted amendments to
11 §215.113(c) substitute the more general Occupations Code subchapter designation for the specific section
12 series reference so that any future statutory changes will not require a rule change, and add a reference
13 to the subchapter in adopted new Chapter 224, (relating to Adjudicative Practice and Procedure), which
14 applies to this subsection and is published for adoption in this issue of the *Texas Register*. Adopted
15 amendments to §215.113(f) add a reference to the subchapter in adopted new Chapter 224, (relating to
16 Adjudicative Practice and Procedure), which applies to this subsection and is published for adoption in
17 this issue of the *Texas Register*, delete archaic language as contested case hearing scheduling is
18 determined by the State Office of Administrative Hearings (SOAH) and its procedural rules, and substitute
19 the word "issued" for "rendered" for consistency.

20 An adopted amendment to the title of §215.115 adding the phrase "Vehicle Sales" describes the
21 scope of the section more accurately. Adopted amendments to §215.115(a), (b), (d) and (f) delete the
22 phrase "a representative of" as this phrase is unnecessary. Adopted amendments to §215.115(a), (b), and
23 (f) add language to allow a record to be submitted to the department electronically upon request to

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 18 of 45

Chapter 215 – Motor Vehicle Distribution

1 modernize the process. Adopted amendments to §215.115(b) correct preposition use to improve
2 readability without changing the meaning.

3 An adopted amendment to the title of §215.116 adds the term “Franchised Dealership” to
4 describe the scope of this section more accurately. An adopted amendment to §215.116(a) adds the
5 descriptor “franchised” to the term dealer and deletes duplicate language without changing meaning.

6 Adopted amendments to §215.117 improve the readability of the section without changing the
7 meaning.

8 The title of adopted new §215.120 was changed at adoption to add “Standard” to the adopted
9 title as the title “Standard License Plates,” describes the content of this section more accurately. Adopted
10 new §215.120 creates a consolidated chapter for all the department’s requirements related to the use of
11 license plates by manufacturers, distributors, and converters for ease of reference and clarity. Adopted
12 new §215.120(a) specifies when a manufacturer, distributor, or converter may apply for a standard license
13 plate and adopted new §215.120(a) and (b) specify the type of vehicle and purposes for which a license
14 plate may be used. Adopted new §215.120(c) explains where the license plate is to be placed on the
15 license holder’s vehicle. Adopted new §215.120(d) contains the recordkeeping requirements for these
16 license plates. In adopted new §215.121(b)(10), the proposed text is changed at adoption to correct a
17 subchapter reference from “Subchapter H” to “Subchapter F.” The department changed the text of
18 adopted new §215.120(d)(3) at adoption to add a clarifying phrase “if one has been assigned” because
19 some vehicles that manufacturers register may not have an assigned Vehicle Identification Number (VIN)
20 such as a prototype or concept vehicle. In adopted new §215.120(d)(4), the department made a change
21 to the text at adoption to specify that the license plate record only needs to contain the identity of the
22 person in control of the standard license plate. Adopted new §215.120(e) and (f) describe what a
23 manufacturer, distributor or converter is required to do if a license plate is lost, stolen, or damaged.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 19 of 45

Chapter 215 – Motor Vehicle Distribution

1 Adopted new §215.120(g) requires license plate records be available for inspection or review if requested
2 by the department. Adopted new §215.120(h) specifies the criteria the department will use to evaluate a
3 license holder's request for additional standard license plates. Adopted new §215.120(i) requires a
4 manufacturer, distributor, or converter to return department-issued license plates to the department
5 within 10 days of the associated license being closed, canceled, or revoked.

6 Adopted new §215.121 describes the powers of the board and department to sanction a
7 manufacturer, distributor, or converter. This adopted new section provides these license holders with
8 information about which violations may result in civil penalties or may affect licensing eligibility. Adopted
9 new §215.121(a) describes existing administrative sanctions that the board or department may take if a
10 manufacturer, distributor, or converter violates a law or rule enforced by the department. Adopted new
11 §215.121(b) describes which acts or omissions may result in a sanction. A change to the proposed text of
12 §215.121(b) at adoption removes the clause "a representative of" because it is unnecessary. A change to
13 the proposed text for §215.121(b)(2) at adoption replaces the word "timely" with the more specific phrase
14 "within 15 days" to specify the time period certain license holders have to provide records in response to
15 a request by the department. In adopted new §215.121(b)(10), the proposed text is changed at adoption
16 to correct a subchapter reference from "Subchapter H" to "Subchapter F," the relettered subchapter
17 containing the advertising rules.

18

19 Subchapter E. General Distinguishing Numbers

20 This subchapter is adopted to be relettered as Subchapter D because the department has adopted
21 the repeal of current Subchapter B in this issue of the *Texas Register* and the subsequent subchapters are
22 adopted to be relettered accordingly. An adopted amendment to the title of this subchapter adds in-
23 transit licenses which are issued to drive-a-way operators under Transportation Code, §503.023.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 20 of 45

Chapter 215 – Motor Vehicle Distribution

1 Adopted amendments to §215.131 add a reference to Transportation Code, Chapters 1001–1005
2 and clarify that provisions in this subchapter apply to GDNs and drive-a-way operator in-transit licenses
3 issued by the department.

4 Adopted amendments to §215.132 delete an unused definition for charitable organization, delete
5 an unnecessary definition for license, and add a clarifying definition for municipality, which is defined by
6 reference to Local Government Code, Chapter 1. Adopted amendments also renumber the remaining
7 provisions accordingly.

8 An adopted amendment to §215.133 retitles the section to “GDN Application Requirements for a
9 Dealer or a Wholesale Motor Vehicle Auction” to accurately reflect the scope of the section.
10 Transportation Code, §503.022 requires a wholesale motor vehicle auction to hold a GDN for each
11 business location, and Transportation Code, §503.030 requires an applicant to submit information
12 required by the department in the application. A wholesale motor vehicle auction is not “a dealer” as
13 defined in Transportation Code, §503.001(4). To clarify the scope of this section, which is intended to
14 include all GDN application requirements, the phrase “or a Wholesale Motor Vehicle Auction” was added
15 to the title and the application requirements are expanded to include this GDN category. An adopted
16 amendment to §215.133(a) adds a reference to a wholesale motor vehicle auction to reflect the expanded
17 scope of the rule and deletes a redundant word. Adopted amendments to §215.133(c) add multiple
18 references to wholesale motor vehicle auction throughout to expand the requirements of the rule to
19 include wholesale motor vehicle auction GDN holders, add a clarifying reference to §215.83, and clarify
20 an existing requirement for a license holder to pay any outstanding civil penalties owed the department
21 under a final order before renewing a GDN. Adopted amendments to §215.133(c)(1) clarify existing
22 application requirements in §215.133(c)(1)(C); add new §215.133(c)(1)(D), which requires an applicant to
23 provide a contact name and contact details for a person who can provide business information about the

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 21 of 45

Chapter 215 – Motor Vehicle Distribution

1 applicant so the department knows who to contact for related questions; reletter the remaining
2 subparagraphs; add in §215.133(c)(1)(I) the requirement for a telephone number for a dealer’s temporary
3 tag database account administrator; and correct in §215.133(c)(1)(O) the name of a form. Adopted
4 amendments to §215.133(c)(2) clarify §215.133(c)(2)(D) by adding “unexpired” and deleting “current” in
5 the related clauses and substituting the modern phrase “military identification card” for “armed forces
6 identification,” and add the word “business” in §215.133(c)(2)(G) to clarify the phrase “premises photos.”
7 Adopted amendments to §215.133(c)(3) delete a redundant phrase in §215.133(c)(3)(A), add a clarifying
8 reference in §215.133(c)(3)(B) to applicable taxes, and substitute “standard” for “metal” for a more
9 precise description of a dealer’s license plate. In §215.133(d), adopted amendments add a fingerprint
10 requirement for wholesale motor vehicle auction GDNs to allow the department to evaluate the criminal
11 histories of applicants to prevent and deter application fraud, and update the title of a referenced section.
12 Adopted amendments to §215.133(e) delete “dealer” to clarify that all GDN applicants and holders must
13 follow the assumed name requirements in that subsection and add the phrase “a name or” to denote that
14 an applicant cannot use a business name or an assumed name that is confusing, deceptive, or otherwise
15 misleading to the public. Adopted new §215.133(j) clarifies that a person holding an independent motor
16 vehicle GDN and performing salvage activities must apply for a National Motor Vehicle Title Information
17 System Identification number and provide that number to the department in the application so the
18 department can verify that the applicant meets federal registration requirements and is qualified to
19 perform salvage activities. The next subsection, adopted §215.133(k), is relettered accordingly.

20 In the adopted amendments to §§215.133, 215.134, 215.135, 215.141, and 215.145, the
21 department made a nonsubstantive change to the proposed text to rephrase “system for licensing” to
22 “licensing system” for consistency and to improve readability. In the adopted amendments to
23 §§215.133(c), 215.134(b), 215.138(a)(i), 215.140(a)(1)(A), 215.144(j)(3), and 215.160(d), the department

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 22 of 45

Chapter 215 – Motor Vehicle Distribution

1 substitutes “must” in the proposed text for “shall” at adoption for consistency with drafting standards. In
2 adopted §215.133(c)(2)(D) and §215.134(e)(2)(C), the phrase “at least” is deleted at adoption as
3 unnecessary. In §215.135(b) and (c), a change to the text at adoption substitutes “is required to” with
4 “must” for consistency in terminology.

5 Transportation Code, §503.023 requires a drive-a-way operator who transports or drives a vehicle
6 in Texas to hold a drive-a-way in-transit license. Transportation Code §503.031 requires an applicant for
7 this license type to submit an application containing information required by the department. Adopted
8 new §215.134 is necessary to define application requirements for a drive-a-way operator in-transit
9 license. Adopted new §215.134(a) defines the requirement that a person have a drive-a-way operator
10 license to engage in the business in Texas. Adopted new §215.134(b) defines the application process and
11 requires an applicant to complete an application form prescribed by the department and submit the
12 application through the department’s designated electronic licensing system. Adopted new §215.134(c)
13 requires a license holder renewing or amending a license to verify current information and provide related
14 information and documents for any new requirements or changes to the license and pay required fees.
15 Adopted new §215.134(d) instructs new applicants how to register in the department-designated
16 licensing system. Adopted new §215.134(e)(1) describes the information that must be submitted in the
17 application for a drive-a-way operator in-transit license. Adopted new §215.134(e)(2) describes the
18 documents that must be attached to the application based on statutory requirements and related
19 consumer fraud or public safety considerations resulting from the license holder’s operation or business
20 model. Adopted new §215.134(e)(3) describes the fees that must be paid when an applicant applies for a
21 license. Adopted new §215.134(f) requires a license applicant to comply with fingerprint requirements to
22 allow the department to confirm an applicant’s identity and perform a more comprehensive review of the
23 applicant’s criminal record to deter and prevent application fraud. Adopted new §215.134(g) protects the

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 23 of 45

Chapter 215 – Motor Vehicle Distribution

1 public by prohibiting an in-transit license holder from using a business name or assumed name that is
2 confusing, deceptive, or misleading. Adopted amendments to §215.135(a) and (b) substitute
3 “municipality” for “city” as municipality is a defined term in the Local Government Code, Chapter 1, and
4 is adopted as a defined term in §215.132. The department made a change to the proposed text at
5 adoption to replace “city” with “municipality” in the adopted amendments to §215.135(c) as well, to
6 create consistency. An adopted amendment to §215.135(a) updates a reference to align with the title of
7 §215.140. Adopted amendments to §215.135(b) and (c) correct punctuation. The adopted amendment to
8 §215.135(d) requires a GDN holder to notify the department of a new, closed or relocated business
9 location by filing an amendment electronically in the designated licensing system to modernize the
10 process.

11 Adopted amendments to §215.137(a) substitute “GDN” for “license” and delete “dealership” for
12 consistency in terminology. Adopted amendments to §215.137(c) rephrase a sentence for clarity and
13 consistency without changing the meaning.

14 Adopted amendments to the title of §215.138 and throughout the section delete “metal” or
15 “assigned metal dealer’s” to describe a dealer’s standard license plate for consistency in terminology. An
16 adopted amendment to §215.138(a) deletes a requirement to attach a plate to a license plate holder,
17 references §217.27, Vehicle Registration Insignia, for plate placement requirements, and is necessary for
18 consistency. Adopted amendments to §215.138(b) replace the phrase “so that the receipt can be
19 presented” with “to present” to add clarity without changing meaning. Adopted amendments combine
20 the definition of light truck in §215.138(e) and rule language in §215.138(f) into relettered §215.138(e) to
21 add clarity, and the remaining sections are relettered accordingly. Adopted amendments to relettered
22 §215.138(h) clarify that a dealer must keep records of all license plates issued by the department for
23 dealer use, including both standard and personalized prestige plates. Adopted amendments to relettered

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 24 of 45

Chapter 215 – Motor Vehicle Distribution

1 §215.138(i) and (j) clarify the procedures for reporting a license plate that is lost, stolen, or damaged.
2 Adopted new §215.138(k) requires that a dealer’s license plate records be available for inspection or to
3 submit to the department electronically upon request to allow the department to investigate potential
4 misuse of license plates. Adopted new §215.138(l) requires a dealer to return to the department all plates,
5 stickers, and related receipts within 10 days, consistent with the requirements of Transportation Code,
6 §503.038. At adoption, the phrase “standard or personalized prestige” is placed after “dealer” and before
7 “license plate” throughout new adopted §215.138 to clarify that the requirements of this section apply to
8 all dealer license plate types. In adopted relettered §215.138(j), the text was reorganized at adoption to
9 add clarity and in §215.138(j)(2) “must” was deleted as this word is duplicative and unnecessary. In
10 adopted new §215.138(l), the text is changed at adoption to substitute the term “dealer” in place of
11 “license holder” and to replace “shall” with “must” for consistency of terminology.

12 Adopted amendments to the title of §215.139 and throughout the section and attached graphics
13 delete “metal” and add “standard” to describe a dealer plate more accurately and consistently. In
14 §215.139(d) and in §215.139(f)(2), adopted amendments remove passive verbs and thereby improve
15 readability without changing the meaning. In the attached graphic to §215.139(f)(1), adopted
16 amendments correct the number of plates that a dealer selling 50 to 99 vehicles during the previous 12
17 months is eligible to request and add a missing category for a dealer selling 100 to 200 vehicles during the
18 previous 12 months. These adopted amendments correct inadvertent errors made when the graphic was
19 last published. The adopted amendments delete §215.139(h) as an unnecessary disclaimer because other
20 adopted amendments to §215.87(d) and §215.138(h) explicitly address procedures relating to
21 personalized prestige dealer plates.

22 An adopted amendment to §215.140 adds a subsection letter (a) to distinguish premises
23 requirements for GDN dealers from premises requirements for wholesale motor vehicle auctions, which

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 25 of 45

Chapter 215 – Motor Vehicle Distribution

1 are adopted in new subsection (b). Adopted amendments to §215.140(a)(1)(B) and §215.140(a)(2) clarify
2 that the dealer’s business hours must be posted in a manner and location that is accessible to the public
3 to meet the requirements of Transportation Code, §503.032. Adopted amendments to §215.140(a)(5)(F)
4 clarify that an established and permanent location must be capable of receiving U.S. mail and must have
5 an assigned emergency services property address to allow the department to verify the physical location
6 and municipality in which the business is located. An adopted amendment to §215.140(a)(5)(F) deletes
7 “metal” to describe the dealer’s license plate more consistently. An adopted amendment to
8 §215.140(a)(11)(B)(ii) clarifies that a display area must be reserved exclusively for the dealer’s inventory.
9 Adopted amendments to §215.140(a)(11)(B)(iv) and (vii) clarify that a barrier that cannot be readily
10 removed is one that cannot be easily moved by one person and typically weighs more than 50 pounds.
11 This weight guideline is consistent with Occupation Health and Safety Administration recommendations
12 for the maximum weight that one person may safely lift without assistance. Adopted amendments to
13 §215.140(a)(11)(C) replace “dealer” with “GDN holder.” Adopted amendments to §215.140(a)(11)(C)
14 include a change to the proposed text at adoption to replace the proposed requirement that a GDN holder
15 disclose all storage lots in the license application process with a more limited requirement that a GDN
16 holder disclose the location of a storage lot or location of a motor vehicle in inventory upon request by
17 the department, so the department can inspect the lot to ensure compliance with department rules and
18 investigate complaints. The adopted changes in §215.140(a)(11) prevent fraud and consumer abuse and
19 protect public health and safety. An adopted amendment to §215.140(a)(12) deletes an exclusion for
20 salvage pool operators because this exclusion is not consistent with public welfare as the public should
21 not be misled about the status or condition of a salvage vehicle. If a dealer is selling both motor vehicles
22 and salvage vehicles, each salvage vehicle must be clearly and conspicuously marked. An adopted

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 26 of 45

Chapter 215 – Motor Vehicle Distribution

1 amendment to §215.140(a)(14) moves to the end of the paragraph the requirement to post a dealer's
2 GDN and bond notice in each location to improve clarity without changing the meaning.

3 Adopted new §215.140(b) adds premises requirements for wholesale motor vehicle auctions and
4 implements the requirements of Transportation Code, §503.032. The text of adopted new
5 §215.140(b)(6)(G) is changed at adoption to limit the requirement that a GDN holder disclose the address
6 or location of a storage lot to be only upon request of the department, rather than as part of the license
7 application. The text of adopted new §215.140(b)(7)(C)(ii) is changed at adoption to correct a reference
8 by replacing “dealer” with “wholesale motor vehicle auction.”

9 Adopted amendments to §215.141(a) reorder language for consistency with §215.141(b) and add
10 a reference to a cease-and-desist order, which is an action the board is authorized to take under
11 Occupations Code, §2301.153 and §2301.802. Adopted amendments to §215.141(b)(1) add a reference
12 to the relevant statute and to the requirement to post a bond notice and delete an archaic reference to a
13 bond amount. Adopted new §215.141(b)(2) addresses the failure of a license holder to meet or maintain
14 the established and permanent place of business premises requirements as this failure is one of the most
15 common violations requiring a sanction under this subchapter, and the remaining paragraphs are
16 renumbered accordingly. Adopted amendments to renumbered §215.141(b)(4) clarify that a license
17 holder under this subchapter may be sanctioned for either failing to provide electronic records, or for
18 refusing or failing to comply with a department request to review electronic or physical records at the
19 licensed business location—the text is changed at adoption to add the phrase “electronic or physical” for
20 additional clarity. An adopted amendment to renumbered §215.141(b)(4)(A) corrects the title to a cross-
21 referenced section of rule. At adoption, text was added to renumbered §215.141(b)(4)(B) to delete an
22 unnecessary “and” because additional language is being adopted in this subparagraph. Adopted new
23 §215.141(b)(4)(D) adds the Certificate of Occupancy, Certificate of Compliance, business license or permit,

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 27 of 45

Chapter 215 – Motor Vehicle Distribution

1 or other official documentation confirming compliance with county and municipal laws or ordinances for
2 a vehicle business at the licensed physical location as records the department may request to investigate
3 compliance with Transportation Code requirements for an established and permanent place of business.
4 Adopted amendments reletter the remaining subsections to accommodate adopted new
5 §215.141(b)(4)(D). An adopted amendment to relettered §215.141(b)(6) deletes a redundant reference
6 to §215.140 because a reference to that section is adopted in §215.141(b)(2) and removes subsection
7 delineations within §215.141(b)(6) because they are unnecessary. Adopted amendments to relettered
8 §215.141(b)(8) clarify that a license holder under this subchapter may be sanctioned if the license holder
9 fails to submit a license amendment in the designated department electronic licensing system to change
10 an address within 10 days of the change. The proposed text of §215.141(b)(8) is changed at adoption to
11 align with changes made at adoption to §215.140, removing all reference to the proposed requirement
12 for GDN applicants to disclose storage lots on the license application, which is removed from §215.140.
13 An adopted amendment to relettered §215.141(b)(9) clarifies that a license holder under this subchapter
14 may be sanctioned if a person fails to submit a license amendment in the designated department
15 electronic licensing system to notify the department of a change in name or change in management or
16 ownership within 10 days of the change. The adopted amendments to §215.141(b)(8) and (9) modernize
17 the process with references to the electronic licensing system. Adopted amendments to relettered
18 §215.141(b)(12) and (13) delete “metal” from the description of license plate consistent with statutory
19 language in Transportation Code, Chapter 503. An adopted amendment to relettered §215.141(b)(16)
20 deletes an incorrect reference to non-existent Transportation Code, Chapter 1000. An adopted
21 amendment to relettered §215.141(b)(17) adds a clarifying reference to §211.3, Criminal Offense
22 Guidelines. An adopted amendment to relettered §215.141(b)(20) clarifies that providing a false or forged
23 document to the department may result in a sanction. In an adopted amendment to §215.141(b)(21), the

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 28 of 45

Chapter 215 – Motor Vehicle Distribution

1 text is changed at adoption to delete a stray reference to Transportation Code, Chapter 1000, which does
2 not exist. An adopted amendment to relettered §215.141(b)(22) clarifies that providing a false or forged
3 identity document, photograph, image, or document to the department is a material misrepresentation
4 and may result in a sanction. Adopted new §215.141(b)(25) clarifies that a license holder's failure to
5 comply with the requirements for dealer's issuance of temporary tags under §215.150 may result in a
6 sanction. Adopted amendments to relettered §215.141(b)(28) delete an archaic effective date and add
7 the title of a referenced statutory provision for clarity. The text of adopted relettered §215.141(b)(28) is
8 changed at adoption to correct punctuation by removing an errant period. Adopted new §215.141(b)(29)
9 adds failure to issue a refund as ordered by the board or department as an action that may result in a
10 sanction to ensure the board is able to enforce its refund orders. Adopted new §215.141(b)(30) adds
11 failure to acquire or maintain a certificate, business license, permit, or other documents confirming
12 compliance with county or municipal laws or ordinances for a vehicle business as an action that may result
13 in a sanction because a license holder must comply with county and local laws to have and maintain an
14 established and permanent place of business. An established and permanent place of business is a
15 requirement for GDN holders under Transportation Code §503.032 and wholesale motor vehicle auctions
16 under Transportation Code, §503.030.

17 Transportation Code, §503.035 requires the department to issue an in-transit license plate to a
18 drive-a-way operator holding an in-transit license. Adopted new §215.143 describes the process for a
19 drive-away operator to obtain an in-transit standard license plate and the requirements for using an in-
20 transit standard license plate. Adopted new §215.143(a) specifies when and how a drive-a-way operator
21 may apply for an in-transit standard license plate. Adopted new §215.143(b) describes when and where
22 the license plate is to be placed on a vehicle. Adopted new §215.143(c) describes the recordkeeping
23 requirements for in-transit standard license plates. Adopted §215.143(d) and (e) describe what a

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 29 of 45

Chapter 215 – Motor Vehicle Distribution

1 drive-a-way operator is required to do if a standard in-transit license plate is lost, stolen, or damaged.
2 Adopted new §215.143(f) requires license plate records to be available for inspection or review if
3 requested by the department to allow the department to investigate potential fraud or complaints.
4 Adopted new §215.143(g) specifies the criteria the department will use to evaluate a request for
5 additional in-transit standard license plates to ensure that the plate allocation is sufficient to meet but
6 not exceed the licensee's legitimate needs so as to not increase the opportunity for plate fraud. Adopted
7 new §215.143(h) requires a drive-a-way operator to return department-issued license plates to the
8 department within 10 days of the associated license being closed, canceled, or revoked to prevent
9 fraudulent use of in-transit standard license plates.

10 An adopted amendment to the title of §215.144 adds "Vehicle" to the title to describe the scope
11 more accurately as pertaining to vehicle records. Adopted amendments to §215.144(a) add a reference
12 to a wholesale motor vehicle auction and delete the redundant phrase "a representative of"—the text is
13 changed at adoption to include "of" in the deleted phrase and thereby correct an error in the proposed
14 text. An adopted amendment to §215.144(b) adds a reference to records that must be kept by an
15 independent mobility motor vehicle dealer for ease of reference, with a change in the text at adoption to
16 remove an unnecessary "the." An adopted amendment to §215.144(c) deletes unnecessary punctuation.
17 Adopted amendments to §215.144(d) clarify language regarding department records requests and correct
18 a reference from "division" to "department" for consistency. Adopted amendments to §215.144(e)(7)
19 delete an archaic reference to the title of a tax receipt form and substitute the general phrase "county tax
20 assessor-collector receipt marked paid," because the receipt form may vary by county. Adopted
21 amendments to §215.144(e)(8) improve sentence structure, clarify that records must be kept for both the
22 purchase and the sale of a vehicle, delete a reference to an archaic form, and add requirements to keep
23 a copy of the purchaser's photo identification, the odometer disclosure statement signed by the buyer

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 30 of 45

Chapter 215 – Motor Vehicle Distribution

1 unless the vehicle is exempt, and the rebuilt salvage disclosure, if applicable. A change to the proposed
2 text of §215.144(e)(8)(M) at adoption adds the phrase “unless the vehicle is exempt” to the adopted text
3 for clarity. These additional record requirements in §215.144(e)(8)(L)–(N) prevent consumer harm and
4 reduce potential for fraud. Adopted amendments to §215.144(e)(9) rephrase the existing requirement to
5 improve readability without changing the meaning. Adopted amendments to §215.144(f)(2) add a
6 reference to a statutory exemption and update the language consistent with current statutory
7 requirements because any willing county tax assessor-collector may process a title or registration request.
8 Adopted amendments to §215.144(f)(3) add clarity by changing the presumed reasonable time for a
9 dealer to apply for a title and registration from 20 working days to 30 days and add references to title
10 processing to clarify that the same presumed time limit applies to both titling and registration dealer
11 responsibilities. An adopted amendment to §215.144(g)(1) adds clarity by changing the presumed
12 reasonable time for a dealer to act for out-of-state sales from 20 working days to 30 days; the definition
13 of “days” under §215.2(b)(2) is adopted to be calendar days. Adopted amendments to §215.144(h) update
14 the language consistent with current statutory requirements because any willing county tax assessor-
15 collector may process a title or registration request. Adopted amendments to §215.144(j) delete the
16 unnecessary phrase “a representative of” to describe the department, simplify the language in
17 §215.144(j)(2) regarding the requirement that a wholesale motor vehicle auction must reply within 15
18 days of receiving a department records request regardless of the method in which the department makes
19 the request, and update a citation to the federal odometer disclosure requirements in §215.144(j)(3)(F).
20 An adopted amendment to §215.144(k) deletes the unnecessary phrase “a representative of” in
21 describing the department. Adopted amendments to §215.144(l) update the subsection title to refer to
22 the department’s electronic titling and registration system for clarity and delete unnecessary punctuation.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 31 of 45

Chapter 215 – Motor Vehicle Distribution

1 In the adopted amendments to §215.144(a), (b), (d), (h), (j), and (l), the text is changed at adoption to
2 substitute “shall” for “must” for consistency in terminology.

3 An adopted amendment to §215.145(a) deletes a duplicative word, and adopted amendments to
4 §215.145(b) modernize the provision by requiring a dealer to submit a license amendment electronically
5 in the department’s designated licensing system. Adopted amendments to §215.145(c)–(f) remove
6 redundant language or restate language to improve readability without changing the meaning. Another
7 adopted amendment to §215.145(f) modernizes the provision by adding a reference to filing a GDN
8 application electronically in the department’s designated licensing system. An adopted amendment to
9 §215.145(g) deletes unnecessary punctuation and corrects the title of a referenced statute.

10 The department adopts the repeal of the entirety of §215.146 in this issue of the *Texas Register*
11 because the rule language is incorporated into new adopted §215.120, relating to Standard License Plates.

12 Adopted amendments to §215.147(a) correct a reference to a driver license and delete an archaic
13 reference to a concealed handgun license. An adopted amendment to §215.147(b) substitutes “dealer’s”
14 for “license holder’s” for consistency in terminology without changing the meaning. An adopted
15 amendment to §215.147(c) adds “Vehicle” for consistency with an adopted title change to §215.144,
16 relating to Vehicle Records. A change to the text at adoption §215.147(c) substitutes “must” with “shall”
17 for consistency with drafting standards.

18 Adopted amendments to §215.148 add references to Transportation Code, Chapter 503 and adopted new
19 Chapter 224 of this title (relating to Adjudicative Practice and Procedure), which is published for adoption
20 in this issue of the *Texas Register*, update an adopted title change to §215.144, and remove redundant
21 and unnecessary words and punctuation. A change to the text at adoption §215.148(a) substitutes “shall”
22 for “must” and in §215.148(d) substitutes “must” for “shall” for consistency with drafting standards.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 32 of 45

Chapter 215 – Motor Vehicle Distribution

1 Adopted amendments to §215.149 change the title to “Sales of New Mobility Motor Vehicles” to
2 accurately reflect the section scope and add references to “new” mobility motor vehicles for clarity.

3 An adopted amendment to §215.150(a) adds “or lease” to clarify that a dealer may issue a
4 temporary tag for a leased vehicle. An adopted amendment to §215.150(b)(1) updates a reference to
5 adopted new Chapter 224 of this title (relating to Adjudicative Practice and Procedure), which is published
6 for adoption in this issue of the *Texas Register*. Adopted amendments to §215.150(c) change word order
7 to “buyer’s temporary tag” for consistency.

8 An adopted amendment to §215.151(a) adds “governmental agency” to the list of entities that
9 must display temporary tags on the rear of a vehicle in operation. As a result, the deletion of §215.151(b)
10 is adopted, and the remaining subsections are relettered accordingly. Adopted amendments to relettered
11 §215.151(c) delete duplicate language from a referenced statute and add a statutory reference for
12 allowed uses of a converter’s temporary tag for completeness and ease of reference.

13 Adopted amendments to §215.152(a) and (b) delete an unnecessary phrase as a governmental
14 agency is defined in §215.2 to include federal, state, and local agencies. Adopted amendments in
15 §215.152(f) increase the allotment of temporary tags for a franchised dealer from 600 to 1,000 based on
16 the department’s historical experience. Since the time that maximum tag limits were put in place, the
17 department has been monitoring temporary tag usage and processing requests for additional temporary
18 tags. The one dealer category that has consistently required more temporary tags to be allocated is a new
19 franchised dealer. Increasing the initial amount allocated to this dealer type will help ensure a new
20 franchised dealer has the requisite number of tags to support daily operations. Adopted amendments in
21 §215.152(i) clarify the process and procedure for requesting additional temporary tags and for appealing
22 a denial of a request, but do not change existing process or procedure. Another amendment to §215.152(l)
23 clarifies that temporary tag allotments do not carry over to subsequent years.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 33 of 45

Chapter 215 – Motor Vehicle Distribution

1 An adopted amendment to §215.154(a) adds “or lease” to clarify that a dealer may issue a dealer’s
2 temporary tag for a vehicle the dealer is authorized to lease. An adopted amendment to §215.154(c)
3 deletes “metal” and adds “standard or personalized prestige” to accurately describe the license plate
4 types the dealer may use. In §215.154(d), changes to the text at adoption added punctuation to statutory
5 references for consistency. An adopted amendment to §215.154(d)(2)(B) adds a reference to §215.138(d)
6 for clarity and ease of reference. Adopted amendments to §215.154(e) and (g) delete these two
7 subsections as the language in these subsections duplicates §215.138, to which a reference is adopted in
8 §215.154(d)(2)(B), and the remaining subsections are relettered accordingly.

9 Adopted amendments to §215.155(a) clarify that a buyer’s temporary tag may only be displayed
10 on a vehicle from the selling dealer’s inventory, reorganize and combine the content in §215.155(a) and
11 (b) in a numbered list for clarity and readability, and add “or lease” to clarify that a dealer may issue a
12 dealer’s temporary tag for a vehicle the dealer is authorized to lease. Adopted new §215.155(b) clarifies
13 that in accordance with Texas Transportation Code, §503.063, a buyer’s temporary tag must be issued
14 and provided to a buyer of a vehicle that is to be titled but not registered and clarifies that the temporary
15 tag must not be displayed on the vehicle in these circumstances. This clarification facilitates title-only
16 vehicle sales for vehicles that will not be driven on Texas roads. An adopted amendment to §215.155(c)
17 deletes “metal” for consistency. Adopted amendments to §215.155(e) delete unnecessary punctuation
18 and phrasing without changing the meaning. Adopted amendments to §215.155(f) and adopted new
19 §215.155(g) reorganize and rephrase language in §215.155(f) to improve clarity and readability without
20 changing meaning.

21 The text of amended §215.160(a) and (b) changed at adoption, replacing redundant phrases “a
22 regular title” and “issued a title” with “been titled” for clarity and readability without changing the
23 meaning. The text of amended §215.160(a) changed at adoption to remove a redundant citation to

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 34 of 45

Chapter 215 – Motor Vehicle Distribution

1 Transportation Code, §501.100. An adopted amendment to §215.160(b) increases the required font size
2 from 11-point to 14-point in the rebuilt vehicle acknowledgment or vehicle disclosure form to increase
3 visibility. An adopted amendment in §215.160(c) requires a separate signature on the acknowledgment
4 or disclosure form. Adopted amendments in §215.160(d) reorder language to improve clarity and update
5 a referenced section title; the department also changed the proposed text in §215.160(d) at adoption to
6 replace “shall” with “must” for consistency with drafting standards. The adopted amendments increasing
7 the required font size and requiring a signature protect consumers and prevent consumer harm.

8 Adopted amendments to §215.161 update the title to add “Provider” for clarity because the
9 requirements in this section relate to motor vehicle licensing education course providers. Adopted new
10 §215.161(f) clarifies that the department does not offer an approved licensing education course.

11

12 Subchapter F. Lessors and Lease Facilitators

13 This subchapter is adopted to be relettered as Subchapter E as the department adopts the repeal
14 of current Subchapter B in this issue of the *Texas Register* and the following subchapters are adopted to
15 be relettered accordingly.

16 Adopted amendments to §215.171 update statutory references including references to relevant
17 Transportation Code chapters.

18 Adopted amendments to §215.173(a) edit language and provide a statutory reference for clarity
19 and to improve readability.

20 In the adopted amendments to §§215.174(a), 215.178(a), (d), and 215.179(b), the department
21 changed the proposed text at adoption to substitute “shall” for “must” for consistency in terminology. In
22 the adopted amendments to §§215.174, 215.175, and 215.179, the department changed the proposed
23 text at adoption to replace “system for licensing” with “licensing system” to improve readability.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 35 of 45

Chapter 215 – Motor Vehicle Distribution

1 The adopted amendments to §215.174 modernize the provision by requiring use of the
2 department’s electronic licensing system. Adopted amendments to §215.174(a) add a reference to
3 §215.83 and clarify that applications, including supporting documentation and fees, are to be submitted
4 electronically in the designated department licensing system. Adopted new §215.174(b) requires a license
5 holder renewing or amending a license to verify current information and provide related information and
6 documents for any changes to the license and pay required fees. These adopted amendments modernize
7 the license renewal and amendment process. Adopted new §215.174(c) instructs a new applicant how to
8 register in the department-designated licensing system. Adopted new §215.174(d) describes the
9 information that must be submitted in the application, and the remaining subsections are relettered
10 accordingly. The department changed the proposed text of §215.174(d) at adoption to delete extraneous
11 brackets. Adopted amendments to relettered §215.174(e) specify the supporting documentation that an
12 applicant for a vehicle lessor’s license must provide so the department can investigate the applicant and
13 its business practices prior to issuing a new or renewal license. The adopted amendments to relettered
14 §215.174(e) clarify that a document submitted as part of a vehicle lessor’s license application must be a
15 legible and accurate electronic image, describe the business organization documents required, add
16 current identity document requirements, and require a vehicle lessor not located in Texas to provide a list
17 of vehicle lessor licenses in other states, if applicable, and any other information required to evaluate the
18 application under current law. In adopted §215.174(e)(2), the introductory phrase “at least” in this
19 paragraph is deleted at adoption as this phrase is unnecessary.

20 The department changed the proposed text at adoption in §215.174(e) and (f) to replace “must”
21 with “shall” for consistency with drafting standards. Adopted amendments to relettered §215.174(f)
22 specify the supporting documentation that an applicant for a vehicle lease facilitator’s license must
23 provide so the department can investigate the applicant and its business practices prior to issuing a new

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 36 of 45

Chapter 215 – Motor Vehicle Distribution

1 or renewal license. The adopted amendments to relettered §215.174(f) clarify that a document submitted
2 as part of a vehicle lease facilitator’s license application must be a legible and accurate electronic image,
3 describe the business organization documents required, add current identity document requirements,
4 delete a requirement for a vehicle lease facilitator to update a vehicle lessor list, and require a vehicle
5 lease facilitator to provide any other information required to evaluate the application under current law.
6 Adopted new §215.174(g) protects the public by prohibiting a vehicle lessor or vehicle lease facilitator
7 from using a business name or assumed name that is confusing, deceptive, or misleading. Adopted new
8 §215.174(h) clarifies an existing requirement that during the license term, a vehicle lessor or vehicle lease
9 facilitator must update the list of authorized vehicle lease facilitators or vehicle lessors, as applicable, and
10 notify the department within 10 days of a change by electronically submitting a license amendment in the
11 designated licensing system.

12 Adopted amendments to §215.175(b)(5) and (6) clarify that a vehicle lessor or vehicle lease
13 facilitator must notify the department of a change in address, name, assumed name, or change in
14 management or ownership by electronically submitting a license amendment in the designated licensing
15 system. An adopted amendment to §215.175(b)(7) updates a statutory reference. An adopted
16 amendment to §215.175(b)(8) updates a subchapter designation to match the adopted relettering. The
17 department changed the proposed text at adoption in §215.175(b)(10) to correct a citation to the
18 department’s rule that sets guidelines for the department’s treatment of criminal offenses by license
19 holders. Adopted amendments to §215.175(b)(13) delete the term “willfully” to make any omission of
20 material information sanctionable conduct and clarify that a material misrepresentation includes
21 providing a false or forged identity document or a false or forged photograph, electronic image, or
22 document. Adopted amendments to §215.175(c) and (d) modernize the provision to clarify that the

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 37 of 45

Chapter 215 – Motor Vehicle Distribution

1 vehicle lessor and the vehicle lease facilitator must notify the department by electronically submitting a
2 license amendment in the designated licensing system.

3 An adopted amendment to §215.176 adds “business” to the title of the section to describe the
4 section. An adopted amendment in §215.176(b) substitutes “municipality” for “city” for consistency with
5 the term defined in §215.132. In §215.176(b) a change to the text at adoption substitutes “must” for “is
6 required to” for consistency in terminology.

7 An adopted amendment to the title of §215.177 adds “Premises Requirements” to describe the
8 scope of the section. An adopted amendment to §215.177(a) removes unnecessary words to improve
9 readability. An adopted amendment to §215.177(a)(1)(A) sets minimum standards for a license holder’s
10 availability and responsiveness to the public and the department by adding a requirement that the
11 business telephone be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner,
12 answering service, voicemail service, or answering machine, and that a caller must be able to speak to a
13 natural person or leave a message during these hours. Adopted amendments to §215.177(a)(1)(B) clarify
14 that “chairs” is interpreted as two chairs and clarify that a vehicle lessor or vehicle facilitator’s office must
15 have internet access to ensure a license holder has the minimum level of facilities to adequately serve the
16 public. Adopted amendments to §215.177(a)(1)(C) further ensure that a vehicle lessor or vehicle
17 facilitator’s office meets minimum standards to serve the public by requiring the office to have a
18 permanent roof, requiring the office to be in a building open to the public, requiring the physical address
19 to have an assigned emergency services property address, and stating that the office may not be virtual
20 or provided by a subscription for office space or office services. Adopted amendments to
21 §215.177(a)(1)(E) and (F) remove unnecessary language without changing the meaning. Adopted
22 amendments to §215.177(a)(2) protect the public from being misled or confused by a license holder’s
23 signage by adding “business” to clarify that the requirements are for a business sign, requiring that the

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 38 of 45

Chapter 215 – Motor Vehicle Distribution

1 business name used on the sign be substantially similar to the name of the licensed entity, and adding
2 criteria to determine whether the sign is conspicuous and permanent. Adopted amendments to
3 §215.177(a)(3) clarify premises lease requirements and modernize the language. The adopted
4 amendments in §215.177(a) are consistent with the minimum requirements for a retail dealer and deter
5 fraud and protect consumers. An adopted amendment deletes the requirements in §215.177(b) for
6 out-of-state vehicle lessors who do not deal directly with the public as these requirements are
7 unnecessary and unenforceable, and the remaining following subsections are relettered accordingly.

8 Adopted amendments to §215.178(a) clarify that the records kept by lessors and lease facilitators
9 include vehicle purchase, leasing, and sales records. The adopted amendments to §215.178(a) include a
10 change to the text at adoption to add the phrase “of leased vehicles” to align subsection (a) with
11 subsection (a)(1) by clarifying that sales records relate to vehicles sold at the end of a lease, and that a
12 lessor is required to keep records of leases as well as records of sales. The adopted amendments to
13 §215.178(a) also include a change to the text at adoption to replace “must” with “shall” for consistency
14 with drafting standards. Adopted amendments to §215.178(a)(1) add “complete” to describe records for
15 consistency, delete an archaic requirement to keep records for prior periods at a location in the same
16 county or within 25 miles of the license location, and simplify the language regarding the requirement
17 that a dealer must reply within 15 days of receiving a request for records from the department regardless
18 of the method in which the department makes the request. Adopted amendments to §215.178(b)
19 improve clarity and readability and revise the requirement for a vehicle lease facilitator to provide an
20 employee’s work address and not a home address. Adopted new §215.178(c) describes the vehicle lessor’s
21 recordkeeping requirements if a leased vehicle is later sold, and the subsequent subsections are relettered
22 accordingly. Adopted amendments to relettered §215.178(d) consist of minor edits throughout to fix
23 cross-references and improve clarity and readability, and do not change the meaning of the rule. Adopted

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 39 of 45

Chapter 215 – Motor Vehicle Distribution

1 amendments to relettered §215.178(f) delete redundant language and clarify that a letter of
2 representation or appointment between a vehicle lessor and a vehicle lease facilitator must be executed
3 and maintained by each party. Adopted amendments to relettered §215.178(g) modernize the provision
4 by adding the option for a vehicle lessor or a vehicle lease facilitator to send records to the department
5 electronically, and make minor edits to improve readability.

6 Adopted amendments throughout §215.179 modernize the rule by specifying that a vehicle lessor
7 or vehicle facilitator must submit a notice of a change to a license electronically in the designated licensing
8 system, remove redundant or unnecessary language, and update the title of a referenced section of this
9 chapter.

10 An adopted amendment to §215.180 substitutes a subchapter designation for a list of sections so
11 that a future statutory change will not require a rule change.

12

13 Subchapter G. Warranty Performance Obligations

14 The department adopts the repeal of all sections of Subchapter G, Warranty Performance
15 Obligations, in this issue of the *Texas Register* because the substance of each rule and any adopted
16 amendments are incorporated into adopted new Chapter 224, (relating to Adjudicative Practice and
17 Procedure) which is also published for adoption in this issue of the *Texas Register*. The adopted repeal
18 includes §§215.201–215.210.

19

20 Subchapter H. Advertising

21 This subchapter is adopted to be relettered as Subchapter F because the department adopts the
22 repeal of current Subchapters B and G in this issue of the *Texas Register* and the remaining subchapters
23 are adopted to be relettered accordingly.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 40 of 45

Chapter 215 – Motor Vehicle Distribution

1 An adopted amendment to §215.242 substitutes “deemed” for “considered” for consistency.

2 Adopted amendments to §215.244(11) delete an unnecessary definition for a license holder. As a
3 result, adopted amendments to §215.244 renumber the remaining definitions and fix cross references
4 accordingly. An adopted amendment to renumbered §215.244(17) clarifies that the communication
5 referred to in the provision is a notice of opportunity to cure.

6 An adopted amendment to the title of §215.249 substitutes “or” for “/” for clarity and style
7 consistency. An adopted amendment to §215.249(c) deletes “the State of” for consistency.

8 In §215.249(a) and §215.250(a) changes to the text at adoption substitutes “must” for “shall” for
9 consistency in terminology.

10 Adopted amendments to §215.250(a) delete “new or used” as this phrase is unnecessary and add
11 a requirement for a dealer to disclose a market adjustment if one is added to the sales price so that the
12 public is aware of the pricing. Adopted amendments to §215.250(b)(3) add clarity that fees and charges
13 expressly allowed by law do not have to be included in a featured sales price.

14 An adopted amendment to §215.257 clarifies that the term “authorized dealer” or similar term
15 may not be used unless a dealer holds both a franchised dealer license and a franchised dealer GDN.

16 Adopted amendments to the title and text of §215.261 substitute “or” for “/” for clarity and style
17 consistency.

18 An adopted amendment to §215.264(c) substitutes “other disclosure or deal term” for the lengthy
19 list of disclosures and deal terms in this section for clarity and brevity. Adopted amendments to
20 §215.264(f) and (h) delete references to specific paragraphs as the paragraph references are unnecessary.

21 Adopted amendments to §215.268 delete unnecessary language and substitute terms for
22 consistency and clarity and do not change the meaning of the section.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 41 of 45

Chapter 215 – Motor Vehicle Distribution

1 Adopted amendments to §215.270(b) add clarity by identifying the referenced notice as an
2 opportunity to cure and update a reference to the adopted new §224.56, Notice of Department Decision,
3 which is adopted in this issue of the *Texas Register*.

4

5 Subchapter I. Practice and Procedure for Hearings Conducted by The State Office of Administrative
6 Hearings

7 All sections of Subchapter I, Practice and Procedure for Hearings Conducted by The State Office
8 of Administrative Hearings, are adopted for repeal in this issue of the *Texas Register* because the
9 substance of each rule and any adopted amendments are incorporated into adopted new Chapter 224,
10 (relating to Adjudicative Practice and Procedure) which is adopted in this issue of the *Texas Register*. The
11 adopted repeal includes §§215.301–215.303, 215.305–215.308, 215.310, 215.311, and 215.314–215.317.

12

13 Subchapter J. Administrative Sanctions

14 This subchapter is adopted to be relettered as Subchapter G because the department adopts the
15 repeal of current Subchapters B, G, and I in this issue of the *Texas Register* and the remaining subchapters
16 are adopted to be relettered accordingly.

17 Adopted amendments to §215.500 delete “and Procedures” from the title and delete all of
18 subsection (b) because the procedures from this section are adopted into new Chapter 224, (relating to
19 Adjudicative Practice and Procedure), which is published for adoption in this issue of the *Texas Register*.

20 Adopted amendments to §215.500(a) delete the (a) designation and correct a reference to a referenced
21 section.

1 The remaining sections of Subchapter J, §§215.501, 215.502, and §215.505, are adopted for
2 repeal in this issue of the *Texas Register* and are adopted for inclusion in new Chapter 224, (relating to
3 Adjudicative Practice and Procedure), which is published for adoption in this issue of the *Texas Register*.

4

5 **SUMMARY OF COMMENTS.**

6 The department received nine written comments on the proposal.

7 The department received written comments from six individuals, the Texas Automobile Dealers
8 Association (TADA), the Texas Independent Automobile Dealers Association (TIADA), and the Texas
9 Recreational Vehicle Association (TRVA).

10 **Comment:** TADA requested that the proposed amendments to §§215.102, 215.103, 215.171, and
11 215.173–215.180 be withdrawn from consideration due to pending litigation.

12 **Response:** The department disagrees. The department does not believe that withdrawing these rules is
13 necessary as these rules are not at issue in pending litigation, except as authority for regular ongoing
14 enforcement activities.

15 **Comment:** TADA stated that the word “authorized” is unclear in §215.102(e)(2)(E)(i).

16 **Response:** The department disagrees. The department believes that “authorized” is a term that a
17 manufacturer or distributor can reasonably interpret when applying for a license. The department
18 modified other language in the sentence for clarity and consistency in response to this comment.

19 **Comment:** An individual commenter requested the department change the proposed amendments to
20 §215.102 to clarify which specific terms in a distributor agreement must be disclosed to the department
21 under Occupations Code, §2301.260 because a distribution agreement may contain confidential or
22 proprietary information that is irrelevant to distributor licensing requirements.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 43 of 45

Chapter 215 – Motor Vehicle Distribution

1 **Response:** The department agrees. The department modified the proposed language in §215.102(e)(2)(g)
2 at adoption to address this concern by specifying the contract terms that an applicant for a distributor
3 license must provide the department.

4 **Comment:** Four individual commenters stated their full support for amendments to §215.103 and
5 expressed the view that a franchised dealership’s ability to offer mobile warranty repair services will
6 enable franchised dealers to provide a higher level of service to the public and improve customer
7 satisfaction.

8 **Response:** The department agrees.

9 **Comment:** An individual commenter requested that an electronic notice requirement be added to
10 §215.105 and §215.106.

11 **Response:** The department agrees. Electronic notice is an efficient and preferred notice method. The
12 department added language at adoption to §215.105 and §215.106 in response to this comment to
13 require electronic notice in addition to notice by certified mail, return receipt requested.

14 **Comment:** TADA requested clarifying language be added to §215.111 regarding the minimum number of
15 days that a manufacturer or distributor must provide a franchised dealer to file a protest before
16 terminating or discontinuing a franchise.

17 **Response:** The department agrees. The department added language in §215.111(b) at adoption to clarify
18 that the effective date of a franchise termination or discontinuance must not be less than 60 days after
19 the franchised dealer receives notice.

20 **Comment:** TADA and TRVA requested the department not repeal §215.112.

21 **Response:** The department disagrees. The department lost statutory authority for §215.112 on
22 September 1, 2019. This rule has been unenforceable for more than four years and must be repealed. The
23 statutory limitations on sales such as prohibitions on weekend sales (“blue law”) and off-site sales remain

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 44 of 45

Chapter 215 – Motor Vehicle Distribution

1 in effect and enforceable on their own, without any need for the department to repeat them in rule. The
2 department remains committed to working with stakeholders to propose a new rule for board
3 consideration consistent with the department’s current statutory authority.

4 **Comment:** TIADA stated that the department should not require license applicants to provide additional
5 or specific forms of identification and recommended striking the words “at least” before the phrase “one
6 of the following” in §215.133(c)(2)(D).

7 **Response:** The department agrees. The department does not require a natural person to provide more
8 than one form of identification and a person may choose any form of identification from the list in
9 §215.133(c)(2)(D). Some applicants have chosen to upload more than one type of identification to
10 facilitate license processing due to concerns about scanned image quality. However, this situation has
11 become less prevalent, and the department agrees that “at least” is unnecessary language and has
12 deleted that phrase.

13 **Comment:** TIADA recommended simplifying the language in relettered §215.138(j).

14 **Response:** The department agrees. The department reorganized the language in relettered §215.138(j) at
15 adoption to improve clarity.

16 **Comment:** TADA and TIADA had concerns about the proposed new requirement in §215.140(a)(11)(C) for
17 a GDN applicant or holder to disclose the physical address of a storage lot.

18 **Response:** The department agrees. In response, the department changed the language of
19 §215.140(a)(11)(C) at adoption to make the requirement less burdensome by only requiring a GDN holder
20 or applicant to disclose the address of a storage lot or location of a vehicle in inventory upon department
21 request, rather than through the license application or license amendment process.

22 **Comment:** TIADA questioned whether the minimum premises standards for wholesale motor vehicle
23 auctions in §215.140(b)(6)(g) are appropriate.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 45 of 45

Chapter 215 – Motor Vehicle Distribution

1 **Response:** The department disagrees. The department proposed minimum standards based on the
2 wholesale nature of this GDN type and believes these provisions are necessary to implement
3 Transportation Code, §503.032. The department did not receive any comments from wholesale motor
4 vehicle auction GDN holders regarding these minimum standards.

5 **Comment:** TIADA pointed out incorrect usage of the term “dealer” in §215.140(b)(6)(g).

6 **Response:** The department agrees. The department changed the language of §215.140(b)(6)(g) at
7 adoption to replace “dealer” with “wholesale motor vehicle auction.”

8 **Comment:** TIADA suggested adding “if applicable” to the odometer disclosure recordkeeping requirement
9 in §215.144(e)(8)(M).

10 **Response:** The department agrees. The department changed the language of §215.144(e)(8)(M) at
11 adoption to add a clarifying phrase.

12 **Comment:** TADA requested that license holders be allowed adequate time to reprint forms or reprogram
13 systems to meet new font and format requirements in §215.160(b) and (c) to minimize financial impact
14 to affected license holders.

15 **Response:** The department agrees. The department notes that it, too, must reprogram department
16 systems to implement some of the adopted amendments. Accordingly, the department is recommending
17 a future effective date of June 1, 2024, to the Board for all amendments.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 2 of 230

Chapter 215 – Motor Vehicle Distribution

1 §503.002, which authorizes the board to adopt rules for the administration of Transportation Code,
2 Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain
3 contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring
4 that an applicant for an original or renewal general distinguishing number who adopts to be an
5 independent motor vehicle dealer complete web-based education and training developed or approved
6 by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe
7 the form of the notice of a surety bond and the procedure by which a claimant may recover against the
8 surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the
9 issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which
10 require the board to adopt rules necessary to implement and manage the department's temporary tag
11 databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are
12 necessary and appropriate to implement the powers and the duties of the department, as well as the
13 statutes referenced throughout this preamble.

14 The department also adopts amendments under the authority of Transportation Code,
15 §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition
16 to the statutory authority referenced throughout this preamble.

17 Transportation Code, §501.0041 authorizes the department to adopt rules to administer
18 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt
19 rules to administer Transportation Code, Chapter 502.

20 Occupations Code, §55.002 requires a state agency that issues a license to adopt rules to exempt
21 an individual license holder from incurring any increased fee or other penalty for failing to renew the
22 license in a timely manner if the individual establishes that failure to timely renew the license is because
23 the individual was serving as a military service member. Occupations Code, §55.004 requires a state

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 3 of 230

Chapter 215 – Motor Vehicle Distribution

1 agency that issues a license to adopt rules for the issuance of the license to an applicant who is a military
2 service member, military veteran, or military spouse and holds a current license issued by another
3 jurisdiction with substantially equivalent requirements or held a Texas license within the prior five years.
4 Occupations Code, §55.0041 requires a state agency that issues a license to adopt rules to recognize
5 equivalent out-of-state licenses for a military service member, military veteran, or military spouse within
6 30 days of application and issue a license or authorization. Occupations Code, §55.005 requires a state
7 agency that issues a license to process an application and issue a license within 30 days for a military
8 service member, military veteran, or military spouse.

9 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the
10 nature and requirements of all available formal and informal procedures. Government Code, §2001.039
11 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing
12 the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal,
13 revocation, suspension, annulment, or withdrawal of a license.

14 **CROSS REFERENCE TO STATUTE.** These adopted revisions implement Government Code, Chapters 411
15 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503,
16 1001–1003, and 1005.

17 Text.

18 §215.1. Purpose and Scope.

19 Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1001 ~~[1000]~~–1005
20 require the Texas Department of Motor Vehicles to license and regulate the [motor]vehicle industry
21 ~~[dealers, manufacturers, distributors, converters, representatives, vehicle lessors and vehicle lease~~
22 ~~facilitators, in order]~~ to ensure a sound system of distributing and selling ~~[motor]~~vehicles; provide for
23 compliance with manufacturers' warranties; and to prevent fraud, unfair practices, discrimination,

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 4 of 230

Chapter 215 – Motor Vehicle Distribution

1 impositions, and other abuses of the people of this state in connection with the distribution and sale of
2 ~~[motor-]~~vehicles. This chapter describes licensing requirements and the rules governing the vehicle
3 industry. ~~[prescribes the policies and procedures for the regulation of the motor vehicle industry.]~~

4

5 §215.2. Definitions; Conformity with Statutory Requirements.

6 (a) The definitions contained in Occupations Code, Chapter 2301 and Transportation Code,
7 Chapters 503 and 1001~~[1000]~~–1005 govern this chapter. In the event of a conflict, the definition or
8 procedure referenced in Occupations Code, Chapter 2301 controls.

9 (b) The following words and terms, when used in this chapter, shall have the following
10 meanings, unless the context clearly indicates otherwise.

11 (1) ~~[ALJ--An Administrative Law Judge of the State Office of Administrative Hearings.]~~

12 ~~[(2)]Board--The Board of the Texas Department of Motor Vehicles, including~~~~[any]~~
13 ~~department staff~~~~[personnel]~~ to whom the board delegates a [any] duty~~[assigned]~~.

14 (2) Day--The word "day" refers to a calendar day.

15 (3) Director--The director of the division~~[department]~~ that regulates the distribution and
16 sale of motor vehicles, including any department staff ~~[personnel]~~ to whom the director delegates a~~[ny]~~
17 duty assigned under this chapter.

18 ~~[(4) Executive director--The executive director of the Texas Department of Motor~~
19 ~~Vehicles.]~~

20 ~~[(5) Final order authority--The person(s) with authority under Occupations Code,~~
21 ~~Chapter 2301; Transportation Code, Chapters 503 and 1000 --1005; or board rules to issue a final order.]~~

22 (4) ~~[(6)]GDN--General distinguishing number,~~ a license issued under Transportation
23 Code, Chapter 503.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 5 of 230

Chapter 215 – Motor Vehicle Distribution

1 (5) ~~[(7)]~~Governmental agency--A state agency other than the department, [All other
2 state and]all local governmental agencies, and all agencies of the United States government, whether
3 executive, legislative, or judicial.

4 (6) Standard license plate--A motor vehicle license plate issued by the department to a
5 license holder for use by the license holder that is not a personalized prestige dealer's license plate
6 issued under Transportation Code §503.0615.

7 ~~[(8) [Hearing officer--An ALJ, a hearings examiner, or any other person designated,
8 employed, or appointed by the department to hold hearings, administer oaths, receive pleadings and
9 evidence, issue subpoenas to compel the attendance of witnesses, compel the production of papers and
10 documents, issue interlocutory orders and temporary injunctions, make findings of fact and conclusions
11 of law, issue proposals for decision, and recommend or issue final orders.]~~

12 ~~[(9) Motion for rehearing authority--The person(s) with authority under Occupations~~
13 ~~Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 -- 1005; or board rules to decide a~~
14 ~~motion for rehearing.]~~

15 ~~[(10) SOAH--The State Office of Administrative Hearings.]~~

16

17 **SUBCHAPTER B. (RELATING TO ADJUDICATIVE PRACTICE AND PROCEDURE)**

18

43 TAC §§215.21–215.63

19 **STATUTORY AUTHORITY.** The department adopts repeals to Chapter 215 under Occupations Code,
20 §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles
21 and the authority to take any action that is necessary or convenient to exercise that authority;
22 Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license
23 holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 6 of 230

Chapter 215 – Motor Vehicle Distribution

1 and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in
2 connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations
3 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which
4 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter
5 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives
6 the board authority to deny an application for a license, revoke or suspend a license, place on probation,
7 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,
8 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds
9 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government
10 Code, §411.122(d), which authorizes department access to criminal history record information
11 maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal
12 history record information from DPS and the FBI for license applicants, license holders, and
13 representatives whose act or omission would be cause for denying, revoking, or suspending a general
14 distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,
15 Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as
16 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which
17 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;
18 Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases;
19 Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of
20 dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the
21 board to adopt rules necessary to implement and manage the department's temporary tag databases;
22 and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 7 of 230

Chapter 215 – Motor Vehicle Distribution

1 appropriate to implement the powers and the duties of the department, as well as the statutes referenced
2 throughout this preamble.

3 The department also adopts repeals under the authority of Transportation Code, §501.0041 and
4 §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory
5 authority referenced throughout this preamble.

6 Transportation Code, §501.0041 authorizes the department to adopt rules to administer
7 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt
8 rules to administer Transportation Code, Chapter 502.

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, §2001.039 requires
11 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.
12 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,
13 suspension, annulment, or withdrawal of a license.

14 **CROSS REFERENCE TO STATUTE.** These repeals implement Government Code, Chapters 411 and 2001;
15 Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503, 1001–1003,
16 and 1005.

17

18 Text.

19 [~~§215.21. Purpose and Scope.~~]

20 [~~(a) The purpose of this subchapter is to ensure adjudication of the rights of parties in~~
21 ~~matters within the jurisdiction of Occupations Code, Chapter 2301 and Transportation Code,~~
22 ~~Chapters 503 and 1000–1005; and to ensure effective administration of Occupations Code,~~
23 ~~Chapter 2301 and Transportation Code, Chapters 503 and 1000–1005 by the department, in~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 8 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~accordance with Government Code, Chapter 2001 and Occupations Code, §2301.001 and~~
2 ~~§2301.152.]~~

3 ~~[(b) Practice and procedure in contested cases heard by SOAH are addressed in:]~~

4 ~~[(1) 1 TAC Chapter 155;]~~

5 ~~[(2) Subchapter I of this chapter (relating to Practice and Procedure for Hearings~~

6 ~~Conducted by the State Office of Administrative Hearings); and]~~

7 ~~[(3) this subchapter, where not in conflict with SOAH rules.]~~

8 ~~[(c) This subchapter applies to contested cases filed under Occupations Code, Chapter 2301~~
9 ~~or Transportation Code, Chapter 503; and to complaints filed on or after January 1, 2014,~~
10 ~~under Occupations Code, §2301.204 or §§2301.601–2301.613, to the extent they do not~~
11 ~~conflict with state law, rule, or court order.]~~

12

13 ~~[§215.22. Prohibited Communications:]~~

14 ~~[(a) No person, party, attorney of record, or authorized representative in any contested case shall~~
15 ~~engage in, directly or indirectly, any ex parte communication, in violation of Government Code,~~
16 ~~§2001.061, concerning the contested case with the board or hearing officer assigned to render a~~
17 ~~decision or make findings of fact and conclusions of law in a contested case.]~~

18 ~~[(b) Except as prohibited by Government Code §2001.061, department staff may advise the~~
19 ~~board, the hearing officer, and a person delegated power from the board under Occupations Code~~
20 ~~§2301.154 regarding the contested case and any procedural matters. However, the department staff~~
21 ~~shall not recommend a final decision to the board unless the department is a party to the contested~~
22 ~~case.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 9 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(c) Violations of this section shall be promptly reported to the hearing officer, as applicable, and~~
2 ~~the general counsel of the department. The general counsel shall ensure that a copy or summary of the~~
3 ~~ex parte communication is included with the record of the contested case and that a copy is forwarded~~
4 ~~to all parties or their authorized representatives. The general counsel may take any other appropriate~~
5 ~~action otherwise provided by law.]~~

6

7 ~~[\$215.23. Appearances.]~~

8 ~~[(a) General. Any party to a contested case may appear in person or by an authorized~~
9 ~~representative. An authorized representative may be required to show authority to represent a party.]~~

10 ~~[(b) Intervention. Any public official or other person having an interest in a contested case may,~~
11 ~~upon request to the hearing officer, be permitted to intervene. Any person desiring to intervene in a~~
12 ~~contested case may be required to disclose that person's interest in the contested case before~~
13 ~~permission to appear will be granted.]~~

14

15 ~~[\$215.24. Petitions.]~~16 ~~[(a) Petitions shall be in writing and shall:]~~

17 ~~[(1) state the petitioner's interest in the subject matter, the facts relied upon, and the~~
18 ~~relief sought; and]~~

19 ~~[(2) cite the specific code provision(s) or other appropriate law.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 10 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(b) The original of each petition, pleading, motion, brief, or other document permitted or~~
2 ~~required to be filed with the department in a contested case shall be signed by the party or the party's~~
3 ~~authorized representative.]~~

4 ~~[(c) All pleadings filed in a contested case shall be printed or typed on 8-1/2 inch by 11 inch~~
5 ~~paper in no smaller than 11 point type with margins of at least one inch at the top, bottom, and each~~
6 ~~side. Each page shall be numbered at the bottom. All text, except block quotations and footnotes, shall~~
7 ~~be double spaced.]~~

8

9 ~~[\$215.27. Complaints.]~~

10 ~~[(a) Complaints alleging violations of Occupations Code, Chapter 2301 or Transportation Code,~~
11 ~~Chapters 503 and 1000 – 1005 shall be in writing, addressed to the department, and signed by the~~
12 ~~complainant. Complaint forms will be supplied by the department for the purpose of filing complaints.]~~

13 ~~[(b) A complaint shall contain the name and address of the complainant, the name and address~~
14 ~~of the party against whom the complaint is made, and a brief statement of the facts forming the basis of~~
15 ~~the complaint.]~~

16 ~~[(c) If requested by the department, complaints shall be under oath. Before initiating an~~
17 ~~investigation or other proceeding to determine the merits of the complaint, the department may require~~
18 ~~from the complainant additional information necessary to evaluate the merits of the complaint.]~~

19

20 ~~[\$215.29. Computing Time.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 11 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[Any period of time prescribed or allowed by this chapter, by order of the board, or by any~~
2 ~~applicable statute shall be computed in accordance with Government Code, §311.014.]~~

3

4 ~~[\$215.30. Filing of Documents.]~~

5 ~~[(a) Each document required or permitted to be filed with the department under this chapter~~
6 ~~shall be delivered:]~~

7 ~~[(1) in person;]~~

8 ~~[(2) by first-class mail to the address of the department; or]~~

9 ~~[(3) by electronic document transfer to a destination designated by the department.]~~

10 ~~[(b) Delivery by electronic document transfer is considered timely if the document is received by~~
11 ~~5:00 p.m. Central Standard Time (CST). Delivery by electronic document transfer after 5:00 p.m. CST shall~~
12 ~~be deemed received on the following day.]~~

13 ~~[(c) A certificate by the party or party's authorized representative showing timely delivery of a~~
14 ~~document in a manner described in this section shall be prima facie evidence of timely delivery. Nothing~~
15 ~~herein shall preclude the department or any party from offering proof that the document was not timely~~
16 ~~delivered.]~~

17 ~~[(d) To be timely filed, a document must be received by the department within the time~~
18 ~~specified by statute, rule, or department order. A document received after the specified time,~~
19 ~~notwithstanding the date of mailing or other means of delivery, shall be deemed untimely.]~~

20

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 12 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~§215.32. Extension of Time.~~

2 ~~[(a) Except as provided by subsection (b) of this section, when an act is required or allowed to be~~
3 ~~done at or within a specified time in accordance with this chapter, the board or the hearing officer, with~~
4 ~~good cause shown, may:]~~

5 ~~[(1) order the specific period extended if the extension is requested before the~~
6 ~~expiration of the period previously specified; or]~~

7 ~~[(2) permit the act to be done after the expiration of the specified period, provided~~
8 ~~good cause is shown for the failure to act.]~~

9 ~~[(b) Notwithstanding subsection (a) of this section, the board or hearing officer may not extend~~
10 ~~the time for filing a document when a statute or rule specifies the time period by which a document~~
11 ~~must be received by the department.]~~

12

13 ~~§215.34. Notice of Hearing in Contested Cases.~~

14 ~~[(a) In a contested case, each party is entitled to a hearing, in accordance with Government~~
15 ~~Code, §2001.051.]~~

16 ~~[(b) A notice of hearing in a contested case shall comply with the requirements of Government~~
17 ~~Code, §2001.052(a) and shall be served upon the parties in person or by certified mail, return receipt~~
18 ~~requested to the last known address of the parties or their authorized representatives, in accordance~~
19 ~~with Occupations Code, §2301.705.]~~

20 ~~[(c) The last known address of a license applicant, license holder, or other person is the last~~
21 ~~mailing address provided to the department when the license applicant applies for its license, when a~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 13 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~license holder renews its license, or when the license holder notifies the department of a change in the~~
2 ~~license holder's mailing address.]~~

3 ~~[(d) A notice of hearing in a contested case may be amended in accordance with Government~~
4 ~~Code, §2001.052(b).]~~

5

6 ~~[\$215.35. Reply.]~~

7 ~~[(a) Within 20 days after service of a notice of hearing in a contested case or within 10 days after~~
8 ~~service of an amended notice of hearing, a party may file a reply.]~~

9 ~~[(b) A reply shall include the docket number of the contested case and shall be filed by the party~~
10 ~~or party's authorized representative. The original reply shall be filed with the department and a copy~~
11 ~~shall be served on any other parties to the contested case.]~~

12 ~~[(c) A party may file an amended reply prior to the contested case hearing. In any contested case~~
13 ~~when the notice of hearing has been amended at the contested case hearing, a party, at the discretion of~~
14 ~~the hearing officer, shall have an opportunity to file an amended reply.]~~

15 ~~[(d) Upon the motion of a party, with good cause shown, the department may extend the time~~
16 ~~to file a reply.]~~

17 ~~[(e) All allegations shall be deemed admitted by any party not appearing at the contested case~~
18 ~~hearing on the merits.]~~

19

20 ~~[\$215.36. Hearings To Be Public.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 14 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[Hearings in contested cases shall be open to the public.]~~

2

3 ~~[\$215.37. Recording and Transcriptions of Hearing Cost.]~~

4 ~~[(a) Except as provided by Subchapter G of this chapter (relating to Warranty Performance~~
5 ~~Obligations), hearings in contested cases will be transcribed by a court reporter or recorded by the~~
6 ~~hearing officer.]~~

7 ~~[(b) In a contested case in which the hearing is transcribed by a court reporter, the costs of~~
8 ~~transcribing the hearing and for the preparation of an original transcript of the record for the~~
9 ~~department shall be assessed to the requesting party in the contested case, unless otherwise directed.]~~

10 ~~[(c) Copies of recordings or transcriptions of a contested case hearing will be provided to any~~
11 ~~party upon written request and upon payment for the cost of the recordings or transcriptions.]~~

12 ~~[(d) In the event a final decision in a contested case is appealed and the department is required~~
13 ~~to transmit to the court the original or a certified copy of the record, or any part thereof, the appealing~~
14 ~~party shall, unless waived by the department, pay the costs of preparation of the record that is required~~
15 ~~to be transmitted to the court.]~~

16

17 ~~[\$215.38. Consolidation of Proceedings.]~~

18 ~~[No contested case proceedings including two or more complaints or petitions shall be jointly~~
19 ~~heard without the consent of all parties, unless the hearing officer finds that justice and efficiency are~~
20 ~~better served by the consolidation.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 15 of 230

Chapter 215 – Motor Vehicle Distribution

1

2 ~~[\$215.39. Waiver of Hearing.]~~

3 ~~[After the issuance of a notice of hearing in a contested case, and in accordance with the~~
4 ~~deadlines prescribed by §215.35 of this title (relating to Reply), a party may waive a hearing and consent~~
5 ~~to the entry of an agreed order. Agreed orders proposed by the parties remain subject to the approval of~~
6 ~~the final order authority.]~~

7

8 ~~[\$215.40. Continuance of Hearing.]~~

9 ~~[After a contested case has been called on the date assigned for hearing pursuant to notice, a~~
10 ~~continuance of the contested case hearing will be granted only upon a showing of good cause. A motion~~
11 ~~for continuance of a contested case hearing shall be filed and served on all parties at least five days~~
12 ~~before the hearing date, except when good cause is shown to consider a motion for continuance filed~~
13 ~~after the deadline.]~~

14

15 ~~[\$215.41. Presiding Officials.]~~

16 ~~[(a) Hearing officer. The term "hearing officer" as used in this section includes the board when~~
17 ~~presiding over a hearing.]~~

18 ~~[(b) Powers and duties. A hearing officer shall conduct fair hearings and shall take all necessary~~
19 ~~action to administer the disposition of contested cases. A hearing officer's powers include, but are not~~
20 ~~limited to the authority to:]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 16 of 230

Chapter 215 – Motor Vehicle Distribution

- 1 ~~[(1) administer oaths;]~~
- 2 ~~[(2) examine witnesses;]~~
- 3 ~~[(3) rule upon the admissibility of evidence;]~~
- 4 ~~[(4) rule upon motions; and]~~
- 5 ~~[(5) regulate the course of the contested case hearing and the conduct of the parties and~~
- 6 ~~their authorized representatives.]~~
- 7 ~~[(c) Recusal.]~~
- 8 ~~[(1) If the hearing officer determines that he or she should be recused from a particular~~
- 9 ~~contested case hearing, the hearing officer shall withdraw from the contested case by giving notice on~~
- 10 ~~the record and by notifying the chief hearing officer.]~~
- 11 ~~[(2) A party may file a motion to recuse the hearing officer. The motion to recuse shall be~~
- 12 ~~supported by an affidavit setting forth the alleged grounds for disqualification. A copy of the motion shall~~
- 13 ~~be served on the hearing officer who shall have 10 days to reply, and a copy shall be served on all parties~~
- 14 ~~or their authorized representatives.]~~
- 15 ~~[(3) If the hearing officer contests the alleged grounds for disqualification, the chief~~
- 16 ~~hearing officer shall promptly determine the validity of the grounds alleged and render a decision.]~~
- 17 ~~[(d) Substitution of hearing officer. If the hearing officer is disqualified, dies, becomes disabled,~~
- 18 ~~or withdraws during any contested case proceeding, the chief hearing officer may appoint another~~
- 19 ~~hearing officer to preside over the remainder of the contested case proceeding.]~~
- 20

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 17 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~§215.42. Conduct of Hearing.~~

2 ~~Each party in a contested case shall have the right to notice, cross-examination, presentation of~~
3 ~~evidence, objection, motion, argument, and all other rights essential to a fair contested case hearing.~~
4 ~~Except as provided by this chapter or in the notice of hearing, the Texas Rules of Civil Procedure, as~~
5 ~~applied to non-jury civil cases, shall be applicable to hearings in contested cases, as far as reasonably~~
6 ~~practical.]~~

7

8 ~~§215.43. Conduct of Decorum.~~

9 ~~(a) All parties, witnesses, counsel, and authorized representatives shall conduct themselves in~~
10 ~~all contested case hearings with proper dignity, courtesy, and respect for the board, the hearing officer,~~
11 ~~and other parties.]~~

12 ~~(b) Upon violation of this section, any party, witness, attorney, or authorized representative may~~
13 ~~be:]~~

14 ~~[(1) excluded from the contested case hearing for such period and upon such conditions~~
15 ~~as are just; or]~~

16 ~~[(2) subject to other just, reasonable, and lawful disciplinary action as the board, hearing~~
17 ~~officer, or department may order.]~~

18

19 ~~§215.44. Evidence.~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 18 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(a) General. The Texas Rules of Evidence shall apply in all contested cases, in accordance with~~
2 ~~Government Code, Chapter 2001.]~~

3 ~~[(b) Documents in department files. The hearing officer may take judicial notice of documents or~~
4 ~~information in the department's files, in accordance with Government Code, Chapter 2001.]~~

5 ~~[(c) Exhibits. Exhibits shall be limited to facts with respect to the relevant and material issues~~
6 ~~involved in a particular contested case. Documentary exhibits shall not unduly encumber the record.~~
7 ~~Where practical, the sheets of each exhibit shall not be more than 8-1/2 inches by 11 inches in size, and~~
8 ~~shall be numbered and labeled. The original and one copy of each exhibit offered shall be tendered to~~
9 ~~the reporter or hearing officer for identification, and a copy shall be furnished to each party. In the event~~
10 ~~an offered exhibit has been excluded after objection and the party offering the exhibit withdraws the~~
11 ~~offer, the hearing officer shall return the exhibit. If the excluded exhibit is not withdrawn, it shall be given~~
12 ~~an exhibit number for identification and be included in the record only for the purpose of preserving the~~
13 ~~exception together with the hearing officer's ruling.]~~

14

15 ~~[\$215.45. Stipulation of Evidence.]~~

16 ~~[Evidence may be stipulated by agreement of all parties.]~~

17

18 ~~[\$215.46. Objections and Exceptions.]~~

19 ~~[Formal exceptions to the ruling of the hearing officer is not necessary.]~~

20

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 19 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~§215.47. Motions.~~

2 ~~[(a) Each motion in a contested case, unless made during a contested case hearing, shall be in~~
3 ~~writing and shall state:]~~

4 ~~[(1) the relief sought; and]~~

5 ~~[(2) the specific reasons and grounds.]~~

6 ~~[(b) If the motion is based upon matters which do not appear of record, the motion must be~~
7 ~~supported by affidavit.]~~

8 ~~[(c) Any motion not made during a contested case hearing shall be filed with the hearing officer~~
9 ~~and a copy shall be served on all parties or their authorized representatives.]~~

10

11 ~~§215.48. Briefs.~~

12 ~~[The hearing officer may direct that the parties file briefs in any pending contested case.]~~

13

14 ~~§215.49. Service of Pleadings, Petitions, Briefs, and other Documents.]~~

15 ~~[(a) A copy of each document filed in any contested case shall be served upon all parties or their~~
16 ~~authorized representatives and upon the department by sending a copy properly addressed to each~~
17 ~~party by:]~~

18 ~~[(1) first class mail;]~~

19 ~~[(2) hand delivery;]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 20 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(3) facsimile; or]~~

2 ~~[(4) email.]~~

3 ~~[(b) A copy of each document may be served upon the department by electronic document~~
4 ~~transfer at a destination designated by the department.]~~

5 ~~[(c) A certificate of service shall accompany each document.]~~

6

7 ~~[\$215.55. Final Decision.]~~

8 ~~[(a) Except as provided by §215.58 of this title (relating to Delegation of Final Order Authority),~~
9 ~~the board has final order authority in a contested case initiated by a complaint filed before January 1,~~
10 ~~2014, under Occupations Code, §2301.204 or §§2301.601 – 2301.613.]~~

11 ~~[(b) The hearings examiner has final order authority in a contested case filed on or after January~~
12 ~~1, 2014, under Occupations Code, §2301.204 or §§2301.601 – 2301.613.]~~

13 ~~[(c) Except as provided by subsections (a) and (b) of this section and §215.58 of this title, the~~
14 ~~board has final order authority in a contested case filed under Occupations Code, Chapter 2301 or under~~
15 ~~Transportation Code, Chapter 503.]~~

16 ~~[(d) An order shall be deemed final and binding on all parties and all administrative remedies are~~
17 ~~deemed to be exhausted as of the effective date, unless a motion for rehearing is filed with the~~
18 ~~appropriate authority as provided by law.]~~

19

20 ~~[\$215.56. Submission of Amicus Briefs.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 21 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(a) Any interested person may submit an amicus brief for consideration in a contested case and~~
2 ~~should file the brief no later than the deadline for filing exceptions.]~~

3 ~~[(b) A party may submit one written response to the amicus brief no later than the deadline for~~
4 ~~filing replies to exceptions.]~~

5 ~~[(c) Any amicus brief, or response to that brief, not filed within the deadlines prescribed by~~
6 ~~subsection (b) of this section will not be considered, unless good cause is shown why the deadline~~
7 ~~should be waived or extended.]~~

8

9 ~~§215.58. Delegation of Final Order Authority.]~~

10 ~~[(a) In accordance with Occupations Code, §2301.154(c), except as provided by subsection (b) of~~
11 ~~this section, the director is authorized to issue, where there has not been a decision on the merits, a~~
12 ~~final order in a contested case, including, but not limited to a contested case resolved:]~~

13 ~~[(1) by settlement;]~~

14 ~~[(2) by agreed order;]~~

15 ~~[(3) by withdrawal of the complaint;]~~

16 ~~[(4) by withdrawal of a protest;]~~

17 ~~[(5) by dismissal for want of prosecution;]~~

18 ~~[(6) by dismissal for want of jurisdiction;]~~

19 ~~[(7) by summary judgment or summary disposition;]~~

20 ~~[(8) by default judgment; or]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 22 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(9) when a party waives opportunity for a contested case hearing.]~~

2 ~~[(b) In accordance with Occupations Code, §2301.154(c), the director is authorized to issue a~~
3 ~~final order in a contested case filed prior to January 1, 2014, under Occupations Code, §2301.204 or~~
4 ~~§§2301.601 – 2301.613.]~~

5 ~~[(c) In a contested case in which the board has delegated final order authority under subsections~~
6 ~~(a) or (b) of this section, a motion for rehearing shall be filed with and decided by the final order~~
7 ~~authority delegate.]~~

8

9 ~~[\$215.59. Request for Oral Presentation.]~~

10 ~~[(a) At least 30 days prior to the date of a proposed board meeting during which the board may~~
11 ~~review a contested case, department staff shall notify the parties regarding the opportunity to attend~~
12 ~~and provide an oral presentation concerning a proposal for decision before the board. The department~~
13 ~~will deliver notice in accordance with §215.30 of this title (relating to Filing of Documents), using the last~~
14 ~~known address that the parties provided to the department.]~~

15 ~~[(b) If a party seeks to provide an oral presentation at the board meeting, it must submit a~~
16 ~~written request for an oral presentation to the department's contact listed in the notice provided under~~
17 ~~subsection (a) of this section and copy all other parties in accordance with §215.49 of this title (relating~~
18 ~~to Service of Pleadings, Petitions, Briefs, and Other Documents) at least 14 days prior to the date of the~~
19 ~~board meeting at which the party's contested case will be considered.]~~

20 ~~[(c) If there is more than one other party who was not adversely affected by the proposal for~~
21 ~~decision, such parties may agree on the order of their presentations in lieu of the order prescribed under~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 23 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~§215.62(c) of this title (relating to Order of Presentations to the Board for Review of a Contested Case). If~~
2 ~~the parties who were not adversely affected by the proposal for decision do not timely provide the~~
3 ~~department and the other parties with notice under subsection (b) of this section regarding their agreed~~
4 ~~order of presentation, their order of presentation will be determined under §215.62(c) of this title.]~~

5 ~~[(d) If a party timely submits a written request for an oral presentation, that party may make an~~
6 ~~oral presentation at the board meeting. If a party fails to timely submit a written request for an oral~~
7 ~~presentation, that party shall not make an oral presentation at the board meeting.]~~

8

9 ~~[§215.60. Written Materials and Evidence.]~~

10 ~~[(a) If a party seeks to provide written materials to the board, it must provide the written~~
11 ~~materials to the department and all other parties in accordance with §215.30 of this title (relating to~~
12 ~~Filing of Documents) and §215.49 of this title (relating to Service of Pleadings, Petitions, Briefs, and~~
13 ~~Other Documents) at least 21 days prior to the date of the board meeting. If a party fails to timely~~
14 ~~provide written materials to the department or any other party, the department shall not provide the~~
15 ~~written materials to the board and the party shall not provide the written materials to the board at the~~
16 ~~board meeting.]~~

17 ~~[(b) For the purposes of this section, written materials are defined as language or images that~~
18 ~~are contained in the SOAH administrative record that are recorded in paper form. The language or~~
19 ~~images in the written materials must be taken without changes from the administrative record. Proposed~~
20 ~~final orders are not prohibited from being included in a party's written materials. Written materials shall~~
21 ~~be limited to evidence contained in the SOAH administrative record and consistent with the scope of the~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 24 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~board's authority to take action under Government Code §2001.058(e) and Occupations Code, Chapter~~
2 ~~2301. However, any party may argue that the board should remand the case to SOAH.]~~

3 ~~[(c) All information in the written materials shall include a cite to the SOAH administrative record~~
4 ~~on all points to specifically identify where the information is located.]~~

5 ~~[(d) Written materials shall be single-sided, double-spaced, 8.5 inches by 11 inches, and at least~~
6 ~~12-point type. Written materials are limited to 15 pages per party. If a party provides the department~~
7 ~~with written materials that contain more pages than the maximum allowed, the department shall not~~
8 ~~provide the written materials to the board and the party shall not provide the written materials to the~~
9 ~~board at the board meeting.]~~

10

11 ~~[\$215.61. Limiting Oral Presentation and Discussion to Evidence in the Administrative Record.]~~

12 ~~[(a) The parties to a contested case under review by the board shall limit their oral presentation~~
13 ~~and discussion to evidence in the SOAH administrative record, and their oral presentation and discussion~~
14 ~~shall be consistent with the scope of the board's authority to take action under Government Code~~
15 ~~§2001.058(e) and Occupations Code, Chapter 2301. However, any party may argue that the board should~~
16 ~~remand the case to SOAH.]~~

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

19

20 ~~[\$215.62. Oral Presentations to the Board for Review of a Contested Case.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 25 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(a) The department's staff will present the procedural history and summary of the contested~~
2 ~~case.]~~

3 ~~[(b) The party that is adversely affected has the opportunity to make its oral presentation first.~~
4 ~~However, the board chairman is authorized to determine the order of each party's oral presentation in~~
5 ~~the event of the following:]~~

6 ~~[(1) it is not clear which party is adversely affected;]~~

7 ~~[(2) it appears as though more than one party is adversely affected; or]~~

8 ~~[(3) different parties are adversely affected by different portions of the contested case~~
9 ~~under review.]~~

10 ~~[(c) The other party or parties who were not adversely affected then have an opportunity to~~
11 ~~make their oral presentation. If there is more than one other party, each party will have an opportunity~~
12 ~~to respond in alphabetical order based on the name of the party in the pleadings in the SOAH~~
13 ~~administrative record, except as stated otherwise in §215.59(c) of this title (relating to Request for Oral~~
14 ~~Presentation).]~~

15 ~~[(d) A party must timely comply with the requirements of §215.59 of this title before the party is~~
16 ~~authorized to provide an oral presentation to the board.]~~

17 ~~[(e) Each party is limited to the time allotted under §206.22(f) of this title (relating to Public~~
18 ~~Access to Board Meetings).]~~

19

20 ~~[§215.63. Board Conduct and Discussion When Reviewing a Contested Case.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 26 of 230

Chapter 215 – Motor Vehicle Distribution

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

5 ~~[(b) Board members may question any party or the department on any matter that is relevant to~~
6 ~~the proposal for decision; however, any questions shall be consistent with the scope of the board's~~
7 ~~authority to take action under Government Code §2001.058(e) and Occupations Code, Chapter 2301;~~
8 ~~any questions must be limited to evidence contained in the SOAH administrative record; and the~~
9 ~~communication must comply with §215.22 of this title (relating to Prohibited Communications). In~~
10 ~~addition, board members are authorized to ask questions regarding a request to remand the case to~~
11 ~~SOAH, including a remand to SOAH for further consideration of the evidence.]~~

12 ~~[(c) Board members may use their industry expertise to help them understand the case and~~
13 ~~make effective decisions, consistent with the scope of the board's authority to take action under~~
14 ~~Government Code §2001.058(e) and Occupations Code, Chapter 2301. However, board members are not~~
15 ~~advocates for a particular industry. Board members are public servants who take an oath to preserve,~~
16 ~~protect, and defend the Constitution and laws of the United States and Texas.]~~

17

18

SUBCHAPTER C. LICENSES, GENERALLY

19

43 TAC §§215.82–215.89

20 **STATUTORY AUTHORITY.** The department adopts amendments to Chapter 215 under Occupations Code,
21 §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles
22 and the authority to take any action that is necessary or convenient to exercise that authority;
23 Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 27 of 230

Chapter 215 – Motor Vehicle Distribution

1 holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute
2 and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in
3 connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations
4 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which
5 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter
6 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives
7 the board authority to deny an application for a license, revoke or suspend a license, place on probation,
8 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,
9 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds
10 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government
11 Code, §411.122(d), which authorizes department access to criminal history record information
12 maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal
13 history record information from DPS and the FBI for license applicants, license holders, and
14 representatives whose act or omission would be cause for denying, revoking, or suspending a general
15 distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,
16 Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as
17 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which
18 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;
19 Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases;
20 Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for
21 an original or renewal general distinguishing number who adopts to be an independent motor vehicle
22 dealer complete web-based education and training developed or approved by the department;
23 Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 28 of 230

Chapter 215 – Motor Vehicle Distribution

1 of a surety bond and the procedure by which a claimant may recover against the surety bond;
2 Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of
3 dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the
4 board to adopt rules necessary to implement and manage the department's temporary tag databases;
5 and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and
6 appropriate to implement the powers and the duties of the department, as well as the statutes referenced
7 throughout this preamble.

8 The department also adopts amendments under the authority of Transportation Code, §501.0041
9 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the
10 statutory authority referenced throughout this preamble.

11 Transportation Code, §501.0041 authorizes the department to adopt rules to administer
12 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt
13 rules to administer Transportation Code, Chapter 502.

14 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature
15 and requirements of all available formal and informal procedures. Government Code, §2001.039 requires
16 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.
17 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,
18 suspension, annulment, or withdrawal of a license.

19 **CROSS REFERENCE TO STATUTE.** These adopted revisions implement Government Code, Chapters 411
20 and 2001; Occupations Code, Chapters Occupations Code, Chapters 53, 55, 2301, and 2302; and
21 Transportation Code, Chapters 501–503, 1001–1003, and 1005.

22

23 Text.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 29 of 230

Chapter 215 – Motor Vehicle Distribution

1 §215.82. Replacement Standard License Plates and Stickers. [~~Duplicate Licenses and Plates.~~]

2 [(a) A request for a duplicate license must:]

3 [(1) be made on a department-approved form;]

4 [(2) state the reason for the duplicate license; and]

5 [(3) be accompanied by the required duplicate license fee.]

6 [(b) A license holder may receive one duplicate license at no charge if the license holder:]

7 [(1) did not receive the original license; and]

8 [(2) makes the request within 45 days of the date the license was mailed to the

9 license holder.]

10 [(c) A license holder may receive a replacement [~~metal~~] dealer's, converter's, drive-a-way

11 in-transit, or manufacturer's standard license plate or assigned sticker, as[if] applicable, at no

12 charge if the license holder:

13 (1) did not receive the applicable standard [~~metal dealer's~~] license plate or sticker; [and]

14 (2) makes the request within 45 days of the date the applicable standard [~~metal dealer's~~]

15 license plate or sticker was mailed to the license holder; and [~~on a department's approved form.~~]

16 (3) submits a request electronically in the licensing system designated by the department.

17

18 §215.83. License Applications, Amendments, or Renewals.

19 (a) An application for a new license, license amendment, or license renewal filed with the

20 department must be:

21 (1) filed electronically in the department-designated licensing system on a form

22 approved by the department;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 30 of 230

Chapter 215 – Motor Vehicle Distribution

1 (2) completed by the applicant, license holder, or authorized representative who is
2 an employee, a licensed attorney, or a certified public accountant;

3 (3) accompanied by the required fee, paid by~~[check,]~~ credit card~~[,]~~ or by electronic
4 funds transfer, drawn from an account held by the applicant or license holder, or drawn from a
5 trust account of the applicant's attorney or certified public accountant; and

6 (4) accompanied by proof of a surety bond, if required.

7 (b) An authorized representative of the applicant or license holder who files an application
8 with the department on behalf of an applicant or license holder may be required to provide
9 written proof of authority to act on behalf of the applicant or license holder.

10 (c) 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 a person listed in
12 subsection (a)(2) of this section, unless that person files a written request under Government
13 Code, Chapter 552.

14 (d) Prior to the expiration of a license, a license holder or authorized representative must
15 electronically file with the department a sufficient license renewal application. Failure to receive
16 notice of license expiration from the department does not relieve the license holder from the
17 responsibility to timely file a sufficient license renewal application. A license renewal application is
18 timely filed if[:

19 (1) the department receives a sufficient license renewal application on or before
20 the date the license expires~~]; or~~

21 (2) ~~a legible postmark on the envelope transmitting the sufficient license renewal~~
22 ~~application clearly indicates that the license holder or authorized representative mailed the license~~
23 ~~renewal application on or before the date the license expires].~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 31 of 230

Chapter 215 – Motor Vehicle Distribution

1 (e) An application for a new license, ~~or~~ license amendment, or license renewal filed with
2 the department must be sufficient. An application is sufficient if the application:

3 (1) includes all information and documentation required by the department; and

4 (2) is filed in accordance with subsection (a) of this section.

5 ~~(f) [A license renewal application received by the department is sufficient if:~~

6 ~~(1) the renewal application form is completed by the license holder or authorized~~
7 ~~representative of the license holder who is an employee, an unpaid agent, a licensed attorney, or~~
8 ~~certified public accountant;~~

9 ~~(2) accompanied by the required license renewal application fee payment; and~~

10 ~~(3) accompanied by proof of a surety bond, if required.]~~

11 ~~(g)~~ If an applicant, license holder, or authorized representative does not provide the
12 information or documentation required by the department, the department will issue a written
13 notice of deficiency. The information or documentation requested in the written notice of
14 deficiency must be received by the department within 20 calendar days of the date of the notice of
15 deficiency, unless the department issues a written extension of time. If an applicant, license
16 holder, or authorized representative fails to respond or fully comply with all deficiencies listed in
17 the written notice of deficiency within the time prescribed by this subsection, the application will
18 be deemed withdrawn and will be administratively closed.

19 ~~(g)~~ ~~(h)~~ The department will evaluate a sufficient application for a new license, license
20 amendment, or license renewal in accordance with applicable rules and statutes to determine
21 whether to approve or deny the application. If the department determines that there are grounds
22 for denial of the application, the department may pursue denial of the application in accordance
23 with Subchapter G~~(j)~~ of this chapter (relating to Administrative Sanctions).

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 32 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~(h)~~~~(i)~~ The department will process an application for a new license, license amendment,
2 or license renewal filed by a military service member, military spouse, or military veteran in
3 accordance with Occupations Code, Chapter 55. A license holder who fails to timely file a sufficient
4 application for a license renewal because that license holder was on active duty is exempt from
5 any increased fee or penalty imposed by the department for failing to renew the license in a timely
6 manner.

7 ~~(i)~~~~(j)~~ A military service member or military spouse may engage in a business or occupation
8 for which a department issued license is required if the military service member or military spouse
9 meets the requirements of Occupations Code, §55.0041 and this section. This section establishes
10 requirements and procedures authorized or required by Occupations Code, Chapter 55, and does
11 not modify or alter rights that may be provided under federal law.

12 (1) ~~[To meet the requirements of Occupations Code, §55.0041, a]~~ A military
13 service member or military spouse must submit to the department:

14 (A) notice of the military service member or military spouse's intent
15 to engage in a business or occupation in Texas for which a department issued license is required;

16 (B) proof of the military service member or military spouse's being
17 stationed ~~[residency]~~ in Texas and a copy of the military service member or military spouse's
18 military identification card, ~~[as required by Occupations Code, §55.0041(b)(2)]~~; and

19 (C) documentation demonstrating that the military service member or
20 military spouse is licensed and in good standing in another jurisdiction for the relevant business or
21 occupation.

22 (2) Upon receipt of the notice and documentation required by paragraphs
23 (1)(B) and (1)(C) of this subsection, the department shall:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 33 of 230

Chapter 215 – Motor Vehicle Distribution

1 (A) confirm with the other licensing jurisdiction that the military
2 service member or military spouse is currently licensed and in good standing for the relevant
3 business or occupation; and

4 (B) conduct a comparison of the other jurisdiction's license
5 requirements, statutes, and rules with the department's licensing requirements to determine if the
6 requirements are substantially equivalent.

7 (3) If the department confirms that a military service member or military
8 spouse is currently licensed in good standing in another jurisdiction with substantially equivalent
9 licensing requirements, the department ~~shall~~may issue a license to the military service member or
10 military spouse for the relevant business or occupation within 30 days. The license is subject to
11 requirements in Chapter 215 of this title and Occupations Code, Chapter 2301 in the same manner
12 as a license issued under the standard application process, unless modified or exempted under
13 Occupations Code, Chapter 55.

14 ~~(j)~~(k) A license holder who timely files a sufficient license renewal application in
15 accordance with subsection (d) of this section may continue to operate under the expired license
16 until the license renewal application is determined in accordance with Government Code
17 §2001.054.

18 ~~(k)~~(l) A license holder who fails to timely file a sufficient license renewal application in
19 accordance with subsection (d) of this section is not authorized to continue licensed activities after
20 the date the license expires. A license holder may dispute a decision that a license renewal
21 application was not timely or sufficient by submitting evidence to the department demonstrating
22 that the license renewal application was timely and sufficient. Such evidence must be received by

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 34 of 230

Chapter 215 – Motor Vehicle Distribution

1 the department within ~~15~~¹⁰ calendar days of the date the department issues notice that a timely
2 or sufficient license renewal application was not received by the department.

3 ~~(l)~~^(m) The department shall accept a late license renewal application up to 90 days after
4 the date the license expires. In accordance with subsection ~~(k)~~^(j) of this section, the license
5 holder is not authorized to continue licensed activities after the date the license expires until the
6 department approves the late license renewal application. If the department grants a license
7 renewal under this section, the licensing period begins on the date the department issues the
8 renewed license. The license holder may resume licensed activities upon receipt of the
9 department's written verification or upon receipt of the renewed license.

10 ~~(m)~~⁽ⁿ⁾ If the department has not received a late license renewal application within 90
11 days after the date the license expires, the department will close the license. A person must apply
12 for and receive a new license before that person is authorized to resume activities requiring a
13 license.

14 ~~(n)~~^(o) A ~~metal~~ dealer's standard license plate issued in accordance with Transportation
15 Code, Chapter 503, Subchapter C expires on the date the associated license expires, is canceled, or
16 when a license renewal application is determined, whichever is later.

17

18 §215.84. Brokering, New Motor Vehicles.

19 (a) Unless excluded from the definition of "Broker" in Occupations Code, §2301.002, a
20 person may not act, offer to act, or claim to be a broker.

21 (b) For purposes of this ~~sub~~chapter, the phrase "arranges or offers to arrange a
22 transaction," as used in the definition of broker in Occupations Code, §2301.002, includes the
23 practice of arranging or offering to arrange a transaction involving the sale of a new motor vehicle

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 35 of 230

Chapter 215 – Motor Vehicle Distribution

1 for a fee, commission, or other valuable consideration. Advertising is not acting as a broker[ing],
2 provided the person's business primarily is[includes the business of] broadcasting, printing,
3 publishing, or advertising for others in their own names.

4 (c)[~~(b)~~] A buyer referral service, program, plan, club, or any other entity that accepts a fee
5 for arranging a transaction involving the sale of a new motor vehicle is a broker. The payment of a
6 fee to such entity is aiding and abetting brokering. However, a referral service, program, plan, club,
7 or other entity that forwards a referral to a franchised dealership may lawfully operate in a
8 manner that includes all of the following conditions:[-]

9 (1) There is no exclusive market area offered to a dealer by the program. All dealers
10 are allowed to participate in the program on equal terms.

11 (2) Participation by a dealer in the program is not restricted by conditions, such as
12 limiting the number of line-makes or discrimination by size of dealership or location. The total
13 number of participants in the program may be restricted if the program is offered to all dealers at
14 the same time, with no regard to the line-make.

15 (3) All participants pay the same fee for participation in the program. The program
16 fee shall be a weekly, monthly, or annual fee, regardless of the size, location, or line-makes sold by
17 the franchised dealer.

18 (4) A person is not to be charged a fee on a per referral fee basis or any other basis
19 that could be considered a transaction-related fee.

20 (5) The program does not set or suggest to the dealer any price of a motor vehicle
21 or a trade-in.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 36 of 230

Chapter 215 – Motor Vehicle Distribution

1 (6) The program does not advertise or promote its plan in a manner that implies
2 that the buyer, as a customer of that program, receives a special discounted price that cannot be
3 obtained unless the customer is referred through that program.

4 (7) A program must comply with Subchapter F of this chapter (related to
5 Advertising).

6 (d) ~~[(c) Subsections (a)–(c) of] This [this] section does not apply to a [any] person [or~~
7 ~~entity] who is not a [exempt from the] broker as defined[definition] in Occupations Code,~~
8 §2301.002.

9 ~~[(d) All programs must comply with Subchapter H of this chapter (relating to Advertising).]~~

10
11 §215.85. Brokering, Used Motor Vehicles.

12 (a) Transportation Code, §503.021 prohibits a person from engaging in business as a dealer,
13 directly or indirectly, including by consignment without a GDN. Except as provided by this section,
14 "directly or indirectly" includes the practice of arranging or offering to arrange a transaction
15 involving the sale of a used motor vehicle for a fee, commission, or other valuable consideration. A
16 person who is a bona fide employee of a dealer holding a GDN and acts for the dealer is not a
17 broker for the purposes of this section.

18 (b) A buyer referral service, program, plan, club, or any other entity that accepts a fee for
19 arranging a transaction involving the sale of a used motor vehicle is required to meet the
20 requirements for and obtain a GDN, unless the referral service, program, plan, or club is operated
21 in the following manner: [:-]

22 (1) There is no exclusive market area offered to a dealer by the program. All dealers
23 are allowed to participate in the program on equal terms.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 37 of 230

Chapter 215 – Motor Vehicle Distribution

1 (2) Participation by a dealer in the program is not restricted by conditions, such as
2 limiting the number of line-makes or discrimination by size of dealer~~[ship]~~ or location. The total
3 number of participants in the program may be restricted if the program is offered to all dealers at
4 the same time, with no regard to the line-make.

5 (3) All participants pay the same fee for participation in the program. The program
6 fee shall be a weekly, monthly, or annual fee, regardless of the size, location, or line-makes sold by
7 the dealer.

8 (4) A person is not to be charged a fee on a per referral fee basis or any other basis
9 that could be considered a transaction-related fee.

10 (5) The program does not set or suggest to the dealer any price of a motor vehicle
11 or a trade-in.

12 (6) The program does not advertise or promote its plan in a manner that implies
13 that the buyer, as a customer of that program, receives a special discounted price that cannot be
14 obtained unless the customer is referred through that program.

15 (7) A program complies with Subchapter F of this chapter (relating to Advertising).

16 (c) ~~[All programs must comply with Subchapter H of this chapter (relating to Advertising).~~

17 ~~(d)~~ A ~~[licensed]~~ dealer holding a GDN pursuant to Transportation Code, §503.029(a)(6)(B),
18 may pay a referral fee in cash or value to an individual who has purchased a vehicle from the
19 ~~[licensed]~~ dealer within the four-year period preceding the referral. The fee may be paid
20 contingent upon either the new referred individual:

21 (1) purchasing a vehicle from the ~~[independent motor vehicle]~~ dealer; or

22 (2) the referral of a new potential purchaser.

23

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 38 of 230

Chapter 215 – Motor Vehicle Distribution

1 §215.87. License and Standard [~~Meta-Dealer's~~] License Plate Terms and Fees.

2 (a) Except as provided by other law, the term of a license or standard [~~metal-dealer's~~]
3 license plate issued by the department to a dealer, converter, drive-a-way operator, distributor, or
4 manufacturer under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 is two
5 years.

6 (b) A standard [~~metal-dealer's~~] license plate issued by the department expires on the date
7 the associated license expires or is canceled, closed, or revoked.

8 (c) The fee for a license or standard [~~metal-dealer's~~] license plate is computed by
9 multiplying the applicable annual fee by the number of years of the license term. The entire
10 [~~amount of the~~] fee including any tax owed under Tax Code §152.027 is due at the time of
11 application for the license or license renewal.

12 (d) A dealer may apply for a personalized prestige plate issued under Transportation Code
13 §503.0615 by completing a department form, providing a copy of a department-issued license, and
14 submitting payment to a county tax assessor-collector. A personalized prestige plate may be
15 renewed in an electronic system designated by the department.

16

17 §215.89. Fitness.

18 (a) In determining a person's fitness for a license issued or to be issued by the department
19 under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, the board[~~or~~
20 ~~department~~] will consider:

21 (1) the requirements of Occupations Code, Chapter 53;

22 (2) the provisions of Occupations Code, §2301.651 and Transportation Code

23 §503.034;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 39 of 230

Chapter 215 – Motor Vehicle Distribution

- 1 (3) any specific statutory licensing criteria or requirements;
- 2 (4) mitigating factors; and
- 3 (5) other evidence of a person's fitness, as allowed by law, including the standards
- 4 identified in subsection (b) of this section.

5 (b) The board~~[or department]~~ may determine that a person is unfit to perform the duties

6 and discharge the responsibilities of a license holder and may, following notice and an opportunity

7 for hearing, deny a person's license application or revoke or suspend a license if the person:

8 (1) fails to meet or maintain the qualifications and requirements of licensure;

9 (2) is convicted, or considered convicted under Occupations Code §53.021(d), by

10 any local, state, federal, or foreign authority of an offense that directly relates to the duties or

11 responsibilities of the licensed occupation as described in §211.3 of this title (relating to Criminal

12 Offense Guidelines) or is convicted, or considered convicted under Occupations Code §53.021(d),

13 of an offense that is independently disqualifying under Occupations Code §53.021;

14 (3) omits information or provides false, misleading, or incomplete information on

15 an initial application, renewal application, or application attachment, for a license or other

16 authorization issued by the department or by any local, state, or federal regulatory authority;

17 (4) is found to have violated an administrative or regulatory requirement based on

18 action taken on a license, permit, or other authorization, including disciplinary action, revocation,

19 suspension, denial, corrective action, cease and desist order, or assessment of a civil penalty,

20 administrative fine, fee, or similar assessment, by the board, department, or any local, state, or

21 federal regulatory authority;

22 (5) is insolvent or fails to obtain or maintain financial resources sufficient to meet

23 the financial obligations of the license holder;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 40 of 230

Chapter 215 – Motor Vehicle Distribution

1 (6) is a corporation or other legal entity that fails to maintain its charter, certificate,
2 registration, or other authority to conduct business in Texas;

3 (7) is assessed a civil penalty, administrative fine, fee, or similar assessment, by the
4 board, department, or a local, state, or federal regulatory authority, for violation of a requirement
5 governing or impacting the distribution or sale of a vehicle or a motor vehicle, or the acquisition,
6 sale, repair, rebuild, reconstruction, or other dealing of a salvage motor vehicle or nonrepairable
7 motor vehicle, and fails to comply with the terms of a final order or fails to pay the penalty
8 pursuant to the terms of a final order;

9 (8) was or is a person described in §211.2 of this title (relating to Application of
10 Subchapter) whose actions or omissions could be considered unfit, who is ineligible for licensure,
11 or whose current or previous license, permit, or other authorization issued by any local, state, or
12 federal regulatory authority has been subject to disciplinary action including suspension,
13 revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty,
14 administrative fine, fee, or similar assessment;

15 (9) has an ownership, organizational, managerial, or other business arrangement,
16 that would allow a person the power to direct or cause the direction of the management, policies,
17 and activities, of an applicant or license holder, whether directly or indirectly, when the person
18 could be considered unfit, ineligible for licensure, or whose current or previous license, permit, or
19 other authorization issued by any local, state, or federal regulatory authority, has been subject to
20 disciplinary action, including suspension, revocation, denial, corrective action, cease and desist
21 order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the
22 board, department, or any local, state, or federal regulatory authority;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 41 of 230

Chapter 215 – Motor Vehicle Distribution

1 (10) is found in a ~~a~~ final order issued after~~[through]~~ a contested case hearing to
2 be unfit or acting in a manner detrimental to the system of distribution or sale of motor vehicles in
3 Texas, the economy of the state, the public interest, or the welfare of Texas residents.
4

4

5 SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS**6 43 TAC §§215.101–215.112, 215.115–215.217, and 215.120–215.121**

7 **STATUTORY AUTHORITY.** The department adopts amendments and repeals to Chapter 215 under
8 Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease
9 of motor vehicles and the authority to take any action that is necessary or convenient to exercise that
10 authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of
11 license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by
12 statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses
13 in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations
14 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which
15 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter
16 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives
17 the board authority to deny an application for a license, revoke or suspend a license, place on probation,
18 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,
19 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds
20 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government
21 Code, §411.122(d), which authorizes department access to criminal history record information
22 maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal
23 history record information from DPS and the FBI for license applicants, license holders, and

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 42 of 230

Chapter 215 – Motor Vehicle Distribution

1 representatives whose act or omission would be cause for denying, revoking, or suspending a general
2 distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,
3 Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as
4 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which
5 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;
6 Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases;
7 Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of
8 dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the
9 board to adopt rules necessary to implement and manage the department's temporary tag databases;
10 and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and
11 appropriate to implement the powers and the duties of the department, as well as the statutes referenced
12 throughout this preamble.

13 The department also adopts amendments under the authority of Transportation Code, §501.0041
14 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the
15 statutory authority referenced throughout this preamble.

16 Transportation Code, §501.0041 authorizes the department to adopt rules to administer
17 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt
18 rules to administer Transportation Code, Chapter 502.

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, §2001.039 requires
21 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.
22 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,
23 suspension, annulment, or withdrawal of a license.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 43 of 230

Chapter 215 – Motor Vehicle Distribution

1 **CROSS REFERENCE TO STATUTE.** These adopted revisions implement Government Code, Chapters 411
2 and 2001; Occupations Code, Chapters Occupations Code, Chapters 53, 55, 2301, and 2302; and
3 Transportation Code, Chapters 501–503, 1001–1003, and 1005.

4
5 Text.

6 §215.101. Purpose and Scope.

7 This subchapter implements Occupations Code, Chapter 2301 and Transportation Code,
8 Chapters 503 and 1001[1000] – 1005, and applies to franchised dealers, manufacturers,
9 distributors, and converters.

10
11 §215.102. Application Requirements.

12 (a) No person may engage in business, serve in the capacity of, or act as a manufacturer,
13 distributor, converter, or franchised dealer in Texas unless that person holds a license.

14 (b) A license application must be on a form prescribed by the department and properly
15 completed by the applicant. A license application must include all required information, supporting
16 documents, and fees and must be submitted to the department electronically in the licensing
17 system designated by the department.

18 (c) A license holder renewing or amending its license must verify current license
19 information, provide related information and documents for any new license requirements or
20 changes to the license, and pay required fees including any outstanding civil penalties owed the
21 department under a final order.

22 (d) An applicant for a new license must register for an account in the department-designated
23 licensing system by selecting the licensing system icon on the dealer page of the department website. An

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 44 of 230

Chapter 215 – Motor Vehicle Distribution

1 applicant must designate the account administrator and provide the name and email address for that
2 person, and provide the business telephone number, name, business type, and social security number or
3 employer identification number, as applicable. The applicant's licensing account administrator must be
4 an owner, officer, manager, or bona fide employee.

5 (e) Once registered, an applicant may apply for a new license and must provide the
6 following:

7 (1) Required information:

8 (A) type of license requested;

9 (B) business information, including the name, physical and mailing
10 addresses, telephone number, Secretary of State file number (as applicable), and website address
11 as applicable;

12 (C) contact name, email address, and telephone number of the person
13 submitting the 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) the name, social security number, date of birth, identity document
18 information, and ownership percentage for each owner, partner, member, beneficiary, or principal
19 if the applicant is not a publicly traded company;

20 (F) the name, social security number, date of birth, and identity document
21 information for each officer, director, manager, trustee, or other representative authorized to act
22 on behalf of the applicant if the applicant is owned in full or in part by a legal entity;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 45 of 230

Chapter 215 – Motor Vehicle Distribution

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) if applying for a manufacturer's, distributor's, or converter's license:

10 (i) financial resources, business integrity and experience, facilities
11 and personnel for serving franchised dealers;

12 (ii) a description of the business model or business process and
13 product and services used or offered sufficient to allow the department to determine if the license
14 type applied for is appropriate under Texas law; and

15 (iii) number of standard license plates requested.

16 (L) if applying for a manufacturer's or distributor's license:

17 (i) if the applicant or any entity controlled by the applicant owns an
18 interest in a Texas motor vehicle dealer or dealership, controls a Texas dealer or dealership, or acts
19 in the capacity of a Texas dealer;

20 (ii) a statement regarding the manufacturer's compliance with
21 Occupations Code Chapter 2301, Subchapter I and §§2301.451-2301.476; and

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 46 of 230

Chapter 215 – Motor Vehicle Distribution

1 (iii) if a franchise agreement for each line-make being applied for
2 exists which states the obligations of a Texas franchised dealer to the applicant and the obligations
3 of the applicant to the Texas franchised dealer.

4 (M) if applying for a manufacturer’s license, the line-make information
5 including the world manufacturer identifier assigned by the National Highway Traffic Safety
6 Administration, line-make name, and vehicle type;

7 (N) if applying for a distributor’s license:

8 (i) the manufacturer for whom the distributor will act;

9 (ii) whether the manufacturer is licensed in Texas;

10 (iii) the person in this state who is responsible for compliance with
11 the warranty covering the motor vehicles to be sold; and

12 (iv) the terms of the contract under which the distributor will act for
13 the manufacturer.

14 (O) if applying for a converter’s 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’s license:

19 (i) reason for the new application;

20 (ii) dealership location on a system-generated map;

21 (iii) whether the dealership is under construction and expected
22 completion date;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 47 of 230

Chapter 215 – Motor Vehicle Distribution

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 GDN Application Requirements for a Dealer or a Wholesale Motor

5 Vehicle Auction).

6 (Q) signed Certificate of Responsibility, which is a form provided by the

7 department; and

8 (R) any other information required by the department to evaluate the

9 application under current law and board rules.

10 (2) A legible and accurate electronic image of each applicable required document:

11 (A) the certificate of filing, certificate of incorporation, or certificate of

12 registration on file with the Secretary of State, as applicable;

13 (B) each assumed name certificate on file with the Secretary of State or

14 county clerk;

15 (C) one of the following unexpired identity documents for each natural

16 person listed in the application:

17 (i) driver license;

18 (ii) Texas Identification Card issued by the Texas Department of

19 Public Safety under Transportation Code, Chapter 521, Subchapter E;

20 (iii) license to carry a handgun issued by the Texas Department of

21 Public Safety under Government Code, Chapter 411, Subchapter H;

22 (iv) passport; or

23 (v) United States armed forces identification.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 48 of 230

Chapter 215 – Motor Vehicle Distribution

1 (D) if applying for a manufacturer’s, distributor’s, or converter’s 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’s or distributor’s license:

6 (i) a list of each franchised dealer in Texas including the dealer’s
7 name and physical address, or if motor vehicle sales or offers to sell to Texas residents will solely
8 be over the internet, a list of each out-of-state person authorized by the manufacturer or
9 distributor to sell a new motor vehicle online to a Texas resident including the person’s name,
10 physical address, and license number issued by the state in which the person 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’s 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’s license, either:

19 (i) pages of the executed distributor agreement containing at
20 minimum the following:

21 (I) the legal business name of each party;

22 (II) authorized signature of each party;

23 (III) distribution territory;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 49 of 230

Chapter 215 – Motor Vehicle Distribution

1 (IV) distribution agreement effective date and end date,
2 or written confirmation from the distributor and manufacturer that the distribution agreement is
3 expected to be in effect for the entire license period;

4 (V) physical location, mailing address, and email address of
5 each party;

6 (VI) distributor responsibilities under the agreement related
7 to warranty matters under Occupations Code, Chapter 2301, and franchised dealer matters under
8 Occupations Code, Chapter 2301, Subchapter H, Dealers, Subchapter I, Warranties:
9 Reimbursement of Dealer, Subchapter J, Manufacturers, Distributors, and Representative, and
10 Subchapter K, Mediation Between Dealer and Manufacturer or Distributor;

11 (VII) party or person responsible for providing warranty
12 services; and

13 (VIII) motor vehicle line-makes and vehicle types included in
14 the agreement; or

15 (ii) a completed department-provided questionnaire containing the
16 information required in clause (i) signed by the applicant and the manufacturer as true and
17 complete. An authorized representative for the manufacturer may sign the questionnaire,
18 however, the applicant or applicant's representative may not sign the questionnaire on behalf of a
19 manufacturer.

20 (H) if applying for a franchised dealer's license, pages of the executed
21 franchise agreement containing at minimum the following:

22 (i) the legal business name of each party;

23 (ii) authorized signature of each party;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 50 of 230

Chapter 215 – Motor Vehicle Distribution

- 1 (iii) authorized dealership location;
- 2 (iv) list of motor vehicle line-makes and vehicle types to be sold or
- 3 serviced; and
- 4 (v) a department Evidence of Relocation form signed by the
- 5 manufacturer or distributor, if applicable; and
- 6 (l) any other documents required by the department to evaluate the
- 7 application under current law and board rules.
- 8 (3) Required fees:
- 9 (A) the license fee as prescribed by law; and
- 10 (B) the fee as prescribed by law for each plate requested by the applicant.
- 11 (f) An applicant operating under a name other than the applicant shall use the name under
- 12 which the applicant is authorized to do business, as filed with the Secretary of State or county
- 13 clerk, and the assumed name of such legal entity shall be recorded by the applicant on the
- 14 application using the letters "DBA." The applicant may not use a name or assumed name that may
- 15 be confused with or is similar to that of a governmental entity or that is otherwise deceptive or
- 16 misleading to the public.
- 17 (g) A manufacturer or distributor may add a new line-make to an existing license during the
- 18 license period by submitting a license amendment application and providing brochures, photos, or
- 19 other documents describing the new line-make sufficient to allow the department to identify the
- 20 line-make and vehicle product type. A license amendment to add a line-make to a manufacturer's
- 21 or distributor's license must be approved by the department before the new line-make may be
- 22 added to a franchised dealer's license.
- 23

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 51 of 230

Chapter 215 – Motor Vehicle Distribution

1 §215.103. Service-only Facility.

2 (a) A service-only facility is a location occupied and operated by a franchised dealer that is
3 a completely separate, noncontiguous site, from the franchised dealer's new motor vehicle sales
4 and service or sales only location, where the franchised dealer performs ~~[will only perform]~~
5 warranty~~[and nonwarranty]~~ repair services and not new motor vehicle sales. ~~[Except as allowed in~~
6 ~~subsection (d) of this section, warranty repair services may only be performed at either a licensed~~
7 ~~dealership or a licensed service-only facility.]~~

8 (b) A franchised dealer must obtain a license to operate a service-only facility. A dealer may
9 not obtain a service-only facility license to service a ~~[particular]~~ line-make of new motor vehicles,
10 unless that dealer is franchised and licensed to sell that line-make.

11 (c) A service-only facility is a dealership subject to protest under Occupations Code,
12 Chapter 2301.

13 (d) Upon the manufacturer's or distributor's prior written approval, which cannot be
14 unreasonably withheld, ~~[only]~~ a franchised dealer of the manufacturer or distributor may contract
15 with another person as a subcontractor to perform warranty repair services that the dealer is
16 authorized to perform under a franchise agreement with a manufacturer or distributor. Payment
17 shall be made by the franchised dealer to the subcontractor and not by the manufacturer or
18 distributor to the subcontractor.

19 (e) A person with whom a franchised dealer contracts to perform warranty repair services
20 is not eligible to obtain a service-only facility license and may not advertise the performance of
21 warranty repair services in any manner to the public.

22

23 §215.104. Changes to Franchised Dealer's License.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 52 of 230

Chapter 215 – Motor Vehicle Distribution

1 (a) In accordance with Occupations Code, §2301.356, a franchised dealer must file an
2 application to amend the franchised dealer's license [~~in order~~] to request [~~inclusion of~~] an
3 additional line-make at the dealer's currently licensed showroom. The amendment application
4 must be filed electronically in the licensing system designated by the department.

5 (1) In accordance with §215.110 of this title (relating to Evidence of Franchise), the
6 franchised dealer must attach to the amendment application a legible and accurate electronic
7 image[~~copy~~] of:

8 (A) the executed franchise agreement;

9 (B) the required excerpt from the executed franchise agreement; or

10 (C) an evidence of franchise form completed by the manufacturer,
11 distributor, or representative.

12 (2) The amendment application for an additional franchise at the showroom is
13 considered an original application and is subject to protest, in accordance with Occupations Code,
14 Chapter 2301, this chapter, and Chapter 224 of this title (relating to (relating to Adjudicative
15 Practice and Procedure)).

16 (b) A franchised dealer may propose to sell or assign to another any interest in the licensed
17 entity, whether a corporation or otherwise, provided the physical location of the licensed entity
18 remains the same.

19 (1) The franchised dealer shall notify the department in writing within 10 days of
20 the sale or assignment of interest by filing an application to amend the franchised dealer's license
21 electronically in the licensing system designated by the department.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 53 of 230

Chapter 215 – Motor Vehicle Distribution

1 (2) If the sale or assignment of any portion of the business results in a change of
2 business entity, then the purchasing entity or assignee must apply for and obtain a new license in
3 the name of the new business entity.

4 (3) A publicly-held corporation must file an amendment application [~~needs only to~~
5 ~~inform the department of a change in ownership~~] if one person or entity acquires 10% or greater
6 interest in the licensed entity.

7 (c) A franchised dealer must [~~is required to~~] file an amendment application electronically in
8 the licensing system designated by the department within 10 days of a license change, including:

9 (1) deletion of a line-make from the dealer's license;

10 (2) a change of assumed name on file with the Office of the Secretary of State or
11 county clerk;

12 (3) a change of mailing address;

13 (4) a change of telephone number; or

14 [~~(5) a change of facsimile number; or~~]

15 (5) [~~(6)~~] a change of email address.

16 (d) A franchised dealer must [~~is required to~~] file a business entity amendment application
17 electronically in the licensing system designated by the department within 10 days of an entity
18 change, including:

19 (1) a change in management, dealer principal, or change of other person who
20 oversees [~~is in charge of~~] a franchised dealer's business activities, including a managing partner,
21 officer, director of a corporation, or similar person; or

22 (2) a change of legal entity name on file with the Office of the Secretary of State.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 54 of 230

Chapter 215 – Motor Vehicle Distribution

1 (e) If a franchised [~~licensed new motor vehicle~~] dealer changes or converts from one type
2 of business entity to another type of business entity without changing ownership of the dealership,
3 the submission of a franchise agreement in the name of the new entity is not required in
4 conjunction with an amendment application. The franchise agreement on file with the department
5 prior to the change or conversion of the dealer's business entity type applies to the successor
6 entity until the parties agree to replace the franchise agreement. This subsection does not apply to
7 a sole proprietorship or general partnership.

8 (f) If a franchised dealer adopts a plan of conversion under a state or federal law that
9 allows one legal entity to be converted into another legal entity, only an amendment application
10 [~~to amend the license~~] is necessary to be filed with the department. The franchise agreement on
11 file with the department continues to apply to the converted entity. If a license holder becomes
12 another legal entity by any means other than by conversion, a new application is required, subject
13 to subsection (e) of this section.

14 (g) In addition to obtaining permission from the manufacturer or distributor, a franchised
15 dealer must [~~shall~~] obtain department approval prior to opening a supplemental location or
16 relocating an existing location by filing an amendment application electronically in the licensing
17 system designated by the department. A franchised dealer must notify the department
18 electronically in the licensing system designated by the department when closing an existing
19 location.

20

21 §215.105. Notification of License Application; Protest Requirements.

22 (a) The provisions of this section are not applicable to an application filed with the department
23 for a franchised dealer's license as a result of the purchase or transfer of an existing entity holding a

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 55 of 230

Chapter 215 – Motor Vehicle Distribution

1 current franchised dealer's license that does not involve a physical relocation of the purchased or
2 transferred line-makes.

3 (b) Upon receipt of an application for a franchised [~~new motor vehicle~~] dealer's license, including
4 an application filed with the department by reason of the relocation of an existing dealership, the
5 department shall give notice of the filing of the application to each franchised dealer that may have
6 standing to protest the application. The department shall send notice electronically and by certified mail,
7 return receipt requested, to the email address and mailing address in the franchised dealer's license
8 record.

9 (c) If it appears to the department that there are no franchised dealers with standing to protest,
10 then no notice shall be given.

11 (d) A person holding a franchised dealer's license for the sale of the same line-make of a new
12 motor vehicle as proposed for sale in the subject application and that has standing to protest the
13 application may file with the department a notice of protest opposing the granting of a license by timely
14 filing a protest electronically in the licensing system designated by the department and paying the
15 required fee.

16 (e) A franchised dealer that wishes to protest the application shall give notice in accordance with
17 Occupations Code, Chapter 2301.

18 (1) The notice of protest must [~~shall~~] be in writing and shall be signed by an authorized
19 officer or other official authorized to sign on behalf of the protesting dealer filing the notice.

20 (2) The notice of protest must [~~shall~~] state the statutory basis upon which the protest is
21 made and assert how the protesting dealer meets the standing requirements under §215.119 of this title
22 (relating to Standing to Protest) to protest the application.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 56 of 230

Chapter 215 – Motor Vehicle Distribution

1 (3) The notice of protest must ~~shall~~ state that the protest is not made for purposes of
2 delay or for any other purpose except for justifiable cause.

3 (4) If a protest is filed against an application for the establishment of a dealership or for
4 addition of a line-make at an existing dealership, the notice of protest must ~~shall~~ state under which
5 provision of Occupations Code, Chapter 2301 the protest is made.

6

7 §215.106. Time for Filing Protest.

8 (a) A notice of protest must be:

9 (1) received by the department not later than 5:00 p.m. Central ~~Standard~~ Time (CST or
10 CDT, as applicable) on the 15th day after the department issued the notice as evidenced by the date in
11 the notice ~~[date 15 days from the date of mailing of the department's notification to the license holder~~
12 ~~of the filing of the application];~~

13 (2) filed in ~~[with the department by United States mail, facsimile, hand delivery, or~~
14 ~~through]~~the department's designated electronic filing system ~~[when available; however, a notice of~~
15 ~~protest may not be filed by email]; and~~

16 (3) ~~[accompanied by the required filing fee]~~ submitted with the filing fee paid. ~~[If the~~
17 ~~filing fee does not accompany the notice of protest, the fee must be received by the department not~~
18 ~~later than 5:00 p.m. CST on the date 20 days from the date of mailing of the department's notification to~~
19 ~~the license holder of the filing of the application.]~~

20 (b) The department shall ~~will~~ reject a notice of protest if:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 57 of 230

Chapter 215 – Motor Vehicle Distribution

1 (1) the complete notice of protest is not filed within 15 days from the date of mailing of
2 the department's notification to the license holder of the filing of the application; or

3 (2) the required filing fee is not paid when the protest is submitted in the department's
4 designated electronic filing system or is later dishonored. [~~remitted within 20 days from the date of~~
5 ~~mailing of the department's notification to the license holder of the filing of the application.~~]

6

7 §215.108. Addition or Relocation of Line-make.

8 An application to amend an existing franchised[~~new motor vehicle~~] dealer's license for the
9 addition of another line-make at the existing dealership or for the relocation of a line-make to the
10 existing dealership shall be deemed an "application to establish a dealership" insofar as the line-make to
11 be added is concerned, and shall be subject to the provisions of §215.105 of this title (relating to
12 Notification of License Application; Protest Requirements) and §215.106 of this title (relating to Time for
13 Filing Protest).

14

15 §215.109. Replacement Dealership.

16 An application for a franchised [~~new motor vehicle~~] dealer's license for a dealership intended as
17 a replacement for a previously existing dealership shall be deemed an application for a "replacement
18 dealership" required to be established in accordance with Occupations Code, §2301.453 and shall not be
19 subject to protest under the provisions of §215.105 of this title (relating to Notification of License
20 Application; Protest Requirements), provided that:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 58 of 230

Chapter 215 – Motor Vehicle Distribution

1 (1) the application states that the applicant is intended as a replacement dealership and
2 identifies the prior dealership to be replaced;

3 (2) the manufacturer or distributor of the line-make gives notice to the department and
4 to other dealers franchised for the same line-make that meet the provisions of Occupations Code,
5 §2301.652(b) and (c);

6 (3) the notice under paragraph (2) of this subsection is given within 60 days following
7 the closing of the prior dealership;

8 (4) the application is filed electronically in the licensing system designated by the
9 department ~~[with the department]~~ not later than one year following the closing of the prior dealership;
10 and

11 (5) the location of the applicant's proposed dealership is not more than two miles from
12 the location of the prior dealership.

13

14 §215.110. Evidence of Franchise.

15 (a) Upon application for a franchised~~[new motor vehicle]~~ dealer's license or an amendment of an
16 existing franchised~~[new motor vehicle]~~ dealer's license to add a line-make, the applicant must submit a
17 legible and accurate electronic image~~[photocopy]~~ of the ~~[pages of the]~~ franchise agreement~~[(s)]~~ pages
18 that reflect:

19 (1) the parties ~~[to the agreement(s)],~~

20 (2) the authorized signatures of the parties~~[to the agreement(s)], [and]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 59 of 230

Chapter 215 – Motor Vehicle Distribution

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 shall 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 licensing system designated by the department, prior to the effective

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 60 of 230

Chapter 215 – Motor Vehicle Distribution

1 date of the franchise termination or discontinuance stated in the notice from the manufacturer or
2 distributor, which must not be less than 60 days after the franchised dealer receives the notice of
3 termination or discontinuance.

4

5 [~~§215.112. Motor Home Show Limitations and Restrictions~~]

6 [(a) Applicability. This rule implements Occupations Code, §2301.358 and is expressly limited to
7 motor home shows that require department approval in accordance with subsection (b) of this section.]

8 [(b) Show approval required. Without written approval by the department, a person may not
9 promote or conduct a show involving a new motor home that will be sold or offered for sale.]

10 [(c) Show requirements. The department may approve a motor home show in accordance with
11 this section if the show:]

12 [(1) does not exceed six consecutive days;]

13 [(2) is not conducted within 90 days of a previous show in the same county; and]

14 [(3) complies with Occupations Code, Chapter 2301; Transportation Code, Chapters 503
15 and 1000 – 1005; and board rules.]

16 [(d) Additional motor home shows. The department may authorize additional motor home
17 shows in any county upon a showing of good cause by the promoter for waiver from the show
18 requirements of subsection (c) of this section.]

19 [(e) Show approval requirements. For purposes of this section, the promoter or coordinator of a
20 motor home show must submit an application to the department. The application must:]

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 61 of 230

Chapter 215 – Motor Vehicle Distribution

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,~~
14 ~~in 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~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 62 of 230

Chapter 215 – Motor Vehicle Distribution

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;]

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 63 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(3) may not sell, offer to sell, negotiate a price, or enter into a contract or letter of~~
2 ~~intention to contract for the sale of the motor home; and]~~

3 ~~[(4) is not required to remove or cover the suggested retail price the manufacturer may~~
4 ~~have affixed to the motor home.]~~

5

6 §215.113. Manufacturer Ownership of Franchised Dealer; Good Cause Extension; Dealer Development.

7 (a) In the absence of a showing of good cause, an application for a franchised ~~[new motor~~
8 ~~vehicle]~~ dealer's license of which a manufacturer or distributor owns any interest in or has control of the
9 dealership entity must be submitted to the department electronically in the licensing system
10 designated by the department no later than 30 days before:

11 (1) the opening of the dealership;

12 (2) close of the buy-sell agreement; or

13 (3) the expiration of the current license.

14 (b) If a manufacturer or distributor applies for a franchised~~[new motor vehicle]~~ dealer's license
15 of which the manufacturer or distributor holds an ownership interest in or has control of the dealership
16 entity in accordance with Occupations Code, §2301.476(d) - (f), the license application must contain a
17 sworn statement from the manufacturer or distributor that the dealership was purchased from a
18 franchised dealer and is for sale at a reasonable price and under reasonable terms and conditions, and
19 that the manufacturer or distributor intends to sell the dealership to a person not controlled or owned
20 by the manufacturer or distributor within 12 months of acquiring the dealership, except as provided by
21 subsection (h) of this section.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 64 of 230

Chapter 215 – Motor Vehicle Distribution

1 (c) A request for an extension of the initial 12-month [~~12-month~~] period for manufacturer or
2 distributor ownership or control of a franchised [~~new motor vehicle~~] dealership, in accordance with
3 Occupations Code, §2301.476(e), must be submitted to the department in accordance with subsection
4 (a) of this section along with a sufficient application to renew the new motor vehicle dealer's license. The
5 request must contain a detailed explanation, including appropriate documentary support, to show the
6 manufacturer's or distributor's good cause for failure to sell the dealership within the initial 12-month
7 [~~12-month~~] period. The director shall [~~will~~] evaluate the request and determine whether the license
8 should be renewed for a period not to exceed 12 months or deny the renewal application. If the renewal
9 application is denied, the manufacturer or distributor may request a hearing on the denial in accordance
10 with Occupations Code, Chapter 2301, Subchapter O [~~§§2301.701–2301.713~~] and the matter will be
11 referred to SOAH for a hearing under Chapter 224, Subchapter C of this title (relating to Motor Vehicle,
12 Salvage Vehicle, and Trailer Industry License Enforcement).

13 (d) Requests for extensions after the first extension is granted, as provided by Occupations Code,
14 §2301.476(e), must be submitted at least 120 days before the expiration of the current license
15 electronically in the licensing system designated by the department. Upon receipt of a subsequent
16 request, the department shall [~~board will~~] initiate a hearing in accordance with Occupations Code,
17 Chapter 2301, Subchapter O [~~§§2301.701–2301.713~~], at which the manufacturer or distributor will be
18 required to show good cause for the failure to sell the dealership. The manufacturer or distributor has
19 the burden of proof and the burden of going forward on the sole issue of good cause for the failure to
20 sell the dealership.

21 (e) The department shall [~~will~~] give notice of the hearing described in subsection (d) of this
22 section to all other franchised dealers holding franchises for the sale and service or service only of the
23 same line-make of new motor vehicles that are located in the same county in which the dealership

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 65 of 230

Chapter 215 – Motor Vehicle Distribution

1 owned or controlled by the manufacturer or distributor is located or in an area within 15 miles of the
2 dealership owned or controlled by the manufacturer or distributor. Such dealers, if any, will be allowed
3 to intervene and protest the granting of the subsequent extension. Notices of intervention by dealers
4 afforded a right to protest under Occupations Code, §2301.476(e) must be filed with the department
5 electronically in the licensing system designated by the department within 15 days of the date of
6 mailing of the notice of hearing, and a copy must be provided to the manufacturer or distributor. The
7 department shall ~~will~~ reject a 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.

21 (h) An application for a new motor vehicle dealer's license of which a manufacturer or
22 distributor owns any interest in the dealership entity in accordance with Occupations Code,

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 66 of 230

Chapter 215 – Motor Vehicle Distribution

1 §2301.476(g) must contain sufficient documentation to show that the applicant meets the requirements
2 of Occupations Code, §2301.476(g).

3

4 §215.115. Manufacturer, Distributor, and Converter Vehicle Sales Records.

5 (a) A manufacturer or distributor must maintain, for a minimum period of 48 months, a record of
6 each vehicle sold to any person in this state. The manufacturer or distributor shall make the record
7 available during business hours for inspection and copying by ~~a representative of~~ the department or be
8 available to submit electronically to the department upon request.

9 (b) A converter must maintain, for a minimum period of 48 months, a record of each vehicle
10 converted ~~for~~~~to~~ ~~a~~~~ny~~ person in this state, including ~~to~~ a Texas franchised dealer. The converter shall
11 make the record available during business hours for inspection and copying by ~~a representative of~~ the
12 department or be available to submit electronically to the department upon request.

13 (c) A manufacturer, distributor, or converter is required to maintain at its licensed location a
14 record reflecting each purchase, sale, or conversion for a minimum period of 24 months. Records for
15 prior time periods may be kept off-site.

16 (d) Within 15 days of receipt of a request sent by mail or electronic document transfer from ~~a~~
17 ~~representative of~~ the department, a manufacturer, distributor, or converter must submit a copy of
18 specified records to the address listed in the request.

19 (e) Records required to be maintained and made available to the department must include the
20 following:

21 (1) the date of sale or conversion of the motor vehicle;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 67 of 230

Chapter 215 – Motor Vehicle Distribution

- 1 (2) the VIN;
- 2 (3) the name and address of the person purchasing the motor vehicle~~[dealer or~~
3 ~~converter]~~;
- 4 (4) a copy of or a record with the information contained in the manufacturer's certificate
5 of origin or title;
- 6 (5) information regarding the prior status of the motor vehicle such as the Reacquired
7 Vehicle Disclosure Statement;
- 8 (6) the repair history of any motor vehicle subject to a warranty complaint;
- 9 (7) technical service bulletin or equivalent advisory; and
- 10 (8) any audit of a franchised dealership.

11 (f) Any record required by the department may be maintained in an electronic format, if the
12 electronic record can be printed at the licensed location upon request [~~for the record~~]by[~~a~~
13 ~~representative of~~ the department or be available to submit electronically to the department upon
14 request.

15

16 §215.116. Franchised Dealership Lease or Sublease Listing.

17 A franchised dealer that lists its dealership for lease or sublease to mitigate damages in
18 accordance with Occupations Code, §2301.4651(e) is required to list~~[for lease or sublease]~~:

- 19 (1) the entire real property if the termination or discontinuance effectively terminates all
20 line-makes and all franchises for the entire dealership; or

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 68 of 230

Chapter 215 – Motor Vehicle Distribution

1 (2) only that portion of the real property associated with the terminated line-make or
2 franchise, if the termination or discontinuance does not affect all line-makes and all franchises of the
3 dealership.

4

5 §215.117. Market Value Property Appraisal.

6 (a) An appraiser performing a[A] market value property appraisal[~~assessment made~~] in
7 accordance with Occupations Code, §2301.482(c) must be a Texas[~~requires three general~~]certified real
8 estate appraiser[~~s certified by the State of Texas~~].

9 (b) Necessary real estate and necessary construction are each determined by the applicable
10 property use agreement.

11 (c) The[~~To determine~~]market value of property in accordance with Occupations Code,
12 §2301.482(c), is the[~~an~~] average of the market value property appraisals[~~will be calculated from the~~
13 ~~independent market value property assessment determinations~~] of the three [~~general~~]certified real
14 estate appraisers.

15

16 §215.120 Standard License Plates.

17 (a) A manufacturer, distributor, or converter may apply for a manufacturer or converter standard
18 license plate for use on a new unregistered vehicle of the same vehicle type assembled or modified in
19 accordance with Transportation Code §503.064 or §503.0618, as applicable:

20 (1) when applying for a new or renewal license, or

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 69 of 230

Chapter 215 – Motor Vehicle Distribution

1 (2) by submitting a standard license plate request application electronically in the system
2 designated by the department.

3 (b) A manufacturer may use a manufacturer's standard license plate to test a prototype motor
4 vehicle on a public street or highway including a commercial motor vehicle prototype designed to carry a
5 load. A manufacturer's standard license plate may not be used on a commercial motor vehicle prototype
6 or new commercial motor vehicle to carry a load for which the manufacturer or other person receives
7 compensation.

8 (c) A manufacturer, distributor, or converter shall attach a standard license plate to the rear of a
9 vehicle in accordance with §217.27 of this title (relating to Vehicle Registration Insignia).

10 (d) A manufacturer, distributor, or converter shall maintain a record of each standard license
11 plate issued to the manufacturer, distributor, or converter by the department. The license plate record
12 must contain:

13 (1) the license plate number;

14 (2) the year and make of the vehicle to which the license plate is affixed;

15 (3) the VIN of the vehicle, if one has been assigned; and

16 (4) the name of the person in control of the license plate.

17 (e) If a manufacturer, distributor, or converter cannot account for a standard license plate or a
18 standard license plate is damaged, the manufacturer, distributor, or converter shall:

19 (1) document the license plate as "void" in the license plate record in subsection (d); and

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 70 of 230

Chapter 215 – Motor Vehicle Distribution

1 (2) within three days of discovering that the license plate is missing or damaged, report
2 the license plate as lost, stolen, or damaged electronically in the system designated by the department;

3 and

4 (3) if found after reported missing, cease use of the license plate.

5 (f) A standard license plate is no longer valid for use after the manufacturer, distributor, or
6 converter reports to the department that the license plate is lost, stolen, or damaged. A manufacturer,
7 distributor, or converter must render a void license plate unusable by permanently marking the front of
8 the plate with the word “VOID” or a large “X” and once marked, shall destroy or recycle the license plate,
9 or return the license plate to the department within 10 days.

10 (g) The license holder’s license plate record must be available for inspection and copying by the
11 department during normal business hours or be available to submit electronically to the department
12 upon request.

13 (h) In evaluating requests for additional standard license plates, the department shall consider
14 the business justification provided by a license holder including the following:

15 (1) the number of vehicles assembled or modified;

16 (2) the highest number of motor vehicles in inventory in the prior 12 months;

17 (3) the size and type of business;

18 (4) how the license holder typically uses standard licenses plates;

19 (5) the license holder’s record of tracking and reporting missing or damaged license
20 plates to the department; and

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 71 of 230

Chapter 215 – Motor Vehicle Distribution

1 (6) any other factor the Department in its discretion deems necessary to support the
2 number of license plates requested.

3 (i) a license holder shall return a department-issued license plate to the department within 10
4 days of the license holder closing the associated license or the associated license being revoked,
5 canceled, or closed by the department.

6
7 §215.121. Sanctions.

8 (a) The board or department may take the following actions against a license applicant, a license
9 holder, or a person engaged in business for which a license is required:

10 (1) deny an application;

11 (2) revoke a license;

12 (3) suspend a license;

13 (4) assess a civil penalty;

14 (5) issue a cease and desist order; or

15 (6) take other authorized action.

16 (b) The board or department may take action described in subsection (a) of this section if a
17 license applicant, a license holder, or a person engaged in business for which a license is required:

18 (1) fails to maintain records required under this chapter;

19 (2) refuses or fails within 15 days to comply with a request for records made by a
20 representative of the department;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 72 of 230

Chapter 215 – Motor Vehicle Distribution

1 (3) sells or offers to sell a motor vehicle to a retail purchaser other than through a
2 licensed or authorized dealer;

3 (4) fails to submit a license amendment application in the electronic licensing system
4 designated by the department to notify the department of a change of the license holder's physical
5 address, mailing address, telephone number, or email address within 10 days of the change;

6 (5) fails to timely submit a license amendment application in the electronic licensing
7 system designated by the department to notify the department of a license holder's business or
8 assumed name change, deletion of a line-make, or management or ownership change;

9 (6) fails to notify the department or pay or reimburse a franchised dealer as required by
10 law;

11 (7) misuses or fails to display a license plate as required by law;

12 (8) is a manufacturer or distributor and fails to provide a manufacturer's certificate for a
13 new vehicle;

14 (9) fails to remain regularly and actively engaged in the business of manufacturing,
15 assembling, or modifying a new motor vehicle of the type and line make for which a license has been
16 issued by the department;

17 (10) violates a provision of Occupations Code, Chapter 2301; Transportation Code
18 Chapters 501–503 or 1001–1005; a board order or rule; or a regulation of the department relating to the
19 manufacture, assembly, sale, lease, distribution, financing, or insuring of vehicles, including advertising
20 rules under Subchapter F of this chapter (relating to Advertising);

1 (11) is convicted of an offense that directly relates to the duties or responsibilities of the
2 occupation in accordance with §211.3 of this title (relating to Criminal Offense Guidelines);

3 (12) is determined by the board or department, in accordance with §215.89 of this title
4 (relating to Fitness), to be unfit to hold a license;

5 (13) omits information or makes a material misrepresentation in any application or other
6 documentation filed with the department including providing a false or forged identity document or a
7 false or forged photograph, electronic image, or other document;

8 (14) fails to remit payment as ordered for a civil penalty assessed by the board or
9 department;

10 (15) violates any state or federal law or regulation relating to the manufacture,
11 distribution, modification, or sale of a motor vehicle;

12 (16) fails to issue a refund as ordered by the board or department; or

13 (17) fails to participate in statutorily required mediation without good cause.

14

15 **SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS**

16 **43 TAC §§215.131–215.146, 215.152, 215.154–215.155, and 215.160–161**

17 **STATUTORY AUTHORITY.** The department adopts amendments and repeals to Chapter 215 under
18 Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease
19 of motor vehicles and the authority to take any action that is necessary or convenient to exercise that
20 authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of
21 license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 74 of 230

Chapter 215 – Motor Vehicle Distribution

1 statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses
2 in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations
3 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which
4 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter
5 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives
6 the board authority to deny an application for a license, revoke or suspend a license, place on probation,
7 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,
8 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds
9 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government
10 Code, §411.122(d), which authorizes department access to criminal history record information
11 maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal
12 history record information from DPS and the FBI for license applicants, license holders, and
13 representatives whose act or omission would be cause for denying, revoking, or suspending a general
14 distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,
15 Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as
16 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which
17 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;
18 Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases;
19 Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for
20 an original or renewal general distinguishing number who adopts to be an independent motor vehicle
21 dealer complete web-based education and training developed or approved by the department;
22 Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice
23 of a surety bond and the procedure by which a claimant may recover against the surety bond;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 75 of 230

Chapter 215 – Motor Vehicle Distribution

1 Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of
2 dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the
3 board to adopt rules necessary to implement and manage the department's temporary tag databases;
4 and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and
5 appropriate to implement the powers and the duties of the department, as well as the statutes referenced
6 throughout this preamble.

7 The department also adopts amendments under the authority of Transportation Code, §501.0041
8 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the
9 statutory authority referenced throughout this preamble.

10 Transportation Code, §501.0041 authorizes the department to adopt rules to administer
11 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt
12 rules to administer Transportation Code, Chapter 502.

13 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature
14 and requirements of all available formal and informal procedures. Government Code, §2001.039 requires
15 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.
16 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,
17 suspension, annulment, or withdrawal of a license.

18 **CROSS REFERENCE TO STATUTE.** These adopted revisions implement Government Code, Chapters 411
19 and 2001; Occupations Code, Chapters Occupations Code, Chapters 53, 55, 2301, and 2302; and
20 Transportation Code, Chapters 501–503, 1001–1003, and 1005.

21

22 Text.

23 §215.131. Purpose and Scope.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 76 of 230

Chapter 215 – Motor Vehicle Distribution

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.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 77 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~(7)~~~~(8)~~ Temporary tag--A buyer's temporary tag, converter's temporary tag, or
2 dealer's temporary tag as described under Transportation Code, Chapter 503.

3 ~~(8)~~~~(9)~~ Towable recreational vehicle--Has the same meaning as "house trailer"
4 defined by this section.

5 ~~(9)~~~~(10)~~ Travel Trailer--Has the same meaning as "house trailer" defined by this
6 section.

7 ~~(10)~~~~(11)~~ Vehicle--Has the meaning assigned by Transportation Code, §503.001.

8 ~~(11)~~~~(12)~~ VIN--Vehicle identification number.

9

10 §215.133. GDN ~~[General Distinguishing Number]~~ Application Requirements for a Dealer or a
11 Wholesale Motor Vehicle Auction.

12 (a) No person may engage in business as a dealer or as a wholesale motor vehicle auction
13 unless that person has a ~~currently~~ valid GDN assigned by the department for each location from
14 which the person engages in business. A dealer must also hold a GDN for a consignment location,
15 unless the consignment location is a wholesale motor vehicle auction.

16 (b) Subsection (a) of this section does not apply to a person exempt from the requirement
17 to obtain a GDN under Transportation Code §503.024.

18 (c) A GDN dealer or wholesale motor vehicle auction application must ~~[shall]~~ be on a form
19 prescribed by the department and properly completed by the applicant as required under §215.83
20 of this title (relating to License Applications, Amendments, or Renewals). A GDN dealer or
21 wholesale motor vehicle auction application must ~~[shall]~~ include all required information, required
22 supporting documents, and required fees and must ~~[shall]~~ be submitted to the department
23 electronically in the licensing [a] system designated by the department ~~[for licensing]~~. A GDN

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 78 of 230

Chapter 215 – Motor Vehicle Distribution

1 dealer or wholesale motor vehicle auction GDN holder renewing or amending its GDN must verify
2 current license information, provide related information and documents for any new requirements
3 or changes to the GDN, and pay required fees including any outstanding civil penalties owed the
4 department under a final order. An applicant for a new dealer or wholesale motor vehicle auction
5 GDN must provide the 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 (as [if] applicable), and website
10 address, as applicable [~~(if applicable)~~];

11 (C) [~~application contact name, email address, and telephone number~~]
12 contact name, email address, and telephone number of the person submitting the application;

13 (D) contact name, email address, and telephone number of a person who
14 can provide information about business operations and the motor vehicle products or services
15 offered;

16 (E)[~~(D)~~] the name, social security number, date of birth, identity document
17 information, and ownership percentage for each owner, partner, member, or principal if the
18 applicant is not a publicly traded company;

19 (F)[~~(E)~~] the name, social security number, date of birth, and identity
20 document information for each officer, director, manager, trustee, or other representative
21 authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal
22 entity;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 79 of 230

Chapter 215 – Motor Vehicle Distribution

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

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 80 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~(P)~~~~(O)~~ 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) 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, as [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;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 81 of 230

Chapter 215 – Motor Vehicle Distribution

1 (F) documents proving business premises ownership, or lease or sublease
2 agreement for the license period;

3 (G) business premises photos and a notarized affidavit certifying that all
4 premises requirements in §215.140 of this title (relating to Established and Permanent Place of
5 Business Premises Requirements) are met and will be maintained during the license period;

6 (H) evidence of franchise if applying for a franchised motor vehicle dealer
7 GDN;

8 (I) proof of completion of the dealer education and training required under
9 Transportation Code §503.0296, if applicable; and

10 (J) 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 fee ~~[for the GDN]~~ for each type of license requested as prescribed by
14 law; and

15 (B) the fee, including applicable taxes, for each standard~~[metal]~~ dealer plate
16 requested by the applicant as prescribed by law.

17 (d) An applicant for a dealer or wholesale auction GDN must also comply with fingerprint
18 requirements in §211.6 of this title (relating to Fingerprint Requirements for Designated License
19 Types~~[General Distinguishing Numbers]~~), as [if] applicable.

20 (e) An applicant for a ~~[dealer]~~ GDN operating under a name other than the applicant's
21 business name ~~[applicant]~~ shall use the assumed name under which the applicant is authorized to
22 do business, as filed with the Secretary of State or county clerk, and the assumed name of such
23 legal entity shall be recorded by the applicant on the application using the letters "DBA." The

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 82 of 230

Chapter 215 – Motor Vehicle Distribution

1 applicant may not use a name or ~~[an]~~ assumed name that may be confused with or is similar to
2 that of a governmental 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's 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:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 83 of 230

Chapter 215 – Motor Vehicle Distribution

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

5 (2) a person holding an independent motor vehicle GDN for at least 10 years as of
6 September 1, 2019, is exempt from the dealer education and training requirement; and.

7 (3) a military service member, military spouse, or military veteran will receive
8 appropriate credit for prior training, education, and professional experience and may be exempted
9 from the dealer education and training requirement.

10

11 §215.134. Requirements for a Drive-a-way Operator In-Transit License.

12 (a) No drive-a-way operator may engage in business in Texas unless that person has a
13 currently valid drive-a-way operator in-transit license issued by the department.

14 (b) A drive-a-way operator in-transit application must be on a form prescribed by the
15 department and properly completed by the applicant as required under §215.83 of this title
16 (relating to License Applications, Amendments, or Renewals). A drive-a-way operator in-transit
17 application must include all required information, required supporting documents, and required
18 fees, and must be submitted to the department electronically in the licensing system designated
19 by the department.

20 (c) A drive-a-way operator in-transit license holder renewing or amending its license must
21 verify current license information, provide related information and documents for any new
22 requirements or changes to the license, and pay required fees.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 84 of 230

Chapter 215 – Motor Vehicle Distribution

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 (as applicable), and website address,
13 as 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;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 85 of 230

Chapter 215 – Motor Vehicle Distribution

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, as applicable;

16 (B) each assumed name certificate on file with the Secretary of State or
17 county clerk;

18 (C) one of the following unexpired identity documents for each natural
19 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;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 86 of 230

Chapter 215 – Motor Vehicle Distribution

- 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 drive-a-way in-transit standard
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

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 87 of 230

Chapter 215 – Motor Vehicle Distribution

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 must [are required to]:

11 (1) obtain a new GDN; and

12 (2) provide a new surety bond reflecting the additional location^[7] 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 municipality [city] or relocates to a
15 point not within the limits of the same municipality [city] of the initial location must [is required to]:

16 (1) obtain a new GDN; and

17 (2) provide a new surety bond reflecting the new address^[7] 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^[any] licensed location by filing an amendment application electronically in the licensing

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 88 of 230

Chapter 215 – Motor Vehicle Distribution

1 system designated by the department. 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.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 89 of 230

Chapter 215 – Motor Vehicle Distribution

1 (e) A bonding company shall give written notice to the department 30 days prior to canceling any
2 surety bond.

3 (f) The surety bond required by this section does not apply to a:

4 (1) franchised motor vehicle dealer licensed by the department;

5 (2) franchised motorcycle dealer licensed by the department;

6 (3) franchised house trailer or travel trailer dealer licensed by the department; or

7 (4) trailer or semitrailer dealer licensed by the department.

8

9 §215.138. Use of ~~[Metal]~~ Dealer's License Plates.

10 (a) A ~~[metal]~~ dealer's standard or personalized prestige license plate must ~~[shall]~~ be attached to
11 the rear ~~[license plate holder]~~ of a vehicle in accordance with §217.27 of this title (relating to Vehicle
12 Registration Insignia)~~[Transportation Code, §503.061]~~.

13 (b) A copy of the receipt for a ~~[the metal]~~ dealer's standard or personalized prestige license plate
14 issued by the department should be carried in the vehicle to present~~[so that the receipt can be~~
15 ~~presented]~~ to law enforcement personnel upon request.

16 (c) A ~~[metal]~~ dealer's standard or personalized prestige license plate may not be displayed on:

17 (1) a laden commercial vehicle being operated or moved on the public streets or
18 highways; or

19 (2) the dealer's service or work vehicle, except as provided by Transportation Code,
20 §503.068(b-1).

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 90 of 230

Chapter 215 – Motor Vehicle Distribution

1 (d) For purposes of this section, a dealer's service or work vehicle includes:

2 (1) a vehicle used for towing or transporting another vehicle;

3 (2) a vehicle, including a light truck, used in connection with the operation of the
4 dealer's shops or parts department;

5 (3) a courtesy car on which a courtesy car sign is displayed;

6 (4) a rental or lease vehicle; and

7 (5) a boat trailer owned by a dealer or manufacturer that is used to transport more than
8 one boat.

9 ~~[(e) As used in this section, "light truck" has the meaning assigned by Transportation Code,~~
10 ~~§541.201.]~~

11 (e) [(f)] For purposes of this section, a light truck as defined by Transportation Code, §541.201, is
12 not considered a laden commercial vehicle when it is:

13 (1) mounted with a camper unit; or

14 (2) towing a trailer for recreational purposes.

15 (f) [(g)] A ~~metal~~ dealer's standard or personalized prestige license plate may be displayed only
16 on the type of vehicle for which the GDN is issued and for which a dealer is licensed to sell. A
17 nonfranchised dealer may not display a ~~metal~~ dealer's standard or personalized prestige license plate
18 on a new motor vehicle.

19 (g) [(h)] A ~~metal~~ dealer's standard or personalized prestige license plate may be displayed only
20 on a vehicle that has a valid inspection in accordance with Transportation Code, Chapter 548.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 91 of 230

Chapter 215 – Motor Vehicle Distribution

1 (h) [(h)] A dealer shall maintain a record of each [~~metal~~] dealer's standard or personalized
2 prestige license plate issued by the department to that dealer. The license plate record must contain:

3 (1) the [~~assigned metal dealer's~~] license plate number;

4 (2) the year and make of the vehicle to which the [~~metal~~] dealer's license plate is affixed;

5 (3) the VIN of the vehicle; and

6 (4) the name of the person in control of the vehicle.

7 (i) [(i)] If a dealer cannot account for a [~~metal~~] dealer's standard or personalized prestige license
8 plate that the department issued to that dealer, the dealer shall [~~must~~]:

9 (1) document the [~~metal~~] dealer's license plate as "void" in the [~~metal~~] dealer's license
10 plate record;

11 (2) within three days of discovering that the [~~metal~~] dealer's license plate is missing^[7] or
12 damaged, report the dealer's license plate as lost, stolen, or damaged in the electronic system
13 designated by the department [~~report to the department in writing that the metal dealer's license plate~~
14 ~~is lost or stolen~~]; and

15 (3) if found, cease use of the [~~metal~~] dealer's license plate.

16 (j) [(j)] A [~~metal~~] dealer's standard or personalized prestige license plate is no longer valid for
17 use after the dealer reports to the department that the [~~metal~~] dealer's license plate is lost, stolen, or
18 damaged [~~missing~~]. A dealer shall:

19 (1) render a void plate unusable by permanently marking the front of the plate with the
20 word "VOID" or a large "X"; and

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 92 of 230

Chapter 215 – Motor Vehicle Distribution

1 (2) destroy or recycle the license plate or return the license plate to the department
2 within 10 days.

3 (k) A dealer's license plate record must be available for inspection and copying by the
4 department during normal business hours or be available to submit electronically to the department
5 upon request.

6 (l) A dealer shall return a department-issued license plate, sticker, or receipt to the department
7 within 10 days of the dealer closing the associated license or the department revoking or canceling the
8 license.

9
10 §215.139. ~~[Metal]~~ Dealer's Standard License Plate Allocation.

11 (a) The number of ~~[metal]~~dealer's standard license plates a dealer may order for business use is
12 based on the type of license for which the dealer applied and the number of vehicles the dealer sold
13 during the previous year.

14 (b) A new license applicant is allotted a predetermined number of ~~[metal]~~dealer's standard
15 license plates for the duration of the dealer's first license term.

16 (c) Unless otherwise qualified under this section, the maximum number of ~~[metal]~~dealer's
17 standard license plates the department will issue to a new license applicant during the applicant's first
18 license term is indicated in the following table.

19 Attached Graphic

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 93 of 230

Chapter 215 – Motor Vehicle Distribution

1 (d) A dealer applying [~~that submits an application to the department~~] for a license is not subject
2 to the initial allotment limits described in this section and may rely on that dealer's existing allocation of
3 [~~meta~~] dealer's standard license plates if that dealer is:

4 (1) a franchised dealership subject to a buy-sell agreement, regardless of a change in the
5 entity or ownership;

6 (2) any type of dealer that is relocating and has been licensed by the department for a
7 period of one year or longer; or

8 (3) any type of dealer that is changing its business entity type and has been licensed by
9 the department for a period of one year or longer.

10 (e) The maximum number of [~~meta~~] dealer's standard license plates the department will issue
11 to a vehicle dealer per license term is indicated in the following table.

12 Attached Graphic

13 (f) A dealer may obtain more than the maximum number of [~~meta~~] dealer's standard license
14 plates provided by this section by submitting to the department proof of sales for the previous 12-month
15 period that justifies additional allocation.

16 (1) The number of additional [~~meta~~] dealer's standard license plates the department
17 will issue to a dealer that demonstrates a need through proof of sales is indicated in the following table.

18 Attached Graphic

19 (2) For purposes of this section, proof of sales for the previous 12-month period may
20 consist of a copy of the most recent vehicle inventory tax declaration or monthly statements filed with
21 the taxing authority in the county of the dealer's licensed location. Each copy must be stamped as

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 94 of 230

Chapter 215 – Motor Vehicle Distribution

1 received by the taxing authority. The department will consider a[A] franchised dealer's license renewal
2 application that indicates sales of more than 200 units [~~is considered~~]to be proof of sales of more than
3 200 units and no additional proof is required.

4 (3) The department may not issue more than two [~~metal~~] dealer's standard license
5 plates to a wholesale motor vehicle dealer. For purposes of this section, a wholesale motor vehicle
6 dealer's proof of sales may be demonstrated to the department by submitting:

7 (A) evidence of the wholesale motor vehicle dealer's sales for the previous 12-
8 month period, if the wholesale motor vehicle dealer has been licensed during those 12 months; or

9 (B) other documentation approved by the department demonstrating the
10 wholesale motor vehicle dealer's transactions.

11 (g) The director may waive the [~~metal~~]dealer's standard license plate issuance restrictions if the
12 waiver is essential for the continuation of the business. The director will determine the number of [~~metal~~
13]dealer's standard license plates the department will issue based on the dealer's past sales, dealer's
14 inventory, and any other factor the director determines pertinent.

15 (1) A request for a waiver must be submitted to the director in writing and specifically
16 state why the additional plate is necessary for the continuation of the applicant's business.

17 (2) A request for a waiver must be accompanied by proof of the dealer's sales for the
18 previous 12-month period, if applicable.

19 (3) A wholesale motor vehicle dealer may not apply for a waiver of the [~~metal~~] dealer's
20 standard license plate issuance restrictions.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 95 of 230

Chapter 215 – Motor Vehicle Distribution

1 (4) A waiver granted by the director under this section for a specific number of ~~[metal]~~
2 dealer's standard license plates is valid for four years.

3 ~~[(h) This section does not apply to a personalized prestige dealer's license plate issued in accordance
4 with Transportation Code, §503.0615.]~~

5

6 §215.140. Established and Permanent Place of Business Premises Requirements.

7 (a) A dealer must meet the following requirements at each licensed location and maintain the
8 requirements during the term of the license. If multiple dealers are licensed at a location, each dealer
9 must maintain the following requirements during the entire term of the license.

10 (1) Business hours for retail dealers.

11 (A) A retail dealer's office must ~~[shall]~~ be open at least four days per week for at
12 least four consecutive hours per day and may not be open solely by appointment.

13 (B) The retail dealer's business hours for each day of the week must be posted at
14 the main entrance of the retail dealer's office in a manner and location that is accessible to the public.

15 The owner or a bona fide employee of the retail dealer shall be at the retail dealer's licensed location
16 during the posted business hours for the purposes of buying, selling, exchanging, or leasing vehicles. If
17 the owner or a bona fide employee is not available to conduct business during the retail dealer's posted
18 business hours due to special circumstances or emergencies, a separate sign must be posted indicating
19 the date and time the retail dealer will resume operations. Regardless of the retail dealer's business
20 hours, the retail dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 96 of 230

Chapter 215 – Motor Vehicle Distribution

1 fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able
2 to speak to a natural person or leave a message during these hours.

3 (2) Business hours for wholesale motor vehicle dealers. A dealer that holds only a
4 wholesale motor vehicle dealer's GDN must post its business hours at the main entrance of the
5 wholesale motor vehicle dealer's office in a manner and location that is accessible to the public. A
6 wholesale motor vehicle dealer or bona fide employee shall be at the wholesale motor vehicle dealer's
7 licensed location at least two weekdays per week for at least two consecutive hours per day. A wholesale
8 motor vehicle dealer may not be open solely by appointment. Regardless of the wholesale motor vehicle
9 dealer's business hours, the wholesale motor vehicle dealer's telephone must be answered from 8:00
10 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or
11 answering machine. A caller must be able to speak to a natural person or leave a message during these
12 hours.

13 (3) Business sign requirements for retail dealers.

14 (A) A retail dealer must display a conspicuous, permanent sign with letters at
15 least six inches in height showing the retail dealer's business name or assumed name substantially
16 similar to the name reflected on the retail dealer's GDN under which the retail dealer conducts business.
17 A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main
18 entrance of the business office. A business sign is considered permanent only if it is made of durable,
19 weather-resistant material.

20 (B) The sign must be permanently mounted at the physical address listed on the
21 application for the retail dealer's GDN. A business sign is considered permanently mounted if bolted to

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 97 of 230

Chapter 215 – Motor Vehicle Distribution

1 an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently
2 installed in the ground.

3 (C) A retail dealer may use a temporary sign or banner if that retail dealer can
4 show proof that a sign that meets the requirements of this paragraph has been ordered and provides a
5 written statement that the sign will be promptly and permanently mounted upon delivery.

6 (D) A retail dealer is responsible for ensuring that the business sign complies
7 with municipal ordinances, and that any lease signage requirements are consistent with the signage
8 requirements in this paragraph.

9 (4) Business sign requirements for wholesale motor vehicle dealers.

10 (A) Exterior Sign

11 (i) A wholesale motor vehicle dealer must display a conspicuous,
12 permanent sign with letters at least six inches in height showing the wholesale motor vehicle dealer's
13 business name or assumed name substantially similar to the name reflected on the wholesale motor
14 vehicle dealer's GDN under which the wholesale motor vehicle dealer conducts business. Effective
15 September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers"
16 in letters at least three inches in height. A business sign is considered conspicuous if it is easily visible to
17 the public within 100 feet of the main entrance of the business office. A business sign is considered
18 permanent only if it is made of durable, weather-resistant material.

19 (ii) The sign must be permanently mounted on the business property at
20 the physical address listed on the application. A business sign is considered permanently mounted if
21 bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support
22 permanently installed in the ground. A wholesale motor vehicle dealer may use a temporary exterior

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 98 of 230

Chapter 215 – Motor Vehicle Distribution

1 sign or banner if the wholesale motor vehicle dealer can show proof that a sign that meets the
2 requirements of this paragraph has been ordered and provides a written statement that the sign will be
3 promptly and permanently mounted upon delivery.

4 (B) Interior Sign

5 (i) If the wholesale motor vehicle dealer's office is located in an office
6 building with one or more other businesses and an outside sign is not permitted by the property owner,
7 a conspicuous permanent business sign permanently mounted on or beside the main door to the
8 wholesale motor vehicle dealer's office with letters at least two inches in height is acceptable. Effective
9 September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers"
10 in letters at least one inch in height.

11 (ii) An interior business sign is considered conspicuous if it is easily
12 visible to the public within 10 feet of the main entrance of the wholesale motor vehicle dealer's office.
13 An interior sign is considered permanent if made from durable material and has lettering that cannot be
14 changed. An interior sign is considered permanently mounted if bolted or otherwise permanently affixed
15 to the main door or nearby wall. A wholesale motor vehicle dealer may use a temporary interior sign or
16 banner if the wholesale motor vehicle dealer can show proof that a sign that meets the requirements of
17 this paragraph has been ordered and provides a written statement that the sign will be promptly and
18 permanently mounted upon delivery.

19 (C) A wholesale motor vehicle dealer is responsible for ensuring that the
20 business sign complies with municipal ordinances and that any lease signage requirements are
21 consistent with the signage requirements in this paragraph.

22 (5) Office requirements for a retail dealer and a wholesale motor vehicle dealer.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 99 of 230

Chapter 215 – Motor Vehicle Distribution

1 (A) A dealer's office must be located in a building with a permanent roof and
2 connecting exterior walls on all sides.

3 (B) A dealer's office must comply with all applicable municipal ordinances,
4 including municipal zoning ordinances. The dealer is responsible for obtaining a certificate of occupancy,
5 certificate of compliance, or other required document issued by a municipal government to show
6 compliance, including a new certificate or document when the building is altered or remodeled, or when
7 the building use changes.

8 (C) A dealer's office may not be located in a residence, apartment, hotel, motel,
9 rooming house, or any room or building not open to the public.

10 (D) A dealer's office may not be located in a restaurant, gas station, or
11 convenience store, unless the office has a separate entrance door that does not require a dealer's
12 customer to pass through the other business.

13 (E) A dealer's office may not be virtual or provided by a subscription for office
14 space or office services. Access to an office space or office services is not considered an established and
15 permanent location.

16 (F) The physical address of the dealer's office must be in Texas and recognized by
17 the U.S. Postal Service, be ~~be~~ capable of receiving U.S. mail, and have an assigned emergency services
18 property address. The department will not mail a ~~metal~~ dealer's license plate to an out-of-state
19 address.

20 (G) A portable-type office building may qualify as an office only if the building
21 meets the requirements of this section and is not a readily moveable trailer or other vehicle.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 100 of 230

Chapter 215 – Motor Vehicle Distribution

- 1 (H) The dealer's office space must:
- 2 (i) include at least 100 square feet of interior floor space, exclusive of
- 3 hallways, closets, or restrooms;
- 4 (ii) have a minimum seven-foot-high ceiling;
- 5 (iii) accommodate required office equipment; and
- 6 (iv) allow a dealer and customer to safely access the office and conduct
- 7 business in private while seated.

8 (6) Required office equipment for a retail dealer and a wholesale motor vehicle dealer.

9 At a minimum, a dealer's office must be equipped with:

- 10 (A) a desk;
- 11 (B) two chairs;
- 12 (C) internet access; and
- 13 (D) a working telephone number listed in the business name or assumed name
- 14 under which the dealer conducts business.

15 (7) Number of retail dealers in one building. Not more than four retail dealers may be

16 located in the same building. Each retail dealer located in the same building must meet the requirements

17 of this section.

18 (8) Number of wholesale motor vehicle dealers in one office building. Not more than

19 eight wholesale motor vehicle dealers may be located in the same office building. Each wholesale motor

20 vehicle dealer located in the same office building must meet the requirements of this section.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 101 of 230

Chapter 215 – Motor Vehicle Distribution

1 (9) Office sharing prohibition for retail dealers and wholesale motor vehicle dealers.

2 Unless otherwise authorized by the Transportation Code, a retail dealer and a wholesale motor vehicle
3 dealer licensed after September 1, 1999, may not be located in the same building.

4 (10) Dealer housed with other business.

5 (A) If a person conducts business as a dealer in conjunction with another
6 business owned by the same person and under the same name as the other business, the same
7 telephone number may be used for both businesses. If the name of the dealer differs from the name of
8 the other business, a separate telephone listing and a separate sign for each business are required.

9 (B) A person may conduct business as a dealer in conjunction with another
10 business not owned by that person only if the dealer owns the property on which business is conducted
11 or has a separate lease agreement from the owner of that property that meets the requirements of this
12 section. The same telephone number may not be used by both businesses. The dealer must have
13 separate business signs, telephone listings, and office equipment required under this section.

14 (C) A dealer's office must have permanent interior walls on all sides and be
15 separate from any public area used by another business.

16 (11) Display area and storage lot requirements.

17 (A) A wholesale motor vehicle dealer is not required to have display space at the
18 wholesale motor vehicle dealer's business premises.

19 (B) A retail dealer must have an area designated as display space for the retail
20 dealer's inventory. A retail dealer's designated display area must comply with the following
21 requirements.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 102 of 230

Chapter 215 – Motor Vehicle Distribution

1 (i) The display area must be located at the retail dealer's physical
2 business address or contiguous to the retail dealer's physical address. The display area may not be in a
3 storage lot.

4 (ii) The display area must be of sufficient size to display at least five
5 vehicles of the type for which the GDN is issued. The display area ~~[These spaces]~~ must be reserved
6 exclusively for the retail dealer's inventory and may not be used for customer parking, employee parking,
7 general storage, or shared or intermingled with another business or a public parking area, a driveway to
8 the office, or another dealer's display area.

9 (iii) The display area may not be on a public easement, right-of-way, or
10 driveway unless the governing body having jurisdiction of the easement, right-of-way, or driveway
11 expressly consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part
12 of the state highway system, use as a display area may only be authorized by a lease agreement.

13 (iv) If a retail dealer shares a display or parking area with another
14 business, including another dealer, the dealer's vehicle inventory must be separated from the other
15 business's display or parking area by a material object or barrier that cannot be readily removed. A
16 barrier that cannot be readily removed is one that cannot be easily moved by one person and typically
17 weighs more than 50 pounds. A material object or barrier must be in place on all sides except for the
18 space necessary to allow for entry and exit of vehicle inventory.

19 (v) If a dealer's business location includes gasoline pumps or a charging
20 station or includes another business that sells gasoline or has a charging station, the dealer's display area
21 may not be part of the parking area for fuel or charging station customers and may not interfere with
22 access to or from the gasoline pumps, fuel tanks, charging station, or fire prevention equipment.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 103 of 230

Chapter 215 – Motor Vehicle Distribution

1 (vi) The display area must be adequately illuminated if the retail dealer
2 is open at night so that a vehicle for sale can be properly inspected by a potential buyer.

3 (vii) The display area may be located inside a building; however, if
4 multiple dealers are displaying vehicles inside a building, each dealer's display area must be separated by
5 a material object or barrier that cannot be readily removed. A barrier that cannot be readily removed is
6 one that cannot be easily moved by one person and typically weighs more than 50 pounds. A material
7 object or barrier must be in place on all sides except for the space necessary to allow for entry and exit
8 of vehicle inventory.

9 (C) A GDN holder~~[dealer]~~ may maintain a storage lot only if the storage lot is not
10 accessible to the public and no sales activity occurs at the storage lot. A sign stating the license
11 holder's~~[dealer's]~~ name, contact information, and the fact the property is a storage lot is permissible. A
12 storage lot must be fenced or in an access-controlled location to be considered not accessible to the
13 public. A GDN holder or applicant must disclose the address of a storage lot or the location of a vehicle in
14 inventory upon request by the department.

15 (12) Dealers authorized to sell salvage motor vehicles. If an independent motor vehicle
16 dealer offers a salvage motor vehicle for sale on the dealer's premises, the vehicle must be clearly and
17 conspicuously marked with a sign informing a potential buyer that the vehicle is a salvage motor vehicle.
18 ~~[This requirement does not apply to a licensed salvage pool operator.]~~

19 (13) Lease requirements. If the premises from which a dealer conducts business,
20 including any display area, is not owned by the dealer, the dealer must maintain a lease that is
21 continuous during the period of time for which the dealer's license will be issued. The lease agreement
22 must be on a properly executed form containing at a minimum:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 104 of 230

Chapter 215 – Motor Vehicle Distribution

1 (A) the name of the property owner as the lessor of the premises and the name
2 of the dealer as the tenant or lessee of the premises;

3 (B) the period of time for which the lease is valid;

4 (C) the street address or legal description of the property, provided that if only a
5 legal description of the property is included, a dealer must attach a statement verifying that the property
6 description in the lease agreement is the physical street address identified on the application as the
7 physical address for the established and permanent place of business;

8 (D) the signature of the property owner as the lessor and the signature of the
9 dealer as the tenant or lessee; and

10 (E) if the lease agreement is a sublease in which the property owner is not the
11 lessor, the dealer must also obtain a signed and notarized statement from the property owner including
12 the following information:

13 (i) property owner's full name, email address, mailing address, and
14 phone number; and

15 (ii) property owner's statement confirming that the dealer is authorized
16 to sublease the location and may operate a vehicle sales business from the location.

17 (14) Dealer must display GDN and bond notice. A dealer must display the dealer's GDN
18 issued by the department at all times in a manner that makes the GDN easily readable by the public and
19 in a conspicuous place at each place of business for which the dealer's GDN is issued. ~~[If the dealer's
20 GDN applies to more than one location, a copy of the GDN and bond notice must be displayed in each
21 supplemental location.]~~ A dealer required to obtain a surety bond must post a bond notice adjacent to

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 105 of 230

Chapter 215 – Motor Vehicle Distribution

1 and in the same manner as the dealer's GDN is displayed. The notice must include the bond company
2 name, bond identification number, and procedure by which a claimant can recover under the bond. The
3 notice must also include the department's website address and notify a consumer that a dealer's surety
4 bond information may be obtained by submitting a request to the department. If the dealer's GDN
5 applies to more than one location, a copy of the GDN and bond notice must be displayed in each
6 supplemental location.

7 (b) Wholesale motor vehicle auction premises requirements. A wholesale motor vehicle auction
8 must comply with the following premises requirements:

9 (1) a wholesale motor vehicle auction GDN holder must hold a motor vehicle auction on
10 a regular periodic basis at the licensed location, and an owner or bona fide employee must be available
11 at the business location during each auction and during posted business hours. If the owner or a bona
12 fide employee is not available to conduct business during the posted business hours due to special
13 circumstances or emergencies, a separate sign must be posted indicating the date and time operations
14 will resume.

15 (2) the business telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a
16 bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must
17 be able to speak to a natural person or leave a message during these hours.

18 (3) a wholesale motor vehicle auction GDN holder must display a business sign that
19 meets the following requirements:

20 (A) The sign must be a conspicuous, permanent sign with letters at least six
21 inches in height showing the business name or assumed name substantially similar to the name reflected
22 on the GDN under which the GDN holder conducts business. A business sign is considered conspicuous

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 106 of 230

Chapter 215 – Motor Vehicle Distribution

1 if it is easily visible to the public within 100 feet of the main entrance of the business office. A business
2 sign is considered permanent only if it is made of durable, weather-resistant material.

3 (B) The sign must be permanently mounted at the physical address listed on the
4 application for the wholesale motor vehicle auction GDN. A business sign is considered permanently
5 mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign
6 support permanently installed in the ground.

7 (C) An applicant may use a temporary sign or banner if the applicant can show
8 proof that a sign that meets the requirements of this paragraph has been ordered and provides a written
9 statement that the sign will be promptly and permanently mounted upon delivery.

10 (D) An applicant or holder is responsible for ensuring that the business sign
11 complies with municipal ordinances, and that any lease signage requirements are consistent with the
12 signage requirements in this paragraph.

13 (4) The business office of a wholesale motor vehicle auction GDN applicant and holder
14 must meet the following requirements:

15 (A) The office must be located in a building with a permanent roof and
16 connecting exterior walls on all sides.

17 (B) The office must comply with all applicable municipal ordinances, including
18 municipal zoning ordinances. The wholesale motor vehicle auction is responsible for obtaining a
19 certificate of occupancy, certificate of compliance, or other required document issued by a municipal
20 government to show compliance, including a new certificate or document when the building is altered or
21 remodeled, or when the building use changes.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 107 of 230

Chapter 215 – Motor Vehicle Distribution

1 (C) The office may not be located in a residence, apartment, hotel, motel,
2 rooming house, or any room or building not open to the public.

3 (D) The office may not be located in a restaurant, gas station, or convenience
4 store, unless the office has a separate entrance door that does not require a customer to pass through
5 the other business.

6 (E) The office may not be virtual or provided by a subscription for office space or
7 office services. Access to office space or office services is not considered an established and permanent
8 location.

9 (F) The physical address of the office must be in Texas and recognized by the U.S.
10 Postal Service, capable of receiving U.S. mail, and have an assigned emergency services property
11 address.

12 (G) A portable-type office building may qualify as an office only if the building
13 meets the requirements of this section and is not a readily moveable trailer or other vehicle.

14 (5) A wholesale motor vehicle auction GDN applicant and holder must have the following
15 office equipment:

16 (A) a desk;

17 (B) a chair;

18 (C) internet access; and

19 (D) a working telephone number listed in the business name or assumed name
20 under which business is conducted.

1 (6) A wholesale motor vehicle auction must meet the following display area and storage
2 lot requirements:

3 (A) The area designated as display space for inventory must be located at the
4 physical business address or contiguous to the physical address. The display area may not be in a storage
5 lot.

6 (B) The display area must be of sufficient size to display at least five vehicles.
7 Those spaces must be reserved exclusively for inventory and may not be used for customer parking,
8 employee parking, general storage, or shared or intermingled with another business or a public parking
9 area, or a driveway to the office.

10 (C) The display area may not be on a public easement, right-of-way, or driveway
11 unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly
12 consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part of the
13 state highway system, use as a display area may only be authorized by a lease agreement.

14 (D) If the business location includes gasoline pumps or a charging station or
15 includes another business that sells gasoline or has a charging station, the display area may not be part
16 of the parking area for fuel or charging station customers and may not interfere with access to or from
17 the gasoline pumps, fuel tanks, charging station, or fire prevention equipment.

18 (E) The display area must be adequately illuminated if open at night so that a
19 vehicle for sale can be properly inspected by a potential buyer.

20 (F) The display area may be located inside a building.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 109 of 230

Chapter 215 – Motor Vehicle Distribution

1 (G) A wholesale motor vehicle auction may maintain a storage lot only if the
2 storage lot is not accessible to the public and no sales activity occurs at the storage lot. A sign stating the
3 business name, contact information, and the fact the property is a storage lot is permissible. A storage
4 lot must be fenced or in an access-controlled location to be considered not accessible to the public. A
5 GDN holder or applicant must disclose the address of a storage lot or the location of a vehicle in
6 inventory upon request by the department.

7 (7) A wholesale motor vehicle auction must meet the following lease requirements if the
8 business premises, including any display area, is not owned by the wholesale motor vehicle auction:

9 (A) the applicant or holder must maintain a lease that is continuous during the
10 period of time for which the GDN will be issued;

11 (B) The lease agreement must be on a properly executed form containing at a
12 minimum:

13 (i) the name of the property owner as the lessor of the premises and the
14 name of the GDN applicant or holder as the tenant or lessee of the premises;

15 (ii) the period of time for which the lease is valid;

16 (iii) the street address or legal description of the property, provided that
17 if only a legal description of the property is included, a wholesale motor vehicle auction must attach a
18 statement verifying that the property description in the lease agreement is the physical street address
19 identified on the application as the physical address for the established and permanent place of
20 business;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 110 of 230

Chapter 215 – Motor Vehicle Distribution

1 (iv) the signature of the property owner as the lessor and the signature
2 of the applicant or holder as the tenant or lessee; and

3 (C) if the lease agreement is a sublease in which the property owner is not the
4 lessor, the wholesale motor vehicle auction must also obtain a signed and notarized statement from the
5 property owner including the following information:

6 (i) property owner's full name, email address, mailing address, and
7 phone number; and

8 (ii) property owner's statement confirming that the wholesale motor
9 vehicle auction is authorized to sublease the location and may operate a wholesale motor vehicle
10 auction business from the location.

11

12 §215.141. Sanctions.

13 (a) The board or department may take the following actions against a license applicant, a license
14 holder, or a person engaged in business for which a license is required:

15 (1) deny an application;

16 (2) revoke a license;

17 (3) suspend a license; ~~and~~18 (4) assess a civil penalty; ~~[or other action against a license applicant, a license holder, or~~
19 ~~a person engaged in business for which a license is required.]~~20 (5) issue a cease and desist order; or

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 111 of 230

Chapter 215 – Motor Vehicle Distribution

1 (6) or take other authorized action.

2 (b) The board or department may take action described in subsection (a) of this section if a
3 license applicant, a license holder, or a person engaged in business for which a license is required:

4 (1) fails to maintain a good and sufficient bond or post the required bond notice ~~in the~~
5 ~~amount of \$25,000~~ if required under Transportation Code §503.033 (relating to Security Requirement);

6 (2) fails to meet or maintain the requirements of §215.140 (relating to Established and
7 Permanent Place of Business Premises Requirements);

8 (3) ~~[2]~~ fails to maintain records required under this chapter;

9 (4) ~~[3]~~ refuses or fails to comply with a request by ~~[a representative of]~~ the department
10 for electronic records or to examine and copy electronic or physical records during the license holder's
11 business hours at the licensed business location:

12 (A) sales records required to be maintained by §215.144 of this title (relating to
13 Vehicle Records);

14 (B) ownership papers for a vehicle owned by that dealer or under that dealer's
15 control; ~~and~~

16 (C) evidence of ownership or a current lease agreement for the property on
17 which the business is located; or

18 (D) the Certificate of Occupancy, Certificate of Compliance, business license or
19 permit, or other official documentation confirming compliance with county and municipal laws or
20 ordinances for a vehicle business at the licensed physical location.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 112 of 230

Chapter 215 – Motor Vehicle Distribution

1 (5) [(4)] refuses or fails to timely comply with a request for records made by a
2 representative of the department;

3 (6) [(5)] holds a wholesale motor vehicle dealer's license and[:]

4 [(A) fails to meet the requirements of §215.140 of this title (relating to
5 ~~Established and Permanent Place of Business~~); or

6 (B)] sells or offers to sell a motor vehicle to a person other than a licensed or
7 authorized dealer;

8 (7) [(6)] sells or offers to sell a type of vehicle that the person is not licensed to sell;

9 (8) [(7)] fails to submit a license amendment application in the electronic licensing
10 system designated by the department to notify the department of a change of the license holder's
11 physical address, mailing address, telephone number, or email address within 10 days of the change;

12 (9) [(8)] fails to submit a license amendment application in the electronic licensing
13 system designated by the department to notify the department of a license holder's name change, or
14 management or ownership change within 10 days of the change;

15 (10) [(9)] except as provided by law, issues more than one buyer's temporary tag for the
16 purpose of extending the purchaser's operating privileges for more than 60 days;

17 (11) [(10)] fails to remove a license plate or registration insignia from a vehicle that is
18 displayed for sale;

19 (12) [(11)] misuses a [~~metal~~] dealer's license plate or a temporary tag;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 113 of 230

Chapter 215 – Motor Vehicle Distribution

1 (13) [(12)] fails to display a [meta] dealer's license plate or temporary tag, as required by
2 law;

3 (14) [(13)] holds open a title or fails to take assignment of a certificate of title,
4 manufacturer's certificate, or other basic evidence of ownership for a vehicle acquired by the dealer, or
5 fails to assign the certificate of title, manufacturer's certificate, or other basic evidence of ownership for
6 a vehicle sold;

7 (15) [(14)] fails to remain regularly and actively engaged in the business of buying,
8 selling, or exchanging vehicles of the type for which the GDN is issued by the department;

9 (16) [(15)] violates a provision of Occupations Code, Chapter 2301; Transportation Code
10 Chapters 503 and 1001[(1000)]–1005; a board order or rule; or a regulation of the department relating to
11 the sale, lease, distribution, financing, or insuring of vehicles, including advertising rules under
12 Subchapter F[H] of this chapter (relating to Advertising);

13 (17) [(16)] is convicted of an offense that directly relates to the duties or responsibilities
14 of the occupation in accordance with §211.3 of this title (relating to Criminal Offense Guidelines);

15 (18) [(17)] is determined by the board or department, in accordance with §215.89 of this
16 title (relating to Fitness), to be unfit to hold a license;

17 (19) [(18)] has not assigned at least five vehicles in the prior 12 months, provided the
18 dealer has been licensed more than 12 months;

19 (20) [(19)] files or provides a false or forged:

20 (A) title document, including an affidavit making application for a certified copy
21 of a title; or

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 114 of 230

Chapter 215 – Motor Vehicle Distribution

- 1 (B) tax document, including a sales tax statement or affidavit;
- 2 (21) [(20)] uses or allows use of that dealer's license or location for the purpose of
- 3 avoiding a provision of Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1001
- 4 [(1000)] - 1005; or other laws;
- 5 (22) [(21)] omits information or makes a material misrepresentation in any application or
- 6 other documentation filed with the department including providing a false or forged identity document
- 7 or a false or forged photograph, electronic image, or other document;
- 8 (23) [(22)] fails to remit payment as ordered for a civil penalty assessed by the board or
- 9 department;
- 10 (24) [(23)] sells a new motor vehicle without a franchised dealer's license issued by the
- 11 department;
- 12 (25) [(24)] fails to comply with a dealer responsibility under §215.150 of this title
- 13 (relating to Authorization to Issue Temporary Tags);
- 14 (26) utilizes a temporary tag that fails to meet the requirements of §215.153 of this title
- 15 (relating to Specifications for All Temporary Tags);
- 16 (27) [(25)] violates any state or federal law or regulation relating to the sale of a motor
- 17 vehicle; ~~or~~
- 18 (28) [(26) effective January 1, 2017,] knowingly fails to disclose that a motor vehicle has
- 19 been repaired, rebuilt, or reconstructed and issued a title under Transportation Code, §501.100 (relating
- 20 to Application for Regular Certificate of Title for Salvage Vehicle);
- 21 (29) fails to issue a refund as ordered by the board or department; or

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 115 of 230

Chapter 215 – Motor Vehicle Distribution

1 (30) fails to acquire or maintain a required certificate of occupancy, certificate of
2 compliance, business license or permit, or other official documentation for the licensed location
3 confirming compliance with county or municipal laws or ordinances or other local requirements for a
4 vehicle business.

5

6 §215.143. Drive-a-way Operator In-Transit License Plates.

7 (a) A drive-a-way operator may apply for a drive-a-way in-transit standard license plate:

8 (1) when applying for a new or renewal in-transit license, or

9 (2) by submitting a plate request application electronically in the system designated by
10 the department.

11 (b) A drive-a-way operator must display an in-transit license plate in the rear of each transported
12 motor vehicle from the vehicle's point of origin to its point of destination in Texas in accordance with
13 §217.27 of this title (relating to Vehicle Registration Insignia).

14 (c) A drive-a-way operator shall maintain a record of each license plate issued to the operator by
15 the department. The record of each license plate issued must contain:

16 (1) the license plate number;

17 (2) the year and make of the vehicle to which the license plate is affixed;

18 (3) the VIN of the vehicle; and

19 (4) the name of the person in control of the vehicle.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 116 of 230

Chapter 215 – Motor Vehicle Distribution

1 (d) If a drive-a-way operator cannot account for a license plate or a license plate is damaged, the
2 operator must:

3 (1) document the license plate as "void" in the operator's plate record;

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 in the electronic system designated by the department; and

6 (3) if found once reported, cease use of the license plate.

7 (e) A license plate is no longer valid for use after the drive-a-way operator reports to the
8 department that the plate is lost, stolen, or damaged. A drive-a-way operator must render a void plate
9 unusable by permanently marking the front of the plate with the word "VOID" or a large "X" and once
10 marked, may destroy or recycle the license plate, or return the license plate to the department for
11 recycling within 10 days.

12 (f) The drive-a-way operator's license plate record must be available for inspection and copying
13 by the department during normal business hours or be available to submit electronically to the
14 department upon request.

15 (g) In evaluating requests for additional license plates, the department will consider the business
16 justification provided by a drive-a-way operator including the following:

17 (1) the number of vehicles currently being transported to a location in Texas;

18 (2) the highest number of motor vehicles transported in the prior 12 months;

19 (3) the size and type of business; and

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 117 of 230

Chapter 215 – Motor Vehicle Distribution

1 (4) the operator’s record of tracking and reporting missing or damaged plates to the
2 department.

3 (h) If a drive-a-way operator closes the associated license or the associated license is revoked or
4 canceled by the department, the operator must return a license plate to the department within 10 days.

5
6 §215.144. Vehicle Records.

7 (a) Purchases and sales records. A dealer and wholesale motor vehicle auction shall ~~[must]~~
8 maintain a complete record of all vehicle purchases and sales for a minimum period of 48 months and
9 make the record available for inspection and copying by ~~[a representative of]~~ the department during
10 business hours.

11 (b) Independent mobility motor vehicle dealers. An independent mobility motor vehicle dealer
12 shall ~~[must]~~ keep a complete written record of each vehicle purchase, vehicle sale, and any adaptive
13 work performed on each vehicle for a minimum period of 36 months after the date the adaptive work is
14 performed on the vehicle. An independent mobility motor vehicle dealer shall also retain and produce
15 for inspection all records relating to license requirements under Occupations Code, §2301.002(17-b) and
16 all information and records required under Transportation Code §503.0295.

17 (c) Location of records. A dealer's record reflecting purchases and sales for the preceding 13
18 months must be maintained at the dealer's licensed location. Original titles are not required to be kept
19 at the licensed location [r] but must be made available to the agency upon reasonable request. A dealer's
20 record for prior time periods may be kept off-site.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 118 of 230

Chapter 215 – Motor Vehicle Distribution

1 (d) Request for records. Within 15 days of receiving a request [~~receipt of a request sent by mail~~
2 ~~or electronic document transfer~~] from a representative of the department, a dealer shall [~~must~~] deliver a
3 copy of the specified records to the address listed in the request. If a dealer has a concern about the
4 origin of a records request, the dealer may verify that request with the department [~~division~~] prior to
5 submitting its records.

6 (e) Content of records. A dealer's complete record for each vehicle purchase or vehicle sale must
7 contain:

8 (1) the date of the purchase;

9 (2) the date of the sale;

10 (3) the VIN;

11 (4) the name and address of the person selling the vehicle to the dealer;

12 (5) the name and address of the person purchasing the vehicle from the dealer;

13 (6) the name and address of the consignor if the vehicle is offered for sale by
14 consignment;

15 (7) except for a purchase or sale where the Tax Code does not require payment of motor
16 vehicle sales tax, a county tax assessor-collector receipt marked paid [~~copy of the receipt, titled "Tax~~
17 ~~Collector's Receipt for Texas Title Application/Registration/Motor Vehicle Tax"~~];

18 (8) a copy of all documents, forms, and agreements applicable to a particular sale,
19 including a copy of:

20 (A) the title application;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 119 of 230

Chapter 215 – Motor Vehicle Distribution

- 1 (B) the work-up sheet;
- 2 (C) the front and back of the manufacturer's certificate of origin or
3 manufacturer's statement of origin, unless the dealer obtains the title [~~is obtained~~] through the
4 electronic title system;
- 5 (D) the front and back of the title for the purchase and the sale, unless the
6 dealer enters or obtains the title [~~is obtained~~] through the electronic title system;
- 7 (E) the factory invoice, if applicable;
- 8 (F) the sales contract;
- 9 (G) the retail installment agreement;
- 10 (H) the buyer's order;
- 11 (I) the bill of sale;
- 12 (J) any waiver;
- 13 (K) any other agreement between the seller and purchaser; [~~and~~]
- 14 (L) the purchaser's photo identification; [~~Form VTR-136, relating to County of~~
15 ~~Title Issuance, completed and signed by the buyer;~~]
- 16 (M) the odometer disclosure statement signed by the buyer, unless the vehicle is
17 exempt; and
- 18 (N) the rebuilt salvage disclosure, if applicable.
- 19 (9) the original manufacturer's certificate of origin, original manufacturer's statement of
20 origin, or original title for a new motor vehicle [~~vehicles~~] offered for sale by a dealer which must be [~~and~~]

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 120 of 230

Chapter 215 – Motor Vehicle Distribution

1 a) properly stamped [~~original manufacturer's certificate of origin, original manufacturer's statement of~~
2 ~~origin, or original title for motor vehicles sold by a dealer~~] if the title transaction is entered into the
3 electronic titling system by the dealer;

4 (10) the dealer's monthly Motor Vehicle Seller Financed Sales Returns, if any; and

5 (11) if the vehicle sold is a motor home or a towable recreational vehicle subject to
6 inspection under Transportation Code, Chapter 548, a copy of the written notice provided to the buyer at
7 the time of the sale, notifying the buyer that the vehicle is subject to inspection requirements.

8 (f) Title assignments.

9 (1) For each vehicle a dealer acquires or offers for sale, the dealer must properly take
10 assignment in the dealer's name of any:

11 (A) title;

12 (B) manufacturer's statement of origin;

13 (C) manufacturer's certificate of origin; or

14 (D) other evidence of ownership.

15 (2) Unless not required by Transportation Code, §501.0234(b), a[A] dealer must apply in
16 the name of the purchaser of a vehicle for the title and registration, as applicable, of the vehicle with a
17 [~~the appropriate~~] county tax assessor-collector [~~as selected by the purchaser~~].

18 (3) To comply with Transportation Code, §501.0234(f), a registration is considered filed
19 within a reasonable time if the registration is filed within:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 121 of 230

Chapter 215 – Motor Vehicle Distribution

1 (A) 30 [~~20 working~~] days of the date of sale of the vehicle for a vehicle titled or
2 registered in Texas; or

3 (B) 45 days of the date of sale of the vehicle for a dealer-financed transaction
4 involving a vehicle that is titled or registered in Texas.

5 (4) The dealer is required to provide to the purchaser the receipt for the title and
6 registration application.

7 (5) The dealer is required to maintain a copy of the receipt for the title and registration
8 application in the dealer's sales file.

9 (g) Out-of-state sales. For a sale [~~sales transaction~~] involving a vehicle to be transferred out of
10 state, the dealer must:

11 (1) within 30 [~~20 working~~] days of the date of sale, either file the application for
12 certificate of title on behalf of the purchaser or deliver the properly assigned evidence of ownership to
13 the purchaser; and

14 (2) maintain in the dealer's record at the dealer's licensed location a photocopy of the
15 completed sales tax exemption form for out of state sales approved by the Texas Comptroller of Public
16 Accounts.

17 (h) Consignment sales. A dealer offering a vehicle for sale by consignment must [~~shall~~] have a
18 written consignment agreement or a power of attorney for the vehicle, and shall, after the sale of the
19 vehicle, take assignment of the vehicle in the dealer's name and, pursuant to subsection (f), apply in the
20 name of the purchaser for transfer of title and registration, if the vehicle is to be registered, with a the
21 appropriate] county tax assessor-collector [~~as selected by the purchaser~~]. The dealer must, for a

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 122 of 230

Chapter 215 – Motor Vehicle Distribution

1 minimum of 48 months, maintain a record of each vehicle offered for sale by consignment, including the
2 VIN and the name of the owner of the vehicle offered for sale by consignment.

3 (i) Public motor vehicle auctions.

4 (1) A GDN holder that acts as a public motor vehicle auction must comply with
5 subsection (h) of this section.

6 (2) A public motor vehicle auction:

7 (A) is not required to take assignment of title of a vehicle it offers for sale;

8 (B) must take assignment of title of a vehicle from a consignor prior to making
9 application for title on behalf of the buyer; and

10 (C) must make application for title on behalf of the purchaser and remit motor
11 vehicle sales tax within 20 working days of the sale of the vehicle.

12 (3) A GDN holder may not sell another GDN holder's vehicle at a public motor vehicle
13 auction.

14 (j) Wholesale motor vehicle auction records. A wholesale motor vehicle auction license holder
15 shall ~~must~~ maintain, for a minimum of 48 months, a complete record of each vehicle purchase and sale
16 occurring through the wholesale motor vehicle auction. The wholesale motor vehicle auction license
17 holder shall make the record available for inspection and copying by ~~a representative of~~ the
18 department during business hours.

19 (1) A wholesale motor vehicle auction license holder shall ~~must~~ maintain at the
20 licensed location a record reflecting each purchase and sale for at least the preceding 24 months.
21 Records for prior time periods may be kept off-site.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 123 of 230

Chapter 215 – Motor Vehicle Distribution

1 (2) Within 15 days of receiving a department request [~~receipt of a request sent by mail~~
2 ~~or by electronic document transfer from a representative of the department~~], a wholesale motor vehicle
3 auction license holder shall [~~must~~] deliver a copy of the specified records to the address listed in the
4 request.

5 (3) A wholesale motor vehicle auction license holder's complete record of each vehicle
6 purchase and sale must [~~shall~~], at a minimum, contain:

7 (A) the date of sale;

8 (B) the VIN;

9 (C) the name and address of the person selling the vehicle;

10 (D) the name and address of the person purchasing the vehicle;

11 (E) the dealer's license number of both the selling dealer and the purchasing
12 dealer, unless either is exempt from holding a license;

13 (F) all information necessary to comply with the federal odometer disclosure
14 requirements in 49 CFR Part 580 [~~Truth in Mileage Act~~];

15 (G) auction access documents, including the written authorization and
16 revocation of authorization for an agent or employee, in accordance with §215.148 of this title (relating
17 to Dealer Agents);

18 (H) invoices, bills of sale, checks, drafts, or other documents that identify the
19 vehicle, the parties, or the purchase price;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 124 of 230

Chapter 215 – Motor Vehicle Distribution

1 (I) any information regarding the prior status of the vehicle such as the
2 Reacquired Vehicle Disclosure Statement or other lemon law disclosures; and

3 (J) a copy of any written authorization allowing an agent of a dealer to enter the
4 auction.

5 (k) Electronic records. A license holder may maintain a record in an electronic format if the
6 license holder can print the record at the licensed location upon request by ~~a representative of~~ the
7 department, except as provided by subsection (I) of this section.

8 (l) Use of department electronic titling and registration systems ~~webDEALER~~. A license holder
9 utilizing the department's web-based title application known as webDEALER, as defined in §217.71 of
10 this title (relating to Automated and Web-Based Vehicle Registration and Title Systems), shall ~~must~~
11 comply with §217.74 of this title (relating to Access to and Use of webDEALER). Original hard copy titles
12 are not required to be kept at the licensed location~~;~~ but must be made available to the department
13 upon request.

14

15 §215.145. Change of Dealer's Status.

16 (a) A dealer's name change requires a new bond or a rider to the existing bond reflecting the
17 new dealer name, unless the dealer is not otherwise required to purchase a bond.

18 (b) A dealer shall notify the department in writing within 10 days of a change of ownership by
19 submitting a license amendment application in the department-designated electronic licensing system. A
20 licensed dealer that proposes to sell or assign to another any interest in the licensed entity, whether a
21 corporation or otherwise, and provided the physical location of the licensed entity remains the same,

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 125 of 230

Chapter 215 – Motor Vehicle Distribution

1 shall notify the department in writing within 10 days of the change by filing an application to amend the
2 license in the department-designated electronic licensing system. If the sale or assignment of any
3 portion of the business results in a change of entity, then the new entity must apply for and obtain a new
4 license. A publicly held corporation only needs to inform the department of a change in ownership if one
5 person or entity acquires a 10% or greater interest in the licensed entity.

6 (c) Upon the death of a dealer operating [~~of a dealership operated~~] as a
7 sole proprietor [~~proprietorship~~], either the surviving spouse of the deceased dealer or other individual
8 deemed qualified by the department shall submit to the department a bond rider adding the name of
9 the surviving spouse or other qualifying person to the bond for the remainder of the bond and license
10 term. The surviving spouse or other qualifying person may continue operating [~~dealership operations~~
11]under the current dealer license until the end of the license term.

12 (d) For purposes of subsection (c) of this section, [~~if the qualifying person is~~] the sole proprietor's
13 surviving spouse [~~, then the surviving spouse~~] may change the ownership of the dealership at the time
14 the license is renewed without applying for a new GDN. At the time the renewal application is filed, the
15 sole proprietor's surviving spouse must [~~is required to~~] submit to the department:

- 16 (1) an application to amend the business entity;
- 17 (2) a copy of the sole proprietor's certificate of death, naming the surviving spouse;
- 18 (3) the required ownership information; and
- 19 (4) if applicable, a bond in the name of the surviving spouse.

20 (e) For purposes of subsection (c) of this section, [~~if the qualifying person is not the surviving~~
21 ~~spouse, then the~~] a qualifying person who is not the surviving spouse may operate the sole

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 126 of 230

Chapter 215 – Motor Vehicle Distribution

1 proprietorship business during the term of the license. The qualifying person must file with the
2 department:

3 (1) an application to amend the business entity, identifying the qualifying person as the
4 manager;

5 (2) an ownership information form, indicating that the qualifying person has no
6 ownership interest in the business; and

7 (3) a bond rider adding the qualified person's ~~[individual's]~~ name to the existing bond.

8 (f) For purposes of subsection (c) of this section, ~~[if the qualifying person is not the surviving~~
9 ~~spouse, then at the time the license is due to be renewed, the]~~ a qualifying person who is not the
10 surviving spouse must file with the department an application for a new GDN on or before the expiration
11 of the license term in the department-designated electronic licensing system.

12 (g) A determination made under this section does not impact a decision made by the board
13 under Occupations Code, §2301.462[;] (relating to Succession Following Death of Franchised Dealer).

14

15 ~~[\$215.146. Metal Converter's License Plates]~~

16 ~~[(a) A metal converter's license plate shall be attached to the rear license plate holder of a~~
17 ~~vehicle in accordance with Transportation Code, §503.0618.]~~

18 ~~[(b) A converter shall maintain a record of each metal converter's license plate issued to that~~
19 ~~converter. The record of each metal converter's license plate issued must contain:~~

20 (1) the assigned metal converter's license plate number;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 127 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~(2) the year and make of the vehicle to which the metal converter's license plate is~~
2 ~~affixed;~~

3 ~~(3) the VIN of the vehicle; and~~

4 ~~(4) the name of the person in control of the vehicle.]~~

5 ~~[(c) If a converter cannot account for a metal converter's license plate that the department~~
6 ~~issued to the converter, the converter must:~~

7 ~~(1) document the metal converter's license plate as "void" in the converter's metal~~
8 ~~license plate record;~~

9 ~~(2) within three days of discovering that the plate is missing, report to the department in~~
10 ~~writing that the metal converter's license plate is lost or stolen; and~~

11 ~~(3) if found, cease use of the metal converter's license plate.]~~

12 ~~[(d) A metal converter's license plate is no longer valid for use after the converter reports to the~~
13 ~~department that the plate is missing.]~~

14 ~~[(e) A metal converter's license plate record shall be made available for inspection and copying~~
15 ~~by the department at the converter's licensed location during the converter's posted business hours.]~~

16

17 §215.147. Export Sales.

18 (a) Before selling a motor vehicle for export from the United States to another country, a dealer
19 must obtain a legible photocopy of the buyer's government-issued photo identification document. The
20 photo identification document must be issued by the jurisdiction where the buyer resides and be:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 128 of 230

Chapter 215 – Motor Vehicle Distribution

- 1 (1) a passport;
- 2 (2) a driver [~~driver's~~] license;
- 3 (3) a [~~concealed handgun license or~~] license to carry a handgun issued by the Texas
4 Department of Public Safety under Government Code, Chapter 411, Subchapter H;
- 5 (4) a national identification certificate or identity document; or
- 6 (5) other identification document containing the:
 - 7 (A) name of the issuing jurisdiction;
 - 8 (B) buyer's full name;
 - 9 (C) buyer's foreign address;
 - 10 (D) buyer's date of birth;
 - 11 (E) buyer's photograph; and
 - 12 (F) buyer's signature.
- 13 (b) A dealer that sells a vehicle for export from the United States shall place a stamp on the title
14 that includes the words "For Export Only" and includes the dealer's [~~license holder's~~] GDN. The stamp
15 must be legible, in black ink, at least two inches wide, and placed on the:
 - 16 (1) back of the title in all unused dealer reassignment spaces; and
 - 17 (2) front of the title in a manner that does not obscure any names, dates, mileage
18 statements, or other information printed on the title.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 129 of 230

Chapter 215 – Motor Vehicle Distribution

1 (c) In addition to the records required to be maintained by §215.144 of this title (relating to
2 Vehicle Records), a dealer shall maintain, for each motor vehicle sold for export, a sales file record. The
3 sales file record shall be made available for inspection and copying upon request by the department. The
4 sales file record of each vehicle sold for export must [~~shall~~] contain:

5 (1) a completed copy of the Texas Motor Vehicle Sales Tax Exemption Certificate for
6 Vehicles Taken Out of State, indicating that the vehicle has been purchased for export to a foreign
7 country;

8 (2) a copy of the front and back of the title of the vehicle, showing the "For Export Only"
9 stamp and the GDN of the dealer; and

10 (3) if applicable, an Export-only Sales Record Form, listing each motor vehicle sold for
11 export only.

12 (d) A dealer, at the time of sale of a vehicle for export, shall:

13 (1) enter the information required by Transportation Code, §503.061 in the temporary
14 tag database;

15 (2) designate the sale as "For Export Only"; and

16 (3) issue a buyer's temporary tag, in accordance with Transportation Code, §503.063.

17

18 §215.148. Dealer Agents.

19 (a) A dealer shall [~~must~~] provide written authorization to each person with whom the dealer's
20 agent or employee will conduct business on behalf of the dealer, including to a person that:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 130 of 230

Chapter 215 – Motor Vehicle Distribution

- 1 (1) buys and sells motor vehicles for resale; or
- 2 (2) operates a licensed auction.
- 3 (b) If a dealer's agent or employee that conducts business on behalf of the dealer commits an
- 4 act or omission that would be cause for denial, revocation, or suspension of a license in accordance with
- 5 Occupations Code, Chapter 2301 or Transportation Code, Chapter 503, the board may:
- 6 (1) deny an application for a license; or
- 7 (2) revoke or suspend a license.
- 8 (c) The board may take action described in subsection (b) of this section after notice and an
- 9 opportunity for hearing, in accordance with Occupations Code, Chapter 2301 and Chapter 224 of this
- 10 title (relating to (relating to Adjudicative Practice and Procedure)).
- 11 (d) A dealer's authorization to an agent or employee must ~~shall~~:
- 12 (1) be in writing;
- 13 (2) be signed by the dealer principal or person in charge of daily activities of the
- 14 dealership;
- 15 (3) include the agent's or employee's name, current mailing address, and telephone
- 16 number;
- 17 (4) include the dealer's business name, address, and dealer license number or numbers;
- 18 (5) expressly authorize buying or selling by the specified agent or employee;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 131 of 230

Chapter 215 – Motor Vehicle Distribution

1 (6) state that the dealer is liable for any act or omission regarding a duty or obligation of
2 the dealer that is caused by that agent or employee, including any financial considerations to be paid for
3 the vehicle;

4 (7) state that the dealer's authorization remains in effect until the recipient of the
5 written authorization is notified in writing of the revocation of the authority; and

6 (8) be maintained as a required dealer's record and made available upon request by a
7 representative of the department, in accordance with the requirements of §215.144 of this title (relating
8 to Vehicle Records).

9 (e) A license holder, including a wholesale motor vehicle auction~~[license holder]~~ that buys and
10 sells vehicles on a wholesale basis, including by sealed bid, is required to verify the authority of any
11 person claiming to be an agent or employee of a licensed dealer who purports to be buying or selling a
12 motor vehicle:

13 (1) on behalf of a licensed dealer; or

14 (2) under the written authority of a licensed dealer.

15 (f) A title to a vehicle bought by an agent or employee of a dealer shall be:

16 (1) reassigned to the dealer by the seller or by the auction; and

17 (2) shall not be delivered to the agent or employee~~[,]~~ but delivered only to the dealer or
18 the dealer's financial institution.

19 (g) Notwithstanding the prohibitions in this section, an authorized agent or employee may sign a
20 required odometer statement.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 132 of 230

Chapter 215 – Motor Vehicle Distribution

1 (h) In a wholesale transaction for the purchase of a motor vehicle, the seller may accept as
2 consideration only:

3 (1) a check or a draft drawn on the purchasing dealer's account;

4 (2) a cashier's check in the name of the purchasing dealer; or

5 (3) a wire transfer from the purchasing dealer's bank account.

6

7 §215.149. Sales of New Mobility Motor Vehicles~~[Independent Mobility Motor Vehicle Dealers]~~.

8 In accordance with Occupations Code, §2301.361, a transaction occurs through or by a
9 franchised dealer of the motor vehicle's chassis line-make if the franchised dealer applies for title and
10 registration of a new~~the~~ mobility motor vehicle in the name of the purchaser. An independent mobility
11 motor vehicle dealer may prepare the documentation necessary for a franchised dealer to comply with
12 the requirements of Transportation Code, §501.0234 in connection with the sale of a new mobility
13 motor vehicle.

14

15 §215.150. Authorization to Issue Temporary Tags.

16 (a) A dealer that holds a GDN may issue a dealer's temporary tag, buyer's temporary tag, or a
17 preprinted Internet-down temporary tag for authorized purposes only for each type of vehicle the dealer
18 is licensed to sell or lease. A converter that holds a converter's license under Occupations Code, Chapter
19 2301 may issue a converter's temporary tag for authorized purposes only.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 133 of 230

Chapter 215 – Motor Vehicle Distribution

1 (b) A license holder may issue an applicable dealer's temporary tag, buyer's temporary tag, or
2 converter's temporary tag until:

3 (1) the department denies access to the temporary tag database under Transportation
4 Code §503.0632(f) and ~~§224.58[§215.505]~~ of this title (relating to Denial of Dealer or Converter Access
5 to Temporary Tag System);

6 (2) the license holder issues the maximum number of temporary tags authorized under
7 Transportation Code §503.0632(a)-(d); or

8 (3) the license is canceled, revoked, or suspended.

9 (c) A federal, state, or local governmental agency that is exempt under Section 503.024 from the
10 requirement to obtain a dealer general distinguishing number may issue one [temporary]buyer's
11 temporary tag, or one preprinted Internet-down temporary tag, in accordance with Transportation Code
12 §503.063. A governmental agency that issues a [temporary]buyer's temporary tag, or preprinted
13 Internet-down temporary tag, under this subsection:

14 (1) is subject to the provisions of Transportation Code §503.0631 and §503.067
15 applicable to a dealer; and

16 (2) is not required to charge the registration fee under Transportation Code §503.063(g).

17 (d) A dealer or converter is responsible for all use of and access to the applicable temporary tag
18 database under the dealer's or converter's account, including access by any user or unauthorized person.
19 Dealer and converter duties include monitoring temporary tag usage, managing account access, and
20 taking timely and appropriate actions to maintain system security, including:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 134 of 230

Chapter 215 – Motor Vehicle Distribution

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 (b)(e) 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.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 135 of 230

Chapter 215 – Motor Vehicle Distribution

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:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 136 of 230

Chapter 215 – Motor Vehicle Distribution

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

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 137 of 230

Chapter 215 – Motor Vehicle Distribution

1 (4) the department may increase the determined allotment of buyer's temporary tags

2 for dealers in the state, in a geographic or population area, or in a county, based on:

3 (A) changes in the market;

4 (B) temporary conditions that may affect sales; and

5 (C) any other information the department considers relevant.

6 (d) The department will inform each dealer annually of the maximum number of agent

7 temporary tags and vehicle specific temporary tags the dealer is authorized to issue during the calendar

8 year under Transportation Code §503.0632. The number of agent temporary tags and vehicle specific

9 temporary tags allocated to each dealer by the department, for each tag type, will be determined based

10 on the following formula:

11 (1) dealer temporary tag data for agent temporary tags and vehicle specific temporary

12 tags determined from the department's systems from the previous three fiscal years. A dealer's base

13 number will contain the maximum number of dealer temporary tags issued during the previous three

14 fiscal years;

15 (2) the total value of paragraph (1) of this subsection will be increased by a multiplier

16 based on the dealer's time in operation giving a 10 percent increase in tags for each year the dealer has

17 been in operation up to 10 years; and

18 (3) the total value of paragraph (2) of this subsection will be increased by a multiplier

19 that is the greater of:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 138 of 230

Chapter 215 – Motor Vehicle Distribution

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;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 139 of 230

Chapter 215 – Motor Vehicle Distribution

1 (2) the total value of paragraph (1) of this subsection will be increased by a multiplier
2 based on the converter's time in operation giving a 10 percent increase in tags for each year the dealer
3 has been in operation up to 10 years; and

4 (3) the total value of paragraph (2) of this subsection will be increased by a multiplier
5 that is the greater of:

6 (A) the converter's actual growth rate percentage identified from the preceding
7 two fiscal years, calculated by the growth of the number of converter's temporary tags issued, except
8 that it may not exceed 200 percent; or

9 (B) the statewide actual growth rate percentage identified from the preceding
10 two fiscal years, calculated by the growth of the number of converter's temporary tags issued, not less
11 than zero, to determine the converter's temporary tag allotment;

12 (4) the department may increase a converter's allotment of converter temporary tags for
13 converters in the state, in a geographic or population area, or in a county, based on:

14 (A) changes in the market;

15 (B) temporary conditions that may affect sales; and

16 (C) any other information the department considers relevant.

17 (f) A dealer or converter that is licensed after the commencement of a calendar year shall be
18 authorized to issue the number of temporary tags allotted in this subsection prorated on all or part of
19 the remaining months until the commencement of the calendar year after the dealer's or converter's
20 initial license expires. The initial allocations shall be as determined by the department in granting the
21 license, but not more than:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 140 of 230

Chapter 215 – Motor Vehicle Distribution

1 (1) 1,000~~[600]~~ temporary tags for a franchised dealer per each tag type, buyer's
2 temporary tags, agent temporary tags, and vehicle specific tags, unless:

3 (A) the dealer provides credible information indicating that a greater number of
4 tags is warranted based on anticipated sales, and growth, to include new and used vehicle sales,
5 including information from the manufacturer or distributor, or as otherwise provided in this section; and

6 (B) if more than 1,000~~[600]~~ temporary tags are determined to be needed based
7 on anticipated sales and growth, the total number of temporary tags needed, including the 1,000~~[600]~~,
8 will be doubled;

9 (2) 300 temporary tags for a nonfranchised dealer per each tag type, buyer's temporary
10 tags, agent temporary tags, and vehicle specific tags, unless the dealer provides credible information
11 indicating that a greater number of tags is warranted based on anticipated sales as otherwise provided in
12 this section; and

13 (3) A converter will be allocated 600 temporary tags, unless the converter provides
14 credible information indicating that a greater number of tags is warranted based on anticipated sales,
15 including information from the manufacturer or distributor, or as otherwise provided in this section.

16 (g) An existing dealer or converter that is:

17 (1) moving its operations from one location to a different location will continue with its
18 allotment of temporary tags and not be allocated temporary tags under subsection (f) of this section;

19 (2) opening an additional location will receive a maximum allotment of temporary tags
20 based on the greater of the allotment provided to existing locations, including franchised dealers
21 opening additional locations for different line makes, or the amount under subsection (f) of this section;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 141 of 230

Chapter 215 – Motor Vehicle Distribution

1 (3) purchased as a buy-sell ownership agreement will receive the maximum allotment of
2 temporary tags provided to the location being purchased and not be allocated temporary tags under
3 subsection (f) of this section; and

4 (4) inherited by will or laws of descent will receive the maximum allotment of temporary
5 tags provided to the location being inherited and not be allocated temporary tags under subsection (f) of
6 this section.

7 (h) A new dealer or converter may also provide credible information supporting a request for
8 additional temporary tags to the amount allocated under subsection (f) of this section based on:

9 (1) franchised dealer, manufacturer, or distributor sales expectations;

10 (2) a change in license required by death or retirement, except as provided in subsection
11 (g) of this section;

12 (3) prior year's sales by a dealership moving into the state; or

13 (4) other similar change of location or ownership that indicates some continuity in
14 existing operations.

15 (i) After using 50 percent of the allotted maximum number of temporary tags, a dealer or
16 converter may request an increase in the number of temporary tags by submitting a request in the
17 department's eLICENSING system.

18 (1) The dealer or converter must provide information demonstrating the need for
19 additional temporary tags results from business operations, including anticipated needs, as required by
20 §503.0632(c). Information may include documentation of sales and tax reports filed as required by law,
21 information of anticipated need, or other information of the factors listed in §503.0632(b).

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 142 of 230

Chapter 215 – Motor Vehicle Distribution

1 (2) The department shall consider the information presented and may consider
2 information not presented that may weigh for or against granting the request that the department in its
3 sole discretion determines to be relevant in making its determination. Other relevant information may
4 include information of the factors listed in §503.0632(b), the timing of the request, and the applicant's
5 temporary tag activity.

6 (3) The department may allocate a lesser or greater number of additional temporary
7 tags than the amount requested~~[by the dealer or converter]~~. Allocation of a lesser or greater number of
8 additional temporary tags is not a denial of the request. Allocation of additional temporary tags under
9 this paragraph does not limit the dealer's or converter's ability to submit additional requests for more
10 temporary tags.

11 (4) If a request is denied, the denial will be sent to the dealer or converter by email to
12 the requestor's email address~~[a dealer or converter may appeal the denial to the Director of the Motor~~
13 ~~Vehicle Division whose decision is final].~~

14 (A) A dealer or converter may appeal the denial to the Motor Vehicle Division
15 Director.~~[The denial will be sent to the license holder by email to the email used by the license holder in~~
16 ~~the request.]~~

17 (B) The appeal must be requested through the eLICENSING system within 15~~[10~~
18 ~~business] days of the date the department emailed the denial to the dealer or converter~~~~[the denial being~~
19 ~~sent to the department through the eLICENSING system].~~

20 (C) The appeal may discuss information provided in the request but may not
21 include additional information.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 143 of 230

Chapter 215 – Motor Vehicle Distribution

1 (D) The Motor Vehicle Division Director will review the submission and any
2 additional statements concerning the information submitted in the original request and render an
3 opinion within 15~~10 business~~ days of receiving the appeal. The Motor Vehicle Division Director may
4 decide to deny the request and issue no additional tags~~;~~ or award an amount of additional temporary
5 tags that is lesser, equal to, or greater than the request.

6 (E) The requesting dealer or converter~~license holder~~ will be notified as follows:

7 (i) If the Motor Vehicle Division Director ~~director~~ decides ~~has decided~~
8 to deny the appeal, the department will contact the license holder ~~will be contacted~~ by email regarding
9 the decision and options to submit a new request with additional relevant credible supporting
10 documentation or to pursue a claim in district court; or

11 (ii) If the Motor Vehicle Division Director awards ~~has decided to award~~
12 an amount of additional temporary tags that is lesser, equal to, or greater than the request, the
13 additional temporary tags will be added to the dealer's or converter's ~~license holder's~~ account and the
14 license holder will be contacted by email regarding the decision, informed that the request has not been
15 denied, and options ~~the license holder has~~ to submit a new request.

16 (5) The Motor Vehicle Division Director's decision on appeal is final.

17 (6)~~(5)~~ Once a denial is final, a dealer or converter may only submit a subsequent
18 request for additional temporary tags during that calendar year if the dealer or converter is able to
19 provide additional information not considered in a~~the~~ prior request.

20 (j) A change in the allotment under subsection (i) of this section does not create a dealer or
21 converter base for subsequent year calculations.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 144 of 230

Chapter 215 – Motor Vehicle Distribution

1 (k) The department may at any time initiate an enforcement action against a dealer or converter
2 if temporary tag usage suggests that misuse or fraud has occurred as described in Transportation Code
3 §§503.038, 503.0632(f), or 503.067.

4 (l) Unused temporary~~[dealer or converter]~~ tag allotments from a calendar year do not roll over
5 to subsequent years.

6
7 §215.154. Dealer's Temporary Tags.

8 (a) A dealer's temporary tag may be displayed only on the type of vehicle for which the GDN is
9 issued and for which the dealer is licensed by the department to sell or lease.

10 (b) A wholesale motor vehicle auction license holder that also holds a dealer GDN may display a
11 dealer's temporary tag on a vehicle that is being transported to or from the licensed auction location.

12 (c) When an unregistered vehicle is sold to another dealer, the selling dealer shall remove the
13 selling dealer's temporary tag. The purchasing dealer may display its dealer's ~~[dealer]~~ temporary tag or
14 its ~~[metal]~~ dealer's standard or personalized prestige license plate on the vehicle.

15 (d) A dealer's temporary tag:

16 (1) may be displayed on a vehicle only as authorized in Transportation Code, §503.062;
17 and

18 (2) may not be displayed on:

19 (A) a laden commercial vehicle being operated or moved on the public streets or
20 highways;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 145 of 230

Chapter 215 – Motor Vehicle Distribution

1 (B) on the dealer's service or work vehicles as described in §215.138(d) of this
2 chapter (relating to Use of Dealer's License Plates);

3 (C) a golf cart as defined under Transportation Code, Chapter 551; or

4 (D) an off-highway vehicle as defined under Transportation Code, Chapter 551A.

5 [~~(e) For purposes of this section, a dealer's service or work vehicle includes:~~]

6 [~~(1) a vehicle used for towing or transporting other vehicles;~~]

7 [~~(2) a vehicle, including a light truck, used in connection with the operation of the~~
8 ~~dealer's shops or parts department;~~]

9 [~~(3) a courtesy car on which a courtesy car sign is displayed;~~]

10 [~~(4) a rental or lease vehicle; and~~]

11 [~~(5) any boat trailer owned by a dealer or manufacturer that is used to transport more~~
12 ~~than one boat.]~~

13 (e) [(f)] For purposes of subsection (d) of this section, a vehicle bearing a dealer's temporary tag
14 is not considered a laden commercial vehicle when the vehicle is:

15 (1) towing another vehicle bearing the same dealer's temporary tags; and

16 (2) both vehicles are being conveyed from the dealer's place of business to a licensed
17 wholesale motor vehicle auction or from a licensed wholesale motor vehicle auction to the dealer's
18 place of business.

19 [~~(g) As used in this section, "light truck" has the meaning assigned by Transportation Code,~~
20 ~~§541.201.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 146 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~(f)~~ 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)~~ 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)~~ 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)~~ 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)~~ 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.

20

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 147 of 230

Chapter 215 – Motor Vehicle Distribution

1 §215.155. Buyer's Temporary Tags.

2 (a) A buyer's temporary tag may be displayed only on a vehicle; ~~[from the seller's inventory that~~
3 ~~can be legally operated on the public streets and highways and for which a sale has been consummated.]~~

4 (1) from the selling dealer's inventory; and

5 (2) that can be legally operated on the public streets and highways; and

6 (3) for which a sale or lease has been consummated; and

7 (4) that has a valid inspection in accordance with Transportation Code Chapter 548,

8 unless:

9 (A) an inspection is not required under Transportation Code §503.063(i) or (j); or

10 (B) the vehicle is exempt from inspection under Chapter 548.

11 (b) A buyer's temporary tag must be issued and provided to the buyer of a vehicle that is to be
12 titled but not registered but the temporary tag must not be displayed on the vehicle.

13 ~~[(b) A buyer's temporary tag may be displayed only on a vehicle that has a valid inspection in~~
14 ~~accordance with Transportation Code Chapter 548, unless:]~~

15 ~~[(1) an inspection is not required under Transportation Code §503.063(i) or (j); or]~~

16 ~~[(2) the vehicle is exempt from inspection under Chapter 548.]~~(c) For a wholesale

17 transaction, the purchasing dealer places on the motor vehicle its own:

18 (1) dealer's temporary tag; or

19 (2) ~~[metal]~~ dealer's license plate.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 148 of 230

Chapter 215 – Motor Vehicle Distribution

1 (d) A buyer's temporary tag is valid until the earlier of:

2 (1) the date on which the vehicle is registered; or

3 (2) the 60th day after the date of purchase.

4 (e) The dealer[;] or [~~federal, state, or local~~]governmental agency, must ensure that the following
5 information is placed on a buyer's temporary tag[~~that the dealer issues~~]:

6 (1) the vehicle-specific number obtained from the temporary tag database;

7 (2) the year and make of the vehicle;

8 (3) the VIN of the vehicle;

9 (4) the month, day, and year of the expiration of the buyer's temporary tag; and

10 (5) the name of the dealer or [~~federal, state, or local~~]governmental agency.

11 (f) A dealer shall charge a buyer a fee of \$5 for the buyer's temporary tag or Internet-down
12 buyer's temporary tag issued, unless the vehicle is exempt from payment of registration fees under
13 Transportation Code, §502.453 or §502.456. [~~A federal, state, or local governmental agency may charge a
14 buyer a fee of \$5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless
15 the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or
16 §502.456]. A dealer shall remit the fee [~~shall be remitted by a dealer~~] to the county[~~in conjunction~~] with
17 the title transfer application[~~, and, if collected, by a federal, state, or local governmental agency, to the
18 county,~~] for deposit to the credit of the Texas Department of Motor Vehicles fund. If[~~, unless~~] the vehicle
19 is sold by a dealer to an out-of-state resident[~~, in which case~~]:~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 149 of 230

Chapter 215 – Motor Vehicle Distribution

1 (1) the dealer shall remit the entire fee to the department for deposit to the credit of the
2 Texas Department of Motor Vehicles fund if payment is made through the department's electronic title
3 system; or

4 (2) the dealer shall remit the fee to the county for deposit to the credit of the Texas
5 Department of Motor Vehicles fund.

6 (g) A governmental agency may charge a buyer a fee of \$5 for the buyer's temporary tag or
7 Internet-down buyer's temporary tag issued, unless the vehicle is exempt from payment of registration
8 fees under Transportation Code, §502.453 or §502.456. If collected by a governmental agency, the fee
9 must be sent to the county for deposit to the credit of the Texas Department of Motor Vehicles fund.

10

11 §215.160. Duty to Identify Motor Vehicles Offered for Sale as Rebuilt.

12 (a) For each motor vehicle a dealer displays or offers for retail sale and which the dealer knows
13 has been a salvage motor vehicle as defined by Transportation Code, §501.091(15) and has [~~a regular~~
14 ~~title~~] subsequently been titled [~~issued a title~~] under Transportation Code, §501.100, a dealer shall
15 disclose in writing that the motor vehicle has been repaired, rebuilt, or reconstructed [~~and issued a title~~
16 ~~under Transportation Code, §501.100~~]. The written disclosure must:

17 (1) be visible from outside of the motor vehicle; and

18 (2) contain lettering that is reasonable in size, stating as follows: *"This motor vehicle has*
19 *been repaired, rebuilt or, reconstructed after formerly being titled as a salvage motor vehicle."*

20 (b) Upon the sale of a motor vehicle which has been a salvage motor vehicle as defined by
21 Transportation Code, §501.091(15) and [~~a regular title~~] subsequently titled [~~issued~~] under Transportation

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 150 of 230

Chapter 215 – Motor Vehicle Distribution

1 Code, §501.100, a dealer shall obtain the purchaser's signature on the vehicle disclosure form or on an
2 acknowledgement written in fourteen [~~eleven~~] point or larger font that states as follows: "*I, (name of*
3 *purchaser), acknowledge that at the time of purchase, I am aware that this vehicle has been repaired,*
4 *rebuilt, or reconstructed and was formerly titled as a salvage motor vehicle.*"

5 (c) The purchaser's acknowledgement as required in subsection (b) of this section may be
6 incorporated in a Buyer's Order, a Purchase Order, or other disclosure document. This
7 disclosure requires [~~does not require~~] a separate signature.

8 (d) An original signed acknowledgement or vehicle disclosure form required by subsection (b) of
9 this section must [~~or a signed vehicle disclosure form shall~~] be given to the purchaser and a copy of the
10 signed acknowledgement or vehicle disclosure form shall be retained by the dealer in the records of
11 motor vehicles sales required by §215.144 of this title (relating to Vehicle Records). If the
12 acknowledgement is incorporated in a Buyer's Order, a Purchase Order, or other disclosure document, a
13 copy of that document must be given to the purchaser and a copy retained in the dealer's records in
14 accordance with §215.144.

15 (e) This section does not apply to a wholesale motor vehicle auction.

16

17 §215.161. Licensing Education Course Provider Requirements.

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

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 151 of 230

Chapter 215 – Motor Vehicle Distribution

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

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

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

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

10 (f) The dealer training provided by the department is not an approved licensing education course
11 under this section.

12

13

SUBCHAPTER F. LESSORS AND LEASE FACILITATORS

14

43 TAC §§215.171–215.180

15 **STATUTORY AUTHORITY.** The department adopts amendments to Chapter 215 under Occupations Code,

16 §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles

17 and the authority to take any action that is necessary or convenient to exercise that authority;

18 Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license

19 holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute

20 and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in

21 connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations

22 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 152 of 230

Chapter 215 – Motor Vehicle Distribution

1 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter
2 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives
3 the board authority to deny an application for a license, revoke or suspend a license, place on probation,
4 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,
5 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds
6 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government
7 Code, §411.122(d), which authorizes department access to criminal history record information
8 maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal
9 history record information from DPS and the FBI for license applicants, license holders, and
10 representatives whose act or omission would be cause for denying, revoking, or suspending a general
11 distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,
12 Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as
13 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which
14 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;
15 Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases;
16 Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of
17 dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the
18 board to adopt rules necessary to implement and manage the department's temporary tag databases;
19 and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and
20 appropriate to implement the powers and the duties of the department, as well as the statutes referenced
21 throughout this preamble.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 153 of 230

Chapter 215 – Motor Vehicle Distribution

1 The department also adopts amendments under the authority of Transportation Code, §501.0041
2 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the
3 statutory authority referenced throughout this preamble.

4 Transportation Code, §501.0041 authorizes the department to adopt rules to administer
5 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt
6 rules to administer Transportation Code, Chapter 502.

7 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature
8 and requirements of all available formal and informal procedures. Government Code, §2001.039 requires
9 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.
10 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,
11 suspension, annulment, or withdrawal of a license.

12 **CROSS REFERENCE TO STATUTE.** These adopted revisions implement Government Code, Chapters 411
13 and 2001; Occupations Code, Chapters Occupations Code, Chapters 53, 55, 2301, and 2302; and
14 Transportation Code, Chapters 501–503, 1001–1003, and 1005.

15

16 Text.

17 **SUBCHAPTER E[F]. LESSORS AND LEASE FACILITATORS**

18 §215.171. Purpose and Scope.

19 This subchapter implements Occupations Code, Chapter 2301 [~~and more~~]specifically,
20 §§2301.251, 2301.253, 2301.254, 2301.261, 2301.262, 2301.357, and Subchapter L. Vehicle Lessors
21 and Vehicle Lease Facilitators[~~2301.551 – 2301.556~~], and Transportation Code Chapters 1001 -
22 1005.

23

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 154 of 230

Chapter 215 – Motor Vehicle Distribution

1 §215.173. License.

2 (a) No person may engage in business as a vehicle lessor or a vehicle lease facilitator unless
3 that person holds a valid license issued by the department^[7] or is ~~otherwise~~ exempt~~[- by law]~~
4 from obtaining such a license under Occupations Code §2301.254.

5 (b) Any person who facilitates vehicle leases on behalf of a vehicle lease facilitator must:

6 (1) be on the vehicle lease facilitator's payroll and receive compensation from
7 which social security, federal unemployment tax, and all other appropriate taxes are withheld from
8 the representative's paycheck and paid to the proper taxing authority; and

9 (2) have work details such as when, where, and how the final results are achieved,
10 directed, and controlled by the vehicle lease facilitator.

11

12 §215.174. Application for a License.

13 (a) An applicant for a vehicle lessor's or vehicle lease facilitator's license shall ~~must~~
14 submit a sufficient application to the department as required under §215.83 of this title (relating
15 to License Applications, Amendments, or Renewals). To be sufficient, the application must be on a
16 form prescribed by the department, ~~and~~ accompanied by all required supporting documentation,
17 and required fees, and submitted to the department electronically in the licensing system
18 designated by the department.

19 (b) A license holder renewing or amending a license must verify current license
20 information, provide related information and documents for any new requirements or changes to
21 the license, and pay required fees.

22 (c) An applicant for a new license must register for an account in the department-designated
23 licensing system by selecting the licensing system icon on the dealer page of the department website. An

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 155 of 230

Chapter 215 – Motor Vehicle Distribution

1 applicant must designate the account administrator and provide the name and email address for that
2 person, and provide the business telephone number, name, business type, and social security number or
3 employer identification number, as applicable. The applicant's licensing account administrator must be
4 an owner, officer, manager, or bona fide employee.

5 (d) Once registered, an applicant may apply for a new license and must provide the
6 following:

7 (1) type of license requested;

8 (2) business information, including the name, physical and mailing addresses,
9 telephone number, Secretary of State file number, as applicable, and website address, as
10 applicable;

11 (3) contact name, email address, and telephone number of the person submitting
12 the application;

13 (4) contact name, email address, and telephone number of a person who can
14 provide information about business operations and the motor vehicle services offered;

15 (5) the name, social security number, date of birth, identity document information,
16 and ownership percentage for each owner, partner, member, beneficiary, or principal if the
17 applicant is not a publicly traded company;

18 (6) 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 (7) the name, employer identification number, ownership percentage, and non-
22 profit or publicly traded status for each legal entity that owns the applicant in full or in part;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 156 of 230

Chapter 215 – Motor Vehicle Distribution

1 (8) criminal history record information under the laws of Texas, another state in the
2 United States, the United States, and any foreign jurisdiction for each person listed in the
3 application, including offense description, date, and location;

4 (9) military service status;

5 (10) licensing history required to evaluate fitness for licensure under §215.89 of
6 this title (relating to Fitness);

7 (11) signed Certification of Responsibility, which is a form provided by the
8 department; and

9 (12) any other information required by the department to evaluate the application
10 under current law and board rules.

11 ~~(e)~~~~(b)~~ The supporting documentation for a vehicle lessor's license application must ~~shall~~
12 include a legible and accurate electronic image of each applicable required document:

13 (1) Certificate of incorporation, registration, or formation filed with the Texas
14 Secretary of State ~~[verification of the criminal background of each owner and officer of the~~
15 ~~applicant, if applicable];~~

16 (2) one of the following current identity documents for each natural person listed in
17 the application:

18 (A) driver license;

19 (B) Texas Identification Card issued by the Texas Department of Public
20 Safety under Transportation Code Chapter 521, Subchapter E;

21 (C) license to carry a handgun issued by the Texas Department of Public
22 Safety under Government Code Chapter 411, Subchapter H;

23 (D) passport; or

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 157 of 230

Chapter 215 – Motor Vehicle Distribution

- 1 (E) United States military identification card
- 2 [~~(2)~~ the fee required by law for each type of license required];
- 3 (3) a copy of each assumed name certificate on file with the appropriate recording
- 4 entity, such as the Office of the Secretary of State or the county clerk;
- 5 (4) a sample copy of the vehicle lease agreement between the vehicle lessor and a
- 6 lessee;
- 7 (5) a sample copy of the required fee disclosure statement regarding fees paid by
- 8 the vehicle lessor to a vehicle lease facilitator for the facilitation of a vehicle lease or a statement
- 9 that no such fees were or will be paid;
- 10 (6) a list including the business name(s), DBA(s), and addresses of lease facilitators
- 11 with whom the applicant conducts or intends to conduct business;
- 12 (7) a list of other satellite offices that conduct business in the State of Texas that
- 13 includes the address, phone number, and name of the contact person for each location;[-]
- 14 (8) if a vehicle lessor does not deal directly with the public to execute vehicle leases
- 15 and has a licensed location in another state, a vehicle lessor must provide the jurisdiction name,
- 16 licensed business address, and license number for each location that leases a motor vehicle to a
- 17 Texas resident; and
- 18 (9) any other information required by the department to evaluate the application
- 19 under current law and board rules.
- 20 (f)[~~(e)~~] The supporting documentation for a vehicle lease facilitator's license application
- 21 must [shall] include a legible and accurate electronic image of each applicable required document;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 158 of 230

Chapter 215 – Motor Vehicle Distribution

- 1 (1) Certificate of incorporation, registration, or formation filed with the Texas
2 Secretary of State~~[verification of the criminal background of each owner and officer of the~~
3 ~~applicant, if applicable];~~
- 4 (2) one of the following unexpired identity documents for each natural person
5 listed in the application:
- 6 (A) driver license;
- 7 (B) Texas Identification Card issued by the Texas Department of Public
8 Safety under Transportation Code Chapter 521, Subchapter E;
- 9 (C) license to carry a handgun issued by the Texas Department of Public
10 Safety under Government Code Chapter 411, Subchapter H;
- 11 (D) passport; or
- 12 (E) United States military identification card;
- 13 ~~[(2) the fee required by law for each type of license required;]~~
- 14 (3) a copy of each assumed name certificate on file with the appropriate recording
15 entity, such as the Office of the Secretary of State or the county clerk;
- 16 (4) a sample copy of the vehicle lease agreement between each of the lessors the
17 lease facilitator represents, and the lessee;
- 18 (5) a sample copy of the required fee disclosure statement regarding fees paid by a
19 vehicle lessor to the vehicle lease facilitator for the facilitation of a vehicle lease or a statement
20 that no such fees were or will be paid;
- 21 (6) a list of all vehicle lessors, including names and addresses, for whom any vehicle
22 lease facilitator solicits or procures a lessee;~~[- The vehicle lease facilitator shall update the list~~
23 ~~upon renewal of a license and within 10 days of the addition of any vehicle lessor to this list; and]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 159 of 230

Chapter 215 – Motor Vehicle Distribution

1 (7) a copy of the representation agreement between the vehicle lease facilitators
2 and each lessor; and[-]

3 (8) any other information required by the department to evaluate the application
4 under current law and board rules.

5 (g) An applicant operating under a name other than the applicant's business name shall use
6 the name under which the applicant is authorized to do business, as filed with the Secretary of
7 State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant
8 on the application using the letters "DBA." The applicant may not use a name or assumed name
9 that may be confused with or is similar to that of a governmental entity or that is otherwise
10 deceptive or misleading to the public.

11 (h) During the term of a license, a vehicle lessor must add, delete, or update the previously
12 submitted list of lease facilitators and a lease facilitator must add, delete, or update the previously
13 submitted list of new vehicle lessors within 10 days by electronically submitting a license
14 amendment in the licensing system designated by the department.

15
16 §215.175. Sanctions.

17 (a) The board or department may:

18 (1) deny a vehicle lessor or vehicle lease facilitator application;

19 (2) revoke or suspend a vehicle lessor or vehicle lease facilitator license; or

20 (3) assess a civil penalty or take other action on a vehicle lessor or vehicle lease

21 facilitator applicant or license holder, or a person engaged in business for which a vehicle lessor or

22 vehicle lease facilitator license is required.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 160 of 230

Chapter 215 – Motor Vehicle Distribution

1 (b) The board or department may take action described in subsection (a) of this section if a
2 vehicle lessor or vehicle lease facilitator applicant or license holder, or a person engaged in
3 business for which a vehicle lessor or vehicle lease facilitator license is required:

4 (1) fails to maintain an established and permanent place of business required by
5 §215.177 of this title (relating to Established and Permanent Place of Business);

6 (2) fails to maintain records required under this subchapter;

7 (3) refuses or fails to comply with a request by a representative of the department
8 to examine during the vehicle lessor's or vehicle lease facilitator's posted business hours at the
9 vehicle lessor's or vehicle lease facilitator's licensed location:

10 (A) a vehicle leasing record required to be maintained by §215.178 of this
11 title (relating to Records Required for Vehicle Lessors and Vehicle Lease Facilitators);

12 (B) ownership papers for a vehicle owned, leased, or under that vehicle
13 lessor's or vehicle lease facilitator's control; or

14 (C) evidence of ownership or a current premises lease agreement for the
15 property upon which the business is located;

16 (4) refuses or fails to timely comply with a request for records made by a
17 representative of the department;

18 (5) fails to notify the department in writing by electronically submitting a license
19 amendment in the licensing system designated by the department within 10 days of a change of
20 the vehicle lessor or vehicle lease facilitator license holder's:

21 (A) mailing address;

22 (B) physical address;

23 (C) telephone number; or

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 161 of 230

Chapter 215 – Motor Vehicle Distribution

1 (D) email address;

2 (6) fails to notify the department in writing by electronically submitting a license
3 amendment in the licensing system designated by the department within 10 days of a change of
4 the vehicle lessor or vehicle lease facilitator license holder's name, assumed name, management,
5 or ownership;

6 (7) fails to comply with the fee restrictions or other requirements under
7 Occupations Code, §2301.357 or Chapter 2301, Subchapter L. Vehicle Lessors and Vehicle Lease
8 Facilitators [~~§§2301.551 – 2301.556~~];

9 (8) fails to maintain advertisement records or otherwise fails to comply with the
10 advertising requirements of:

11 (A) §215.178; or

12 (B) Subchapter E[H] of this chapter (relating to Advertising);

13 (9) violates any law relating to the sale, lease, distribution, financing, or insuring of
14 motor vehicles;

15 (10) is convicted of an offense that, in accordance with Occupations Code, Chapter
16 53 and with §211.3 [~~§215.88~~] of this title (relating to Criminal Offense Guidelines) [~~and Action on~~
17 ~~License~~]], directly relates to the duties or responsibilities of the licensed occupation;

18 (11) is determined by the board or department, in accordance with §215.89 of this
19 title (relating to Fitness), to be unfit to hold a vehicle lessor or vehicle lease facilitator license;

20 (12) uses or allows use of a vehicle lessor or vehicle lease facilitator license in
21 violation of any law or for the purpose of avoiding any provision of Occupations Code, Chapter
22 2301; or

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 162 of 230

Chapter 215 – Motor Vehicle Distribution

1 (13) ~~willfully~~ omits material information or makes a material misrepresentation in
2 any application or other documentation filed with the department including providing a false or
3 forged identity document or a false or forged photograph, electronic image, or other document.

4 (c) The board or department may take action on a vehicle lessor's license or assess civil
5 penalties for the vehicle lessor's failure to notify the department in writing by electronically
6 submitting a license amendment in the licensing system designated by the department within 10
7 days of any change, addition, or deletion to the list of vehicle lease facilitators with whom the
8 vehicle lessor conducts business, including any change to a vehicle lease facilitator's mailing
9 address, physical address, telephone number, or email address.

10 (d) The board or department may take action on a vehicle lease facilitator's license or
11 assess civil penalties for the failure to notify the department in writing within 10 days by
12 electronically submitting a license amendment in the licensing system designated by the
13 department of any change, addition, or deletion to the list of vehicle lessors for whom the vehicle
14 lease facilitator conducts business, including any change to a vehicle lessor's mailing address,
15 physical address, telephone number, or email address.

16 (e) The board or department may take action on a vehicle lessor's or vehicle lease
17 facilitator's license if the vehicle lessor or vehicle lease facilitator accepts a fee from a dealer,
18 directly or indirectly, for referring a customer who purchases or considers purchasing a motor
19 vehicle.

20
21 §215.176. More Than One Business Location.

22 (a) A vehicle lease facilitator must be licensed separately for each business location.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 163 of 230

Chapter 215 – Motor Vehicle Distribution

1 (b) A vehicle lessor or vehicle lease facilitator that relocates from a point outside the limits
2 of a municipality~~[city]~~ or relocates to a point not within the limits of the same municipality~~[city]~~ of
3 the initial business location must ~~[is required to]~~ obtain a new license.

4 (c) A vehicle lessor is required to obtain a license for the vehicle lessor's primary location. A
5 vehicle lessor must provide the address, telephone number, and the name of a contact person for
6 all other satellite offices that conduct business in the state of Texas.

7

8 §215.177. Established and Permanent Place of Business Premises Requirements.

9 (a) A vehicle lessor or vehicle lease facilitator operating within ~~[the State of]~~ Texas must
10 meet the following requirements at each location where vehicles are leased or offered for lease.

11 (1) Physical location requirements.

12 (A) A vehicle lessor or vehicle lease facilitator operating within~~[the State of]~~
13 Texas must be open to the public. The vehicle lessor's or vehicle lease facilitator's business hours
14 for each day of the week must be posted at the main entrance of the office. The business telephone
15 must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering
16 service, voicemail service, or answering machine. A caller must be able to speak to a natural person or
17 leave a message during these hours. The owner or an employee of the vehicle lessor or vehicle lease
18 facilitator must be at the location during the posted business hours for the purpose of leasing
19 vehicles. In the event the owner or an employee is not available to conduct business during the
20 posted business hours, a separate sign must be posted indicating the date and time such owner or
21 employee will resume vehicle leasing operations.

22 (B) A vehicle lessor's or vehicle leasing facilitator's office structure must be
23 of sufficient size to accommodate the following required equipment:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 164 of 230

Chapter 215 – Motor Vehicle Distribution

1 (i) a desk and two chairs from which the vehicle lessor or vehicle
2 lease facilitator transacts business; ~~and~~

3 (ii) a working telephone number listed in the business name or
4 assumed name under which the vehicle lessor or vehicle lease facilitator conducts business; and ~~and~~

5 (iii) internet access.

6 (C) A vehicle lessor or vehicle lease facilitator that files an application for a
7 new license or a vehicle lessor that files an application for a satellite location must comply with the
8 following requirements:

9 (i) The office must be located in a building with a permanent roof and
10 connecting exterior walls on all sides.

11 (ii) The office must comply with all applicable local zoning
12 ordinances and deed restrictions.

13 (iii) The office may not be located within a residence, apartment,
14 hotel, motel, or rooming house or building not open to the public.

15 (iv) The physical address of the office must be recognized by the U.S.
16 Postal Service, ~~and~~ capable of receiving U.S. mail, and have an assigned emergency services
17 property address.

18 (v) The office may not be virtual or provided by a subscription for
19 office space or office services. Access to office space or office services is not considered an
20 established and permanent location.

21 (D) A portable-type office structure may qualify as an office only if the
22 structure meets the requirements of this section and is not a readily moveable trailer or other
23 vehicle.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 165 of 230

Chapter 215 – Motor Vehicle Distribution

1 (E) One or more licensed vehicle lessors or vehicle lease facilitators, or a
2 combination of one or more licensed vehicle lessors and vehicle lease facilitators may occupy the
3 same business structure and conduct vehicle leasing operations in accordance with the license
4 held by the vehicle lessor or licensed vehicle lease facilitator. Each ~~[person engaged in business as~~
5 ~~a]~~vehicle lessor or vehicle lease facilitator must have:

6 (i) a separate desk from which that vehicle lessor or vehicle lease
7 facilitator transacts business;

8 (ii) a separate working telephone number listed in the vehicle lessor
9 or vehicle lease facilitator's business name or assumed name;

10 (iii) a separate right of occupancy that meets the requirements of
11 this section; and

12 (iv) a vehicle lessor or vehicle lease facilitator license issued by the
13 department in the name of the vehicle lessor or vehicle lease facilitator.

14 (F) A vehicle lease facilitator's established and permanent place of business
15 must be physically located within ~~[the State of]~~Texas.

16 (2) Business Sign requirements. A vehicle lessor or vehicle lease facilitator shall
17 display a conspicuous and permanent business sign at the licensed location showing the name
18 under which the vehicle lessor or vehicle lease facilitator conducts business. Outdoor business
19 signs must contain letters that are at least six inches in height. The business name or assumed
20 name on the sign must be substantially similar to the name reflected on the license issued by the
21 department. A business sign is considered conspicuous if it is easily visible to the public within 100 feet
22 of the main entrance of the business office. A business sign is considered permanent only if it is made of
23 durable, weather-resistant material.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 166 of 230

Chapter 215 – Motor Vehicle Distribution

1 (3) Premises lease requirements. If the premises from which a licensed vehicle
2 lessor or vehicle lease facilitator conducts business is not owned by the license holder, the license
3 holder must maintain for the licensed location a valid premises lease that is continuous during the
4 period of time for which the vehicle lessor's or vehicle lease facilitator's license will be issued. The
5 premises lease agreement must be on a properly executed form containing at a minimum:

6 (A) the name of the property owner~~[landlord]~~ of the premises and the name
7 of the vehicle lease facilitator as the tenant or lessee of the premises;

8 (B) the street address or legal description of the property, provided that if
9 only a legal description of the property is included, the applicant must attach a statement that the
10 property description in the lease agreement is the street address identified on the application as
11 the physical address for the established and permanent place of business; ~~and~~

12 (C) the signature of the property owner as the lessor and the signature of the
13 applicant or holder as the tenant or lessee;

14 (D)~~(C)~~ the period of time for which the premises lease is valid;[-] and

15 (E) if the lease agreement is a sublease in which the property owner is not the
16 lessor, the applicant or holder must also obtain a signed and notarized statement from the property
17 owner including the following information:

18 (i) property owner's full name, email address, mailing address, and
19 phone number; and

20 (ii) property owner's statement confirming that the license holder is
21 authorized to sublease the location and may operate a motor vehicle leasing business from the location.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 167 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(b) A vehicle lessor that does not deal directly with the public to execute vehicle leases~~
2 ~~and whose licensed location is in another state must meet the following requirements at each~~
3 ~~location.]~~

4 ~~[(1) Physical location requirements.]~~

5 ~~[(A) The vehicle lessor's office structure must be of sufficient size to~~
6 ~~accommodate the following required equipment:]~~

7 ~~[(i) a desk and chairs from which the vehicle lessor transacts~~
8 ~~business; and]~~

9 ~~[(ii) a working telephone number listed in the business name or~~
10 ~~assumed name under which the vehicle lessor conducts business.]~~

11 ~~[(B) A vehicle lessor that files an application for a new license or a satellite~~
12 ~~location with a primary licensed location in another state must conform to the following~~
13 ~~requirements:]~~

14 ~~[(i) The office must be located in a building with connecting exterior~~
15 ~~walls on all sides.]~~

16 ~~[(ii) The office must comply with all applicable local zoning~~
17 ~~ordinances and deed restrictions.]~~

18 ~~[(iii) The office may not be located within a residence, apartment,~~
19 ~~hotel, motel, or rooming house.]~~

20 ~~[(iv) The physical address of the office must be recognized by the~~
21 ~~U.S. Postal Service and capable of receiving U.S. mail.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 169 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(A) the name of the landlord of the premises and the name of the licensed~~
2 ~~lessor identified as the tenant of the premises;]~~

3 ~~[(B) the street address or legal description of the property, provided that if~~
4 ~~only a legal description of the property is included, the applicant must attach a statement that the~~
5 ~~property description in the lease agreement is the street address identified on the application;~~
6 ~~and]~~

7 ~~[(C) the period of time for which the premises lease is valid.]~~

8 **(b)[(c)]** A vehicle lessor or vehicle lease facilitator shall be independent of financial
9 institutions and dealerships in location and in business activities, unless that vehicle lessor or
10 vehicle lease facilitator is an:

11 (1) employee or legal subsidiary of the financial institution or dealership; or

12 (2) entity wholly owned by the financial institution or dealership.

13 **(c)[(d)]** For purposes of this section, an employee is a person who meets the requirements
14 of §215.173(b) of this title (relating to License).

15

16 §215.178. Records Required for Vehicle Lessors and Vehicle Lease Facilitators.

17 (a) Vehicle purchase, leasing, and sales ~~[Purchase and leasing]~~ records. A vehicle lessor or
18 vehicle lease facilitator shall ~~[must]~~ maintain a complete record of all vehicle purchases, leases,
19 and sales of leased vehicles for at least one year after the expiration of the vehicle lease.

20 (1) Complete records. ~~[Records]~~ reflecting vehicle lease transactions that occurred
21 within the preceding 24 months must be maintained at the licensed location. Records for prior
22 time periods may be kept off-site ~~[at a location within the same county or within 25 miles of the~~
23 ~~licensed location].~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 170 of 230

Chapter 215 – Motor Vehicle Distribution

1 (2) Within 15 days of receipt of a request [~~sent by mail or by electronic document~~
2 ~~transfer~~] from a representative of the department, a vehicle lessor or vehicle lease facilitator shall
3 ~~must~~ deliver a copy of the specified records to the address listed in the request.

4 (b) Content of records for lease transaction. A complete record for a vehicle lease
5 transaction must contain:

6 (1) the name, address, and telephone number of the vehicle lessor [~~of the vehicle~~
7 ~~subject to the transaction~~];

8 (2) the name, mailing address, physical address, and telephone number of each
9 vehicle lessee [~~of the vehicle subject to the transaction~~];

10 (3) the name, address, telephone number, and license number of the lease
11 facilitator [~~of the vehicle subject to the transaction~~];

12 (4) the name, work [~~home~~] address, and telephone number of each employee of
13 the vehicle lease facilitator that handled the transaction;

14 (5) a complete description of the vehicle involved in the transaction, including the
15 VIN;

16 (6) the name, address, telephone number, and GDN of the dealer selling the
17 vehicle, as well as the franchised dealer's license number [~~of the dealer~~] if the vehicle [~~involved in~~
18 ~~the transaction~~] is a new motor vehicle;

19 (7) the amount of fee paid to the vehicle lease facilitator or a statement that no fee
20 was paid;

21 (8) a copy of the buyer's order and sales contract for the vehicle;

22 (9) a copy of the vehicle lease contract;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 171 of 230

Chapter 215 – Motor Vehicle Distribution

1 (10) a copy of all other contracts, agreements, or disclosures between the vehicle
2 lease facilitator and the consumer lessee; and

3 (11) a copy of the front and back of the manufacturer's statement of origin,
4 manufacturer's certificate of origin, or the title of the vehicle, as applicable. ~~[if the vehicle involved~~
5 ~~in the transaction is a new motor vehicle.]~~

6 (c) Content of records for sale of leased vehicle. A vehicle lessor's complete record for each
7 vehicle sold at the end of a lease to a lessee, a dealer, or at a wholesale motor vehicle auction 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 vehicle lessor;

13 (5) the name and address of the person purchasing the vehicle from the vehicle lessor;

14 (6) except for a purchase or sale where the Tax Code does not require payment of motor
15 vehicle sales tax, a tax assessor-collector receipt marked paid;

16 (7) a copy of all documents, forms, and agreements applicable to a particular sale,
17 including a copy of:

18 (A) the title application;

19 (B) the work-up sheet;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 172 of 230

Chapter 215 – Motor Vehicle Distribution

- 1 (C) the front and back of manufacturer's certificate of origin or manufacturer's
2 statement of origin, unless the title is obtained through the electronic title system;
- 3 (D) the front and back of the title, unless the title is obtained through the
4 electronic title system;
- 5 (E) the factory invoice;
- 6 (F) the sales contract;
- 7 (G) the retail installment agreement;
- 8 (H) the buyer's order;
- 9 (I) the bill of sale;
- 10 (J) any waiver;
- 11 (K) any other agreement between the seller and purchaser; and
- 12 (L) the purchaser's photo identification if sold to a lessee;
- 13 (8) a copy of the original manufacturer's certificate of origin, original manufacturer's
14 statement of origin, or title for motor vehicle offered for sale, or a properly stamped original
15 manufacturer's certificate of origin, original manufacturer's statement of origin, or original title for a title
16 transaction entered into the electronic titling system by a dealer;
- 17 (9) the monthly Motor Vehicle Seller Financed Sales Returns, if any; and
- 18 (10) if the vehicle sold is a motor home or a towable recreational vehicle subject to
19 inspection under Transportation Code, Chapter 548, a copy of the written notice provided to the buyer at
20 the time of the sale, notifying the buyer that the vehicle is subject to inspection requirements.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 173 of 230

Chapter 215 – Motor Vehicle Distribution

1 (d) ~~[(e)]~~ Records of advertising. A vehicle lessor or vehicle lease facilitator shall ~~[must]~~
2 maintain a copy of all advertisements, brochures, scripts, or an electronically reproduced copy in
3 whatever medium appropriate, of promotional materials for a period of at least 18 months. Each
4 copy is subject to inspection upon request by ~~[a representative of]~~ the department at the business
5 location ~~[of the license holder]~~ during posted business hours.

6 (1) A vehicle lessor and a vehicle lease facilitator shall ~~[Vehicle Lessors and vehicle~~
7 ~~lease facilitators must]~~ comply with all federal and state advertising laws and regulations, including
8 Subchapter E ~~[H]~~ of this chapter (relating to Advertising).

9 (2) A vehicle lessor's ~~[lessor]~~ or vehicle lease facilitator's advertising or promotional
10 materials ~~[facilitator]~~ may not state or infer ~~[in any advertisement]~~, either directly or indirectly,
11 that the business involves the sale of new motor vehicles.

12 (e) ~~[(d)]~~ Title assignments. Each certificate of title, manufacturer's certificate of origin, or
13 other evidence of ownership for a vehicle that has been acquired by a vehicle lessor for lease must
14 be properly assigned from the seller in the vehicle lessor's name.

15 (f) ~~[(e)]~~ Letters of representation or appointment. A letter of representation or
16 appointment between a vehicle lessor and a vehicle lease facilitator ~~[with whom the vehicle lessor~~
17 ~~conducts business]~~ must be executed by both parties and maintained by each party.

18 (g) ~~[(f)]~~ Electronic records. Any record required to be maintained by a vehicle lessor or
19 vehicle lease facilitator may be maintained in an electronic format, provided the electronic record
20 can be printed at the licensed location or sent electronically upon department request ~~[for the~~
21 ~~record by a representative of the department]~~.

22

23 §215.179. Change of Vehicle Lessor or Vehicle Lease Facilitator Status.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 174 of 230

Chapter 215 – Motor Vehicle Distribution

1 (a) Change of ownership. A vehicle lessor or vehicle lease facilitator that [~~proposes to sell~~]
2 sells or assigns [~~assign~~] to another any interest in the licensed entity, whether a corporation or
3 otherwise, provided the physical location of the licensed entity remains the same, shall notify the
4 department in writing within 10 days by filing an application to amend the license in the electronic
5 licensing system designated by the department. If the sale or assignment of any portion of the
6 business results in a change of entity, then the purchasing or assignee entity must apply for and
7 obtain a new license by submitting a new license application in the electronic licensing system
8 designated by the department. A publicly held corporation licensed as a vehicle lessor or vehicle
9 lease facilitator needs only inform the department of a change in ownership if one person or entity
10 acquires 10% or greater interest in the licensed entity by submitting a license amendment
11 application in the electronic licensing system designated by the department.

12 (b) Change of operating status of business location. A license holder shall obtain
13 department approval prior to opening a satellite location or relocating an existing location, in
14 accordance with §215.176 of this title (relating to More than One Business Location) by
15 electronically submitting a new license application in the licensing system designated by the
16 department and receiving electronic notice of approval prior to relocating or opening a satellite
17 location. A license holder shall [~~must~~] notify the department when closing an existing location or a
18 satellite location by electronically submitting a license amendment to close the license or close the
19 satellite location in the licensing system designated by the department.

20
21 §215.180. Required Notices to Lessees.

22 Vehicle lessors and vehicle lease facilitators shall provide notice of the complaint
23 procedures provided by Occupations Code, §[§]2301.204 and Subchapter M (relating to

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 175 of 230

Chapter 215 – Motor Vehicle Distribution

1 Warranties: Rights of Vehicle Owners),~~[2301.601–2301.613]~~ to each lessee of a new motor vehicle
2 with whom they enter into a vehicle lease.

3

4

SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS

5

43 TAC §§215.201–215.210

6 **STATUTORY AUTHORITY.** The department adopts repeals to Chapter 215 under Occupations Code,
7 §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles
8 and the authority to take any action that is necessary or convenient to exercise that authority;
9 Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license
10 holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute
11 and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in
12 connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations
13 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which
14 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter
15 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives
16 the board authority to deny an application for a license, revoke or suspend a license, place on probation,
17 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,
18 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds
19 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government
20 Code, §411.122(d), which authorizes department access to criminal history record information
21 maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal
22 history record information from DPS and the FBI for license applicants, license holders, and
23 representatives whose act or omission would be cause for denying, revoking, or suspending a general

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 176 of 230

Chapter 215 – Motor Vehicle Distribution

1 distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,
2 Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as
3 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which
4 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;
5 Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases;
6 Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of
7 dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the
8 board to adopt rules necessary to implement and manage the department's temporary tag databases;
9 and 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 The department also adopts repeals under the authority of Transportation Code, §501.0041 and
13 §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory
14 authority referenced throughout this preamble.

15 Transportation Code, §501.0041 authorizes the department to adopt rules to administer
16 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt
17 rules to administer Transportation Code, Chapter 502.

18 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature
19 and requirements of all available formal and informal procedures. Government Code, §2001.039 requires
20 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.
21 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,
22 suspension, annulment, or withdrawal of a license.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 177 of 230

Chapter 215 – Motor Vehicle Distribution

1 **CROSS REFERENCE TO STATUTE.** These repeals implement Government Code, Chapters 411 and 2001;
2 Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503, 1001–1003,
3 and 1005.

4
5 Text.

6 [~~§215.201. Purpose and Scope.~~]

7 [~~(a) This subchapter implements Occupations Code, §2301.204 and §§2301.601–~~
8 ~~2301.613.~~]

9 [~~(b) Practice and procedure in contested cases heard by the department's Office of~~
10 ~~Administrative Hearings (OAH) are addressed in Subchapter B of this chapter (relating to (relating~~
11 ~~to Adjudicative Practice and Procedure)) and the provisions of this subchapter to the extent that~~
12 ~~the provisions do not conflict with state law, rule, or court order.~~]

13 [~~(c) The following words and terms, when used in this subchapter, shall have the following~~
14 ~~meanings, unless the context clearly indicates otherwise.~~]

15 [~~(1) Comparable Motor Vehicle—A new motor vehicle, with comparable mileage,~~
16 ~~from the same manufacturer, converter, or distributor's product line and the same model year or~~
17 ~~newer as the motor vehicle to be replaced or as reasonably equivalent to the motor vehicle to be~~
18 ~~replaced.~~]

19 [~~(2) Lemon Law—Refers to Occupations Code, Chapter 2301, Subchapter M~~
20 ~~{§§2301.601–2301.613}.~~]

21 [~~(3) Warranty Performance—Refers to Occupations Code, §2301.204.~~]

22

23 [~~§215.202. Filings of Complaints.~~]

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 178 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(a) Lemon law complaints.]~~

2 ~~[(1) Complaints seeking relief under the lemon law must be in writing and filed with~~

3 ~~the department. A complaint filed with the department shall be delivered:]~~

4 ~~[(A) in person to the department;]~~

5 ~~[(B) by mail to the address of the department;]~~

6 ~~[(C) by email to a department-designated email address; or]~~

7 ~~[(D) by facsimile transmission to a department-designated facsimile~~

8 ~~number.]~~

9 ~~[(2) Complaints may be submitted in letter or other written format, or on complaint~~

10 ~~forms provided by the department.]~~

11 ~~[(3) Complaints shall state sufficient facts to enable the department and the party~~

12 ~~complained against to know the nature of the complaint and the specific problems or~~

13 ~~circumstances forming the basis of the claim for relief under the lemon law.]~~

14 ~~[(4) Complaints shall, at a minimum, provide the following information:]~~

15 ~~[(A) the name, address, and telephone number of the motor vehicle owner;]~~

16 ~~[(B) the identification of the motor vehicle, including the make, model, year,~~

17 ~~and manufacturer's VIN;]~~

18 ~~[(C) the type of warranty coverage;]~~

19 ~~[(D) the name and address of the dealer or other person from whom the~~

20 ~~motor vehicle was purchased or leased, including the name and address of the vehicle lessor, if~~

21 ~~applicable;]~~

22 ~~[(E) the date of delivery of the motor vehicle to the original owner and in~~

23 ~~the case of a demonstrator, the date the motor vehicle was placed into demonstrator service;]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 179 of 230

Chapter 215 – Motor Vehicle Distribution

- 1 ~~[(F) the motor vehicle mileage at the time when:]~~
- 2 ~~[(i) the motor vehicle was purchased or leased;]~~
- 3 ~~[(ii) problems with the motor vehicle were first reported; and]~~
- 4 ~~[(iii) the complaint was filed;]~~
- 5 ~~[(G) the name of the dealer or the name of the manufacturer's, converter's,~~
- 6 ~~or distributor's agent to whom the problems were first reported;]~~
- 7 ~~[(H) identification of the motor vehicle's existing problems and a brief~~
- 8 ~~description of the history of problems and repairs on the motor vehicle, including:]~~
- 9 ~~[(i) the date and mileage of each repair; and]~~
- 10 ~~[(ii) a copy of each repair order where possible;]~~
- 11 ~~[(I) the date the motor vehicle manufacturer, converter, or distributor~~
- 12 ~~received written notification of the complaint;]~~
- 13 ~~[(J) the date and results of the motor vehicle inspection, if the motor~~
- 14 ~~vehicle was inspected by the manufacturer, converter, or distributor; and]~~
- 15 ~~[(K) any other information the complainant deems relevant to the~~
- 16 ~~complaint.]~~
- 17 ~~[(5) The department's staff will provide information concerning the complaint~~
- 18 ~~procedure and complaint forms to any person requesting assistance.]~~
- 19 ~~[(6) The filing fee required under the lemon law should be remitted with the~~
- 20 ~~complaint by any form of payment accepted by the department. The filing fee is nonrefundable,~~
- 21 ~~but a complainant that prevails in a case is entitled to reimbursement of the filing fee from the~~
- 22 ~~nonprevailing party. Failure to remit the filing fee with the complaint will delay commencement of~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 180 of 230

Chapter 215 – Motor Vehicle Distribution

1 the 150-day period referenced in paragraph (8) of this subsection and may result in dismissal of
2 the complaint.}]

3 [(7) The commencement of a lemon law proceeding occurs on the date the filing
4 fee is received by the department or its authorized agent.}]

5 [(8) If the hearings examiner has not issued an order within 150 days after the
6 commencement of the lemon law proceeding in accordance with paragraph (7) of this subsection,
7 department staff shall notify the parties by mail that the complainant may file a civil action in state
8 district court to seek relief under the lemon law. The notice will inform the complainant of the
9 complainant's right to continue the lemon law complaint through the department. The 150-day
10 period shall be extended upon request of the complainant or if a delay in the proceeding is caused
11 by the complainant.}]

12 [(b) Warranty performance complaints (repair only relief).}]

13 [(1) Complaints for warranty performance relief filed with the department must
14 comply with the requirements of subsection (a)(1) – (4) of this section.}]

15 [(2) A filing fee is not required for a complaint that is subject to a warranty
16 performance claim.}]

17 [(3) A complaint may be filed with the department in accordance with this section if
18 the defect in the motor vehicle subject to the warranty performance complaint was reported to
19 the manufacturer, converter, distributor, or to an authorized agent prior to the expiration of the
20 warranty period.}]

21 [(4) If the defect is not resolved pursuant to §215.205 of this title (relating to
22 Mediation; Settlement), a hearing will be scheduled and conducted in accordance with

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 181 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O and~~
2 ~~this subchapter.]~~

3 ~~[(5) The final order authority will issue an order on the warranty performance~~
4 ~~complaint. A party who disagrees with the order may oppose the order in accordance with~~
5 ~~§215.207 of this title (relating to Contested Cases: Final Orders).]~~

6 ~~[(6) Department staff will provide information concerning the complaint procedure~~
7 ~~and complaint forms to any person requesting assistance.]~~

8
9 ~~[\$215.203. Review of Complaints.]~~

10 ~~[Department staff will promptly review a complaint to determine if the complaint meets~~
11 ~~the minimum requirements of a lemon law or a warranty performance complaint.]~~

12 ~~[(1) If department staff cannot determine whether a complaint meets the minimum~~
13 ~~lemon law or warranty performance requirements, the complainant will be contacted for~~
14 ~~additional information.]~~

15 ~~[(2) If department staff determines that the complaint meets the minimum lemon~~
16 ~~law or warranty performance requirements, the complaint will be processed in accordance with~~
17 ~~this subchapter.]~~

18
19 ~~[\$215.204. Notification to Manufacturer, Converter, or Distributor.]~~

20 ~~[(a) Upon receipt of a complaint for lemon law or warranty performance relief, the~~
21 ~~department will:]~~

22 ~~[(1) provide notification of the complaint to, and request a response from, the~~
23 ~~appropriate manufacturer, converter, or distributor; and]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 182 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(2) provide a copy of the complaint to, and may request a response from, the~~
2 ~~selling dealer and any other dealer involved with the complaint.]~~

3 ~~[(b) The manufacturer shall, upon request by the department, provide a copy of the~~
4 ~~warranty for the motor vehicle subject to the lemon law or warranty performance complaint.]~~

5

6 ~~[\$215.205. Mediation; Settlement.]~~

7 ~~[(a) Department staff will attempt to settle or resolve a lemon law or warranty~~
8 ~~performance complaint through nonbinding mediation before a hearing on the complaint is~~
9 ~~scheduled.]~~

10 ~~[(b) The parties are required to participate in the nonbinding mediation process in good~~
11 ~~faith.]~~

12 ~~[(c) In a case filed under Occupations Code, §2301.204 or §§2301.601—2301.613, the~~
13 ~~mediator shall qualify for appointment as an impartial third party in accordance with Civil Practice~~
14 ~~and Remedies Code, Chapter 154.]~~

15

16 ~~[\$215.206. Hearings.]~~

17 ~~[Lemon law or warranty performance complaints that satisfy the jurisdictional requirements of~~
18 ~~the Occupations Code will be set for hearing. Notification of the date, time, and place of the hearing will~~
19 ~~be given to all parties by certified mail. Additional information contained in the notice of hearing shall be~~
20 ~~consistent with §215.34 of this title (relating to Notice of Hearing in Contested Cases).]~~

21 ~~[(1) When possible, hearings will be held in the city in which the complainant resides.]~~

22 ~~[(2) Hearings will be scheduled at the earliest date possible, provided that a 10-day~~
23 ~~notice or other notice required by law is given to all parties.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 183 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(3) Hearings will be conducted expeditiously by a hearings examiner in accordance with~~
2 ~~Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O; and with~~
3 ~~the provisions of Subchapter B of this chapter (relating to (relating to Adjudicative Practice and~~
4 ~~Procedure)) and this subchapter.]~~

5 ~~[(4) Hearings will be conducted informally. The parties have the right to be represented~~
6 ~~by attorneys at a hearing, although attorneys are not required. Any party who intends to be represented~~
7 ~~at a hearing by an attorney or an authorized representative must notify the hearings examiner, the~~
8 ~~department, and any other party in writing at least five business days prior to the hearing. Failure to~~
9 ~~provide notice will result in postponement of the hearing if requested by any other party.]~~

10 ~~[(5) Subject to a hearings examiner ruling, a party may present that party's case in full,~~
11 ~~including testimony from witnesses and documentary evidence such as repair orders, warranty~~
12 ~~documents, and the motor vehicle sales contract.]~~

13 ~~[(6) By agreement of the parties and with the written approval of the hearings examiner,~~
14 ~~the hearing may be conducted by written submission only or by telephone.]~~

15 ~~[(7) Except for a hearing conducted by written submission, each party may be~~
16 ~~questioned by the other party at the discretion of the hearings examiner.]~~

17 ~~[(8) Except for a hearing conducted by written submission or by telephone, the~~
18 ~~complainant must bring the motor vehicle in question to the hearing so that the motor vehicle may be~~
19 ~~inspected and test driven, unless otherwise ordered by the hearings examiner upon a showing of good~~
20 ~~cause by the complainant.]~~

21 ~~[(9) The department may have the motor vehicle in question inspected by an expert~~
22 ~~prior to the hearing, if the department determines that an expert opinion may assist in arriving at a~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 184 of 230

Chapter 215 – Motor Vehicle Distribution

1 decision. An inspection under this section shall be made only upon prior notice to all parties, who shall
2 have the right to be present at such inspection. A copy of any findings or report from such inspection will
3 be provided to all parties before, or at, the hearing.]

4 [(10) Except for hearings conducted by written submission, all hearings will be recorded
5 by the hearings examiner. A copy of the recording will be provided to any party upon request and upon
6 payment for the cost of the copy, as provided by law or board rules.]

7

8 [§215.207. Contested Cases: Final Orders.]

9 [(a) A motion for rehearing of a final order issued by the board or a person delegated final order
10 authority for a complaint filed under Occupations Code, Chapter 2301, Subchapters E or M shall proceed
11 in accordance with Occupations Code, §2301.713.]

12 [(b) A hearings examiner shall prepare a final order as soon as possible, but not later than 60
13 days after the hearing is closed, or as otherwise provided by law. The final order shall include the
14 hearings examiner's findings of fact and conclusions of law. The final order shall be sent by the
15 department to all parties by certified mail.]

16 [(c) A party who disagrees with the final order may file a motion for rehearing in accordance
17 with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O. A
18 motion for rehearing of a final order issued by a hearings examiner must:]

19 [(1) be filed with the chief hearings examiner;]

20 [(2) include the specific reasons, exceptions, or grounds asserted by a party as the basis
21 of the request for a rehearing; and]

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 185 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(3) recite, if applicable, the specific findings of fact, conclusions of law, or any other~~
2 ~~portions of the final order to which the party objects.]~~

3 ~~[(d) Replies to a motion for rehearing must be filed with the chief hearings examiner in~~
4 ~~accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301,~~
5 ~~Subchapter O.]~~

6 ~~[(e) If the chief hearings examiner or the chief hearings examiner's designee grants a motion for~~
7 ~~rehearing, the parties will be notified by mail and a rehearing will be scheduled promptly. After~~
8 ~~rehearing, a final order shall be issued with any additional findings of fact or conclusions of law, if~~
9 ~~necessary to support the final order. A hearings examiner may issue an order granting the relief~~
10 ~~requested in a motion for rehearing or requested in a reply to a motion for rehearing without the need~~
11 ~~for a rehearing. If a motion for rehearing and the relief requested is denied, an order will be issued.]~~

12 ~~[(f) A party who has exhausted all administrative remedies and who is aggrieved by a final order~~
13 ~~in a contested case from which appeal may be taken is entitled to judicial review pursuant to~~
14 ~~Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter P, under the~~
15 ~~substantial evidence rule. A copy of the petition for judicial review must be served on the final order~~
16 ~~authority and any other parties of record. After service of the petition and within the time permitted for~~
17 ~~filing an answer, the final order authority shall transmit to the reviewing court the original or a certified~~
18 ~~copy of the entire record of the proceeding. If the court orders that new evidence be presented to the~~
19 ~~final order authority, the final order authority may modify the findings and decision or order by reason~~
20 ~~of the new evidence, and shall transmit the additional record to the court.]~~

21

22 ~~[\$215.208. Lemon Law Relief Decisions.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 186 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(a) Unless otherwise indicated, this section applies to decisions that relate to lemon law~~
2 ~~complaints. Decisions shall give effect to the presumptions provided in Occupations Code, §2301.605,~~
3 ~~where applicable.]~~

4 ~~[(1) If it is found that the manufacturer, distributor, or converter is not able to conform~~
5 ~~the motor vehicle to an applicable express warranty by repairing or correcting a defect in the~~
6 ~~complainant's motor vehicle, creating a serious safety hazard or substantially impairing the use or~~
7 ~~market value of the motor vehicle after a reasonable number of attempts, and that the affirmative~~
8 ~~defenses provided under Occupations Code, §2301.606 are not applicable, the final order authority shall~~
9 ~~issue a final order to the manufacturer, distributor, or converter to:]~~

10 ~~[(A) replace the motor vehicle with a comparable motor vehicle, less a~~
11 ~~reasonable allowance for the owner's use of the vehicle; or]~~

12 ~~[(B) accept the return of the motor vehicle from the owner and refund the full~~
13 ~~purchase price of the motor vehicle to the owner, less a reasonable allowance for the owner's use of the~~
14 ~~motor vehicle.]~~

15 ~~[(2) In any decision in favor of the complainant, the final order authority will, to the~~
16 ~~extent possible, accommodate the complainant's request with respect to replacement or repurchase of~~
17 ~~the motor vehicle.]~~

18 ~~[(b) This subsection applies only to the repurchase of motor vehicles.]~~

19 ~~[(1) When a refund of the purchase price of a motor vehicle is ordered, the purchase~~
20 ~~price shall be the total purchase price of the motor vehicle, excluding the amount of any interest, finance~~
21 ~~charge, or insurance premiums. The award to the motor vehicle owner shall include reimbursement of~~
22 ~~the amount of the lemon law complaint filing fee paid by, or on behalf of, the motor vehicle owner. The~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 187 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~refund shall be made payable to the motor vehicle owner and to any lienholder, respective to their~~
2 ~~ownership interest.]~~

3 ~~[(2) There is a rebuttable presumption that a motor vehicle has a useful life of 120,000~~
4 ~~miles. Except in cases where the preponderance of the evidence shows that the motor vehicle has a~~
5 ~~longer or shorter expected useful life than 120,000 miles, the reasonable allowance for the owner's use~~
6 ~~of the motor vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this~~
7 ~~paragraph.]~~

8 ~~[(A) The product obtained by multiplying the purchase price, as defined in~~
9 ~~paragraph (1) of this subsection, of the motor vehicle by a fraction having as its denominator 120,000~~
10 ~~and having as its numerator the number of miles that the motor vehicle traveled from the time of~~
11 ~~delivery to the owner to the first report of the defect or condition forming the basis of the repurchase~~
12 ~~order; and]~~

13 ~~[(B) 50% of the product obtained by multiplying the purchase price by a fraction~~
14 ~~having as its denominator 120,000 and having as its numerator the number of miles that the motor~~
15 ~~vehicle traveled after the first report of the defect or condition forming the basis of the repurchase~~
16 ~~order. The number of miles during the period covered in this paragraph shall be determined from the~~
17 ~~date of the first report of the defect or condition forming the basis of the repurchase order through the~~
18 ~~date of the hearing.]~~

19 ~~[(3) There is a rebuttable presumption that the useful life of a towable recreational~~
20 ~~vehicle is 3,650 days or 10 years. Except in cases where a preponderance of the evidence shows that the~~
21 ~~vehicle has a longer or shorter expected useful life than 3,650 days or 10 years, the reasonable~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 188 of 230

Chapter 215 – Motor Vehicle Distribution

1 allowance for the owner's use of the towable recreational vehicle shall be that amount obtained by
2 adding subparagraphs (A) and (B) of this paragraph.]

3 [(A) The product obtained by multiplying the purchase price, as defined in
4 paragraph (1) of this subsection, of the towable recreational vehicle by a fraction having as its
5 denominator 3,650 days or 10 years, except the denominator shall be 1,825 days or five years, if the
6 towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of
7 days from the time of delivery to the owner to the first report of the defect or condition forming the
8 basis of the repurchase order.]

9 [(B) 50% of the product obtained by multiplying the purchase price by a fraction
10 having as its denominator 3,650 days or 10 years, except the denominator shall be 1,825 days or five
11 years, if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the
12 number of days of ownership after the first report of the defect or condition forming the basis of the
13 repurchase order. The number of days during the period covered in this paragraph shall be determined
14 from the date of the first report of the defect or condition forming the basis of the repurchase order
15 through the date of the hearing.]

16 [(C) Any day or part of a day that the vehicle is out of service for repair will be
17 deducted from the numerator in determining the reasonable allowance for use of a towable recreational
18 vehicle in this paragraph.]

19 [(c) This subsection applies only to leased motor vehicle relief.]

20 [(1) Except in cases involving unusual and extenuating circumstances supported by a
21 preponderance of the evidence, when a refund of the purchase price of a leased motor vehicle is

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 189 of 230

Chapter 215 – Motor Vehicle Distribution

1 ordered, the purchase price shall be allocated and paid to the lessee and the vehicle lessor, respectively,
2 in accordance with subparagraphs (A) and (B) of this paragraph.]

3 [(A) The lessee shall receive the total of:]

4 [(i) all lease payments previously paid by the lessee to the vehicle lessor
5 under the terms of the lease; and]

6 [(ii) all sums previously paid by the lessee to the vehicle lessor in
7 connection with entering into the lease agreement, including, but not limited to any capitalized cost
8 reduction, down payment, trade-in, or similar cost, plus sales tax, license, registration fees, and other
9 documentary fees, if applicable.]

10 [(B) The vehicle lessor shall receive the total of:]

11 [(i) the actual price paid by the vehicle lessor for the motor vehicle,
12 including tax, title, license, and documentary fees, if paid by the vehicle lessor and evidenced in a bill of
13 sale, bank draft demand, tax collector's receipt, or similar instrument; and]

14 [(ii) an additional 5.0% of the purchase price plus any amount or fee
15 paid by vehicle lessor to secure the lease or interest in the lease.]

16 [(C) A credit reflecting all of the payments made by the lessee shall be deducted
17 from the actual purchase price that the manufacturer, converter, or distributor is required to pay the
18 vehicle lessor, as specified in subparagraph (B)(i) and (ii) of this paragraph.]

19 [(2) When the final order authority orders a manufacturer, converter, or distributor to
20 refund the purchase price in a leased vehicle transaction, the motor vehicle shall be returned to the
21 manufacturer, converter, or distributor with clear title upon payment of the sums indicated in paragraph

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 190 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~(1)(A) and (B) of this subsection. The vehicle lessor shall transfer title of the motor vehicle to the~~
2 ~~manufacturer, converter, or distributor, as necessary to effectuate the lessee's rights. The lease shall be~~
3 ~~terminated without penalty to the lessee.]~~

4 ~~[(3) Refunds shall be made to the lessee, vehicle lessor, and to any lienholder, respective~~
5 ~~to their ownership interest. The refund to the lessee under paragraph (1)(A) of this subsection shall be~~
6 ~~reduced by a reasonable allowance for the lessee's use of the motor vehicle. A reasonable allowance for~~
7 ~~use shall be computed in accordance with subsection (b)(2) or (3) of this section, using the amount in~~
8 ~~paragraph (1)(B)(i) of this subsection as the applicable purchase price.]~~

9 ~~[(d) This subsection applies only to replacement of motor vehicles.]~~

10 ~~[(1) Upon issuance of an order from the final order authority to a manufacturer,~~
11 ~~converter, or distributor to replace a motor vehicle, the manufacturer, converter, or distributor shall:]~~

12 ~~[(A) promptly authorize the exchange of the complainant's motor vehicle with~~
13 ~~the complainant's choice of any comparable motor vehicle; and]~~

14 ~~[(B) instruct the dealer to contract the sale of the selected comparable motor~~
15 ~~vehicle with the complainant under the following terms.]~~

16 ~~[(i) The sales price of the comparable motor vehicle shall be the vehicle's~~
17 ~~Manufacturer's Suggested Retail Price (MSRP/DSRP, as applicable);]~~

18 ~~[(ii) The trade-in value of the complainant's motor vehicle shall be the~~
19 ~~MSRP/DRSP, as applicable, at the time of the original transaction, less a reasonable allowance for the~~
20 ~~complainant's use of the complainant's motor vehicle.]~~

TITLE 43. TRANSPORTATION

Part 10. Texas Department of Motor Vehicles

Chapter 215 – Motor Vehicle Distribution

1 ~~[(iii) The use allowance for replacement relief shall be calculated in~~
2 ~~accordance with subsection (b)(2) and (3) of this section.]~~

3 ~~[(2) Upon any replacement of a complainant's motor vehicle, the complainant shall be~~
4 ~~responsible for payment or financing of the usage allowance of the complainant's vehicle, any~~
5 ~~outstanding liens on the complainant's vehicle, and applicable taxes and fees associated with the new~~
6 ~~sale, excluding documentary fees.]~~

7 ~~[(A) If the comparable motor vehicle has a higher MSRP/DSRP, as applicable,~~
8 ~~than the complainant's vehicle, the complainant shall be responsible at the time of sale to pay or finance~~
9 ~~the difference in the two vehicles' MSRPs/DSRPs, as applicable, to the manufacturer, converter or~~
10 ~~distributor.]~~

11 ~~[(B) If the comparable motor vehicle has a lower MSRP/DSRP, as applicable, than~~
12 ~~the complainant's vehicle, the complainant will be credited the difference in the MSRP/DSRP, as~~
13 ~~applicable, between the two motor vehicles. The difference credited shall not exceed the amount of the~~
14 ~~calculated usage allowance for the complainant's vehicle.]~~

15 ~~[(3) The complainant is responsible for obtaining financing, if necessary, to complete the~~
16 ~~transaction.]~~

17 ~~[(4) The replacement transaction, as described in paragraphs (2) and (3) of this~~
18 ~~subsection, shall be completed as specified in the final order. If the replacement transaction cannot be~~
19 ~~completed within the ordered time period, the manufacturer shall repurchase the complainant's motor~~
20 ~~vehicle in accordance with the repurchase provisions of this section. If repurchase relief occurs, a party~~
21 ~~may request calculation of the repurchase price by the final order authority.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 192 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(e) If the final order authority finds that a complainant's motor vehicle does not qualify for~~
2 ~~replacement or repurchase, an order may be entered in any proceeding, where appropriate, requiring~~
3 ~~repair work to be performed or other action taken to obtain compliance with the manufacturer's,~~
4 ~~converter's, or distributor's warranty obligations.]~~

5 ~~[(f) If the motor vehicle is substantially damaged or if there is an adverse change in the motor~~
6 ~~vehicle's condition beyond ordinary wear and tear, from the date of the hearing to the date of~~
7 ~~repurchase, and the parties are unable to agree on an amount allowed for such damage or condition,~~
8 ~~either party may request reconsideration by the final order authority of the repurchase price contained~~
9 ~~in the final order.]~~

10 ~~[(g) In any award in favor of a complainant, the final order authority may require the dealer~~
11 ~~involved to reimburse the complainant, manufacturer, converter, or distributor for the cost of any items~~
12 ~~or options added to the motor vehicle if one or more of those items or options contributed to the defect~~
13 ~~that is the basis for the order, repurchase, or replacement. This subsection shall not be interpreted to~~
14 ~~require a manufacturer, converter, or distributor to repurchase a motor vehicle due to a defect or~~
15 ~~condition that was solely caused by a dealer add-on item or option.]~~

16

17 ~~[\$215.209. Incidental Expenses.]~~

18 ~~[(a) When a refund of the purchase price or replacement of a motor vehicle is ordered, the~~
19 ~~complainant shall be reimbursed for certain incidental expenses incurred by the complainant from loss~~
20 ~~of use of the motor vehicle because of the defect or nonconformity which is the basis of the complaint.~~
21 ~~The expenses must be reasonable and verifiable. Reimbursable incidental expenses include, but are not~~
22 ~~limited to the following costs:]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 193 of 230

Chapter 215 – Motor Vehicle Distribution

- 1 ~~[(1) alternate transportation;]~~
- 2 ~~[(2) towing;]~~
- 3 ~~[(3) telephone calls or mail charges directly attributable to contacting the manufacturer,~~
- 4 ~~distributor, converter, or dealer regarding the motor vehicle;]~~
- 5 ~~[(4) meals and lodging necessitated by the motor vehicle's failure during out of town~~
- 6 ~~trips;]~~
- 7 ~~[(5) loss or damage to personal property;]~~
- 8 ~~[(6) attorney fees if the complainant retains counsel after notification that the~~
- 9 ~~respondent is represented by counsel; and]~~
- 10 ~~[(7) items or accessories added to the motor vehicle at or after purchase, less a~~
- 11 ~~reasonable allowance for use.]~~
- 12 ~~[(b) Incidental expenses shall be included in the final repurchase price required to be paid by a~~
- 13 ~~manufacturer, converter, or distributor to a prevailing complainant or in the case of a motor vehicle~~
- 14 ~~replacement, shall be tendered to the complainant at the time of replacement.]~~
- 15 ~~[(c) When awarding reimbursement for the cost of items or accessories presented under~~
- 16 ~~subsection (a)(7) of this section, the hearings examiner shall consider the permanent nature,~~
- 17 ~~functionality, and value added by the items or accessories and whether the items or accessories are~~
- 18 ~~original equipment manufacturer (OEM) parts or non-OEM parts.]~~
- 19
- 20 ~~[§215.210. Compliance with Order Granting Relief.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 194 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(a) Compliance with an order issued by the final order authority will be monitored by the~~
2 ~~department.]~~

3 ~~[(b) A complainant is not bound by a final decision and order.]~~

4 ~~[(c) If a complainant does not accept the final decision, the proceeding before the final order~~
5 ~~authority will be deemed concluded and the complaint file closed.]~~

6 ~~[(d) If the complainant accepts the final decision, then the manufacturer, converter, or~~
7 ~~distributor, and the dealer to the extent of the dealer's responsibility, if any, shall immediately take such~~
8 ~~action as is necessary to implement the final decision and order.]~~

9 ~~[(e) If a manufacturer, converter, or distributor replaces or repurchases a motor vehicle pursuant~~
10 ~~to an order issued by the final order authority, then the manufacturer, converter, or distributor shall,~~
11 ~~prior to the resale of such motor vehicle, retitle the vehicle in Texas and shall:]~~

12 ~~[(1) issue a disclosure statement on a form provided by or approved by the department;~~
13 ~~and]~~

14 ~~[(2) affix a department approved disclosure label in a conspicuous location in or on the~~
15 ~~motor vehicle.]~~

16 ~~[(f) The disclosure statement and disclosure label required under subsection (e) of this section~~
17 ~~shall accompany the motor vehicle through the first retail purchase. No person or entity holding a license~~
18 ~~or GDN issued by the department under Occupations Code, Chapter 2301 or Transportation Code,~~
19 ~~Chapter 503 shall remove or cause the removal of the disclosure label until delivery of the motor vehicle~~
20 ~~to the first retail purchaser.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 196 of 230

Chapter 215 – Motor Vehicle Distribution

1 Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license
2 holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute
3 and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in
4 connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations
5 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which
6 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter
7 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives
8 the board authority to deny an application for a license, revoke or suspend a license, place on probation,
9 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,
10 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds
11 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government
12 Code, §411.122(d), which authorizes department access to criminal history record information
13 maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal
14 history record information from DPS and the FBI for license applicants, license holders, and
15 representatives whose act or omission would be cause for denying, revoking, or suspending a general
16 distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,
17 Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as
18 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which
19 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;
20 Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases;
21 Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for
22 an original or renewal general distinguishing number who adopts to be an independent motor vehicle
23 dealer complete web-based education and training developed or approved by the department;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 197 of 230

Chapter 215 – Motor Vehicle Distribution

1 Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice
2 of a surety bond and the procedure by which a claimant may recover against the surety bond;
3 Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of
4 dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the
5 board to adopt rules necessary to implement and manage the department's temporary tag databases;
6 and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and
7 appropriate to implement the powers and the duties of the department, as well as the statutes referenced
8 throughout this preamble.

9 The department also adopts amendments under the authority of Transportation Code, §501.0041
10 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the
11 statutory authority referenced throughout this preamble.

12 Transportation Code, §501.0041 authorizes the department to adopt rules to administer
13 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt
14 rules to administer Transportation Code, Chapter 502.

15 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature
16 and requirements of all available formal and informal procedures. Government Code, §2001.039 requires
17 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.
18 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,
19 suspension, annulment, or withdrawal of a license.

20 **CROSS REFERENCE TO STATUTE.** These adopted revisions implement Government Code, Chapters 411
21 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503,
22 1001–1003, and 1005.

23

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 198 of 230

Chapter 215 – Motor Vehicle Distribution

1 Text.

2 §215.242. General Prohibition.

3 A person advertising motor vehicles shall not use false, deceptive, unfair, or misleading
4 advertising. In addition to a violation of a specific advertising rule, any other advertising or advertising
5 practices found by the department to be false, deceptive, or misleading, whether herein described, shall
6 be deemed a violation of Occupations Code, Chapter 2301 and shall also be deemed~~considered~~ a
7 violation of this rule.

8

9 §215.244. Definitions.

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

12 (1) Advertisement--

13 (A) An oral, written, graphic, or pictorial statement or representation made in the
14 course of soliciting business, including, but not limited to a statement or representation:

15 (i) made in a newspaper, magazine, or other publication;

16 (ii) contained in a notice, sign, poster, display, circular, pamphlet, or
17 letter;

18 (iii) aired on the radio;

19 (iv) broadcast on the internet or television; or

20 (v) streamed via an online service.

21 (B) Advertisement does not include direct communication between a person or
22 person's representative and a prospective purchaser.

23 (2) Advertising provision--

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 199 of 230

Chapter 215 – Motor Vehicle Distribution

1 (A) A provision of Occupations Code, Chapter 2301, relating to the regulation of
2 advertising; or

3 (B) A rule relating to the regulation of advertising, adopted pursuant to the
4 authority of Occupations Code, Chapter 2301.

5 (3) Bait advertisement--An alluring but insincere offer to sell or lease a product of which
6 the primary purpose is to obtain a lead to a person interested in buying or leasing merchandise of the
7 type advertised and to switch a consumer from buying or leasing the advertised product in order to sell
8 or lease some other product at a higher price or on a basis more advantageous to the dealer.

9 (4) Balloon payment--Any scheduled payment made as required by a consumer credit
10 transaction that is more than twice as large as the average of all prior scheduled payments except the
11 down payment.

12 (5) Clear and conspicuous--The statement, representation, or term being disclosed is of
13 such size, color, contrast, and audibility and is presented so as to be readily noticed and understood. All
14 language and terms, including abbreviations, shall be used in accordance with their common or ordinary
15 usage and meaning.

16 (6) Dealership addendum--A form that is displayed on a window of a motor vehicle when
17 a[the] dealership installs special features, equipment, parts, or accessories, or charges for services not
18 already compensated by the manufacturer or distributor for work required to prepare a motor vehicle for
19 delivery to a buyer.

20 (A) The purpose of the addendum is to disclose:

21 (i) that it is supplemental;

22 (ii) any added feature, service, equipment, part, or accessory, including
23 the retail price, charged and added by the dealership;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 200 of 230

Chapter 215 – Motor Vehicle Distribution

1 (iii) any additional charge to the selling price such as additional dealership
2 markup; and

3 (iv) the total dealer selling price.

4 (B) The dealership addendum form shall not be deceptively similar in appearance
5 to the Monroney label, as defined by paragraph (13) ~~[(14)]~~ of this section.

6 (7) Demonstrator--A new motor vehicle that is currently in the inventory of the
7 automobile dealership and used primarily for test drives by customers and for other purposes designated
8 by the dealership.

9 (8) Disclosure--Required information that is clear, conspicuous, and accurate.

10 (9) Distributor Suggested Retail Price (DSRP)--means the total price shown on the
11 Monroney Label as specified by subparagraph ~~[sub-paragraph]~~ (D) of paragraph (13) ~~[(14)]~~ of this section.

12 (10) Factory executive/official motor vehicle--A new motor vehicle that has been used
13 exclusively by an executive or official of the dealer's franchising manufacturer, distributor, or their
14 subsidiaries.

15 ~~[(11) License holder--Any person required to obtain a license from the department.]~~

16 (11) ~~[(12)]~~ Limited rebate--A rebate that is not available to every consumer purchasing or
17 leasing a motor vehicle because qualification for receipt of the rebate is conditioned or restricted in some
18 manner. A rebate conditioned or restricted to purchasers who are residents of the contiguous United
19 States is not a limited rebate.

20 (12) ~~[(13)]~~ Manufacturer's Suggested Retail Price (MSRP)--means the total price shown on
21 the Monroney Label as specified by subparagraph ~~[sub-paragraph]~~ (D) of paragraph (13) of this section.

22 (13) ~~[(14)]~~ Monroney Label--The label required by the Automobile Information Disclosure
23 Act, 15 U.S.C. §§1231 - 1233, to be affixed to the windshield or side window of certain new motor vehicles

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 201 of 230

Chapter 215 – Motor Vehicle Distribution

1 delivered to the dealer and that contains information about the motor vehicle, including, but not limited
2 to:

3 (A) the retail price of the motor vehicle suggested by the manufacturer or
4 distributor, as applicable;

5 (B) the retail delivered price suggested by the manufacturer or distributor, as
6 applicable, for each accessory or item of optional equipment, physically attached to the motor vehicle at
7 the time of its delivery to a dealer, which is not included within the price of the motor vehicle as stated in
8 subparagraph (A) of this paragraph;

9 (C) the amount charged, if any, to a dealer for the transportation of the motor
10 vehicle to the location at which it is delivered to the dealer; and

11 (D) the total of the amounts specified pursuant to subparagraphs (A), (B), and (C)
12 of this paragraph.

13 (14) [~~(15)~~] Online service--A network that connects computer users.

14 (15) [~~(16)~~] Rebate or cash back--A sum of money applied to the purchase or lease of a
15 motor vehicle or refunded after full payment has been rendered for the benefit of the purchaser.

16 (16) [~~(17)~~] Savings claim or discount--An offer to sell or lease a motor vehicle at a reduced
17 price, including, but not limited to, a manufacturer's or distributor's customer rebate, a dealer discount,
18 or a limited rebate.

19 (17) [~~(18)~~] Subsequent violation--Conduct that is the same or substantially the same as
20 conduct the department has previously alleged in a notice of an opportunity to cure [~~an earlier~~
21 ~~communication~~] to be a violation of an advertising provision.

22

23 §215.249. Manufacturer's or [~~]~~ Distributor's Suggested Retail Price.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 202 of 230

Chapter 215 – Motor Vehicle Distribution

1 (a) Except as provided by subsection (b) of this section, the suggested retail price of a new motor
2 vehicle advertised by a manufacturer or distributor must ~~shall~~ include all costs and charges for the motor
3 vehicle advertised.

4 (b) The following costs and charges may be excluded if an advertisement described in subsection
5 (a) of this section clearly and conspicuously states the costs and charges are excluded:

6 (1) destination and dealer preparation charges;

7 (2) registration, certificate of title, license fees, or an additional registration fee, if any;

8 (3) taxes; and

9 (4) other fees or charges that are allowed or prescribed by law.

10 (c) Except as provided by this subsection, if the price of a motor vehicle is stated in an
11 advertisement placed with local media in ~~the State of~~ Texas by a manufacturer or distributor and the
12 names of the local dealers for the motor vehicles advertised are included in that advertisement, then the
13 price must include all costs and charges for the motor vehicle advertised, including destination and dealer
14 preparation charges. The only costs and charges that may be excluded from the price are:

15 (1) registration, certificate of title, license fees, or an additional registration fee, if any;

16 (2) taxes; and

17 (3) other fees or charges that are allowed or prescribed by law.

18

19 §215.250. Dealer Price Advertising; Savings Claims; Discounts.

20 (a) When featuring a sales price of a ~~new or used~~ motor vehicle in an advertisement, the dealer
21 must be willing to sell the motor vehicle for that featured sales price to any retail buyer. The featured
22 sales price must ~~shall~~ be the price before the addition or subtraction of any other negotiated items.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 203 of 230

Chapter 215 – Motor Vehicle Distribution

1 Destination and dealer preparation charges and additional dealership markup, if any must be included in
2 the featured sales price.

3 (b) The only costs and charges that may be excluded from the featured sales price are:

4 (1) registration, certificate of title, or license fees;

5 (2) taxes; and

6 (3) other fees or charges that are expressly allowed [~~or prescribed~~] by law.

7 (c) A qualification may not be used when featuring a sales price for a motor vehicle such as "with
8 trade," "with acceptable trade," "with dealer-arranged financing," "rebate assigned to dealer," or "with
9 down payment."

10 (d) Advertising an "internet price," "e-price," or using similar terms that indicate or create the
11 impression that there is a different or unique sales price for an online or internet consumer or transaction
12 is prohibited.

13 (e) A savings claim or discount offer is prohibited except to advertise a new motor vehicle. No
14 person may advertise a savings claim or discount offer on a used motor vehicle.

15 (f) Statements such as "up to," "as much as," and "from" shall not be used by a dealer in
16 connection with savings claims or discount offers.

17 (g) The savings claim or discount offer for a new motor vehicle, when advertised by a dealer, must
18 be the savings claim or discount available to any and all members of the buying public.

19 (h) If an advertisement includes a savings claim or discount offer, the amount and type of each
20 incentive that makes up the total amount of the savings claim or discount offer must be disclosed.

21 (1) If a savings claim or discount offer includes only a dealer discount, that incentive must
22 be disclosed as a deduction from the MSRP/DSRP, as applicable. The following are acceptable formats for
23 advertising a dealer discount with and without a sales price.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 204 of 230

Chapter 215 – Motor Vehicle Distribution

1 Attached Graphic

2 (2) If a savings claim or discount offer includes only a customer rebate, that incentive must
3 be disclosed as a deduction from the MSRP/DSRP, as applicable. The following are acceptable formats for
4 advertising a customer rebate with and without a sales price.

5 Attached Graphic

6 (3) If a savings claim or discount offer includes both a customer rebate and a dealer
7 discount, the incentives must be disclosed as deductions from the MSRP/DSRP, as applicable. The
8 following are acceptable formats for advertising both a customer rebate and a dealer discount with and
9 without a sales price.

10 Attached Graphic

11 (i) If a savings claim or discount offer includes an option package discount, that discount should
12 be disclosed above, or prior to, the MSRP/DSRP, as applicable, with a total sales price of the motor vehicle
13 before option discounts. Any additional savings or discounts should then be disclosed below the
14 MSRP/DSRP, as applicable. The following are acceptable formats for advertising an option package
15 discount with and without a sales price.

16 Attached Graphic

17 (j) Except as provided herein, the calculation of the featured sales price or featured savings claim
18 or discount may not include a limited rebate. A limited rebate may be advertised by providing the amount
19 of the limited rebate and explaining the conditions or restrictions on qualification for the limited rebate
20 in a statement below the featured sales price or featured savings claim or discount.

21 Attached Graphic

22 (k) In an internet advertisement with multiple limited rebates available on an advertised new
23 motor vehicle, a dealer may display each limited rebate separately allowing a potential buyer to "click" on

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 205 of 230

Chapter 215 – Motor Vehicle Distribution

1 the limited rebate to view the sales price after deducting the applicable limited rebate or applicable
2 multiple rebates.

3 Attached Graphic

4 (I) If a dealer has added an option that was not obtained from the manufacturer or distributor of
5 the motor vehicle, a dealer discount may not be advertised for that vehicle. If a dealer has added an option
6 obtained from the manufacturer or distributor and disclosed that option and its suggested retail price on
7 a dealership addendum, the dealer may advertise a dealer discount for that motor vehicle if the option is
8 listed, and the difference is shown between the dealer's sales price and the MSRP/DSRP, as applicable, of
9 the vehicle including the option obtained from the manufacturer or distributor.

10 Attached Graphic

11

12 §215.257. Authorized Dealer.

13 The term "authorized dealer" or a similar term shall not be used unless the advertising dealer
14 holds both a franchised dealer license and a franchised dealer GDN[dealer license] to sell the motor
15 vehicles the dealer identifies itself as "authorized" to sell.

16

17 §215.261. Manufacturer or [f]Distributor Sales and Wholesale Prices.

18 A motor vehicle shall not be advertised for sale in any manner that creates the impression that it
19 is being offered for sale by the manufacturer or distributor of the motor vehicle. An advertisement shall
20 not:

21 (1) contain terms such as "factory sale," "fleet prices," "wholesale prices," "factory
22 approved," "factory sponsored," "manufacturer sale," or "distributor sale;"

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 206 of 230

Chapter 215 – Motor Vehicle Distribution

1 (2) use a manufacturer's or [/~~/] distributor's name or abbreviation in any manner calculated
2 or likely to create an impression that the motor vehicle is being offered for sale by the manufacturer or
3 distributor; or~~

4 (3) use any other similar terms which indicate sales other than retail sales from the dealer.

5

6 §215.264. Payment Disclosure - Vehicle Lease.

7 (a) An advertisement that promotes a consumer lease and contains the amount of any payment
8 or that contains either a statement of any capitalized cost reduction or other payment or a statement that
9 no payment is required at consummation or prior to consummation or delivery, if delivery occurs after
10 consummation, must clearly and conspicuously include the following:

11 (1) that the transaction advertised is a vehicle lease;

12 (2) the total amount due at consummation or prior to consummation or delivery, if
13 delivery occurs after consummation;

14 (3) the number, amount, and due date or period of scheduled payments under the vehicle
15 lease;

16 (4) a statement of whether a security deposit is required; and

17 (5) a statement that an extra charge may be imposed at the end of the vehicle lease term
18 where the lessee's liability, if any, is based on the difference between the residual value of the leased
19 property and its realized value at the end of the vehicle lease term.

20 (b) Except for a periodic payment, a reference to a charge described in subsection (a)(2) of this
21 section cannot be more prominently advertised than the disclosure of the total amount due at vehicle
22 lease signing or delivery.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 207 of 230

Chapter 215 – Motor Vehicle Distribution

1 (c) Except for disclosures of limitations on rate information, if a percentage rate is advertised, that
2 rate shall not be more prominently advertised than any other disclosure or deal term ~~[of the following~~
3 ~~disclosures in the advertisement]~~.

4 ~~[(1) Description of payments.]~~

5 ~~[(2) Amount due at vehicle lease signing or delivery.]~~

6 ~~[(3) Payment schedule and total amount of periodic payments.]~~

7 ~~[(4) Other itemized charges that are not included in the periodic payment. These charges~~
8 ~~include the amount of any liability that the vehicle lease imposes upon the lessee at the end of the vehicle~~
9 ~~lease term.]~~

10 ~~[(5) Total number of payments.]~~

11 ~~[(6) Payment calculation, including:]~~

12 ~~[(A) gross capitalized cost;]~~

13 ~~[(B) capitalized cost reduction;]~~

14 ~~[(C) adjusted capitalized cost;]~~

15 ~~[(D) residual value;]~~

16 ~~[(E) depreciation and any amortized amounts;]~~

17 ~~[(F) rent charge;]~~

18 ~~[(G) total of base periodic payments;]~~

19 ~~[(H) vehicle lease term;]~~

20 ~~[(I) base periodic payment;]~~

21 ~~[(J) itemization of other charges that are a part of the periodic payment; and]~~

22 ~~[(K) total periodic payment.]~~

23 ~~[(7) Early termination conditions and disclosure of charges.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 208 of 230

Chapter 215 – Motor Vehicle Distribution

- 1 ~~[(8) Maintenance responsibilities.]~~
- 2 ~~[(9) Purchase option.]~~
- 3 ~~[(10) Statement referencing nonsegregated disclosures.]~~
- 4 ~~[(11) Liability between residual and realized values.]~~
- 5 ~~[(12) Right of appraisal.]~~
- 6 ~~[(13) Liability at the end of the vehicle lease term based on residual value.]~~
- 7 ~~[(14) Fees and taxes.]~~
- 8 ~~[(15) Insurance.]~~
- 9 ~~[(16) Warranties or guarantees.]~~
- 10 ~~[(17) Penalties and other charges for delinquency.]~~
- 11 ~~[(18) Security interest.]~~

12 (d) If a vehicle lessor provides a percentage rate in an advertisement, a notice stating "this
13 percentage may not measure the overall cost of financing this lease" shall accompany the rate disclosure.
14 The vehicle lessor shall not use the terms "annual percentage rate," "annual lease rate," or any equivalent
15 terms in any advertisement containing a percentage rate.

16 (e) A multi-page advertisement that provides a table or schedule of the required disclosures is
17 considered a single advertisement, provided that for vehicle lease terms appearing without all of the
18 required disclosures, the advertisement refers to the page or pages on which the table or schedule
19 appears.

20 (f) A merchandise tag stating any item listed in subsection (a) of this section must comply with
21 subsection (a)~~[(1)–(5)]~~ of this section by referring to a sign or to a display prominently posted in the
22 vehicle lessor's place of business. The sign or display must contain a table or schedule of the required
23 disclosures under subsection (a)~~[(1)–(5)]~~.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 209 of 230

Chapter 215 – Motor Vehicle Distribution

1 (g) An advertisement made through television or radio stating any item listed in subsection (a) of
2 this section, must include the following statements:

3 (1) that the transaction advertised is a vehicle lease;

4 (2) the total amount due at consummation or due prior to consummation or delivery, if
5 delivery occurs after consummation; and

6 (3) the number, amount, and due date or period of scheduled payments under the vehicle
7 lease.

8 (h) In addition to the requirements of subsection (g)[~~(1)–(3)~~] of this section, an advertisement
9 made through television or radio stating any item listed in subsection (a) of this section, must:

10 (1) provide a toll-free telephone number along with a statement that the telephone
11 number may be used by consumers to obtain the information in subsection (a) of this section; or

12 (2) direct the consumer to a written advertisement in a publication of general circulation
13 in the community served by the media station, including the name and the date of the publication, with
14 a statement that the required disclosures in subsection (a) of this section are included in the
15 advertisement.

16 (i) The toll-free telephone number required by subsection (h)(1) of this section shall be available
17 for at least 10 days, beginning on the date of the broadcast. Upon request, the vehicle lessor shall provide
18 the information in subsection (a) of this section orally or in writing.

19 (j) The written advertisement required by subsection (h)(2) of this section shall be published
20 beginning at least three days before the broadcast and ending at least 10 days after the broadcast.

21

22 §215.268. Bankruptcy and Liquidation Sales.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 210 of 230

Chapter 215 – Motor Vehicle Distribution

1 A person who advertises a liquidation sale, auction sale, or going out of business sale shall state
2 the correct name and permanent address of the ~~owner of the~~ business in the advertisement. The phrases
3 "going out of business," "closing out," "shutting doors forever," "bankruptcy sale," "foreclosure,"
4 "bankruptcy," or similar phrases or words indicating that a business~~[an enterprise]~~ is ceasing
5 operation~~[business]~~ shall not be used unless the business is closing its operations and follows the
6 procedures required by Business and Commerce Code, Chapter 17, Subchapter F.

7

8 §215.270. Enforcement.

9 (a) The department may file a Notice of Department Decision against a license holder alleging a
10 violation of an advertising provision pursuant to Occupations Code, §2301.203, provided the department
11 can show:

12 (1) that the license holder who allegedly violated an advertising provision has received
13 from the department a notice of an opportunity to cure the violation by certified mail, return receipt
14 requested, in compliance with subsection (b) of this section; and

15 (2) that the license holder committed a subsequent violation of the same advertising
16 provision.

17 (b) An effective notice of an opportunity to cure issued under subsection (a)(1) of this section
18 must:

19 (1) state that the department has reason to believe that the license holder violated an
20 advertising provision and must identify the provision;

21 (2) set forth the facts upon which the department bases its allegation of a violation; and

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 211 of 230

Chapter 215 – Motor Vehicle Distribution

1 (3) state that if the license holder commits a subsequent violation of the same advertising
2 provision, the department will [~~formally~~] file a Notice of Department Decision under §224.56 of this title
3 (relating to Notice of Department Decision).

4 (c) As a part of the cure procedure, the department may require a license holder who allegedly
5 violated an advertising provision to publish a retraction notice to effect an adequate cure of the alleged
6 violation. A retraction notice must:

7 (1) appear in a newspaper of general circulation in the area in which the alleged violation
8 occurred;

9 (2) appear in the portion of the newspaper devoted to motor vehicle advertising, if any;

10 (3) identify the date and the medium of publication, print, electronic, or other, in which
11 the advertising alleged to be a violation appeared; and

12 (4) identify the alleged violation of the advertising provision and contain a statement of
13 correction.

14 (d) A cure is made solely for the purpose of settling an allegation and is not an admission of a
15 violation of these rules; Occupations Code, Chapter 2301; or other law.

16

17 **SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE OF**

18 **ADMINISTRATIVE HEARINGS**

19 **43 TAC §§215.301–215.317**

20 **STATUTORY AUTHORITY.** The department adopts repeals to Chapter 215 under Occupations Code,
21 §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles
22 and the authority to take any action that is necessary or convenient to exercise that authority;
23 Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 212 of 230

Chapter 215 – Motor Vehicle Distribution

1 holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute
2 and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in
3 connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations
4 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which
5 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter
6 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives
7 the board authority to deny an application for a license, revoke or suspend a license, place on probation,
8 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,
9 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds
10 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government
11 Code, §411.122(d), which authorizes department access to criminal history record information
12 maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal
13 history record information from DPS and the FBI for license applicants, license holders, and
14 representatives whose act or omission would be cause for denying, revoking, or suspending a general
15 distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,
16 Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as
17 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which
18 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;
19 Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases;
20 Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for
21 an original or renewal general distinguishing number who adopts to be an independent motor vehicle
22 dealer complete web-based education and training developed or approved by the department;
23 Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 213 of 230

Chapter 215 – Motor Vehicle Distribution

1 of a surety bond and the procedure by which a claimant may recover against the surety bond;
2 Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of
3 dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the
4 board to adopt rules necessary to implement and manage the department's temporary tag databases;
5 and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and
6 appropriate to implement the powers and the duties of the department, as well as the statutes referenced
7 throughout this preamble.

8 The department also adopts repeals under the authority of Transportation Code, §501.0041 and
9 §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory
10 authority referenced throughout this preamble.

11 Transportation Code, §501.0041 authorizes the department to adopt rules to administer
12 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt
13 rules to administer Transportation Code, Chapter 502.

14 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature
15 and requirements of all available formal and informal procedures. Government Code, §2001.039 requires
16 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.
17 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,
18 suspension, annulment, or withdrawal of a license.

19 **CROSS REFERENCE TO STATUTE.** These repeals implement Government Code, Chapters 411 and 2001;
20 Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503, 1001–1003,
21 and 1005.

22

23 Text.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 214 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~§215.301. Purpose and Scope.~~

2 ~~[(a) This subchapter implements the practice and procedure for contested cases under the~~
3 ~~jurisdiction of the department that are conducted by an ALJ under Occupations Code, Chapter~~
4 ~~2301 and Transportation Code, Chapters 503 and 1000—1005.]~~

5 ~~[(b) A contested case hearing held by an ALJ shall be conducted in accordance with~~
6 ~~Government Code, Chapter 2001; applicable SOAH rules; and board rules.]~~

7 ~~[(c) Unless otherwise provided by statute or by this chapter, this subchapter governs~~
8 ~~practice and procedure relating to contested cases filed with the department on or after~~
9 ~~September 1, 2007.]~~

10 ~~[(d) Practice and procedure in contested cases filed on or after January 1, 2014, under~~
11 ~~Occupations Code, Chapter 2301, Subchapters E or M are addressed in Subchapter B of this~~
12 ~~chapter (relating to (relating to Adjudicative Practice and Procedure)).]~~

13

14 ~~[215.302. Conformity with Statutory Requirements.]~~

15 ~~[In the event of a conflict between Occupations Code, Chapter 2301 and Transportation Code,~~
16 ~~Chapter 503, the definition or procedure referenced in Occupations Code, Chapter 2301 controls.]~~

17

18 ~~§215.303. Application of Board and SOAH Rules.]~~

19 ~~[Upon referral by the department of a contested case to SOAH, the rules contained in 1 TAC~~
20 ~~Chapter 155 and the provisions of this subchapter, to the extent they are not in conflict with 1 TAC~~
21 ~~Chapter 155, govern the processing of the contested case until the ALJ disposes of the contested case.]~~

22

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 215 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~§215.305. Filing of Complaints, Protests, and Petitions; Mediation.]~~

2 ~~[(a) All complaints, protests, and petitions required or allowed to be filed under Occupations~~
3 ~~Code, Chapter 2301; Transportation Code, Chapters 503 and 1000—1005; or this chapter must be~~
4 ~~delivered to the department:]~~

5 ~~[(1) in person;]~~

6 ~~[(2) by first-class mail; or]~~

7 ~~[(3) by electronic document transfer at a destination designated by the department.]~~

8 ~~[(b) Except as provided by subsections (d), (n), and (o) of this section, parties to a contested case~~
9 ~~filed under Occupations Code, Chapter 2301 or Transportation Code, Chapters 503 and 1000—1005 are~~
10 ~~required to participate in mediation, in accordance with this section, before the case is referred for~~
11 ~~hearing.]~~

12 ~~[(c) The term "mediation" as used in this section has the meaning assigned by Occupations Code,~~
13 ~~§2301.521.]~~

14 ~~[(d) This section does not limit the parties' ability to settle a case without mediation.]~~

15 ~~[(e) The department shall provide mediation services.]~~

16 ~~[(f) The mediator shall qualify for appointment as an impartial third party in accordance with~~
17 ~~Civil Practice and Remedies Code, Chapter 154.]~~

18 ~~[(g) The mediation process will conclude within 60 days of the date a contested case is assigned~~
19 ~~to a mediator unless, at the department's discretion, the mediation deadline is extended.]~~

20 ~~[(h) The department will assign a different mediator if:]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 216 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(1) either party promptly and with good cause objects to an assigned mediator; or]~~

2 ~~[(2) an assigned mediator is recused.]~~

3 ~~[(i) At any time before a contested case is referred for hearing, the parties may file a joint notice~~
4 ~~of intent to retain an outside mediator. The notice must include:]~~

5 ~~[(1) the name, address, email address, facsimile number, and telephone number of the~~
6 ~~outside mediator selected;]~~

7 ~~[(2) a statement that the parties have entered into an agreement with the outside~~
8 ~~mediator regarding the mediator's rate and method of compensation;]~~

9 ~~[(3) an affirmation that the outside mediator qualifies for appointment as an impartial~~
10 ~~third party in accordance with Civil Practice and Remedies Code, Chapter 154; and]~~

11 ~~[(4) a statement that the mediation will conclude within 60 days of the date of the joint~~
12 ~~notice of retention unless, at the department's discretion, the mediation deadline is extended.]~~

13 ~~[(j) All communications in a mediation are confidential and subject to the provisions of the~~
14 ~~Governmental Dispute Resolution Act, Government Code, §2009.054.]~~

15 ~~[(k) Agreements reached by the parties in mediation shall be reduced to writing by the mediator~~
16 ~~and signed by the parties before the mediation concludes or as soon as practical.]~~

17 ~~[(l) Within 10 days of the conclusion of the mediation period, a mediator shall provide to the~~
18 ~~department and to the parties a written report stating:]~~

19 ~~[(1) whether the parties attended the mediation;]~~

20 ~~[(2) whether the matter settled in part or in whole;]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 217 of 230

Chapter 215 – Motor Vehicle Distribution

- 1 ~~[(3) any unresolved issues; and]~~
- 2 ~~[(4) any other stipulations or matters the parties agree to report.]~~
- 3 ~~[(m) Upon receipt of the mediator's report required under this section, the department shall:]~~
- 4 ~~[(1) enter an order disposing of resolved issues; and]~~
- 5 ~~[(2) refer unresolved issues for hearing.]~~
- 6 ~~[(n) Parties to a contested case filed as an enforcement action brought by the department are~~
- 7 ~~not required to participate in mediation.]~~
- 8 ~~[(o) Parties to a contested case filed under Occupations Code, §2301.204 or §§2301.601–~~
- 9 ~~2301.613, must participate in mediation in accordance with §215.205 of this title (relating to Mediation;~~
- 10 ~~Settlement).]~~
- 11
- 12 ~~[§215.306. Referral to SOAH.]~~
- 13 ~~[Contested cases shall be referred to SOAH upon determination that a hearing is appropriate~~
- 14 ~~under Occupations Code, Chapter 2301, Subchapter O; Transportation Code, Chapter 503; or this~~
- 15 ~~chapter, including contested cases relating to:]~~
- 16 ~~[(1) an enforcement complaint on the department's own initiative;]~~
- 17 ~~[(2) a notice of protest that has been timely filed in accordance with §215.106 of this~~
- 18 ~~title (relating to Time for Filing Protest);]~~
- 19 ~~[(3) a protest filed under Occupations Code, §2301.360 or a complaint or protest filed~~
- 20 ~~under Occupations Code, Chapter 2301, Subchapters I or J;]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 218 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(4) issuance of a cease and desist order, whether the order is issued with or without~~
2 ~~prior notice at the time the order takes effect; or]~~

3 ~~[(5) any other contested matter that meets the requirements for a hearing at SOAH~~
4 ~~under Occupations Code, Chapter 2301.]~~

5

6 ~~[\$215.307. Notice of Hearing.]~~

7 ~~[(a) The requirements for a notice of hearing in a contested case are provided by Government~~
8 ~~Code, §2001.052; Occupations Code, §2301.705; and 1 TAC §155.401, as applicable.]~~

9 ~~[(b) For service of parties outside of the United States, in addition to service under Occupations~~
10 ~~Code, §2301.265, the department may serve a notice of hearing by any method allowed under Texas~~
11 ~~Rules of Civil Procedure, Rule 108a(1) or that provides for confirmation of delivery to the party.]~~

12 ~~[(c) The last known address of a license applicant, license holder, or other person is the last~~
13 ~~mailing address provided to the department when the license applicant applies for its license, when a~~
14 ~~license holder renews its license, or when the license holder notifies the department of a change in the~~
15 ~~license holder's mailing address.]~~

16

17 ~~[\$215.308. Reply to Notice of Hearing and Default Proceedings.]~~

18 ~~[(a) On or before the 20th day after a notice of hearing has been served on a party in a contested~~
19 ~~case referred by the department to SOAH, the party may file a written reply or pleading responding to all~~
20 ~~allegations. The written reply or responsive pleading must be filed with SOAH in accordance with 1 TAC~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 219 of 230

Chapter 215 – Motor Vehicle Distribution

1 §155.101 and must identify the SOAH and department docket numbers as reflected on the notice of
2 hearing.]

3 [(b) Any party filing a reply or responsive pleading shall serve a copy of the reply or responsive
4 pleading on each party or party's representative in compliance with 1 TAC §155.103. Any party filing a
5 reply or responsive pleading shall also provide a copy to the department. The presumed time of receipt
6 of served documents is subject to 1 TAC §155.103.]

7 [(c) A party may file an amended or supplemental reply or responsive pleading in accordance
8 with 1 TAC §155.301.]

9 [(d) If a party properly noticed under this chapter does not appear at the hearing, a party may
10 request that the ALJ dismiss the contested case from the SOAH docket. If the contested case is dismissed
11 from the SOAH docket, the case may be presented to the board for disposition based on the default
12 pursuant to 1 TAC §155.501. The board may enter a final order finding that the allegations in the petition
13 are deemed admitted and granting relief in accordance with applicable law. No later than 10 days after
14 the hearing date, if a final order has not been issued, a party may file a motion with the board to set
15 aside the default and reopen the record. The board, for good cause shown, may grant the motion, set
16 aside the default, and refer the case back to SOAH for further proceedings.]

17

18 [~~§215.310. Issuance of Proposals for Decision and Orders.~~]

19 [(a) All proposals for decision prepared by the ALJ shall be submitted to the board and copies
20 furnished to the parties.]

21 [(b) All decisions and orders issued by the board shall be furnished to the parties and to the ALJ.]

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 220 of 230

Chapter 215 – Motor Vehicle Distribution

1

2 ~~§215.311. Amicus Briefs.]~~

3 ~~[(a) Any interested person may submit an amicus brief for consideration by the board in a~~
4 ~~contested case by the deadline for exceptions under 1 TAC §155.301. A party may submit one written~~
5 ~~response to the amicus brief no later than the deadline for replies to exceptions under 1 TAC §155.301.]~~

6 ~~[(b) Amicus briefs and responses to amicus briefs must be submitted to the board and the ALJ,~~
7 ~~and copies must be served on all parties.]~~

8 ~~[(c) Any amicus brief, or response to that brief, not submitted to the board and the ALJ within~~
9 ~~the deadlines prescribed by subsection (a) of this section will not be considered by the board, unless~~
10 ~~good cause is shown why the deadline should be waived or extended.]~~

11 ~~[(d) The ALJ may amend the proposal for decision in response to any amicus brief or response to~~
12 ~~an amicus brief.]~~

13

14 ~~§215.314. Cease and Desist Orders.]~~

15 ~~[(a) Whenever it appears that a person is violating any provision of Occupations Code, Chapter~~
16 ~~2301; Transportation Code, Chapter 503; or a board rule or order, an order requiring the person to cease~~
17 ~~and desist from the violation may be entered.]~~

18 ~~[(b) If it appears from specific facts shown by affidavit or by verified complaint that one or more~~
19 ~~of the conditions in Occupations Code, §2301.802(b) will occur before notice can be served and a~~
20 ~~hearing held, the order may be issued without notice; otherwise, the order must be issued after a~~
21 ~~hearing has been held to determine the validity of the order and to allow the person who requested the~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 221 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~order to show good cause why the order should remain in effect during the pendency of the contested~~
2 ~~case.]~~

3 ~~[(c) Each cease and desist order issued without notice must include:]~~

4 ~~[(1) the date and hour of issuance;]~~

5 ~~[(2) a statement of which of the conditions in Occupations Code, §2301.802(b) will occur~~
6 ~~before notice can be served and a hearing held; and]~~

7 ~~[(3) a notice of hearing for the earliest date possible to determine the validity of the~~
8 ~~order and to allow the person who requested the order to show good cause why the order should~~
9 ~~remain in effect during the pendency of the contested case.]~~

10 ~~[(d) Each cease and desist order shall:]~~

11 ~~[(1) state the reasons for its issuance; and]~~

12 ~~[(2) describe in reasonable detail the act or acts to be restrained.]~~

13 ~~[(e) A cease and desist order shall not be issued unless the person requesting the order presents~~
14 ~~a petition or complaint, verified by affidavit, containing a plain statement of the grounds for seeking the~~
15 ~~cease and desist order.]~~

16 ~~[(f) A cease and desist order issued without notice expires as provided in the order, but shall not~~
17 ~~exceed 20 days.]~~

18 ~~[(g) A cease and desist order may be extended for a period of time equal to the period of time~~
19 ~~granted in the original order if, prior to the expiration of the previous order, good cause is shown for the~~
20 ~~extension or the party against whom the order is directed consents to the extension.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 222 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(h) The person against whom a cease and desist order was issued without notice may request~~
2 ~~that the scheduled hearing be held earlier than the date set in the order.]~~

3 ~~[(i) After the hearing, the ALJ shall prepare a written order, including a justification explaining~~
4 ~~why the cease and desist order should remain in place during the pendency of the contested case.]~~

5 ~~[(j) A party may appeal to the board an order granting or denying a motion for a cease and desist~~
6 ~~order.]~~

7 ~~[(k) An appeal of an order granting or denying a motion for a cease and desist order must be~~
8 ~~made to the board before a person may seek judicial review of an order issued under this section.]~~

9 ~~[(l) Upon appeal to a district court of an order issued under this section, the order may be stayed~~
10 ~~by the board upon a showing of good cause by a party.]~~

11 ~~[(m) Prior to the commencement of a proceeding by SOAH, the director is authorized to issue a~~
12 ~~cease and desist order under this section. An ALJ shall hold a hearing to determine whether an~~
13 ~~interlocutory cease and desist order should remain in effect during the pendency of the proceeding.]~~

14

15 ~~[\$215.315. Statutory Stay.]~~

16 ~~[(a) A person affected by a statutory stay imposed by Occupations Code, Chapter 2301 may~~
17 ~~request a hearing before an ALJ to modify, vacate, or clarify the extent and application of the statutory~~
18 ~~stay.]~~

19 ~~[(b) After a hearing on a motion to modify, vacate, or clarify a statutory stay, the ALJ shall~~
20 ~~expeditiously prepare a written order, including a justification explaining why the statutory stay should or~~
21 ~~should not be modified, vacated, or clarified.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 223 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(c) A person affected by a statutory stay imposed by Occupations Code, Chapter 2301 may~~
2 ~~initiate a proceeding before the board to modify, vacate, or clarify the extent and application of the~~
3 ~~statutory stay.]~~

4

5 ~~[\$215.316. Informal Disposition.]~~

6 ~~[(a) Notwithstanding any other provision in this subchapter, at any time during the contested~~
7 ~~case, the board may informally dispose of a contested case by stipulation, agreed settlement, dismissal,~~
8 ~~or consent order.]~~

9 ~~[(b) If the parties have settled or otherwise determined that a contested case proceeding is not~~
10 ~~required, the party who brought the protest, complaint, or petition shall file a motion to dismiss the~~
11 ~~contested case from SOAH's docket and present a proposed agreed order or dismissal order to the~~
12 ~~board.]~~

13 ~~[(c) Agreed orders must contain proposed findings of fact and conclusions of law that are signed~~
14 ~~by all parties or their authorized representatives.]~~

15 ~~[(d) Upon receipt of the agreed order, the board may:]~~16 ~~[(1) adopt the settlement agreement and issue a final order;]~~

17 ~~[(2) reject the settlement agreement and remand the contested case for a hearing~~
18 ~~before SOAH; or]~~

19 ~~[(3) take other action that the board finds just.]~~

20

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 224 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~§215.317. Motion for Rehearing.~~

2 ~~[(a) A motion for rehearing and any reply to a motion for rehearing will be processed in~~
3 ~~accordance with Government Code, Chapter 2001.]~~

4 ~~[(b) For an order issued by the board, a motion for rehearing and reply to a motion for rehearing~~
5 ~~must be filed with the department and decided by the board unless the board specifically delegates~~
6 ~~motion for rehearing authority.]~~

7 ~~[(c) For an order issued by a board delegate, a motion for rehearing and reply to a motion for~~
8 ~~rehearing must be filed with the department and decided by the board delegate who issued the order.]~~

9 ~~[(d) The requirements for a motion for rehearing regarding a complaint filed on or after January~~
10 ~~1, 2014, under Occupations Code, §2301.204 or §§2301.601 – 2301.613 are governed by §215.207 of this~~
11 ~~title (relating to Contested Cases: Final Orders).]~~

12

13 **SUBCHAPTER G[J]. ADMINISTRATIVE SANCTIONS**

14 **43 TAC §§215.500–215.502, 215.505**

15 **STATUTORY AUTHORITY.** The department adopts amendments and repeals to Chapter 215 under
16 Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease
17 of motor vehicles and the authority to take any action that is necessary or convenient to exercise that
18 authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of
19 license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by
20 statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses
21 in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations
22 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 225 of 230

Chapter 215 – Motor Vehicle Distribution

1 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter
2 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives
3 the board authority to deny an application for a license, revoke or suspend a license, place on probation,
4 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,
5 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds
6 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government
7 Code, §411.122(d), which authorizes department access to criminal history record information
8 maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal
9 history record information from DPS and the FBI for license applicants, license holders, and
10 representatives whose act or omission would be cause for denying, revoking, or suspending a general
11 distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,
12 Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as
13 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which
14 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;
15 Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases;
16 Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for
17 an original or renewal general distinguishing number who adopts to be an independent motor vehicle
18 dealer complete web-based education and training developed or approved by the department;
19 Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice
20 of a surety bond and the procedure by which a claimant may recover against the surety bond;
21 Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of
22 dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the
23 board to adopt rules necessary to implement and manage the department's temporary tag databases;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 226 of 230

Chapter 215 – Motor Vehicle Distribution

1 and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and
2 appropriate to implement the powers and the duties of the department, as well as the statutes referenced
3 throughout this preamble.

4 The department also adopts amendments under the authority of Transportation Code, §501.0041
5 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the
6 statutory authority referenced throughout this preamble.

7 Transportation Code, §501.0041 authorizes the department to adopt rules to administer
8 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt
9 rules to administer Transportation Code, Chapter 502.

10 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature
11 and requirements of all available formal and informal procedures. Government Code, §2001.039 requires
12 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.
13 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,
14 suspension, annulment, or withdrawal of a license.

15 **CROSS REFERENCE TO STATUTE.** These amendments implement Government Code, Chapters 411 and
16 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503, 1001–
17 1003, and 1005.

18

19 Text.

20 §215.500. Administrative Sanctions~~[and Procedures]~~.21 ~~(a)~~ An administrative sanction may include:

22 (1) denial of an application for a license;

23 (2) suspension of a license;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 227 of 230

Chapter 215 – Motor Vehicle Distribution

- 1 (3) revocation of a license;
- 2 (4) the imposition of civil penalties; or
- 3 (5) a refund under §215.504 of this title (relating to Buyer [~~concerning buyer~~]
- 4 or Lessee Refund [~~lessee refund~~]).

5 [~~(b) The department shall issue and mail a Notice of Department Decision to a license~~

6 ~~applicant, license holder, or other person by certified mail, return receipt requested, to the last~~

7 ~~known address upon a determination under Occupations Code, Chapters 2301 and 2302 or~~

8 ~~Transportation Code, Chapter 503 that:}]~~

9 [(1) ~~an application for a license should be denied; or~~]

10 [(2) ~~administrative sanctions should be imposed.~~]

11 [(c) ~~The last known address of a license applicant, license holder, or other person is the last~~

12 ~~mailing address provided to the department when the license applicant applies for its license,~~

13 ~~when a license holder renews its license, or when the license holder notifies the department of a~~

14 ~~change in the license holder's mailing address.~~]

15 [(d) ~~The Notice of Department Decision shall include:}]~~

16 [(1) ~~a statement describing the department decision and the effective date;}]~~

17 [(2) ~~a description of each alleged violation;}]~~

18 [(3) ~~a description of each administrative sanction being adopted;}]~~

19 [(4) ~~a statement regarding the legal basis for each administrative sanction;}]~~

20 [(5) ~~a statement regarding the license applicant, license holder, or other person's~~

21 ~~right to request a hearing;}]~~

22 [(6) ~~the procedure to request a hearing, including the deadline for filing; and}]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 228 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~(7) notice to the license applicant, license holder, or other person that the adopted~~
2 ~~decision and administrative sanctions in the Notice of Department Decision will become final on~~
3 ~~the date specified if the license applicant, license holder, or other person fails to timely request a~~
4 ~~hearing.]~~

5 ~~[(e) The license applicant, license holder, or other person must submit, in writing, a request~~
6 ~~for a hearing under this section. The department must receive a request for a hearing within 26~~
7 ~~days of the date of the Notice of Department Decision.]~~

8 ~~[(f) If the department receives a timely request for a hearing, the department will set a~~
9 ~~hearing date and give notice to the license applicant, license holder, or other person of the date,~~
10 ~~time, and location of the hearing.]~~

11 ~~[(g) If the license applicant, license holder, or other person does not make a timely request~~
12 ~~for a hearing or enter into a settlement agreement within 27 days of the date of the Notice of~~
13 ~~Department Decision, the department decision becomes final.]~~

14
15 ~~[\$215.501. Final Decisions and Orders; Motions for Rehearing]~~

16 ~~[(a) If a department decision becomes final under a Notice of Department Decision issued~~
17 ~~under §215.500 of this title (relating to Administrative Sanctions and Procedures), the matter will~~
18 ~~be forwarded to the final order authority for issuance of a final order incorporating the decisions,~~
19 ~~findings, and administrative sanctions imposed by the Notice of Department Decision. The~~
20 ~~department will send a copy of the final order to the parties.]~~

21 ~~[(b) The provisions of Government Code, Chapter 2001, Subchapter F govern:]~~

22 ~~[(1) the issuance of a final order issued under this subchapter; and]~~

23 ~~[(2) motions for rehearing filed in response to a final order.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 229 of 230

Chapter 215 – Motor Vehicle Distribution

1

2 ~~[\$215.502. Judicial Review of Final Order.]~~3 ~~[The provisions of Government Code, Chapter 2001, Subchapter G govern the appeal of a~~
4 ~~final order issued under this subchapter.]~~

5

6 ~~[\$215.505. Denial of Dealer or Converter Access to Temporary Tag System.]~~7 ~~[(a) In this section "fraudulently obtained temporary tags from the temporary tag~~
8 ~~database" means a dealer or converter account user misusing the temporary tag database~~
9 ~~authorized under Transportation Code §503.0626 or §503.0631 to obtain:]~~10 ~~[(1) an excessive number of temporary tags relative to dealer sales;]~~11 ~~[(2) temporary tags for a vehicle or vehicles not in the dealer's or converter's~~
12 ~~inventory (a vehicle is presumed not to be in the dealer's or converter's inventory if the vehicle is~~
13 ~~not listed in the relevant monthly Vehicle Inventory Tax Statement); or]~~14 ~~[(3) access to the temporary tag database for a fictitious user or person using a~~
15 ~~false identity.]~~16 ~~[(b) The department shall deny a dealer or converter access to the temporary tag database~~
17 ~~effective on the date the department sends notice electronically and by certified mail to the dealer~~
18 ~~or converter that the department has determined, directly or through an account user, the dealer~~
19 ~~or converter has fraudulently obtained temporary tags from the temporary tag database. A dealer~~
20 ~~or converter may seek a negotiated resolution with the department by demonstrating corrective~~
21 ~~actions taken or that the department's determination was incorrect.]~~22 ~~[(c) Notice shall be sent to the dealer's or converter's last known email and mailing address~~
23 ~~in the department's records.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 230 of 230

Chapter 215 – Motor Vehicle Distribution

1 ~~[(d) A dealer or converter may request a hearing on the denial as provided by Subchapter~~
2 ~~0, Chapter 2301, Occupations Code. The request must be submitted in writing and request a~~
3 ~~hearing under this section. The department must receive a written request for a hearing within 26~~
4 ~~days of the date of the notice denying access to the database. The request for a hearing does not~~
5 ~~stay the denial of access under subsection (b) of this section. A dealer may continue to seek a~~
6 ~~negotiated resolution with the department after a request for hearing has been submitted under~~
7 ~~this subsection by demonstrating corrective actions taken or that the department's determination~~
8 ~~was incorrect.]~~

9 ~~[(e) The department may also issue a Notice of Department Decision stating administrative~~
10 ~~violations as provided in §215.500 concurrently with the notice of denial of access under this~~
11 ~~section. A Notice of Department Decision may include notice of any violation, including a violation~~
12 ~~listed under subsection (a) of this section.]~~

13 ~~[(f) A department determination and action denying access to the temporary tag database~~
14 ~~becomes final if the dealer or converter does not request a hearing or enter into a settlement~~
15 ~~agreement with the department within 26 days of the date of the notice denying access to a~~
16 ~~database.]~~

Figure: 43 TAC §215.139(c)

| If a new license applicant is: | Maximum number of [metal]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 meta 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> [metal-dealer's] license plates issued to a dealer with a [that] <u>demonstrated need</u> [demonstrates a need] 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> [5] |
| 4. a dealer selling <u>100 to 200 vehicles during the previous 12-month period</u> | <u>5</u> |
| <u>5</u> [4]. a dealer selling more than 200 vehicles during the previous 12-month period | any number of <u>standard</u> [metal-dealer's] license plates the dealer requests. |

McDade, Tameka

From: Bruce Bennett <jbb.chblaw@sbcglobal.net>
Sent: Monday, January 22, 2024 8:23 AM
To: Zz - Resource - GCO_Rules
Subject: Comment on Proposed Rules 215.105(b) and 215.106(a)
Attachments: 20241022.Rule215.105(b).docx; 20240122.Rule 215.106.docx

Follow Up Flag: Follow up
Flag Status: Completed

ATTENTION: This email originated from outside of TxDMV. Malicious software, such as viruses, worms, and ransomware can be transmitted via email attachments and links. Do not click any links or open any attachments unless you recognize the sender and have confirmed the content is safe.

Dear General Counsel:

I request proposed Rules 215.105(b) and 215.106(a) be amended to provide for notice of a license application to be given to licensees with standing to protest by electronic means. Over the past two years, the U.S. mail has become increasingly unreliable. Our firm sends any important written communication by overnight delivery. Because of the time-sensitive nature of the right of protest, I believe notification should include use of the Department's eLicensing system.

Thank you for your consideration of this request.

Best regards,

J. Bruce Bennett
CARDWELL, HART & BENNETT, LLP
807 Brazos, Suite 1001
Austin, Texas 78701
(512) 322-0011 (Telephone)
(512) 496-9400 (Cell)
(512) 322-0808 (Facsimile)
jbb.chblaw@me.com

Cardwell, Hart & Bennett, LLP. E-mail Confidentiality Notice: This transmission (and any attachments) may be (1) subject to the Attorney-Client or Attorney-Work Product Privileges, or (2) strictly confidential. If you are not the intended recipient of this message, please do not read, disclose, print, copy, use, forward, or disseminate this information to others. If you receive this message in error, please reply and notify the sender (only) and then delete the message. Unauthorized interception of this e-mail is a violation of federal law. IRS Circular 230 Disclosure. Any federal tax advice contained in this message (including attachments) should not be used or referred to in the promoting, marketing, or recommending of any entity investment plan or arrangement, nor is such advice intended or written to be used, and cannot be used, by a taxpayer to avoid penalties under the IRS Code.

§ 215.105 Notification of License Application; Protest Requirements

(b) Upon receipt of an application for a franchised 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. **Such notice shall be given by regular U.S. mail, certified U.S. mail, return receipt requested, and by electronic means.**

§ 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 Time (CST or CDT, as applicable) on the ~~date 15 days from the date of mailing of the department's notification to~~ **15th day after the department notified** the license holder of the filing of the application **in accordance with § 215.105(b)**;

Trent Polk - CEO
Glenn Polk Chevy Buick GMC of Gainesville
1608 West Hwy 82
Gainesville, TX 76240

January 23, 2024

2024 JAN 29 AM 10:25
RECEIVED

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

JAN 29 2024
TxDMV
OFFICE OF GENERAL COUNSEL

Subject: Letter of Support for Proposed Rule Change - Mobile Service under 43 TAC §215.103

Dear Ms. Moriarty,

I am writing this letter to express my full support for the proposed rule change regarding mobile service under 43 TAC §215.103. As a motor vehicle dealer, I believe that this rule change will bring numerous benefits to both dealerships and customers in the state of Texas.

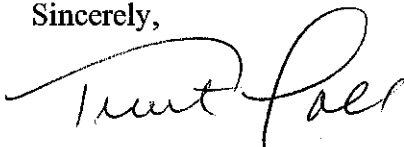
Mobile service offers a convenient and efficient solution for vehicle maintenance and repairs. It allows dealerships to extend their services beyond the traditional brick-and-mortar locations, reaching customers who may have difficulty visiting a physical dealership due to various reasons such as distance, time constraints, or mobility issues. By allowing mobile service, the Texas Department of Motor Vehicles will enable dealerships to provide a higher level of customer service and enhance the overall ownership experience.

Furthermore, mobile service can significantly reduce downtime for customers, as repairs and maintenance can be performed at their preferred location, whether it be their home, workplace, or any other convenient spot. This flexibility not only saves valuable time for customers but also contributes to their satisfaction and loyalty towards the dealership.

I firmly believe that the proposed rule change to allow mobile service under 43 TAC §215.103 aligns with the evolving needs and expectations of customers in today's fast-paced world. It will foster innovation, improve customer satisfaction, and contribute to the growth and success of motor vehicle dealerships in Texas.

Thank you for considering this letter of support. I trust that the Texas Department of Motor Vehicles will carefully evaluate the benefits of mobile service and make a decision that will positively impact the automotive industry and the customers it serves.

Sincerely,



Trent Polk - CEO

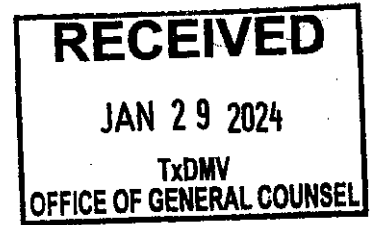
Glenn Polk Chevy Buick GMC of Gainesville

no money

Monte Hall GM
Hall Chevrolet GMC
385 West Dallas Street
Canton, TX 75103

1/23/24

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



Subject: Letter of Support for Proposed Rule Change - Mobile Service under 43 TAC §215.103

Dear Ms. Moriatty,

I am writing this letter to express my full support for the proposed rule change regarding mobile service under 43 TAC §215.103. As a motor vehicle dealer, I believe that this rule change will bring numerous benefits to both dealerships and customers in the state of Texas.

Mobile service offers a convenient and efficient solution for vehicle maintenance and repairs. It allows dealerships to extend their services beyond the traditional brick-and-mortar locations, reaching customers who may have difficulty visiting a physical dealership due to various reasons such as distance, time constraints, or mobility issues. By allowing mobile service, the Texas Department of Motor Vehicles will enable dealerships to provide a higher level of customer service and enhance the overall ownership experience.

Furthermore, mobile service can significantly reduce downtime for customers, as repairs and maintenance can be performed at their preferred location, whether it be their home, workplace, or any other convenient spot. This flexibility not only saves valuable time for customers but also contributes to their satisfaction and loyalty towards the dealership.

I firmly believe that the proposed rule change to allow mobile service under 43 TAC §215.103 aligns with the evolving needs and expectations of customers in today's fast-paced world. It will foster innovation, improve customer satisfaction, and contribute to the growth and success of motor vehicle dealerships in Texas.

Thank you for considering this letter of support. I trust that the Texas Department of Motor Vehicles will carefully evaluate the benefits of mobile service and make a decision that will positively impact the automotive industry and the customers it serves.

Sincerely,

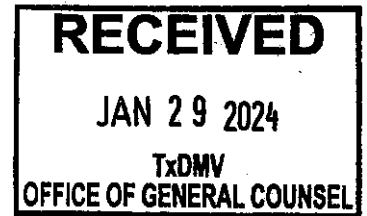
A handwritten signature in black ink, appearing to read "Monte Hall". The signature is stylized and cursive.

Monte Hall
General Manger
Hall Chevrolet GMC

Pam Hall President/Owner
Hall Chevrolet GMC
385 West Dallas Street
Canton, TX 75103

1/23/24

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



Subject: Letter of Support for Proposed Rule Change - Mobile Service under 43 TAC §215.103

Dear Ms. Moriarty,

I am writing this letter to express my full support for the proposed rule change regarding mobile service under 43 TAC §215.103. As a motor vehicle dealer, I believe that this rule change will bring numerous benefits to both dealerships and customers in the state of Texas.

Mobile service offers a convenient and efficient solution for vehicle maintenance and repairs. It allows dealerships to extend their services beyond the traditional brick-and-mortar locations, reaching customers who may have difficulty visiting a physical dealership due to various reasons such as distance, time constraints, or mobility issues. By allowing mobile service, the Texas Department of Motor Vehicles will enable dealerships to provide a higher level of customer service and enhance the overall ownership experience.

Furthermore, mobile service can significantly reduce downtime for customers, as repairs and maintenance can be performed at their preferred location, whether it be their home, workplace, or any other convenient spot. This flexibility not only saves valuable time for customers but also contributes to their satisfaction and loyalty towards the dealership.

I firmly believe that the proposed rule change to allow mobile service under 43 TAC §215.103 aligns with the evolving needs and expectations of customers in today's fast-paced world. It will foster innovation, improve customer satisfaction, and contribute to the growth and success of motor vehicle dealerships in Texas.

Thank you for considering this letter of support. I trust that the Texas Department of Motor Vehicles will carefully evaluate the benefits of mobile service and make a decision that will positively impact the automotive industry and the customers it serves.

Sincerely,

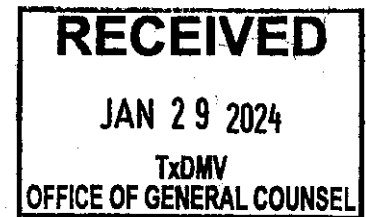
A handwritten signature in black ink, appearing to read "Pam Hall". The signature is written in a cursive style with a large, sweeping initial "P".

Pam Hall
President/Owner
Hall Chevrolet GMC

Shawn Polk – Owner & COO
Glenn Polk Chevrolet of Sanger
1405 North Stemmons St
Sanger, TX 76266

1-23-2024

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



Subject: Letter of Support for Proposed Rule Change - Mobile Service under 43 TAC §215.103

Dear Ms. Moriarty,

I am writing this letter to express my full support for the proposed rule change regarding mobile service under 43 TAC §215.103. As a motor vehicle dealer, I believe that this rule change will bring numerous benefits to both dealerships and customers in the state of Texas.

Mobile service offers a convenient and efficient solution for vehicle maintenance and repairs. It allows dealerships to extend their services beyond the traditional brick-and-mortar locations, reaching customers who may have difficulty visiting a physical dealership due to various reasons such as distance, time constraints, or mobility issues. By allowing mobile service, the Texas Department of Motor Vehicles will enable dealerships to provide a higher level of customer service and enhance the overall ownership experience.

Furthermore, mobile service can significantly reduce downtime for customers, as repairs and maintenance can be performed at their preferred location, whether it be their home, workplace, or any other convenient spot. This flexibility not only saves valuable time for customers but also contributes to their satisfaction and loyalty towards the dealership.

I firmly believe that the proposed rule change to allow mobile service under 43 TAC §215.103 aligns with the evolving needs and expectations of customers in today's fast-paced world. It will foster innovation, improve customer satisfaction, and contribute to the growth and success of motor vehicle dealerships in Texas.

Thank you for considering this letter of support. I trust that the Texas Department of Motor Vehicles will carefully evaluate the benefits of mobile service and make a decision that will positively impact the automotive industry and the customers it serves.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Polk". The signature is fluid and cursive.

Shawn Polk – Owner & COO

Glenn Polk Chevrolet of Sanger



January 23, 2024

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

Re: 43 TAC 215, Texas Register December 29, 2023

Dear Ms. Moriaty:

The Texas Independent Automobile Dealers Association (TIADA) respectfully submits the following comments in response to the Texas Department of Motor Vehicles (TxDMV) proposed changes to 43 Texas Administrative Code Chapter 215. TIADA represents over 1,000 independent automobile dealers throughout the state of Texas which range in size from large publicly traded companies to small and micro-businesses.

TIADA after reviewing the purposed rules has the following suggestions:

Licensees should not be required to provide additional information because they have numerous acceptable forms of identification. Although §215.133(c)(2)(D) provides that an applicant must provide “at least on of the following unexpired identity documents for each natural person listed in the application”, the application system is set up to require the applicant to provide all of the items they have listed in the list including a license to carry a handgun. Additionally, the list contains a passport which may identify the applicant as a citizen of another country. Since some people may prefer not to disclose their foreign nationality or decision to carry a handgun in places besides the licensed location, TIADA recommends striking the words “at least” before the words “one of the following”.

§215.138(j) should be modified for clarity. TIADA recommends the following:

- (j) A dealer’s license plate is no longer valid for use after the dealer reports to the department that the dealer’s license plate is lost, stolen, or damaged. A dealer must render a void plate unusable by
- (i) making the front of the with the word “VOID” or a large “X” and destroying or recycling the plate; or
 - (ii) return the plate to the department within 10 days.

TIADA believes the concerns it had and the concerns of other stakeholders were not addressed since the regulations of storage lots in §215.140(a)(11)(C) were last proposed. TIADA remains unsure as to what a storage lot is. Does it include cars being stored at the auction waiting for sale? Does it include cars at a service station not owned by the dealer waiting for parts? TIADA is unsure what are the requirements of a storage lot. Does the 2-year lease requirement apply? If all cars are removed, is it no longer a storage lot? Is notification required every time it is not being used? TIADA is unsure what

TIADA Comments to TxDMV – 43 TAC Chapter 215

January 23, 2024

Page | 2 of 2

dangers are posed to the public that have caused the necessity of regulating a storage lot. Is a lot that suddenly has cars owned by a dealer more dangerous than the same lot with privately owned cars on it? These are just a few of the questions TIADA has about storage lots along with numerous other questions not posed here. Therefore, TIADA recommends striking §215.140(a)(11)(C) in its entirety”.

TIADA is concerned about the regulations related to a wholesale motor vehicle auction as the rules related to them appear to be based on what is appropriate for a dealer and not a wholesale motor vehicle auction. Also, the proposed rule appears to have a typo from when language as the word “dealer” appears in (b)6(G), however the words “wholesale motor vehicle auction” are used everywhere else in this section to describe the licensed entity. While TIADA is concerned about the requirements for a wholesale auction as our members use them extensively, we cannot offer expertise as to the best requirements for them and just know what is appropriate for a retail dealer is likely not the same as for a wholesale motor vehicle auction because unlike dealers, wholesale auctions do not serve the general public. Therefore, TIADA recommends striking the changes related to whole motor vehicle auctions to seek stakeholder input from the wholesale auctions.

The requirements related to odometer statements should be modified to clarify that when a vehicle is exempt a signed odometer disclosure statement is not necessary. §215.144(e)(8)(M) states that “the odometer disclosure statement signed by the buyer” must be retained, however not every transaction requires a signed odometer statement. Therefore, TIADA recommends modifying §215.144(e)(8)(M) to add the words “if applicable” after the words “by the buyer”.

Respectfully,



Earl Cooke

Director of Compliance and Business Development

earl.cooke@txiada.org



Laird Doran
Vice President, Government Relations
& Senior Counsel

January 28, 2024

VIA EMAIL: Laura.Moriaty@txdmv.gov
rules@txdmv.gov

Ms. Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, TX 78731

RE: Proposed Changes to 43 TAC Chapter 215

Dear Ms. Moriaty:

The following comments are submitted on behalf of Gulf States Toyota, Inc. (“GST”) with respect to the most recent proposed rule amendments to Chapter 215, Motor Vehicle Distribution, and as published in the December 29, 2023, *Texas Register*, 48 TexReg 8202–8262.

We are very appreciative of the Texas Department of Motor Vehicles (“TxDMV” or “the Agency”) staff that have worked so diligently on preparing these proposed rules and for their coordination with industry stakeholders regarding the potential adoption and future implementation of these proposed rules.

We offer the following comments and suggestions for clarification, understanding, and consideration:

43 TAC § 215.102 Application Requirements.

GST is concerned that certain provisions contained within the proposed changes to Subchapter C. Franchised Dealers, Manufacturers, Distributors and Converters, Sec. 215.102 exceed the scope of the TxDMV’s statutory authority under Texas Occupations Code Chapter 2301 or are otherwise inconsistent with the statute. While the Texas Legislature has delegated certain authority to TxDMV to adopt administrative rules, such rules shall be subordinate to legislatively-passed laws, including such laws that have been passed that clearly and repeatedly set forth the definitions of “Dealer,” “Dealership,” “Distributor,” “Franchise,” “Franchised dealer,” “Manufacturer,” “Motor Vehicle,” “New motor vehicle,” “Retail sale,” “Vehicle lease,” and “Warranty work.” See TEX. OCC. CODE § 2301.002. Where these proposed rules conflict with a statutory definition, such rules must be inapplicable, and the plain unambiguous meaning of the statutory definition shall govern.

§ 215.102 (e)(1)(G)

In proposed § 215.102(e)(1)(G), the Agency wants to require that each applicant for a distributor license provide to the Agency a copy of the distributor agreement between a manufacturer and distributor or to complete a department-provided questionnaire containing the information required under Occupations Code, § 2301.260, and signed by the applicant as true and complete. GST greatly appreciates the Agency’s willingness to allow for a completed questionnaire in lieu of the submission of an actual distributor agreement. However, GST still believes that the new requirements found in § 215.102(e)(1)(G) are problematic for several reasons.

First, concerns around the production of distributor agreements to the Agency were brought up during not one, but two separate TxDMV advisory committee meetings during the fall of 2023.¹ After substantive discussion and consideration, both the Motor Vehicle Industry Regulation and the Customer Service and Protection Advisory Committees resoundingly passed motions calling for the removal of § 215.102(e)(1)(G) and the distributor agreement production requirement in its entirety.²

Second, when inquiries were made by advisory committee members about the genesis of, and need for, this new requirement of distributors, staff referred the advisory committees to Texas Occupations Code §2301.260.³ However, a close reading of § 2301.260 reveals that there is nothing in statute that would expressly require the production of an entire distributor agreement.⁴ What § 2301.260(a)(4) does state is that “the terms of the contract under which the distributor will act for the manufacturer” must be disclosed. It is easy to see that providing certain terms of a contract is a much narrower requirement than requiring the production of the entire agreement, as the Agency has proposed.

A distributor agreement may contain a wide array of provisions that are confidential, proprietary, and/or that may be highly sensitive in nature to both parties to this private contract. Such terms and provisions may have little to no relation on how or if the “distributor will act for the manufacturer” in the State of Texas. It should be noted that staff provided no evidentiary examples during the advisory committee meetings of any complaints or enforcement cases involving distributors acting without authorization from a manufacturer. However, should the Agency believe that the language in proposed § 215.102(e)(1)(G) is necessary specifically to demonstrate that the distributor is acting with appropriate authority, GST would argue that a letter from the manufacturer or other appropriate corporate entity explaining the scope of the distributor’s authorization should reasonably satisfy such concerns. In fact, historically speaking, since the creation of the distributor license requirements decades ago, GST has never been required to submit its distributor agreement, and the TxDMV has never considered GST’s license application to be anything but compliant. But regardless of the longstanding interpretation and practice, TxDMV has in fact already accepted without issue such a suggested letter in recent years from the appropriate entity validating the distributor’s authority to act when reviewing a distributor’s license application. Further

¹ See transcript from September 13, 2023 Motor Vehicle Industry Regulation Advisory Committee (MVIRAC) Meeting at 69:5 - 78:12 available at <https://ftp.txdmv.gov/pub/txdmv-info/board/2023/09-13-23-MVIRAC-Transcript.pdf>; see transcript from September 19, 2023 Consumer Service and Protection Advisory Committee Meeting at 58:22 – 66:22 available at <https://ftp.txdmv.gov/pub/txdmv-info/board/2023/09-19-23-CSPAC-Transcript.pdf>.

² *Id.*

³ *Id.*

⁴ Sec. 2301.260. APPLICATION FOR DISTRIBUTOR'S LICENSE.

(a) An application for a distributor's license must disclose:

(1) the manufacturer for whom the distributor will act;

(2) whether the manufacturer is licensed in this state;

(3) the persons in this state who will be responsible for compliance with the warranty covering the motor vehicles to be sold;

(4) the terms of the contract under which the distributor will act for the manufacturer; and

(5) the franchised dealers with whom the distributor will do business.

(b) An applicant for a distributor's license that has a responsibility under a warranty agreement must include a statement regarding the manufacturer's compliance with Subchapter I and Sections 2301.451-2301.476.

(c) An applicant for or holder of a distributor's license must inform the board of a change in the information provided under this section not later than the 15th day after the date of the change. Information submitted under this subsection becomes a part of the application.

expanding upon what the TxDMV has itself deemed to be compliant for many years without statutory change or authority should not be warranted.

Third, this new requirement will likely come as an unwelcomed and unnecessary surprise to a large portion of the motor vehicle industry in Texas and beyond. Distributors wholesale vehicles for brands that represent more than 45 percent of all new passenger car and light truck vehicles wholesaled to new motor vehicle dealers in the United States.⁵ In Texas alone there are over one hundred licensed distributors of new motor vehicles.⁶ Each would presumably be impacted by this burdensome and intrusive new requirement of § 215.102(e)(1)(G).

Let's take for example a global German automaker that we will hypothetically call Alpine Motowerks Group AG. We'll also assume that Alpine Motowerks USA, LLC. is licensed as a distributor in the State of Texas by TxDMV. Texas would presumably be an outlier among all fifty states by requiring that Alpine Motowerks USA, LLC, which is headquartered in another state, produce its distributor agreement with Alpine Motowerks Group AG based in Germany, merely to demonstrate that the U.S. entity does in fact have the legal authority to wholesale Alpine Motowerks vehicles to Alpine Motowerks dealers in Texas. The need to demonstrate such authority being given from the German entity to the US entity seems redundant and unnecessary where, as a licensed distributor, Alpine Motowerks USA, LLC is already required by statute to: (1) identify the manufacturer upon whom it will be acting; (2) identify whether there is a manufacturing entity licensed in Texas; and (3) identify who holds responsibility for warranty obligations related to their vehicles. TEX. OCC. CODE § 2301.260. Moreover, the Agency already receives a copy of each dealer franchise agreement between dealer and the distributor. In other words, there is already ample documentation being submitted to TxDMV evidencing the distributor's authority to act.

Lastly, GST greatly appreciates that in the version of the proposed § 215.102(e)(1)(G) published in the Texas Register, TxDMV staff included language that allows for the submission of a questionnaire in-lieu of providing the entire distributor agreement. This is much more in line with the letter and spirit of Texas Occupations Code § 2301.260. However, as of the date of the submission of these comments, the TxDMV has not published a copy of that future questionnaire for review by stakeholders, nor has the Agency outlined with any specificity what information the questionnaire would seek to obtain. This is concerning because there is simply no permanency around such a form or questionnaire. Stated another way, there are no safeguards or assurances at this point for distributors to suggest that the information required under the questionnaire would not be equally problematic to having to provide the entire distributor agreement itself.

GST certainly does not believe that it would be the intent of the Agency to take a "tails I win, heads you lose" posture with respect to this new rule. However, GST cannot fully embrace any questionnaire approach without first reviewing the form itself and having the Agency provide some assurances that the scope of information required by the questionnaire will not expand beyond what is the minimum necessary information required to meet the requirements of § 2301.260. Therefore, GST would respectfully request that when the Agency provides its written responses to all of the public comments received, that contained in those written responses should be a detailed explanation of why the questionnaire would be necessary, and if so, a representative example of the questionnaire and a commitment by the Agency that information sought via the questionnaire should be the least amount of information absolutely necessary to satisfy the requirements of Texas Occupations Code § 2301.260.

We very much appreciate the opportunity to comment on these proposed changes. If you have any questions, please do not hesitate to contact me.

⁵ See for example *2021 US auto sales by brand*, noting that those brands that use Texas licensed distributors to wholesale vehicles to dealers represent more than 45% of the total sales nationally: <https://www.carpro.com/blog/full-year-2021-sales-report-with-most-brands-reporting>; see also <https://texasdmv.my.salesforce-sites.com/dealers/motorvehiclemanufacturerstaging> (list of manufacturers and distributors licensed by the Texas Department of Motor Vehicles).

⁶ See *id.*

Sincerely,



Laird M. Doran

Vice President, Government Relations & Senior Counsel for The Friedkin Group
Submitted on behalf of Gulf States Toyota, Inc.



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

January 29, 2024

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

Sent via email: rules@txdmv.gov

Re: Proposed TxDMV Rules 48 *TexReg* 8192 - 8327
(December 29, 2023)¹

Dear Ms. Moriaty:

Please accept the following comments regarding the proposed rules as published in the December 29, 2023, *Texas Register*, 48 *TexReg* 8192 - 8327, from the Texas Automobile Dealers Association (TADA).

On behalf of the franchised dealers and TADA, I recognize and appreciate the time and effort the agency's staff spent regarding the rule review.

Request to Withdraw

As the agency is a defendant in current litigation which touches upon certain rule proposals or which could be an issue in that litigation as well as enforcement actions, TADA respectfully requests the agency to withdraw from consideration the

¹Computing dates relating to rulemaking submissions provides that if the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

TEX. GOV'T CODE ANN. §311.014 (Vernon 2013); 1 TAC §91.34.

following proposed rules: 43 TAC §215.102(e)(2)(E)(i), 43 TAC §215.103, and Subchapter E. 43 TAC §§215.171, 215.173 - 215.180, as well as any other proposal touching upon current litigation, pending the final determination of the litigation.

The statute and rules regarding sales, leasing, and warranty repairs are currently being defended by the Attorney General and the status quo regarding applicable rules should be maintained and respected during the pendency of the litigation. Just as it is the practice with the Attorney General of Texas with respect to Attorney General Opinions not to issue an opinion on an issue that is involved in pending litigation, the agency should defer review of any rule which is or which could be at issue in current litigation.

As stated by the General, “courts have stated that attorney general opinions are highly persuasive and are entitled to great weight; however, the ultimate determination of a law’s applicability, meaning, or constitutionality is left to the courts. For this reason, **the attorney general does not write attorney general opinions on issues that are involved in pending litigation.**”² (Emphasis added.)

This prohibition is similar to the Finance Commission, Consumer Credit Regulation, regarding official interpretations and advisory letters:

Pending Litigation. The requestor must state whether, to the best of the requestor’s knowledge, the issue to be considered is an issue in pending litigation. Matters in litigation will ordinarily not be answered.³

Although the agency is not being asked to issue an opinion, the State should

2

[https://www2.texasattorneygeneral.gov/opinion/about-attorney-general-opinions#:~:text=Pending requests are sometimes closed.\(\"Closed Lit\"\)](https://www2.texasattorneygeneral.gov/opinion/about-attorney-general-opinions#:~:text=Pending requests are sometimes closed.(\)

The TxDMV’s previous rule regarding *Formal Opinions*, 43 TAC §215.4(a), provided that a request for a formal opinion is inappropriate if the request involves a matter which is under investigation or is the subject of a current proceeding by the Board or another governmental agency. . .”

Repealed in 2016, 41 *TexReg* 1376 (February 26, 2016).

³7 TAC §1.201(b)(3).

not be placed in the position of defending a statute as well as a former rule and an amended rule in on-going litigation.

TADA respectfully requests that the following proposals be withdrawn until the litigation is final: 43 TAC §215.103, 43 TAC §215.1-2(e)(2)(E)(i), and Subchapter E. 43 TAC §§215.171, 215.173 - 215.180.

43 TAC §215.103. Service-only Facility

48 *TexReg* 8222

TADA requests that the agency withdraw its proposed amendments to the Service-only Facility rule as service is an issue in current agency enforcement and in litigation. In addition, parties in current litigation have referenced this rule in their briefing.

The status quo is to be maintained from the time that litigation begins, respecting the statutes, rules, and regulations that are in play at the time of the filing. The agency should withdraw any proposed amendment to 43 TAC §215.103.

TxDMV 2020 Guidance

In response to an inquiry requesting the department's guidance in which Ford Motor Company requested its dealers to perform non-warranty repairs via a mobile repair service, Mr. Roland Luna responded in a November 20, 2020, letter. Mr. Luna's letter provided that non-warranty repairs may be performed in a mobile service vehicle but warranty repairs are performed at a franchised dealer's licensed and permanent location, not through a mobile vehicle. (*See Attachment 1.*)

Mr. Luna's letter provides the following explanation as to why warranty repairs cannot be performed through a mobile repair service:

Mobile Repair Services—Licensure and Warranty Repairs

Occupations Code §2301.251(a) establishes a licensing requirement and provides that “unless a person holds a Chapter 2301 license authorizing the activity, the person may not (1) engage in business as, serve in the capacity of, or act as a dealer, manufacturer, distributor, converter,

representative, vehicle lessor, or vehicle lease facilitator; or (2) perform or offer to perform repair services on a motor vehicle *under a franchise and a motor vehicle manufacturer's warranty* regardless of whether the person sells or offers to sell motor vehicles at the same location.”

Occupations Code §2301.002(16)(B) defines that a “franchised dealer” as a licensed [Occupations Code Chapter 2301 or Transportation Code Chapter 503] person “engaged in the business of buying, selling, or exchanging new motor vehicles *and servicing or repairing motor vehicles under a manufacturer's warranty at an established and permanent place of business under a franchise in effect with a manufacturer or distributor.*” A mobile repair service would have to demonstrate that it meets the *established and permanent* location requirement to be licensed to perform warranty repair services. In other words, if a franchised dealer is prohibited from performing warranty repair services at any location other than its established and permanent (licensed) location, it is unclear how a mobile repair service unit qualifies to be licensed.

...

If a mobile service repair vehicle cannot meet the licensing requirements to perform warranty repair services, then the issue of whether a right to protest exists, becomes moot.

...

TADA concurs and dealers are acting in accordance with the November 20, 2020, departmental guidance regarding warranty repairs required to be performed at an established and permanent and licensed franchised dealership and that non-warranty repairs may be performed via a mobile service.

In addition to the requirement that warranty repairs are to be performed by a franchised dealer with a licensed, established, and permanent place of business, Chapter 2301 also defines “**dealership**” as the physical premises and business facilities in which the franchised dealer operates the dealer's business, including the sale and **repair** of motor vehicles.⁴ (Emphasis added.)

⁴TEX OCC. CODE ANN. §2301.002(8) (Vernon 2022).

For warranty work to be performed other than at a franchised dealer's licensed, established and permanent place of business requires a legislative amendment.

As a person may not "act as a dealer" without the appropriate license required in §2301.251(a), the Legislature also provided that a manufacturer or distributor may not "act in the capacity of a franchised dealer."⁵

The Fifth Circuit in *Ford Motor Company v. TxDOT*⁶ discusses what "acting in the capacity of a dealer"⁷ means and cites the statute's definition of "franchised dealer"⁸ which includes engaging in the business of not only buying, selling, or exchanging a motor vehicle, but also servicing or repairing a motor vehicle under a manufacturer's warranty at an established and permanent place of business, and as also discussed by Mr. Luna in the November 20, 2020 letter.

The court also continued in its discussion regarding Ford's allegation of statutory vagueness as to "acting in the capacity of a dealer" by stating:

Ford knew, that as a manufacturer, it was prohibited from selling automobiles and it had fair notice that its conduct may violate §5.02C(c).⁹ In drafting §5.02C(c), the legislature

⁵*Id.* §2301.476(c).

⁶264 F.3d 493, (5th Cir. 2001).

⁷*Id.* at 508.

⁸"Franchised dealer" means a person who:

(A) holds a franchised motor vehicle dealer's license issued by the board under this chapter and Chapter 503, Transportation Code; and

(B) is engaged in the business of buying, selling, or exchanging new motor vehicles and servicing or repairing motor vehicles under a manufacturer's warranty at an established and permanent place of business under a franchise in effect with a manufacturer or distributor.

Id. §2301.002(16).

⁹ §5.02C(c) (2001): "Except s provided by this section, a manufacturer or distributor may not directly or indirectly:

(1) own an interest in a dealer or dealership;
(2) operate or control a dealer or dealership; or
(3) act in the capacity of a dealer."

probably intended, permissibly so, to capture whatever creative conduct could be imagined by manufacturers to circumvent the statute's intended prohibition.¹⁰

In other words, the court determined that the legislature broadly enacted the manufacturer and distributor prohibition from "acting in the capacity of a dealer." The breadth of the statutory language is because the legislature could not list each and every one of the many activities that a franchised dealer performs that are prohibited by the manufacturer or distributor from performing.

The Fifth Circuit's *Ford* opinion, the statute, and the TxDMV 2020 guidance provide that the repair and servicing of a motor vehicle that is under a manufacturer's warranty is to be performed at the franchised dealer's licensed, permanent, and established dealership. Non-warranty repairs may be performed by using a mobile service vehicle.

TADA requests that the proposal to 43 TAC §215.103 be withdrawn pending the outcome of current litigation. In the alternative, TADA requests that the agency retain the last sentence in (a) and not amend (d).

43 TAC §215.102(e)(2)(E)(i). Application Procedures
(48 *TexReg* 8222)

TADA requests this proposed rule be withdrawn pending the outcome of current litigation.

The proposal requires, if applying for a manufacturer or distributor license, to provide:

- (i) a list of each franchised dealer in Texas including the dealer's name and physical address, or if offers for sale or sales of motor vehicle [sic] in Texas will solely be over the internet, a list of each out-of-state dealer

VERNON'S TEXAS CIVIL STATUTES, Art. 4413(36) (2001).

¹⁰*Id.* at 509.

authorized by the manufacturer or distributor to sell a product online to a Texas resident including the dealer’s name, physical address, and dealer license number issued by the state in which the dealer is located; (Emphasis added.)

The Transportation Code, §503.021, sets out that “a person may not engage in business as a dealer, directly or indirectly, including by consignment, without a general distinguishing number (GDN) in one of the categories described by Section 503.029(a)(6)¹¹ for each location from which the person conducts business as a dealer.”

In accordance with §503.024, Transportation Code, if a licensed dealer is located in another state, the person is not required to obtain a general distinguishing number (GDN) as provided for in §503.021 if the licensed dealer, as a domiciliary in another state, is:

1. Buying a vehicle from, selling a vehicle to, or exchanging a vehicle with a person who:
 - (A) holds a GDN issued by the TxDMV, if the transaction is not intended to avoid a requirement of Chapter 503, Transportation Code; or,
 - (B) is a licensed domiciliary of another state **and** the transaction is not intended to avoid a requirement of this chapter; or
2. Buying, selling, including by consignment, or exchanging at a public auction:
 - (A) an antique vehicle that is at least 25 years of age; or
 - (B) a special interest vehicle that:
 - (I) is at least 12 years of age; or
 - (ii) has been the subject of a retail sale.¹²

(Emphasis added.)

¹¹The GDN categories are: (A) franchised motor vehicle dealer; (B) independent motor vehicle dealer; (C) wholesale motor vehicle dealer; (D) motorcycle dealer; (E) house trailer dealer; (F) trailer or semitrailer dealer; or (G) independent mobility motor vehicle dealer. TEX. TRANSP. CODE ANN. §503.029(a)(6) (Vernon 2018).

¹²*Id.* §503.024(c).

A licensed dealer in another state, regardless of whether that dealer is licensed to sell a product online by a manufacturer or distributor, is still subject to the laws of the State of Texas and §503.024, Transportation Code, applies. Such out-of-state dealer may buy, sell, or exchange a vehicle with a licensed Texas dealer if the transaction is not intended to avoid the requirements of Chapter 503, Transportation Code; or, if licensed in another state, the buying, selling, or exchanging of a vehicle cannot be intended to avoid the requirements of Chapter 503, Transportation Code.

In addition, the Occupations Code provides that a dealer may only sell or offer to sell a motor vehicle from an established and permanent place of business approved by the division and for which a GDN has been issued. The allowable exceptions with respect to the required licensed, established and permanent place of business requirement for sales or offers to sell by a dealer¹³ include: (1.) those specific licensees who may sell at a show or exhibit as provided in §2301.358(c) and (d), Occupations Code; (2.) the sale of an antique vehicle or a special interest vehicle; or, (3.) a licensed GDN dealer¹⁴ may sell or offer to sell a motor vehicle online through an advertisement on the Internet to a buyer who never personally appears at the dealer's established and permanent place of business, §2301.362(b), Occupations Code.

The proposal is unclear as to the department's intention of what is an "authorized" dealer, in-state or out-of-state, by a manufacturer or distributor to sell online to a Texas resident.

Regardless of an "authorization" by a manufacturer or distributor to a non-Texas dealer, the statutes regarding sales in Texas to Texas residents cannot be avoided and when applied, serve to ensure a sound system of distributing and selling motor vehicles in Texas.

As the agency is concerned about consumer fraud and public safety with respect to out-of-state dealers, the Transportation Code's requirements regarding dealer GDN licensing if five (5) or more vehicles in a calendar year are sold in Texas

¹³*Id.* §2301.362.

¹⁴*Id.* §2301.002(7): "'Dealer' means a person who holds a general distinguishing number issued by the board under Chapter 503, Transportation Code."

serve to quell those concerns as a GDN should be obtained as required, unless there is proof that the avoidance of obtaining a GDN by the out-of-state dealer is not to circumvent the state's licensing requirement. Otherwise, obtaining the GDN by the out-of-state dealer will satisfy the consumer fraud and public safety concern.¹⁵

The Fifth Circuit in *Ford* discusses the internet and concludes that the Texas statute prohibiting a manufacturer or distributor from owning, operating, controlling, or acting in the capacity of a dealer is inclusive of all forms of manufacturer marketing and sales, including those performed over the internet. The court states that:

When considering laws that directly regulate internet activities, this alleged need for uniformity may well prevail. However, application of this principle in circumstances like the instant case would lead to absurd results. It would allow corporations or individuals to circumvent otherwise constitutional state laws and regulations simply by connecting the transaction to the internet. Section 5.02C(c)¹⁶ serves as a prohibition on all forms of marketing and sales by manufacturers, not just those conducted via the internet. In the absence of Congressional legislation, §5.02C(c)'s incidental regulation of internet activities does not violate the Commerce Clause.¹⁷

As the court discusses, the Texas statute does not allow a manufacturer or distributor to own, operate, control, or act in the capacity of a dealer and that prohibition cannot be circumvented by “connecting the transaction to the internet.”

TADA again re-urges the agency to withdraw this proposal in 43 TAC §215.102(e)(2)(E)(i) pending the outcome of current litigation in which it is involved

¹⁵*Id.* §503.024.

¹⁶Section 5.02C(c) provided that:

“. . . a manufacturer or distributor may not directly or indirectly:

- (1) own an interest in a dealer or dealership;
- (2) operate or control a dealer or dealership; or
- (3) act in the capacity of a dealer.

VERNON'S TEXAS CIVIL STATUTES, Art. 4413(36) (2001).

¹⁷*Id.* 264 F.3d 493, 505.

as the proposal concerns issues involved in current litigation and the status quo must be maintained until a final ruling by the court.

SUBCHAPTER E. LESSORS AND LEASE FACILITATORS

43 TAC §§215.171, 215.173 - 215.180

(48 *TexReg* 8247 - 8253)

TADA requests that the agency withdraw its proposed amendments to Subchapter E. Lessors and Lease Facilitators. Leasing is at issue in the current litigation and current rules in Subchapter E. are cited within filed motions.

As previously requested and stated, when litigation is filed and on-going, the status quo should remain in place pending the final determination by the court and no amendments to rules should be entertained until an opinion from the court of last resort is issued.

43 TAC §215.112. *Motor Home Show Limitations and Restrictions*

(48 *TexReg* 8227)

Proposed for Repeal

Although TADA does not represent a licensee that may sell at a show or exhibit, members of TADA participate in shows and exhibits throughout the year.

While the agency's approval is no longer required for a licensee to participate in a show or exhibit since 2019, the TxDMV must still enforce the various statutes that can be in-play at a show or exhibit so as to ensure "a sound system of distributing and selling motor vehicles" and "to prevent fraud, unfair practices, discrimination, impositions, or other abuse of the people of this state."¹⁸

Areas that could be exploited at a show or exhibit include brokering,¹⁹ off-site

¹⁸*Id.* §2301.001.

¹⁹*Id.* §2301.006.

selling (for those licensees who are not allowed to sell at a show or exhibit),²⁰ “blue law” violations,²¹ sales by a manufacturer or distributor,²² and, Monroney violations.²³

In addition, as stated in the statute, it is “**dealership**” **personnel** who may be present to aid in the showing and exhibiting of new motor vehicles under §2301.358(b), Occupations Code. Since “dealership” is defined as the premises and facilities on which a franchised dealer operates the dealer’s business, it is the franchised dealer’s employees who may be present at a show or exhibit to aid in showing and exhibiting of the vehicles.²⁴

This statutory provision stating that dealership personnel are the ones who may be present to aid in a show or exhibit, emphasizes the prohibition disallowing sales to occur at a show or exhibit, except as provided, and also emphasizes that a manufacturer and distributor cannot act in the capacity of a dealer.²⁵

In order to prevent fraud and unfair practices and to ensure statutes are followed, calls for the board to adopt rules under its statutory authority in §2301.155²⁶ with respect to shows and exhibits.

Simply by removing the approval by the agency for a show or exhibit does not mean that the agency is no longer required to enforce its applicable statutes at a show or exhibit.

²⁰ *Id.* §2301.358; §503.021.

²¹ TEX. TRANSP. CODE ANN. §728.002 (Vernon 2022);
Id. §2301.362.

²²*Id.* §2301.476.

²³15 U.S.C. §§1231-1233.

²⁴*Id.* §2301.002(8).

²⁵*Id.* §2301.476.

²⁶§2301.155: “The authority to adopt rules under this chapter is vested in the board. In accordance with this chapter and the rules, decisions, and orders of the board, the board shall adopt rules as necessary or convenient to administer this chapter and to govern practice and procedure before the board.”

A step forward is to: (1.) define a show or exhibit;²⁷ (2.) emphasize that sales may not occur at a show or exhibit except as provided in §2301.358(c), Occupations Code; (3.) remind licensees that only dealership personnel may aid in the showing and exhibiting of new motor vehicles as stated in §2301.358(b), Occupations Code; (4.) provide that brokering is not allowed; (5.) reiterate that the “blue law” must be complied with at those shows and exhibits that allow for a sale; and, (6.) provide that the “Monroney” label may not be removed from a new motor vehicle that is required to have the label affixed to it.

As the above rule suggestions are applicable to all licensees, they cannot be considered anti-competitive as current statutes dictate these requirements.

Repealing the current rule without adopting regulations for the licensees to recognize the meaning of a “show” and “exhibit” as well as a need to adopt rules that include those personnel and actions that can or cannot be a part of a show or exhibit, will assist in preventing fraud and unfair and unlawful practices.

43 TAC §215.140. Established and Permanent Place of Business Premises Requirements
(48 *TexReg* 8233)

New language proposed in Section 215.140(a)(11)(c) requires a GDN applicant to include the physical address of a storage lot if it is located at a different physical address than the licensed location. If the storage lot is established after the license is issued and located at a different physical address, then the dealer must submit a license amendment within ten (10) days.

The rule currently provides that a dealer who maintains a storage lot must not allow public access and no sales may occur at the storage lot. A sign is required stating the licensee’s name, contact information, and that the lot is for storage. A

²⁷ As a starting point and as suggested by the Sunset Commission, “a show involves multiple motor vehicle dealer participants and takes place on a specific day or days, while an exhibition is an ongoing vehicle display such as a car at a shopping mall.” Sunset Advisory Commission, Staff Report with Final Results, *Texas Department of Motor Vehicles*, 2018 - 2019, 86th Legislature, at 42.

storage lot must be fenced or in an access-controlled location so that it is not accessible by the public.

However, a storage lot may be temporary. For example, there may be times when a licensee receives a fleet of vehicles and rents or leases a lot to store the vehicles for a short period of time. The licensee should not be required to amend their license in this instance and amend their license again when the rental or lease ends.

Requiring a license amendment each time the dealer rents or leases a lot on a temporary basis subjects the dealer to an unnecessary requirement and a potential violation. Dealers, as owners of the vehicles, have an inherent interest to safeguard their vehicles and as sales may not occur off-site from their licensed location, the proposal is unnecessary.

TADA requests that the storage lot requirements be reviewed and amended for those lots that are temporary and those that are permanent and that a license amendment not be required for a storage lot that is temporary.

43 TAC §215.111. *Notice of Termination or Discontinuance of Franchise and Time for Filing Protest*

(48 *TexReg* 8224)

A manufacturer or distributor must give notice of termination or discontinuance of a franchise to the dealer and the department in accordance with Occupations Code §2301.453. A dealer must electronically file a written notice of a protest of a franchise termination or discontinuance pursuant to §2301.453 prior to the effective date of the termination or discontinuance as “*stated in the notice from the manufacturer or distributor.*”

Even if the manufacturer or distributor is required to notice the dealer and department with a minimum of sixty (60) days as provided by §2301.453, the notice sent to the dealer may state a different period of time.

TADA suggests that the board consider clarifying the current language in subsection (b) to provide that the notice from the manufacturer or distributor must

provide the minimum number of days as stated in §2301.453 because the manufacturer's or distributor's notice to the dealer may incorrectly provide the number of days for a dealer to send a notice of protest to the agency.

43 TAC §215.160. Duty to Identify Motor Vehicles Offered for Sale as Rebuilt

(48 *TexReg* 8246)

Upon the sale of a motor vehicle that has been declared a salvage vehicle by the department and a regular title subsequently issued, the dealer must obtain the purchaser's signature on a disclosure form or an acknowledgment. The proposal amends the font size from *11 to 14 point* for a disclosure that a vehicle has been repaired, rebuilt, or reconstructed and was formerly titled as a salvage vehicle. (43 TAC §215.160(b))

The acknowledgment may be incorporated on a buyer's order or a purchase order or other disclosure document. The adopted rule did not require a separate signature; however, the proposed rule will now require a *separate signature* on the buyer's order, purchase order, or separate disclosure document. (43 TAC §215.160(c))

If such amendments are essential, adequate time for a licensee to reprint their forms and re-program their computers as well as to deplete their current stock of purchase or buyer's orders or separate disclosure documents should be taken into account so that the effective date of these form changes considers the expense to a licensee of such alterations, re-printing, and re-programming.

Conclusion

TADA appreciates the opportunity to file comments regarding the agency's rule proposals and recognizes that a great deal of time and effort was put into the many amendments.

TADA again requests that 43 TAC §215.102(e)(2)(E)(i), 43 TAC §215.103, and Subchapter E. 43 TAC §§215.171, 215.173 - 215.180 be withdrawn as well as

any other proposal that is or may be at issue in current litigation. The status quo should be maintained until litigation is complete.

Guidance for all licensees regarding shows and exhibits can be adopted in accordance with the agency's rulemaking authority in §2301.155 as a show or an exhibit can be exploited if enforcement of current statutes is not honored.

Reconsideration as to whether a temporary storage lot should be the subject of a license or an amended license is requested as it is not part of a permanent dealership facility and may not be necessary as current storage lot rules are in place.

TADA requests that if the new disclosure font size increases and separate signature line are deemed necessary amendments and adopted, that the board provide adequate time for a licensee to reprint forms, reprogram computers, and deplete their current stock of forms prior to the new requirements becoming effective.

Again, on behalf of TADA, thank you for the opportunity to comment on the published proposed rules and amendments. If there is a question, please call at your convenience.

Sincerely,



Karen Phillips
General Counsel/EVP

ATTACHMENT

1

November 20, 2020

Karen Phillips
General Counsel, Executive Vice-President
Texas Automobile Dealers Association
1108 Lavaca, Suite 800
Austin, Texas 78701

RE: Occasional Sales and Mobile Services

Dear Ms. Phillips:

Please allow this correspondence to serve as the Texas Department of Motor Vehicles' [the department] response to your inquiries as it relates to the above-referenced subject. This response is intended just as guidance related to those discussions and does not establish any requirement, provide legal advice, or determine any law or fact.

Your inquiry seeks the department's guidance regarding a fact situation in which a motor vehicle dealer holding a general distinguishing number (GDN) license may take in a trade-in of a vehicle type that the GDN license holder is not licensed to sell. The specific example you provided involves a customer who desires to use their motorcycle as a trade-in vehicle when purchasing a motor vehicle from a license holder. Although the department is unable to provide you or your organization with legal advice, we suggest that a review of the following laws/rules would be instructive and responsive to your inquiry: Texas Transportation Code §§503.021; 503.024; 503.026; Texas Occupations Code §2302.009, §2302.101; and Chapter 43 of the Texas Administrative Code (TAC) §215141(b)(6).

The Texas Automobile Dealers Association (TADA) has also presented the department with questions involving licensure, warranty repairs, and protest issues as they relate to the establishment of a potential mobile repair service program in Texas. For informational purposes and by way of example, TADA provided the department with information the Ford Motor Company is providing to its franchised dealers to determine their level of interest in Ford Motor Company's mobile repair service program. The Ford Motor Company program pertains only to non-warranty and recall repairs. The performance of non-warranty and recall repairs are not activities for which a person is required to hold a license.

While the department cannot provide TADA with legal advice, the department would refer TADA to Occupations Code §2301.251 and §2301.002(16) for guidance in answering TADA's mobile repair service (1) licensure and warranty repair question(s); and (2) Occupations Code §2301.251, Transportation Code §503.029(a)(6)(A), §503.032(a); and 43 TAC §215.119, for guidance in answering TADA's protest question.

Discussion

Occasional Sales

Transportation Code §503.026 requires a person to obtain a dealer general distinguishing number for *each* type of vehicle the person intends to sell. In the example that you provided, the motor vehicle dealer would also be required to hold a motorcycle dealer GDN if the motor vehicle dealer took in a motorcycle as a trade-in and intended to sell the motorcycle. Otherwise, without such an additional motorcycle dealer GDN, the motor vehicle dealer would be subject to an enforcement action for violating Title 43 TAC §215.141(b)(6).

Transportation Code §503.021 prohibits a motor vehicle dealer selling vehicles that are not the same vehicle type as the dealer is licensed to sell. Texas law does not prohibit a dealer from accepting in trade that the dealer is not authorized to sell. However, Texas law provides no exception to the prohibition that would allow a dealer to sell a trade-in vehicle that is a trade-in vehicle that the dealer is not licensed to sell. In other words, a GDN license holder may accept a trade-in vehicle that they are not licensed to sell, but they may not sell that vehicle.

In addition, you ask questions of whether a dealer can title the vehicles in their own name to then sell the vehicle at the dealership or to sell them through a wholesale dealer auction if they do not have a GDN for that type of vehicle they are intending to sell and whether those examples would exempt dealers from the plain language of Transportation Code §503.026.

- 1) Dealer accepts less than five vehicles per year and titles them in their name.

Transportation Code §503.026 requires a person to obtain a GDN for each type of vehicle the person intends to sell. However, Transportation Code §503.024 states in part, that a person is not required to obtain a dealer GDN if the person sells or offers to sell during a calendar year fewer than five vehicles of the same type that are owned and registered in that person's name.

A dealer wishing to accept a type of vehicle that they are not authorized to sell in order to purchase it and title it in their own name for personal use is not prohibited by statute. However, if a dealer were accepting a vehicle as a trade-in for which they are not licensed to sell and titling it in their own name to avoid the prohibition in Transportation Code §503.026, that could be a violation of rule and statute. For example, Transportation Code §503.024(b)(1) provides, in part, that the exemption is only applicable if the sale or offer is not made to avoid a requirement of Chapter 503. Determining a violation would be based on the specific facts of the situation.

- 2) Dealer sells vehicles of a different type acquired by trade-in through a wholesale dealer auction.

Transportation Code §503.024(b)(1) offers another exemption for a person selling or offering to sell a vehicle. The sale or offer must not be made to avoid a requirement of Chapter 503; the vehicle must have been acquired for personal or business use; and the sale must be to a person

other than a retail buyer if not sold or offered through a licensed auctioneer; or any person if the sale or offer is made through a licensed auctioneer.

This exemption was added during the 85th Legislature and the bill analysis states its purpose as removing the restriction of "farmers, families, small businesses, and corporations from utilizing the professional auctioneer to sell their vehicles by the auction method of marketing if their fleet contains more than four of like and kind vehicles." However, the statute also provides that, "if the sale or offer is not made to avoid a requirement of this chapter." Depending on the facts of the situation, if a GDN holder is selling the vehicle at auction for the purpose of circumventing the prohibition in Transportation Code §503.026, that could be a violation of rule and statute.

You may also wish to review the recent amendments to Texas Occupations Code §2302.009 and §2302.101. Transportation Code §503.026 prohibits GDN holders from selling vehicles they are not licensed to sell by expressly creating an exemption for independent auto dealers to act as salvage dealers. The legislature exempted independent motor vehicle dealers from the prohibition, and not all GDN holders.

Mobile Repair Services- Licensure and Warranty Repairs

Occupations Code §2301.251(a) establishes a licensing requirement and provides that "unless a person holds a Chapter 2301 license authorizing the activity, the person may not (1) engage in business as, serve in the capacity of, or act as a dealer, manufacturer, distributor, converter, representative, vehicle lessor, or vehicle lease facilitator; or (2) perform or offer to perform repair services on a motor vehicle **under a franchise and a motor vehicle manufacturer's warranty**, regardless of whether the person sells or offers to sell motor vehicles at the same location."

Occupations Code §2301.002(16)(B) defines that a "franchised dealer" as a licensed [Occupations Code Chapter 2301 or Transportation Code Chapter 503] person "engaged in the business of buying, selling, or exchanging new motor vehicles **and servicing or repairing motor vehicles under a manufacturer's warranty at an established and permanent place of business under a franchise in effect with a manufacturer or distributor.**" A mobile repair service would have to demonstrate that it meets the **established and permanent** location requirement to be licensed to perform warranty repair services. In other words, if a franchised dealer is prohibited from performing warranty repair services at any location other than its established and permanent (licensed) location, it is unclear how a mobile repair service unit qualifies to be licensed.

Protest

The association has asked the department, if a license is required for a franchised dealer to operate a mobile repair service program to perform non-warranty repair services only, is the application subject to protest? The department would refer TADA to the applicable statutes and rule(s) regarding this question. First, a franchised dealer must have both a franchised motor vehicle dealer's "GDN" issued under Chapter 503, Transportation Code, and a license issued

under Chapter 2301 Occupations Code. See. Occupations Code, §2301.251(b); Transportation Code §503.029(a)(6)(A). An applicant for a GDN must demonstrate that the location for which the applicant requests the number is an *established permanent place of business*. See. Transportation Code §503.032(a).

Next, 43 TAC §215.119(b), *Standing to Protest*, sets forth standing to protest requirements and the scenarios under which a protest may be made. For example, a person has standing to protest an application to establish a dealership or add a franchised line-make at an existing dealership if (1) the person is franchised dealer in the same line-make; and (2) the person's dealership is located either in the same county as, or within 15 miles of, the dealership for which the application was filed.

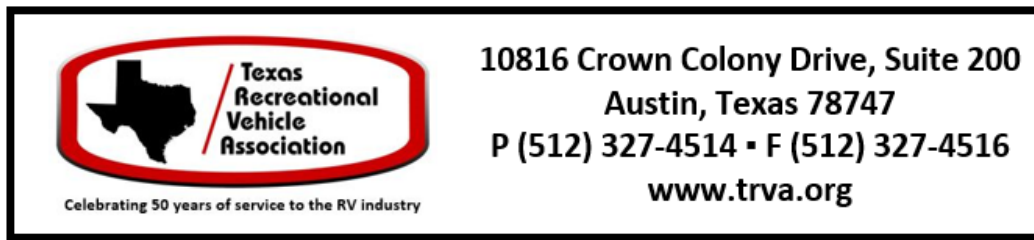
If a mobile service repair vehicle cannot meet the licensing requirements to perform warranty repair services, then the issue of whether a right to protest exists, becomes moot.

Thank you for your inquiries. The department hopes that you find this correspondence responsive to your inquiry. Should you have further questions, please feel free to contact us.

Sincerely,



Roland D. Luna, Sr., Director
Motor Vehicle Division



January 29, 2024

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

Sent via email: rules@txdmv.gov, laura.moriatty@txdmv.gov, daniel.avitia@txdmv.gov

Dear Ms. Moriatty,

The Texas Recreational Vehicle Association (TRVA) respectfully submits this comment on the proposed repeal of 7 TAC §43 TAC §215.112, which states rules for motor home shows and exhibitions.

TRVA's Interest in the Issue

The Texas Recreational Vehicle Association (TRVA) is a statewide trade association of Texas businesses involved in the recreational vehicle industry. Our membership includes RV dealers, repair facilities and RV parks throughout the State of Texas. Our members include small family operations as well as larger companies. TRVA and its members seek to maintain the reputation of the RV industry by promoting legal compliance and ethical industry practices.

In 2023, motor home sales in Texas were almost \$500,000,000. The motor home market affects many Texans and Texas businesses.

The rule under consideration applies to motor home shows and exhibitions. The issues pertaining to shows and exhibitions are extremely important to motor home dealers and purchasers because, unlike other vehicles, motor homes can be sold at motor home sales under certain circumstances. TRVA is concerned that, without some guidance in the rules, this exception to the general Texas law that sales can only be made at licensed, bonded locations will be abused.

Summary

TRVA agrees that the current rule is no longer consistent with statute. However, TRVA submits that the rule should be amended to bring it into conformity with the statute, rather than repealing it. Amendment, rather than repeal, is most consistent with the legislative intent.

For motor home sales and exhibitions, an amended rule is essential to fulfill the statute's purpose to "ensure a sound system of distributing and selling motor vehicles" and "to prevent fraud, unfair practices, discrimination, impositions, or other abuse of the people of this state." Tex. Occ. Code §2301.001. Otherwise, the statutory exception allowing sale of motor homes at motor home shows can be exploited to allow results that are not in the public interest and that were never intended by the legislature, *i.e.*, an end run around the comprehensive regulatory scheme and purpose of Chapter 2301 of the Occupations Code and Chapter 503 of the Transportation Code.

Discussion

1. The statutory change that resulted in the need to address 43 TAC §215.112 was a product of the Sunset Advisory Commission Staff Report (the "Sunset Report"). The Sunset Report's only recommendation was that the legislature remove the requirement that a dealer obtain authorization to participate in a show. The legislature's only change to the statute was to replace the authorization requirement with a requirement that the dealer provide written notification of intent to participate in a show. To avoid results never intended from that limited change, the rule should be amended to be consistent with the Sunset Report which was the basis of the legislative action and with the legislative intent in changing the statute.

The proposed repeal of the rule results from section 2.05 of SB 604, the 2019 Sunset Bill for the TxDMV. Acts 2019, 86th Leg., R.S., Ch. 594. SB 604 changed the provision requiring that dealers obtain TxDMV authorization to participate in vehicle shows. *Id.*, §2.05, p. 10. Instead of obtaining authorization to participate in a show, a dealer now must provide advance written notice of intent to participate in the show.

This change was a result of the Sunset Report. The Sunset Report defined the shows and exhibitions to be addressed in by the sunset bill (SB 604) as follows:

"A show involves multiple motor vehicle dealer participants and takes place on a specific day or days, while an exhibition is an ongoing vehicle display such as a car at a shopping mall. Marketing of motor vehicles and trailers takes place at these events."¹

To ensure that the statute is enforced using the same meaning that the legislature had in mind when it enacted SB 604, 43 TAC §215.112 needs to be amended, rather than repealed to reflect the definitions of "show" and "exhibition" in the Sunset Report, existing 43 TAC §215.112 and established practice.

Focusing first on the descriptions in the Sunset Report, a "show" must first have multiple motor vehicle dealer participants. Multiple dealers are necessary to have competition and prevent deception. If a "show" can consist of a single dealer, or only of dealers under common control, consumers can be misled into thinking that they have negotiated a competitive price between competing dealers, when in fact there was no competition.

¹ Emphasis added throughout this Comment.

The second element of the Sunset Report’s definition of a “show” is that the show take place “on a specific day or days.” A show is thus temporary and only for a day or days, not weeks, months or years. Moreover, the show must be for a “specific” day or days.

Similarly, the Sunset Report’s definition of an “exhibition” noted that it is a “display such as a car at a shopping mall.” It is a “display” *i.e.*, vehicles for consumers to see but not buy while at a third party location devoted to other purposes, e.g., a shopping mall, rodeo or airport. An exhibition is ongoing, *i.e.*, static and continuing during the third party location’s regular business hours, not just a drive by or parade.

The Sunset Report’s definitions of a “show” and “exhibition” are consistent with common understanding, longtime industry practice and the TxDMV’s historical practice. A “show” is an event occurring on a specific day or a few specific days, involving multiple dealer competitors, not a dealer sales lot. That longtime practice and understanding is set forth in 43 TAC §215.112—a show “does not exceed six consecutive days” and “is not conducted within 90 days of a previous show in the same county”.

The legislature only changed the requirement for a dealer to obtain to participate in a show, not what a “show” is. Nothing in the legislative history indicates that the legislature intended to change the long established concept of what a “show” is. Since 43 TAC §215.112 already set forth what constituted a “show”, the legislature would reasonably have assumed that when it only changed “authorization” for motor home shows to “notification” for motor home shows, the rule would continue to set forth what a motor home “show” is .

Texas Government Code section 311.023 directs that in interpreting a statute, the following may be considered:

“1) the object sought to be attained [here, just to change the requirement for authorization to the requirement of notification],

2) the circumstances under which the statute was enacted [here, that SB 604 was the sunset bill to continue the TxDMV and the change was only to change authorization to notification and save one full time employee],

3) the common law or former statutory provisions, including laws on the same or similar subjects [here, the comprehensive licensing and regulatory scheme of Occupations Code Chapter 2301 and Transportation Code 503],

4) the consequences of a particular construction [here, not confining “shows” to events with multiple dealers, for six days or less, occurring not more often than 90 days in the same county, risks consequence never intended by the legislature, *i.e.*, upending the entire regulatory scheme of Occupations Code Chapter 2301 and Transportation Code Chapter 503 insofar as they pertain to sales of motor homes, resulting in anti-competitive and abusive practices],

6) administrative construction of the statute [per 43 TAC §215.112, shows consist of multiple dealers, for six days or less, not occurring more often than 90 days in the same county, at third party facilities]; and

7) title (caption), preamble, and emergency provision [of SB 604—here the continuation of the TxDMV, not a total change of the statutory scheme as it affects motor home sales].

2. The statutory section permitting “shows” and “exhibitions,” is a narrow exception to the overarching general requirements of Occupations Code Chapter 2301 and Transportation Code Chapter 503 that dealers may only operate from licensed locations. To avoid the exception swallowing the general rule and the numerous abuses and unintended consequences that will result if that occurs, the rule should clearly set forth what constitute “shows” and “exhibitions” within the exception, as it historically has.

The overarching legislative intent and public policy of Chapter 2301 are specifically set forth in Tex. Occ. Code §2301.001, which provides in pertinent part as follows:

“the exercise of the state's police power to ensure a sound system of distributing and selling motor vehicles through:

- (1) licensing and regulating manufacturers . . . and dealers of motor vehicles; and
- (2) . . . to prevent fraud, unfair practices, discrimination, impositions, or other abuse of the people of this state.

To that end, the legislature mandated that “This chapter [Chapter 2301] shall be liberally construed to accomplish its purposes . . .” *Id.*

To achieve the legislative purposes of a sound distribution system and protection against abuse, Chapter 2301 of the Texas Occupations Code and Chapter 503 of the Transportation Code set forth comprehensive detailed requirements that dealers, including motor home dealers, may engage in business only from licensed locations meeting various requirements.

“A dealer must apply for a separate license . . . for each separate and distinct dealership showroom as determined by the department.” *Id.* §2301.257(c). This specifically authorizes the department to determine what is a separate dealer “showroom,” as opposed to a “show” or “exhibit,” to prevent unlicensed dealer locations from avoiding the requirements of Chapter 2301 by calling unlicensed locations “shows” or “exhibitions”.

Chapter 2301 also provides that “Before changing a location, a dealer must obtain a new license for that location.” *Id.* Other sections of Chapter 2301 further regulate locations used by a dealer.²

In furtherance of these requirements, 43 TAC §215.104 provides that “(g) In addition to obtaining permission from the manufacturer or distributor, a franchised dealer shall obtain department approval prior to opening a supplemental location or relocating an existing location.”

Chapter 503 of the Transportation Code also emphasizes the need for each location at which a dealer operates to be licensed. Transportation Code §. 503.021 provides that: “A person

² The Board’s rules require *inter alia*, that the dealer “that “the dealer’s office must have “permanent interior walls on all sides and be separate from any public area used by another business,” that the location must have “a conspicuous sign.”

may not engage in business as a dealer, directly or indirectly . . . without a dealer general distinguishing number . . . for each location from which the person conducts business as a dealer.” Section 503.027(b) provides in part that “Each location must comply with the requirements prescribed by this chapter and board rules relating to an established and permanent place of business.”

Pursuant to the statutes and to aid in their enforcement, the Board has adopted various rules, including 43 TAC §215.135, providing that if a dealer operates at a location not in the same city as its licensed location, it must obtain a General Distinguishing Number for the additional location and that a dealer must “provide a new surety bond reflecting the additional location, unless the licensed location is exempt by statute from the surety requirement.”

Statutory Authority for the Rule

To implement both the overarching purpose of Chapters 2301 and 503, including the narrow exception in §2301.358, amendment rather than repeal of the rule is needed: (1) to define what is a “show” at which sales of motor homes can occur, and (2) to provide guidance as to when sales at such shows are “not otherwise prohibited”.

The statutes provide authorization for such a rule. *See, e.g.*, Tex. Occupations Code §2301.257(c), “A franchised dealer must apply for a separate license . . . for each separate and distinct dealership showroom as determined by the department”; Tex. Occ. Code §2301.153(a) “the board has all powers necessary, incidental, or convenient to perform a power or duty expressly granted under this chapter, including the power to: . . . (8) adopt rules . . .”.

Amending 43 TAC 215.112 to differentiate locations that are considered dealer locations subject to all of the numerous statutory and regulatory requirements for dealer locations, from “shows” and “exhibits” that are subject to some but not all of those requirements, is further authorized by the general authorizations in Tex. Occ. Code §§ Sec. 2301.151 and 2301.152, which provide in pertinent part as follows:

2301.151 (b) The board may take any action that is specifically designated or implied under this chapter or that is necessary or convenient to the exercise of the power and jurisdiction granted under Subsection (a).

Sec. 2301.152. General Duties of Board. (a) In accordance with this chapter, the board shall: (1) administer this chapter . . . (3) ensure that the distribution, sale, and lease of motor vehicles is conducted as required by this chapter and board rules . . . and (5) prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles . . . and (b) . . . shall enforce and administer Chapter 503, Transportation Code.

Such a rule amendment is within the Board’s statutory authority, particularly given the legislative mandate that “This chapter shall be liberally construed to accomplish its purposes, including the exercise of the state's police power to ensure a sound system of distributing and selling motor vehicles . . .” Tex. Occ. Code §2301.001. Allowing dealers to avoid the regulatory scheme and pop up “here today gone tomorrow” sales locations, wherever and whenever they

please, then leave their buyers without a dealer for post-sale service, is not a sound system of distributing and selling vehicles.

That the legislature intended for the Board to continue to have authority to adopt rules to regulate dealer participation in vehicle shows and exhibitions is made clear by SB 604 leaving intact subsection (d) of Tex. Occupations Code §2301.358, which continues to provide that:

d) *A rule adopted by the board regulating the off-site display or sale of towable recreational vehicles must include a provision that authorizes the display and sale of towable recreational vehicles at a private event in a trade area that would not otherwise qualify for the private event under the application of general participation requirements for organized dealer shows and exhibitions.*

Conclusion

To stay consistent with the legislative intent and prevent the inevitable abuses that will occur if operations from unlicensed locations are allowed under the sham of calling them “shows” or “exhibitions,” 43 TAC 215.112 should be amended rather than repealed. The amendment should provide what constitutes a “show” and what constitutes an “exhibit.” The clarification should be consistent with the Sunset Report that was the basis for the legislative change that precipitated the need to change the rule, and with the long-established meanings of “show” and “exhibit” in 43 TAC §215.112, industry practice and common understanding.

The narrow exception allowing sales of motor homes at motor home shows has always been considered to allow sales only at events involving multiple dealers, lasting days, not weeks, held only occasionally and located at third party facilities. Those are the shows that the legislature was addressing, and there is no indication that the legislature intended to change the concept of “shows” and “exhibits” when it changed the requirement for “authorization” of shows to “notification” of shows.

Without a rule to ensure that “shows” and “exhibits” have the meanings intended by the legislature, the narrow exception for shows and exhibits will be abused with results never intended by the legislature.

TRVA stands ready to work with TxDMV staff on the details of an amendment to 43 TAC §215.112 that will achieve the legislative intent consistent with statutory authorizations, foster competition and prevent abusive practices. TRVA appreciates the Board and TxDMV’s time and consideration on this important issue.

Sincerely,



Phil Elam
Executive Director
Texas Recreational Vehicle Association
philelam@trva.org

Board Meeting Date: 4/11/2024
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Monique Johnston, Motor Vehicle Division Director
Agenda Item: 9
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. Adopt amendments to and repeals of sections in 43 Texas Administrative Code (TAC) Chapter 221 with an effective date of June 1, 2024.

PURPOSE AND EXECUTIVE SUMMARY

This rule item would adopt amendments and repeals to Chapter 221, Salvage Vehicle Dealers in conjunction with a review of Chapter 221 in compliance with Government Code, § 2001.039. This rule item is considered for adoption concurrently with new Chapter 224, Adjudicative Practice and Procedure, which consolidates into one chapter all contested case rules, including those currently in Chapter 221.

FINANCIAL IMPACT

No significant impact.

BACKGROUND AND DISCUSSION

As part of the department's rule review of Chapter 221, Salvage Vehicle Dealers, the department recommends adopting amendments and repeals to sections of Chapter 221 to achieve the following goals:

- 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 proposed for adoption 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

Fingerprint requirements are a proven, effective way to prevent application fraud. An adopted amendment would expand fingerprint requirements to salvage vehicle dealers and include both new and renewal license applicants.

Fee Consistency

An adopted amendment to §221.13, License Terms and Fees, would allow the department to charge a salvage vehicle dealer a \$25 license amendment fee for certain license amendments that require department review and expense. This is the same fee charged to other license holders as Occupations Code, §2301.264(e) prescribes a \$25 license amendment fee for Occupations Code, Chapter 2301 and Transportation Code, Chapter 503 license holders.

Repeals

Repeals would delete §221.48, Scrapped or Destroyed Motor Vehicle, which duplicates §217.86, Dismantling, Scrapping, or Destruction of Motor Vehicles, and move the adjudicative rules in Subchapter E to new Chapter 224, Adjudicative Practice and Procedure, which is being considered concurrently for adoption by the board.

COMMENTS

The proposed rules were published for comment in the December 29, 2023, issue of the Texas Register. The comment period closed on January 28, 2024. The department received one written comment from the Texas Independent Automobile Dealers Association (TIADA) requesting changes to the proposed rule amendments. The department considered this comment (attached) and is recommending a change to the rule text at adoption in response to one of the recommendations.

If the board adopts the amendments and repeals during its April 11, 2024, open meeting, staff anticipates:

- Publication in the April 26, 2024, issue of the *Texas Register*; and
- An effective date of June 1, 2024.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 1 of 19

Chapter 221 – Salvage Vehicle Dealers

| | |
|----|--|
| 1 | ADOPTION OF REVISIONS TO |
| 2 | SUBCHAPTER A. GENERAL PROVISIONS |
| 3 | 43 TAC §221.1 and §221.2 |
| 4 | SUBCHAPTER B. LICENSING |
| 5 | 43 TAC §§221.11–221.20 |
| 6 | SUBCHAPTER C. LICENSED OPERATIONS |
| 7 | 43 TAC §§221.41–221.54 |
| 8 | SUBCHAPTER D. RECORDS |
| 9 | 43 TAC §§221.71–221.73 |
| 10 | SUBCHAPTER E. ADMINISTRATIVE PROCEDURES |
| 11 | 43 §§221.91–221.96 |
| 12 | SUBCHAPTER F. ADMINISTRATIVE SANCTIONS |
| 13 | 43 TAC §§221.111, 221.112, and 221.115 |

14

15 **INTRODUCTION.** The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas

16 Administrative Code (TAC) Subchapter A, General Provisions, §221.1 and §221.2; Subchapter B, Licensing,

17 §§221.11, 221.13–221.20; Subchapter C, Licensed Operations, §§221.41–221.47 and 221.49–221.54;

18 Subchapter D, Records, §§221.71–221.73; and Subchapter F, Administrative Sanctions, §§221.111,

19 221.112, and 221.115. The department also adopts the repeal of §221.48 and Subchapter E,

20 Administrative Procedures, §§221.91–221.96. Subchapter F is also adopted for relettering as Subchapter

21 E because the preceding subchapter is repealed.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 2 of 19

Chapter 221 – Salvage Vehicle Dealers

1 Sections 221.1, 221.11, 221.14–221.20, 221.41, 221.43–221.46, 221.49, 221.54, 221.72, 221.111
2 221.112, and 221.115 are adopted without changes to the proposed text as published in the December
3 29, 2023, issue of the *Texas Register* (48 TexReg 8278) and will not be republished.

4 Section 221.13 is adopted with changes to the proposed text published in the December 29, 2023,
5 issue of the *Texas Register* (48 TexReg 8278) and will be republished. Sections 221.2, 221.42, 221.47,
6 221.50–221.53, 221.71, and 221.73 are adopted with nonsubstantive changes to the proposed text
7 published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8278) and will be republished.

8

9 EXPLANATION OF ADOPTED AMENDMENTS AND REPEALS

10

11 Subchapter A. General Provisions

12 Adopted conforming amendments to §221.1 are necessary to more completely describe the
13 scope of the chapter to include holders of independent motor vehicle dealer's general distinguishing
14 numbers (GDN) issued under Transportation Code, Chapter 503, who act as salvage vehicle dealers and
15 to add a reference to persons exempt from licensure. House Bill
16 (HB) 1667, 86th Legislature, Regular Session (2019), added Occupations Code, §2302.009 and amended
17 Occupations Code, §2302.101, granting independent motor vehicle dealers the ability to perform salvage
18 activities without obtaining a salvage vehicle dealer's license, but at the same time requiring these dealers
19 to comply with Occupations Code, Chapter 2302 requirements. A second adopted amendment is
20 necessary to add a reference to persons exempt from licensure as Occupations Code, Chapter 2302
21 contains exceptions for metal recyclers, insurance companies, and used automotive recyclers licensed
22 under Occupations Code, Chapter 2309.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 3 of 19

Chapter 221 – Salvage Vehicle Dealers

1 The adopted amendments to §221.2 add the following definitions for consistency: “day” in
2 §221.2(4) to mean a calendar day, unless otherwise stated; “director” in §221.2(6) to mean the division
3 director that regulates the distribution and sales of motor vehicles, including any department staff to
4 whom the director delegates any duty assigned under this chapter; and “General Distinguishing Number
5 (GDN)” in §221.2(7) to match the definition of the same term in Occupations Code, §2301.002(17). The
6 phrase “or context clearly indicates otherwise” that was proposed in §221.2(4) was not adopted because
7 it was duplicative of the first sentence in §221.2. The proposed citation to the Occupations Code in
8 §221.2(7) was simplified at adoption to remove the subsection citation, to align it with the citation format
9 used in §221.2(27). An adopted amendment to §221.2(8) is necessary to conform the definition of “license
10 holder” to include an independent motor vehicle dealer GDN authorized to operate as a salvage vehicle
11 dealer consistent with Occupations Code, §2302.009 and §2302.101. An adopted amendment to
12 renumbered §221.2(15) is necessary to substitute the current definition of “person” for the definition in
13 Occupations Code, §2301.002(27) for consistency. The adopted amendments to §221.2(4) removes the
14 definition of “corporation” because a special definition for corporation is unnecessary. The adopted
15 amendments to §221.2(6) remove the definition of “final order authority” because the sections of Chapter
16 221 that use the term “final order authority”, §221.93 and §221.95, are repealed and are incorporated
17 into new adopted Chapter 224 of this title (relating to Adjudicative Practice and Procedure). The adopted
18 amendments remove the definitions of “major component part” in §221.2(8) and “minor component
19 part” in §221.2(10) because these two terms are not referenced in Chapter 221. Adopted amendments
20 also renumber the definitions to correspond with the adopted revisions.

21

22 Subchapter B. Licensing

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 4 of 19

Chapter 221 – Salvage Vehicle Dealers

1 The adopted amendment to §221.11(b) adds a reference to reflect that a motor vehicle is required
2 to be both titled and registered to operate on public highways under Transportation Code, §502.040.
3 Adopted amendments to §221.11(c) substitute a statutory reference to the Occupations Code for deleted
4 rule language that duplicated the statute, to ensure consistency with any future statutory changes.

5 An adopted amendment to §221.13(c) sets a \$25 license amendment fee. Occupations Code,
6 §2302.052 assigns the board the duty of setting reasonable and necessary fees. Occupations Code,
7 §2301.264(e) prescribes a \$25 license amendment fee for licenses issued under Occupations Code,
8 Chapter 2301 and Transportation Code, Chapter 503. The department construes the fee amount
9 prescribed in statute to be reasonable and necessary and adopts the same fee because department
10 resources required to process license amendment are similar across all license types. The department
11 added the following clarifying language to §221.13(c) at adoption to identify the specific types of license
12 amendments to which the fee applies: “and applies to a license amendment changing a license holder’s
13 name, changing ownership or management, or when adding a new business address and assumed name.”

14 An adopted amendment to §221.14(a) removes redundant language without changing the
15 meaning of the rule. Occupations Code, §2302.103 requires an applicant to submit an application on a
16 form prescribed by the department. Adopted amendments to §221.14(b) update the application
17 requirements for a new salvage vehicle dealer license, license amendment, or license renewal to prevent
18 and deter fraud. These adopted amendments include language consistent with current practices and new
19 requirements to deter and prevent fraud in the application process, such as fingerprinting and site visits,
20 that have proven to be successful in reducing fraud in the issuance of dealer GDNs, a related license type.
21 Adopted amendments §221.14(b) require that the application must be on a department-approved form;
22 completed by the applicant, license holder, or authorized representative who is an employee, a licensed
23 attorney, or a certified public accountant; and accompanied by the required fee from an account held by

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 5 of 19

Chapter 221 – Salvage Vehicle Dealers

1 the applicant or license holder, or from a trust account of the applicant or license holder, or from a trust
2 account of the applicant's or license holder's attorney or certified public accountant. Adopted new
3 §221.14(c) modernizes the application process by requiring license applications and fees to be submitted
4 to the department electronically and paid for by credit card or electronic funds transfer. Adopted new
5 §221.14(d) is intended to reduce application fraud by giving the department the option to require a site
6 visit to determine whether a business location meets the requirements of Chapter 221. Adopted new
7 §221.14(e) reduces application fraud by requiring salvage vehicle dealers applying for or renewing a
8 license to comply with fingerprint requirements in §211.6 of Title 43 (relating to Fingerprint Requirements
9 for Designated License Types). This adopted fingerprinting requirement is a one-time requirement if a
10 person maintains an active license. Adopted new §221.14(f) clarifies that the department will not provide
11 information regarding the status of an application, application deficiencies, or pending new license
12 numbers to a person other than to the applicant, license holder, or authorized representative, unless the
13 person files a written request under the Texas Public Information Act. These adopted revisions to §221.14
14 provide more clarity regarding the salvage vehicle dealer license application process and are necessary to
15 deter and prevent fraud.

16 Adopted amendments to §221.15 clarify and update the information required on a salvage vehicle
17 dealer application. Adopted new §221.15(a) clarifies the application process by providing information
18 about the steps and information required for a new salvage dealer license applicant. These steps include
19 registering for an account in the online licensing system, designating an account administrator, providing
20 the name and email address for that person, and providing the business telephone number, name,
21 business type, and social security number or employer identification number, as applicable. Adopted new
22 §221.15(a) specifies that the applicant's license account administrator must be an owner, officer,
23 manager, or bona fide employee to reduce fraud and increase responsiveness and accountability by the

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 6 of 19

Chapter 221 – Salvage Vehicle Dealers

1 applicant. The adopted amendments in §221.15(b) create a new subsection to include language currently
2 in §221.15. Adopted amendments to §221.15(b)(1) require the applicant to provide the reason for the
3 application and certain other business information. Adopted amendments to the existing language
4 incorporated into adopted new §221.15(b)(2) remove surplus language and provides additional clarity
5 and detail regarding required business information necessary to improve the department's ability to
6 identify fraud and investigate applicants. These adopted amendments include clarifying that the business
7 address is the physical address of the business and requiring the following information: business email
8 address; telephone number; Texas Sales Tax Identification Number; National Motor Vehicle Title
9 Information System Identification Number, if applicable; and Secretary of State filing number, if
10 applicable. Adopted new §221.15(b)(2)(A) prohibits the business name or assumed name from being
11 misleading to the public so that accurate information about the nature of the salvage business is disclosed
12 to the public. Adopted amendments to §221.15(b)(3) require the applicant to provide an application
13 contact name, email address, and telephone number to allow the department to easily contact the
14 applicant and delete unnecessary language regarding the applicant's last known address. To improve
15 readability, adopted amendments to the existing language incorporated into §221.15(b) consolidate
16 previous subsections that set out separate requirements for the applicant to apply as a sole proprietor, a
17 general partnership, or a limited partnership, limited liability company, or corporation. To allow the
18 department to identify and investigate applicants, adopted amendments to §221.15(b)(4)–(7) require the
19 applicant to provide: the name, social security number, date of birth, identity document information, and
20 ownership percentage for each owner, partner, member, beneficiary, or principal if the applicant is not a
21 publicly traded company; 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 on
23 behalf of the applicant if the applicant is owned in full or in part by a legal entity; the name, employer

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 7 of 19

Chapter 221 – Salvage Vehicle Dealers

1 identification number, ownership percentage, and non-profit or publicly-traded status for each legal
2 entity that owns the applicant in full or in part; the name, social security number, date of birth, and
3 identity document information of at least one manager or other bona fide employee who will be present
4 at the business location if the license holder is out of state or will not be present during business hours at
5 the business location in Texas. To facilitate the department's evaluation of applicants and its efforts to
6 protect the public from crime, adopted amendments to §221.15(b)(8) clarify that criminal history record
7 information required for an application is criminal history record information under the laws of Texas,
8 another state in the United States, the United States, and any foreign jurisdiction for each person listed
9 in the application, and requires an applicant to provide a description of the criminal offense, the date, and
10 location. Adopted amendments in §221.15(b)(9) clarify that applicants are required to provide their
11 military service status to enable the department to determine eligibility for special licensing
12 considerations provided under law to veterans. Adopted amendments incorporated in §221.15(b)(10) are
13 necessary to facilitate department investigations of applicants by clarifying the requirement for an
14 applicant to provide information regarding previously submitted license applications, whether under this
15 chapter or the laws of another jurisdiction, the result of previous applications, and whether the applicant
16 has ever been the holder of a license issued by the department or another jurisdiction that was revoked,
17 suspended, or subject of an order issued by the board or by another jurisdiction, or has an unpaid
18 administrative penalty. These adopted requirements in §221.15(b) are necessary for the department to
19 be able to discharge its responsibilities under Occupations Code, §2302.104, which prescribes information
20 that must be obtained from an applicant, and Occupations Code, §2302.105, which requires the
21 department to investigate an applicant's qualifications. Adopted amendments in §221.15(b)(11) require
22 an applicant to provide information about each business location and the business premises sufficient to
23 demonstrate compliance with related premises rules in Chapter 221, Subchapter C. Adopted amendments

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 8 of 19

Chapter 221 – Salvage Vehicle Dealers

1 in §221.15(b)(12) require an applicant to provide a signed Certification of Responsibility, which is a
2 department form signed by the applicant, in which the applicant certifies that the information provided
3 or attached to the application is true, complete, and correct, and that the applicant has complied with all
4 applicable state laws and ordinances. This certification is necessary to ensure that an applicant
5 understands the applicant's responsibilities under Texas law and the consequences of providing
6 incomplete or false information.

7 Adopted amendments in new §221.15(c) clarify that a salvage vehicle dealer renewing or
8 amending its license must verify its current license information and provide information relating to any
9 new requirements or changes to the license.

10 Adopted amendments to §221.16 require an applicant to attach a legible and accurate image of
11 each required document. These amendments are necessary to allow the department to investigate and
12 process the application as required under Occupations Code, Chapter 2302. Adopted amendments to
13 §221.16 specify that required attachments include the certificate of filing, certificate of incorporation, or
14 certificate of registration on file with the Secretary of State, if applicable; each assumed name certificate
15 on file with the Secretary of State or county clerk; at least one identity document for each natural person
16 listed in the application; documents proving premises ownership or a valid lease; business premises
17 photos with a notarized affidavit; a Texas Use and Sales Tax Permit; a Franchise Tax Account Status issued
18 by the Comptroller's Office; and any other documents required by the department to evaluate the
19 application under current law and board rules. These adopted amendments consolidate previous separate
20 requirements for sole proprietors, general partnerships, limited partnerships, limited liability companies,
21 and corporations and are necessary to improve readability. The adopted amendments to §221.16(3) also
22 update references to types of identification consistent with current usage and statutory changes. The
23 adopted amendments to §§221.16(4) and (5) clarify and add requirements that the license application

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 9 of 19

Chapter 221 – Salvage Vehicle Dealers

1 includes documents proving business premises ownership or a fully executed lease or sublease agreement
2 for the license period, and business premises photos with a notarized affidavit certifying that all premises
3 requirements in Subchapter C are met and will be maintained during the license period. These changes
4 are necessary to prevent and deter fraud in the application process and to improve compliance with
5 premises requirements in Chapter 221, Subchapter C. These requirements are consistent with GDN dealer
6 requirements, which have proven successful in preventing and deterring fraud and improving compliance
7 with premises requirements. An adopted amendment to §221.16(8) authorizes the department to require
8 any other documents necessary to evaluate the application to ensure that the department can comply
9 with its statutory duty to investigate each license application as required under Occupations Code,
10 §2302.105.

11 An adopted amendment to §221.17(a) exempts a license holder from any increased fee or penalty
12 for failing to timely renew a license because the license holder was on active military duty. This
13 amendment is necessary to conform to Occupations Code, §55.002. Adopted amendments to §221.17(b)
14 would add the phrase “military service members or” in multiple places in subparagraphs (1), (2), and (3).
15 These adopted amendments are necessary to implement Senate Bill (SB) 422, 88th Legislature, Regular
16 Session (2023), which entitles military service members with out-of-state licenses to be eligible for special
17 business or occupational authorization or licensing consideration that is already afforded for military
18 spouses. Adopted amendments in §221.17(b)(1) delete duplicate references to Occupations Code,
19 §55.0041 and substitute the phrase “being stationed” for “residency” to clarify that eligibility for special
20 licensing consideration for both the military service member and military spouse is based on the military
21 service member being stationed in Texas rather than residence in Texas. Three other amendments to
22 §221.17(b)(3) are adopted to implement SB 422. Adopted amendments change the word “may” to “shall”
23 and add the phrase “within 30 days” to set a deadline by which the department must issue a license to a

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 10 of 19

Chapter 221 – Salvage Vehicle Dealers

1 military service member or spouse. This change is necessary to implement Occupations Code, §55.005(a),
2 as amended by SB 422, which requires a state agency to issue a license no later than the 30th day after
3 an application is filed. Issuing a license within 30 days would also fulfill the requirement of Occupations
4 Code, §55.0041, as amended by SB 422, which requires that the department confirm within 30 days that
5 the military service member or military spouse is authorized to engage in the licensed business or
6 occupation. Another adopted amendment to §221.17(b)(3) adds the phrase “or modified” to recognize
7 that provisions of Occupations Code, Chapter 55 may require the department to modify standard licensing
8 processes when processing an application for a military service member or military spouse, and to clarify
9 that the department’s licensing process for military service members and military spouses will be in
10 accordance with all Occupations Code, Chapter 55 requirements. Adopted new §221.17(c) clarifies that
11 the requirements and procedures authorized under Texas law do not modify or alter rights under federal
12 law.

13 Adopted amendments to §221.18(a)–(c) are necessary to modernize notification requirements by
14 specifying that a license holder must notify the department if the license holder opens or closes an
15 additional location by electronically submitting a license amendment in the department’s designated
16 licensing system. Adopted amendments to §221.18(a)(2) and §221.18(b)(2) remove surplus language. An
17 adopted amendment to §221.18(c) clarifies the appropriate action a license holder must take when
18 closing a location depending on the number of locations listed in the license. Adopted new §221.18(d)
19 clarifies an existing requirement that a license holder must apply for a new license if the license holder is
20 opening a new location not located in the same county.

21 Adopted amendments to §221.19 update the section title to reflect the scope of the section.
22 Adopted amendments to §221.19(a) and (b) modernize the application process by requiring the license
23 holder to submit a license amendment application electronically in the department’s designated licensing

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 11 of 19

Chapter 221 – Salvage Vehicle Dealers

1 system. An adopted amendment to §221.19(a) clarifies that a license holder is required to submit a change
2 in assumed name to the department to enable the department to investigate whether the assumed name
3 is misleading, deceptive or otherwise violates a law or rule. Adopted new §221.19(b)(4) clarifies that a
4 license holder must notify the department of a change in business email address, telephone number,
5 mailing address, or license contact so that the department can communicate with the license holder.
6 Another adopted amendment to §221.19(c) requires a license holder to provide the department with any
7 information necessary for the department to fully evaluate a license amendment and is necessary to
8 enable the department to conduct a thorough and efficient investigation before approving a license
9 amendment consistent with the department’s obligations under Occupations Code, §2302.105.

10 Adopted amendments to §221.20(a), (d), (e), (h), and relettered (j) simplify the language and
11 improve readability without changing meaning. An adopted amendment substitutes “A” for “The” and
12 corrects a verb to “is” from “are” for consistency and clarity. Adopted amendments to §221.20(c) change
13 “salvage vehicle dealer’s” to “license holder’s” for clarity and consistency, and correct the time frame in
14 which the department will provide notice of license expiration from 30 to 31 days consistent with
15 Occupations Code, §2302.152. An adopted amendment to §221.20(d) adds “of expiration” to clarify a
16 reference to a written notice. An adopted amendment to §221.20(e) adds “a” before “salvage vehicle
17 dealer” and adds “license” after “salvage vehicle dealer” to clarify the description of a renewal fee. An
18 adopted amendment to §221.20(i) clarifies that a license holder who timely submits a renewal application
19 may continue to operate under the expired license until the status of the renewal application is
20 determined by the department in accordance with Government Code, §2001.054. An adopted
21 amendment reletters the language that previously appeared in §220.20(i) to §220.20(j).

22

23 Subchapter C. Licensed Operations

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 12 of 19

Chapter 221 – Salvage Vehicle Dealers

1 Adopted amendments to §221.41 simplify and modernize the language and add clarity without
2 changing meaning. Adopted amendments to §221.41(1) add new requirements that apply if a salvage
3 dealer leases or subleases property for a business location. Adopted new §221.41(1)(D) and (E) require a
4 property owner signature or a signed and notarized statement from the property owner if the location is
5 subleased and the property owner is not the lessor. The property owner statement must include the
6 property owner's full name, email address, mailing address, and phone number and confirm that the
7 dealer is authorized to sublease the location and to operate a salvage vehicle dealer business. These
8 adopted changes are necessary to prevent fraud in the application process, to prevent consumer abuse,
9 and to protect public health and safety. These provisions also protect salvage vehicle dealer applicants:
10 the department has received applications from dealers with a signed sublease who are unable to operate
11 a business because the property owner has not authorized a dealer to operate such a business on the
12 property. Adopted amendments to §221.41(2) substitute "under" for "by" and "municipality" for "city"
13 for clarity and consistency in use of these terms.

14 Adopted amendments to the title and language of §221.42 make minor wording changes to clarify
15 and remove surplus wording.

16 Adopted amendments to §221.43(a) require a salvage vehicle dealer who sells to a retail customer
17 to be open at least four days per week for at least four consecutive hours per day and prohibit the office
18 from being open solely by appointment. These adopted amendments create standard minimum business
19 hours across the industry by requiring the office of a salvage pool operator selling only to a wholesale
20 dealer to be open at least two weekdays per week for at least two consecutive hours per day, and not
21 solely by appointment. Occupations Code, §2302.0015 requires a person to allow the department, law
22 enforcement officers, and others to enter and inspect a business during normal business hours. Minimum
23 normal business hours are not defined in statute or rule; therefore, these adopted amendments are

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 13 of 19

Chapter 221 – Salvage Vehicle Dealers

1 necessary to establish these standards, and the board is authorized to do so under the rulemaking
2 authority in Occupations Code, §2302.051. The adopted minimum standards for salvage vehicle dealers
3 are consistent with current minimum requirements for GDN dealers in §215.140(1)(A) of this title (relating
4 to Established and Permanent Place of Business Premises Requirements); the adopted minimum
5 standards for salvage pool operators that only sell to wholesale dealers are consistent with current
6 requirements for wholesale GDN dealers in §215.140(2) of this title (relating to Established and
7 Permanent Place of Business Premises Requirements). These adopted minimum hours are necessary to
8 deter and prevent fraud in the application process, prevent consumer harm, and ensure the department
9 and others authorized by law have access to a salvage vehicle dealer's location for inspection purposes.
10 Adopted amendments to §221.43(c) and (d) make minor word changes to add clarity. An additional
11 adopted amendment to §221.43(d) gives license holders more flexibility by adding options for the office
12 telephone to be answered by the owner or a voicemail service in addition to a bona fide employee,
13 answering service, or answering machine.

14 Adopted amendments to §221.44(a) clarify that a permanent business sign must be made of
15 durable, weather resistant material. Adopted amendments to §221.44(b) clarify that a sign will be
16 considered permanently mounted if it is bolted to an exterior building wall or bolted or welded to a
17 dedicated sign pole or a sign support permanently installed in the ground. Adopted new §221.44(c)
18 authorizes a license holder to use a temporary sign or banner if that license holder can show proof that a
19 business sign that meets the above requirements has been ordered and provides a written statement that
20 the business sign will be promptly and permanently mounted upon delivery and is consistent with the
21 flexibility provided to other license holders. This adopted amendment is necessary to allow a license
22 holder to open their business without delay if all other department requirements are met. Adopted new
23 §221.44(d) clarifies that a license holder is still responsible for ensuring that the business sign complies

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 14 of 19

Chapter 221 – Salvage Vehicle Dealers

1 with applicable municipal ordinances and that any signage requirements in a lease comport with the
2 requirements of this section.

3 An adopted amendment to §221.45(a) clarifies that a business must be located in a building that
4 has a permanent roof. An adopted amendment to §221.45(c) clarifies that a business may not operate in
5 a room or building not open to the public. Adopted new §221.45(e) clarifies that a business may not be
6 virtual or provided by a subscription for office space or office services. Adopted new §221.45(f) requires
7 the physical address of a business be in Texas, recognized by the U.S. Postal Service, and have an assigned
8 emergency services property address, to ensure that both the public and department personnel can
9 readily locate the place of business, and to confirm the municipality in which the property is located.
10 Adopted new §221.45(g) modernizes the business access requirements by requiring the business to be
11 equipped with internet access. These amendments are consistent with minimum standards for public
12 health and safety and business operation, allow the department and the public access to the license
13 holder, and are necessary to deter and prevent fraud in the licensing process.

14 Adopted amendments to §221.46 regarding the requirements to display a license make minor
15 wording changes to simplify language without changing meaning and are necessary to add clarity.

16 An adopted amendment to §221.47 clarifies that a salvage vehicle dealer must properly process
17 vehicle records in accordance with §217.86 of this title (relating to Dismantling, Scrapping, or Destruction
18 of Motor Vehicles).

19 The department adopted the repeal of §221.48 because it duplicates §217.86 and therefore
20 became redundant and unnecessary with the citation to §217.86 adopted in §221.47.

21 An adopted amendment to §221.49 adds a phrase from the title of the section to the body of this
22 section for clarification.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 15 of 19

Chapter 221 – Salvage Vehicle Dealers

1 Adopted amendments to §221.50(a) clarify that a sale or transfer of a flood-damaged vehicle must
2 be in accordance with §217.88 of this title, (relating to Sale, Transfer, or Release of Ownership of a Non-
3 repairable or Salvage Motor Vehicle). Adopted amendments to §221.50(b) make wording and format
4 changes without changing the meaning and are necessary to clarify the language. Adopted amendments
5 to §221.50(c) delete duplicative language that is also in §217.88.

6 Adopted amendments to §221.51(a) are necessary to clarify the language and comport with
7 current practice. Adopted amendments to §221.51(c) and (d) remove the phrase “or any other state” to
8 reflect that the department does not have jurisdiction over out-of-state highways. Adopted amendments
9 to §221.51(f) allow flexibility for a salvage vehicle dealer who offers only salvage vehicles for sale to install
10 a conspicuous permanent sign to provide the required notice to consumers under §221.51(a) and (c). An
11 adopted amendment to §221.51(h) rephrases the existing requirement to recognize that a separate
12 salvage pool license endorsement no longer exists in statute as salvage vehicle dealer license
13 endorsements were eliminated by SB 604, 86th Legislature, Regular Session (2019).

14 The adopted amendment to §221.52(a) adds a reference to §217.88 of this title, (relating to Sale,
15 Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle) and is necessary for
16 completeness. An adopted amendment to §221.52(b) removes duplicate language found in §217.88 of
17 this title, and the remaining subsections are relettered. An adopted amendment to relettered §221.52(b)
18 changes the retention period for a copy of a purchaser’s photo identification from 48 to 36 months for
19 consistency with §217.88. These amendments are necessary to add clarity and for consistency.

20 Adopted amendments to §221.53 reference §217.88 and delete redundant language found in
21 §217.88 to add clarity.

22 Adopted amendments to §221.54 add “vehicle” for consistency in terminology and add two
23 factors the department will consider in determining whether to conduct a site visit: if a business location

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 16 of 19

Chapter 221 – Salvage Vehicle Dealers

1 fails to meet premises or operating requirements, and if records require further investigation by the
2 department. Both factors are indicators of potential fraud and consumer harm and regularly arise in
3 department complaint investigations.

4 At adoption, the department adopted a non-substantive amendment to §§221.42, 221.47, and
5 221.50–221.53 to change the proposed term “non-repairable” to “nonrepairable” for consistency with
6 Occupations Code, Chapter 2302 and Transportation Code, Chapter 501.

7

8 Subchapter D. Records

9 Adopted amendments to §221.71 edit language to remove surplus language and improve
10 grammar and clarity. An adopted amendment to §221.71(c) modernizes the rule by deleting a reference
11 to a requestor being present at the business location and adding an option for records to be provided
12 electronically upon request. An adopted amendment to §221.71(e) increases the deadline from 10 days
13 to 15 days for a salvage vehicle dealer to provide copies of requested records to the department.

14 Adopted amendments to §221.72(b) clarify an existing requirement that a salvage vehicle dealer
15 maintain a record of each vehicle that is dismantled, in addition to each vehicle scrapped or destroyed,
16 and shorten the length of retention of these records from the fourth anniversary of the date the report
17 was acknowledged as received by the department to the third anniversary for consistency with other
18 sections. Lastly, adopted amendments to §221.72(c) add a word and remove a comma for clarity without
19 changing the meaning of the rule.

20 Adopted amendments to §221.73 make wording changes to improve clarity and reflect current
21 practice regarding both vehicle purchase and vehicle sales records. Adopted amendments add references
22 to §221.52 and §217.89 (relating to Rebuilt Salvage Motor Vehicles) and remove redundant language in
23 this section, related to unnecessary descriptors including various types of photo identification. The

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 17 of 19

Chapter 221 – Salvage Vehicle Dealers

1 adopted amendments to §221.73(a) expand the list of records that may be applicable to a particular
2 purchase or sale for clarification and consistency with other rules and because these records are necessary
3 for the department to determine a dealer’s compliance with existing laws and rules.

4 At adoption, the department made a non-substantive amendment to §221.71 and §221.73 to
5 change “non-repairable” to “nonrepairable” for consistency with Occupations Code, Chapter 2302 and
6 Transportation Code, Chapter 501.

7

8 Subchapter E. Administrative Procedures

9 The department adopted the repeal of all sections in Subchapter E. The substance of the rules
10 from Subchapter E are incorporated into adopted new Chapter 224, Adjudicative Practice and Procedure,
11 which is published in this issue of the *Texas Register*. The adopted repeal includes §§221.91–221.96.

12

13 Subchapter F. Administrative Sanctions

14 Adopted amendments to §221.111 delete unnecessary phrases without changing the meaning
15 and update a citation to improve clarity. Additionally, an adopted amendment to §221.111(a)(5) removes
16 the phrase “is unfit, ineligible for license” and an adopted amendment to §221.111(a)(6) removes the
17 phrase “is unfit to hold the license, is ineligible for licensure” from the factors the department considers
18 to determine denial of licensure because that language is not found in Occupations Code, Chapter 2302.

19 Adopted amendments to §221.112 delete unnecessary phrases without changing the meaning,
20 add statutory and rule references and explanatory language, remove surplus language associated with
21 those references, and renumber accordingly. These amendments are necessary to add clarity.

22 Adopted amendments to §221.115 remove the language stating that the department will not
23 refund license fees in the case of a licensure denial, suspension, or revocation and substitute language

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 18 of 19

Chapter 221 – Salvage Vehicle Dealers

1 that allows a refund with director approval unless a license application is withdrawn, denied, suspended,
2 or revoked, or the license applicant or license holder is subject to an unpaid civil penalty imposed by a
3 final order against the license applicant or license holder. This provision ensures that the department
4 receives as much as possible of the assessed civil penalties, but also gives the department flexibility to
5 refund an application fee in other circumstances. These adopted amendments are consistent with the
6 refund process for other license types.

7 SUMMARY OF COMMENTS.

8 The department received one written comment on the proposal from the Texas Independent
9 Automobile Dealers Association (TIADA) with recommendations for changes to §221.19 and §221.111.

10 **Comment:** TIADA recommended that in §221.19, a salvage vehicle dealer not be required to pay a \$25
11 license amendment fee to update a business email address, telephone number, mailing address or change
12 in license contact.

13 **Response.** The department agrees that salvage vehicle dealers should not incur a \$25 amendment fee for
14 changes that do not involve department processing time or expense. The department therefore added
15 the following clarifying language to §221.13(c) at adoption to identify the specific types of license
16 amendments to which the fee applies: “and applies to a license amendment changing a license holder’s
17 name, changing ownership or management, or when adding a new business address and assumed name.”

18 With this revision at adoption, while a salvage vehicle dealer must submit a license amendment to report
19 a change in business email address, telephone number, mailing address or license contact, the dealer will
20 only incur a \$25 amendment fee for a change in business name, a change in ownership or management,
21 or when adding a new business address and assumed name. This latter group of changes requires
22 department processing time and expense and are consistent with when GDN dealers are charged an
23 amendment fee.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 19 of 19

Chapter 221 – Salvage Vehicle Dealers

- 1 **Comment:** TIADA recommended that the department amend §221.111 or add a new rule to describe the
2 department's use of a licensing committee in reviewing applications, including the composition of the
3 committee and deadlines for the committee's review and decision-making.
- 4 **Response.** The department disagrees. The Motor Vehicle Division's licensing committee is an internal
5 management review process to help ensure consistency in application processing and does not place a
6 new requirement on a license holder or affect a license holder's rights under Occupations Code, Chapter
7 2302. Therefore, a rule is not required under Government Code, Chapter 2001. The department does not
8 want to place limitations on the composition of the committee or on the timelines for its decision-making
9 to allow the department necessary flexibility to staff the committee and determine the length of its review
10 as necessitated by the details and complexity of each specific application.

1 **221.SUBCHAPTER A. GENERAL PROVISIONS**

2 **43 TAC §221.1 and §221.2**

3 **STATUTORY AUTHORITY.**

4 The department adopts amendments to Chapter 221 under Government Code, §411.122(d)(24),
5 which authorizes department access to criminal history record information maintained by DPS;
6 Government Code, §411.12511, which authorizes the department to obtain criminal history record
7 information from DPS and the FBI for license applicants, license holders, and representatives whose act
8 or omission would be cause for denying, revoking, or suspending a license issued under Occupations Code,
9 Chapter 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to
10 administer Occupations Code, Chapter 2302; Occupations Code, §2302.052, which assigns the board a
11 duty to set reasonable and necessary application fees, license fees, renewal fees, and other fees as
12 required to implement Chapter 2302; Occupations Code, §2302.103, which requires a salvage vehicle
13 dealer to apply for a license on a form prescribed by the department and pay an application fee;
14 Occupations Code, §2302.104, which prescribes content that must be included in an application;
15 Occupations Code, §2302.105, which requires the department to complete an investigation of the
16 applicant's qualifications before issuing a license; Occupations Code, §2302.108, which authorizes the
17 department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with
18 the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which
19 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the
20 duties of the department.

21 The department also adopts amendments under the authority of Occupations Code, §2301.151,
22 which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and to take
23 any action that is necessary or convenient to exercise that authority; Transportation Code, §§501.0041,

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 2 of 53

Chapter 221 – Salvage Vehicle Dealers

1 502.0021, and 503.002; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to
2 the statutory authority referenced throughout this preamble.

3 Transportation Code, §501.0041 authorizes the department to adopt rules to administer
4 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt
5 rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the
6 department to adopt rules to administer Transportation Code, Chapter 503.

7 Occupations Code, §55.002 requires a state agency that issues a license to adopt rules to exempt
8 an individual license holder from incurring any increased fee or other penalty for failing to renew the
9 license in a timely manner if the individual establishes that failure to timely renew the license is because
10 the individual was serving as a military service member. Occupations Code, §55.004 requires a state
11 agency that issues a license to adopt rules for the issuance of the license to an applicant who is a military
12 service member, military veteran, or military spouse and holds a current license issued by another
13 jurisdiction with substantially equivalent requirements or held a Texas license within the prior five years.
14 Occupations Code, §55.0041 requires a state agency that issues a license to adopt rules to recognize
15 equivalent out-of-state licenses for a military service member, military veteran, or military spouse within
16 30 days of application and issue a license or authorization. Occupations Code, §55.005 requires a state
17 agency that issues a license to process an application and issue a license within 30 days for a military
18 service member, military veteran, or military spouse.

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, §2001.039 requires
21 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.
22 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,
23 suspension, annulment, or withdrawal of a license.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 3 of 53

Chapter 221 – Salvage Vehicle Dealers

1 **CROSS REFERENCE TO STATUTE.** These rule adoptions implement Government Code, Chapters
2 411 and 2001; Occupations Code, Chapters 53, 55, 2301, and 2302; and Transportation Code, Chapters
3 501–503, 1001–1003, and 1005.

4
5 Text.

6 §221.1. Purpose and Scope.

7 Transportation Code, §1001.002, provides that the department shall administer and enforce
8 Occupations Code, Chapter 2302. Chapter 2302 provides that a person may not act as a salvage vehicle
9 dealer, unless the department issues that person a salvage vehicle dealer license, or an independent motor
10 vehicle dealer's general distinguishing number issued under Chapter 503, Transportation Code, or a person
11 is exempt from licensure under Occupations Code, Chapter 2302. This chapter describes the procedures
12 by which a person obtains a salvage vehicle dealer license and the rules governing how a license holder or
13 an independent motor vehicle dealer with authority to operate as a salvage vehicle dealer, must operate,
14 and the procedures by which the department will administer and enforce Occupations Code, Chapter
15 2302, and this chapter.

16
17 §221.2. Definitions.

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

20 (1) Board--The Board of the Texas Department of Motor Vehicles.

21 (2) Casual sale--A sale as defined by Transportation Code, §501.091.

22 (3) Component part--As defined by Occupations Code, §2302.251.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 4 of 53

Chapter 221 – Salvage Vehicle Dealers

1 (4) Day--Means a calendar day unless otherwise stated. [~~Corporation--A business entity,~~
2 including a corporation, or limited liability company, but not a sole proprietorship or general partnership,
3 which has filed a certificate of formation or registration with the Texas Secretary of State.]

4 (5) Department--The Texas Department of Motor Vehicles.

5 (6) Director--Means the division director that regulates the distribution and sales of motor
6 vehicles, including any department staff to whom the director delegates any duty assigned under this
7 chapter. [~~Final order authority--The person with authority under Occupations Code, Chapter 2302, or~~
8 ~~board rules to issue a final order.]~~

9 (7) General Distinguishing Number (GDN)--As defined by Occupations Code, §2301.002.

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 dealer
12 [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 (10) ~~(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.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 5 of 53

Chapter 221 – Salvage Vehicle Dealers

1 (14) ~~[(15)]~~ Out-of-state ownership document--As defined by Transportation Code,
2 §501.091.

3 (15) ~~[(16)]~~ Person--As defined by Occupations Code, §2301.002.~~[A natural person,~~
4 ~~partnership, corporation, trust, association, estate, or any other legal entity.]~~

5 (16) ~~[(17)]~~ Public highway--As defined by Transportation Code, §502.001.

6 (17) ~~[(18)]~~ Retail sale--As defined by Occupations Code, §2301.002.

7 (18) ~~[(19)]~~ Salvage motor vehicle--As defined by Transportation Code, §501.091.

8 (19) ~~[(20)]~~ Salvage record of title--As defined by Transportation Code, §501.091.

9 (20) ~~[(21)]~~ Salvage vehicle dealer--As defined by Transportation Code, §501.091.

10 (21) ~~[(22)]~~ Salvage vehicle title--As defined by Transportation Code, §501.091.

11 (22) ~~[(23)]~~ Used part--As defined by Transportation Code, §501.091.

12

13

SUBCHAPTER B. LICENSING

14

43 TAC §§221.11–221.20

15 **STATUTORY AUTHORITY.** The department adopts amendments to Chapter 221 under Government Code,

16 §411.122(d)(24), which authorizes department access to criminal history record information maintained

17 by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history

18 record information from DPS and the FBI for license applicants, license holders, and representatives

19 whose act or omission would be cause for denying, revoking, or suspending a license issued under

20 Occupations Code, Chapter 2302; Occupations Code, §2302.051, which authorizes the board to adopt

21 rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.052, which

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 6 of 53

Chapter 221 – Salvage Vehicle Dealers

1 assigns the board a duty to set reasonable and necessary application fees, license fees, renewal fees, and
2 other fees as required to implement Chapter 2302; Occupations Code, §2302.103, which requires a
3 salvage vehicle dealer to apply for a license on a form prescribed by the department and pay an application
4 fee; Occupations Code, §2302.104, which prescribes content that must be included in an application;
5 Occupations Code, §2302.105, which requires the department to complete an investigation of the
6 applicant's qualifications before issuing a license; Occupations Code, §2302.108, which authorizes the
7 department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with
8 the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which
9 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the
10 duties of the department.

11 The department also adopts amendments and under the authority of Transportation Code,
12 §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, and 2001.039, and 2001.054, in
13 addition to the statutory authority referenced throughout this preamble.

14 Transportation Code, §501.0041 authorizes the department to adopt rules to administer
15 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt
16 rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the
17 department to adopt rules to administer Transportation Code, Chapter 503.

18 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature
19 and requirements of all available formal and informal procedures. Government Code, §2001.039 requires
20 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.
21 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,
22 suspension, annulment, or withdrawal of a license.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 7 of 53

Chapter 221 – Salvage Vehicle Dealers

1 **CROSS REFERENCE TO STATUTE.** These rule adoptions implement Government Code, Chapters 411 and
2 2001; Occupations Code, Chapters 53, 55, 2301 and 2302; and Transportation Code, Chapters 501–503,
3 1001–1003, and 1005.

4
5 Text.

6 §221.11. License Required.

7 (a) A person must hold a salvage vehicle dealer license, or an independent motor vehicle
8 dealer's general distinguishing number issued under Chapter 503; Transportation Code to:

9 (1) act as a salvage vehicle dealer or rebuilder; or

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

12 (b) A person may not engage in the business of buying, selling or exchanging motor vehicles
13 that can be titled or registered to operate on public highways, including selling a salvage motor
14 vehicle that has been rebuilt, repaired or reconstructed, unless the person holds a general
15 distinguishing number issued by the department under Transportation Code, Chapter 503.

16 (c) The provisions of this subchapter do not apply to a person exempt from licensure under
17 Occupations Code, Chapter 2302. [;]

18 [~~(1) a person who purchases no more than five (5) nonrepairable or salvage motor~~
19 ~~vehicles at casual sale in a calendar year from;~~]

20 [~~(A) a salvage vehicle dealer; or~~]

21 [~~(B) an insurance company;~~]

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 8 of 53

Chapter 221 – Salvage Vehicle Dealers

1 ~~[(2) a metal recycler, unless a motor vehicle is sold, transferred, released, or~~
2 ~~delivered to the metal recycler for the purpose of reuse or resale as a motor vehicle, or as a source~~
3 ~~of used parts, and is used for that purpose;]~~

4 ~~[(3) a person who casually repairs, rebuilds, or reconstructs no more than five (5)~~
5 ~~salvage motor vehicles in the same calendar year;]~~

6 ~~[(4) a person who is a non-United States resident who purchases nonrepairable or~~
7 ~~salvage motor vehicles for export only;]~~

8 ~~[(5) an agency of the United States, an agency of this state, or a local government;]~~

9 ~~[(6) a financial institution or other secured party that holds a security interest in a~~
10 ~~motor vehicle and is selling that motor vehicle in the manner provided by law for the forced sale of~~
11 ~~a motor vehicle;]~~

12 ~~[(7) a receiver, trustee, administrator, executor, guardian, or other person appointed~~
13 ~~by or acting pursuant to the order of a court;]~~

14 ~~[(8) a person selling an antique passenger car or truck that is at least 25 years old or~~
15 ~~a collector selling a special interest motor vehicle as defined in Transportation Code, §683.077, if~~
16 ~~the special interest vehicle is at least 12 years old; and]~~

17 ~~[(9) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the~~
18 ~~highest bidder at a bona fide auction under the following conditions:]~~

19 ~~[(A) neither legal nor equitable title passes to the auctioneer;]~~

20 ~~[(B) the auction is not held for the purpose of avoiding a provision of~~
21 ~~Occupations Code, Chapter 2302, or this subchapter; and]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 9 of 53

Chapter 221 – Salvage Vehicle Dealers

1 ~~[(C) the auction is conducted of motor vehicles owned, legally or equitably,~~
2 ~~by a person who holds a salvage vehicle dealer's license and the auction is conducted at their~~
3 ~~licensed location or at a location approved by the department.]~~

4

5 §221.13. License Terms and Fees.

6 (a) The term of a salvage vehicle dealer license issued by the department under Occupations
7 Code, Chapter 2302, and this chapter, is two years. The fee for a salvage vehicle dealer license is
8 \$190. The entire amount of the fee is due at the time of application for the license.

9 (b) The department may prorate the fee for a salvage vehicle dealer license to allow the
10 salvage vehicle dealer license to expire on the same day as another license issued by the department
11 under Occupations Code, Chapter 2301; Chapter 2302; or Transportation Code, Chapter 503.

12 (c) The fee for a license amendment is \$25 and applies to a license amendment changing a license
13 holder's name, changing ownership or management, or when adding a new business address and assumed
14 name.

15

16 §221.14. License Applications Generally.

17 (a) A salvage vehicle dealer license may be issued for multiple locations within a single county. A
18 separate license and fee is required for a business location ~~[or locations located]~~ in another county.

19 (b) An application for a new license, license amendment, or license renewal filed with the
20 department must be: ~~[A license applicant must submit a signed application on a form prescribed by the~~
21 ~~department, provide any required attachments, and remit the required fees at the time of submission of~~
22 ~~the application.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 10 of 53

Chapter 221 – Salvage Vehicle Dealers

1 (1) on a form prescribed by the department;

2 (2) completed by the applicant, license holder, or authorized representative who is an
3 employee, a licensed attorney, or a certified public accountant; and

4 (3) accompanied by the required fee from an account held by the applicant or license
5 holder, or from a trust account of the applicant's or license holder's attorney or certified public accountant.

6 (c) License applications and fees must be submitted to the department electronically in a system
7 designated by the department for licensing. Fees may be paid by credit card or electronic funds transfer.

8 (d) In evaluating a new or renewal salvage vehicle dealer license application or an application for
9 a new location, the department may require a site visit to determine if the business location meets the
10 requirements in this chapter.

11 (e) An applicant for a salvage vehicle dealer license must also comply with fingerprint
12 requirements in §211.6 of this title (relating to Fingerprint Requirements for Designated License Applicants
13 and License Holders).

14 (f) The department will not provide information regarding the status of an application, application
15 deficiencies, or pending new license numbers to a person other than a person listed in subsection (b)(2)
16 of this section unless the person files a written request under Government Code, Chapter 552.

17

18 §221.15. Required License Application Information.

19 (a) An applicant for a new salvage dealer license must register for an account in the department-
20 designated licensing system by selecting the licensing system icon on the dealer page of the department
21 website. An applicant must designate the account administrator and provide the name and email address

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 11 of 53

Chapter 221 – Salvage Vehicle Dealers

1 for that person, and provide the business telephone number, name, business type, and social security
2 number or employer identification number, as applicable. The applicant's licensing account administrator
3 must be an owner, officer, manager, or bona fide employee.

4 (b) Once registered, an applicant for a new salvage dealer license may apply for a license and must
5 provide the following: [The following information must be provided on each salvage vehicle dealer
6 application:]

7 (1) the application reason [full legal name of the applicant];

8 (2) business information including:

9 (A) the name, provided that the applicant may not use a name or assumed name
10 under which the applicant is authorized to do business that may be confused with or is similar to that of a
11 governmental entity or that is otherwise deceptive or misleading to the public;

12 (B) mailing address;

13 (C)[(2)] the full business physical address, including number, street, municipality,
14 county, and zip code for each location where the applicant will conduct business [under the license if each
15 location is]in the same county;

16 (D) business email;

17 (E) telephone number;

18 (F) Texas Sales Tax Identification Number;

19 (G) National Motor Vehicle Title Information System (NMVTIS) Identification
20 Number;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 12 of 53

Chapter 221 – Salvage Vehicle Dealers

- 1 (H) Secretary of State file number, if applicable; and
- 2 (I) website address, if applicable.
- 3 (3) application contact name, email address, and telephone number ~~[the business~~
4 ~~telephone number and email address];~~
- 5 (4) the name, social security number, date of birth, identity document information, and
6 ownership percentage for each owner, partner, member, beneficiary, or principal if the applicant is not a
7 publicly traded company ~~[the mailing address];~~
- 8 (5) the name, social security number, date of birth, and identity document information for
9 each officer, director, manager, trustee, or other representative authorized to act on behalf of the applicant
10 if the applicant is owned in full or in part by a legal entity; ~~[a statement acknowledging that the department~~
11 ~~will consider the applicant's designated mailing address the applicant's last known address for department~~
12 ~~communication, including service of process under Subchapter E of this chapter (relating to Administrative~~
13 ~~Procedures). The designated mailing address will be considered applicant's last known address until such~~
14 ~~time that the mailing address is changed in the licensing records of the department after the license holder~~
15 ~~submits an amendment to change the license holder's mailing address;]~~
- 16 (6) the name, employer identification number, ownership percentage, and non-profit or
17 publicly-traded status for each legal entity that owns the applicant in full or in part; ~~[all assumed names as~~
18 ~~registered with the secretary of state or county clerk, as applicable;]~~
- 19 (7) the name, social security number, date of birth, and identity document information of
20 at least one manager or other bona fide employee who will be present at the business location if the
21 license holder is out of state or will not be present during business hours at the business location in Texas;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 13 of 53

Chapter 221 – Salvage Vehicle Dealers

1 ~~[if applying as a sole proprietor, the social security number, address and telephone number for the sole~~
2 ~~proprietor;]~~

3 (8) criminal history record information under the laws of Texas, another state of the United
4 States, the United States, and any foreign jurisdiction for each person listed in the application, including
5 offense description, date, and location; ~~[if applying as a general partnership, the social security number,~~
6 ~~address and telephone number for each of the general partners;]~~

7 (9) military service status; ~~[if applying as a limited partnership, limited liability company,~~
8 ~~or corporation, the full name, social security number, address and telephone number for each officer or~~
9 ~~director of the corporation, each member, officer, or manager of the limited liability company, each~~
10 ~~partner, and each officer of the limited partnership, including the information for the general partner~~
11 ~~based on the type of entity;]~~

12 (10) licensing history required to evaluate business reputation, character, and fitness for
13 licensure including a statement indicating whether the applicant or any person described in §211.2 of this
14 title (relating to Application of Subchapter) has previously applied for a license under this chapter or the
15 salvage vehicle dealer licensing laws of another jurisdiction, the result of the previous application, and
16 whether the applicant, including a person described in §211.2 of this title, has ever been the holder of a
17 license issued by the department or another jurisdiction that was revoked, suspended, or subject of an
18 order issued by the board or by another jurisdiction to pay an administrative penalty that remains unpaid;
19 ~~[the state sales tax number;]~~

20 (11) information about each business location and business premises to demonstrate
21 compliance with related rules in this chapter; ~~[the National Motor Vehicle Title Information System~~
22 ~~(NMVTIS) number evidencing that the applicant is registered with NMVTIS;]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 14 of 53

Chapter 221 – Salvage Vehicle Dealers

1 (12) signed Certification of Responsibility, which is a form provided by the department;
2 and [a statement indicating whether the applicant or any person described in §211.2 of this title (relating
3 to Application of Subchapter) has previously applied for a license under this chapter or the salvage vehicle
4 dealer licensing laws of another jurisdiction, the result of the previous application, and whether the
5 applicant, including a person described in §211.2 of this title, has ever been the holder of a license issued
6 by the department or another jurisdiction that was revoked, suspended, or subject of an order issued by
7 the board or by another jurisdiction to pay an administrative penalty that remains unpaid;]

8 (13) any other information required by the department to evaluate the application under
9 current law and board rules. ~~[a statement indicating whether the applicant has an ownership,~~
10 ~~organizational, affiliation, or other business arrangement that would allow a person to direct the~~
11 ~~management, policies, or activities of an applicant or license holder, whether directly or indirectly, who~~
12 ~~was the holder of a license issued by the department or by another jurisdiction that was revoked,~~
13 ~~suspended, or subject of an order issued by the board or by another jurisdiction to pay an administrative~~
14 ~~penalty that remains unpaid;]~~

15 ~~[(14) details of the criminal history of the applicant and any person described in §211.2 of~~
16 ~~this title;]~~

17 ~~[(15) details of the professional information of the applicant and any person described in~~
18 ~~§211.2 of this title;]~~

19 ~~[(16) a statement that the applicant at the time of submitting the application is in~~
20 ~~compliance, and, after issuance of a license, will remain in compliance, with all ordinances and rules of~~
21 ~~the municipality or county of each location where the applicant will conduct business; and]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 15 of 53

Chapter 221 – Salvage Vehicle Dealers

1 ~~[(17) an acknowledgement that the applicant understands, is, and will remain in~~
2 ~~compliance with all state and federal laws relating to the licensed activity.]~~

3 (c) A salvage vehicle dealer renewing or amending its license must verify current license
4 information and provide related information for any new requirements or changes to the license.

5

6 §221.16. Required Attachments to the License Application.

7 A legible and accurate electronic image of each applicable required document must be attached
8 to the license application:

9 (1) the certificate of filing, certificate of incorporation, or certificate of registration on file
10 with the Secretary of State, if applicable;

11 (2) each assumed name certificate on file with the Secretary of State or county clerk;

12 (3) at least one of the following valid and current identity documents for each natural
13 person listed in the application:

14 (A) driver's license;

15 (B) Texas Identification Card issued by the Texas Department of Public Safety
16 under Transportation Code, Chapter 521, Subchapter E;

17 (C) license to carry a handgun issued by the Texas Department of Public Safety
18 under Government Code, Chapter 411, Subchapter H;

19 (D) United States or foreign passport; or

20 (E) United States military identification card;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 16 of 53

Chapter 221 – Salvage Vehicle Dealers

1 (4) documents proving business premises ownership, or a fully executed lease or sublease
2 agreement for the license period;

3 (5) business premises photos and a notarized affidavit certifying that all premises
4 requirements in Subchapter C of the chapter are met and will be maintained during the license period;

5 (6) Texas Use and Sales Tax Permit;

6 (7) Franchise Tax Account Status issued by the Comptroller’s Office; and

7 (8) any other documents required by the department to evaluate the application under
8 current law and board rules.

9 ~~[(a) If the applicant is a sole proprietor or general partnership, in addition to the information~~
10 ~~required by §221.15 of this title (relating to Required License Application Information), the applicant must~~
11 ~~submit a legible copy of one of the following types of identification that is valid and active at the time of~~
12 ~~application for the sole proprietor and each of the general partners:]~~

13 ~~[(1) driver’s license, Department of Public Safety identification, or state identification~~
14 ~~certificate issued by a state or territory of the United States;]~~

15 ~~[(2) concealed handgun license or license to carry a handgun issued by the Department~~
16 ~~of Public Safety under Government Code, Chapter 411, Subchapter H;]~~

17 ~~[(3) United States or foreign passport;]~~

18 ~~[(4) United States Department of Homeland Security, United States Citizenship and~~
19 ~~Immigration Services, or United States Department of State Identification document;]~~

20 ~~[(5) United States military identification card; or]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 17 of 53

Chapter 221 – Salvage Vehicle Dealers

1 ~~[(6) North Atlantic Treaty Organization identification or identification issued under a Status~~
2 ~~of Forces Agreement.]~~

3 ~~[(b) If the applicant is a limited partnership, limited liability company, or a corporation, the~~
4 ~~applicant must submit a legible copy of one of the following current types of identification that is valid and~~
5 ~~active at the time of application for each partner of the limited partnership, each member of the limited~~
6 ~~liability company, and for each officer of the corporation:]~~

7 ~~[(1) driver's license, Department of Public Safety identification, or state identification~~
8 ~~certificate issued by a state or territory of the United States;]~~

9 ~~[(2) concealed handgun license or license to carry a handgun issued by the Department~~
10 ~~of Public Safety under Government Code, Chapter 411, Subchapter H;]~~

11 ~~[(3) United States or foreign passport;]~~

12 ~~[(4) United States Department of Homeland Security, United States Citizenship and~~
13 ~~Immigration Services, or United States Department of State Identification document;]~~

14 ~~[(5) United States military identification card; or]~~

15 ~~[(6) North Atlantic Treaty Organization identification or identification issued under a Status~~
16 ~~of Forces Agreement.]~~

17 ~~[(c) If the applicant is a corporation, the applicant must submit a copy of the certificate of~~
18 ~~incorporation issued by the secretary of state or a certificate issued by the jurisdiction where the applicant~~
19 ~~is incorporated, and a verification that, at the time the application is submitted, all business franchise taxes~~
20 ~~of the corporation have been paid.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 18 of 53

Chapter 221 – Salvage Vehicle Dealers

1 ~~[(d) If the applicant is a limited partnership, the applicant must submit a copy of the certificate of~~
2 ~~partnership issued by the secretary of state or a certificate issued by the jurisdiction where the applicant~~
3 ~~is formed, and verification that, at the time the application is submitted, all business franchise taxes of the~~
4 ~~limited partnership have been paid.]~~

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

8 ~~[(f) If the applicant is a sole proprietor or general partnership, in addition to the information~~
9 ~~required by §221.15, the applicant must submit a legible copy of the Assumed Name Certificate (DBA)~~
10 ~~issued by the county clerk in which the business is located.]~~

11 ~~[(g) If the applicant is a limited partnership, limited liability company, or a corporation, the~~
12 ~~applicant must submit a legible copy of the Assumed Name Certificate (DBA) as registered with the Texas~~
13 ~~Secretary of State's office.]~~

14 ~~[(h) If the applicant is a sole proprietor or general partnership, in addition to the information~~
15 ~~required by §221.15, the applicant must submit a legible copy of the Texas Sales and Use Tax Permit.]~~

16 ~~[(i) If the applicant is a limited partnership, limited liability company, or a corporation, the~~
17 ~~applicant must submit a legible copy of the Texas Sales and Use Tax Permit.]~~

18

19 §221.17. License Processing for Military Service Members, Spouses, and Veterans.

20 (a) The department will process a license, amendment, or renewal application submitted for
21 licensing of a military service member, military spouse, or military veteran in accordance with Occupations

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 19 of 53

Chapter 221 – Salvage Vehicle Dealers

1 Code, Chapter 55. A license holder who fails to timely file a sufficient renewal application because the
2 license holder was on active duty is exempt from any increased fee or penalty imposed by the department.

3 (b) A military service member or military spouse may engage in a business or occupation for which
4 a department issued license is required if the military service member or military spouse meets the
5 requirements of Occupations Code, §55.0041 and this section.

6 (1) A military service member or ~~[To meet the requirements of Occupations Code,~~
7 ~~§55.0041, a]~~ military spouse must submit to the department:

8 (A) notice of the military service member or military spouse's intent to engage in
9 a business or occupation in Texas for which a department issued license is required;

10 (B) proof of the military service member being stationed ~~[military spouse's~~
11 ~~residency]~~ in Texas and a copy of the military service member or military spouse's military identification
12 card ~~[, as required by Occupations Code, §55.0041(b)(2)]; and~~

13 (C) documentation demonstrating that the military service member or military
14 spouse is licensed and in good standing in another jurisdiction for the relevant business or occupation.

15 (2) Upon receipt of the notice and documentation required by paragraphs (1)(B) and (1)(C)
16 of this subsection the department shall:

17 (A) confirm with the other licensing jurisdiction that the military service member
18 or military spouse is currently licensed and in good standing for the relevant business or occupation; and

19 (B) conduct a comparison of the other jurisdiction's license requirements,
20 statutes, and rules with the department's licensing requirements to determine if the requirements are
21 substantially equivalent.

22 (3) If the department confirms that a military service member or military spouse is
23 currently licensed in good standing in another jurisdiction with substantially equivalent licensing

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 20 of 53

Chapter 221 – Salvage Vehicle Dealers

1 requirements, the department shall ~~[may]~~ issue a license to the military service member or military
2 spouse for the relevant business or occupation within 30 days. The license is subject to the requirements
3 of this chapter and Occupations Code, Chapter 2302 in the same manner as a license issued under the
4 standard application process, unless exempted or modified under Occupations Code, Chapter 55.

5 (c) This section establishes requirements and procedures authorized or required by Occupations
6 Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

7

8 §221.18. Additional, New, or Closed Location.

9 (a) If the license holder intends to conduct business at more than one location within the same
10 county, the applicant must:

11 (1) notify the department no later than 10 days before opening the additional location by
12 electronically submitting a license amendment application in the department-designated licensing system;
13 ~~[to amend the license to add an additional location;]~~

14 (2) acknowledge that the additional location ~~[, at the time of submitting the amendment,]~~
15 is and will remain in compliance with all ordinances and rules of the municipality or county for the
16 additional location and board rules; and

17 (3) obtain approval from the department before conducting business at the additional
18 location.

19 (b) If the license holder intends to relocate its business to a new location within the same county,
20 the license holder must:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 21 of 53

Chapter 221 – Salvage Vehicle Dealers

1 (1) notify the department no later than 10 days before opening the new location by
2 electronically submitting a license amendment application in the department-designated licensing system
3 ~~[to amend the license]~~ to add a new location and remove the existing location from the department's
4 records;

5 (2) acknowledge that the new location ~~[, at the time of submitting the amendment,]~~ is and
6 will remain in compliance with all ordinances and rules of the municipality or county for the new location
7 and board rules; and

8 (3) obtain approval from the department before conducting business at the new location.

9 (c) A license holder must notify the department in writing within 10 days of ~~the~~ closing ~~of~~ a
10 business location by electronically submitting a license amendment application in the department-
11 designated licensing system to delete the location if more than one location is listed on the license, or
12 closing the license if a single location is listed on the license.

13 (d) If a license holder is opening a new location not located in the same county, the license holder
14 must apply for a new license.

15

16 §221.19. Notice of Change in [of] License Holder [Holder's Name, Ownership, or Control] Information.

17 (a) A license holder shall notify the department by electronically submitting a license amendment
18 application in the department-designated licensing system to amend its license within 30 days of a change
19 in the license holder's business name or assumed name. Upon submission of an amendment to change
20 the business name or assumed name, the department shall reflect the new business name in the
21 department's records. The dealer shall retain the same salvage vehicle dealer license number except if the

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 22 of 53

Chapter 221 – Salvage Vehicle Dealers

1 business name change is the result of a change in the type of entity being licensed, such as a sole
2 proprietorship becoming a corporation, or if the ownership of the business changes as discussed in
3 subsection (b) of this section.

4 (b) A salvage vehicle dealer shall notify the department by electronically submitting a license
5 amendment application in the department-designated licensing system [~~by submitting a request for~~
6 ~~license amendment~~] within 30 days of a change to:

7 (1) the entity type of the applicant or license holder;

8 (2) the departure or addition of any person reported to the department in the original
9 license application or most recent renewal application, including any person described in §211.2 of this
10 title (relating to Application of Subchapter);

11 (3) an ownership, organizational, managerial, or other business arrangement that would
12 allow the power to direct or cause the direction of the management and policies and activities of an
13 applicant or license holder, whether directly or indirectly, to be established in or with a person not
14 described in paragraph (1) or (2) of this subsection; or

15 (4) a business email address, telephone number, mailing address, or change in license
16 contact.

17 (c) The license holder must submit to the department [~~a notice of change and~~] all information
18 required by the department to evaluate the license amendment application under current law and rules
19 [~~needed for that specific license modification~~].

20

21 §221.20. License Renewal.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 23 of 53

Chapter 221 – Salvage Vehicle Dealers

1 (a) A salvage vehicle dealer license expires on the second anniversary of the date the license was
2 issued [~~of issuance of the salvage vehicle dealer license~~].

3 (b) A [~~The~~] salvage vehicle dealer license may be renewed for an additional period of two years
4 upon timely submission of a renewal application on a form prescribed [~~approved~~] by the department with
5 all required information, attachments, and fees. A renewal application is considered "timely" submitted if
6 the renewal application with all required information, attachments, and required fees is [~~are~~] received by
7 the department on or before the expiration date of the existing license.

8 (c) The department will send a written notice of expiration to a license holder's [~~salvage vehicle~~
9 ~~dealer's~~] email address at least 31 [~~30~~] days before expiration of a license.

10 (d) Failure by the department to send written notice of expiration under this section does not
11 relieve a license holder from timely renewing a license.

12 (e) The renewal fee for a salvage vehicle dealer license is \$170.

13 (f) A license holder may renew an expired license by submitting a renewal application and paying
14 a late renewal fee of \$85 in addition to the renewal fee, if 90 or fewer days have elapsed since the license
15 expired.

16 (g) A license holder may renew an expired license by submitting a renewal application and paying
17 a late renewal fee of \$170 in addition to the renewal fee, if more than 90 days but less than one year has
18 elapsed since the license expired.

19 (h) If a license has been expired for [~~a period of~~] one year or longer and the department has not
20 received [~~is not in receipt of~~] a renewal application [~~with all required information and attachments~~], the

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 24 of 53

Chapter 221 – Salvage Vehicle Dealers

1 department will close the license, and the license holder must apply for a new license [in the same manner
2 as an applicant for an initial license].

3 (i) In accordance with Government Code, §2001.054, a license holder that timely submits a
4 renewal application under subsection (b) of this section may continue to operate under the expired license
5 until the status of the renewal application is determined by the department.

6 (j) [(+)] If the department does not receive a timely [is not in receipt of a] renewal application with
7 all required information and attachments and the applicable renewal fee on or before [prior to] the license
8 expiration date [cancellation date of the license], a salvage vehicle dealer may not engage in the activities
9 that require the license until the license has been renewed by the department.

10

11

SUBCHAPTER C. LICENSED OPERATIONS

12

43 TAC §§221.41–221.48 and 221.49–221.54

13 **STATUTORY AUTHORITY.** The department adopts amendments and repeals to Chapter 221 under
14 §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code,
15 Chapter 2302; Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke,
16 or reinstate a license issued under Chapter 2302 consistent with the requirements of Government Code,
17 Chapter 2001; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are
18 necessary and appropriate to implement the powers and the duties of the department.

19 The department also adopts amendments and under the authority of Occupations Code, §2301.151,
20 which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the
21 authority to take any action that is necessary or convenient to exercise that authority; Transportation

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 25 of 53

Chapter 221 – Salvage Vehicle Dealers

1 Code, §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, and 2001.039, and
2 2001.054, in addition to the statutory authority referenced throughout this preamble.

3 Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation
4 Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to
5 administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department
6 to adopt rules to administer Transportation Code, Chapter 503.

7 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature
8 and requirements of all available formal and informal procedures. Government Code, §2001.039 requires
9 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.
10 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,
11 suspension, annulment, or withdrawal of a license.

12 **CROSS REFERENCE TO STATUTE.** These new rules implement Government Code, Chapter 2001;
13 Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503, 1001–1003,
14 and 1005.

15

16 Text.

17 §221.41. Location Requirements.

18 A salvage vehicle dealer must meet and maintain the following requirements at each licensed
19 business location [~~and must maintain the following requirements~~] during the [entire] term of the
20 license.

21 (1) If the licensed business location is not owned by the license holder, the license
22 holder must maintain a lease that is continuous during the period of time for which the license will

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 26 of 53

Chapter 221 – Salvage Vehicle Dealers

1 be issued [~~that extends through the period for which the license will be issued~~]. The lease agreement

2 must be on a properly executed form [~~an executed lease contract~~] containing at a minimum:

3 (A) the name of the property owner as the lessor of the premises and the
4 name of the dealer as the tenant or lessee of the premises [~~the names of the lessor and lessee~~];

5 (B) the period of time for which the lease is valid; [~~and~~]

6 (C) the street address or legal description of the property, provided that if
7 only a legal description of the property is provided, the license holder must attach a statement
8 verifying that the property description in the lease agreement is the physical street address
9 identified on the application; [-]

10 (D) the signature of the property owner as the lessor and the signature of the
11 dealer as the tenant or lessee; and

12 (E) if the lease agreement is a sublease in which the property owner is not
13 the lessor, the dealer must also obtain a signed and notarized statement from the property owner
14 including the following information:

15 (i) property owner's full name, email address, mailing address, and
16 phone number; and

17 (ii) property owner's statement confirming that the dealer is
18 authorized to sublease the location and may operate a salvage vehicle dealer business from the
19 location.

20 (2) Any business location requirements_s in this subchapter are in addition to any
21 requirements under [~~by~~] municipal [~~city~~] ordinance, county rule, or state law.

22

23 §221.42. Operations Only at Licensed Business Location.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 27 of 53

Chapter 221 – Salvage Vehicle Dealers

1 A salvage vehicle dealer may not sell or offer to sell a salvage motor vehicle [~~vehicles~~] or
2 nonrepairable [~~non-repairable~~] motor vehicle [~~vehicles~~] from any location other than a licensed [~~the~~]
3 business location [~~that has been approved by the department~~].

4

5 §221.43. Business Hours.

6 (a) The office of a salvage vehicle dealer who sells to a retail customer shall be open at least four
7 days per week for at least four consecutive hours per day and may not be open solely by appointment.
8 The office of a salvage pool operator selling only to a wholesale dealer must be open at least two weekdays
9 per week for at least two consecutive hours per day and may not be open solely by appointment. The
10 business hours must be posted at the main entrance of the business's office that is accessible to the public.

11 (b) The license holder or a bona fide employee of the license holder shall be at the licensed
12 business location during the posted business hours for the purpose of operating the salvage business and
13 allowing the inspection of the business location and records.

14 (c) If the license holder or a bona fide employee of the license holder is not available to conduct
15 business during the posted business hours due to special circumstances or emergencies, a separate sign
16 must be posted indicating the date and time the license holder or bona fide employee of the license holder
17 will resume operations at the licensed business location.

18 (d) Regardless of the license holder's business hours, the license holder's [~~licensee's~~] telephone
19 must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering
20 service, voicemail service, or answering machine.

21

22 §221.44. Business Sign Requirements.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 28 of 53

Chapter 221 – Salvage Vehicle Dealers

1 (a) The license holder must display a permanent business sign with letters at least six inches in
2 height showing the license holder's business name or assumed name as reflected on the [~~license holder's~~
3]license issued by the department. A business sign is considered permanent only if it is made of durable,
4 weather-resistant material.

5 (b) A business[~~The~~] sign must be permanently mounted at [~~the~~]each physical business address
6 listed on the license. A business sign is considered permanently mounted if bolted to an exterior building
7 wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground.

8 (c) A license holder may use a temporary sign or banner if that license holder can show proof that
9 a business sign that meets the requirements of this paragraph has been ordered and provides a written
10 statement that the business sign will be promptly and permanently mounted upon delivery.

11 (d) A license holder is responsible for ensuring that the business sign complies with municipal
12 ordinances, and that any lease signage requirements are consistent with the signage requirements in this
13 section.

14

15 §221.45. Business Office.

16 (a) The license holder's office must be located at the licensed business [~~license~~] location in a
17 building with a permanent roof and connecting exterior walls on all sides.

18 (b) A license holder's office structure must comply with all applicable local zoning ordinances and
19 deed restrictions.

20 (c) A license holder's office may not be located within a residence, apartment house or building,
21 hotel, motel, [~~or~~]rooming house, or any room or building not open to the public.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 29 of 53

Chapter 221 – Salvage Vehicle Dealers

1 (d) A portable-type office structure may qualify as a business office only if the structure meets the
2 requirements of this section and is not a readily moveable trailer or other vehicle.

3 (e) A license holder's office may not be virtual or provided by a subscription for office space or
4 office services.

5 (f) The physical address of the salvage vehicle dealer's office must be in Texas, recognized by the
6 U.S. Postal Service, and have an assigned emergency services property address.

7 (g) A license holder's office must be equipped with internet access.

8

9 §221.46. Display of License.

10 At each licensed business location, a [A] license holder must continuously display [at its business
11 location the original or copy of] the license issued by the department [at all times] in a conspicuous
12 manner that makes the license easily readable by the public [and is displayed in a conspicuous place at
13 each licensed business location for which the license is issued].

14

15 §221.47. Evidence of Ownership.

16 A salvage vehicle dealer must receive a properly assigned salvage vehicle title, salvage record of
17 title, nonrepairable [non-repairable] vehicle title, nonrepairable [non-repairable] record of title, or out-
18 of-state ownership document, as applicable, when acquiring a nonrepairable [non-repairable] motor
19 vehicle or salvage motor vehicle in accordance with §217.86 of this title (relating to Dismantling,
20 Scrapping, or Destruction of Motor Vehicles).

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 30 of 53

Chapter 221 – Salvage Vehicle Dealers

1

2 ~~§221.48. Scrapped or Destroyed Motor Vehicle]~~

3 ~~[(a) Within 30 days after a salvage vehicle dealer acquires a non-repairable motor vehicle or~~
4 ~~salvage motor vehicle for the purpose of scrapping or destroying the motor vehicle, the salvage vehicle~~
5 ~~dealer shall:]~~

6 ~~[(1) submit to the department a report on a form prescribed by the department stating~~
7 ~~that the motor vehicle will be scrapped or destroyed and certifying that all license plates and registration~~
8 ~~stickers have been removed from the motor vehicle; and]~~

9 ~~[(2) surrender to the department the properly assigned ownership document.]~~

10 ~~[(b) Not later than 60 days after the motor vehicle is scrapped or destroyed, the salvage vehicle~~
11 ~~dealer shall report to the department that the motor vehicle has been scrapped or destroyed.]~~

12 ~~[(c) A salvage vehicle dealer shall maintain records of each motor vehicle that is scrapped or~~
13 ~~destroyed, as provided by Subchapter D of this chapter (relating to Records).]~~

14 ~~[(d) License plates and registration stickers of vehicles that will be scrapped or destroyed shall be~~
15 ~~stored by the salvage vehicle dealer in a secure location until the department acknowledges receipt of~~
16 ~~the report required by subsection (a) of this section.]~~

17 ~~[(e) The salvage vehicle dealer shall destroy the license plates and registration stickers to the~~
18 ~~vehicles reported under subsection (a) of this section upon receipt of the acknowledged report from the~~
19 ~~department.]~~

20 ~~[(f) A vehicle reported to the department under subsection (a) of this section is considered a~~
21 ~~non-repairable vehicle effective the date of the report.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 31 of 53

Chapter 221 – Salvage Vehicle Dealers

1

2 §221.49. Unique Inventory Number.

3 Occupations Code, §2302.255, sets out the requirements for a salvage vehicle dealer in assigning
4 a unique inventory number when the salvage vehicle dealer purchases or takes delivery of a component
5 part.

6

7 §221.50. Restrictions on Sales of Flood Damaged Vehicles.

8 (a) A motor vehicle that is [~~classified as~~] a nonrepairable [~~non-repairable~~] motor vehicle or
9 salvage motor vehicle based solely on flood damage may be sold or transferred only as provided by this
10 section and §217.88 of this title (relating to Sale, Transfer, or Release of Ownership of a Nonrepairable or
11 Salvage Motor Vehicle).

12 (b) A salvage vehicle dealer may sell, transfer, or release a nonrepairable [~~non-repairable~~] motor
13 vehicle or salvage motor vehicle if the salvage vehicle dealer provides [~~to anyone if a non-repairable or~~
14 ~~salvage vehicle title or a comparable out-of-state ownership document has been issued for the motor~~
15 ~~vehicle provided~~] a written disclosure [~~has been made~~] that the vehicle has been classified as a
16 nonrepairable [~~non-repairable~~] motor vehicle or salvage motor vehicle based solely on flood damage.

17 [~~(c) If a non-repairable or salvage vehicle title or a comparable out-of-state ownership document~~
18 ~~has not been issued for the motor vehicle, a salvage vehicle dealer may only sell, transfer, or release a non-~~
19 ~~repairable motor vehicle or salvage motor vehicle to:~~]

20 [~~(1) an insurance company;~~]21 [~~(2) a governmental entity;~~]

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 32 of 53

Chapter 221 – Salvage Vehicle Dealers

1 ~~[(3) a licensed salvage vehicle dealer;]~~

2 ~~[(4) an out-of-state buyer;]~~

3 ~~[(5) a metal recycler; or]~~

4 ~~[(6) a used automotive parts recycler, provided a written disclosure has been made that~~
5 ~~the vehicle has been classified as a non-repairable motor vehicle or salvage motor vehicle based solely on~~
6 ~~flood damage.]~~

7

8 §221.51. Duty to Identify Motor Vehicles Offered for Sale.

9 (a) A salvage vehicle dealer shall place a notice ~~[sign]~~ on each salvage motor vehicle it displays or
10 offers for sale that:

11 (1) is visible from outside of the salvage motor vehicle;

12 (2) contains lettering that is two inches or more in height identifying the vehicle is a
13 salvage motor vehicle; and

14 (3) states as follows: *"This is a salvage titled vehicle that cannot be operated on a public*
15 *highway. If the salvaged vehicle is to be registered in Texas, the purchaser must apply to a county tax*
16 *assessor-collector's office, surrender the salvage title, submit the required information on repairs that have*
17 *been made to the vehicle and pay the applicable fees before the vehicle may be titled and/or registered to*
18 *operate on the public highway."*

19 (b) Upon the sale of a salvage motor vehicle, a salvage vehicle dealer shall obtain the purchaser's
20 signature to a disclosure statement written in eleven point or larger font that states as follows: *"I, (name*

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 33 of 53

Chapter 221 – Salvage Vehicle Dealers

1 *of purchaser), acknowledge that at the time of purchase, I am aware that: the vehicle is titled on a salvage*
2 *title; if I intend to operate the vehicle on a public highway in Texas, I am responsible for applying for a title*
3 *for this salvage vehicle through a Texas county tax assessor-collector's office accompanied by the required*
4 *forms showing that repairs have been made to the vehicle; I am responsible for paying the applicable fees;*
5 *and, I may not drive this salvage vehicle on a public highway until after a titled branded rebuilt salvage*
6 *and registration have been issued."*

7 (c) A salvage vehicle dealer shall place a sign on each nonrepairable [~~non-repairable~~] motor
8 vehicle it displays or offers for sale that:

9 (1) is visible from outside of the nonrepairable [~~non-repairable~~] motor vehicle;

10 (2) contains lettering that is two inches or more in height; and

11 (3) states as follows: "*This is a nonrepairable [~~non-repairable~~] titled motor vehicle that*
12 *can never be operated on a public highway of this state [~~or any other state~~]."*

13 (d) Upon the sale of a nonrepairable [~~non-repairable~~] motor vehicle, a salvage vehicle dealer shall
14 obtain the purchaser's signature to a disclosure statement written in eleven point or larger font that states
15 as follows: "*I, (name of purchaser), acknowledge that at the time of purchase, I am aware that the vehicle*
16 *is a nonrepairable [~~non-repairable~~] vehicle; this vehicle will never be able to operate on a public highway*
17 *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 nonrepairable [~~non-repairable~~] vehicle I must have the*
18 *nonrepairable [~~non-repairable~~] vehicle titled in my name."*

20 (e) A salvage vehicle dealer shall maintain a copy of the written disclosures required by this section
21 as part of its records of sales in accordance with §221.73 of this title (relating to Content of Records).

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 34 of 53

Chapter 221 – Salvage Vehicle Dealers

1 (f) The notice requirements of subsections (a) and (c) can be met if the salvage vehicle dealer
2 conspicuously displays a permanent sign that ~~[single notice or notices if]~~ all of the vehicles being offered
3 for sale by the salvage vehicle dealer are salvage motor vehicles or non-repairable motor vehicles.

4 (g) If the salvage vehicle dealer conducts a sale of a salvage motor vehicle or a nonrepairable
5 ~~[non-repairable]~~ motor vehicle in Spanish or other foreign language, the notices and disclosures required
6 by this section shall be in that language.

7 (h) This section does not apply to a vehicle that is displayed or offered for sale by a salvage vehicle
8 dealer who operates solely as a salvage pool operator and only sells vehicles at wholesale ~~[person who~~
9 ~~holds a salvage pool license on the premises of the licensed salvage pool operator].~~

10

11 §221.52. Export-only Sales.

12 (a) A license holder may sell a nonrepairable ~~[non-repairable]~~ motor vehicle or a salvage motor
13 vehicle to a person who resides in a jurisdiction outside the United States only as provided by
14 Transportation Code, §501.099 and §217.88 of this title (relating to Sale, Transfer, or Release of Ownership
15 of a Nonrepairable or Salvage Motor Vehicle).

16 ~~[(b) A license holder may accept any of the following types of government-issued photo~~
17 ~~identification documents to establish that the purchaser resides outside the United States:]~~

18 ~~[(1) passport;]~~19 ~~[(2) driver's license;]~~20 ~~[(3) consular identity document;]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 35 of 53

Chapter 221 – Salvage Vehicle Dealers

1 ~~[(4) national identification certificate or identity document; or]~~

2 ~~[(5) other photo identification card issued by the jurisdiction where the purchaser resides~~
3 ~~that contains the name, address, and date of birth of the purchaser.]~~

4 (b)~~[(c)]~~ A legible copy of the purchaser's photo identification document must be maintained in the
5 records of the license holder for a period of 36 ~~[48]~~ months after the sale of a salvage motor vehicle or a
6 nonrepairable ~~[non-repairable]~~ motor vehicle for "export-only."

7 (c) ~~[(d)]~~ The limitation on the number of casual sales that may be made to a person under §221.53
8 of this title (relating to Casual Sales) does not apply to sales to a person who resides in a jurisdiction outside
9 the United States and who purchases salvage motor vehicles and nonrepairable ~~[non-repairable]~~ motor
10 vehicles for "export-only."

11
12 §221.53. Casual Sales.

13 (a) A license holder may not make more than five (5) casual sales of salvage motor vehicles or
14 nonrepairable ~~[non-repairable]~~ motor vehicles during a calendar year to the same person.

15 (b) A license holder must maintain records of each casual sale made in accordance with §217.88
16 of this title (relating to Sale, Transfer, or Release of Ownership of a Nonrepairable or Salvage Motor
17 Vehicle). ~~[during the previous 36 months, as provided by §221.72 of this title (relating to Record~~
18 ~~Retention). Such records must contain the following information regarding each casual sale:]~~

19 ~~[(1) the complete name, address and phone number of the purchaser;]~~

20 ~~[(2) a copy of one of the following valid and current photo identification documents for~~
21 ~~the purchaser:]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 36 of 53

Chapter 221 – Salvage Vehicle Dealers

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 under~~
10 ~~a Status of Forces Agreement; and]~~

11 ~~[(3) the year, make, model, color and vehicle identification number for the salvage motor~~
12 ~~vehicle or non-repairable motor vehicle.]~~

13 (c) A person who purchases a salvage motor vehicle or a nonrepairable ~~[non-repairable]~~ motor
14 vehicle through a casual sale may not sell that salvage motor vehicle or nonrepairable ~~[non-~~
15 ~~repairable]~~ motor vehicle until the salvage vehicle title, salvage record or title, nonrepairable ~~[non-~~
16 ~~repairable]~~ vehicle title or nonrepairable ~~[non-repairable]~~ record of title, as applicable, is in the person's
17 name.

18

19 §221.54. Criteria for Site Visits.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 37 of 53

Chapter 221 – Salvage Vehicle Dealers

1 In determining whether to conduct a site visit at an active salvage vehicle dealer's location, the
2 department will consider whether the dealer has:

3 (1) failed to respond to a records request;

4 (2) failed to operate from the license location; [~~or~~]

5 (3) an enforcement history that reveals failed compliance inspections or multiple
6 complaints with administrative sanctions being taken by the department;[~~]~~

7 (4) a business location that fails to meet premises or operating requirements under this
8 chapter; or

9 (5) records that require further investigation by the department.

10

11

12

SUBCHAPTER D. RECORDS

13

43 TAC §§221.71–221.73

14 **STATUTORY AUTHORITY.** The department adopts amendments to Chapter 221 under §2302.051, which

15 authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302;

16 Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a

17 license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001;

18 and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and

19 appropriate to implement the powers and the duties of the department.

20 The department also adopts amendments and under the authority of Occupations Code,

21 §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles

22 and the authority to take any action that is necessary or convenient to exercise that authority;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 38 of 53

Chapter 221 – Salvage Vehicle Dealers

1 Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, and
2 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

3 Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation
4 Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to
5 administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department
6 to adopt rules to administer Transportation Code, Chapter 503.

7 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature
8 and requirements of all available formal and informal procedures. Government Code, §2001.039 requires
9 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.
10 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,
11 suspension, annulment, or withdrawal of a license.

12 **CROSS REFERENCE TO STATUTE.** These new rules would implement Government Code, Chapter 2001;
13 Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503, 1001–1003,
14 and 1005.

15

16 Text.

17

18 §221.71. Records; Generally.

19 (a) A salvage vehicle dealer shall maintain a record of each salvage motor vehicle and
20 nonrepairable ~~non-repairable~~ motor vehicle purchased, sold, or exchanged by the salvage vehicle dealer.

21 (b) A salvage vehicle dealer's records must be maintained at the licensed business location.

22 (c) Any records required to be maintained by a license holder may be maintained in an electronic
23 format if the record can be reviewed and printed at the licensed business location or provided

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 39 of 53

Chapter 221 – Salvage Vehicle Dealers

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 electronic 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 access
17 at the licensed business location of records stored electronically, a complete record of all purchases and
18 sales of salvage motor vehicles and nonrepairable motor vehicles for a minimum period of 36 months from
19 the date of the transaction.

20 (b) A salvage vehicle dealer shall maintain at the licensed business location a record of each vehicle
21 that is dismantled, scrapped or destroyed, and a photocopy of the front and back of all salvage vehicle

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 40 of 53

Chapter 221 – Salvage Vehicle Dealers

1 titles and nonrepairable vehicle titles, or a photocopy or electronic copy of all salvage records of title, and
2 nonrepairable records of title, and, if applicable, a photocopy of any out-of-state evidence of ownership
3 surrendered to the department, until the third ~~fourth~~ anniversary of the date the report was
4 acknowledged as received by the department.

5 (c) A salvage vehicle dealer utilizing the department's web-based title application known as
6 webDEALER, as defined in §217.71 of this title (relating to Automated and Web-Based Vehicle Registration
7 and Title Systems), must comply with §217.74 of this title (relating to Access to and Use of webDEALER).
8 Original hard copy titles are not required to be kept at the licensed business location [;] but must be made
9 available to the department upon request.

10

11 §221.73. Content of Records.

12 (a) The records of a salvage vehicle dealer for purchases and sales shall include:

13 (1) the date the license holder purchased ~~[of purchase of]~~ the salvage motor vehicle, or
14 nonrepairable ~~[non-repairable]~~ motor vehicle;

15 (2) the name and address of the person who sold the salvage motor vehicle or
16 nonrepairable ~~[non-repairable]~~ motor vehicle to the salvage vehicle dealer;

17 (3) if the person ~~[who sold the salvage motor vehicle or non-repairable motor vehicle to~~
18 ~~the salvage motor vehicle dealer]~~ is not an insurance company or a license holder ~~[salvage pool operator]~~,
19 a photocopy of ~~[one of]~~ the ~~[following current]~~ photo identification document ~~[documents]~~ of the person
20 who purchased the salvage motor vehicle or nonrepairable motor vehicle from the salvage vehicle dealer

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 41 of 53

Chapter 221 – Salvage Vehicle Dealers

1 or sold the salvage motor vehicle or nonrepairable [~~non-repairable~~] motor vehicle to the salvage vehicle
2 dealer; [;]

3 [~~(A) driver's license, Department of Public Safety identification, or state
4 identification certificate issued by a state or territory of the United States;~~]

5 [~~(B) concealed handgun license or license to carry a handgun issued by the
6 Department of Public Safety under Government Code, Chapter 411, Subchapter H;~~]

7 [~~(C) United States or foreign passport;~~]

8 [~~(D) United States Department of Homeland Security, United States Citizenship
9 and Immigration Services, or United States Department of State Identification document;~~]

10 [~~(E) United States military identification card; or~~]

11 [~~(F) North Atlantic Treaty Organization identification or identification issued under
12 a Status of Forces Agreement;~~]

13 (4) a description of the salvage motor vehicle or nonrepairable [~~non-repairable~~] motor
14 vehicle, including the model, year, make, and vehicle identification number, if applicable;

15 (5) the ownership document number and state of issuance of the salvage motor vehicle
16 or nonrepairable [~~non-repairable~~] motor vehicle ownership document, if applicable;

17 (6) a copy of the salvage record of title or nonrepairable [~~non-repairable~~] record of title, if
18 applicable, or a copy of the front and back of the ownership document for the salvage motor vehicle or
19 nonrepairable [~~non-repairable~~] motor vehicle;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 42 of 53

Chapter 221 – Salvage Vehicle Dealers

1 (7) a copy of the form if the ownership document has been surrendered to the
2 department; ~~and~~

3 (8) any evidence indicating that the motor vehicle was dismantled, scrapped, or
4 destroyed; ~~[-]~~

5 (9) the sales contract or buyer's order;

6 (10) the salvage disclosure notice required under §221.51 of this title (relating to Duty to
7 Identify a Motor Vehicle Offered for Sale);

8 (11) a copy of the photo identification document required for export sales under §221.52
9 (relating to Export-Only Sales);

10 (12) records for a casual sale as required under §221.53 (relating to Casual Sales); and

11 (13) any other records required under current rules in this title.

12 (b) If the salvage motor vehicle has been rebuilt, repaired, or reconstructed by the salvage vehicle
13 dealer the salvage vehicle dealer's records must also include a form prescribed by the department ~~for~~
14 ~~"Rebuilt Vehicle Statement," listing all repairs made to the motor vehicle, and, when required to be~~
15 ~~completed, a form prescribed by the department for "Component Part(s) Bill of Sale."]~~in accordance with
16 §217.89 of this title (relating to Rebuilt Salvage Motor Vehicles).

17

18 **SUBCHAPTER E. ADMINISTRATIVE PROCEDURES**

19 **43 TAC §§221.91–221.96**

20 **STATUTORY AUTHORITY.** The department adopts repeals to Chapter 221 under §2302.051, which
21 authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 43 of 53

Chapter 221 – Salvage Vehicle Dealers

1 Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a
2 license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001;
3 and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and
4 appropriate to implement the powers and the duties of the department.

5 The department also adopts repeals under the authority of Occupations Code, §2301.151, which
6 gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority
7 to take any action that is necessary or convenient to exercise that authority; Transportation Code,
8 §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, 2001.054, and 2001.039 in
9 addition to the statutory authority referenced throughout this preamble.

10 Transportation Code, §501.0041 authorizes the department to adopt rules to administer
11 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt
12 rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the
13 department to adopt rules to administer Transportation Code, Chapter 503.

14 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature
15 and requirements of all available formal and informal procedures. Government Code, §2001.039 requires
16 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.
17 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,
18 suspension, annulment, or withdrawal of a license.

19 **CROSS REFERENCE TO STATUTE.** These repeals would implement Government Code, Chapter 2001;
20 Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503, 1001–1003,
21 and 1005.

22

23 Text.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 44 of 53

Chapter 221 – Salvage Vehicle Dealers

1

2 ~~[\$221.91. Notice of Department Decision.]~~

3 ~~[(a) Upon a determination that an application for a license issued under Occupations Code,~~
4 ~~Chapter 2302, and this chapter should be denied, or that a license be revoked or suspended, or that~~
5 ~~administrative sanctions should be imposed based on alleged violations of Occupations Code, Chapter~~
6 ~~2302, or this chapter, the department shall issue and mail, by certified mail, a Notice of Department~~
7 ~~Decision to the applicant's, license holder's or person's last known mailing address, as reflected in the~~
8 ~~department's licensing records.]~~

9 ~~[(b) The Notice of Department Decision includes a statement:]~~10 ~~[(1) that describes the department decision and its effective date;]~~11 ~~[(2) that describes each alleged violation;]~~12 ~~[(3) that describes each administrative sanction being proposed;]~~13 ~~[(4) which sets out the legal basis for each administrative sanction;]~~14 ~~[(5) informing the license applicant, license holder or other person of the right to request~~
15 ~~a hearing;]~~16 ~~[(6) setting forth the procedures for requesting a hearing, including the period during~~
17 ~~which a request for a hearing must be received by the department; and]~~18 ~~[(7) informing the license applicant, license holder, or other person that the proposed~~
19 ~~decision and administrative sanctions in the Notice of Department Decision will become final on the date~~
20 ~~specified if the license applicant, license holder, or other person fails to timely request a hearing.]~~21 ~~[(c) A request for an administrative hearing under this section must be made in writing and~~
22 ~~received by the department within 26 days of the date the Notice of Department Decision is mailed by~~
23 ~~the department.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 45 of 53

Chapter 221 – Salvage Vehicle Dealers

1 ~~[(d) If the license applicant, license holder, or person does not make a timely request for hearing~~
2 ~~or enter into a settlement agreement before the 27th day after the date the Notice of Department~~
3 ~~Decision is mailed, the matter becomes final in accordance with the Government Code, Chapter 2001.]~~

4

5 ~~[\$221.92. Notice of Hearing.]~~

6 ~~[(a) If a request for administrative hearing is timely received, the department shall set a hearing~~
7 ~~with the State Office of Administrative Hearings and give notice to the license applicant, license holder~~
8 ~~or other person of the date, time and location where the hearing will be held.]~~

9 ~~[(b) The hearing shall be conducted under the provisions set forth in this chapter and by an~~
10 ~~administrative law judge of the State Office of Administrative Hearings.]~~

11

12 ~~[\$221.93. Final Decisions and Orders; Motions for Rehearing.]~~

13 ~~[(a) If a department decision becomes final under a Notice of Department Decision issued under~~
14 ~~§221.91 of this title (relating to Notice of Department Decision), the matter will be forwarded to the final~~
15 ~~order authority for issuance of a final order incorporating the decisions, findings and administrative~~
16 ~~sanctions imposed by the Notice of Department Decision. The department will send a copy of the final~~
17 ~~order to the license applicant, license holder, or other person.]~~

18 ~~[(b) The provisions of Government Code, Chapter 2001, Subchapter F, govern the issuance of a~~
19 ~~final order issued under this subchapter and motions for rehearing filed in response to issuance of a final~~
20 ~~order.]~~

21

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 46 of 53

Chapter 221 – Salvage Vehicle Dealers

1 ~~§221.94. Judicial Review of Final Order.]~~

2 ~~[The provisions of Government Code, Chapter 2001, Subchapter G, govern the appeal of a final~~
3 ~~order issued under this subchapter.]~~

4

5 ~~§221.95. Delegation of Final Order Authority]~~

6 ~~[(a) In accordance with Transportation Code, §1003.005(b), in cases brought under Occupations~~
7 ~~Code, Chapter 2302, the director of the division that regulates the distribution and sale of motor vehicles~~
8 ~~is authorized to issue a final order in a case without a decision on the merits, including, but not limited~~
9 ~~to a case resolved:]~~

10 ~~[(1) by settlement;]~~

11 ~~[(2) by agreed order;]~~

12 ~~[(3) by withdrawal of the complaint;]~~

13 ~~[(4) by dismissal for want of prosecution;]~~

14 ~~[(5) by dismissal for want of jurisdiction;]~~

15 ~~[(6) by summary judgment or summary disposition;]~~

16 ~~[(7) by default judgment; or]~~

17 ~~[(8) when a party waives opportunity for a hearing.]~~

18 ~~[(b) In contested cases in which the board has delegated final order authority under subsection~~
19 ~~(a) of this section, a motion for rehearing shall be filed with and decided by the final order authority~~
20 ~~delegate.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 47 of 53

Chapter 221 – Salvage Vehicle Dealers

- 1
- 2 ~~[\$221.96. Cease and Desist Order.]~~
- 3 ~~[(a) The board may issue a cease and desist order if the board reasonably believes a person who~~
- 4 ~~is not licensed under Occupations Code Chapter 2302 is violating that chapter or a rule or order adopted~~
- 5 ~~under that chapter.]~~
- 6 ~~[(b) A cease and desist order may require a person to cease and desist from committing a~~
- 7 ~~violation. The order must contain a notice that a request for hearing may be filed under this section.]~~
- 8 ~~[(c) A person to whom a cease and desist order is issued may file a written request for a hearing~~
- 9 ~~before the board. The order is final unless a request for hearing is timely filed. The person must file the~~
- 10 ~~hearing request not later than the 10th day after the date of receipt of the order.]~~

11

12

SUBCHAPTER F. ADMINISTRATIVE SANCTIONS

13

43 TAC §§221.111–221.115

14

15

16

17

18

19

20

21

22

STATUTORY AUTHORITY. The department adopts amendments to Chapter 221 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a license issued under Occupations Code, Chapter 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.052, which assigns the board a duty to set reasonable and necessary application fees, license fees, renewal fees, and other fees as required to implement Chapter 2302; Occupations Code, §2302.103, which requires a salvage vehicle

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 48 of 53

Chapter 221 – Salvage Vehicle Dealers

1 dealer to apply for a license on a form prescribed by the department and pay an application fee;
2 Occupations Code, §2302.104, which prescribes content that must be included in an application;
3 Occupations Code, §2302.105, which requires the department to complete an investigation of the
4 applicant's qualifications before issuing a license; Occupations Code, §2302.108, which authorizes the
5 department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with
6 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 The department also adopts amendments and under the authority of Occupations Code,
10 §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles
11 and the authority to take any action that is necessary or convenient to exercise that authority;
12 Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, and
13 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.
14 Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation
15 Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to
16 administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department
17 to adopt rules to administer Transportation Code, Chapter 503.

18 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature
19 and requirements of all available formal and informal procedures. Government Code, §2001.039 requires
20 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.
21 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,
22 suspension, annulment, or withdrawal of a license.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 49 of 53

Chapter 221 – Salvage Vehicle Dealers

1 **CROSS REFERENCE TO STATUTE.** These rule adoptions would implement Government Code, Chapters 411
2 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503,
3 1001–1003, and 1005.

4
5 Text.

6 §221.111. Denial of License.

7 (a) The ~~board or~~ department may deny an application for a new license or an application
8 for a license renewal ~~[of a license]~~ under Occupations Code Chapter 53 or Chapter 2302, and
9 §211.3 of this title (relating to Criminal Offense Guidelines) or this chapter, if:

10 (1) all the information required on the application is not complete;

11 (2) the applicant or any owner, officer, director, or other person described in
12 §211.2 of this title (relating to Application of Subchapter) made a false statement, material
13 misrepresentation, or a material omission, on the application to issue, renew, or amend a license;

14 (3) the applicant, or any owner, officer, director, or other person described in
15 §211.2 of this title, has been convicted, or considered convicted under Occupations Code
16 §53.021(d), by any local, state, federal, or foreign authority, of an offense that directly relates to
17 the duties or responsibilities of the licensed occupation as described in §211.3 of this title or is
18 convicted of an offense that is independently disqualifying under Occupations Code §53.021;

19 (4) the applicant's or any owner's, officer's, director's, or other person described in
20 §211.2 of this title, previous license was revoked;

21 (5) the applicant ~~[or license holder]~~ has an ownership, organizational, managerial,
22 or other business arrangement that would allow a person the power to direct, management,
23 policies, or activities, of the applicant or license holder, whether directly or indirectly, who ~~[is~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 50 of 53

Chapter 221 – Salvage Vehicle Dealers

1 ~~unfit, ineligible for license, or]~~has been subject to disciplinary action, including suspension,
2 revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty,
3 administrative fine, or similar assessment for a current or previous license, permit, or other
4 authorization issued by any local, state, or federal regulatory authority; or

5 (6) the applicant, or any owner, officer, or director, or other person described in
6 §211.2 of this title~~[is unfit to hold the license, is ineligible for licensure, or]~~ whose current or
7 previous license, permit, or other authorization issued by any local, state, or federal regulatory
8 authority has been subject to disciplinary action, including suspension, revocation, denial,
9 corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee,
10 or similar assessment.

11 (b) If the department denies an application for a license to be issued under the authority of
12 Occupations Code Chapter 2302, the applicant may request an administrative hearing in the
13 manner specified in §224.54~~[§221.91]~~ of this title (relating to Notice of Department Decision).

14 (c) In accordance with Occupations Code §2302.108, the ~~[board or]~~department shall reject
15 any application for issuance of a new license under Occupations Code Chapter 2302 filed by a
16 person whose license is revoked before the first anniversary of the date of revocation.

17
18 §221.112. Suspension, Revocation and Administrative Penalties.

19 The ~~[board or]~~department may suspend or revoke a license or impose an administrative penalty
20 if the license holder:

21 (1) fails to meet or maintain the qualifications and requirements for a license;

22 (2) violates any law relating to the purchase, sale, exchange, storage, or distribution of
23 motor vehicles, including salvage motor vehicles and nonrepairable motor vehicles;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 51 of 53

Chapter 221 – Salvage Vehicle Dealers

1 (3) willfully defrauds a purchaser;

2 (4) fails to maintain purchase, sales, and inventory records as required by Occupations
3 Code, Chapter 2302, Transportation Code, Chapter 501, Chapter 217, Subchapter D of this title, or this
4 chapter;

5 (5) refuses~~[to permit,]~~ or fails to comply with a request by the department to examine,
6 during normal business hours, the license holder's records as required by Occupations Code, Chapter
7 2302, or this chapter;

8 (6) engages in motor vehicle or salvage business without the required license;

9 (7) engages in business as a salvage vehicle dealer at a location for which a license has
10 not been issued by the department;

11 (8) fails to notify the department of a change of the salvage vehicle dealer's [~~legal~~
12 ~~business entity name, assumed name, mailing address, email address, physical address or location within~~
13 ~~30 days of such change by submitting an amendment to the license]~~ license holder information as
14 required under §221.19 of this title (relating to Notice of Change in License Holder Information);

15 (9) fails to notify the department of a change in location~~[described in §221.19(b) of this~~
16 ~~title (relating to Change of License Holder's Name, Ownership, or Control) as required in that section]~~
17 prior to operating in a new location or closing a location in accordance with §221.18 of this title (relating
18 to Additional, New, or Closed Location);

19 (10) fails to remain regularly and actively engaged in the business for which the salvage
20 vehicle dealer license is issued;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 52 of 53

Chapter 221 – Salvage Vehicle Dealers

1 (11) sells more than five (5) nonrepairable motor vehicles or salvage motor vehicles to
2 the same person in a casual sale during a calendar year;

3 (12) violates any provision of Occupations Code Chapters 2301 or 2302, Transportation
4 Code Chapters 501, 502, or 503, or any board rule or order promulgated under those statutes;

5 (13) uses or allows use of the salvage vehicle dealer's license or business location for the
6 purpose of avoiding the requirements of Occupations Code Chapters 2301 or 2302, Transportation Code,
7 Chapters 501, 502 or 503, or any board rule or order promulgated under those statutes;

8 (14) violates any law, ordinance, rule or regulation governing the purchase, sale,
9 exchange, or storage, of salvage motor vehicles or nonrepairable motor vehicles;

10 (15) sells or offers for sale a nonrepairable motor vehicle or a salvage motor vehicle from
11 any location other than the salvage vehicle dealer's licensed business location;

12 (16) is, or any owner, officer, director, or other person described in §211.2 of this title
13 (relating to Application of Subchapter), is convicted, or considered convicted under Occupations Code
14 §53.021(d), by any local, state, federal, or foreign authority, of an offense that directly relates to the
15 duties or responsibilities of the licensed occupation as described in §211.3 of this title (relating to
16 Criminal Offense Guidelines) or an offense that that is independently disqualifying under Occupations
17 Code §53.021 after initial issuance or renewal of the salvage vehicle dealer license, or that has not been
18 reported to the department as required;

19 (17) makes a false statement, material misrepresentation, or material omission in any
20 application or other information filed with the department;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 53 of 53

Chapter 221 – Salvage Vehicle Dealers

1 (18) fails to timely remit payment for administrative penalties imposed by the
2 department;

3 (19) engages in business without a license required under Occupations Code Chapters
4 2301 or 2302, or Transportation Code Chapter 503;

5 (20) operates a salvage motor vehicle or a nonrepairable motor vehicle on ~~the~~ public
6 highways or allows another person to operate a salvage motor vehicle or a nonrepairable motor vehicle
7 on public highways; or

8 ~~[(21) dismantles a salvage motor vehicle or a nonrepairable motor vehicle; or]~~

9 (21) ~~[(22)]~~ deals in used automotive parts as more than an incidental part of the salvage
10 vehicle dealer's primary business.

11

12 §221.115. Refund of Fees.

13 In the absence of director approval, the department will not refund a fee paid by a license
14 applicant or a license holder if:

15 (1) the application or license is withdrawn, denied, suspended, or revoked; or

16 (2) the license applicant or license holder is subject to an unpaid civil penalty imposed

17 against the license applicant or license holder by a final order. ~~[The department will not refund fees paid~~

18 ~~if a license is denied, suspended or revoked.]~~



TIADA
TEXAS INDEPENDENT AUTOMOBILE
DEALERS ASSOCIATION

January 23, 2024

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

Re: 43 TAC 221, Texas Register December 29, 2023

Dear Ms. Moriaty:

The Texas Independent Automobile Dealers Association (TIADA) respectfully submits the following comments in response to the Texas Department of Motor Vehicles (TxDMV) proposed changes to 43 Texas Administrative Code Chapter 221. TIADA represents over 1,000 independent automobile dealers throughout the state of Texas which range in size from large publicly traded companies to small and micro-businesses.

TIADA after reviewing the purposed rules has the following suggestions:

Licensees should not have to pay \$25 to update a business email address, telephone number, mailing address, or change in license contact. §221.19(b)(4) proposes adding the requirement of filing an amendment to update “a business email address, telephone number, mailing address, or change in license contact”, which results in a cost of \$25 to licensees. TIADA agrees licensees should update contact information with TxDMV, however TIADA does not believe these quick and simple changes rise to the level of an amendment to the license as proposed by the rule. Therefore, TIADA recommends not adopting §221.19(b)(4) and instead adopting rules requiring licensees to notify the department of these changes in a timely manner outside of the amendment process.

Potential licensees would benefit from transparency created by including the Licensing Committee in the rule. TIADA believes including the licensing committee in the rule would result in a more transparent application process. TIADA has received questions related to the licensing committee from potential licensees that it is unable to answer as there is no rule or law that establishes the licensing committee nor is there any other information on the committee. Therefore, TIADA requests a rule establishing the licensing committee including the time it takes for the committee to review an application, composite of the committee, and how long the committee has to issue a decision by adding this information to §221.111 or creating a new section related to said committee.

TIADA Comments to TxDMV – 43 TAC Chapter 221

January 23, 2024

Page | 2 of 2

Respectfully,

A handwritten signature in black ink, appearing to read "Earl Cooke". The signature is fluid and cursive, with the first name "Earl" being more prominent than the last name "Cooke".

Earl Cooke

Director of Compliance and Business Development

earl.cooke@txiada.org

Board Meeting Date: 4/11/2024
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Annette Quintero, Vehicle Titles and Registration Division Director
Agenda Item: 10
Subject: Chapter 217, Vehicle Titles and Registration
Amendments: §217.63
(Relating to Digital License Plates)

RECOMMENDATION

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

PURPOSE AND EXECUTIVE SUMMARY

The adopted 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

No significant fiscal impact on state or local governments is expected because of the enforcement or administration of the adopted proposal. Under Transportation Code §504.154(d)(2) the department is authorized to charge an administrative fee to recoup its administrative costs. 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 digital license plates to be on Texas roads, and allow the department to recoup the investment made in the digital license program.

BACKGROUND AND DISCUSSION

The adopted 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.

If the board adopts the amendments during its April 11, 2024, open meeting, staff anticipates:

- Publication in the April 26, 2024, issue of the *Texas Register*; and
- An effective date of May 2, 2024.

1 **ADOPTION OF REVISIONS TO**
2 **SUBCHAPTER B. MOTOR VEHICLE REGISTRATION**
3 **43 TAC §217.63**

4
5 **INTRODUCTION.** The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas
6 Administrative Code §217.63, concerning Digital License Plate Fees and Payment. The department adopts
7 amendments to §217.63 without changes to the proposed text as published in the December 29, 2023,
8 issue of the *Texas Register* (48 TexReg 8265). The rule will not be republished.

9 **REASONED JUSTIFICATION.**

10 Adopted amendments to §217.63(a) reduce the digital license plate administrative fee from \$95
11 to \$45. The reduction in the fee addresses concerns from stakeholders that the administrative fee
12 associated with the digital license plate is too high and does not incentivize Texans to adopt the new
13 digital license plate technology. This fee reduction would provide an incentive for customers to choose a
14 digital license plate over another type of specialty plate, which would result in the issuance of more digital
15 license plates. Increased sales of digital license plates would allow the department to recoup the costs of
16 administering the digital license plate program more quickly than it will be able to achieve while relying
17 on the current fees from slow sales of very few plates. Adopted amendments to §217.63(a)(1) also
18 streamline the description of how the administrative fee is paid to more accurately reflect current
19 practice.

20 Adopted amendments to §217.63(a)(2) clarify that the registration period of the digital license
21 plate will be aligned with the vehicle registration period, and that the initial administrative fee will be
22 prorated based on the remaining registration period. The amendments do not change the meaning of the
23 provision but clarify it for the reader.

TITLE 43. TRANSPORTATION

Adopted Section

Part 10. Texas Department of Motor Vehicles

Page 2 of 2

Chapter 217 - Vehicle Titles and Registration

1 At adoption a nonsubstantive change in the text to §217.63(a)(3) corrected a citation to
2 Transportation Code, §502.195 by deleting an extraneous space.

3 Adopted amendments to §217.63(b) clarify the purpose of the rule by amending the subsection
4 title and language. Adopted amendments to §217.63(b)(2) correct the description of the payment process
5 for digital license plate fees to clarify that the fees for issuance of digital license plates are paid directly to
6 the state through the digital license plate provider and state systems, in accordance with current
7 practices.

8 **SUMMARY OF COMMENTS.**

9 No comments on the proposed amendments were received.

10 **STATUTORY AUTHORITY.** The department adopts amendments to §217.63 under Transportation Code,
11 §§504.151–504.157, which provides the board with rulemaking authority to implement the digital license
12 plate statutory provisions including setting specifications and requirements for digital license plates and
13 establishing a fee in an amount necessary to cover any administrative costs incurred that relate to the
14 issuance of a digital license plate and exceed the administrative costs incurred for the issuance of a
15 physical license plate. The department also adopts amendments under Transportation Code, §1002.001,
16 which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules
17 that are necessary and appropriate to implement the powers and the duties of the department.

18 **CROSS REFERENCE TO STATUTE.** The adopted amendments implement Transportation Code, Chapter
19 504, Subchapter B-1 relating to Digital License Plates.

1 **SUBCHAPTER B. VEHICLE TITLES AND REGISTRATION**2 **43 TAC §217.63**

3 §217.63. Digital License Plate Fees and Payment.

4 (a) Fees.

5 (1) A person issued a digital license plate must pay an administrative fee of \$45 [~~95.00 to~~
6 ~~the digital license plate provider~~] upon initial application for a digital license plate [,
7 ~~tax assessor-collector or the department, as applicable,~~] on renewal of registration for a vehicle with a
8 digital license plate.

9 (2) The registration period [~~expiration date~~] of the digital license plate will be aligned with
10 the registration period for the vehicle and the administrative fee due under subsection (a) [~~of this section~~]
11 will be prorated [~~adjusted~~] to yield the appropriate fee based on the remaining registration period.

12 (3) A digital license plate administrative fee will be refunded only when registration fees
13 are overcharged under Transportation Code, §502.195 [~~§502.195~~].

14 (b) Payment of fees.

15 (1) All state, county, local, and other applicable fees are due at the time of registration of
16 a vehicle with a digital license plate.

17 (2) The fees for issuance of digital license plates will be paid directly to the state through
18 the digital license plate provider and state systems. [~~Digital license plate providers that have received the~~
19 ~~administrative fee under subsection (a) of this section must submit payment of the administrative fee due~~
20 ~~in full to the department upon receipt of an application for a digital license plate.~~]

To: Texas Department of Motor Vehicles Board
From: Jimmy Archer, Motor Carrier Division Director
Agenda Item: 11
Subject: Chapter 217, Vehicle Titles and Registration
Amendments: §217.56
(Relating to Cleanup)

RECOMMENDATION

Action Item. Adopt proposed amendments to 43 Texas Administrative Code (TAC) §217.56 with an effective date of June 1, 2024.

PURPOSE AND EXECUTIVE SUMMARY

The amendments are necessary to clean up the language and to refer to proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure). This rule item is submitted to the board concurrently with a rule item to adopt new Chapter 224, which would consolidate all department contested case rules into one chapter.

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. incorporate by reference the January 1, 2022, version of IRP;
2. clarify language;
3. make the terminology consistent with other department rules and language on the IRP website;
4. delete certain language regarding the process for an appeal under §217.56; and
5. refer to 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.

Proposed amendments to §217.56 were published for comment in the December 29, 2023, issue of the *Texas Register*. The department did not receive any comments on the proposed amendments.

If the board adopts the amendments to §217.56 during its April 11, 2024, open meeting, staff anticipates:

- Publication in the April 26, 2024, issue of the *Texas Register*; and
- An effective date of June 1, 2024.

TITLE 43. TRANSPORTATION

Adopted Section

Part 10. Texas Department of Motor Vehicles

Page 2 of 3

Chapter 217 – Vehicle Titles and Registration

1 registration under IRP. Also, Government Code, §2001.004(1) requires state agencies to adopt rules of
2 practice stating the nature and requirements of all available formal and informal procedures. In addition,
3 Texas is a member of IRP, as authorized by Transportation Code, §502.091 and 49 U.S.C. §31704, and must
4 comply with IRP. The jurisdictions that are members of IRP amended the January 1, 2021, version of IRP
5 as follows to create the January 1, 2022, version: added Section 601 (Uploading Data to the Repository),
6 amended Section 1505 (Amendment Introduction Process), amended Section 1515 (Ballot Process), and
7 amended Section 1520 (Effective Date of Plan Amendments).

8 An adopted amendment to §217.56(c)(2)(J) replaces the catch line for subparagraph (J) to provide
9 a better description of the contents of subparagraph (J). The adopted amendment to §217.56(c)(2)(J)(ii)
10 changes the word “ruling” to “decision” to be consistent with other department rules. An adopted
11 amendment to §217.56(c)(2)(J)(iii) references adopted new §224.122 of this title (relating to Appeal of
12 Decision Regarding Assessment, Cancellation, or Revocation Under §217.56), which prescribes the
13 requirements for a vehicle registrant that wants to appeal a decision against the registrant under
14 subparagraph (J) of an assessment (a financial penalty under §217.56(c)(2)(G)) or a cancellation or
15 revocation of the registrant’s apportioned registration under IRP. An adopted amendment to
16 §217.56(c)(2)(J)(iii) states that an appeal will be governed by adopted new Chapter 224 of this title
17 (relating to Adjudicative Practice and Procedure) and Transportation Code, Chapter 502. In addition,
18 adopted amendments to §217.56(c)(2)(J)(iii) delete language regarding the prior procedure for an appeal
19 under subparagraph (J), including the procedure under prior Chapter 206, Subchapter D of this title
20 (relating to Procedures in Contested Cases). In this issue of the *Texas Register*, the department adopts
21 amendments that repeal Subchapter D of Chapter 206 and replace it with provisions in adopted new
22 Chapter 224.

23 SUMMARY OF COMMENTS.

TITLE 43. TRANSPORTATION

Part 10. Texas Department of Motor Vehicles

Chapter 217 – Vehicle Titles and Registration

1 No comments on the proposed amendments were received.

2

3

1 **SUBCHAPTER B. MOTOR VEHICLE REGISTRATION**2 **43 TAC §217.56**

3 **STATUTORY AUTHORITY.** The department adopts amendments to §217.56 under Transportation Code,
4 §502.091(b), which authorizes the department to adopt and enforce rules to carry out IRP; Transportation
5 Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code,
6 Chapter 502; Transportation Code, §1002.001, which authorizes the board to adopt rules that are
7 necessary and appropriate to implement the powers and duties of the department; Government Code,
8 §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements
9 of all available formal and informal procedures; Government Code, §2001.054, which specifies the
10 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
11 a license; and the statutory authority referenced throughout this preamble and in the rule text, which is
12 incorporated herein by reference.

13 **CROSS REFERENCE TO STATUTE.** These amendments implement Transportation Code, Chapter 502, and
14 Government Code, Chapter 2001.

15

16 Text.

17 §217.56. Registration Reciprocity Agreements.

18 (a) Purpose. To promote and encourage the fullest possible use of the highway system and
19 contribute to the economic development and growth of the State of Texas and its residents, the
20 department is authorized by Transportation Code, §502.091 to enter into agreements with duly
21 authorized officials of other jurisdictions, including any state of the United States, the District of
22 Columbia, a foreign country, a state or province of a foreign country, or a territory or possession of
23 either the United States or of a foreign country, and to provide for the registration of vehicles by Texas

TITLE 43. TRANSPORTATION

Adopted Section

Part 10. Texas Department of Motor Vehicles

Page 2 of 9

Chapter 217 – Vehicle Titles and Registration

1 residents and nonresidents on an allocation or distance apportionment basis, and to grant exemptions
2 from the payment of registration fees by nonresidents if the grants are reciprocal to Texas residents.

3 (b) Definitions. The following words and terms, when used in this section, shall have the
4 following meanings, unless the context clearly indicates otherwise:

5 (1) Cab card--The apportioned vehicle registration receipt that contains, but is not
6 limited to, the vehicle description and the registered weight at which the vehicle may operate in each
7 jurisdiction.

8 (2) Department--The Texas Department of Motor Vehicles.

9 (3) Director--The director of the Motor Carrier Division, Texas Department of Motor
10 Vehicles.

11 (4) Executive director--The chief executive officer of the department.

12 (5) Regional Service Center--A department office which provides specific services to the
13 public, including replacement titles, bonded title rejection letters, and apportioned registration under
14 the International Registration Plan (IRP).

15 (6) Temporary cab card--A temporary registration permit authorized by the department
16 that allows the operation of a vehicle for 30 days subject to all rights and privileges afforded to a vehicle
17 displaying apportioned registration.

18 (c) Multilateral agreements.

19 (1) Authority. The executive director may on behalf of the department enter into a
20 multilateral agreement with the duly authorized officials of two or more other jurisdictions to carry out
21 the purpose of this section.

22 (2) International Registration Plan.

TITLE 43. TRANSPORTATION

Adopted Section

Part 10. Texas Department of Motor Vehicles

Page 3 of 9

Chapter 217 – Vehicle Titles and Registration

1 (A) Applicability. The IRP is a registration reciprocity agreement among states of
2 the United States and other jurisdictions providing for payment of registration fees on the basis of fleet
3 distance operated in various jurisdictions. Its purpose is to promote and encourage the fullest possible
4 use of the highway system by authorizing apportioned registration for commercial motor vehicles and
5 payment of appropriate vehicle registration fees and thus contributing to the economic development
6 and growth of the member jurisdictions.

7 (B) Adoption. The department adopts by reference the January 1, 2022, version
8 [~~2021 edition~~] of the IRP. The department also adopts by reference the January 1, 2016, version
9 [~~edition~~] of the IRP Audit Procedures Manual. In the event of a conflict between this section and the IRP
10 or the IRP Audit Procedures Manual, the IRP and the IRP Audit Procedures Manual control. Copies of the
11 documents are available for review in the Motor Carrier Division, Texas Department of Motor Vehicles.
12 Copies are also available on request.

13 (C) Application.

14 (i) An applicant must submit an application to the department on a form
15 prescribed by the director, along with additional documentation as required by the director. An
16 applicant shall provide the department with a copy of the applicant's receipt under the Unified Carrier
17 Registration System Plan and Agreement under 49 U.S.C. §14504a (UCR) to prove the applicant is
18 currently registered under UCR if the applicant is required to register under UCR.

19 (ii) Upon approval of the application, the department will compute the
20 appropriate registration fees and notify the registrant.

21 (D) Fees. Upon receipt of the applicable fees in the form as provided by §209.23
22 of this title (relating to Methods of Payment), the department will issue one or two license plates and a
23 cab card for each vehicle registered.

TITLE 43. TRANSPORTATION

Adopted Section

Part 10. Texas Department of Motor Vehicles

Page 4 of 9

Chapter 217 – Vehicle Titles and Registration

1 (E) Display of License Plates and Cab Cards.

2 (i) The department will issue one license plate for a tractor, truck-
3 tractor, trailer, and semitrailer. The license plate issued to a tractor or a truck-tractor shall be installed
4 on the front of the tractor or truck-tractor, and the license plate issued for a trailer or semitrailer shall
5 be installed on the rear of the trailer or semitrailer.

6 (ii) The department will issue two license plates for all other vehicles
7 that are eligible to receive license plates under the IRP. Once the department issues two license plates
8 for a vehicle listed in this clause, one plate shall be installed on the front of the vehicle, and one plate
9 shall be installed on the rear of the vehicle.

10 (iii) The cab card shall be carried at all times in the vehicle in accordance
11 with the IRP. If the registrant chooses to display an electronic image of the cab card on a wireless
12 communication device or other electronic device, such display does not constitute consent for a peace
13 officer, or any other person, to access the contents of the device other than the electronic image of the
14 cab card.

15 (iv) The authority to display an electronic image of the cab card on a
16 wireless communication device or other electronic device does not prevent the Texas State Office of
17 Administrative Hearings or a court of competent jurisdiction from requiring the registrant to provide a
18 paper copy of the cab card in connection with a hearing, trial, or discovery proceeding.

19 (F) Audit. An audit of the registrant's vehicle operational records may be
20 conducted by the department according to the IRP provisions and the IRP Audit Procedures Manual.
21 Upon request, the registrant shall provide the operational records of each vehicle for audit in unit
22 number order, in sequence by date, and including, but not limited to, a summary of distance traveled by

TITLE 43. TRANSPORTATION

Adopted Section

Part 10. Texas Department of Motor Vehicles

Page 5 of 9

Chapter 217 – Vehicle Titles and Registration

1 each individual vehicle on a monthly, quarterly, and annual basis with distance totaled separately for
2 each jurisdiction in which the vehicle traveled.

3 (G) Assessment. The department may assess additional registration fees of up to
4 100% of the apportionable fees paid by the registrant for the registration of its fleet in the registration
5 year to which the records pertain, as authorized by the IRP, if an audit conducted under subparagraph
6 (F) of this paragraph reveals that:

7 (i) the operational records indicate that the vehicle did not generate
8 interstate distance in two or more member jurisdictions for the distance reporting period supporting the
9 application being audited, plus the six-month period immediately following that distance reporting
10 period;

11 (ii) the registrant failed to provide complete operational records; or

12 (iii) the distance must be adjusted, and the adjustment results in a
13 shortage of registration fees due Texas or any other IRP jurisdiction.

14 (H) Refunds. If an audit conducted under subparagraph (F) of this paragraph
15 reveals an overpayment of fees to Texas or any other IRP jurisdiction, the department will refund the
16 overpayment of registration fees in accordance with Transportation Code, §502.195 and the IRP. Any
17 registration fees refunded to a carrier for another jurisdiction will be deducted from registration fees
18 collected and transmitted to that jurisdiction.

19 (I) Cancellation or revocation. The director or the director's designee may cancel
20 or revoke a registrant's apportioned registration and all privileges provided by the IRP as authorized by
21 the following:

22 (i) the IRP; or

23 (ii) Transportation Code, Chapter 502.

TITLE 43. TRANSPORTATION

Adopted Section

Part 10. Texas Department of Motor Vehicles

Page 6 of 9

Chapter 217 – Vehicle Titles and Registration

1 (J) Procedures for assessment, cancellation, or revocation. [~~Enforcement of~~
2 ~~cancelled or revoked registration.~~]

3 (i) Notice. If a registrant is assessed additional registration fees, as
4 provided in subparagraph (G) of this paragraph, and the additional fees are not paid by the due date
5 provided in the notice or it is determined that a registrant's apportioned license plates and privileges
6 should be canceled or revoked, as provided in subparagraph (I) of this paragraph, the director or the
7 director's designee will mail a notice by certified mail to the last known address of the registrant. The
8 notice will state the facts underlying the assessment, cancellation, or revocation; the effective date of
9 the assessment, cancellation, or revocation; and the right of the registrant to request a conference as
10 provided in clause (ii) of this subparagraph.

11 (ii) Conference. A registrant may request a conference upon receipt of a
12 notice issued as provided by clause (i) of this subparagraph. The request must be made in writing to the
13 director or the director's designee within 30 days of the date of the notice. If timely requested, the
14 conference will be scheduled and conducted by the director or the director's designee at division
15 headquarters in Austin and will serve to abate the assessment, cancellation, or revocation unless and
16 until that assessment, cancellation, or revocation is affirmed or disaffirmed by the director or the
17 director's designee. In the event matters are resolved in the registrant's favor, the director or the
18 director's designee will mail the registrant a notice of withdrawal, notifying the registrant that the
19 assessment, cancellation, or revocation is withdrawn, and stating the basis for that action. In the event
20 matters are not resolved in the registrant's favor, the director or the director's designee will issue a
21 decision [~~ruling~~] reaffirming the department's assessment of additional registration fees or cancellation
22 or revocation of apportioned license plates and privileges. The registrant has the right to appeal in
23 accordance with clause (iii) of this subparagraph.

TITLE 43. TRANSPORTATION

Adopted Section

Part 10. Texas Department of Motor Vehicles

Page 7 of 9

Chapter 217 – Vehicle Titles and Registration

1 (iii) Appeal. If a conference held in accordance with clause (ii) of this
2 subparagraph fails to resolve matters in the registrant's favor, the registrant may submit an appeal
3 under §224.122 of this title (relating to Appeal of Decision Regarding Assessment, Cancellation, or
4 Revocation Under §217.56). An appeal will be governed by Chapter 224 of this title (relating to
5 Adjudicative Practice and Procedure) and Transportation Code, Chapter 502. [request an administrative
6 hearing. The request must be in writing and must be received by the director no later than the 20th day
7 following the date of the ruling issued under clause (ii) of this subparagraph. If requested within the
8 designated period, the hearing will be initiated by the department and will be conducted in accordance
9 with Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). Assessment,
10 cancellation, or revocation is abated unless and until affirmed or disaffirmed by order of the Board of
11 the Texas Department of Motor Vehicles or its designee.]

12 (K) Reinstatement.

13 (i) The director or the director's designee will reinstate apportioned
14 registration to a previously canceled or revoked registrant if all applicable fees and assessments due on
15 the previously canceled or revoked apportioned account have been paid and the applicant provides
16 proof of an acceptable recordkeeping system for a period of no less than 60 days.

17 (ii) The application for the following registration year will be processed
18 in accordance with the provisions of the IRP.

19 (L) Denial of apportioned registration for safety reasons. The department will
20 comply with the requirements of the Performance and Registration Information Systems Management
21 program (PRISM) administered by the Federal Motor Carrier Safety Administration (FMCSA).

22 (i) Denial or suspension of apportioned registration. Upon notification
23 from the FMCSA that a carrier has been placed out of service for safety violations, the department will:

TITLE 43. TRANSPORTATION

Adopted Section

Part 10. Texas Department of Motor Vehicles

Page 8 of 9

Chapter 217 – Vehicle Titles and Registration

- 1 (I) deny initial issuance of apportioned registration;
- 2 (II) deny authorization for a temporary cab card, as provided for
- 3 in subparagraph (M) of this paragraph;
- 4 (III) deny renewal of apportioned registration; or
- 5 (IV) suspend current apportioned registration.
- 6 (ii) Issuance after denial of registration or reinstatement of suspended
- 7 registration. The director or the director's designee will reinstate or accept an initial or renewal
- 8 application for apportioned registration from a registrant who was suspended or denied registration
- 9 under clause (i) of this subparagraph upon presentation of a Certificate of Compliance from FMCSA, in
- 10 addition to all other required documentation and payment of fees.
- 11 (M) Temporary cab card.
- 12 (i) Application. The department may authorize issuance of a temporary
- 13 cab card to a motor carrier with an established Texas apportioned account for a vehicle upon proper
- 14 submission of all required documentation, a completed application, and all fees for either:
- 15 (I) Texas title as prescribed by Transportation Code, Chapter 501
- 16 and Subchapter A of this chapter (relating to Motor Vehicle Titles); or
- 17 (II) registration receipt to evidence title for registration
- 18 purposes only (Registration Purposes Only) as provided for in Transportation Code, §501.029 and
- 19 §217.24 of this title (relating to Vehicle Last Registered in Another Jurisdiction).
- 20 (ii) Title application. A registrant who is applying for a Texas title as
- 21 provided for in clause (i)(I) of this subparagraph and is requesting authorization for a temporary cab
- 22 card, must submit to a Regional Service Center a photocopy of the title application receipt issued by the
- 23 county tax assessor-collector's office.

TITLE 43. TRANSPORTATION

Adopted Section

Part 10. Texas Department of Motor Vehicles

Page 9 of 9

Chapter 217 – Vehicle Titles and Registration

1 (iii) Registration Purposes Only. A registrant who is applying for
2 Registration Purposes Only under clause (i)(II) of this subparagraph and is requesting authorization for a
3 temporary cab card, must submit an application and all additional original documents or copies of
4 original documents required by the director to a Regional Service Center.

5 (iv) Department approval. On department approval of the submitted
6 documents, the department will send notice to the registrant to finalize the transaction and make
7 payment of applicable registration fees.

8 (v) Finalization and payment of fees. To finalize the transaction and
9 print the temporary cab card, the registrant may compute the registration fees through the
10 department's apportioned registration software application, TxIRP system, and:

11 (I) make payment of the applicable registration fees to the
12 department as provided by §209.23 of this title; and

13 (II) afterwards, mail or deliver payment of the title application
14 fee in the form of a check, certified cashier's check, or money order payable to the county tax assessor-
15 collector in the registrant's county of residency and originals of all copied documents previously
16 submitted.

17 (vi) Deadline. The original documents and payment must be received by
18 the Regional Service Center within 72-hours after the time that the office notified the registrant of the
19 approval to print a temporary cab card as provided in clause (iv) of this subparagraph.

20 (vii) Failure to meet deadline. If the registrant fails to submit the original
21 documents and required payment within the time prescribed by clause (vi) of this subparagraph, the
22 registrant's privilege to use this expedited process to obtain a temporary cab card will be denied by the
23 department for a period of six months from the date of approval to print the temporary cab card.

Choose an item. **Meeting Date: 4/11/2024**
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Jimmy Archer, Motor Carrier Division Director
Agenda Item: 12
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 Cleanup)

RECOMMENDATION

Action Item. Adopt proposed amendments to and repeals of sections in 43 Texas Administrative Code (TAC) Chapter 218 with an effective date of June 1, 2024.

PURPOSE AND EXECUTIVE SUMMARY

The amendments and repeals are necessary to clean up the rule text. The amendments also refer to proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure). The language from certain amended sections and the repealed sections would be incorporated into proposed new Chapter 224 with some modifications. This rule item is submitted to the board concurrently with a rule item to adopt new Chapter 224, which would consolidate all department contested case rules into one chapter.

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 amendments and repeals. There will be no significant impact on local employment or the local economy as a result of the amendments and repeals.

BACKGROUND AND DISCUSSION

The amendments and repeals are necessary to do the following:

1. clean up the language;
2. delete certain language regarding adjudicative practice and procedure;
3. refer to new Chapter 224 of this title (relating to Adjudicative Practice and Procedure);
4. make rule text consistent with statute, current practice, and the department's rules; and
5. clarify language.

Proposed amendments to and repeals of sections in Chapter 218 were published for comment in the December 29, 2023, issue of the *Texas Register*. The department did not receive any comments on the proposal.

If the board adopts the amendments and repeals during its April 11, 2024, open meeting, staff anticipates:

- Publication in the April 26, 2024, issue of the *Texas Register*; and
- An effective date of June 1, 2024.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

ADOPTION 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) adopts 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. The department adopts §§218.16, 218.64, and 218.70 with changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8267). Sections 218.16, 218.64, and 218.70 will be republished. The department adopts §§218.16, 218.64, and 218.70 with nonsubstantive changes: for clarity, the department changed the order of the citations to new adopted Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and chapters in the Transportation Code.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 2 of 5

Chapter 218 – Motor Carriers

1 The department adopts §§218.10, 218.33, 218.71, and 218.72 without changes to the proposed
2 text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8267). These rules will
3 not be republished.

4 The department adopts the repeal of 43 TAC Subchapter F, Enforcement, §§218.73, 218.75,
5 218.76, 218.77, and 218.78.

6 The adopted amendments delete certain language regarding adjudicative practice and procedure
7 and refer to new Chapter 224 of this title. In this issue of the *Texas Register*, the department adopts new
8 Chapter 224, which includes all department adjudicative practice and procedure rules in one chapter. The
9 adopted amendments also make the terminology consistent with statute and current practice.

10 **REASONED JUSTIFICATION.** The adopted amendment to §218.10 replaces the word “accident” with
11 “accidental” to be consistent with the terminology in Transportation Code, §643.106.

12 An adopted amendment to §218.16(d)(6) replaces the reference to orders issued or adopted by
13 the department regarding self-insured status with a reference to the department’s approval letter. When
14 the department grants an applicant self-insured status under §218.16(d) and Transportation Code,
15 §643.102, the department issues an approval letter that contains the scope and terms of the approval,
16 including maintenance requirements. Also, an adopted amendment to §218.16(d) clarifies the scope of
17 the reasons for which self-insured status could be revoked by referring to the applicable requirements
18 under §218.16, instead of the requirements under §218.16(d)(6). In addition, an adopted amendment to
19 §218.16(d)(6) states that the revocation of self-insured status will be governed by adopted new Chapter
20 224 of this title and Transportation Code, Chapter 643. The department adopts §218.16(d)(6) with
21 nonsubstantive changes to the text at adoption that reverse the order of the citations in the last sentence
22 for clarity and readability.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 3 of 5

Chapter 218 – Motor Carriers

1 Adopted amendments to §218.16(d)(7) delete reference to revocation of self-insured status and
2 modify the catch line to indicate this change because revocations are addressed in §218.16(d)(6).
3 Revocations are treated differently than a denial of an application for self-insured status under adopted
4 new Chapter 224 of this title. Government Code, §2001.054 authorizes this distinction between the two
5 actions and the applicable procedures. An adopted amendment to §218.16(d)(7) also replaces the term
6 “self-insurance status” with “self-insured status” to be consistent with the terminology in §218.16(d). In
7 addition, adopted amendments to §218.16(d)(7) reference adopted new §224.126 of this title (relating to
8 Appeal of a Denial of Self-Insured Status) regarding the filing of an appeal of a denial of an application for
9 self-insured status, and clarify that the applicant must file an appeal, rather than a petition for an
10 administrative hearing. Further, an adopted amendment to §218.16(d)(7) deletes the reference to
11 Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). In this issue of the
12 *Texas Register*, the department adopts amendments that repeal Subchapter D of Chapter 206 and replace
13 it with provisions in adopted new Chapter 224 of this title.

14 The adopted amendment to §218.16(h) replaces the word “accidents” with “collisions” to be
15 consistent with terminology in Transportation Code, §643.105 as amended by House Bill 2190, 88th Texas
16 Legislature, Regular Session (2023).

17 The adopted amendments to §218.33 replace the reference to Subchapter F of Chapter 218 with
18 a reference to adopted new Chapter 224, which includes all department adjudicative practice and
19 procedure rules in one chapter.

20 The adopted amendments to §218.64(c)(7) replace the prior procedure for the rejection of a
21 collective ratemaking agreement under Transportation Code, §643.154 with a new procedure that is
22 governed by adopted new Chapter 224. Department staff do not recall having any hearings in the history
23 of the department regarding the rejection of a collective ratemaking agreement, which may be because

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 4 of 5

Chapter 218 – Motor Carriers

1 the requirements for an acceptable collective ratemaking agreement are minimal. The adopted
2 amendments to §218.64(c)(7) provide for greater flexibility in the procedure for these cases and make the
3 procedure consistent with Transportation Code, §643.154 and other contested cases under
4 Transportation Code, Chapter 643 to the extent applicable. The department adopts §218.64(c)(7) with
5 nonsubstantive changes to the text at adoption that reverse the order of the citations for clarity and to
6 improve readability.

7 The adopted amendment to the heading for Subchapter F of Chapter 218 makes the heading
8 consistent with the amendments and repeals in Subchapter F that change the scope of the subchapter.
9 Adopted amendments to §218.70 make the section consistent with the amendments to and repeals of
10 sections within Subchapter F. Also, an adopted amendment to §218.70 references the assessment of civil
11 penalties under §218.71 in certain cases under federal law regarding the interstate movement of
12 household goods. In addition, an adopted amendment to §218.70 states that the enforcement actions
13 under Chapter 218 are governed by adopted new Chapter 224 of this title and Transportation Code,
14 Chapters 643 and 645, as applicable.

15 Further, an adopted amendment to §218.70 deletes reference to Transportation Code, Chapter
16 648 regarding foreign commercial motor transportation because the department enforces the insurance
17 requirements under Transportation Code, Chapter 643, rather than Chapter 648. Transportation Code,
18 §643.101(b) requires the department by rule to set the amount of liability insurance required for a motor
19 carrier at an amount that does not exceed the amount required under a federal regulation adopted under
20 49 U.S.C. §13906(a)(1). The insurance requirements in 49 C.F.R. Part 387 were adopted under 49 U.S.C.
21 §13906. The department adopted the insurance requirements in Subchapter G of Chapter 218 under
22 Transportation Code, §643.101(b). Also, Transportation Code, Chapter 648 does not provide the
23 department with enforcement authority. Sections in Transportation Code, Chapter 643 provide the

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 5 of 5

Chapter 218 – Motor Carriers

1 department with enforcement authority, such as §§643.251, 643.252, 643.2525, 643.254, and 643.256.
2 The department adopts §218.70 with nonsubstantive changes to the text at adoption that reverse the
3 order of the citations in the last sentence for clarity and readability.

4 The adopted amendments to §218.71 delete subsections (b) and (d) and re-letter the section
5 accordingly. In this issue of the *Texas Register*, the department adopts new Chapter 224, which includes
6 new §224.115 of this title (relating to Administrative Penalty and Sanction Assessment; Probation of
7 Suspension), which contains the language found in deleted §218.71(b). Chapter 224 also includes new
8 §224.116 of this title (relating to Administrative Proceedings), which contains a modified version of
9 deleted §218.71(d).

10 The adopted amendments to §218.72(a) add language regarding the department's authority to
11 deny a certificate of registration to a motor carrier under Transportation Code, §643.252, as well as the
12 department's authority to place on probation a motor carrier whose registration is suspended. Also, an
13 adopted amendment to §218.72(a) changes the word "for" to "on."

14 Adopted amendments to §218.72 delete subsection (c) and re-letter the section accordingly. In
15 this issue of the *Texas Register*, the department adopts new Chapter 224, which includes new §224.115
16 of this title (relating to Administrative Penalty and Sanction Assessment; Probation of Suspension), which
17 contains a modified version of the language found in deleted §218.72(c) regarding the probation of any
18 suspension ordered under Transportation Code, §643.252.

19 The department adopts the repeal of the following sections: §§218.73, 218.75, 218.76, 218.77,
20 and 218.78. In this issue of the *Texas Register*, the department adopts new Chapter 224, which includes
21 the language from these repealed sections with some modifications.

22 SUMMARY OF COMMENTS.

23 No comments on the proposed amendments and repeals were received.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 1 of 22

Chapter 218 – Motor Carriers

SUBCHAPTER B. MOTOR CARRIER REGISTRATION**43 TAC §218.10 AND §218.16**

STATUTORY AUTHORITY. The department adopts the amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.101(b), which requires the department by rule to set the amount of liability insurance required for a motor carrier at an amount that does not exceed the amount required under a federal regulation adopted under 49 U.S.C. §13906(a)(1); Transportation Code, §643.102, which authorizes a motor carrier to comply with the requirements under Transportation Code, §643.101 through self-insurance if it complies with the requirements; Transportation Code, §643.2525, which provides the administrative hearing process under Transportation Code, Chapter 643; Transportation Code, Section 648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387 that require motor carriers operating foreign commercial motor vehicles in this state to maintain financial responsibility; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The amendments implement Transportation Code, Chapters 643 and 648; and Government Code, Chapter 2001.

23

TITLE 43. TRANSPORTATION

Part 10. Texas Department of Motor Vehicles

Chapter 218 – Motor Carriers

1 Text.

2 §218.10. Purpose.

3 Transportation Code, Chapter 643, provides that a motor carrier may not operate a commercial
4 motor vehicle or transport household goods on a for-hire basis on a road or highway of this state unless
5 the carrier registers with the department or is exempt from registration under Transportation Code,
6 §643.002. This subchapter prescribes the procedures by which a motor carrier, leasing business, or for-
7 hire transporter of household goods may register, and sets out minimum insurance requirements and
8 minimum workers' compensation or accidental [~~accident~~] insurance requirements.

9

10 §218.16. Insurance Requirements.

11 (a) Automobile liability insurance requirements. A motor carrier must file proof of commercial
12 automobile liability insurance with the department on a form acceptable to the director for each vehicle
13 required to be registered under this subchapter. The motor carrier must carry and maintain automobile
14 liability insurance that is combined single limit liability for bodily injury to or death of an individual per
15 occurrence, loss or damage to property (excluding cargo) per occurrence, or both. Extraneous
16 information will not be considered acceptable, and the department may reject proof of commercial
17 automobile liability insurance if it is provided in a format that includes information beyond what is
18 required. Minimum insurance levels are indicated in the following table. However, a motor carrier that
19 operates a foreign commercial motor vehicle must comply with the minimum level of financial
20 responsibility in 49 C.F.R. Part 387 to the extent Part 387 prescribes a higher level of financial
21 responsibility than the following table. The department adopts by reference 49 C.F.R. Part 387. Effective
22 October 23, 2015, the department adopts by reference the amendments to 49 C.F.R. Part 387 with an
23 effective date of October 23, 2015.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 3 of 22

Chapter 218 – Motor Carriers

1 [Attached Graphic](#)

2 (b) Cargo insurance. Household goods carriers shall file and maintain with the department proof
3 of financial responsibility.

4 (1) The minimum limits of financial responsibility for a household goods carrier for hire
5 is \$5,000 for loss or damage to a single shipper's cargo carried on any one motor vehicle.

6 (2) The minimum limits of financial responsibility for a household goods carrier for hire
7 is \$10,000 for aggregate loss or damage to multiple shipper cargo carried on any one motor vehicle. In
8 cases in which multiple shippers sustain damage and the aggregate amount of cargo damage is greater
9 than the cargo insurance in force, the insurance company shall prorate the benefits among the shippers
10 in relationship to the damage incurred by each shipper.

11 (c) Workers' compensation or accidental insurance coverage.

12 (1) A motor carrier that is required to register under this subchapter and whose primary
13 business is transportation for compensation or hire between two or more incorporated cities, towns, or
14 villages shall provide workers' compensation for all its employees or accidental insurance coverage in
15 the amounts prescribed in paragraph (2) of this subsection.

16 (2) Accidental insurance coverage required by paragraph (1) of this subsection shall be
17 at least in the following amounts:

18 (A) \$300,000 for medical expenses and coverage for at least 104 weeks;

19 (B) \$100,000 for accidental death and dismemberment, including 70 percent of
20 employee's pre-injury income for not less than 104 weeks when compensating for loss of income; and

21 (C) \$500 for the maximum weekly benefit.

22 (d) Qualification of motor carrier as self-insured.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 4 of 22

Chapter 218 – Motor Carriers

1 (1) General qualifications. A motor carrier may meet the insurance requirements of
2 subsections (a) and (b) of this section by filing an application, in a form prescribed by the department, to
3 qualify as a self-insured. The application must include a true and accurate statement of the motor
4 carrier's financial condition and other evidence that establishes its ability to satisfy obligations for bodily
5 injury and property damage liability without affecting the stability or permanency of its business. The
6 department may accept USDOT evidence of the motor carrier's qualifications as a self-insured.

7 (2) Applicant guidelines. In addition to filing an application as prescribed by the
8 department, an applicant for self-insured status must submit materials that will allow the department to
9 determine the following information.

10 (A) Applicant's net worth. An applicant's net worth must be adequate in relation
11 to the size of its operations and the extent of its request for self-insurance authority. The applicant must
12 demonstrate that it can and will maintain an adequate net worth.

13 (B) Self-insurance program. An applicant must demonstrate that it has
14 established and will maintain a sound insurance program that will protect the public against all claims
15 involving motor vehicles to the same extent as the minimum security limits applicable under this
16 section. In determining whether an applicant is maintaining a sound insurance program, the department
17 will consider:

18 (i) reserves;

19 (ii) sinking funds;

20 (iii) third-party financial guarantees;

21 (iv) parent company or affiliate sureties;

22 (v) excess insurance coverage; and

23 (vi) other appropriate aspects of the applicant's program.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 5 of 22

Chapter 218 – Motor Carriers

1 (C) Safety program. An applicant must submit evidence of substantial
2 compliance with the federal motor carrier safety regulations as adopted by the Texas Department of
3 Public Safety and with Transportation Code, Chapter 644.

4 (3) Other securities or agreements. The department may accept an application for
5 approval of a security or agreement if satisfied that the security or agreement offered will adequately
6 protect the public.

7 (4) Periodic reports. An applicant shall file annual statements, semi-annual and quarterly
8 reports, and any other reports required by the department reflecting the applicant's financial condition
9 and the status of its self-insurance program while the motor carrier is self-insured.

10 (5) Duration and coverage of self-insured status. The department may approve an
11 applicant as a self-insured for any specific time or for an indefinite time. An approved self-insured status
12 only applies to the type of cargo that the applicant reported to the department in the application for
13 self-insured status.

14 (6) Revocation of self-insured status. On receiving evidence that a self-insured motor
15 carrier's financial condition has changed, that its safety program or record is inadequate, or that it is
16 otherwise not in compliance with this subchapter, the department may at any time require the self-
17 insured to provide additional information. On 10 days' notice from the department, the self-insured
18 shall appear and demonstrate that it continues to have adequate financial resources to pay all claims
19 involving motor vehicles for bodily injury and property damage liability. The self-insured shall also
20 demonstrate that it remains in compliance with the requirements of this section and of any active self-
21 insurance requirements included in the department's approval letter. [~~orders issued or adopted by the~~
22 ~~department.~~] If an applicant fails to comply with the applicable requirements under this section, [~~this~~
23 ~~paragraph,~~] its self-insured status may be revoked. The revocation of self-insured status will be

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 6 of 22

Chapter 218 – Motor Carriers

1 governed by Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and
2 Transportation Code, Chapter 643.

3 (7) Appeal of denial of application for self-insured status. An applicant may
4 appeal a denial [~~or revocation~~] of self-insured [~~self insurance~~] status by filing an appeal [~~a petition for an~~
5 ~~administrative hearing~~] in accordance with §224.126 of this title (relating to Appeal of a Denial of Self-
6 Insured Status). [~~Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases).~~]

7 (e) Filing proof of insurance with the department.

8 (1) Forms.

9 (A) A motor carrier shall file and maintain proof of automobile liability insurance
10 for all vehicles required to be registered under this subchapter at all times. This proof shall be filed on a
11 form acceptable to the director.

12 (B) A household goods carrier shall also file and maintain proof of cargo
13 insurance for its cargo at all times. This proof shall be on a form acceptable to the director.

14 (2) Filing proof of insurance. A motor carrier's insurer shall file and maintain proof of
15 insurance on a form acceptable to the director:

16 (A) at the time of the original application for motor carrier certificate of
17 registration;

18 (B) on or before the cancellation date of the insurance coverage as described in
19 subsection (f) of this section;

20 (C) when the motor carrier changes insurers;

21 (D) when the motor carrier asks to retain the certificate number of a revoked
22 certificate of registration;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 7 of 22

Chapter 218 – Motor Carriers

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.

1 (h) Insolvency of insurance carrier. If the insurer of a motor carrier becomes insolvent or
2 becomes involved in a receivership or other insolvency proceeding, the motor carrier must file an
3 affidavit with the department. The affidavit must be executed by an owner, partner, or officer of the
4 motor carrier and show that:

5 (1) no collisions [~~accidents~~] have occurred and no claims have arisen during the
6 insolvency of the insurance carrier; or

7 (2) all claims have been satisfied.

8

9

SUBCHAPTER C. RECORDS AND INSPECTIONS

10

43 TAC §218.33

11

STATUTORY AUTHORITY. The department adopts the amendments under Transportation Code,

12

§643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter

13

643; Transportation Code, §643.251, which authorizes the department to impose an administrative

14

penalty against a motor carrier required to register under Subchapter B of Transportation Code, Chapter

15

643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation Code,

16

§643.252, which authorizes the department to suspend, revoke, or deny a registration issued under

17

Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is

18

suspended; Transportation Code, §643.2525, which provides the administrative hearing process under

19

Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to

20

adopt rules that are necessary and appropriate to implement the powers and duties of the department

21

under the Transportation Code and other laws of this state; Government Code, §2001.004, which

22

requires state agencies to adopt rules of practice stating the nature and requirements of all available

23

formal and informal procedures; Government Code, §2001.054, which specifies the requirements

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 9 of 22

Chapter 218 – Motor Carriers

1 regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and
2 the statutory authority referenced throughout this preamble and in the rule text, which is incorporated
3 herein by reference.

4 **CROSS REFERENCE TO STATUTE.** The amendments implement Transportation Code, Chapters 643 and
5 645; and Government Code, Chapter 2001.

6
7 Text.

8 §218.33. Enforcement.

9 A motor carrier who fails or refuses to permit an inspection, fails to maintain and make available
10 the requisite records, or otherwise fails to comply with the requirements of this subchapter commits a
11 violation subject to enforcement under Chapter 224 of this title (relating to Adjudicative Practice and
12 Procedure). [~~Subchapter F of this chapter (relating to Enforcement).~~]

13

14 **SUBCHAPTER E. CONSUMER PROTECTION**

15 **43 TAC §218.64**

16 **STATUTORY AUTHORITY.** The department adopts the amendments under Transportation Code,
17 §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter
18 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a
19 registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose
20 registration is suspended; Transportation Code, §643.2525, which provides the administrative hearing
21 process under Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the
22 board to adopt rules that are necessary and appropriate to implement the powers and duties of the
23 department under the Transportation Code and other laws of this state; Government Code, §2001.004,

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 10 of 22

Chapter 218 – Motor Carriers

1 which requires state agencies to adopt rules of practice stating the nature and requirements of all
2 available formal and informal procedures; Government Code, §2001.054, which specifies the
3 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
4 a license; and the statutory authority referenced throughout this preamble and in the rule text, which is
5 incorporated herein by reference.

6 **CROSS REFERENCE TO STATUTE.** The amendments implement Transportation Code, Chapter 643; and
7 Government Code, Chapter 2001.

8

9 Text.

10 §218.64. Rates.

11 (a) **Rate-making.** A household goods carrier and/or its household goods agent shall set maximum
12 rates and charges for services in its applicable tariff. The household goods carrier and/or its household
13 goods agent shall disclose the maximum rates and charges to prospective shippers before transporting a
14 shipment between two incorporated cities.

15 (b) **Prohibited charges and allowances.** A household goods carrier and/or its household goods
16 agent shall not charge more than the maximum charges published in its tariff on file with the
17 department for services associated with transportation between two incorporated cities.

18 (c) **Collective ratemaking agreements.**

19 (1) **Eligibility.** In accordance with Transportation Code, §643.154, a household goods
20 carrier and/or its household goods agent may enter into collective ratemaking agreements between one
21 or more other household goods carriers or household goods agents concerning the establishment and
22 filing of maximum rates and charges, classifications, rules, or procedures.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 11 of 22

Chapter 218 – Motor Carriers

1 (2) Designation of collective ratemaking associations. An approved association may be
2 designated by a member household goods carrier as its collective ratemaking association for the
3 purpose of filing a tariff containing maximum rates and charges required by §218.65 of this title (relating
4 to Tariff Registration).

5 (3) Submission. In accordance with Transportation Code, §643.154, a collective
6 ratemaking agreement shall be filed with the department for approval. The agreement shall include the
7 following information:

8 (A) full and correct name, business address (street and number, city, state and
9 zip code), and phone number of the association;

10 (B) whether the association is a corporation or partnership; and

11 (i) if a corporation, the government, state, or territory under the laws of
12 which the applicant was organized and received its present charter; and

13 (ii) if an association or a partnership, the names of the officers or
14 partners and date of formation;

15 (C) full and correct name and business address (city and state) of each
16 household goods carrier on whose behalf the agreement is filed and whether it is an association, a
17 corporation, an individual, or a partnership;

18 (D) the name, title, and mailing address of counsel, officer, or other person to
19 whom correspondence in regard to the agreement should be addressed; and

20 (E) a copy of the constitution, bylaws, or other documents or writings, specifying
21 the organization's powers, duties, and procedures.

22 (4) Signature. The collective ratemaking agreement shall be signed by all parties subject
23 to the agreement or the association's executive officer.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 12 of 22

Chapter 218 – Motor Carriers

1 (5) Incomplete agreement. If the department receives an agreement which does not
2 comply with this subsection, the department will send a letter to the individual submitting the
3 agreement. The letter shall identify the information that is missing and advise the association that the
4 agreement will not be processed until the information is received.

5 (6) Approval. In accordance with Transportation Code, §643.154, the director or
6 designee will approve a collective ratemaking agreement if the agreement provides that:

7 (A) all meetings are open to the public; and

8 (B) notice of meetings shall be sent to shippers who are multiple users of
9 household good carriers.

10 (7) Noncompliance. If the director or the director's designee determines that an
11 agreement does not comply with paragraph (6) of this subsection, the matter will be governed by
12 Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code,
13 Chapter 643.

14 ~~[(A) If the director or designee determines that an agreement does not comply~~
15 ~~with paragraph (6) of this subsection, the department will notify the association representative by~~
16 ~~certified mail of:]~~

17 ~~[(i) the specific reason that an agreement is not being approved; and]~~

18 ~~[(ii) the hearing date.]~~

19 ~~[(B) If the association representative resubmits an acceptable agreement which~~
20 ~~meets the requirements of paragraph (6) of this subsection within 10 business days prior to the hearing~~
21 ~~date, the hearing will be canceled and the agreement will be approved. The State Office of~~
22 ~~Administrative Hearings (SOAH) shall conduct the hearing in accordance with Chapter 206, Subchapter D~~
23 ~~of this title (relating to Procedures in Contested Cases).]~~

1 ~~[(C) If the hearing is held, the presiding officer shall explain the reason(s) that~~
2 ~~the agreement was rejected. The association representative will be allowed to respond to the objections~~
3 ~~and present evidence or exhibits which relate to his or her response. The hearing examiner, based on~~
4 ~~the evidence provided, will make a recommendation to the board whether the agreement should be~~
5 ~~approved or resubmitted. The association representative shall be advised of the examiner's~~
6 ~~recommendation. The final order will be submitted to the board for approval.]~~

7 (8) New parties to an agreement. An updated agreement shall be filed with the
8 department as new parties are added.

9 (9) Amendments to approved agreements. Amendments to approved agreements
10 (other than as to new parties) may become effective only after approval of the department.

11

12

SUBCHAPTER F. ENFORCEMENT

13

43 TAC §§218.70–218.78

14

STATUTORY AUTHORITY. The department adopts the amendments and repeals under Transportation
15 Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code,
16 Chapter 643; Transportation Code, §643.251, which authorizes the department to impose an
17 administrative penalty against a motor carrier required to register under Subchapter B of Transportation
18 Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation
19 Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under
20 Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended;
21 Transportation Code, §643.2525, which provides the administrative hearing process under Transportation
22 Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to appeal the denial
23 of an application for registration, renewal of registration, or reregistration under Transportation Code,

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 14 of 22

Chapter 218 – Motor Carriers

1 Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are
2 necessary and appropriate to implement the powers and duties of the department under the
3 Transportation Code and other laws of this state; Government Code, §2001.004, which requires state
4 agencies to adopt rules of practice stating the nature and requirements of all available formal and informal
5 procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial,
6 renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority
7 referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

8 **CROSS REFERENCE TO STATUTE.** The amendments and repeals implement Transportation Code, Chapters
9 643 and 645; and Government Code, Chapter 2001.

10

11 Text.

12 §218.70. Purpose.

13 The purpose of this subchapter is to provide for administrative penalties and sanctions under
14 Transportation Code, Chapters 643 and 645, as well as the probation of the suspension of a motor
15 carrier's certificate of registration. This subchapter also provides for the assessment of civil penalties in
16 certain cases under federal law regarding the interstate movement of household goods. The
17 enforcement actions under this chapter are governed by Chapter 224 of this title (relating to
18 Adjudicative Practice and Procedure) and Transportation Code, Chapters 643 and 645, as applicable. [an
19 efficient and effective system of enforcement of Transportation Code, Chapters 643, 645, and 648, by
20 establishing procedures for the assessment of administrative penalties; the suspension, revocation, and
21 denial of motor carrier registration and leasing business registration; cease and desist orders; and
22 probation of the suspension of a motor carrier's certificate of registration.]

23

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 15 of 22

Chapter 218 – Motor Carriers

1 §218.71. Administrative Penalties.

2 (a) Authority. The department, after notice and opportunity for hearing, may impose an

3 administrative penalty against the following:

4 (1) a motor carrier that violates a provision of Transportation Code, Chapter 643 or

5 Chapter 645 or violates a rule or order adopted under Transportation Code, Chapter 643 or Chapter 645;

6 or

7 (2) a motor carrier or broker that violates a federal law or regulation, the enforcement

8 of which has been delegated to the department.

9 ~~[(b) Amount of administrative penalty for violations of state laws, rules, or orders.]~~

10 ~~[(1) In an action brought by the department, the aggregate amount of administrative~~

11 ~~penalty shall not exceed \$5,000 unless it is found that the motor carrier knowingly committed a~~

12 ~~violation.]~~

13 ~~[(2) In an action brought by the department, if it is found that the motor carrier~~

14 ~~knowingly committed a violation, the aggregate amount of administrative penalty shall not exceed~~

15 ~~\$15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation, or~~

16 ~~acting with deliberate ignorance of or reckless disregard for the violation involved. Actual awareness~~

17 ~~may be inferred from the conduct of the alleged violator or from the history of previous violations by~~

18 ~~the alleged violator.]~~

19 ~~[(3) In an action brought by the department, if it is found that the motor carrier~~

20 ~~knowingly committed multiple violations, the aggregate amount of administrative penalty for the~~

21 ~~multiple violations shall not exceed \$30,000.]~~

22 ~~[(4) Each day a violation continues or occurs is a separate violation for purposes of~~

23 ~~imposing an administrative penalty.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 16 of 22

Chapter 218 – Motor Carriers

1 **(b)** ~~[(e)]~~ Memorandum of Agreement. Pursuant to a Memorandum of Agreement between the
2 department and the Federal Motor Carrier Safety Administration, United States Department of
3 Transportation, the department is authorized to initiate an enforcement action and assess civil penalties
4 against a motor carrier or broker, as applicable, under the authority of the following:

5 (1) 49 U.S.C. §§13702, 13704, 13707(b), 13901, 14104(b), 14706(f), 14708, 14710,
6 14901(d)(2) and (3), 14901(e), and 14915, as amended;

7 (2) 49 C.F.R. §§366.4, 370.3-370.9, 371.3(c), 371.7, 371.105, 371.107, 371.109, 371.111,
8 371.113, 371.115, 371.117, 371.121, 373.201, Part 375, §§378.3 - 378.9, 387.301(b), 387.307, 387.403,
9 and Part 386 Appendix B(g)(22) - (23), as amended; and

10 (3) any future delegations pursuant to 49 U.S.C. §14710.

11 ~~[(d) Enforcement process for federal laws and regulations. The department will follow the~~
12 ~~process set forth in Transportation Code, §643.2525 when enforcing the federal laws and regulations~~
13 ~~cited in subsection(c) of this section via an administrative proceeding.]~~

14

15 §218.72. Administrative Sanctions.

16 (a) Grounds for suspension, ~~and~~ revocation, denial, and probation. Transportation Code,
17 §643.252 provides the grounds on ~~for~~ which the department can suspend, ~~or~~ revoke, or deny a
18 certificate of registration issued under Transportation Code, Chapter 643. Transportation Code,
19 §643.252 also provides the grounds on which the department can place on probation a motor carrier
20 whose registration is suspended.

21 (b) Department of Public Safety enforcement recommendations.

22 (1) The department may suspend or revoke a certificate of registration of a motor
23 carrier upon a written request by the Department of Public Safety, if a motor carrier:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 17 of 22

Chapter 218 – Motor Carriers

1 (A) has an unsatisfactory safety rating under 49 C.F.R., Part 385; or
2 (B) has multiple violations of Transportation Code, Chapter 644, a rule adopted
3 under that chapter, or Transportation Code, Title 7, Subtitle C.

4 (2) A request under paragraph (1) of this subsection must include documentation
5 showing the violation.

6 (c) [~~Probation.~~]

7 [~~(1) The department may probate any suspension ordered under this section.~~]

8 [~~(2) In determining whether to probate a suspension, the department will review:~~]

9 [~~(A) the seriousness of the violation;~~]

10 [~~(B) prior violations by the motor carrier;~~]

11 [~~(C) whether the department has previously probated a suspension for the
12 motor carrier;~~]

13 [~~(D) cooperation by the motor carrier in the investigation and enforcement
14 proceeding; and~~]

15 [~~(E) the ability of the motor carrier to correct the violations.~~]

16 [(3) The department shall set the length of the probation based on the seriousness of
17 the violation and previous violations by the motor carrier.]

18 [(4) The department will require that the motor carrier report monthly to the
19 department any information necessary to determine compliance with the terms of the probation.]

20 [(5) The department may revoke the probation and order the initial suspension and
21 administrative penalty if the motor carrier fails to abide by any terms of the probation.]

22 [(d)] Refund.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 18 of 22

Chapter 218 – Motor Carriers

1 (1) The department may order a motor carrier that violates Transportation Code
2 Chapter 643, department rules, or a department order adopted under Transportation Code Chapter 643
3 to issue a refund to a customer who paid the motor carrier to transport household goods.

4 (2) Under this subsection, a refund is the return of any percentage of funds paid, or
5 contracted to be paid, to a motor carrier transporting household goods, whether those funds are
6 documented as a separate line item or included in the overall amount paid by a customer.

7 (A) A refund includes overpayments, fees paid for services not rendered, and
8 fees paid for charges not listed on the household mover's tariff after the household mover takes
9 possession of the customer's property.

10 (B) A refund does not include any consideration of damages or harm over the
11 amount paid by the customer.

12

13 [~~§218.73. Administrative Proceedings.~~]

14 [~~(a) If the department decides to take an enforcement action under §218.71 of this title (relating~~
15 ~~to Administrative Penalties) or §218.72 of this title (relating to Administrative Sanctions), the~~
16 ~~department shall give written notice to the motor carrier by first class mail to the carrier's address as~~
17 ~~shown in the records of the department.]~~

18 [(b) The notice required by subsection (a) of this section must include:]

19 [(1) a brief summary of the alleged violation;]

20 [(2) a statement of each sanction and/or penalty;]

21 [(3) the effective date of each sanction and/or penalty;]

22 [(4) a statement informing the carrier of the carrier's right to request a hearing;]

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 19 of 22

Chapter 218 – Motor Carriers

1 ~~[(5) a statement as to the procedure for requesting a hearing, including the period~~
2 ~~during which a request must be made; and]~~

3 ~~[(6) a statement that the proposed penalties and sanctions will take effect on the date~~
4 ~~specified in the letter if the motor carrier fails to request a hearing.]~~

5 ~~[(c) The motor carrier must submit a written request for a hearing to the address provided in the~~
6 ~~notice not later than the 26th day after the date the notice is mailed.]~~

7 ~~[(d) On receipt of the written request for a hearing the department will refer the matter to the~~
8 ~~State Office of Administrative Hearings. When the hearing is set, the department will give notice of the~~
9 ~~time and place of the hearing to the carrier.]~~

10 ~~[(e) If the motor carrier does not make a written request for a hearing or enter into a settlement~~
11 ~~agreement before the 27th day after the date the notice is mailed, the department's decision becomes~~
12 ~~final.]~~

13 ~~[(f) Except as provided by Transportation Code, Chapter 643 and this chapter, any proceeding at~~
14 ~~the State Office of Administrative Hearings is governed by Government Code, Chapter 2001 and 1 TAC~~
15 ~~Chapter 155, including the authority to informally dispose of the contested case by stipulation, agreed~~
16 ~~settlement, consent order, or default.]~~

17 ~~[(g) The department and the motor carrier may informally dispose of the enforcement action by~~
18 ~~entering into a settlement agreement or agreeing to stipulations at any time before the director issues a~~
19 ~~final order. However, the motor carrier must pay any penalty in full prior to the execution of a~~
20 ~~settlement agreement.]~~

21

22 ~~[\$218.75. Cost of Preparing Agency Record.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 20 of 22

Chapter 218 – Motor Carriers

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.]~~

4
5 ~~[\$218.76. Registration Suspension Ordered under Family Code.]~~

6 ~~[(a) On receipt of a final order issued under Family Code, §232.003, §232.008, or §232.009,~~
7 ~~regarding child support enforcement, the department will suspend:]~~

8 ~~[(1) a certificate of registration issued under Subchapter B of this chapter (relating to~~
9 ~~Motor Carrier Registration); or]~~

10 ~~[(2) the registration of an interstate motor carrier issued under §218.17 of this title~~
11 ~~(relating to Unified Carrier Registration System).]~~

12 ~~[(b) The department will charge an administrative fee of \$10 to a person whose registration is~~
13 ~~suspended under this section.]~~

14 ~~[(c) A suspension under this section does not require the department to give notice or otherwise~~
15 ~~follow the administrative process provided under §218.73 of this title (relating to Administrative~~
16 ~~Proceedings).]~~

17 ~~[(d) A registration suspended under this section may only be reinstated on receipt of an order~~
18 ~~issued under Family Code, §232.013.]~~

19
20 ~~[\$218.77. Cease and Desist Order.]~~

21 ~~[(a) The department may issue a cease and desist order to a respondent:]~~

22 ~~[(1) who engages or represents itself to be engaged in a motor carrier operation that is~~
23 ~~in violation of this chapter;]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 21 of 22

Chapter 218 – Motor Carriers

- 1 ~~[(2) to prevent a violation of this chapter; and]~~
- 2 ~~[(3) to protect the public health and safety.]~~
- 3 ~~[(b) The order shall:]~~
- 4 ~~[(1) be delivered by personal delivery or registered or certified mail, return receipt~~
- 5 ~~requested, to the person's or entities last known address; and]~~
- 6 ~~[(2) state the effective date of the order.]~~
- 7 ~~[(c) The department's cease and desist order is final, unless within ten days of the service of the~~
- 8 ~~order, the respondent files a written request for hearing to the department.]~~
- 9 ~~[(d) If a request for hearing is filed, the department shall initiate a contested case with the State~~
- 10 ~~Office of Administrative Hearing in accordance with Chapter 206, Subchapter D of this title (relating to~~
- 11 ~~Procedures in Contested Cases).]~~
- 12 ~~[(e) The cease and desist order shall remain in effect until the respondent comes into complete~~
- 13 ~~compliance with department directives and decisions, or unless otherwise provided by an order issued~~
- 14 ~~after final review by the department.]~~
- 15 ~~[(f) If respondent violates a cease and desist order, the department may:]~~
- 16 ~~[(1) impose an administrative penalty against the respondent; and]~~
- 17 ~~[(2) refer the matter to the appropriate authority to institute actions for:]~~
- 18 ~~[(A) an injunction against violation of the cease and desist order;]~~
- 19 ~~[(B) collection of any administrative penalty assessed by the department; and]~~
- 20 ~~[(C) any other remedy provided by law.]~~
- 21 ~~[(g) Nothing in this section precludes the department from imposing other administrative~~
- 22 ~~sanctions against the respondent while a cease and desist order is in effect.]~~
- 23

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 22 of 22

Chapter 218 – Motor Carriers

1 ~~[\$218.78. Appeal of Denial.]~~

2 ~~[(a) Pursuant to Transportation Code, §643.2526, an applicant may appeal the denial of an~~

3 ~~application for registration, renewal of registration, or reinstatement of registration.]~~

4 ~~[(b) The appeal will be governed by Chapter 206, Subchapter D of this title (relating to~~

5 ~~Procedures in Contested Cases), which includes §206.64 of this title (relating to Content of Petition).]~~

6 ~~[(c) The applicant's appeal will be considered untimely if it is not filed with the department by~~

7 ~~the 26th day after the date of the department's denial of the application. The department will not~~

8 ~~consider an untimely appeal.]~~

9 ~~[(d) An application that is considered to be withdrawn under Transportation Code, §643.055 is~~

10 ~~not a denial of an application for the purposes of an appeal under Transportation Code, §643.2526.]~~

Board Meeting Date: 4/11/2024
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Jimmy Archer, Motor Carrier Division Director
Agenda Item: 13
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)

RECOMMENDATION

Action Item. Adopt proposed amendments to and repeals of sections in 43 Texas Administrative Code (TAC) Chapter 219 with an effective date of June 1, 2024.

PURPOSE AND EXECUTIVE SUMMARY

Amendments and repeals are necessary to clean up the rule text. The amendments also refer to proposed new Chapter 224 of this title (relating to Adjudicative Practice and Procedure). The language from certain amended and repealed sections would be incorporated into new Chapter 224 with some modifications. This rule item is submitted to the board concurrently with a rule item to adopt new Chapter 224, which would consolidate all department contested case rules into one chapter.

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 amendments and repeals are necessary to do the following:

1. clean up the language;
2. delete certain language regarding adjudicative practice and procedure;
3. refer to new Chapter 224 of this title (relating to Adjudicative Practice and Procedure); and
4. make rule text consistent with statute and current practice.

Proposed amendments to and repeals of sections in Chapter 219 were published for comment in the December 29, 2023, issue of the *Texas Register*. The department did not receive any comments on the proposal.

If the board adopts the amendments and repeals during its April 11, 2024, open meeting, staff anticipates:

- Publication in the April 26, 2024, issue of the *Texas Register*; and
- An effective date of June 1, 2024.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 1 of 3

Chapter 219 – Oversize and Overweight Vehicles and Loads

1 **ADOPTION OF REVISIONS TO**
2 **SUBCHAPTER F. COMPLIANCE**
3 **§219.82**
4 **SUBCHAPTER H. ENFORCEMENT**
5 **§§219.120, 219.121 AND 219.126**
6 **REPEAL OF**
7 **SUBCHAPTER H. ENFORCEMENT**
8 **§§219.122, 219.124 AND 219.127**

9

10 **INTRODUCTION.** The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas
11 Administrative Code (TAC) Subchapter F, Compliance, §219.82; and Subchapter H, Enforcement,
12 §§219.120, 219.121 and 219.126. The department adopts amendments to §§219.82, 219.120, 219.121
13 and 219.126 without changes to the proposed text as published in the December 29, 2023, issue of the
14 *Texas Register* (48 TexReg 8274). The department also adopts the repeal of Subchapter H, Enforcement,
15 §§219.122, 219.124 and 219.127. The rules will not be republished.

16 The adopted amendments and repeals delete certain language regarding adjudicative practice
17 and procedure. In addition, amendments refer to adopted new Chapter 224 of this title (relating to
18 Adjudicative Practice and Procedure), which the department adopts in this issue of the *Texas Register*.
19 Adopted new Chapter 224 includes all department adjudicative practice and procedure rules in one
20 chapter.

21 **REASONED JUSTIFICATION.** Adopted amendments to §219.82 delete the word “enforcement” and add a
22 reference to adopted new Chapter 224, which applies to any adjudicative practice and procedure under
23 the department’s rules, including Chapter 219.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 2 of 3

Chapter 219 – Oversize and Overweight Vehicles and Loads

1 The adopted amendment to the heading for Subchapter H changes the heading from
2 “Enforcement” to “Administrative Penalties and Sanctions.” This amendment makes the heading for
3 Subchapter H consistent with the rules under Subchapter H because the amendments and repeals change
4 the contents of this subchapter.

5 The adopted amendments to §219.120 make the section consistent with the amendments to and
6 repeals of sections within Subchapter H. An adopted amendment to §219.120 also states that the
7 enforcement actions under this chapter are governed by adopted new Chapter 224 of this title (relating
8 to Adjudicative Practice and Procedure) and Transportation Code, Chapters 621 through 623 for clarity
9 and ease of reference.

10 Adopted amendments to §219.121 replace the language with a summary of the department’s
11 authority under Transportation Code, §623.271 to investigate and impose an administrative penalty or
12 revoke an oversize or overweight permit. An adopted amendment to §219.121 deletes subsection (a)
13 because it repeats the language found in Transportation Code, §623.271. It is not necessary to repeat
14 statutory language in rules. The adopted amendment to the title of §219.121 includes the word
15 “sanctions” and a reference to Transportation Code, §623.271 to address the expanded scope of §219.121
16 due to the amendments and to distinguish §219.121 from §219.126 of this title (relating to Administrative
17 Penalty for False Information on Certificate by a Shipper) regarding the administrative penalty under
18 Transportation Code, §623.272.

19 An adopted amendment to §219.121 deletes subsection (b) regarding the calculation of
20 administrative penalties under Transportation Code, §623.271. The language in deleted §219.121(b) is
21 addressed in adopted new §224.115 of this title (relating to Administrative Penalty and Sanction
22 Assessment; Probation of Suspension). In this issue of the *Texas Register*, the department adopts new
23 Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 3 of 3

Chapter 219 – Oversize and Overweight Vehicles and Loads

1 Adopted amendments to §219.126 cite to Transportation Code, §623.272 and modify the
2 language to summarize the department’s authority to investigate and impose an administrative penalty
3 under Transportation Code, §623.272. Also, an adopted amendment to §219.126 adds a comma to the
4 citation to Transportation Code, §623.274(b) for consistency with other department rules. Further, an
5 adopted amendment to §219.126 deletes subsection (b) because an amendment to §219.120 states that
6 the enforcement actions under Chapter 219 are governed by adopted new Chapter 224 of this title
7 (relating to Adjudicative Practice and Procedure) and Transportation Code, Chapters 621 through 623. In
8 addition, an adopted amendment to §219.126 deletes subsection (c) regarding the calculation of an
9 administrative penalty under §219.126. The language in deleted §219.126(c) is addressed in adopted new
10 §224.115 of this title (relating to Administrative Penalty and Sanction Assessment; Probation of
11 Suspension). In this issue of the *Texas Register*, the department adopts new Chapter 224 of this title
12 (relating to Adjudicative Practice and Procedure). Due to the deletions of §219.126(b) and (c), an adopted
13 amendment to §219.126 deletes “(a)” because there is only one subsection in §219.126.

14 The department adopts the repeal of §219.122. Section 219.122(a) repeats the language found in
15 Transportation Code, §623.271. It is not necessary to repeat statutory language in rules. Section
16 219.122(b) was not expressly authorized under Transportation Code, Chapter 623.

17 The department also adopts the repeal of §219.124 and §219.127. In this issue of the *Texas*
18 *Register*, the department adopts new Chapter 224, which includes the language from §219.124 and
19 §219.127 with some modifications.

20 SUMMARY OF COMMENTS.

21 No comments on the proposed amendments and repeals were received.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 1 of 9

Chapter 219 – Oversize and Overweight Vehicles and Loads

SUBCHAPTER F. COMPLIANCE**43 TAC §219.82**

STATUTORY AUTHORITY. The department adopts amendments under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et seq.*, which authorize the department to issue a permit for transporting poles required for the maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on a shipper who violates a provision under Transportation Code, §623.272 or §623.274, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under §623.272; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 2 of 9

Chapter 219 – Oversize and Overweight Vehicles and Loads

1 authority referenced throughout the preamble and in the rule text, which is incorporated herein by
2 reference.

3 **CROSS REFERENCE TO STATUTE.** The amendments implement Transportation Code, Chapters 621, 622,
4 and 623; and Government Code, Chapter 2001.

5
6 Text.

7 §219.82. Falsification of Information on Application and Permit.

8 (a) A person who provides false information on the permit application or another form required
9 by the department for the issuance of an oversize or overweight permit commits a violation of this
10 chapter and is subject to revocation of an oversize or overweight permit and the [enforcement]
11 provisions of Subchapter H of this chapter and Chapter 224 of this title (relating to Adjudicative Practice
12 and Procedure).

13 (b) A person violates this chapter if the person produces a counterfeit permit or alters a permit
14 issued by the department.

15

16 **SUBCHAPTER H. ENFORCEMENT**

17 **43 TAC §§219.120–219.122 AND 219.124–219.127**

18 **STATUTORY AUTHORITY.** The department adopts amendments and repeals under Transportation Code,
19 §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce
20 Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt
21 rules that are necessary to implement and enforce Transportation Code, Chapter 622, including
22 Transportation Code, §622.051, *et seq.*, which authorize the department to issue a permit for transporting
23 poles required for the maintenance of electric power transmission and distribution lines; Transportation

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 3 of 9

Chapter 219 – Oversize and Overweight Vehicles and Loads

1 Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce
2 Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to
3 impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation
4 Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code,
5 §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under
6 §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative
7 penalty on a shipper who violates a provision under Transportation Code, §623.272 or §623.274, and
8 states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the
9 imposition of an administrative penalty under §623.272; Transportation Code, §1002.001, which
10 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and
11 duties of the department under the Transportation Code and other laws of this state; Government Code,
12 §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements
13 of all available formal and informal procedures; Government Code, §2001.054, which specifies the
14 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
15 a license; and the statutory authority referenced throughout the preamble and in the rule text, which is
16 incorporated herein by reference.

17 **CROSS REFERENCE TO STATUTE.** The amendments and repeals implement Transportation Code, Chapters
18 621, 622, and 623; and Government Code, Chapter 2001.

19

20 Text.

21 §219.120. Purpose.

22 The purpose of this subchapter is to provide for administrative penalties and sanctions under
23 Transportation Code, Chapters 621 through 623. The enforcement actions under this chapter are

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 4 of 9

Chapter 219 – Oversize and Overweight Vehicles and Loads

1 governed by Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and
2 Transportation Code, Chapters 621 through 623. [~~an efficient and effective system of enforcement of~~
3 ~~Transportation Code, Chapters 621, 622, and 623 and the rules adopted under those chapters by setting~~
4 ~~out procedures for administrative penalties, revocation, and denial of oversize or overweight permits.]~~

5

6 §219.121. Administrative Penalties and Sanctions under Transportation Code, §623.271.

7 Transportation Code, §623.271 authorizes the department to investigate and impose an
8 administrative penalty or revoke an oversize or overweight permit issued under Transportation Code,
9 Chapter 623.

10 [(a) Authority. The department, after notice and opportunity for hearing, may impose an
11 administrative penalty against a person or the holder of the permit who:]

12 [(1) provides false information on a permit application or another form required by the
13 department concerning the issuance of an oversize or overweight permit;]

14 [(2) violates this chapter or Transportation Code, Chapters 621, 622, or 623;]

15 [(3) violates an order adopted under this chapter or Transportation Code, Chapters 621,
16 622, or 623; or]

17 [(4) fails to obtain an oversize or overweight permit that is required under this chapter
18 or Transportation Code, Chapters 621, 622, or 623.]

19 [(b) Amount of administrative penalty.]

20 [(1) In an action brought by the department, the aggregate amount of administrative
21 penalty shall not exceed \$5,000 unless it is found that the person or the holder of the permit knowingly
22 committed a violation.]

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 5 of 9

Chapter 219 – Oversize and Overweight Vehicles and Loads

1 ~~[(2) In an action brought by the department, if it is found that the person or the holder~~
2 ~~of the permit knowingly committed a violation, the aggregate amount of administrative penalty shall not~~
3 ~~exceed \$15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation,~~
4 ~~or 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 person or the holder~~
8 ~~of the permit knowingly committed multiple violations, the aggregate amount of administrative penalty~~
9 ~~for the 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 ~~[(5) Any recommendation that an administrative penalty should be imposed must be~~
13 ~~based on the following factors:]~~

14 ~~[(A) the seriousness of the violation, including the nature, circumstances, extent,~~
15 ~~and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or~~
16 ~~economic welfare of the public;]~~

17 ~~[(B) the economic harm to property or the environment caused by the~~
18 ~~violation;]~~

19 ~~[(C) the history of previous violations;]~~

20 ~~[(D) the amount necessary to deter future violations;]~~

21 ~~[(E) efforts made to correct the violation; and]~~

22 ~~[(F) any other matters that justice may require.]~~

23

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 6 of 9

Chapter 219 – Oversize and Overweight Vehicles and Loads

1

2 ~~[\$219.122. Administrative Sanctions.]~~3 ~~[(a) The department may revoke, suspend, or deny an oversize or overweight permit if the~~
4 ~~person or permit holder:]~~5 ~~[(1) provides false information on the permit application or another form provided to~~
6 ~~the department concerning the issuance of an oversize or overweight permit;]~~7 ~~[(2) violates this chapter or Transportation Code, Chapters 621, 622, or 623;]~~8 ~~[(3) violates an order adopted under this chapter or Transportation Code, Chapters 621,~~
9 ~~622, or 623; or]~~10 ~~[(4) fails to obtain an oversize or overweight permit that is required under this chapter~~
11 ~~or Transportation Code, Chapters 621, 622, or 623.]~~12 ~~[(b) The department may probate a suspension ordered under this section.]~~13 ~~[(1) In determining whether to probate a suspension, the department will review:]~~14 ~~[(A) the seriousness of the violation;]~~15 ~~[(B) prior violations by the person;]~~16 ~~[(C) whether the department has previously probated a suspension for the~~
17 ~~person;]~~18 ~~[(D) cooperation by the person in the investigation and enforcement~~
19 ~~proceeding; and]~~20 ~~[(E) the ability of the person to correct the violations.]~~21 ~~[(2) The department shall set the length of the probation based on the seriousness of~~
22 ~~the violation and previous violations by the person.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 7 of 9

Chapter 219 – Oversize and Overweight Vehicles and Loads

1 ~~[(3) The department will require that the person whose suspension is probated report~~
2 ~~monthly to the department any information necessary to determine compliance with the terms of the~~
3 ~~probation.]~~

4 ~~[(4) The department may revoke the probation and impose a deferred administrative~~
5 ~~penalty if the person fails to abide by any terms of the probation.]~~

6

7 ~~[\$219.124. Administrative Proceedings.]~~

8 ~~[(a) If the department decides to take an enforcement action under §219.121 of this title~~
9 ~~(relating to Administrative Penalties) or §219.122 of this title (relating to Administrative Sanctions), the~~
10 ~~department shall give written notice to the person against whom the action is being taken by first class~~
11 ~~mail to the person's address as shown in the records of the department.]~~

12 ~~[(b) The notice required by subsection (a) of this section must include:]~~

13 ~~[(1) a brief summary of the alleged violation;]~~

14 ~~[(2) a statement of each enforcement action being taken;]~~

15 ~~[(3) the effective date of each enforcement action;]~~

16 ~~[(4) a statement informing the person of the person's right to request a~~
17 ~~hearing;]~~

18 ~~[(5) a statement describing the procedure for requesting a hearing, including the~~
19 ~~period during which a hearing request must be made; and]~~

20 ~~[(6) a statement that the proposed penalties and sanctions will take effect on~~
21 ~~the date specified in the letter if the person fails to request a hearing.]~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 8 of 9

Chapter 219 – Oversize and Overweight Vehicles and Loads

1 ~~[(c) The person must submit a written request for a hearing to the address provided in the~~
2 ~~notice not later than the 26th day after the date the notice required by subsection (a) of this section is~~
3 ~~mailed.]~~

4 ~~[(d) On receipt of the written request for a hearing, the department will refer the matter to the~~
5 ~~State Office of Administrative Hearings. When the hearing is set, the department will give notice of the~~
6 ~~time and place of the hearing to the person.]~~

7 ~~[(e) If the person does not make a written request for a hearing or enter into a settlement~~
8 ~~agreement before the 27th day after the date that the notice is mailed, the department's decision~~
9 ~~becomes final.]~~

10 ~~[(f) Except as provided by this chapter and Transportation Code, Chapters 621, 622, and 623, any~~
11 ~~proceeding at the State Office of Administrative Hearings is governed by Government Code, Chapter~~
12 ~~2001 and 1 TAC Chapter 155, including the authority to informally dispose of the contested case by~~
13 ~~stipulation, agreed settlement, consent order, or default.]~~

14 ~~[(g) The department and the person may informally dispose of the enforcement action by~~
15 ~~entering into a settlement agreement or agreeing to stipulations at any time before the director issues a~~
16 ~~final order. However, the person must pay any penalty in full prior to the execution of a settlement~~
17 ~~agreement.]~~

18

19 §219.126. Administrative Penalty for False Information on Certificate by a Shipper.

20 ~~[(a)] Transportation Code, §623.272 authorizes the [The] department to [may] investigate and~~
21 ~~impose an administrative penalty on a shipper who does not provide a shipper's certificate of weight as~~
22 ~~required under Transportation Code, §623.274(b) or provides false information on a shipper's certificate~~
23 ~~of weight that the shipper delivers to a person transporting a shipment.~~

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 9 of 9

Chapter 219 – Oversize and Overweight Vehicles and Loads

1 ~~[(b) The notice and hearing requirements of §219.124 of this title (relating to Administrative~~
2 ~~Proceedings) apply to the imposition of an administrative penalty under this section.]~~

3 ~~[(c) The amount of an administrative penalty imposed under this section is calculated in the~~
4 ~~same manner as the amount of an administrative penalty imposed under §219.121 of this title (relating~~
5 ~~to Administrative Penalties).]~~

6

7 ~~[§219.127. Cost of Preparing Agency Record.]~~

8 ~~[In the event that a final decision is appealed and the department is required to transmit to the~~
9 ~~court the original or a certified copy of the record, or any part thereof, the appealing party shall pay the~~
10 ~~costs of preparation of such record, unless waived by the department in whole or in part.]~~

Board Meeting Date: 4/11/2024
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Corrie Thompson, Enforcement Division Director
Agenda Item: 14
Subject: New Chapter 224, Adjudicative Practice and Procedure
(Relating to Adjudicative Practice and Procedure, including Contested Cases)

RECOMMENDATION

Action Item. Adopt proposed new 43 Texas Administrative Code (TAC) Chapter 224 with an effective date of June 1, 2024.

PURPOSE AND EXECUTIVE SUMMARY

If adopted, new Chapter 224 would consolidate all department contested case rules into one chapter. This rule item is submitted to the board concurrently with rule items to adopt amendments to or repeals of certain language regarding adjudicative practice and procedure in 43 TAC §217.56 and Chapters 206, 215, 218, 219, and 221.

FINANCIAL IMPACT

For each year of the first five years new Chapter 224 would be in effect, there would be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the new chapter. There would be no significant impact on local employment or the local economy as a result of the new chapter.

BACKGROUND AND DISCUSSION

Overview

As part of the department's rule review of Chapters 206, 215, and 221, the department proposed new Chapter 224 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;
- to be consistent 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.

New Chapter 224 Organization

Subchapter A. General Provisions

This new 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 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 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 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 subchapter describes the types of contested cases 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 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 subchapter describes the rules that would apply to a lemon law or warranty performance claim brought by a consumer.

Advisory Committee Input

Advisory committees have provided valuable input on rule proposals considered by the board. 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.

Proposed new Chapter 224 was published for comment in the December 29, 2023, issue of the *Texas Register*. The department received two comments on the proposed new chapter. Mr. Bruce Bennett and the Texas Independent Automobile Dealers Association (TIADA) submitted the attached comments. The department considered the comments and recommended changes to certain rule text in response to the comments.

If the board adopts new Chapter 224 during its April 11, 2024, open meeting, staff anticipates:

- Publication in the April 26, 2024, issue of the *Texas Register*; and
- An effective date of June 1, 2024.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

ADOPTION 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) adopts 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

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 2 of 30

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 department adopts §§224.1–224.31, 224.50, 224.56–224.62, 224.80–224.88, 224.92, 224.94,
5 224.110–224.114, 224.116–224.130, 224.150–224.154, 224.158–224.166, 224.190–224.194, 224.200–
6 224.206, and 224.230–224.268 without changes to the proposed text as published in the December 29,
7 2023, issue of the *Texas Register* (48 TexReg 8298). These rules will not be republished.

8 The department adopts §§224.52, 224.54, 224.64, 224.90, 224.115, 224.156, 224.196, and
9 224.198 with changes to the proposed text as published in the December 29, 2023, issue of the *Texas*
10 *Register* (48 TexReg 8298). The department adopts §§224.64, 224.90, 224.156 and 224.198 with
11 nonsubstantive changes as described below. The department adopts §§224.52, 224.54, 224.115, and
12 224.196 with substantive changes, which are described below in the department’s response to comments.

13 **REASONED JUSTIFICATION.** In this issue of the *Texas Register*, the department adopts revisions
14 that delete language regarding adjudicative practices and procedures in 43 TAC §217.56 and Chapters
15 206, 215, 218, 219, and 221. The department reorganized these rules into new Chapter 224 for easier
16 reference and to add rules consistent with the department’s authority and responsibility under
17 Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; Transportation Code,
18 Chapters 502, 503, 621–623, 643, 645, and 1001–1005; and rules promulgated by the State Office of
19 Administrative Hearings (SOAH). New Chapter 224 is organized into seven subchapters.

20 To the extent the department’s prior rules regarding adjudicative practices and procedures
21 worked well and are currently authorized by law, the department incorporated the relevant language
22 from those rules into new Chapter 224. The department did not change adjudicative practices and
23 procedures unless there was a reason to do so. The department, prior parties, and the representatives for

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 3 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 prior parties are familiar with the department's prior rules regarding adjudicative practices and
2 procedures, which evolved over time to provide predictability and fairness to the parties.

3 To the extent the department's prior rules regarding adjudicative practices and procedures did
4 not include language that is required by law, the department added the language to new Chapter 224. For
5 example, Government Code, §2001.004, requires state agencies to adopt rules of practice stating the
6 nature and requirements of all available formal and informal procedures. Additional statutory
7 requirements are summarized in this preamble in the sections regarding statutory authority.

8 To the extent the department's prior rules regarding adjudicative practices and procedures did
9 not include clarifications that would be helpful to parties and others involved in adjudicative practices and
10 procedures, the department added clarifications to new Chapter 224.

11

12 Subchapter A. General Provisions

13 Adopted new §224.1 describes the purpose and scope of new Chapter 224, which includes all
14 contested case matters in which the department has jurisdiction. Subchapter A applies to all contested
15 case matters unless expressly excluded or limited in another subchapter. Language regarding the purpose
16 or scope of contested case matters from the following sections of this title are incorporated into new
17 Chapter 224: §206.61, relating to Scope and Purpose; §215.21, relating to Purpose and Scope; §215.201,
18 relating to Purpose and Scope; §218.70, relating to Purpose; and §219.120, relating to Purpose. These
19 provisions are all adopted for repeal or amendment in this issue of the *Texas Register*.

20 Adopted new §224.3 includes definitions for terms used throughout Chapter 224. New §224.3
21 incorporates terms defined in relevant content from 1 TAC §155.5, relating to Definitions, which are
22 definitions used by SOAH. Relevant contested case-related definitions from the following sections of this

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 4 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 title are also incorporated into new §224.3: §215.2, relating to Definitions; Conformity with Statutory
2 Requirements; §221.2, relating to Definitions; and §206.62, relating to Definitions.

3 Adopted new §224.5 addresses prohibited communication during a contested case, including *ex*
4 *parte* communication, and incorporates the provisions of §215.22 of this title, relating to Prohibited
5 Communications, which is repealed in this issue of the *Texas Register*.

6 Adopted new §224.7 addresses the appearance by an authorized representative, intervention in
7 a contested case, and the invitation of a person who is not a contested case party to participate in
8 mediation. Relevant content is incorporated into new §224.7 from 1 TAC §155.201, relating to
9 Representation of Parties, as well as §215.23 of this title, relating to Appearances, which is repealed in
10 this issue of the *Texas Register*.

11 Adopted new §224.9 provides guidance on computing time consistent with Government Code,
12 §311.014. New §224.9 also incorporates relevant content from the provisions of §215.29 of this title,
13 relating to Computing Time, which is repealed in this issue of the *Texas Register*.

14 Adopted new §224.11 provides general procedures related to filing and service of documents.
15 New §224.11 incorporates relevant content from 1 TAC §155.101 (a-d), relating to Filing Documents.
16 New §224.11 also incorporates other sections of this title—§215.30, relating to Filing of Documents, and
17 §215.49, relating to Service of Pleading, Petitions, Briefs, and Other Documents—which are repealed in
18 this issue of the *Texas Register*.

19 Adopted new §224.13 addresses discovery matters, including the requirement for cooperation
20 between the contested case parties and criteria and processes for a party to request a commission or
21 subpoena. New §224.13 incorporates relevant content from 1 TAC §155.259, relating to Discovery
22 Motions. New §224.113 also incorporates content from §206.67 of this title, relating to Discovery, which
23 is repealed in this issue of the *Texas Register*.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 5 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 Adopted new §224.15 addresses hearing recording and transcription costs. New §224.15
2 incorporates relevant content from 1 TAC §155.423, relating to Making a Record of the Proceeding. New
3 §224.15 also incorporates relevant content from §215.37(a–c) of this title, relating to Recording and
4 Transcriptions of Hearing Cost, which are repealed in this issue of the *Texas Register*.

5 Adopted new §224.17 addresses when proceedings may be consolidated. New §224.17
6 incorporates relevant provisions from §215.38 of this title, relating to Consolidation of Proceedings,
7 which is repealed in this issue of the *Texas Register*.

8 Adopted new §224.19 addresses the timing and criteria for informally disposing of a contested
9 case. New §224.19 incorporates relevant content from §215.316 of this title, relating to Informal
10 Disposition, which is repealed in this issue of the *Texas Register*.

11 Adopted new §224.21 addresses criteria for when a party may waive a hearing and consent to
12 an agreed order. New §224.21 incorporates relevant content from §215.39 of this title, relating to
13 Waiver of Hearing, which is repealed in this issue of the *Texas Register*.

14 Adopted new §224.23 requires a contested case hearing to be open to the public. New §224.23
15 incorporates content from §215.36 of this title, relating to Hearings To Be Public, which is repealed in
16 this issue of the *Texas Register*.

17 Adopted new §224.25 addresses when a deadline may or may not be extended. New §224.25
18 incorporates content from §215.32 of this title, relating to Extension of Time, which is repealed in this
19 issue of the *Texas Register*.

20 Adopted new §224.27 implements provisions of Government Code Chapter 2001, Subchapter F
21 that govern the issuance of final orders and motions for rehearing. New §224.27 includes related content
22 from the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.55,
23 relating to Final Decision, §215.501, relating to Final Decisions and Orders; Motions for Rehearing,

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 6 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 §215.505, relating to Denial of Dealer or Converter Access to Temporary Tag System, and §221.93, relating
2 to Final Decisions and Orders; Motions for Rehearing.

3 Adopted new §224.29 addresses delegation of final order authority in accordance with
4 Occupations Code, §2301.154(c) and §2301.711; and Transportation Code, §1003.005(b), as applicable.
5 New §224.29 incorporates relevant content from the following sections of this title, which are repealed
6 in this issue of the *Texas Register*: §215.43, relating to Conduct and Decorum, §215.58, relating to
7 Delegation of Final Order Authority, and §221.95, relating to Delegation of Final Order Authority.

8 Adopted new §224.31 addresses the cost of providing a contested case record for appeal
9 purposes. New §224.31 incorporates relevant content from the following sections of this title, which are
10 repealed in this issue of the *Texas Register*: §215.37(d), relating to Recording and Transcriptions of Hearing
11 Cost, §218.75, relating to Cost of Preparing the Agency Record, and §219.127, relating to Cost of Preparing
12 Agency Record.

13

14 Subchapter B. Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement

15 Adopted new §224.50 addresses the purpose and scope of this subchapter and identifies the
16 other subchapters that apply to these types of contested cases. New §224.50 incorporates relevant
17 content from the following sections of this title, which are repealed in this issue of the *Texas Register*:
18 §215.21, relating to Purpose and Scope, and §215.201, relating to Purpose and Scope.

19 Adopted new §224.52 addresses procedures related to cease and desist orders issued under
20 Occupations Code, Chapters 2301 or 2302, including the notice and opportunity required for due process.
21 New §224.52 also addresses the delegation of signature authority to the department's Enforcement
22 Division Director to sign interlocutory cease-and-desist orders. New §224.52 incorporates relevant
23 content from the following sections of this title, which are repealed in this issue of the *Texas Register*:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 7 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 §215.314, relating to Cease and Desist Orders, and §221.96, relating to Cease and Desist Order. The
2 delegation of signature authority for an interlocutory cease-and-desist order is new text that was not
3 contained in the department's sections of this title. The delegation of signature authority is necessary to
4 address a situation in which the facts warrant the issuance of an interlocutory cease-and-desist order as
5 soon as possible. Additionally, new §224.52 clarifies the notice and opportunity to respond for an
6 individual who may be subject to a cease-and-desist order, to ensure consistent due process. The
7 department adopts §224.52(b)(2) with changes at adoption to correct the references from subsection (c)
8 to subsection (b) of this section.

9 Adopted new §224.54 addresses criteria used by the department to assess a civil penalty or to
10 revoke a license consistent with and under the authority of Occupations Code, §2301.801 and §2302.354;
11 and Transportation Code, §503.095, as applicable. These criteria are currently reflected in the
12 department's disciplinary matrix for motor vehicle dealers that is published on the department's website.
13 Adopted new §224.54 also addresses the department's disciplinary matrix regarding the matters under
14 Chapter 224, Subchapter B. The department adopts §224.54(e) with changes at adoption to add language
15 to address concerns raised by the Texas Independent Automobile Dealers Association (TIADA) in a public
16 comment described below. The text added at adoption clarifies that the disciplinary matrix published on
17 the department's website at the time of the violation will be the applicable matrix for guiding the
18 department's decisions on penalties and sanctions, but also notes that the disciplinary matrix does not
19 limit either the department from seeking or the board from ordering penalties and sanctions that are
20 outside the ranges recommended in the penalty matrix. The text added at adoption brings more
21 predictability for license holders but still allows the department and the board to exercise discretion as
22 necessary within statutory limits. New §224.54 creates clarity and ease of reference for license holders,
23 administrative law judges, and board members seeking to determine the appropriate penalty in a

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 8 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 contested case. At adoption the department also changed the title by adding “and Revocation” before
2 “Assessment” to better reflect the scope of the rule.

3 Adopted new §224.56 addresses the requirements for a notice of department decision issued to
4 a person who is alleged to have violated a statute or department rule. New §224.56 incorporates relevant
5 content from the following: §215.500 of this title, regarding Administrative Sanctions and Procedures,
6 which is amended in this issue of the *Texas Register*, and §221.91 of this title, regarding Notice of
7 Department Decision, which is repealed in this issue of the *Texas Register*.

8 Adopted new §224.58 addresses the process for denying access to the temporary tag system as
9 authorized under Transportation Code, §503.0632(f). New §224.58 incorporates content from §215.505
10 of this title, regarding Denial of Dealer or Converter Access to Temporary Tag System, which is repealed
11 in this issue of the *Texas Register*. At adoption, the text “listed on the application” in §224.58(a)(5) was
12 deleted, as the requirement to disclose a storage lot on the application was changed at adoption to a
13 more limited requirement that a GDN holder disclose the location of a storage lot or location of a motor
14 vehicle in inventory upon request by the department.

15 Adopted new §224.60 describes the process for filing and service of documents under this
16 subchapter. New §224.60 incorporates relevant content from 1 TAC §155.101 (a-d), relating to Filing
17 Documents, as well as the following sections of this title, which are repealed in this issue of the *Texas*
18 *Register*: §215.30, relating to Filing of Documents, and §215.49, relating to Service of Pleading, Petitions,
19 Briefs, and Other Documents.

20 Adopted new §224.62 addresses the process for referring a contested case under this
21 subchapter to SOAH. New §224.62 incorporates relevant content from 1 TAC §155.51, relating to
22 Jurisdiction, and §155.53, relating to Request to Docket Case, as well as §215.306 of this title, relating to
23 Referral to SOAH, which is repealed in this issue of the *Texas Register*.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 9 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 Adopted new §224.64 addresses the process for the department to issue a notice of hearing for
2 contested cases under this subchapter. New §224.64 incorporates relevant content from the following
3 sections of this title, which are repealed in this issue of the *Texas Register*: §215.34, relating to Notice of
4 Hearing in Contested Case, and §221.92, relating to Notice of Hearing. The department adopts §224.64
5 with changes at adoption to replace the word “notifies” with “shall notify.”

6
7 Subchapter C. Contested Cases Between Motor Vehicle Industry License Holders or Applicants

8 Adopted new §224.80 addresses the purpose and scope of this subchapter and identifies the
9 other subchapters that apply to these types of contested cases for clarity and ease of reference. New
10 §224.80 incorporates relevant content from the following sections of this title, which are repealed in
11 this issue of the *Texas Register*: §215.21, relating to Purpose and Scope, and §215.201, relating to
12 Purpose and Scope.

13 Adopted new §224.82 addresses the requirements for a franchised dealer to file a protest or
14 complaint consistent with the department’s responsibilities under Occupations Code, Chapter 2301.
15 New §224.82 incorporates relevant content from §215.106 of this title, relating to Time for Filing
16 Protest.

17 Adopted new §224.84 addresses how a protest, complaint, or other document must be filed,
18 including the requirement to file any document electronically, and include all assigned docket numbers.
19 New §224.84 incorporates relevant content from 1 TAC §155.101 (a-d), relating to Filing Documents, as
20 well as the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.24,
21 relating to Petitions, §215.30, relating to Filing of Documents, §215.49, relating to Service of Pleading,
22 Petitions, Briefs, and Other Documents, and §215.305, relating to Filing of Complaints, Protests, and
23 Petitions; Mediation.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 10 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 Adopted new §224.86 describes the process used by the department to review a protest or
2 complaint to determine if the protest or complaint meets the minimum statutory requirements and is
3 appropriate to refer to SOAH for a hearing at SOAH consistent with the department’s responsibilities
4 under Occupations Code, Chapter 2301.

5 Adopted new §224.88 describes the department’s procedure for docketing a contested case
6 under this subchapter, the issuance of a stay as authorized by Occupations Code, §2301.803, the notice
7 to the parties, the opportunity for the parties to accept or decline a department mediator and retain a
8 private mediator, and the deadline to notify the department regarding the mediator option chosen by the
9 parties. Mediation is required under Occupations Code, Chapter 2301, Subchapter K and §2301.703.

10 Adopted new §224.90 describes the procedures related to mediation including the timeline for
11 mediation, requirements if a private mediator is selected by the parties, the requirement for a mediator
12 to submit a written report, and the department’s actions upon receiving the report including notifying
13 SOAH whether a party refused to participate in or attend mediation. New §224.90 allows a SOAH
14 Administrative Law Judge (ALJ) to recommend a sanction in the final proposal for decision for refusal to
15 attend or participate in a statutorily required mediation. New §224.90 incorporates relevant content
16 from §215.305 of this title, relating to Filing of Complaints, Protests, and Petitions; Mediation, which is
17 repealed in this issue of the *Texas Register*. The department adopts §224.90 with the following
18 nonsubstantive changes to the text at adoption: 1) changed the word “the” to “this” in subsections
19 (g)(2) and (h)(4) to refer to “§224.88 of this title”; and 2) added the word “in” and changed the order of
20 the words in subsection (m) to be consistent with the language in subsection (l)(3), which refers to a
21 party who “refused to attend or participate in a mediation.”

22 Adopted new §224.92 addresses the process for referring a contested case under this
23 subchapter to SOAH. New §224.92 incorporates relevant content from 1 TAC §155.51, relating to

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 11 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 Jurisdiction, and §155.53, relating to Request to Docket Case, as well as §215.306 of this title, relating to
2 Referral to SOAH, which is repealed in this issue of the *Texas Register*.

3 Adopted new §224.94 addresses the process for the department to issue a notice of hearing for
4 contested cases under this subchapter. New §224.94 incorporates relevant content from §215.34 of this
5 title, relating to Notice of Hearing in Contested Cases, which is repealed in this issue of the *Texas*
6 *Register*.

7

8 Subchapter D. Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement

9 Adopted new §224.110 addresses the purpose and scope of this subchapter and identifies the
10 other subchapters that apply to these types of contested cases. New §224.110 incorporates relevant
11 content from the following sections of this title: §218.1, relating to Purpose, §218.70, relating to
12 Purpose, §219.1, relating to Purpose and Scope, and §219.120, relating to Purpose.

13 Adopted new §224.112 references definitions used in statute and existing rules to avoid
14 duplication and potential conflict when incorporating definitions from the Transportation Code, and the
15 following sections of this title: §218.2, relating to Definitions, and §219.2, relating to Definitions.

16 Adopted new §224.114 addresses procedures related to cease-and-desist orders issued under
17 Transportation Code, §643.256. New §224.114 incorporates relevant content from §218.77, relating to
18 Cease and Desist Order, which is repealed in this issue of the *Texas Register*.

19 Adopted new §224.115 addresses criteria used by the department to assess an administrative
20 penalty under Transportation Code, §§623.271, 623.272, and 643.251. Transportation Code, §643.251
21 provides the dollar caps for administrative penalties, as well as the factors on which the administrative
22 penalty shall be based. Transportation Code, §623.271 and §623.272 state that the amount of an
23 administrative penalty imposed under §623.271 and §623.272, respectively, is calculated in the same

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 12 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 manner as the amount of an administrative penalty imposed under Transportation Code, §643.251. New
2 §224.115 also addresses the criteria the department will use to determine whether to probate a
3 suspension of a motor carrier’s registration, as well as the length of the probation and the reporting
4 requirements during the probation. Many of these criteria are currently reflected in the department’s
5 disciplinary matrix for motor carriers that is published on the department’s website. Adopted new
6 §224.115 also addresses the department’s disciplinary matrix regarding the matters under Chapter 224,
7 Subchapter D. The department’s disciplinary matrix for motor carriers includes the factors on which the
8 administrative penalty and sanction shall be based for the most common violations. Although an
9 administrative penalty may generally be called a sanction, Transportation Code, §643.252, which is titled
10 “Administrative Sanctions,” lists the factors for which the department may suspend, revoke, or deny a
11 registration issued under Transportation Code, Chapter 643. Transportation Code, §643.251, which is
12 titled “Administrative Penalty,” addresses administrative penalties that the department may impose
13 against a motor carrier.

14 The department adopts new §224.115(e) with changes at adoption to add language to address
15 concerns raised by TIADA in a public comment described below. The text added at adoption clarifies that
16 the disciplinary matrix published on the department’s website at the time of the violation will be the
17 applicable matrix for guiding the department’s decisions on penalties and sanctions, but also notes that
18 the disciplinary matrix does not limit either the department from seeking or the director from ordering
19 penalties and sanctions that are outside the ranges recommended in the penalty matrix. The text added
20 at adoption brings more predictability for motor carriers but still allows the department and the director
21 to exercise discretion as necessary within statutory limits. The department also changed the title of
22 §224.115 at adoption by adding “Sanction Assessment;” because §224.115 references the disciplinary

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 13 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 matrix that the department will publish on its website to provide guidance to motor carriers on the
2 penalties and sanctions that may be assessed for the most common violations.

3 Adopted new §224.115 creates clarity and provides ease of reference for motor carriers,
4 administrative law judges, and the Motor Carrier Division Director seeking to determine the appropriate
5 administrative penalty and sanction in a contested case. New §224.115 incorporates relevant content
6 from §218.71, relating to Administrative Penalties; §218.72, relating to Administrative Sanctions;
7 §219.121, relating to Administrative Penalties; and §219.126 relating to Administrative Penalty for False
8 Information on Certificate by a Shipper, which are amended in this issue of the *Texas Register*.

9 Adopted new §224.116 addresses procedures when the department decides to take
10 enforcement action under any of the following sections of this title: §218.16, relating to Insurance
11 Requirements; §218.64, relating to Rates; §218.71, relating to Administrative Penalties; §218.72,
12 relating to Administrative Sanctions; §219.121, relating to Administrative Penalties and Sanctions under
13 Transportation Code, §623.271; or §219.126, relating to Administrative Penalty for False Information on
14 Certificate by a Shipper. New §224.116 incorporates relevant content from the following sections of this
15 title, which are amended or repealed in this issue of the *Texas Register*: §218.71, relating to
16 Administrative Penalties; §218.73, relating to Administrative Proceedings; and §219.124, relating to
17 Administrative Proceedings.

18 Adopted new §224.118 requires a person to file a document according to written instructions
19 provided by the department as different systems and methods may be used depending on the party and
20 type of enforcement action.

21 Adopted new §224.120 describes the procedures followed by the department upon receiving a
22 final order issued under Family Code, §§232.003, 232.008, or 232.009, regarding child support
23 enforcement. New §224.120 incorporates relevant content from §218.76 of this title, relating to

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 14 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 Registration Suspension Ordered Under the Family Code, which is repealed in this issue of the *Texas*
2 *Register*.

3 Adopted new §224.122 prescribes the requirements for a vehicle registrant that wants to appeal
4 a decision against the registrant of an assessment (a financial penalty under §217.56(c)(2)(G) of this title,
5 relating to Registration Reciprocity Agreements) or a cancellation or revocation of the registrant's
6 apportioned registration under the International Registration Plan (IRP). New §224.122 incorporates
7 relevant content from §217.56(c)(2)(J)(iii) of this title, which is amended in this issue of the *Texas*
8 *Register*.

9 Adopted new §224.124 describes the appeal process for a person who is denied registration
10 under a new, renewal, or reregistration application under Transportation Code, Chapter 643. New
11 §224.124 incorporates relevant content from §218.78 of this title, relating to Appeal of Denial, which is
12 repealed in this issue of the *Texas Register*.

13 Adopted new §224.126 describes the appeal process for a person whose application for self-
14 insured status is denied under §218.16(d), relating to Insurance Requirements. Relevant content is
15 incorporated from §218.16(d), which is amended in this issue of the *Texas Register*.

16 Adopted new §224.128 addresses the process for referring a contested case under this
17 subchapter to SOAH. Relevant content is incorporated from 1 TAC §155.51, relating to Jurisdiction, and
18 §155.53, relating to Request to Docket Case.

19 Adopted new §224.130 addresses the process for the department to issue a notice of hearing for
20 contested cases under this subchapter consistent with the statutory requirements under Government
21 Code, Chapter 2001, and SOAH's rule regarding notice of hearing in 1 TAC §155.401, relating to Notice of
22 Hearing.

23

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 15 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 Subchapter E. Contested Cases Referred to SOAH

2 Adopted new §224.150 describes the types of contested cases that are referred to SOAH, the
3 transfer of jurisdiction from the department to SOAH, and the transfer of jurisdiction from SOAH back to
4 the department. New §224.150 incorporates relevant content from the following sections of this title,
5 which are repealed in this issue of the *Texas Register*: §215.21, relating to Purpose and Scope; §215.201,
6 relating to Purpose and Scope; and §215.303, relating to Application of Board and SOAH Rules.

7 Adopted new §224.152 describes the department’s procedures for referring a contested case to
8 SOAH consistent with SOAH’s rules. Relevant content is incorporated into new §224.152 from SOAH’s
9 related rules in 1 TAC §155.51, relating to Jurisdiction, and §155.53, relating to Request to Docket Case,
10 as well as §215.306 of this title, relating to Referral to SOAH, which is repealed in this issue of the *Texas*
11 *Register*.

12 Adopted new §224.154 addresses applicable notice of hearing requirements under Government
13 Code, §2001.052; Occupations Code, §2301.705; 1 TAC §155.401, relating to Notice of Hearing; and
14 Transportation Code, Chapters 623 and 643; provides for service on parties outside the United States to
15 the extent authorized by applicable law; and addresses the amendment of a notice of hearing under
16 Government Code, §2001.052(b). New §224.154 incorporates relevant content from SOAH’s related rules
17 in 1 TAC §155.401, as well as the following sections of this title, which are repealed in this issue of the
18 *Texas Register*: §215.34, relating to Notice of Hearing in Contested Cases; §215.307, relating to Notice of
19 Hearing; §218.73, relating to Administrative Proceedings; §219.124, relating to Administrative
20 Proceedings; and §221.92, related to Notice of Hearing. Transportation Code, §643.2525(a) requires the
21 department to give written notice to the motor carrier by first class mail for an enforcement action under
22 Transportation Code, §643.251 or §643.252 regarding administrative penalties and sanctions,
23 respectively. Transportation Code, §623.271(b) and §623.272(b) state that the notice and hearing

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 16 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty
2 or revocation of a permit under §623.271 and the imposition of an administrative penalty under §623.272.

3 Adopted new §224.156 describes the process for a party to reply to a notice of hearing and the
4 consequences for when a party does not appear at a hearing. New §224.156 incorporates relevant
5 content from §215.308 of this title, relating to Reply to Notice of Hearing and Default Proceedings,
6 which is repealed in this issue of the *Texas Register*. Adopted new §224.156 also incorporates applicable
7 sections of SOAH’s rules of procedure for contested cases within SOAH’s jurisdiction, including 1 TAC
8 §155.301 relating to Required Form of Pleadings, and §155.501, relating to Failure to Attend Hearing
9 and Default Proceedings. The department adopts §224.156(a) with changes at adoption to replace the
10 word “on” with the word “in” in the last clause of the second sentence.

11 Adopted new §224.158 describes the process and deadlines for an ALJ to consider an amicus
12 brief. The new rule allows amicus briefs to be incorporated into the administrative record of the
13 contested case for review and consideration by the ALJ, as well as the board, the board delegate, or the
14 director responsible for issuing a final order in the case. New §224.158 incorporates relevant content
15 from §215.311 of this title, relating to Amicus Briefs, which is repealed in this issue of the *Texas Register*.

16 Adopted new §224.162 addresses an ALJ’s responsibilities to hear and rule on a request
17 regarding a statutory stay and the right for a party to file an interlocutory appeal with the board.
18 Adopted new §224.162 incorporates relevant content from §215.315 of this title, relating to Statutory
19 Stay, which is repealed in this issue of the *Texas Register*.

20 Adopted new §224.164 describes the ALJ and party responsibilities relating to a proposal for
21 decision in a contested case. New §224.164 incorporates relevant content from SOAH’s related rule in 1
22 TAC §155.507, relating to Proposals for Decision; Exceptions and Replies, as well as §215.310 of this title,

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 17 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 relating to Issuance of Proposals for Decision and Orders, which is repealed in this issue of the *Texas*
2 *Register*.

3 Adopted new §224.166 describes the process by which jurisdiction transfers back to the board or
4 board delegate for a final decision, consistent with the requirements of Government Code, Chapter 2001.

5

6 Subchapter F. Board Procedures in Contested Cases

7 Adopted new §224.190 describes the scope of the subchapter, which includes review and
8 consideration of a contested case and issuance of a final order by the board or board delegate. New
9 §224.190 incorporates relevant content from the following sections of this title, which are repealed in
10 this issue of the *Texas Register*: §215.21, relating to Purpose and Scope, and §215.201, relating to
11 Purpose and Scope.

12 Adopted new §224.192 describes the process for a person to appeal an interlocutory cease-and-
13 desist or stay order authorized under Occupations Code, Chapter 2301, to comply with the statutory
14 requirement that the board rule on appeals of such interlocutory orders. New §224.192 incorporates
15 relevant content from the following sections of this title, which are repealed in this issue of the *Texas*
16 *Register*: §215.314, relating to Cease and Desist Orders, and §221.96, relating to Cease and Desist Order.
17 New §224.192 also clarifies the timelines and process through which a party would request to make an
18 oral presentation or to provide written materials to the board when it reviews the appeal of the
19 interlocutory order. New §224.192 also stipulates that the board's review of an appeal of an interlocutory
20 order is limited to the review and changes allowed under Texas Government Code, §2001.058(e), to clarify
21 the separate roles of the SOAH ALJ and the board in reviewing an interlocutory order issued by the
22 department.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 18 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 Adopted new §224.194 describes the process for scheduling the review of a contested case by
2 the board or a board delegate and allows the decision-making authority to review the case during a public
3 meeting to increase public insight into the decision-making process.

4 Adopted new §224.196 describes 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. New §224.196 incorporates relevant content from §215.59
7 of this title, relating to Request for Oral Presentation, which is repealed in this issue of the *Texas*
8 *Register*. New §224.196 complies with Transportation Code, §1004.002, which requires the board to
9 develop policies that provide the public with a reasonable opportunity to appear before the board and
10 speak on any issue under the jurisdiction of the board. A party that complies with the requirements
11 under new §224.196 will be allowed a maximum of 15 minutes to make their oral presentation to the
12 board unless the board chair increases this time under new §224.200. The department adopts
13 §224.196(e) with a change at adoption to address a comment from TIADA, which is described in further
14 detail below. The change to the text at adoption allows a party to speak as a public commenter on a
15 contested case agenda item only if the party is not also making an oral presentation to the board. This
16 will allow parties who failed to give the proper and timely notice necessary to make an oral presentation
17 an opportunity to briefly address and answer questions from the board, so that a missed oral
18 presentation deadline does not completely preclude a party from appearing before the board to defend
19 its position in a contested case.

20 Adopted new §224.198 describes the responsibilities and deadlines for a party that wants to
21 provide written materials to the board as part of the board’s consideration of the contested case. New
22 §224.198 incorporates relevant content from §215.60 of this title, relating to Written Materials and

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 19 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 Evidence, which is repealed in this issue of the *Texas Register*. The department made a nonsubstantive
2 change to §224.198(b) at adoption by changing the word “aren’t” to “are not” for stylistic consistency.

3 Adopted new §224.200 describes the responsibilities and limitations for a party making an oral
4 presentation as part of the board’s consideration of the contested case. New §224.200 incorporates
5 relevant content from the following sections of this title, which are repealed in this issue of the *Texas*
6 *Register*: §206.22(f), relating to Public Access to Board Meetings, §215.61, relating to Limiting Oral
7 Presentation and Discussion to Evidence in the Administrative Record, and §215.62, relating to Order of
8 Presentations to the Board for Review of a Contested Case.

9 Adopted new §224.202 describes the order of presentations at the board meeting in which the
10 board is considering a contested case. New §224.202 incorporates relevant content from the following
11 sections of this title, which are repealed in this issue of the *Texas Register*: §206.22(f), relating to Public
12 Access to Board Meetings, and §215.62, relating to Order of Presentations to the Board for Review of a
13 Contested Case.

14 Adopted new §224.204 addresses board member conduct while reviewing and considering a
15 contested case. New §224.204 incorporates relevant content from §215.63 of this title, relating to Board
16 Conduct and Discussion When Reviewing a Contested Case, which is repealed in this issue of the *Texas*
17 *Register*.

18 Adopted new §224.206 describes the requirements for a final order issued by the board or a
19 board delegate and when the order is final. New §224.206 incorporates relevant content from §215.501
20 of this title, relating to Final Decisions and Orders; Motions for Rehearing, which is repealed in this issue
21 of the *Texas Register*.

22

23 Subchapter G. Lemon Law and Warranty Performance Claims

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 20 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 Adopted new §224.230 describes the scope of this subchapter, provides statutory references,
2 and defines terms used in the subchapter. New §224.230 incorporates relevant content from the
3 following sections of this title, which are repealed in this issue of the *Texas Register*: §215.21, regarding
4 Purpose and Scope, and §215.201, regarding Purpose and Scope.

5 Adopted new §224.232 describes the requirements for a person to file a lemon law or warranty
6 performance claim, the process, and the assistance available from the department to enable a person to
7 do so. New §224.232 incorporates relevant content from the following sections of this title, which are
8 repealed in this issue of the *Texas Register*: §215.27, relating to Complaints, and §215.202, relating to
9 Filing of Complaints.

10 Adopted new §224.234 describes how the department reviews a complaint to determine if the
11 department has jurisdiction and meets minimum statutory requirements. New §224.234 incorporates
12 relevant content from §215.203 of this title, relating to Review of Complaints, which is repealed in this
13 issue of the *Texas Register*.

14 Adopted new §224.236 describes the process regarding the notification to the manufacturer,
15 distributor, or converter. New §224.236 incorporates relevant content from §215.204 of this title,
16 relating to Notification to Manufacturer, Converter, or Distributor, which is repealed in this issue of the
17 *Texas Register*.

18 Adopted new §224.238 describes the process for mediation, settlement, and referral for hearing
19 with a hearings examiner. New §224.238 incorporates relevant content from §215.205 of this title,
20 relating to Mediation; Settlement, which is repealed in this issue of the *Texas Register*.

21 Adopted new §224.240 describes the notice of hearing requirements consistent with
22 Government Code, Chapter 2001. New §224.240 incorporates relevant content from §215.34 of this

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 21 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 title, relating to Notice of Hearing in Contested Cases, which is repealed in this issue of the *Texas*
2 *Register*.

3 Adopted new §224.242 describes the requirements for a party to make a motion, as well as the
4 fact that a motion is not granted unless a hearings examiner makes a ruling. New §224.242 incorporates
5 relevant content from §215.47 of this title, relating to Motions, which is repealed in this issue of the
6 *Texas Register*.

7 Adopted new §224.244 describes the methods by which a document may be filed and served in
8 this subchapter. New §224.244 incorporates relevant content from §215.49 of this title, relating to
9 Service of Pleading, Petitions, Briefs, and Other Documents, which is repealed in this issue of the *Texas*
10 *Register*.

11 Adopted new §224.246 describes the role and powers of the hearings examiner and the recusal
12 or substitution process. New §224.246 incorporates relevant content from §215.41 of this title, relating
13 to Presiding Officials, which is repealed in this issue of the *Texas Register*.

14 Adopted new §224.248 describes the criteria for the granting of a continuance by a hearings
15 examiner. New §224.248 incorporates relevant content from §215.40 of this title, relating to
16 Continuance of Hearing, which is repealed in this issue of the *Texas Register*.

17 Adopted new §224.250 describes a party's rights during the hearing, provides guidance as to
18 how a hearing will be conducted, and addresses participant conduct and decorum in a hearing. New
19 §224.250 incorporates relevant content from the following provisions of this title, which are repealed in
20 this issue of the *Texas Register*: §215.42, relating to Conduct of Hearing, and §215.43, relating to
21 Conduct and Decorum.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 22 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 Adopted new §224.252 addresses the procedure that will be followed during a hearing. New
2 §224.252 incorporates related content from §215.206 of this title, relating to Hearings, which is
3 repealed in this issue of the *Texas Register*.

4 Adopted new §224.254 addresses the standards and handling of evidence during a hearing. New
5 §224.254 incorporates relevant content from the following sections of this title, which are repealed in
6 this issue of the *Texas Register*: §215.44, relating to Evidence, and §215.45, relating to Stipulation of
7 Evidence.

8 Adopted new §224.256 addresses how objections and exceptions may be handled during a
9 hearing conducted by a hearings examiner. New §224.256 incorporates relevant content from §215.46
10 of this title, relating to Objections and Exceptions, which is repealed in this issue of the *Texas Register*.

11 Adopted new §224.258 specifies that the hearings examiner has final order authority in cases
12 under this subchapter. New §224.258 incorporates relevant content from §215.55 of this title, relating
13 to Final Decision, which is repealed in this issue of the *Texas Register*.

14 Adopted new §224.260 describes how lemon law relief decisions will be evaluated by a hearings
15 examiner, the presumptions that may be applied, and how refunds may be calculated, in addition to
16 other important criteria. New §224.260 incorporates content from §215.208 of this title, relating to
17 Lemon Law Relief Decisions, which is repealed in this issue of the *Texas Register*. However, language in
18 §215.208 requiring a different presumptive useful life calculation for a towable recreational vehicle that
19 is lived in full-time was omitted as useful life may vary based on whether the towable recreational
20 vehicle is at a fixed location or used for traveling. New §224.260 allows the hearings examiner to
21 consider the evidence presented regarding usage and adjust the calculation accordingly.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 23 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 Adopted new §224.262 details which incidental costs may be included in a final refund amount
2 ordered by a hearings examiner. New §224.262 incorporates relevant content from §215.209 of this
3 title, relating to Incidental Expenses, which is repealed in this issue of the *Texas Register*.

4 Adopted new §224.264 describes the requirements for a hearings examiner to issue a final
5 order, the process for filing and considering a motion for rehearing, and notification to the parties. New
6 §224.264 incorporates relevant content from §215.207 of this title, relating to Contested Cases: Final
7 Orders, which is repealed in this issue of the *Texas Register*.

8 Adopted new §224.266 describes the complainant’s option to accept or reject the final order
9 and the responsibilities of a manufacturer, distributor, or converter if a complainant accepts the final
10 order. New §224.266 incorporates relevant content from §215.210 of this title, relating to Compliance
11 with Order Granting Relief, which is repealed in this issue of the *Texas Register*.

12 Adopted new §224.268 describes the process for a party to appeal a final order in Travis County
13 district court under Government Code, Chapter 2001, subject to Occupations Code, §2301.609. New
14 §224.268 incorporates relevant content from §215.207(f) of this title, relating to Contested Cases: Final
15 Orders, which is repealed in this issue of the *Texas Register*.

16 **SUMMARY OF COMMENTS.**

17 The department received two written comments on the proposal. The department received a
18 written comment from an individual and TIADA.

19 **§224.54**

20 **Comment:** TIADA recommended that the department add a sentence to §224.54(e), stating the
21 department will consider the disciplinary matrix published at the time of the offense and that the
22 disciplinary matrix does not prevent the department from seeking sanctions above or below the
23 recommended ranges. TIADA stated that an administrative law judge in a prior case was not certain which

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 24 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 of two versions of the disciplinary matrix that were in effect during the pendency of the litigation should
2 apply to that particular case.

3 **Response:** The department agrees with the comment. In response to the comment, the department
4 added a modified version of the recommended language to §224.54 and §224.115.

5 The department added language to §224.54(e), stating the department will consider the
6 disciplinary matrix published at the time of the violation, rather than at the time of the offense, to be
7 consistent with the terminology used in §224.54 and the relevant statutes. In addition to stating the
8 disciplinary matrix does not prevent the department from seeking administrative penalties and sanctions
9 above or below the recommended ranges listed in the disciplinary matrix, the department added clarifying
10 language that says the disciplinary matrix does not prevent the board or the board's delegate from
11 ordering administrative penalties and sanctions above or below the recommended ranges listed in the
12 disciplinary matrix. This clarifying language documents the current practice in which neither the board nor
13 the board's delegate are bound by the published disciplinary matrix that applies to matters that fall within
14 the scope of Chapter 224, Subchapter B of this title (relating to Motor Vehicle, Salvage Vehicle, and Trailer
15 Industry Enforcement). The proposed text stated that the published disciplinary matrix provides guidance
16 to license holders on the sanctions that may be assessed for the most common violations; however, it is
17 preferable to provide more detail to license holders to explain what this text means. Also, the department
18 amended the heading for §224.54 and added language to §224.54(e) to include the assessment regarding
19 revocation because §224.54 also addresses factors regarding whether license revocation is appropriate.

20 Although the commenter did not cite to §224.115, the department also added language to
21 §224.115(e), stating the department will consider the disciplinary matrix published at the time of the
22 violation because §224.115 addresses the disciplinary matrix for contested cases under Chapter 224,
23 Subchapter D of this title (relating to Motor Carrier and Oversize or Overweight Vehicle or Load

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 25 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 Enforcement). In addition to stating the disciplinary matrix does not prevent the department from seeking
2 penalties and sanctions above or below the recommended ranges listed in the disciplinary matrix, the
3 department also added clarifying language that says the disciplinary matrix does not prevent the director
4 from ordering administrative penalties and sanctions above or below the recommended ranges listed in
5 the disciplinary matrix. The proposed text stated that the published disciplinary matrix provides guidance
6 to motor carriers on the penalties and sanctions that may be assessed for the most common violations;
7 however, it is preferable to provide more detail to motor carriers to explain what this text means. The
8 added language references the director because the board delegated final order authority to the
9 department’s Motor Carrier Division director under §224.29(c) to the extent the director does not already
10 have such authority under statutes, such as Transportation Code, §643.2525.

11 Also, the department amended the title of §224.115 at adoption to include the assessment of
12 sanctions because §224.115 references the disciplinary matrix that the department will publish on its
13 website to provide guidance to motor carriers on the penalties and sanctions that may be assessed for
14 the most common violations. Although an administrative penalty may generally be called a sanction,
15 Transportation Code, §643.252, which is titled “Administrative Sanctions,” lists the factors for which the
16 department may suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643.
17 Transportation Code, §643.251, which is titled “Administrative Penalty,” addresses administrative
18 penalties that the department may impose against a motor carrier.

§224.196

20 **Comment:** TIADA recommended that the department strike rule text that says if a party fails to timely
21 submit a written request for an oral presentation, that party shall not make an oral presentation at the
22 board meeting. TIADA says that most other tribunals do not require a party to notify the tribunal that the
23 party will attend a scheduled hearing and that the department should follow those tribunals.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 26 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 **Response:** The department agrees with the comment in part, with respect to the opportunity for a party
2 to make a public comment even when it has failed to submit a timely request to make an oral
3 presentation, and made certain changes to §224.196.

4 The department disagrees, however, that the board should follow the procedures used in
5 tribunals. The board is not a tribunal. The board is not authorized to retry the contested case, and the
6 board has limited authority under Government Code, §2001.058(e) to change a finding of fact or
7 conclusion of law made by the SOAH ALJ. Also, the board is prohibited from considering evidence that is
8 not contained within SOAH’s administrative record, so the parties do not need to appear before the board
9 to present new evidence. In addition, the board has access to the entire SOAH administrative record for
10 each case and is able to review every exhibit, testimony transcript, and filing made in the case.

11 Since February 2021, the department has operated under §206.22(f) of this title, relating to Public
12 Access to Board Meetings, and §215.59 of this title, relating to Request for Oral Presentation, which are
13 repealed in this issue of the *Texas Register*. Sections 206.22(f) and 215.59 only authorize a party to a
14 contested case to make an oral presentation to the board if the party timely submitted a written request
15 to make an oral presentation. However, if a party failed to timely submit a written request to make an
16 oral presentation to the board, the board chairman authorized the party to make a public comment under
17 §206.22(a) on the agenda item for the contested case. This process worked well for the two contested
18 cases that the board considered at the December 2023 and February 2024 board meetings.

19 It is not fair to the party who timely submitted a written request if the board allows the other
20 party to make an oral presentation without timely submitting a request. Also, Transportation Code,
21 §1004.002 requires the board to develop and implement policies that provide the public with a reasonable
22 opportunity to appear before the board and to speak on any issue under the jurisdiction of the board and
23 the rule to be adopted is consistent with this statutory requirement.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 27 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 For these reasons, the department will retain the requirement under §224.196 for a party to
2 timely submit a written request for an oral presentation before the party is allowed to make an oral
3 presentation to the board under Chapter 224, Subchapter F (relating to Board Procedures in Contested
4 Cases).

5 The department amended §224.196(e) to authorize a party to make a public comment regarding
6 the party's contested case during the posted agenda item for the contested case under §206.22 of this
7 title (relating to Public Access to Board Meetings); however, a party is not authorized to make a public
8 comment regarding the party's contested case under §206.22 in addition to making an oral presentation
9 regarding the party's contested case. If a party timely complies with the requirements to make an oral
10 presentation under Subchapter F of Chapter 224, §224.196 authorizes the party to make an oral
11 presentation to the board for up to 15 minutes unless the board chair increases the time under §224.200.
12 Fifteen minutes is ample time for a party to make an oral presentation to the board, so a party does not
13 need an additional three minutes to make a public comment regarding their contested case. Also, the
14 time that a party spends answering board questions is not counted against their 15 minutes. In addition,
15 if the board chair decides that the parties need more than 15 minutes to make an oral presentation,
16 §224.200 authorizes the board chair to increase the oral presentation time. If a party fails to comply with
17 the requirements to make an oral presentation, the party can attend the board meeting and make a public
18 comment under §206.22 for up to three minutes unless the board chair increases the time.

§224.198

20 **Comment:** An individual recommended that the department add a sentence to §224.198 that says a
21 proposed final order or a draft motion for possible board action are not counted against the 15-page limit
22 under §224.198(d) for written materials. The individual stated that allowing the parties to a contested

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 28 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 case to propose a final order or a motion for board action will assist board members in focusing on the
2 key points in the case and will help them to reach a final decision.

3 **Response:** The department disagrees with the comment and declines to make the requested change.
4 Adopted new §224.198—like §215.60 of this title (relating to Written Materials and Evidence), which is
5 repealed in this issue of the *Texas Register*—imposes a 15-page limit for written materials that a party can
6 submit to the department to provide to the board. New §224.198 expressly allows a party to provide a
7 proposed final order and a draft motion for possible board action if the party complies with the
8 requirements under §224.198. The 15-page limit has been sufficient for prior contested cases that were
9 submitted to the board for a final order under §215.60, which was adopted in February 2021. In at least
10 one case, a party submitted a proposed three-page final order as part of their 15 pages of written
11 materials under §215.60. Also, in the five contested cases in which the board issued a final order from
12 April of 2023 to February of 2024, the longest final order was five pages, not including the Proposal for
13 Decision that was incorporated into one of the final orders. The parties can choose to submit a proposed
14 final order or motion as part of their 15 pages of written materials without using all 15 pages for the
15 proposed final order or motion.

16 The commenter’s requested change opens the door to allowing a party to submit an unlimited
17 number of pages of written materials to the board, which is unnecessary because the board is not
18 authorized to relitigate the case or to receive new evidence in the case. The board has limited authority
19 under Government Code, §2001.058(e) to change a finding of fact or conclusion of law made by the SOAH
20 ALJ. The board is prohibited from considering evidence not contained within SOAH’s administrative
21 record, and the board has access to the entire SOAH administrative record for each case and is able to
22 review every exhibit, testimony transcript, and filing made in the case. Further, the department includes,
23 at a minimum, the following materials in the board books provided to board members and published on

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 29 of 30

Chapter 224 – Adjudicative Practice and Procedure

1 the department’s website, so the parties can direct board members to specific pages, rather than
2 providing the materials to the board members again in written materials: 1) the SOAH ALJ’s Proposal for
3 Decision; 2) any exceptions that a party filed with SOAH regarding the ALJ’s Proposal for Decision; and 3)
4 the SOAH ALJ’s exceptions letter regarding the Proposal for Decision. Finally, it is not necessary for a party
5 to submit a proposed final order or a proposed motion for possible board action. If a board member needs
6 assistance with drafting a proposed motion or proposed final order, the department’s general counsel is
7 available to assist the board member.

8 §224.202

9 **Comment:** TIADA recommended that the department strike the language in §224.202(b) and (c). TIADA
10 also recommended that the department modify the order of oral presentations to the board to follow
11 typical judicial procedure, which allows the party that brought the lawsuit to present first, rather than
12 allowing the party that is adversely affected to present first.

13 **Response:** The department disagrees with the comment and declines to make the requested changes.
14 The board is not a court. Also, requiring the adversely affected party to present first helps the board to
15 focus on issues the board is authorized to address, and recognizes the SOAH ALJ’s role in assessing the
16 evidence, deciding fact issues, and making a recommendation in the Proposal for Decision.

17 Adopted new §224.202—like §215.62 of this title (relating to Order of Presentations to the Board
18 for Review of a Contested Case), which is repealed in this issue of the *Texas Register*—authorizes the party
19 that is adversely affected by the ALJ’s Proposal for Decision to make their oral presentation to the board
20 first, followed by the party or parties that are not adversely affected. This process worked well under
21 §215.62, which became effective in February 2021. Moreover, the board has already considered and
22 decided this issue: when the department proposed §215.62, the board considered and addressed public

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 30 of 30

Chapter 224 – Adjudicative Practice and Procedure

- 1 comments regarding the order of presentation, including comments requesting that the adversely
- 2 affected party present first.

1 **SUBCHAPTER A. GENERAL PROVISIONS**

2 **43 TAC §§224.1–224.31**

3 **STATUTORY AUTHORITY.** The department adopts new Chapter 224 under Government Code, §2001.004,
4 which requires state agencies to adopt rules of practice stating the nature and requirements of all
5 available formal and informal procedures; Government Code, §2001.054, which specifies the
6 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
7 a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale
8 and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise
9 that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications
10 of license holders; ensure that the distribution, sale and lease of motor vehicles is conducted as required
11 by statute and board rules; to provide for compliance with warranties; to prevent fraud, unfair practices,
12 discrimination, impositions, and other abuses in connection with the distribution and sale of motor
13 vehicles; and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code,
14 Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or
15 convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before
16 the board; Occupations Code, §2301.602, which requires the board to adopt rules for the enforcement
17 and implementation of Subchapter M of Occupations Code, Chapter 2301; Occupations Code, §2301.651,
18 which authorizes the board to deny an application for a license, revoke or suspend a license, place on
19 probation a person whose license has been suspended, or reprimand a licensee; Occupations Code,
20 §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code,
21 Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to
22 administer Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the
23 department to adopt and enforce rules to carry out the International Registration Plan (IRP);

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 2 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of
2 Transportation Code, Chapter 503; Transportation Code, §621.008, which authorizes the board to adopt
3 rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation
4 Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce
5 Transportation Code, Chapter 622; Transportation Code, §623.002, which authorizes the board to adopt
6 rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation
7 Code, §623.271, which authorizes the department to impose an administrative penalty or revoke an
8 oversize or overweight permit issued under Transportation Code, Chapter 623, and states that the notice
9 and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an
10 administrative penalty or the revocation of a permit under §623.271; Transportation Code, §623.272,
11 which authorizes the department to impose an administrative penalty on a shipper who violates a
12 provision under §623.272, and states that the notice and hearing requirements under Transportation
13 Code, §643.2525 apply to the imposition of an administrative penalty under §623.272; Transportation
14 Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code,
15 Chapter 643; Transportation Code, §643.102, which authorizes a motor carrier to comply with the
16 requirements under Transportation Code, §643.101 through self-insurance if it complies with the
17 requirements; Transportation Code, §643.251, which authorizes the department to impose an
18 administrative penalty against a motor carrier required to register under Subchapter B of Transportation
19 Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation
20 Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under
21 Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended;
22 Transportation Code, §643.2525, which provides the process for an administrative hearing under
23 Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 3 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 appeal the denial of an application for registration, renewal of registration, or reregistration under
2 Transportation Code, Chapter 643; Transportation Code, §645.003, which authorizes the department to
3 adopt rules providing for administrative penalties for a failure to register or submit information and
4 documents under the unified carrier registration plan and agreement or for a violation of the unified
5 carrier registration plan and agreement; Transportation Code, §1002.001, which authorizes the board to
6 adopt rules that are necessary and appropriate to implement the powers and duties of the department;
7 Transportation Code, §1003.005, which authorizes the board by rule to delegate any power relating to a
8 contested case, including the power to issue a final order, to one or more board members or certain
9 department staff; and the statutory authority referenced throughout this preamble and in the rule text,
10 which is incorporated herein by reference.

11 **CROSS REFERENCE TO STATUTE.** These new rules implement Government Code, Chapter 2001;
12 Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 621–623, 643,
13 645, and 1002–1005.

14

15 Text.

16 §224.1. Purpose and Scope.

17 This subchapter describes the procedures by which the department will adjudicate a
18 contested case arising under Occupations Code, Chapters 2301 or 2302, or Transportation Code,
19 Chapters 502, 503, 621–623, 643, 645, or 1001–1005, consistent with the requirements of
20 Government Code, Chapter 2001. Unless expressly excluded or limited, this subchapter applies to
21 every contested case in which the department has jurisdiction.

22

23 §224.3. Definitions.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 4 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (a) The statutory definitions govern this chapter. In the event of a conflict, the definition or
2 procedure referenced in statute controls.

3 (b) When used in this chapter, the following words and terms shall have the following
4 meanings unless the context clearly indicates otherwise.

5 (1) Administrative Law Judge or ALJ--An individual appointed to serve as a presiding
6 officer by the State Office of Administrative Hearings Chief Judge under Government Code,
7 Chapter 2003, to conduct a hearing on matters within the department's jurisdiction.

8 (2) APA--The Administrative Procedure Act, Government Code, Chapter 2001.

9 (3) Authorized representative--An attorney authorized to practice law or, if
10 authorized by the applicable subchapter, a non-attorney designated by a party to represent the
11 party.

12 (4) Board--The board of the Texas Department of Motor Vehicles, including department
13 staff personnel to whom the board delegates an assigned duty.

14 (5) Complaint--A matter filed under Occupations Code, §2301.460 or under
15 Subchapters E or M, or under Transportation Code, Chapter 503.

16 (6) Confidential Information--Information considered to be confidential under
17 constitutional or statutory law or by judicial decision.

18 (7) Contested Case--A proceeding in which the legal rights, duties, or privileges of a
19 party are determined by the department after the opportunity for an adjudicative hearing.

20 (8) Day--A calendar day.

21 (9) Department--The Texas Department of Motor Vehicles.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 5 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (10) Director--The division director of the department authorized by the board or by
2 statute to act, including any department personnel to whom the division director delegates a duty
3 assigned under this chapter.

4 (11) Electronic filing or filed electronically--The electronic transmission of
5 documents filed in a contested case by uploading the documents to a case docket using a
6 department-designated system or department-designated email.

7 (12) Electronic service or served electronically--The electronic transmission of
8 documents filed in a contested case and sent to a party or a party's authorized representative by
9 email or a department-designated system.

10 (13) Electronic signature or signed electronically--An electronic version of a
11 person's signature that is the legal equivalent of the person's handwritten signature, unless the
12 document is required to be notarized or sworn. Electronic signature formats include:

13 (A) an "/s/" and the person's name typed in the space where the signature
14 would otherwise appear;

15 (B) an electronic graphical image or scanned image of the signature; or

16 (C) a "digital signature" based on accepted public key infrastructure
17 technology that guarantees the signer's identity and data integrity.

18 (14) Evidence--Testimony and exhibits admitted into the hearing record by an ALJ
19 or hearings examiner to prove or disprove the existence of an alleged fact.

20 (15) Ex Parte Communication--Direct or indirect communication between a state
21 agency, party, person, or representative of those entities and an ALJ, board member, or hearings
22 examiner in connection with an issue of law or fact in a contested case where the other known

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 6 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 parties to the contested case do not have notice of the communication and an opportunity to
2 participate. Ex parte communication does not include:

3 (A) communication where all parties to the contested case have notice of
4 the communication and an opportunity to participate;

5 (B) communication concerning uncontested administrative or uncontested
6 procedural matters;

7 (C) consultation between a board member or hearings examiner and the
8 department’s general counsel or hearings personnel;

9 (D) communication required for the disposition of an ex parte matter or
10 otherwise expressly authorized by law; and

11 (E) communication between a state agency, party, person, or representative
12 of those entities and a mediator made in an effort to evaluate a contested matter for mediation or
13 to mediate or settle a contested matter.

14 (16) Exhibit—A document, record, photograph, video, or other form of data
15 compilation, regardless of media, or other tangible object offered by a party as evidence.

16 (17) Filed--The receipt by the department of a document and required payment, if
17 applicable.

18 (18) Final order authority--The person with authority under statute or a board rule
19 to issue a final order.

20 (19) GDN--General distinguishing number as defined in Transportation Code,
21 Chapter 503.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 7 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (20) Hearings Examiner--An individual appointed by the Chief Hearings Examiner to
2 serve as a presiding officer to hear contested cases under Occupations Code, §2301.204 or

3 Subchapter M.

4 (21) License holder--A person holding a license under Occupations Code, Chapters
5 2301 or 2302, or a GDN or other license issued under Transportation Code, Chapter 503.

6 (22) Mediation--A confidential, informal dispute resolution process in which a
7 qualified impartial person facilitates communication between the contested case parties to
8 promote settlement, reconciliation, or understanding, as defined by Occupations Code, §2301.521.

9 (23) Party--A person, including the department, named or allowed to participate in
10 a contested case.

11 (24) Person--As defined in Occupations Code, §2301.002.

12 (25) Personal information--As defined by Transportation Code, §730.003(6).

13 (26) Personal identifying information--As defined by Business and Commerce Code,
14 §521.002(1).

15
16 (27) Pleading--A filed document that requests procedural or substantive relief,
17 makes a claim, alleges a fact, denies an allegation, makes or responds to a legal argument, or
18 otherwise addresses a matter involved in a contested case.

19 (28) Protest--To challenge a person's licensing application or a decision by a license
20 holder, as provided under Occupations Code, Chapter 2301.

21 (29) Redact--To remove a reference from a document.

22 (30) Sensitive personal information--As defined by Business and Commerce Code,
23 §521.002(2).

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 8 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (31) SOAH--The State Office of Administrative Hearings.

2 (32) Stipulation--A binding agreement among opposing parties concerning a relevant

3 issue or fact.

4 (33) TAC--The Texas Administrative Code.

5 (34) TRCP--The Texas Rules of Civil Procedure, which may be found on the website of the

6 Supreme Court of Texas.

7 (35) TRE--The Texas Rules of Evidence, which may be found on the website of the

8 Supreme Court of Texas.

9

10 §224.5. Prohibited Communication.

11 (a) No person, party, attorney of record, or authorized representative in any contested

12 case shall violate Government Code, §2001.061 by directly or indirectly engaging in ex parte

13 communication concerning a contested case with an ALJ, board member, board delegate, or a

14 hearings examiner assigned to render a decision or make findings of fact and conclusions of law in

15 a contested case.

16 (b) Unless prohibited by Government Code, §2001.061, department staff who did not

17 participate in the hearing may advise a board member, a board delegate, or a hearings examiner,

18 regarding a contested case and any procedural matters.

19 (c) Department staff shall not recommend a final decision to the board unless the

20 department is a party to the contested case.

21 (d) A violation of this section shall be promptly reported to the board chair or chief

22 hearings examiner, as applicable, and the general counsel of the department.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 9 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (e) The general counsel shall ensure that a copy or summary of the ex parte communication
2 is included with the record of the contested case and that a copy is forwarded to all parties or their
3 authorized representatives.

4 (f) The general counsel may take any other appropriate action otherwise provided by law.

5

6 §224.7. Appearance.

7 (a) General. Any party to a contested case may appear in person or by an authorized
8 representative. An authorized representative may be required to show authority to represent a party.

9 (b) Appearance by authorized representative. An authorized representative who has not entered
10 an appearance as a matter of record in a contested case shall enter an appearance by filing with the
11 department appropriate documentation that contains the representative's mailing address, email
12 address, and telephone number. If the authorized representative's authority is challenged, the
13 representative must show authority to appear as the party's representative.

14 (c) Attorney in charge. When more than one attorney makes an appearance in a contested case
15 on behalf of a party, the attorney whose signature appears first on the initial document filed in the
16 contested case shall be the attorney in charge for that party unless another attorney is specifically
17 designated in writing. All communication sent by the department or other party regarding the contested
18 case shall be sent to the attorney in charge unless otherwise requested by a party.

19 (d) Intervention. Any public official or other person having an interest in a contested case may,
20 upon request to the ALJ or hearings examiner, be allowed to intervene. A person requesting to intervene
21 in a contested case may be required to disclose that person's interest in the contested case before
22 permission to intervene will be granted.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 10 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (e) A person may be invited to participate in a contested case mediation if all parties and the
2 mediator agree that the person’s participation will facilitate understanding and resolution of the
3 contested case. However, an invited person who is not a party is not required to participate in a
4 mediation.

5 (f) This rule does not allow a person to engage in the unauthorized practice of law.

6

7 §224.9. Computing Time.

8 (a) General. Any time period prescribed or allowed by this chapter, by order of the board, or by
9 any applicable statute shall be computed in accordance with Government Code, §311.014.

10 (b) Application of this section. This section applies, unless another method is required by statute,
11 another rule in this chapter, or order.

12 (c) Computing time periods. When computing a time period under this chapter:

13 (1) the day of the act, event, or default from which the designated time period begins to
14 run is not counted; and

15 (2) the last day of the time period is counted, unless it is a Saturday, Sunday, or legal
16 holiday, in which case the period is extended to include the next day that is not a Saturday, Sunday, or
17 legal holiday.

18 (d) Calendar days. Time shall be computed using calendar days rather than business days, unless
19 otherwise specified in statute or rule.

20

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 11 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 §224.11. Filing and Service of Documents.

2 (a) Each document required or allowed to be filed with the department under this chapter must
3 be filed as required under this section and the relevant subchapter for the applicable type of contested
4 case.

5 (b) A copy of each document filed in a contested case shall be filed or served on the same date
6 upon:

7 (1) the department, and

8 (2) each party or the party's authorized representative or attorney in charge.

9 (c) A certificate of service shall accompany each document. A certificate of service by the party
10 or party's authorized representative showing timely service in a manner described in the relevant
11 subchapter shall be prima facie evidence of timely service. This section does not preclude the
12 department or any party from offering proof that the document was not timely filed or served.

13 (d) To be timely filed, a document must be received by the department within the time specified
14 by statute, rule, or department order. A document received after the specified time, notwithstanding the
15 means of delivery, shall be deemed untimely. Electronic filing is considered timely if the document is
16 received by 5:00 p.m. Central Standard Time or Daylight Savings Time when in effect. Electronic filing
17 after 5:00 p.m. shall be deemed received on the following day or the next business day if filed on a
18 Saturday, Sunday, or legal holiday.

19 (e) A document filed electronically must:

20 (1) be legible and in a portable document format (PDF), unless the department requests
21 a different format;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 12 of 94

Chapter 224 – Adjudicative Practice and Procedure

- 1 (2) be directly converted to PDF rather than scanned, to the extent possible;
- 2 (3) not be locked;
- 3 (4) include the email address of the party or authorized representative who
4 electronically filed the document;
- 5 (5) include the docket number and the name of the contested case in which the
6 document is filed;
- 7 (6) be titled or described in a manner that allows the department and the parties to
8 reasonably ascertain the contents of the document; and
- 9 (7) include an electronic signature.
- 10 (f) The department is not responsible for a filing party’s user, system, transmission, or service
11 error.
- 12 (g) If a document is not filed or served timely due to a system outage of a department-
13 designated system, the filing party may send the document to a department-designated email address or
14 seek appropriate relief from the final order authority.
- 15 (h) A party must redact information in a document before filing if the document contains
16 personal identifying information, sensitive identifying information, or other confidential information that
17 is not necessary to the resolution of the case. If the information is necessary to the resolution of the
18 case, each page of the document must be conspicuously marked as “CONFIDENTIAL – NOT FOR PUBLIC
19 RELEASE” in bold 12-point or larger type in the document header or footer. A party may request a
20 document be filed under seal if allowed by other law, order, or rule.

21

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 13 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 §224.13. Discovery.

2 (a) Party Cooperation. The parties and their authorized representatives shall cooperate in
3 discovery and shall endeavor to make any agreement reasonably necessary for the efficient disposition
4 of the contested case.

5 (b) Discovery Request. A party may request that the department issue a commission or a
6 subpoena if the parties cannot agree, or a contested case requires testimony, documents, or information
7 from a person who is not a party. A party must submit a commission or subpoena request to the
8 department's Office of General Counsel for review.

9 (c) Commission to take a deposition. Upon the written request of a party, the executive director
10 may issue a written commission directed to an officer, authorized by statute, to take a deposition of a
11 witness.

12 (d) Subpoena to produce documents. Upon the written request of a party, the executive director
13 may issue a subpoena for the production of documents. The written request must identify the
14 documents with as much detail as possible and must include a statement of their relevance to the issues
15 in the contested case.

16 (e) Subpoena for attendance at a hearing or a deposition. Upon the written request of a party,
17 the executive director may issue a subpoena for the attendance of a witness at a hearing or a deposition
18 in a contested case. The subpoena may be directed to any person without regard to the distance
19 between the location of the witness and the location of the hearing.

20 (f) The executive director is authorized to delegate the authority to department staff to issue a
21 subpoena and a commission.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 14 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (g) Limits on discovery. A commission or subpoena will only be issued on a showing of good
2 cause and receipt of a deposit sufficient to ensure payment of expenses and fees related to the
3 subpoena, including statutory witness fees. A commission or subpoena will not be issued if it appears to
4 be duplicative, dilatory, sought for the purpose of harassment, or if it would unduly inconvenience the
5 person to whom it is directed. Issuance of a commission or subpoena will be subject to the provisions of
6 Government Code, Chapter 2001, and SOAH rules.

7

8 §224.15. Hearing Recording and Transcription Cost.

9 (a) Except as provided by Subchapter G of this chapter (relating to Lemon Law and Warranty
10 Performance Claims), a hearing in a contested case will be transcribed by a court reporter if anticipated
11 to last longer than one day.

12 (b) The costs of transcribing the hearing and for the preparation of an original transcript of the
13 record for the department shall be:

14 (1) assessed to a party requesting the transcript in a contested case;

15 (2) shared by the parties in a contested case under Subchapter C of this chapter (relating
16 to Contested Cases Between Motor Vehicle Industry License Holders or Applicants); or

17 (3) assessed as directed by the ALJ or hearings examiner.

18 (c) Copies of recordings or transcriptions of a contested case hearing will be provided to any
19 party upon written request and upon payment for any duplication costs incurred by the department.

20

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 15 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 §224.17. Consolidation of Proceedings.

2 No contested case proceedings including two or more related cases or claims shall be jointly
3 heard without the consent of all parties, unless the ALJ or hearings examiner finds that justice and
4 efficiency are better served by the consolidation.

5

6 §224.19. Informal Disposition.

7 (a) Notwithstanding any other provision in this chapter, at any time during the contested case,
8 the final order authority may informally dispose of a contested case in whole or in part by stipulation,
9 agreement, dismissal, or consent order.

10 (b) If the parties have settled or otherwise determined that a contested case proceeding is not
11 required, the party who initiated the contested case shall file a motion to dismiss the contested case
12 from the docket and present a proposed agreed order or dismissal order to the final order authority. If
13 the party who initiated the contested case fails to file a motion to dismiss as required under this
14 subsection, the final order authority may issue a dismissal order after providing the parties with a 30-day
15 notice.

16 (c) A proposed agreed order submitted to the final order authority by the parties must contain
17 proposed findings of fact and conclusions of law.

18 (d) Upon receipt of the proposed agreed order, the final order authority may:

19 (1) adopt the settlement agreement and issue a final order;

20 (2) reject the settlement agreement and remand the contested case for a hearing; or

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 16 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (3) take other action that the final order authority finds just.

2

3 §224.21. Waiver of Hearing.

4 After the department issues a notice of hearing in a contested case, a party may waive a hearing

5 and consent to an agreed order. An agreed order proposed by the parties is subject to the approval of

6 the final order authority.

7

8 §224.23. Hearings to be Public.

9 A hearing in a contested case shall be open to the public.

10

11 §224.25. Extension of Time.

12 (a) The final order authority may not extend the time for filing a document when a statute or

13 rule specifies the time period by which a document must be filed with the department.

14 (b) When an act is discretionary or allowed to be done at or within a specified time in

15 accordance with this chapter and Government Code, Chapter 2001, the final order authority, with good

16 cause shown, may:

17 (1) order the specific period extended if the extension is requested before the expiration

18 of the period previously specified; or

19 (2) allow the act to be done after the expiration of the specified period, provided good

20 cause is shown for the failure to act.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 17 of 94

Chapter 224 – Adjudicative Practice and Procedure

1

2 §224.27. Final Order; Motion for Rehearing.

3 (a) The provisions of Government Code, Chapter 2001, Subchapter F, govern the issuance of a
4 final order issued under this subchapter and a motion for rehearing filed in response to a final order.

5 (b) Except as provided by subsection (c) of this section and §224.29 of this title (relating to
6 Delegation of Final Order Authority), the board has final order authority in a contested case filed under
7 Occupations Code, Chapters 2301 or 2302, or under Transportation Code, Chapters 502, 503, 621-623,
8 643, 645, and 1001–1005.

9 (c) The hearings examiner has final order authority in a contested case filed under Occupations
10 Code, §2301.204 or Occupations Code Chapter 2301, Subchapter M.

11 (d) A department determination and action denying access to the temporary tag database
12 becomes final within 26 days of the date of the notice denying access to a database, unless the dealer or
13 converter:

14 (1) requests a hearing regarding the denial of access, or

15 (2) enters into a settlement agreement with the department.

16 (e) Unless a timely motion for rehearing is filed with the appropriate final order authority as
17 provided by law, an order shall be deemed final and binding on all parties. All administrative remedies
18 are deemed to be exhausted as of the effective date of the final order.

19 (f) If a timely motion for rehearing is not filed, the final order shall be deemed final and binding
20 in accordance with the provisions of Government Code, §2001.144.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 18 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (g) If a final and binding order includes an action on a license, the department may act on the
2 license on the date the final order is deemed final and binding, unless the action is stayed by a court
3 order.

4

5 §224.29. Delegation of Final Order Authority.

6 (a) In accordance with Occupations Code, §2301.154(c) and Transportation Code, §1003.005(b),
7 except as provided by subsection (b) of this section, the director of the division that regulates the
8 distribution and sale of motor vehicles is authorized to issue, where there has not been a decision on the
9 merits, a final order in a contested case under Subchapters B and C, including, but not limited to a
10 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 including:

16 (A) failure of a complaining or protesting party to participate in scheduling
17 mediation or to appear at mediation as required under Subchapter C of this chapter (relating to
18 Contested Cases Between Motor Vehicle Industry License Holders or Applicants);

19 (B) failure of a complaining or protesting party to respond to department
20 requests for information or scheduling matters;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 19 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (C) failure of a complaining or protesting party to dismiss a contested case that
2 has been resolved by the parties;

3 (6) by dismissal for want of jurisdiction;

4 (7) by summary judgment or summary disposition;

5 (8) by default judgment; or

6 (9) when a party waives opportunity for a contested case hearing.

7 (b) In accordance with Occupations Code, §2301.704 and §2301.711, a hearings examiner is
8 authorized to issue a final order in a contested case brought under Occupations Code, §2301.204 or
9 §§2301.601–2301.613.

10 (c) In accordance with Transportation Code, §1003.005, the director of the department’s Motor
11 Carrier Division is delegated any power relating to a contested case, including the authority to issue a
12 final order, in contested cases under Subchapter D of this chapter to the extent that delegation of such
13 authority is not already provided by statute.

14 (d) In a contested case in which the board has delegated final order authority under subsection
15 (a) or (c) of this section, a motion for rehearing shall be filed with and decided by the final order
16 authority delegate.

17

18 §224.31. Cost of Record on Appeal.

19 (a) If a final decision in a contested case is appealed and the department is required to transmit
20 to the court the original or a certified copy of the administrative record, or any part thereof, the

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 20 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 appealing party shall pay the costs of preparation of the record, unless waived by the department in
2 whole or in part.

3 (b) A charge imposed as provided by this section is a court cost and may be assessed by the
4 court in accordance with the TRCP.

5

6 **SUBCHAPTER B. MOTOR VEHICLE, SALVAGE VEHICLE, AND TRAILER INDUSTRY ENFORCEMENT**

7

43 TAC §§224.50–224.64

8 **STATUTORY AUTHORITY.** The department adopts new Chapter 224 under Government Code, §2001.004,
9 which requires state agencies to adopt rules of practice stating the nature and requirements of all
10 available formal and informal procedures; Government Code, §2001.054, which specifies the
11 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
12 a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale
13 and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise
14 that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications
15 of license holders; ensure that the distribution, sale and lease of motor vehicles is conducted as required
16 by statute and board rules; to prevent fraud, unfair practices, discrimination, impositions, and other
17 abuses in connection with the distribution and sale of motor vehicles; and to enforce and administer
18 Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155,
19 which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code,
20 Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651,
21 which authorizes the board to deny an application for a license, revoke or suspend a license, place on
22 probation a person whose license has been suspended, or reprimand a licensee; Occupations Code,
23 §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code,

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 21 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to
2 administer Transportation Code, Chapter 502; Transportation Code, §503.002, which authorizes the board
3 to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code,
4 §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement
5 the powers and duties of the department; Transportation Code, §1003.005, which authorizes the board
6 by rule to delegate any power relating to a contested case, including the power to issue a final order, to
7 one or more board members or certain department staff; and the statutory authority referenced
8 throughout this preamble and in the rule text, which is incorporated herein by reference.

9 **CROSS REFERENCE TO STATUTE.** These new rules implement Government Code, Chapter 2001;
10 Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 1002, and 1003.

11
12 Text.

13 §224.50. Purpose and Scope.

14 This subchapter, and Subchapters A, E, and F, describe the procedures by which the
15 department will adjudicate alleged violations of Occupations Code, Chapter 2301 and 2302, and
16 Transportation Code, Chapter 503 brought by the department against a license applicant, license
17 holder, or unlicensed person engaging in an activity or business that requires a license under these
18 statutes.

19
20 §224.52. Cease and Desist Order; Delegation of Authority.

21 (a) When a person is alleged to be violating a provision of Occupations Code, Chapter 2301,
22 or a board rule or order, the department may enter an interlocutory order requiring the person to
23 cease and desist from the violation under the following procedures.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 22 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (1) In accordance with Occupations Code, §2301.154(c) and Transportation Code,
2 §1003.005(b), the department’s Enforcement Division director is delegated the authority to issue an
3 interlocutory cease-and-desist order under the procedures established in this subsection.

4 (2) A person requesting an interlocutory cease-and-desist order must present a
5 petition or complaint, verified by affidavit, containing a plain statement of the grounds for seeking
6 the cease-and-desist order to the department’s Enforcement Division director in accordance with
7 the procedures set forth in §224.84 of this section (regarding Filing and Service of a Protest,
8 Complaint, or Other Document). The department shall not issue an interlocutory cease-and-desist
9 order without a verified petition or complaint that meets the requirements of this subsection.

10 (3) At least three days prior to entering an interlocutory order requiring a person to
11 cease and desist, the department must send a letter notifying the person of the allegations against them
12 to all current addresses for the person in the department’s records by both electronic service and
13 certified mail, return receipt requested.

14 (4) The notice letter must include a statement of the alleged conduct that forms the
15 basis for the interlocutory cease-and-desist order and must provide the person the opportunity to
16 show cause in writing within three days why the department should not issue a cease-and-desist
17 order.

18 (5) In considering whether to issue an interlocutory cease-and-desist order, the
19 department must determine if the conditions set forth in Occupations Code, §2301.802(b) are present
20 and consider the person’s written response, if any, to the letter notifying the person of the alleged
21 violations. The department shall email a copy of the department’s decision to the person in addition to
22 sending a copy by certified mail, return receipt requested.

23 (6) Each interlocutory cease-and-desist order must include:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 23 of 94

Chapter 224 – Adjudicative Practice and Procedure

- 1 (A) the date and hour of issuance;
- 2 (B) a statement of which of the conditions in Occupations Code,
- 3 §2301.802(b) the department determined were present to necessitate the cease-and-desist order;
- 4 (C) a notice of hearing at SOAH to determine the validity of the order;
- 5 (D) the reasons for its issuance; and
- 6 (E) a description in reasonable detail of the act or acts to be restrained.
- 7 (7) If the ALJ determines after a hearing that the cease-and-desist order should
- 8 remain in place during the pendency of the contested case, the ALJ shall issue an interlocutory
- 9 cease-and-desist order.
- 10 (8) An interlocutory cease-and-desist order remains in effect until vacated or
- 11 incorporated in a final order.
- 12 (9) A party may immediately appeal an interlocutory cease-and-desist order issued by an
- 13 ALJ to the board under §224.192 of this title (relating to Appeal of an Interlocutory Order) while the
- 14 contested case is at SOAH.
- 15 (b) The department may issue a final cease-and-desist order if a person who is not licensed
- 16 under Occupations Code, Chapter 2302 is found, after notice and opportunity for a hearing, to
- 17 have violated that chapter or a rule or order adopted under that chapter. The department may
- 18 also issue a final cease-and-desist order under Occupations Code, Chapter 2301 to a person found,
- 19 after notice and opportunity for a hearing, to have violated that chapter, a board rule, or an order.
- 20 (1) If the department decides to seek a cease-and-desist order under subsection (b) of
- 21 this section, the department will send a letter notifying the person of the allegations against them to all
- 22 current addresses for the person in the department’s records by both electronic service and certified
- 23 mail, return receipt requested. The notice letter will contain:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 24 of 94

Chapter 224 – Adjudicative Practice and Procedure

- 1 (A) a summary of the factual allegations;
- 2 (B) a description of the statutory provision, rule or order the person is
- 3 alleged to have violated;
- 4 (C) a description in reasonable detail of the act or acts to be restrained by
- 5 the cease-and-desist order;
- 6 (D) a statement regarding the person's right to request a hearing;
- 7 (E) the procedure to request a hearing, including the deadline for filing; and
- 8 (F) notice to the person that the department will issue a cease-and-desist
- 9 order that will become final on the date specified if the person fails to timely request a hearing.
- 10 (2) A person to whom a cease-and-desist notice letter under subsection (b) is sent
- 11 may file a written request for a hearing before a SOAH ALJ. The person must submit, in writing, a
- 12 request for a hearing under this section to the department's contact listed in the notice letter
- 13 provided under subsection (b)(1) of this section. The department must receive the request for a
- 14 hearing within 26 days of the date the notice letter is mailed.
- 15 (3) If the person does not make a timely written request for a hearing within 26
- 16 days of the date the cease-and-desist letter is mailed, the allegations are deemed admitted on the
- 17 27th day and a final cease-and-desist order including sanctions may be issued by the final order
- 18 authority.
- 19 (c) Once jurisdiction for the conduct of a contested case hearing transfers to SOAH, an ALJ
- 20 may act on a party's motion regarding an existing cease-and-desist order issued by the department
- 21 or consider a new motion for a cease-and-desist order by a party.
- 22
- 23 §224.54. Civil Penalty and Revocation Assessment.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 25 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (a) Occupations Code, §2301.801 and §2302.354, and Transportation Code, §503.095
2 govern the amount of a civil penalty that may be assessed by the department against a license
3 holder.

4 (b) In determining the amount of civil penalty to assess the department will consider the
5 following aggravating factors:

6 (1) the seriousness of the violation, including the nature, circumstances, extent,
7 and gravity of any prohibited act, and the harm or potential harm to the safety of the public;

8 (2) the economic damage to the public caused by the violation;

9 (3) any history of previous violations including whether the license holder
10 previously entered into an agreed order with the department or otherwise received a warning or
11 reduced penalty;

12 (4) the amount necessary to deter a future violation; and

13 (5) any other matter that justice may require, including:

14 (A) the number of violations or number of consumers harmed by
15 violation(s);

16 (B) whether the consumer received a title;

17 (C) whether the license holder misused license plates or temporary tags;

18 (D) whether the license holder attempted to conceal a violation;

19 (E) whether the act constituting the violation was intentional,

20 premeditated, knowing, or grossly negligent; and

21 (F) whether an order issued by the department was violated.

22 (c) In determining whether license revocation is appropriate, the department will consider
23 the following factors:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 26 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (1) whether the license holder is unfit under standards governing the occupation,
2 including qualifications for a license;

3 (2) whether the license holder made a material misrepresentation in any written
4 communication or information provided to the department;

5 (3) whether the license holder willfully defrauded a purchaser;

6 (4) whether the license holder misused license plates or temporary tags, including
7 whether the license holder attempted to use an internet-down tag to avoid inspection
8 requirements;

9 (5) whether the license holder failed to fulfill a written agreement with a retail
10 purchaser of a vehicle or motor vehicle; and

11 (6) whether the license holder failed to attend an approved dealer training seminar
12 as ordered in an agreed final order

13 (d) The department will consider the following mitigating factors in determining the
14 amount of civil penalty to assess or whether license revocation is appropriate:

15 (1) acknowledgment by the licensee of any wrongdoing;

16 (2) willingness to cooperate with the department; and

17 (3) efforts to correct a violation.

18 (e) The department will publish a disciplinary matrix on the department website to provide
19 guidance to license holders on the administrative penalties and other sanctions that may be
20 assessed for the most common violations. The department will consider the disciplinary matrix
21 published at the time of the violation; however, the disciplinary matrix does not prevent the
22 department from seeking administrative penalties and other sanctions above or below the
23 recommended ranges listed in the disciplinary matrix. Also, the disciplinary matrix does not

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 27 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 prevent the board or the board’s delegate from ordering administrative penalties and other
2 sanctions above or below the recommended ranges listed in the disciplinary matrix.

3

4 §224.56. Notice of Department Decision.

5 (a) The department shall issue a Notice of Department Decision to a license applicant,
6 license holder, or other person by certified mail, return receipt requested, to the last known
7 address and email address upon a determination under Occupations Code, Chapters 2301 and
8 2302 or Transportation Code, Chapter 503 that:

9 (1) an application for a license should be denied; or

10 (2) an administrative sanction should be imposed.

11 (b) The last known address is the mailing address provided by the person in the
12 department-designated licensing system.

13 (c) A Notice of Department Decision shall include:

14 (1) a statement describing the department decision and the effective date;

15 (2) a description of each alleged violation;

16 (3) a description of each administrative sanction being proposed;

17 (4) a statement which sets out the legal basis for each administrative sanction;

18 (5) a statement informing the license applicant, license holder, or other person of
19 the right to request a hearing;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 28 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (6) the procedure to request a hearing, including the deadline for filing a request
2 with the department and the acceptable electronic methods to request a hearing; and

3 (7) notice to the license applicant, license holder, or other person that the
4 proposed decision and administrative sanctions in the Notice of Department Decision will become
5 final on the date specified if the license applicant, license holder, or other person fails to timely
6 request a hearing in accordance with subsection (d) of this section.

7 (d) To receive a hearing, the license applicant, license holder, or other person must submit
8 a written request for a hearing under this section to the department. The department must receive
9 a hearing request within 26 days of the date of the Notice of Department Decision for the request
10 to be considered timely.

11 (e) If the department receives a timely request for a hearing, the department will contact
12 the license holder and attempt to informally resolve the contested case. If the license holder and
13 the department cannot informally resolve the contested case, the department will refer the
14 contested case to SOAH to set a hearing date and will give notice to the license applicant, license
15 holder, or other person of the date, time, and location of the hearing.

16 (f) If the license applicant, license holder, or other person does not make a timely request
17 for a hearing or agree to settle the contested case within 26 days of the date of the Notice of
18 Department Decision, the allegations are deemed admitted on the 27th day and a final order
19 including sanctions may be issued by the final order authority.

20

21 §224.58. Denial of Dealer or Converter Access to Temporary Tag System.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 29 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (a) In this section "fraudulently obtained temporary tags from the temporary tag database"

2 means misuse by a dealer or converter account user of the temporary tag database authorized under

3 Transportation Code, §503.0626 or §503.0631 to obtain:

4 (1) an excessive number of temporary tags relative to dealer sales;

5 (2) temporary tags for a vehicle or vehicles not in the dealer's or converter's inventory (a

6 vehicle is presumed not to be in the dealer's or converter's inventory if the vehicle is not listed in the

7 relevant monthly Vehicle Inventory Tax Statement);

8 (3) access to the temporary tag database for a fictitious user or person using a false

9 identity;

10 (4) temporary tags for a vehicle or a motor vehicle when a dealer is no longer operating

11 at a licensed location; or

12 (5) temporary tags issued for a vehicle or a motor vehicle not located at a licensed

13 location or a storage lot.

14 (b) The department shall deny a dealer or converter access to the temporary tag database

15 effective on the date the department sends notice electronically and by certified mail to the dealer or

16 converter that the department has determined, directly or through an account user, that the dealer or

17 converter has fraudulently obtained temporary tags from the temporary tag database. A dealer or

18 converter may seek a negotiated resolution with the department by demonstrating the dealer or

19 converter took corrective action or that the department's determination was incorrect.

20 (c) Notice shall be sent to the dealer's or converter's last known mailing address and last known

21 email in the department-designated licensing system.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 30 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (d) A dealer or converter may request a hearing on the denial of access to the temporary tag
2 database, as provided by Subchapter O, Chapter 2301, Occupations Code. The request must be in writing
3 and the dealer or converter must request a hearing under this section. The department must receive the
4 written request for a hearing within 26 days of the date of the notice denying access to the database.
5 The request for a hearing does not stay the denial of access under subsection (b) of this section. A dealer
6 or converter may continue to seek a negotiated resolution with the department after a request for
7 hearing has been submitted under this subsection by demonstrating the dealer or converter took
8 corrective action or that the department's determination was incorrect.

9 (e) The department may also issue a Notice of Department Decision stating administrative
10 violations as provided in §224.56 of this title (relating to Notice of Department Decision) concurrently
11 with the notice of denial of access under this section. A Notice of Department Decision may include
12 notice of any violation, including a violation listed under subsection (a) of this section.

13 (f) A department determination and action denying access to the temporary tag database
14 becomes final if the dealer or converter does not request a hearing or enter into a settlement agreement
15 with the department within 26 days of the date of the notice denying access to a database.

16
17 §224.60. Filing and Service of Documents.

18 Each document required or allowed to be filed with the department under this subchapter must
19 be filed electronically in a department-designated system or according to written instructions provided
20 by the department.

21

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 31 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 §224.62. Referral to SOAH.

2 (a) If the department receives a timely request for a hearing and the parties are unable to
3 informally resolve or dispose of the contested case, the department will refer the contested case to
4 SOAH by filing a Request to Docket form and related documents as required under SOAH rules.

5 (b) When SOAH accepts the department’s request to docket a contested case, jurisdiction
6 transfers to SOAH.

7

8 §224.64. Notice of Hearing.

9 Once SOAH provides the department with the initial hearing date, time, and place, the
10 department shall notify the parties. The contested case proceeds according to Subchapter E of this
11 chapter (relating to Contested Cases Referred to SOAH).

12

13 **SUBCHAPTER C. CONTESTED CASES BETWEEN MOTOR VEHICLE INDUSTRY LICENSE HOLDERS OR**
14 **APPLICANTS**

15 **43 TAC §§224.80–224.94**

16 **STATUTORY AUTHORITY.** The department adopts new Chapter 224 under Government Code, §2001.004,
17 which requires state agencies to adopt rules of practice stating the nature and requirements of all
18 available formal and informal procedures; Government Code, §2001.054, which specifies the
19 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
20 a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale
21 and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise
22 that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 32 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 of license holders, ensure that the distribution, sale and lease of motor vehicles is conducted as required
2 by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other
3 abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer
4 Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155,
5 which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code,
6 Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651,
7 which authorizes the board to deny an application for a license, revoke or suspend a license, place on
8 probation a person whose license has been suspended, or reprimand a licensee; Occupations Code,
9 §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code,
10 Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to
11 administer Transportation Code, Chapter 502; Transportation Code, §503.002, which authorizes the board
12 to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code,
13 §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement
14 the powers and duties of the department; Transportation Code, §1003.005, which authorizes the board
15 by rule to delegate any power relating to a contested case, including the power to issue a final order, to
16 one or more board members or certain department staff; and the statutory authority referenced
17 throughout this preamble and in the rule text, which is incorporated herein by reference.

18 **CROSS REFERENCE TO STATUTE.** These new rules implement Government Code, Chapter 2001;
19 Occupations Code, Chapter 2301; and Transportation Code, Chapters 502, 503, 1002, and 1003.

20

21 Text.

22 §224.80. Purpose and Scope.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 33 of 94

Chapter 224 – Adjudicative Practice and Procedure

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

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 34 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (3) state the statutory provision under which the complaint is made.

2

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.

10

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.

20

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 35 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 §224.88. Docketing and Notice of a Protest or Complaint.

2 (a) If a protest or complaint meets minimum requirements, the department will docket the
3 contested case and assign a docket number.

4 (b) The department will notify the contested case parties that a statutory stay under
5 Occupations Code, §2301.803 is in effect.

6 (c) The department will assign a department mediator and notify the contested case parties.
7 Within seven days of the department notice date, each party must either:

8 (1) accept the assigned department mediator; or

9 (2) decline the assigned department mediator and retain a private mediator and comply
10 with the requirements of §224.90 of this title (relating to Mediation).

11

12 §224.90. Mediation.

13 (a) Except as provided by subsection (b), parties to a contested case filed under this subchapter
14 are required to participate in mediation before the department will refer a contested case to SOAH for a
15 hearing.

16 (b) This section does not limit the parties' ability to settle a case without mediation.

17 (c) The department will provide mediation services by a staff member qualified to serve as an
18 impartial third party in accordance with Civil Practice and Remedies Code, Chapter 154.

19 (d) The mediation will conclude within 60 days of the date a contested case is assigned to a
20 department mediator, unless the mediation deadline is extended. The department mediator may extend

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 36 of 94

Chapter 224 – Adjudicative Practice and Procedure

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 this 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;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 37 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (4) a statement that the mediation will conclude within 60 days of the department's
2 notice under §224.88 of this 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.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 38 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (m) If a party refused to attend or participate in a mediation, an ALJ may recommend a sanction
2 in 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 ENFORCEMENT**

18 **43 TAC §§224.110–224.130**

19 **STATUTORY AUTHORITY.** The department adopts new Chapter 224 under Government Code, §2001.004,
20 which requires state agencies to adopt rules of practice stating the nature and requirements of all
21 available formal and informal procedures; Government Code, §2001.054, which specifies the

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 39 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
2 a license; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer
3 Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the department
4 to adopt and enforce rules to carry out IRP; Transportation Code, §621.008, which authorizes the board
5 to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621;
6 Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to
7 implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which
8 authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code,
9 Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an
10 administrative penalty or revoke an oversize or overweight permit issued under Transportation Code,
11 Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525
12 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271;
13 Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on
14 a shipper who violates a provision under §623.272, and states that the notice and hearing requirements
15 under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under
16 §623.272; Transportation Code, §643.003, which authorizes the department to adopt rules to administer
17 Transportation Code, Chapter 643; Transportation Code, §643.102, which authorizes a motor carrier to
18 comply with the requirements under Transportation Code, §643.101 through self-insurance if it complies
19 with the requirements; Transportation Code, §643.251, which authorizes the department to impose an
20 administrative penalty against a motor carrier required to register under Subchapter B of Transportation
21 Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation
22 Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under
23 Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 40 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 Transportation Code, §643.2525, which provides the process for an administrative hearing under
2 Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to
3 appeal the denial of an application for registration, renewal of registration, or reregistration under
4 Transportation Code, Chapter 643; Transportation Code, §645.003, which authorizes the department to
5 adopt rules providing for administrative penalties for a failure to register or submit information and
6 documents under the unified carrier registration plan and agreement or for a violation of the unified
7 carrier registration plan and agreement; Transportation Code, §1002.001, which authorizes the board to
8 adopt rules that are necessary and appropriate to implement the powers and duties of the department;
9 and the statutory authority referenced throughout this preamble and in the rule text, which is
10 incorporated herein by reference.

11 **CROSS REFERENCE TO STATUTE.** These new rules implement Government Code, Chapter 2001; and
12 Transportation Code, Chapters 502, 621–623, 643, 645, 1002 and 1003.

13

14 Text.

15 §224.110. Purpose and Scope.

16 This subchapter and Subchapters A, E, and F of this chapter describe the procedures by
17 which the department will adjudicate alleged violations and claims under Transportation Code,
18 Chapters 502, 621–623, 643, and 645. These contested cases involve registrants under the
19 International Registration Plan, motor carriers, motor carrier leasing businesses, motor
20 transportation brokers, and household goods carriers. Contested cases involving persons operating
21 oversize or overweight vehicles or moving oversize or overweight loads are also included.

22

23 §224.112. Definitions.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 41 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (a) The definitions contained in the relevant Transportation Code chapter apply to the
2 contested cases under this subchapter.

3 (b) The definitions contained in Chapter 217 of this title (relating to Vehicle Titles and
4 Registration), Chapter 218 of this title (relating to Motor Carriers), and Chapter 219 of this title
5 (relating to Oversize and Overweight Vehicles and Loads) apply to the relevant contested cases
6 under this subchapter.

7

8 §224.114. Cease and Desist Order.

9 (a) The department may issue a cease-and-desist order to a respondent:

10 (1) who engages or represents itself to be engaged in a motor carrier operation that
11 is in violation of this chapter;

12 (2) to prevent a violation of Chapter 218 of this title (relating to Motor Carriers); or

13 (3) to protect public health and safety.

14 (b) The order shall:

15 (1) be delivered by personal delivery or registered or certified mail, return receipt
16 requested, to the person's or entity's last known address;

17 (2) include:

18 (A) a summary of the factual allegations;

19 (B) a description of the statutory provision, rule or order the person is
20 alleged to have violated;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 42 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (C) a description in reasonable detail of the act or acts to be restrained by
2 the cease-and-desist; and

3 (3) state the effective date of the order.

4 (c) The department's cease and desist order is final, unless within ten days of the service of
5 the order, the respondent files with the department a written request for hearing.

6 (d) If a request for hearing is filed, the department shall initiate a contested case with
7 SOAH in accordance with Chapter 224, Subchapter E of this title (relating to Contested Cases
8 Referred to SOAH).

9 (e) The cease-and-desist order shall remain in effect until the respondent comes into
10 complete compliance with department directives and decisions, or unless otherwise provided by
11 an order issued after final review by the department.

12 (f) If a respondent violates a cease-and-desist order, the department may:

13 (1) impose an administrative penalty against the respondent; or

14 (2) refer the matter to the appropriate authority to institute actions for:

15 (A) an injunction against violation of the cease-and-desist order;

16 (B) collection of any administrative penalty assessed by the department; or

17 (C) any other remedy provided by law.

18 (g) Nothing in this section precludes the department from imposing other administrative
19 sanctions against the respondent while a cease-and-desist order is in effect.

20

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 43 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 §224.115. Administrative Penalty and Sanction Assessment; Probation of Suspension

2 (a) Amount of administrative penalty under Transportation Code, §623.271.

3 (1) Transportation Code, §623.271 governs the amount of an administrative penalty that
4 the department may assess against a person or the holder of an oversize or overweight permit, as
5 applicable.

6 (2) In an action brought by the department, the aggregate amount of administrative
7 penalty shall not exceed \$5,000 unless it is found that the person or the holder of the permit knowingly
8 committed a violation.

9 (3) In an action brought by the department, if it is found that the person or the holder of
10 the permit knowingly committed a violation, the aggregate amount of administrative penalty shall not
11 exceed \$15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation,
12 or acting with deliberate ignorance of or reckless disregard for the violation involved. Actual awareness
13 may be inferred from the conduct of the alleged violator or from the history of previous violations by
14 the alleged violator.

15 (4) In an action brought by the department, if it is found that the person or the holder of
16 the permit knowingly committed multiple violations, the aggregate amount of administrative penalty for
17 the multiple violations shall not exceed \$30,000.

18 (5) Each day a violation continues or occurs is a separate violation for purposes of
19 imposing an administrative penalty.

20 (b) Amount of administrative penalty under Transportation Code, §623.272.

21 (1) Transportation Code, §623.272 governs the amount of an administrative penalty that
22 the department may assess against a shipper.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 44 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (2) The amount of an administrative penalty imposed under this subsection is calculated
2 in the same manner as the amount of an administrative penalty imposed under subsection (a) of this
3 section.

4 (c) Amount of administrative penalty under Transportation Code, §643.251.

5 (1) Transportation Code, §643.251 governs the amount of an administrative penalty that
6 the department may assess against a motor carrier that is required to register under Subchapter B of
7 Chapter 643 of the Transportation Code and violates Transportation Code, Chapter 643 or a rule or
8 order adopted under Chapter 643.

9 (2) In an action brought by the department, the aggregate amount of administrative
10 penalty shall not exceed \$5,000 unless it is found that the motor carrier knowingly committed a
11 violation.

12 (3) In an action brought by the department, if it is found that the motor carrier
13 knowingly committed a violation, the aggregate amount of administrative penalty shall not exceed
14 \$15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation, or
15 acting with deliberate ignorance of or reckless disregard for the violation involved. Actual awareness
16 may be inferred from the conduct of the alleged violator or from the history of previous violations by
17 the alleged violator.

18 (4) In an action brought by the department, if it is found that the motor carrier
19 knowingly committed multiple violations, the aggregate amount of administrative penalty for the
20 multiple violations shall not exceed \$30,000.

21 (5) Each day a violation continues or occurs is a separate violation for purposes of
22 imposing an administrative penalty.

23 (d) Probation of suspension under Transportation Code, §643.252.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 45 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (1) Transportation Code, §643.252 authorizes the department to place on probation a
2 motor carrier whose registration is suspended.

3 (2) In determining whether to probate a suspension of a motor carrier’s registration, the
4 department will consider the factors listed in Transportation Code, §643.251 regarding the amount of an
5 administrative penalty.

6 (3) The department shall set the length of the probation based on the seriousness of the
7 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 (e) The department will publish a disciplinary matrix on the department website to provide
11 guidance to motor carriers on the penalties and sanctions that may be assessed for the most
12 common violations. The department will consider the disciplinary matrix published at the time of
13 the violation; however, the disciplinary matrix does not prevent the department from seeking
14 administrative penalties and sanctions above or below the recommended ranges listed in the
15 disciplinary matrix. Also, the disciplinary matrix does not prevent the director from ordering
16 administrative penalties and sanctions above or below the recommended ranges listed in the
17 disciplinary matrix.

18
19 §224.116. Administrative Proceedings.

20 (a) If the department decides to take an enforcement action under §218.16 of this title (relating
21 to Insurance Requirements) for the revocation of self-insured status, §218.64 of this title (relating to
22 Rates), §218.71 of this title (relating to Administrative Penalties), §219.121 of this title (relating to

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 46 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 Administrative Penalties and Sanctions under Transportation Code, §623.271), §218.72 of this title
2 (relating to Administrative Sanctions), or §219.126 of this title (relating to Administrative Penalty for
3 False Information on Certificate by a Shipper), the department shall mail a Notice of Department
4 Decision to the person by first class mail to the last known address as shown in department records. If
5 the enforcement action falls under the Memorandum of Agreement with the Federal Motor Carrier
6 Safety Administration (FMCSA) under §218.71, the department shall mail the Notice of Department
7 Decision to the person by first class mail to the last known address as shown in FMCSA’s records.

8 (b) The Notice of Department Decision shall include:

9 (1) a brief summary of the alleged violation or enforcement action being proposed;

10 (2) a statement describing each sanction, penalty, or enforcement action proposed;

11 (3) a statement informing the person of the right to request a hearing;

12 (4) a statement of the procedure a person must use to request a hearing, including the
13 deadline for filing a request with the department and the acceptable methods to request a hearing; and

14 (5) a statement that a proposed penalty, sanction, or enforcement action will become
15 final and take effect on a specific date if the person fails to request a hearing.

16 (c) A person must submit to the department a written request for a hearing to the address
17 provided in the Notice of Department Decision not later than the 26th day after the date the notice is
18 mailed by the department; however, this requirement does not apply to a contested case that falls under
19 §218.64 and Transportation Code, §643.154.

20 (d) If a person submits a timely written request for a hearing or the contested case that falls
21 under §218.64 and Transportation Code, §643.154, the department will contact the person and attempt

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 47 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 to informally resolve the contested case. If the person and the department cannot informally resolve the
2 contested case, the department will refer the contested case to SOAH to set a hearing date and will give
3 notice of the time and place of the hearing to the person.

4 (e) Except as provided by Transportation Code, §643.154, if the person does not make a timely
5 request for a hearing or agree to settle a contested case within 26 days of the date the Notice of
6 Department Decision was mailed, the allegations are deemed admitted on the 27th day and a final order
7 including sanctions and penalties may be issued by the final order authority.

8 (f) Except as provided by statute and the applicable provisions of this chapter, any SOAH
9 proceeding is governed by Government Code, Chapter 2001 and 1 TAC Chapter 155, including the
10 authority of the department to informally dispose of the contested case by stipulation, agreed
11 settlement, consent order, or default. The department will follow the process set forth in Transportation
12 Code, §643.2525 and the applicable provisions of this chapter when enforcing the federal laws and
13 regulations cited in §218.71 to the extent authorized by applicable federal laws and regulations.

14 (g) The department and the person may informally resolve the contested case by entering into a
15 settlement agreement or agreeing to stipulations at any time before the director issues a final order.
16 However, the person must pay any penalty in full prior to the execution of a settlement agreement.

17

18 §224.118. Filing of Documents.

19 Each document required or allowed to be filed with the department under this subchapter must
20 be filed according to written instructions provided by the department in the applicable notice under this
21 subchapter.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 48 of 94

Chapter 224 – Adjudicative Practice and Procedure

1

2 §224.120. Registration Suspension Ordered Under Family Code.

3 (a) On receipt of a final order issued under Family Code, §§232.003, 232.008, or 232.009,
4 regarding child support enforcement, the department will suspend:

5 (1) a certificate of registration issued under Chapter 218, Subchapter B (relating to
6 Motor Carrier Registration); or

7 (2) the registration of an interstate motor carrier issued under §218.17 of this title
8 (relating to Unified Carrier Registration System).

9 (b) The department will charge an administrative fee of \$10 to a person whose registration is
10 suspended under this section.

11 (c) A suspension under this section does not require the department to give notice or otherwise
12 follow the administrative process provided under §224.116 of this title (relating to Administrative
13 Proceedings).

14 (d) A registration suspended under this section may only be reinstated on receipt of an order
15 issued under Family Code, §232.013.

16

17 §224.122. Appeal of Decision Regarding Assessment, Cancellation, or Revocation Under §217.56.

18 (a) Pursuant to §217.56(c)(2)(J)(iii) of this title (relating to Registration Reciprocity Agreements),
19 a registrant may appeal the department's decision regarding an assessment, cancellation, or revocation.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 49 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (b) The appeal will be governed by Chapter 224, Subchapter E of this title (relating to Contested
2 Cases Referred to SOAH).

3 (c) The registrant's appeal will be considered untimely if it is not received by the director of the
4 department's Motor Carrier Division by the 26th day after the date of the department's decision. The
5 department will not consider an untimely appeal.

6 (d) A timely appeal will abate the assessment pending a final order.

7

8 §224.124. Appeal of a Denial Under Transportation Code, §643.2526.

9 (a) Pursuant to Transportation Code, §643.2526, an applicant may appeal the denial of an
10 application for registration, renewal of registration, or reregistration under Transportation Code, Chapter
11 643.

12 (b) The appeal will be governed by Chapter 224, Subchapter E of this title (relating to Contested
13 Cases Referred to SOAH).

14 (c) The applicant's appeal will be considered untimely if it is not filed with the department by the
15 26th day after the date of the department's denial of the application. The department will not consider
16 an untimely appeal.

17 (d) An application that is withdrawn under Transportation Code, §643.055 is not a denial of an
18 application for the purposes of an appeal under Transportation Code, §643.2526.

19

20 §224.126. Appeal of a Denial of Self-Insured Status.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 50 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (a) Pursuant to §218.16(d) of this title (relating to Insurance Requirements), an applicant may
2 appeal the denial of an application for self-insured status.

3 (b) The appeal will be governed by Chapter 224, Subchapter E of this title (relating to Contested
4 Cases Referred to SOAH).

5 (c) The applicant's appeal will be considered untimely if it is not filed with the department by the
6 26th day after the date of the department's denial of the application. The department will not consider
7 an untimely appeal.

8
9 §224.128. Referral to SOAH.

10 (a) The department will refer a contested case to SOAH by filing a Request to Docket form and
11 related documents as required under SOAH rules as follows:

12 (1) if the department receives a timely request for a hearing and the parties are unable
13 to informally resolve or dispose of the case;

14 (2) if the department receives a timely appeal under §§224.122, 224.124, or 224.126; or

15 (3) the contested case falls under §218.64 of this title (relating to Rates) and
16 Transportation Code, §643.154.

17 (b) When SOAH accepts the department's Request to Docket, jurisdiction of the contested case
18 transfers to SOAH.

19
20 §224.130. Notice of Hearing.

1 (a) Once SOAH provides the department with the initial hearing date, time, and place, the
2 department will issue to the contested case parties a notice of hearing that complies with Government
3 Code, Chapter 2001 and SOAH rules.

4 (b) The contested case proceeds according to Subchapter E of this chapter (relating to Contested
5 Cases Referred to SOAH).

6

7

SUBCHAPTER E. CONTESTED CASES REFERRED TO SOAH

8

43 TAC §§224.150–224.166

9 **STATUTORY AUTHORITY.** The department adopts new Chapter 224 under Government Code, §2001.004,
10 which requires state agencies to adopt rules of practice stating the nature and requirements of all
11 available formal and informal procedures; Government Code, §2001.054, which specifies the
12 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
13 a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale
14 and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise
15 that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications
16 of license holders; ensure that the distribution, sale and lease of motor vehicles is conducted as required
17 by statute and board rules; to prevent fraud, unfair practices, discrimination, impositions, and other
18 abuses in connection with the distribution and sale of motor vehicles; and to enforce and administer
19 Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155,
20 which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code,
21 Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651,
22 which authorizes the board to deny an application for a license, revoke or suspend a license, place on
23 probation a person whose license has been suspended, or reprimand a licensee; Occupations Code,

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 52 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code,
2 Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to
3 administer Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the
4 department to adopt and enforce rules to carry out IRP; Transportation Code, §503.002, which authorizes
5 the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code,
6 §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce
7 Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt
8 rules that are necessary to implement and enforce Transportation Code, Chapter 622; Transportation
9 Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce
10 Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to
11 impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation
12 Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code,
13 §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under
14 §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative
15 penalty on a shipper who violates a provision under §623.272, and states that the notice and hearing
16 requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty
17 under §623.272; Transportation Code, §643.003, which authorizes the department to adopt rules to
18 administer Transportation Code, Chapter 643; Transportation Code, §643.102, which authorizes a motor
19 carrier to comply with the requirements under Transportation Code, §643.101 through self-insurance if it
20 complies with the requirements; Transportation Code, §643.251, which authorizes the department to
21 impose an administrative penalty against a motor carrier required to register under Subchapter B of
22 Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter
23 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 53 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose
2 registration is suspended; Transportation Code, §643.2525, which provides the process for an
3 administrative hearing under Transportation Code, Chapter 643; Transportation Code, §643.2526, which
4 authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or
5 reregistration under Transportation Code, Chapter 643; Transportation Code, §645.003, which authorizes
6 the department to adopt rules providing for administrative penalties for a failure to register or submit
7 information and documents under the unified carrier registration plan and agreement or for a violation
8 of the unified carrier registration plan and agreement; Transportation Code, §1002.001, which authorizes
9 the board to adopt rules that are necessary and appropriate to implement the powers and duties of the
10 department; and the statutory authority referenced throughout this preamble and in the rule text, which
11 is incorporated herein by reference.

12 **CROSS REFERENCE TO STATUTE.** These new rules implement Government Code, Chapter 2001;
13 Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 621–623, 643,
14 645, and 1002–1005.

15

16 Text.

17 §224.150. Purpose and Scope.

18 (a) This subchapter describes department practice and procedures for referring a contested
19 case to SOAH for a hearing, including a contested case under Subchapter B (relating to Motor
20 Vehicle, Salvage Vehicle, and Trailer Industry Enforcement), Subchapter C (relating to Contested
21 Cases Between Motor Vehicle Industry License Holders or Applicants), and Subchapter D (Motor
22 Carrier and Oversize or Overweight Vehicle or Load Enforcement) of this chapter.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 54 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (b) When SOAH accepts a referral from the department, jurisdiction of the contested case
2 transfers to SOAH, and practice and procedure in contested cases heard by SOAH are addressed in:

3 (1) 1 TAC Chapter 155, and

4 (2) subchapter A and this subchapter, where not in conflict with SOAH rules.

5 (c) When SOAH disposes of a contested case, jurisdiction transfers from SOAH back to the
6 department. The department will issue a final order under §224.29 of this title (relating to
7 Delegation of Final Order Authority) or under Subchapter F of this chapter (relating to Board
8 Procedures in Contested Cases).

9
10 §224.152. Referral to SOAH.

11 (a) The department shall refer contested cases to SOAH upon determination that a hearing is
12 appropriate under Occupations Code, Chapter 2301 or 2302, or Transportation Code, Chapters 502, 503,
13 621–623, 643, 645, or 1001–1005, including contested cases relating to:

14 (1) an enforcement complaint on the department's own initiative;

15 (2) a notice of protest that has been timely filed in accordance with §215.106 of this title
16 (relating to Time for Filing Protest);

17 (3) a protest filed under Occupations Code, §2301.360 or a protest or complaint filed
18 under Occupations Code, Chapter 2301, Subchapters I or J;

19 (4) a department-issued cease and desist order; or

20 (5) any other contested matter that meets the requirements for a hearing at SOAH.

21 (b) The department will follow SOAH procedures to file a Request to Docket Case and related
22 documents and request a setting of a hearing.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 55 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (c) SOAH will provide the department with the date, time, and place of the initial hearing.

2

3 §224.154. Notice of Hearing.

4 (a) In a contested case, each party is entitled to an opportunity for a hearing, in accordance with

5 Government Code, §2001.051.

6 (b) The requirements for a notice of hearing in a contested case are provided by Government

7 Code, §2001.052; Occupations Code, §2301.705; the SOAH rules; and Transportation Code, Chapter 623

8 or 643, as applicable.

9 (c) For service of parties outside of the United States, in addition to service under Occupations

10 Code, §2301.265, the department may serve a notice of hearing by any method allowed under TRCP or

11 that provides for confirmation of delivery to the party to the extent authorized by applicable law.

12 (d) The last known address of a license applicant, license holder, or other person is the last

13 mailing address in department records or Federal Motor Carrier Safety Administration (FMCSA) records,

14 as applicable.

15 (e) A notice of hearing issued by the department in a contested case shall comply with the

16 requirements of Government Code, §2001.052(a).

17 (f) The department will serve a notice of hearing upon a license holder by certified mail return

18 receipt requested to the last known address of the license holder or authorized representative, in

19 accordance with Occupations Code, §2301.705.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 56 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (g) The department may serve a notice of hearing upon a person who is not a license holder by
2 first class mail to the person's last known address as shown in department records or Federal Motor
3 Carrier Safety Administration (FMCSA) records, as applicable.

4 (h) A notice of hearing in a contested case may be amended in accordance with Government
5 Code, §2001.052(b).

6

7 §224.156. Reply to Notice of Hearing and Default Proceedings.

8 (a) A party may file a written reply or pleading to respond to all allegations. The written
9 reply or responsive pleading must be filed with SOAH in accordance with SOAH rules and must
10 identify the SOAH and department docket numbers, as reflected in the notice of hearing.

11 (b) Any party filing a reply or responsive pleading shall serve a copy of the reply or
12 responsive pleading on each party or party's authorized representative in compliance with SOAH
13 rules.

14 (c) A party may file an amended or supplemental reply or responsive pleading in
15 accordance with SOAH rules.

16 (d) If a party properly noticed under this chapter does not appear at the hearing, a party
17 appearing at the hearing may request that the ALJ dismiss the contested case from the SOAH
18 docket. If the contested case is dismissed from the SOAH docket, the case may be presented to the
19 final order authority for disposition pursuant to SOAH rules and §224.29 of this title (relating to
20 Delegation of Final Order Authority).

21

22 §224.158. Amicus Briefs.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 57 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (a) An interested person may submit an amicus brief for consideration by the ALJ in a
2 contested case by the deadline for filing exceptions in accordance with SOAH rules. A party may
3 submit one written reply to the amicus brief no later than the deadline for filing replies to
4 exceptions under SOAH rules.

5 (b) An amicus brief and a party’s reply to amicus brief must be submitted to the ALJ and be
6 served on all parties.

7 (c) The ALJ may amend the proposal for decision after considering an amicus brief or a
8 party’s reply to an amicus brief.

9
10 §224.162. Statutory Stay.

11 (a) A person affected by a statutory stay imposed by Occupations Code, Chapter 2301 may
12 request a hearing before a SOAH ALJ to modify, vacate, or clarify the extent and application of the
13 statutory stay.

14 (b) The ALJ shall hold a hearing on a motion to modify, vacate, or clarify a statutory stay,
15 and prepare a written order, including a justification explaining why the statutory stay should or
16 should not be modified, vacated, or clarified.

17 (c) A person affected by a statutory stay imposed by Occupations Code, Chapter 2301 may
18 request a hearing before the board to modify, vacate, or clarify the extent and application of the
19 statutory stay under §224.192 of this chapter (relating to Appeal of an Interlocutory Order) while
20 the contested case is at SOAH.

21
22 §224.164. Issuance of a Proposal for Decision.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 58 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (a) After a hearing on the merits, the ALJ shall submit a proposal for decision in a contested
2 case to the department and all parties.

3 (b) The parties may submit to the ALJ exceptions to the proposal for decision and replies to
4 exceptions to the proposal for decision in accordance with the SOAH rules.

5 (c) The ALJ will review all exceptions and replies and notify the department and parties
6 whether the ALJ recommends any changes to the proposal for decision.

7 (d) The parties are not entitled to file exceptions or briefs in response to an amended
8 proposal for decision but may raise an issue before the board as allowed at the time of oral
9 presentation under Subchapter F of this chapter.

10

11 §224.166. Transfer of Jurisdiction for Final Decision.

12 (a) A party may appeal an interlocutory order issued under Occupations Code, Chapter
13 2301 to the board under §224.192 of this title (relating to Appeal of an Interlocutory Order). SOAH
14 retains jurisdiction on all other pending matters in the contested case, except as provided
15 otherwise in this chapter.

16 (b) If a contested case includes a hearing on the merits, SOAH's jurisdiction transfers to the
17 board when the ALJ confirms that the proposal for decision is final.

18 (c) Once jurisdiction transfers, no new testimony, witnesses, or information may be
19 considered by the board or board delegate with final order authority.

20 (d) After SOAH transfers the SOAH administrative record to the department, the board or
21 board delegate with final order authority will consider the contested case under the provisions of
22 Subchapter F of this chapter (relating to Board Procedures in Contested Cases).

23

1 **SUBCHAPTER F. BOARD PROCEDURES IN CONTESTED CASES**

2 **43 TAC §§224.190–224.206**

3 **STATUTORY AUTHORITY.** The department adopts new Chapter 224 under Government Code, §2001.004,
4 which requires state agencies to adopt rules of practice stating the nature and requirements of all
5 available formal and informal procedures; Government Code, §2001.054, which specifies the
6 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
7 a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale
8 and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise
9 that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications
10 of license holders; ensure that the distribution, sale and lease of motor vehicles is conducted as required
11 by statute and board rules; to prevent fraud, unfair practices, discrimination, impositions, and other
12 abuses in connection with the distribution and sale of motor vehicles; and to enforce and administer
13 Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155,
14 which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code,
15 Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651,
16 which authorizes the board to deny an application for a license, revoke or suspend a license, place on
17 probation a person whose license has been suspended, or reprimand a licensee; Occupations Code,
18 §2301.709, which requires the board to adopt rules that establish standards for reviewing a case under
19 Subchapter O of Chapter 2301 of the Occupations Code; Occupations Code, §2302.051, which authorizes
20 the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation
21 Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code,
22 Chapter 502; Transportation Code, §502.091(b), which authorizes the department to adopt and enforce
23 rules to carry out IRP; Transportation Code, §503.002, which authorizes the board to adopt rules for the

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 60 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 administration of Transportation Code, Chapter 503; Transportation Code, §621.008, which authorizes
2 the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621;
3 Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to
4 implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which
5 authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code,
6 Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an
7 administrative penalty or revoke an oversize or overweight permit issued under Transportation Code,
8 Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525
9 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271;
10 Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on
11 a shipper who violates a provision under §623.272, and states that the notice and hearing requirements
12 under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under
13 §623.272; Transportation Code, §643.003, which authorizes the department to adopt rules to administer
14 Transportation Code, Chapter 643; Transportation Code, §643.251, which authorizes the department to
15 impose an administrative penalty against a motor carrier required to register under Subchapter B of
16 Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter
17 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a
18 registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose
19 registration is suspended; Transportation Code, §643.2525, which provides the process for an
20 administrative hearing under Transportation Code, Chapter 643; Transportation Code, §643.2526, which
21 authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or
22 reregistration under Transportation Code, Chapter 643; Transportation Code, §645.003, which authorizes
23 the department to adopt rules providing for administrative penalties for a failure to register or submit

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 61 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 information and documents under the unified carrier registration plan and agreement or for a violation
2 of the unified carrier registration plan and agreement; Transportation Code, §1002.001, which authorizes
3 the board to adopt rules that are necessary and appropriate to implement the powers and duties of the
4 department; Transportation Code, §1003.005, which authorizes the board by rule to delegate any power
5 relating to a contested case, including the power to issue a final order, to one or more board members or
6 certain department staff; and the statutory authority referenced throughout this preamble and in the rule
7 text, which is incorporated herein by reference.

8 **CROSS REFERENCE TO STATUTE.** These new rules implement Government Code, Chapter 2001;
9 Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 621–623, 643,
10 645, and 1002–1005.

11
12 Text.

13 §224.190. Purpose and Scope.

14 This subchapter describes procedures for the board to review and issue a final order in a
15 contested case in which:

16 (1) a SOAH ALJ has submitted a final proposal for decision for consideration by the
17 board or board delegate with final order authority,

18 (2) a party has appealed an interlocutory cease-and-desist order issued by an ALJ,

19 or

20 (3) a party affected by a statutory stay order issued by an ALJ requested a hearing
21 to modify, vacate, or clarify the extent and application of the statutory stay order.

22

23 §224.192. Appeal of an Interlocutory Order.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 62 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (a) A party affected by an interlocutory cease-and-desist order or a statutory stay order under
2 Occupations Code, Chapter 2301 may appeal the order to the board by submitting to the department’s
3 general counsel a motion requesting that the board modify, vacate, or clarify the order.

4 (b) The party requesting that the board modify, vacate, or clarify an order must also
5 simultaneously serve the request on the other parties and the ALJ in accordance with §224.11 of this
6 title (relating to Filing and Service of Documents).

7 (c) The board will consider the interlocutory appeal and issue a final order at a public meeting as
8 soon as practicable. Notwithstanding the deadline listed in §224.196 of this title (relating to Request for
9 Oral Presentation), the department shall give the parties written notice at least seven days prior to the
10 board meeting at which the board is scheduled to consider the appeal. The notice shall notify the parties
11 regarding the opportunity to attend and provide an oral presentation concerning an order before the
12 board, and the opportunity to provide written materials to the board.

13 (1) Notwithstanding the deadline listed in §224.196, if a party seeks to provide an oral
14 presentation at the board meeting, the party must submit a written request for an oral presentation to
15 the department's contact listed in the notice provided under this subsection and copy all other parties in
16 accordance with §224.11 at least three days prior to the date of the board meeting at which the board is
17 scheduled to consider the party's contested case.

18 (2) Notwithstanding the deadline listed in §224.198 of this title (relating to Written
19 Materials and Evidence), if a party wants to provide written materials at the board meeting, the party
20 must provide the written materials to the department and all other parties in accordance with §224.11
21 at least three days prior to the date of the board meeting at which the board is scheduled to consider
22 the party's contested case.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 63 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (d) An appeal to the board of an interlocutory cease-and-desist order or a statutory stay order is
2 governed by Government Code, §2001.058(e).

3
4 §224.194. Contested Case Review.

5 (a) After SOAH submits a final proposal for decision and transfers SOAH’s administrative
6 record to the department, the board has jurisdiction and the record required to issue a final order
7 and will review the contested case during the public session of a board meeting, in accordance
8 with the APA.

9 (b) For a contested case in which the board has delegated final order authority to the
10 Director of the Motor Carrier Division, a special public meeting may be scheduled.

11
12 §224.196. Request for Oral Presentation.

13 (a) At least 30 days prior to the scheduled date of a board meeting, the department shall notify
14 the parties regarding the opportunity to attend and provide an oral presentation concerning a proposal
15 for decision before the board. The department will deliver notice electronically to the last known email
16 address provided to the department by the party or party’s authorized representative in accordance with
17 §224.11 of this title (relating to Filing and Service of Documents).

18 (b) If a party wants to make an oral presentation at the board meeting, a party must submit a
19 written request for an oral presentation to the department’s contact listed in the notice provided under
20 subsection (a) of this section and copy all other parties in accordance with §224.11 at least 14 days prior
21 to the date of the board meeting at which the party’s contested case will be reviewed.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 64 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (c) If more than one party was not adversely affected by the proposal for decision, such parties
2 may agree on the order of their presentations in lieu of the order prescribed under §224.202 of this title
3 (relating to Order of Oral Presentations to the Board). The order of presentations will be determined
4 under §224.202 of this title if the parties who were not adversely affected by the proposal for decision
5 do not timely provide the department and the other parties with notice under subsection (b) of this
6 section regarding their agreed order of presentation.

7 (d) If a party timely submits a written request for an oral presentation, that party may make an
8 oral presentation at the board meeting. If a party fails to timely submit a written request for an oral
9 presentation, that party shall not make an oral presentation at the board meeting.

10 (e) Section 206.22 of this title (relating to Public Access to Board Meetings) authorizes a party to
11 speak as a public commenter regarding the party’s contested case during the posted agenda item for the
12 contested case; however, a party is not authorized to make a public comment regarding the party’s
13 contested case under §206.22 in addition to making an oral presentation regarding the party’s contested
14 case under this subchapter.

15
16 §224.198. Written Materials and Evidence.

17 (a) If a party wants to provide written materials at the board meeting, the party must provide
18 the written materials to the department and all other parties in accordance with §224.11 of this title
19 (relating to Filing and Service of Documents) at least 21 days prior to the date of the board meeting. If a
20 party fails to timely provide written materials to the department or any other party, the department
21 shall not provide the written materials to the board and the party shall not provide the written materials

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 65 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 to the board at the board meeting. Non-parties are not authorized to provide written materials to the
2 board.

3 (b) For the purposes of this section, written materials are defined as language or images
4 including photographs or diagrams, that are contained in the SOAH administrative record and recorded
5 in paper form except as stated otherwise in this subsection. The language or images in the written
6 materials must be taken without changes from the SOAH administrative record; however, proposed final
7 orders and draft motions for possible board action are allowed to be included in a party's written
8 materials even if they contain arguments or requests that are not contained in the SOAH administrative
9 record. Written materials shall be limited to evidence contained in the SOAH administrative record and
10 consistent with the scope of the board's authority to act under Government Code, §2001.058(e) and
11 Occupations Code, Chapters 2301 and 2302, and Transportation Code, Chapters 502, 503, 621–623, 643,
12 645, or 1001–1005, as applicable.

13 (c) All information in the written materials shall include a citation to the SOAH administrative
14 record on all points to specifically identify where the information is located. The citations may be
15 provided in an addendum to the written materials that is not counted against the 15-page limit under
16 subsection (d) of this section; however, the addendum must not include any information other than a
17 heading that lists the name of the party, the caption for the contested case, and text that lists the
18 citations and page numbers.

19 (d) Written materials shall be 8.5 inches by 11 inches and single-sided. Written materials must be
20 double-spaced and at least 12-point type if in text form. Written materials are limited to 15 pages per
21 party. If a party provides the department with written materials that contain more pages than the
22 maximum allowed, the department shall not provide the written materials to the board and a party shall
23 not provide the written materials to the board at the board meeting.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 66 of 94

Chapter 224 – Adjudicative Practice and Procedure

1

2 §224.200. Oral Presentation Limitations and Responsibilities.

3 (a) A party to a contested case under review by the board shall limit oral presentation and
4 discussion to evidence in the SOAH administrative record. Also, oral presentation and discussion shall be
5 consistent with the scope of the board's authority to act under Government Code, §2001.058(e);
6 Occupations Code, Chapters 2301 and 2302; and Transportation Code Chapter 502, 503, 621–623, 643,
7 645, or 1001–1005, as applicable.

8 (b) A party may argue that the board should remand the contested case to SOAH.

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

11 (d) A party's presentation to the board is subject to the following limitations and conditions:

12 (1) Each party shall be allowed a maximum of 15 minutes for their oral presentation. The
13 board chair may increase this time.

14 (2) No party is allowed to provide a rebuttal or a closing statement.

15 (3) An intervenor of record from the SOAH proceeding supporting another party shall
16 share that party's time.

17 (4) Time spent by a party responding to a board question is not counted against their
18 presentation time.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 67 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (5) During an oral presentation, a party to the contested case before the board may
2 object that a party presented material or argument that is not in the SOAH administrative record. Time
3 spent discussing such objections is not counted against the objecting party's time.

4

5 §224.202. Order of Oral Presentations to the Board.

6 (a) The department will present the procedural history and summary of the contested case.

7 (b) The party that is adversely affected may present first. However, the board chair is authorized
8 to determine the order of each party's presentation if:

9 (1) it is not clear which party is adversely affected;

10 (2) it appears that more than one party is adversely affected; or

11 (3) different parties are adversely affected by different portions of the contested case
12 under review.

13 (c) The other party or parties not adversely affected will then have an opportunity to make a
14 presentation. If more than one party is not adversely affected, each party will have an opportunity to
15 respond in alphabetical order based on the name of the party in the pleadings in the SOAH
16 administrative record, except as stated otherwise in §224.196 of this title (relating to Request for Oral
17 Presentation).

18

19 §224.204. Board Conduct and Discussion When Reviewing a Contested Case or Interlocutory Order.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 68 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (a) The board shall conduct its contested case review in compliance with Government Code,
2 Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code Chapters 502, 503,
3 621–623, 643, 645, or 1001–1005, as applicable, including the limitations on changing a finding of fact
4 or conclusion of law made by a SOAH ALJ, and the prohibition on considering evidence outside of the
5 SOAH administrative record.

6 (b) A board member may question a party or the department on any matter that is relevant to
7 the proposal for decision; however, a question shall be consistent with the scope of the board’s authority
8 to take action under Government Code, §2001.058(e); Occupations Code, Chapters 2301 and 2302; and
9 Transportation Code, Chapters 502, 503, 621–623, 643, 645, or 1001–1005, as applicable; a question
10 must be limited to evidence contained in the SOAH administrative record; and the communication must
11 comply with §224.5 of this title (relating to Prohibited Communication). In considering a contested case,
12 a board member is authorized to ask a question regarding a request to remand the case to SOAH,
13 including a remand to SOAH for further consideration of the evidence.

14 (c) A board member may use personal expertise in the industry to understand a contested case
15 and make effective decisions, consistent with the scope of the board's authority to act under
16 Government Code, §2001.058(e); Occupations Code, Chapters 2301 and 2302; and Transportation Code
17 Chapters 502, 503, 621–623, 643, 645, or 1001–1005, as applicable. However, a board member is not an
18 advocate for a particular industry. A board member is an impartial public servant who takes an oath to
19 preserve, protect, and defend the Constitution and laws of the United States and Texas.

20

21 §224.206. Final Orders.

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 **43 TAC §§224.230–224.268**

14 **STATUTORY AUTHORITY.** The department adopts new Chapter 224 under Government Code, §2001.004,
15 which requires state agencies to adopt rules of practice stating the nature and requirements of all
16 available formal and informal procedures; Occupations Code, §2301.152, which authorizes the board to
17 provide for compliance with warranties; Occupations Code, §2301.155, which authorizes the board to
18 adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301; Occupations Code,
19 §2301.602, which requires the board to adopt rules for the enforcement and implementation of
20 Subchapter M of Occupations Code, Chapter 2301; Transportation Code, §1002.001, which authorizes the
21 board to adopt rules that are necessary and appropriate to implement the powers and duties of the

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 70 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 department; and the statutory authority referenced throughout this preamble and in the rule text, which
2 is incorporated herein by reference.

3 **CROSS REFERENCE TO STATUTE.** These new rules implement Government Code, Chapter 2001;
4 Occupations Code, Chapter 2301; and Transportation Code, Chapters 1002 and 1003.

5
6 Text.

7 §224.230. Purpose, Scope, and Definitions.

8 (a) Subchapter A and this subchapter apply to contested cases filed under Occupations
9 Code, §2301.204 or Subchapter M, to the extent they do not conflict with state law, rule, or court
10 order.

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

13 (1) Case advisor--A department staff member responsible for evaluating,
14 investigating, and mediating lemon law and warranty performance complaints prior to a hearing.

15 (2) Comparable motor vehicle--A new motor vehicle, with comparable mileage,
16 from the same manufacturer, distributor, or converter's product line and the same model year or
17 newer as the motor vehicle to be replaced or as reasonably equivalent to the motor vehicle to be
18 replaced.

19 (3) Lemon law--Refers to Occupations Code, Chapter 2301, Subchapter M
20 (§§2301.601–2301.613).

21 (4) Warranty performance--Refers to Occupations Code, §2301.204.

22

23 §224.232. Filing a Complaint.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 71 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (a) The department will provide information concerning the complaint procedure and a
2 complaint form to a person requesting assistance. A person may call the department or visit the
3 department website for information or to file a complaint electronically.

4 (b) A complaint alleging a violation of Occupations Code, §2301.204 or Subchapter M, must be in
5 writing and signed by the complainant, and:

6 (1) state sufficient facts to enable the department and the party complained against to
7 know the nature of the complaint and the specific problems or circumstances forming the basis of the
8 claim for relief under the lemon law or warranty performance statute;

9 (2) provide the following information:

10 (A) the name, address, and telephone number of the motor vehicle owner;

11 (B) the make, model, year, and Vehicle Identification Number or VIN of the
12 motor vehicle;

13 (C) the type of warranty coverage;

14 (D) the name and address of the dealer or other person from whom the motor
15 vehicle was purchased or leased, including the name and address of the vehicle lessor, if applicable;

16 (E) the original date of delivery of the motor vehicle to the owner and in the
17 case of a demonstrator, the date the motor vehicle was placed into demonstrator service;

18 (F) the motor vehicle mileage at the time when:

19 (i) the motor vehicle was purchased or leased;

20 (ii) problems with the motor vehicle were first reported; and

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 72 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (iii) the complaint was filed;

2 (G) the name of the dealer or the name of the manufacturer's, converter's, or
3 distributor's agent to whom the problems were first reported;

4 (H) identification of the motor vehicle's existing problems and a brief description
5 of the history of problems and repairs on the motor vehicle, including:

6 (i) the date and mileage of each repair; and

7 (ii) a copy of each repair order where possible;

8 (I) the date the motor vehicle manufacturer, distributor, or converter first
9 received written notice of the alleged defect or nonconformity;

10 (J) the date and results of the motor vehicle inspection, if the motor vehicle was
11 inspected by the manufacturer, distributor, or converter; and

12 (K) any other information the complainant deems relevant to the complaint.

13 (c) A person may file a complaint with the department:

14 (1) by mail sent to the mailing address listed on the department website at TxDMV.gov,

15 or

16 (2) electronically in the Motor Vehicle Dealer Online Complaint System which may be
17 accessed on the department website.

18 (d) Before investigating a claim, the department may require the complainant to provide
19 additional information necessary to evaluate whether the department has jurisdiction to pursue the
20 complaint.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 73 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (e) The following provisions apply to lemon law complaints.

2 (1) The filing fee required under the lemon law should be paid when the complaint is
3 submitted to the department and may be paid online by credit card if filing a claim electronically or by
4 check if mailing a complaint to the department. The filing fee is nonrefundable, but a complainant that
5 prevails in a case is entitled to reimbursement of the filing fee from the nonprevailing party. Failure to
6 pay the filing fee when submitting a complaint will delay the start of the 150-day period in paragraph (3)
7 of this subsection and may result in dismissal of the complaint.

8 (2) A lemon law proceeding commences on the date the filing fee is received by the
9 department.

10 (3) If the hearings examiner has not issued an order within 150 days after the
11 commencement of the lemon law proceeding in accordance with paragraph (2) of this subsection, the
12 department shall notify the parties by certified mail that the complainant may file a civil action in state
13 district court to seek relief under the lemon law. The notice will inform the complainant of the
14 complainant's right to continue the lemon law complaint with the department. The department shall
15 extend the 150-day period upon request of the complainant or if a delay in the proceedings is caused by
16 the complainant.

17 (f) The following provisions apply to warranty performance complaints (repair-only relief).

18 (1) A filing fee is not required for a complaint that is subject to a warranty performance
19 claim.

20 (2) A complaint may be filed with the department in accordance with this section if the
21 defect in the motor vehicle subject to the warranty performance complaint was reported to the
22 manufacturer, distributor, or converter prior to the expiration of the warranty period.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 74 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (3) If the defect is not resolved pursuant to §224.238 of this title (relating to Mediation;
2 Settlement or Referral for Hearing), the department will schedule a hearing to be conducted in
3 accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301,
4 Subchapter O and this subchapter.

5 (4) A hearings examiner will issue a final order on a warranty performance complaint. A
6 party who disagrees with the order may oppose the order in accordance with §224.264 of this title
7 (relating to Final Orders).

8
9 §224.234. Complaint Review.

10 (a) A case advisor will review a complaint to determine if the department has jurisdiction to
11 consider the complaint and whether the complaint meets the minimum statutory requirements for a
12 lemon law or a warranty performance complaint.

13 (b) If a case advisor cannot determine if the department has jurisdiction or whether a complaint
14 meets the lemon law or warranty performance minimum statutory requirements, the case advisor will
15 contact the complainant for additional information.

16 (c) The case advisor will notify the complainant if the department does not have jurisdiction over
17 the complaint.

18 (d) If a case advisor determines that the department has jurisdiction and the complaint meets
19 the minimum lemon law or warranty performance requirements, the complaint will be processed in
20 accordance with this subchapter.

21

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 75 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 §224.236. Notification to Manufacturer, Distributor, or Converter.

2 (a) Once a case advisor determines that a complaint meets the minimum statutory requirements
3 the case advisor will:

4 (1) notify the appropriate manufacturer, distributor, or converter of the complaint and
5 request a response; and

6 (2) provide a copy of the complaint to the selling dealer and any other dealer involved
7 with the complaint and may request a response.

8 (b) Upon request by the department, the manufacturer shall provide a copy of the warranty for
9 the motor vehicle subject to the lemon law or warranty performance complaint.

10 (c) The case advisor will provide a copy of any responses or documents received from the
11 manufacturer, distributor, or converter to the complainant.

12

13 §224.238. Mediation; Settlement or Referral for Hearing.

14 (a) A case advisor will attempt to settle or resolve a lemon law or warranty performance
15 complaint through nonbinding mediation before a hearing on the complaint is scheduled.

16 (b) The parties must participate in the nonbinding mediation process in good faith.

17 (c) In a case filed under Occupations Code, §2301.204 or §§2301.601–2301.613, a case advisor
18 shall qualify for appointment as an impartial third party in accordance with Civil Practice and Remedies

19 Code, Chapter 154.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 76 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (d) If the parties cannot resolve the complaint, a case advisor will refer the complaint for a
2 hearing with a hearings examiner.

3

4 §224.240. Notice of Hearing.

5 (a) Each party is entitled to an opportunity for a hearing, in accordance with Government Code,
6 §2001.051.

7 (b) A notice of hearing in a contested case shall comply with the requirements of Government
8 Code, §2001.052(a) and the department shall serve the notice upon the parties by certified mail, return
9 receipt requested to the last known address of a party or the party's authorized representative in
10 accordance with Occupations Code, §2301.705.

11 (c) The last known address of a party is the last mailing address provided to the department.

12 (d) A notice of hearing in a contested case may be amended in accordance with Government
13 Code, §2001.052(b).

14

15 §224.242. Motions.

16 (a) Unless made during a contested case hearing, each motion in a contested case shall be in
17 writing and shall state:

18 (1) the relief sought; and

19 (2) the specific reasons and grounds for the relief requested.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 77 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (b) A motion not made during a contested case hearing shall be filed with the hearings examiner
2 and a copy shall be served on all parties or their authorized representatives at least five days prior to the
3 hearing absent a showing of good cause.

4 (c) A motion is not granted until it has been ruled on by the hearings examiner, even if the
5 motion is uncontested or agreed.

6

7 §224.244. Service of Documents.

8 (a) A copy of each document filed in a contested case shall be served upon all parties or their
9 authorized representatives by sending a copy properly addressed to each party by:

10 (1) first-class mail; or

11 (2) email.

12 (b) A copy of each document must also be filed with the department by:

13 (1) email;

14 (2) fax; or

15 (3) first-class mail.

16 (c) A certificate of service shall accompany each document.

17

18 §224.246. Presiding Official.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 78 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (a) Hearings examiner. A hearings examiner will preside over a hearing for a lemon law or
2 warranty performance complaint.

3 (b) Powers and duties. A hearings examiner shall conduct fair hearings and shall take all
4 necessary action to administer the disposition of contested cases. A hearings examiner’s powers include,
5 but are not limited to the authority to:

6 (1) administer oaths;

7 (2) examine witnesses;

8 (3) rule upon the admissibility of evidence;

9 (4) rule upon motions; and

10 (5) regulate the course of the contested case hearing and the conduct of the parties and
11 their authorized representative.

12 (c) Expert Inspection. If a hearings examiner determines that an expert opinion may assist in
13 arriving at a decision, a hearings examiner may have the motor vehicle in question inspected by an
14 expert prior to the hearing. An inspection under this subsection shall be made only upon prior notice to
15 all parties, who shall have the right to be present at the inspection. A copy of any findings or report from
16 the expert inspection will be provided to all parties before or at the hearing.

17 (d) Recusal.

18 (1) If a hearings examiner determines that the hearings examiner should be recused
19 from a particular contested case hearing, the hearings examiner shall withdraw from the contested case
20 by giving notice on the record and by notifying the chief hearings examiner.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 79 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (2) A party may file a motion to recuse the hearings examiner. The motion to recuse shall
2 be supported by an affidavit setting forth the alleged grounds for disqualification. A copy of the motion
3 shall be served on the hearings examiner who shall have 10 days to reply, and a copy shall be served on
4 all parties or their authorized representatives.

5 (3) If the hearings examiner contests the alleged grounds for disqualification, the chief
6 hearings examiner shall promptly determine the validity of the grounds alleged and render a decision.

7 (e) Substitution of hearings examiner. If the hearings examiner is disqualified, dies, becomes
8 disabled, or withdraws during any contested case proceeding, the chief hearings examiner may appoint
9 another hearings examiner to preside over the remainder of the contested case proceeding.

10

11 §224.248. Hearing Continuance.

12 (a) A continuance of the contested case hearing will be granted by the hearings examiner only
13 upon a showing of good cause.

14 (b) A motion for continuance of a contested case hearing shall be filed and served on all parties
15 at least five days before the hearing date, except when good cause is shown to consider a motion for
16 continuance filed after the deadline.

17

18 §224.250. Conduct of Hearing.

19 (a) Each party in a contested case shall have the right to notice, cross examination, present
20 evidence, object, make a motion or argument, and all other rights essential to a fair contested case

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 80 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 hearing. Except as provided by this chapter or in the notice of hearing, the TCRP as applied to non-jury
2 civil cases shall be applicable to hearings in contested cases as far as reasonably practical.

3 (b) Parties, representatives, and other participants in a contested case shall:

4 (1) conduct themselves with dignity;

5 (2) show courtesy and respect for one another and the hearings examiner;

6 (3) follow any additional guidelines of decorum prescribed by the hearings examiner;

7 and

8 (4) adhere to the time schedule.

9 (c) If a participant violates this section, the hearing examiner may:

10 (1) issue a warning;

11 (2) recess the hearing; or

12 (3) exclude a person from the contested case hearing for such period and upon such

13 conditions as are just.

14

15 §224.252. Hearings.

16 (a) Depositions, interrogatories, and requests for admission shall not be allowed.

17 (b) When possible, an in-person hearing will be held in the city in which the complainant resides.

18 A hearing may also be conducted by telephone or videoconference.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 81 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (c) A hearing will be scheduled at the earliest date possible, provided that a 10-day notice or
2 other notice required by law is given to all parties.

3 (d) A hearing will be conducted expeditiously by a hearings examiner in accordance with
4 Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, and this subchapter.

5 (e) If a party fails to appear for the hearing, relief may be granted to the party that appears.

6 (f) Absent a showing of good cause, a complaint may be dismissed if the complainant repeatedly
7 fails to respond or communicate with the department.

8 (g) The complainant shall have the burden of proof by a preponderance of the evidence.

9 (h) Hearings will be conducted informally. A party has a right to be represented by an attorney at
10 a hearing, although an attorney is not required. A party who intends to be represented at a hearing by
11 an attorney or other authorized representative must notify the hearings examiner and any other party in
12 writing at least five business days prior to the hearing. Failure to provide notice will result in
13 postponement of the hearing if requested by another party.

14 (i) Subject to a hearings examiner ruling, a party may present that party's case in full, including
15 testimony from witnesses and documentary evidence such as repair orders, warranty documents, and
16 the motor vehicle sales contract.

17 (j) With written approval of the hearings examiner, a hearing may be conducted by written
18 submission only or by telephone or videoconference.

19 (k) Upon notice to the parties, a hearings examiner may conduct a hearing or prehearing
20 conference by telephone or videoconference.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 82 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (l) Except for a hearing conducted by written submission, a party may be questioned by another
2 party at the discretion of the hearings examiner.

3 (m) Except for a hearing conducted by written submission, telephone, or videoconference, the
4 complainant may bring the motor vehicle in question to the hearing so that the motor vehicle may be
5 inspected and test driven by Respondent.

6 (n) Except for a hearing conducted by written submission, a hearing will be recorded by the
7 hearings examiner. A copy of the recording will be provided to any party upon request and upon
8 payment of the cost of the copy as provided by statute or rules.

9
10 §224.254. Evidence.

11 (a) General. The TRE shall apply in all contested cases, in accordance with Government Code,
12 Chapter 2001.

13 (b) Documents in department files. The hearings examiner may take official notice of documents
14 or information in the department's files, in accordance with Government Code, Chapter 2001.

15 (c) Exhibits. Exhibits shall be limited to the relevant and material issues involved in a particular
16 contested case. If an offered exhibit has been excluded after objection and the party offering the exhibit
17 withdraws the offer, the hearings examiner shall return the exhibit. If the excluded exhibit is not
18 withdrawn, it shall be given an exhibit number for identification and be included in the record only for
19 the purpose of preserving the exception together with the hearings examiner's ruling.

20 (d) Evidence may be stipulated by agreement of all parties.

21

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 83 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 §224.256. Objections and Exceptions.2 A party is not required to make a formal exception to a ruling of the hearings examiner.

3

4 §224.258. Final Order Authority.5 (a) The hearings examiner has final order authority in a contested case filed under Occupations6 Code, §2301.204 or Occupations Code, Chapter 2301, Subchapter M.7 (b) This authority includes a contested case in which a case is resolved:8 (1) by settlement;9 (2) by agreed order;10 (3) by withdrawal of the complaint;11 (4) by dismissal for want of prosecution or continued failure to communicate with the12 department;13 (5) by dismissal for want of jurisdiction;14 (6) by summary judgment or summary disposition;15 (7) by a default judgment; or16 (8) when a party waives the opportunity for a contested case hearing.

17

18 §224.260. Lemon Law Relief Decisions.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 84 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (a) Unless otherwise indicated, this section applies to decisions that relate to lemon law
2 complaints. Decisions shall give effect to the presumptions provided in Occupations Code, §2301.605,
3 where applicable.

4 (1) If a hearings examiner finds that the manufacturer, distributor, or converter is not
5 able to conform the motor vehicle to an applicable express warranty by repairing or correcting a defect
6 in the complainant's motor vehicle, creating a serious safety hazard or substantially impairing the use or
7 market value of the motor vehicle after a reasonable number of attempts, and that the affirmative
8 defenses provided under Occupations Code, §2301.606 are not applicable, the hearings examiner shall
9 issue a final order to the manufacturer, distributor, or converter to:

10 (A) replace the motor vehicle with a comparable motor vehicle; or

11 (B) accept the return of the motor vehicle from the owner and refund the full
12 purchase price of the motor vehicle to the owner, less a reasonable allowance for the owner's use of the
13 motor vehicle and any other allowances or refunds payable to the owner.

14 (2) In a decision in favor of the complainant, the hearings examiner will, to the extent
15 possible, accommodate the complainant's request with respect to replacement or repurchase of the
16 motor vehicle.

17 (b) This subsection applies only to the repurchase of motor vehicles.

18 (1) When a refund is ordered, the purchase price shall be the total purchase price of the
19 motor vehicle, excluding the amount of any interest, finance charge, or insurance premiums. The refund
20 amount to the motor vehicle owner shall include reimbursement of the amount of the lemon law
21 complaint filing fee paid by, or on behalf of, the motor vehicle owner. The refund shall be made payable

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 85 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 to the motor vehicle owner and to any lienholder, respective to each person's ownership interest in the
2 motor vehicle.

3 (2) There is a rebuttable presumption that the expected useful life of a motor vehicle is
4 120,000 miles. Except in cases where the preponderance of the evidence shows the motor vehicle has a
5 longer or shorter expected useful life than 120,000 miles, the reasonable allowance for the owner's use
6 of the motor vehicle shall be the sums of the amounts obtained by adding subparagraphs (A) and (B) of
7 this paragraph.

8 (A) The product obtained by multiplying the total purchase price, as defined in
9 paragraph (1) of this subsection, of the motor vehicle by a fraction having as its denominator 120,000
10 and having as its numerator the number of miles that the motor vehicle traveled from the time of
11 delivery to the owner to the date of the date of the first report of the defect or condition forming the
12 basis of the repurchase order; and

13 (B) 50% of the product obtained by multiplying the total purchase price by a
14 fraction having as its denominator 120,000 and having as its numerator the number of miles that the
15 motor vehicle traveled after the first report of the defect or condition forming the basis of the
16 repurchase order through the date of the hearing.

17 (3) There is a rebuttable presumption the expected useful life of a towable recreational
18 vehicle is 5,475 days or 15 years. Except in cases where a preponderance of the evidence shows that the
19 vehicle has a longer or shorter expected useful life than 5,475 days or 15 years, the reasonable
20 allowance for the owner's use of the towable recreational vehicle shall be the sum of the amount
21 obtained by adding subparagraphs (A) and (B) of this paragraph.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 86 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (A) The product obtained by multiplying the total purchase price, as defined in
2 paragraph (1) of this subsection, of the towable recreational vehicle by a fraction having as its
3 denominator 5,475 days or 15 years and having as its numerator the number of days from the time of
4 delivery to the owner to the first report of the defect or condition forming the basis of the repurchase
5 order.

6 (B) 50% of the product obtained by multiplying the purchase price by a fraction
7 having as its denominator 5,475 days or 15 years and having as its numerator the number of days of
8 ownership after the date of the first report of the defect or condition forming the basis of the repurchase
9 order through the date of the hearing.

10 (C) Any day or part of a day that the vehicle is out of service for repair will be
11 deducted from the numerator in determining the reasonable allowance for use of a towable recreational
12 vehicle in this paragraph.

13 (c) This subsection applies only to the repurchase of a leased motor vehicle.

14 (1) Except in cases involving unusual and extenuating circumstances supported by a
15 preponderance of the evidence, when a refund of the total purchase price of a leased motor vehicle is
16 ordered, the refund shall be allocated and paid to the lessee and the vehicle lessor, respectively, in
17 accordance with subparagraphs (A) and (B) of this paragraph.

18 (A) The lessee shall receive the total of:

19 (i) all lease payments previously paid by the lessee to the vehicle lessor
20 under the terms of the lease; and

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 87 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (ii) all sums previously paid by the lessee to the vehicle lessor in
2 connection with entering into the lease agreement, including, but not limited to any capitalized cost
3 reduction, down payment, trade-in, or similar cost, plus sales tax, license, registration fees, and other
4 documentary fees, if applicable.

5 (B) The vehicle lessor shall receive the total of:

6 (i) the actual price paid by the vehicle lessor for the motor vehicle,
7 including tax, title, license, and documentary fees, if paid by the vehicle lessor and evidenced in a bill of
8 sale, bank draft demand, tax collector's receipt, or similar instrument; and

9 (ii) an additional 5.0% of the purchase price plus any amount or fee paid
10 by the vehicle lessor to secure the lease or interest in the lease.

11 (C) A credit reflecting all of the payments made by the lessee shall be deducted
12 from the actual purchase price that the manufacturer, distributor, or converter is required to pay the
13 vehicle lessor, as specified in subparagraph (B)(i) and (ii) of this paragraph.

14 (2) When the hearings examiner orders a manufacturer, distributor, or converter to
15 refund the purchase price in a leased vehicle transaction, the motor vehicle shall be returned to the
16 manufacturer, distributor, or converter with clear title upon payment of the sums indicated in paragraph
17 (1)(A) and (B) of this subsection. The vehicle lessor shall transfer title of the motor vehicle to the
18 manufacturer, distributor, or converter, as necessary to effectuate the lessee's rights. The lease shall be
19 terminated without penalty to the lessee.

20 (3) Refunds shall be made to the lessee, vehicle lessor, and to any lienholder, respective
21 to their ownership interest in the motor vehicle. The refund to the lessee under paragraph (1)(A) of this
22 subsection shall be reduced by a reasonable allowance for the lessee's use of the motor vehicle. A

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 88 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 reasonable allowance for use shall be computed in accordance with subsection (b)(2) or (3) of this
2 section, using the amount in paragraph (1)(B)(i) of this subsection as the applicable total purchase price.

3 (d) This subsection applies only to replacement of motor vehicles.

4 (1) Upon a hearing examiner's issuance of a final order to a manufacturer, distributor, or
5 converter to replace a motor vehicle, the manufacturer, distributor, or converter shall:

6 (A) promptly authorize the exchange of the complainant's motor vehicle with
7 the complainant's choice of any comparable motor vehicle; and

8 (B) instruct the dealer to contract the sale of the selected comparable motor
9 vehicle with the complainant under the following terms.

10 (i) The sales price of the comparable motor vehicle shall be the vehicle's
11 Manufacturer's Suggested Retail Price or Distributor's Suggested Retail Price (MSRP/DSRP), as applicable;

12 (ii) The trade-in value of the complainant's motor vehicle shall be the
13 MSRP/DRSP, as applicable, at the time of the original transaction, less a reasonable allowance for the
14 complainant's use of the complainant's motor vehicle.

15 (iii) The reasonable allowance for replacement relief shall be calculated
16 in accordance with subsection (b)(2) and (3) of this section.

17 (2) Upon a replacement of a complainant's motor vehicle, the complainant shall be
18 responsible for payment or financing of the reasonable allowance for use of the complainant's vehicle,
19 any outstanding liens on the complainant's vehicle, and applicable taxes and fees associated with the
20 new sale of a comparable motor vehicle, excluding documentary fees.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 89 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (A) If the comparable motor vehicle has a higher MSRP/DSRP, as applicable, than
2 the complainant's vehicle, the complainant shall be responsible at the time of sale to pay or finance the
3 difference in the two vehicles' MSRPs/DSRPs, as applicable, to the manufacturer, converter or distributor.

4 (B) If the comparable motor vehicle has a lower MSRP/DSRP, as applicable, than
5 the complainant's vehicle, the complainant will be credited the difference in the MSRP/DSRP, as
6 applicable, between the two motor vehicles. The difference credited shall not exceed the amount of the
7 calculated reasonable allowance for use for the complainant's vehicle.

8 (3) The complainant is responsible for obtaining financing, if necessary, to complete the
9 transaction.

10 (4) The replacement transaction, as described in paragraphs (2) and (3) of this
11 subsection, shall be completed as specified in the final order. If the replacement transaction cannot be
12 completed within the ordered time period, the manufacturer shall repurchase the complainant's motor
13 vehicle in accordance with the repurchase provisions of this section. If repurchase relief occurs, a party
14 may request calculation of the refund price by the hearings examiner.

15 (e) If the hearings examiner finds that a complainant's motor vehicle does not qualify for
16 replacement or repurchase, the hearings examiner may enter an order requiring repair work to be
17 performed or other action taken to obtain compliance with the manufacturer's, converter's, or
18 distributor's warranty obligations.

19 (f) If the motor vehicle is substantially damaged or if there is an adverse change in the motor
20 vehicle's condition beyond ordinary wear and tear, from the date of the hearing to the date of
21 repurchase, and the parties are unable to agree on an amount allowed for such damage or condition,

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 90 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 either party may request reconsideration by the hearings examiner of the refund amount contained in
2 the final order.

3 (g) In any award in favor of a complainant, the hearings examiner may require the dealer
4 involved to reimburse the complainant, manufacturer, distributor, or converter for the cost of any items
5 or options added to the motor vehicle by the dealer if one or more of those items or options contributed
6 to the defect that is the basis for the final order. This subsection shall not be interpreted to require a
7 manufacturer, distributor, or converter to repurchase a motor vehicle due to a defect or condition that
8 was solely caused by an item or option added by the dealer.

9
10 §224.262. Incidental Costs.

11 (a) When a refund of the purchase price or replacement of a motor vehicle is ordered, the
12 complainant shall be reimbursed for certain incidental costs incurred by the complainant from loss of
13 use of the motor vehicle because of the defect or nonconformity which is the basis of the complaint. The
14 costs must be reasonable and verifiable. Reimbursable incidental costs include, but are not limited to the
15 following costs:

16 (1) alternate transportation;

17 (2) towing;

18 (3) telephone calls or mail charges directly attributable to contacting the manufacturer,
19 distributor, converter, or dealer regarding the motor vehicle;

20 (4) meals and lodging necessitated by the motor vehicle's failure during out-of-town
21 trips;

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 91 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (5) loss or damage to personal property;

2 (6) attorney fees if the complainant retains counsel after notification that the

3 respondent is represented by counsel; and

4 (7) items or accessories added to the motor vehicle at or after purchase, less a

5 reasonable allowance for use.

6 (b) Incidental costs shall be included in the final refund amount required to be paid by a

7 manufacturer, distributor, or converter to a prevailing complainant, or in the case of a motor vehicle

8 replacement, shall be tendered to the complainant at the time of replacement.

9 (c) When awarding reimbursement for the cost of items or accessories presented under

10 subsection (a)(7) of this section, the hearings examiner shall consider the permanent nature,

11 functionality, and value added by the items or accessories and whether the items or accessories are

12 original equipment manufacturer (OEM) parts or non-OEM parts.

13

14 §224.264. Final Orders.

15 (a) A hearings examiner shall prepare a final order as soon as possible, but not later than 60 days

16 after the hearing is closed, or as otherwise provided by law. The final order shall include the hearings

17 examiner's findings of fact and conclusions of law. The final order shall be sent by the department to all

18 parties by certified mail.

19 (b) A party who disagrees with the final order may file a motion for rehearing in accordance with

20 Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O. A motion

21 for rehearing of a final order must:

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 92 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (1) be filed with the chief hearings examiner;

2 (2) include the specific reasons, exceptions, or grounds asserted by a party as the basis
3 of the request for a rehearing; and

4 (3) recite, if applicable, the specific findings of fact, conclusions of law, or any other
5 portions of the final order to which the party objects.

6 (c) Replies to a motion for rehearing must be filed with the chief hearings examiner in
7 accordance with Government Code, Chapter 2001, subject to Occupations Code, §2301.713.

8 (d) If the chief hearings examiner or designee grants a motion for rehearing, the parties will be
9 notified by mail and a rehearing will be scheduled promptly. After rehearing, a final order shall be issued
10 with any additional findings of fact or conclusions of law, if necessary to support the final order.

11 (e) A hearings examiner may issue a final order granting the relief requested in a motion for
12 rehearing or requested in a reply to a motion for rehearing without the need for a rehearing.

13 (f) If a motion for rehearing is denied, the chief hearings examiner or designee will issue a final
14 order and notify the parties.

15
16 §224.266. Compliance with Order Granting Relief.

17 (a) Compliance with a final order will be monitored by the department.

18 (b) A complainant is not bound by a final order.

19 (c) If a complainant does not accept the final order, the proceeding before the hearings examiner
20 will be deemed concluded and the complaint file closed.

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 93 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 (d) If the complainant accepts the final decision, then the manufacturer, distributor, or converter,
2 and the dealer to the extent of the dealer's responsibility, if any, shall immediately take such action as is
3 necessary to implement the final order.

4 (e) If a manufacturer, distributor, or converter replaces or repurchases a motor vehicle pursuant
5 to a final order, then the manufacturer, distributor, or converter shall, prior to the resale of such motor
6 vehicle, retitle the vehicle in Texas and shall:

7 (1) issue a disclosure statement on a form provided by or approved by the department;
8 and

9 (2) affix a department-approved disclosure label in a conspicuous location in or on the
10 motor vehicle.

11 (f) The disclosure statement and disclosure label required under subsection (e) of this section
12 shall accompany the motor vehicle through the first retail purchase. No person holding a license or GDN
13 issued by the department under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503
14 shall remove or cause the removal of the disclosure label until delivery of the motor vehicle to the first
15 retail purchaser.

16 (g) A manufacturer, distributor, or converter shall provide to the department the name, address,
17 and telephone number of the transferee to whom the manufacturer, distributor, or converter transfers
18 the motor vehicle on the disclosure statement within 60 days of a transfer. A dealer that sells the vehicle
19 to the first retail purchaser shall return the completed disclosure statement to the department within 60
20 days of the sale.

21 (h) The manufacturer, distributor, or converter must repair the defect or condition in the motor
22 vehicle that resulted in the vehicle being reacquired and issue a basic warranty excluding non-original

TITLE 43. TRANSPORTATION

Adopted Sections

Part 10. Texas Department of Motor Vehicles

Page 94 of 94

Chapter 224 – Adjudicative Practice and Procedure

1 equipment manufacturer items or accessories, for a minimum of 12 months or 12,000 miles, whichever
2 comes first. The warranty shall be provided to the first retail purchaser of the motor vehicle.

3 (i) In the event this section conflicts with the terms contained in a cease and desist order, the
4 terms of the cease and desist order shall prevail.

5 (j) The failure of any manufacturer, distributor, converter, or dealer to comply with a final order
6 within the time period prescribed in the order may subject the manufacturer, converter, distributor, or
7 dealer to formal action by the department, including the assessment of civil penalties of up to \$10,000
8 per day per violation or other sanctions prescribed by Occupations Code, Chapter 2301.

9
10 §224.268. Judicial Appeal of a Final Order.

11 (a) A party who has exhausted all administrative remedies may appeal a final order in a Travis
12 County district court under Government Code, Chapter 2001, and subject to Occupations Code,
13 §2301.609.

14 (b) A party appealing a final order must serve a copy of the petition for judicial review on the
15 department and all parties of record. After service of the petition and within the time allowed for filing
16 an answer, the department shall transmit to the reviewing court the original or a certified copy of the
17 entire record of the proceeding. If the court orders that new evidence be presented to a hearings
18 examiner, the hearings examiner may modify the findings and decision or order by reason of the new
19 evidence and shall transmit the additional record to the court.

From: [Bruce Bennett](#)
To: [Zz - Resource - GCO Rules](#)
Subject: Comment on Proposed Rule 224.198
Date: Sunday, January 21, 2024 8:59:25 AM
Attachments: [20240121.Proposed Amended Rule 224.198\(c\).docx](#)

ATTENTION: This email originated from outside of TxDMV. Malicious software, such as viruses, worms, and ransomware can be transmitted via email attachments and links. Do not click any links or open any attachments unless you recognize the sender and have confirmed the content is safe.

Dear General Counsel:

I ask that proposed Rule 224.198 be amended to include the following sentence:

Nor shall a proposed final order or a draft motion for possible board action be counted against the 15-page limit under subsection (d) of this section.

Allowing the parties to a contested case to propose a final order or a motion for board action will assist board members in focusing on the key points in the case and will help them to reach a final decision. A proposed order or motion would be especially useful to board members in cases in which the board believes that a proposal for decision from SOAH is the product of legal errors that requires correction. Navigating the APA's process for correcting a proposal for decision can be complicated, especially for members of the board who are not lawyers.

Thanks for your consideration of this request.

Best regards,

J. Bruce Bennett
CARDWELL, HART & BENNETT, LLP
807 Brazos, Suite 1001
Austin, Texas 78701
(512) 322-0011 (Telephone)
(512) 496-9400 (Cell)
(512) 322-0808 (Facsimile)
jbb.chblaw@me.com

Cardwell, Hart & Bennett, LLP. E-mail Confidentiality Notice: This transmission (and any attachments) may be (1) subject to the Attorney-Client or Attorney-Work Product Privileges, or (2) strictly confidential. If you are not the intended recipient of this message, please do not read, disclose, print, copy, use, forward, or disseminate this information to others. If you receive this message in error, please reply and notify the sender (only) and then delete the

message. Unauthorized interception of this e-mail is a violation of federal law. IRS Circular 230 Disclosure. Any federal tax advice contained in this message (including attachments) should not be used or referred to in the promoting, marketing, or recommending of any entity investment plan or arrangement, nor is such advice intended or written to be used, and cannot be used, by a taxpayer to avoid penalties under the IRS Code.

§224.198 Written Materials and Evidence

(c) All information in the written materials shall include a citation to the SOAH administrative record on all points to specifically identify where the information is located. The citations may be provided in an addendum to the written materials that is not counted against the 15-page limit under subsection (d) of this section; however, the addendum must not include any information other than a heading that lists the name of the party, the caption for the contested case, and text that lists the citations and page numbers. Nor shall proposed final orders or draft motions for possible board action be counted against the 15-page limit under subsection (d) of this section.



TIADA
TEXAS INDEPENDENT AUTOMOBILE
DEALERS ASSOCIATION

January 23, 2024

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

Re: 43 TAC 224, Texas Register December 29, 2023

Dear Ms. Moriaty:

The Texas Independent Automobile Dealers Association (TIADA) respectfully submits the following comments in response to the Texas Department of Motor Vehicles (TxDMV) proposed changes to 43 Texas Administrative Code Chapter 224. TIADA represents over 1,000 independent automobile dealers throughout the state of Texas which range in size from large publicly traded companies to small and micro-businesses.

TIADA after reviewing the purposed rules has the following suggestions:

The rule should state the department will consider the disciplinary matrix published at the time of the offense because administrative law judges have already had confusion as to which disciplinary matrix should apply when a new version was published. The administrative law judge in *Texas Department of Motor Vehicles v. JNC Auto LLC* stated “some uncertainty as to which of two versions of the Disciplinary Matrix would apply in this case” when discussing two versions of the disciplinary matrix. Therefore, the rule should avoid future uncertainty by modifying §224.54(e) by inserting after the word “violations.” the following sentence:

“The department will consider the disciplinary matrix published at the time of the offense; however, the disciplinary matrix does not limit the department from seeking sanctions above or below the recommended ranges.”

The order of oral presentations to the Board should follow common law practice by providing that the party that brought the suit presents first. Common law tradition is to have the party bringing the case present first instead of focusing on the party being adversely affected which typically is both parties. TIADA believe the Board should follow this tradition as it mirrors that of other tribunals in Texas. Therefore, TIADA recommends striking §224.202 in its entirety and replacing it as follows:

§224.202. Order of Oral Presentations to the Board.

(a) The department will present the procedural history and summary of the contested case.

TIADA Comments to TxDMV – 43 TAC Chapter 224

January 23, 2024

Page | 2 of 2

- (b) The Petitioner shall present first unless the parties agree otherwise.
- (c) The Respondent shall then have an opportunity to make a presentation.
- (d) If more than one party is listed as a Petitioner or Respondent, then each party listed shall have an opportunity to present or respond based on alphabetical order based on the name of the party in the pleadings.

Forfeiture of the right to speak on one's own behalf in a contested case should only be occur by not attending the relevant Board Meeting. The parties to a contested case should be prepared regardless of whether or not notice is given by the other party as to their appearance. Most other tribunals do not require one to notify it that it will be attending a scheduled hearing and TxDMV should follow those tribunals. Therefore, TIADA recommends striking §224.194(b) in its entirety.

Respectfully,



Earl Cooke
Director of Compliance and Business Development
earl.cooke@txiada.org

Board Meeting Date: 4/11/2024
ACTION ITEM

To: Texas Department of Motor Vehicles Board
From: Laura Moriaty, General Counsel
Agenda Item: 15
Subject: Rule Review Proposals under Government Code, §2001.039: Chapter 208, Employment Practices; and Chapter 223, Compliance and Investigations Division

RECOMMENDATION

Action Item. Approval to publish the proposed rule reviews in the *Texas Register* for public comment.

PURPOSE AND EXECUTIVE SUMMARY

The department proposes to review 43 Texas Administrative Code, Chapter 208, Employment Practices, and Chapter 223, Compliance and Investigations Division. This review is being conducted under Texas Government Code §2001.039.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

Texas 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 Texas Administrative Code, Chapter 208 since 2019. The department has not reviewed or readopted Texas Administrative Code, Chapter 223 since it was created in 2020.

The Texas 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, Texas Government Code, Chapter 2001.

Texas Administrative Code, Chapter 208 covers employment practices.

Texas Administrative Code, Chapter 223 covers fraud, waste, or abuse and risk-based monitoring and preventing fraudulent activity.

TITLE 43. TRANSPORTATION

Proposed Rule Review

Part 10. Texas Department of Motor Vehicles

Chapters 208 and 223

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 208, Employment Practices and Chapter 223, Compliance and Investigations Division. This review is being conducted pursuant to Government Code, §2001.039.

The board of the Texas Department of Motor Vehicles 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. CDT on X, XX, 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 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.

Any proposed changes to sections of this chapter will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period.

To: Texas Department of Motor Vehicles Board
From: Corrie Thompson, Director, Enforcement Division
Agenda Item: 16
Subject: Chapter 223, Compliance and Investigations Division
Amendments: §§223.1, 223.2 and 223.3
New: §223.5
Repeal: Subchapter B
(Relating to Cleanup)

RECOMMENDATION

Action Item. Approval to publish the proposed amendments, new section, and repeal in the *Texas Register* for public comment.

PURPOSE AND EXECUTIVE SUMMARY

The department is conducting a review of its rules in 43 Texas Administrative Code (TAC) Chapter 223 in compliance with Government Code, §2001.039. The proposed amendments, new section and repeal would clean up the language in Chapter 223.

FINANCIAL IMPACT

There will be no significant fiscal implications due to the proposed amendments, new section and repeal.

BACKGROUND AND DISCUSSION

The amendments and new section are necessary to do the following:

1. revise the title to Chapter 223 by removing the word “Division” because the Compliance and Investigations Division was disbanded and reorganized within the department’s Enforcement Division;
2. bring the rules into alignment with statute;
3. clarify existing requirements;
4. improve readability by using consistent terminology;
5. update definitions, terms, and references;
6. describe the department’s methods and procedures; and
7. update the department’s process for external risk-based monitoring regarding the external users of the department’s Registration and Title System (RTS).

Proposed new §223.5 would replace Subchapter B, §223.101, which is proposed to be repealed.

1 **PROPOSAL OF REVISIONS TO**

2 **SUBCHAPTER A. FRAUD, WASTE, OR ABUSE**

3 **43 TAC §§223.1, 223.2 AND 223.3**

4 **NEW SECTION**

5 **SUBCHAPTER A. FRAUD, WASTE, OR ABUSE**

6 **§223.5**

7 **REPEAL OF**

8 **SUBCHAPTER B. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY**

9 **43 TAC §223.101**

10 **INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes amendments to 43
11 Texas Administrative Code (TAC) Chapter 223, Subchapter A, Fraud, Waste, or Abuse, §§223.1, 223.2 and
12 223.3; new §223.5; and the repeal of Subchapter B, Risk-Based Monitoring and Preventing Fraudulent
13 Activity, §223.101.

14 The proposed amendments would revise the title to Chapter 223 by removing the word “Division.”
15 The proposed amendments would also bring the rules into alignment with statute; clarify existing
16 requirements; improve readability by using consistent terminology; update definitions, terms, and
17 references; and more specifically describe the department’s methods and procedures. Proposed new
18 §223.5 is necessary to update the department’s process for external risk-based monitoring regarding the
19 external users of the department’s Registration and Title System (RTS). Proposed new §223.5 would
20 replace Subchapter B, §223.101.

21 **EXPLANATION.** The department is conducting a review of its rules in Chapter 223 in compliance with
22 Government Code, §2001.039. Notice of the department’s plan to review Chapter 223 is published in this

TITLE 43. TRANSPORTATION

Proposed Sections

Part 10. Texas Department of Motor Vehicles

Page 2 of 7

Chapter 223 – Compliance and Investigations Division

1 issue of the *Texas Register*. As a part of the rule review, the department is proposing necessary revisions
2 as detailed in the following paragraphs.

3 A proposed amendment would change the title to Chapter 223 to “Compliance and Investigations”
4 by deleting the word “Division.” In August of 2021, the department’s Compliance and Investigations
5 Division disbanded and became a part of the department’s Enforcement Division.

6 Subchapter A. Fraud, Waste, or Abuse

7 Proposed amendments to §223.1 would clarify the purpose and scope of §223.3 and expand the
8 scope of Subchapter A to include new §223.5 to replace §223.101, which is proposed for repeal. Section
9 223.3 authorizes county tax assessor-collectors and deputies to report to the department any suspected
10 fraud, waste or abuse relating to vehicle registration or titling; however, the deputies report suspected
11 fraud, waste or abuse to the county tax assessor-collector, who then reports it to the department. A
12 proposed amendment to §223.1 would also delete subsection (b) because amended subsection (a)
13 includes the necessary language regarding the purpose and scope of Subchapter A.

14 Proposed amendments to §223.2(b) would remove the definitions of “CID” and “Director”
15 because both refer to the Compliance and Investigations Division, which has been disbanded and
16 reorganized within the department’s Enforcement Division. A proposed amendment to the definition of
17 “county tax assessor-collector” in §223.2(b) would clarify the definition by referring to the person who
18 serves as the assessor-collector of taxes for a Texas county under Article VIII, §14, of the Texas
19 Constitution. A proposed amendment to the definition of “deputy” in §223.2(b) would clarify that Chapter
20 217 is in Title 43. A proposed amendment to the definition of “RTS” in §223.2(b) would replace the words
21 “Texas Department of Motor Vehicle’s” with the word “department’s” because the word “department” is
22 defined in Transportation Code, Chapter 501. Section 223.2(a) says the words and terms defined in

TITLE 43. TRANSPORTATION

Proposed Sections

Part 10. Texas Department of Motor Vehicles

Page 3 of 7

Chapter 223 – Compliance and Investigations Division

1 Transportation Code, Chapter 501 have the same meaning when used in Chapter 223, with certain
2 exceptions. Proposed amendments to §223.2(b) would also re-letter the subsection due to deletions.

3 A proposed amendment to §223.3(a) and (c) would delete the words “motor vehicle” from the
4 term “motor vehicle dealer” because the word “dealer” is defined in Transportation Code, Chapter 501,
5 but the term “motor vehicle dealer” is not defined in Chapter 501. Proposed amendments to §223.3 would
6 replace the acronym “CID” with the word “department” to reflect the reorganization within the
7 department. Proposed amendments to §223.3(a)–(c) would remove the words “and possible
8 investigation” as unnecessary. In addition to improving readability, proposed amendments to §223.3(b)
9 would clarify and specify the information that must be included in the detailed narrative that a county tax
10 assessor-collector must submit as part of a request to the department to review suspected fraud, waste,
11 or abuse. A proposed amendment to §223.3(c) would add the word “possible” to be consistent with
12 subsection (a), which includes the word “possible” when referring to suspected fraud, waste, or abuse. A
13 proposed amendment to §223.3(c) would also delete an unnecessary comma. Proposed amendments to
14 §223.3(d) would improve readability by using consistent terminology and removing unnecessary
15 language.

16 Simultaneously with the proposed repeal of Subchapter B and §223.101, the department
17 proposes new §223.5, which would rewrite, reorganize, clarify and specify the department’s external risk-
18 based monitoring system required by Transportation Code, §520.004(4). Proposed new §223.5 would
19 subject all Texas county tax assessor-collectors, their contractors’ staff, and their deputies, which are
20 external RTS users, to periodic examination to determine whether to assign the RTS user a classification
21 of priority or non-priority. Based on the examination, the department will classify each county tax
22 assessor-collector, each of their contractor’s staff, and each deputy as priority or non-priority for the
23 purposes of prioritizing reviews to determine whether there is evidence of fraud by a county tax assessor-

1 collector, their contractor’s staff, or a deputy. This classification system will allow the department to
2 determine how to use its limited resources most efficiently to investigate and prevent fraud.

3 Proposed new §223.5(a) would set out the factors the department considers in classifying a tax
4 assessor-collector, their contractor’s staff, or deputy as a priority or non-priority. These proposed factors
5 would reflect the department’s current practices in assessing whether to investigate a particular county
6 tax assessor-collector, their contractor’s staff, or deputy.

7 Proposed new §223.5(b) would document the department’s goal that each county tax assessor-
8 collector, each of their contractor’s staff, or each deputy who is classified as a priority will be reviewed at
9 least once per year; and if classified as a non-priority, a county tax assessor-collector, their contractor’s
10 staff person, or deputy will be reviewed at least once every two years. This goal would create predictability
11 for the department, county tax assessor-collectors, their contractor’s staff, and deputies; ensure that all
12 county tax assessor-collectors, their contractor’s staff, and deputies are reviewed regularly; and allow the
13 department to prioritize its limited resources toward higher-priority reviews.

14 Proposed new §223.5(c) specifies that the examinations under this section may be virtual, on
15 premises at the county tax assessor-collector’s, their contractor’s staff person’s, or deputy’s location, or a
16 combination of both. Allowing virtual examinations would save the department resources and would be
17 more convenient for county tax assessor-collectors.

18 Proposed new §223.5(d) would provide that the department may notify the county tax assessor-
19 collector of possible fraudulent activity in the county tax assessor-collector’s office when the department
20 is authorized by law enforcement. This would clarify the limitations on the department’s ability to update
21 a county tax assessor-collector about a department investigation of their office.

22

23 Subchapter B. External Risk-Based Monitoring System

1 The department proposes the repeal of Subchapter B, including §223.101 because the risk-based
2 system of monitoring and preventing fraudulent activity relating to vehicle registration and titling falls
3 within the scope of Subchapter A, which is titled “Fraud, Waste, or Abuse.” Also, the definitions in §223.2
4 apply to the entire Chapter 223, even though Section 223.2 is contained in Subchapter A. Simultaneously
5 with the repeal of Subchapter B and §223.101, the department proposes new §223.5, which would
6 rewrite, reorganize, clarify and specify the department’s external risk-based system of monitoring and
7 preventing fraudulent activity relating to vehicle registration and titling.

8 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,
9 has determined that for each year of the first five years the proposed amendments, new section, and
10 repeal are in effect, there will be no significant fiscal impact to state or local governments as a result of
11 the enforcement or administration of the proposal. Enforcement Division Director Corrie Thompson has
12 determined that there will be no significant impact on local employment or the local economy as a result
13 of the proposal.

14 **PUBLIC BENEFIT AND COST NOTE.** Ms. Thompson has also determined that for each year of the first five
15 years the proposed amendments, new section, and repeal are in effect, the anticipated public benefit as
16 a result of enforcing or administering the proposal will be the simplification, clarification, and streamlining
17 of agency rules.

18 Anticipated Cost to Comply with the Proposal. Ms. Thompson anticipates that there will be no
19 costs to comply with the proposed amendments, new section, and repeal.

20 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government
21 Code, §2006.002, the department has determined that the proposed amendments will not have an
22 adverse economic impact on small businesses, micro-businesses, and rural communities because there

1 are no anticipated economic costs for persons required to comply with the proposed amendments, new
2 section, and repeal. Therefore, the department is not required to prepare a regulatory flexibility analysis
3 under Government Code, §2006.002.

4 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests
5 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property
6 that would otherwise exist in the absence of government action and, therefore, does not constitute a
7 taking or require a takings impact assessment under Government Code, §2007.043.

8 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the
9 first five years the proposed amendments, repeal and new section are in effect, no government program
10 would be created or eliminated. Implementation of the proposed revisions would not require the creation
11 of new employee positions or elimination of existing employee positions. The proposed revisions would
12 not require an increase or decrease in future legislative appropriations to the department or an increase
13 or decrease of fees paid to the department. The proposed revisions do not create a new regulation;
14 however, they expand an existing regulation regarding the department's external risk-based monitoring
15 system of external users of RTS. The proposed revisions do not increase or decrease the number of
16 individuals subject to the rule's applicability. Lastly, the proposed revisions do not affect this state's
17 economy.

18 **REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written
19 comments by 5:00 p.m. CDT on MM, DD, YYYY. A request for a public hearing must be sent separately
20 from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov*
21 or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue,

TITLE 43. TRANSPORTATION

Part 10. Texas Department of Motor Vehicles

Chapter 223 – Compliance and Investigations Division

- 1 Austin, Texas 78731. If a hearing is held, the department will consider written comments and public
- 2 testimony presented at the hearing.

1 **CHAPTER 223 – COMPLIANCE AND INVESTIGATIONS DIVISION**

2 **SUBCHAPTER A. FRAUD, WASTE, OR ABUSE**

3 **43 TAC §§223.1, 223.2, 223.3 and 223.5**

4 **STATUTORY AUTHORITY.** The amendments and new provision are proposed under Transportation Code,
5 §520.004, which requires the department by rule to establish a risk-based system of monitoring and
6 preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate
7 resources and personnel; Transportation Code, §520.010, which authorizes the department to perform
8 an audit and investigation related to registration and titling services; and Transportation Code, §1002.001,
9 which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules
10 that are necessary and appropriate to implement the powers and the duties of the department.

11 **CROSS REFERENCE TO STATUTE.** The proposed amendments and new provision would implement
12 Transportation Code, §520.004, §520.010 and Chapter 1002.

13

14 Text.

15

16 **CHAPTER 223 – COMPLIANCE AND INVESTIGATIONS [~~DIVISION~~]**

17

18 §223.1. Purpose and Scope.

19 ~~(a)~~ The purpose of this subchapter is to establish the following:

20 (1) procedures for county tax assessor-collectors and deputies to report suspected fraud, waste,

21 or abuse to the department relating to vehicle registration or titling; and

TITLE 43. TRANSPORTATION

Proposed Sections

Part 10. Texas Department of Motor Vehicles

Page 2 of 7

Chapter 223 – Compliance and Investigations Division

1 (2) a risk-based monitoring system for the department to monitor county tax assessor-collectors
2 and their deputies who use RTS.

3 ~~[(b) This subchapter applies to a county tax assessor-collector, an employee of a county tax~~
4 ~~assessor-collector, or a deputy, who wishes to report suspected fraud, waste, or abuse to the Texas~~
5 ~~Department of Motor Vehicles.]~~

6

7 §223.2. Definitions.

8 (a) The words and terms defined in Transportation Code, Chapter 501, have the same meaning
9 when used in this chapter, except as otherwise provided by this chapter, unless the context clearly
10 indicates otherwise.

11 (b) The following words and terms, when used in this chapter, shall have the following meanings,
12 unless the context clearly indicates otherwise:

13 ~~[(1) CID--the Compliance and Investigations Division of the Texas Department of Motor~~
14 ~~Vehicles.]~~

15 (1) [(2)] County tax assessor-collector--the person who serves as the assessor-collector
16 of taxes for a Texas county under Article VIII, §14, of the Texas Constitution, as well as [includes] an
17 employee of a county tax assessor-collector.

18 (2) [(3)] Deputy--a full service deputy under Chapter 217, Subchapter H of this title
19 (relating to Vehicle Titles and Registration).

20 ~~[(4) Director--the director of the Compliance and Investigations Division.]~~

1 (3) [(5)] RTS--the department's [Texas Department of Motor Vehicle's] registration and
2 title system.

3

4 §223.3. Submission of Request.

5 (a) A county tax assessor-collector who suspects possible fraud, waste, or abuse by an employee,
6 [motor vehicle] dealer, deputy, or any person transacting motor vehicle-related business for or with the
7 county may submit a request to the department [CID] for review [and possible investigation]. The
8 department [CID] may forward a submission to an appropriate law enforcement entity.

9 (b) To submit a request to the department [CID] for review [and possible investigation], the
10 county tax assessor-collector must:

11 (1) request a rejection of the suspected transaction through a department regional
12 service center; and

13 (2) mail or e-mail the following documents and information, as applicable, to the
14 department [CID] in an envelope or e-mail message marked "Red Flag":

15 (A) the original transaction;

16 (B) a detailed narrative, including:

17 (i) the name of a contact person with the county tax assessor-collector,
18 including email address and phone number;

19 (ii) the name of the employee submitting the request [transaction to the
20 CID];

TITLE 43. TRANSPORTATION

Proposed Sections

Part 10. Texas Department of Motor Vehicles

Page 4 of 7

Chapter 223 – Compliance and Investigations Division

1 (iii) a statement as to why the transaction is suspect [~~was flagged~~];

2 (iv) information about the employee or deputy [~~if the employee or~~
3 ~~deputy is~~] suspected of committing fraud, waste, or abuse;

4 (v) any statements made by the customer submitting the suspect
5 transaction;

6 (C) any available video surveillance footage; and

7 (D) any other relevant evidence or information pertaining to the transaction.

8 (c) If a deputy suspects possible fraud, waste, or abuse[~~r~~] by an employee, [~~motor vehicle~~
9 dealer, or any person transacting motor vehicle-related business for or with the deputy, the deputy must
10 report the suspected fraud, waste, or abuse to the county tax assessor-collector. The county tax assessor-
11 collector may then submit a request to the department [~~CID~~] for review [~~and possible investigation~~] in
12 accordance with subsection (b) of this section.

13 (d) If the department [~~CID~~] determines it will not open [~~conduct~~] an investigation after reviewing
14 a submitted request [~~submitted by a county tax assessor-collector~~], the department [~~CID~~] will notify
15 [~~provide a notification to~~] the submitting county tax assessor-collector.

16

17 §223.5. External Risk-Based Monitoring System.

18 (a) All county tax assessor-collectors, their contractor's staff, and the deputies who use RTS are
19 subject to periodic examination by the department. As a result of the examination, the department will
20 classify each county tax assessor-collector, each of their contractor's staff, and each deputy as priority or
21 non-priority for the purposes of prioritizing reviews to determine whether there is evidence of fraud by

TITLE 43. TRANSPORTATION

Proposed Sections

Part 10. Texas Department of Motor Vehicles

Page 5 of 7

Chapter 223 – Compliance and Investigations Division

1 the county tax assessor-collector, their contractor’s staff, or a deputy. In classifying a county tax
2 assessor-collector, their contractor’s staff, or a deputy, the department may consider factors, including,
3 but not limited to:

4 (1) referrals or complaints received from partner state agencies;

5 (2) referrals or complaints received from public safety agencies;

6 (3) the retirement, resignation, or impeachment of the county tax assessor-collector;

7 (4) a contingency that disrupted county motor vehicle title and registration operations,

8 such as a natural disaster or the theft or the burglary of a county tax assessor-collector’s premises;

9 (5) previous compliance review designations;

10 (6) previous instances of non-compliance; and

11 (7) a complaint filed through an internal reporting mechanism, such as a Red Flag

12 referral, telephone call, or an email received by the department’s Consumer Relations Division (CRD), or

13 any other means of communication with the department.

14 (b) It is the department’s goal to review each county tax assessor-collector, each of their
15 contractor’s staff, and each deputy as follows:

16 (1) if the county tax assessor-collector, their contractor’s staff person, or deputy is
17 classified as a priority, they will be reviewed at least once per year; or

18 (2) if the county tax assessor-collector, their contractor’s staff person, or deputy is
19 classified as a non-priority, they will be reviewed at least once every two years.

1 (c) Examinations under this section may be virtual, on premises at the county tax assessor-
2 collector’s, their contractor’s staff person’s, or deputy’s location, or a combination of both.

3 (d) The department may notify the county tax assessor-collector of possible fraudulent activity
4 in the county tax assessor-collector’s office when the department is authorized by law enforcement.

5

6 **SUBCHAPTER B. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY**

7

7 **43 TAC §223.101**

8 **STATUTORY AUTHORITY.** The repeal is proposed under Transportation Code, §520.004, which requires
9 the department by rule to establish a risk-based system of monitoring and preventing fraudulent activity
10 related to vehicle registration and titling in order to efficiently allocate resources and personnel;
11 Transportation Code, §520.010, which authorizes the department to perform an audit and investigation
12 related to registration and titling services; and Transportation Code, §1002.001, which provides the board
13 of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and
14 appropriate to implement the powers and the duties of the department.

15 **CROSS REFERENCE TO STATUTE.** The proposed repeal would implement Transportation Code, §520.004,
16 §520.010 and Chapter 1002.

17

18 Text.

19 ~~**[SUBCHAPTER B. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY]**~~

20

21 ~~[§223.101. External Risk-Based Monitoring System.]~~

TITLE 43. TRANSPORTATION

Proposed Sections

Part 10. Texas Department of Motor Vehicles

Page 7 of 7

Chapter 223 – Compliance and Investigations Division

1 ~~[The department's Compliance and Investigations Division shall establish a risk-based system of~~
2 ~~monitoring and preventing fraudulent activity related to vehicle registration and titling in order to~~
3 ~~efficiently allocate resources and personnel, including:]~~

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

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

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

12 ~~[(4) notifying a tax assessor collector of possible fraudulent activity in the tax assessor-~~
13 ~~collector's office as authorized by law enforcement; and]~~

14 ~~[(5) developing and providing training to fraud investigations staff.]~~

To: Texas Department of Motor Vehicles Board
From: Annette Quintero, Vehicle Titles & Registration Division Director
Agenda Item: 17
Subject: Specialty Plate Design

RECOMMENDATION

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

PURPOSE AND EXECUTIVE SUMMARY

Phi Beta Sigma is a new plate design.

FINANCIAL IMPACT

Revenue from the sale of vendor specialty license plates is used to pay the department's \$8 administrative fee. Other costs incurred by the department related to the My Plates program are recouped by 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.

The plate design listed below was presented to the public in a March 2024 eVIEW. No negative comments were received. The count of the public’s “like/dislikes” are noted below:

| PHI BETA SIGMA | NEW |
|---|--|
| 1694 people liked this design and 366 did not |  <p>The image shows a blue Texas license plate with white text and graphics. In the top left corner, the Greek letters ΦΒΣ are displayed. Below them is the circular seal of Phi Beta Sigma Fraternity, Inc., which includes the text 'PHI BETA SIGMA FRATERNITY, INC.', 'BROTHERHOOD · SCHOLARSHIP · SERVICE', and 'FOUNDED 1914'. The word 'TEXAS' is in the top center, followed by a small horizontal line and the year '1914' in the top right. The alphanumeric code 'BB01BB' is prominently displayed in the center. At the bottom, the motto 'Brotherhood, Scholarship & Service' is written in a smaller font, flanked by two small white oval shapes.</p> |

Phi Beta Sigma (New)



TEXAS SPECIALTY PLATE BUSINESS

Vehicle Titles and
Registration Division
Special Plates Unit (5FTEs) 04/24



VTR Director
Annette Quintero

APR. 2024



SLP AVAILABLE _____ **558**
MILITARY AND DV _____ **220**
RESTRICTED USE _____ **64**
STATE SPECIALTY _____ **127**
VENDOR SPECIALTY _____ **147**



TOP TEN DATA 02-2024

| | LINKED | UNLINKED | TOTAL |
|------------------------------------|--------|----------|-------|
| 1. ANIMAL FRIENDLY | 6,834 | 245 | 7,079 |
| 2. CONSERVATION: HORNED LIZARD | 5,818 | 250 | 6,068 |
| 3. CONSERVATION: BLUEBONNET | 4,382 | 204 | 4,586 |
| 4. CONSERVATION: WHITE-TAILED DEER | 3,075 | 180 | 3,255 |
| 5. TEXAS A & M UNIVERSITY | 2,019 | 38 | 2,057 |
| 6. CONSERVATION: HUMMINGBIRD | 1,954 | 102 | 2,056 |
| 7. BIG BEND NATIONAL PARK | 1,898 | 90 | 1,988 |
| 8. CONSERVATION: LARGE MOUTH BASS | 1,817 | 97 | 1,914 |
| 9. NATIVE TEXAN | 1,732 | 73 | 1,805 |
| 10. CONSERVATION: TEXAS RIVERS | 922 | 66 | 988 |

| | | | |
|---------------------------|--------|--------|--------|
| 1. CLASSIC BLACK | 61,951 | 11,418 | 73,369 |
| 2. LARGE STAR WHITE-BLACK | 37,662 | 5,665 | 43,327 |
| 3. TEXAS BLACK 1845 | 16,195 | 3,335 | 19,530 |
| 4. CLASSIC BLACK-SILVER | 15,622 | 2,725 | 18,347 |
| 5. LONE STAR BLACK | 14,851 | 3,028 | 17,879 |
| 6. CARBON FIBER | 14,640 | 3,004 | 17,644 |
| 7. LONE STAR 1836 | 5,315 | 974 | 6,289 |
| 8. TEXAS A&M (MAROON) | 4,182 | 568 | 4,750 |
| 9. TEXAS VINTAGE BLACK | 4,127 | 626 | 4,753 |
| 10. LONE STAR BLK-SILVER | 4,066 | 843 | 4,909 |

| | | | |
|------------------------------|---------|-------|---------|
| 1. DISABLED VETERAN | 213,085 | 6,386 | 219,471 |
| 2. DV U.S. ARMY | 55,687 | 1,684 | 57,371 |
| 3. DV U.S. MARINE CORPS | 31,520 | 885 | 32,405 |
| 4. DV U.S. AIR FORCE | 25,560 | 692 | 26,252 |
| 5. DV U.S. NAVY | 22,800 | 661 | 23,461 |
| 6. DV BRONZE STAR MEDAL | 15,112 | 371 | 15,483 |
| 7. MERITORIOUS SERVICE MEDAL | 13,488 | 552 | 14,040 |
| 8. PURPLE HEART | 12,568 | 359 | 12,927 |
| 9. U.S. MARINE CORPS | 12,036 | 496 | 12,532 |
| 10. U.S. ARMY | 10,410 | 462 | 10,872 |

SPECIAL PLATES UNIT CUSTOMER SERVICE STATISTICS FY 2024

| | | | | | | |
|---|-----------------|-------------------|--------------|--------------|---------------------------------|---|
| 40,092 | 12,267 | 41 | 5,412 | 1,791 | 22 | 2,467 |
| Personalized Plate Applications Reviewed (96% Approved) | Telephone Calls | Walk-in Customers | Emails | Refunds | Public Information Open Records | Correspondence (Including Plate Applications) |

To: Texas Department of Motor Vehicles Board
From: Dorothy Spearman, Project Manager
Agenda Item: 18.A.i
Subject: Enterprise Projects - Camp Hubbard Renewal Project

PURPOSE AND EXECUTIVE SUMMARY

Briefing only.

FINANCIAL IMPACT

N/A

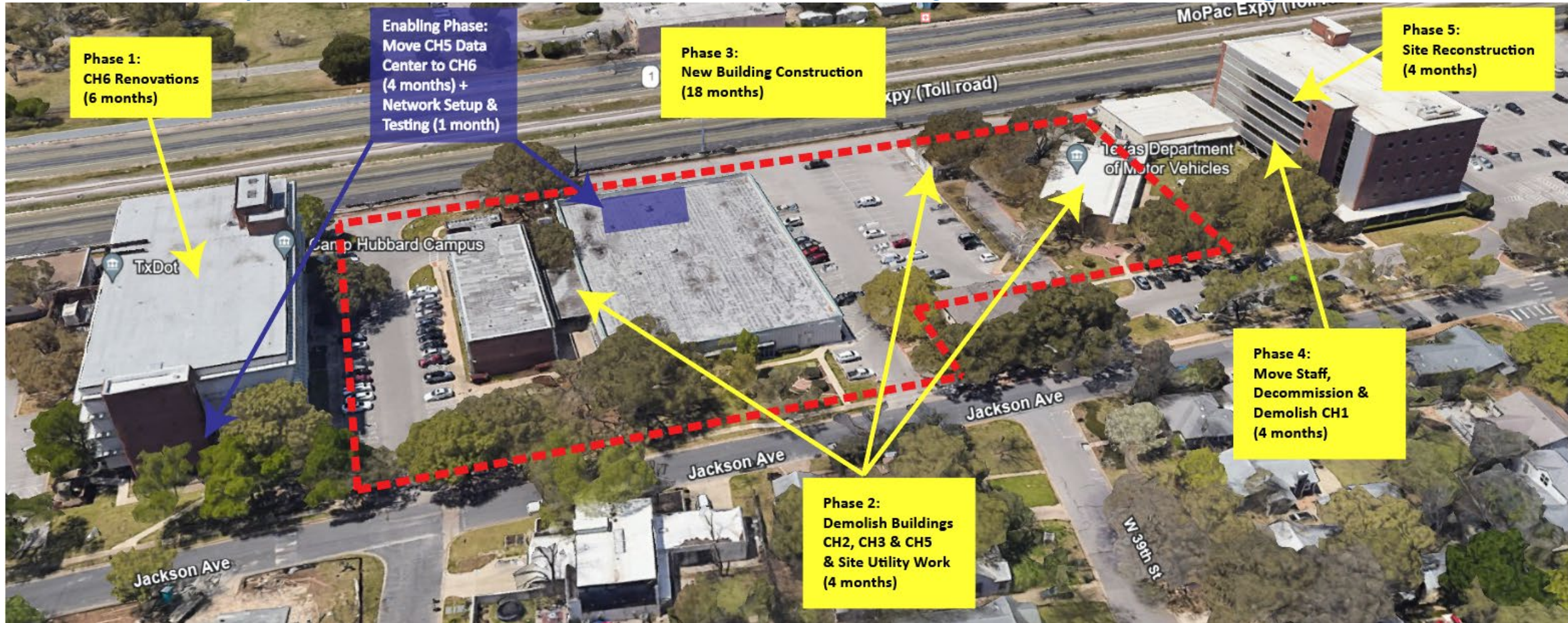
BACKGROUND AND DISCUSSION

- **TPFA financing:** TPFA and TxDMV have reached consensus on the Lease Agreement contract terms. The Office of the Attorney General will issue an opinion on the final documents by mid-April. Once all parties have executed the contracts, TPFA will begin staging the bond sales.
- **Design:** The campus renewal master planning, design, and construction documentation was completed by Marmon Mok Architecture in late 2023.
- **Data Center Enabling Project:** Installation of a new fiber cable backbone and build out of the new data center in CH6 is underway. This independent enabling project is scheduled to be completed by August.
- **Building Decommissioning:**
 - CH2 cafeteria services ended and the vendor is removing their equipment.
 - CH3 has been vacated and Austin Energy has been contracted to remove electric services.
 - CH5 divisions are moving to temporary offices on the 5th floor of CH6. ITSD will maintain data center and warehouse operations in the building until their CH6 spaces are ready this summer.
- **Construction Phase:** TFC posted a solicitation for a Construction Manager at Risk (CMR) March 28, 2024. Contracting is anticipated to be complete in early May with issuance of a Notice to Proceed to follow by June 1.
 - **CH6 Renovations:** The 1958 building will undergo interior and façade improvements to improve the efficiency and reliability of various systems. Four divisions will have permanent offices in the renovated spaces with the remaining space serving as flex space for the department's future needs.
 - **Demolition A:** Buildings CH2, CH3 and CH5 will be demolished upon successful transfer of IT network operations to the new CH6 data center. Along with associated underground utility work, this phase is estimated to take four months.
 - **New Building Construction:** From foundations to furniture installation, the new building is expected to be constructed within 18 months.
 - **Demolition B:** Once staff and operations are settled into the new headquarters, the old CH1 will be decommissioned and demolished. Four months is the expected time required for this phase.
 - **Site Work:** Final site improvements and parking lot expansion in the footprint of old CH1 will take three months, wrapping up in late 2026.

Camp Hubbard Renewal – Campus Design



Camp Hubbard Renewal Project Phasing



| 2024 | | 2025 | | 2026 | | 2027 |
|------------------------------|---------------|------------------------------------|--|---------|--|---------|
| Data Center Build Out & Move | Phase 2: Demo | Phase 3: New Building Construction | | Phase 4 | | Phase 5 |
| Phases 1: CH6 Renovations | | | | | | |



Site Logistics – Phase 2



Site Logistics – Phase 3



Site Logistics – Phases 4 & 5



CH6 New South Entrance Design

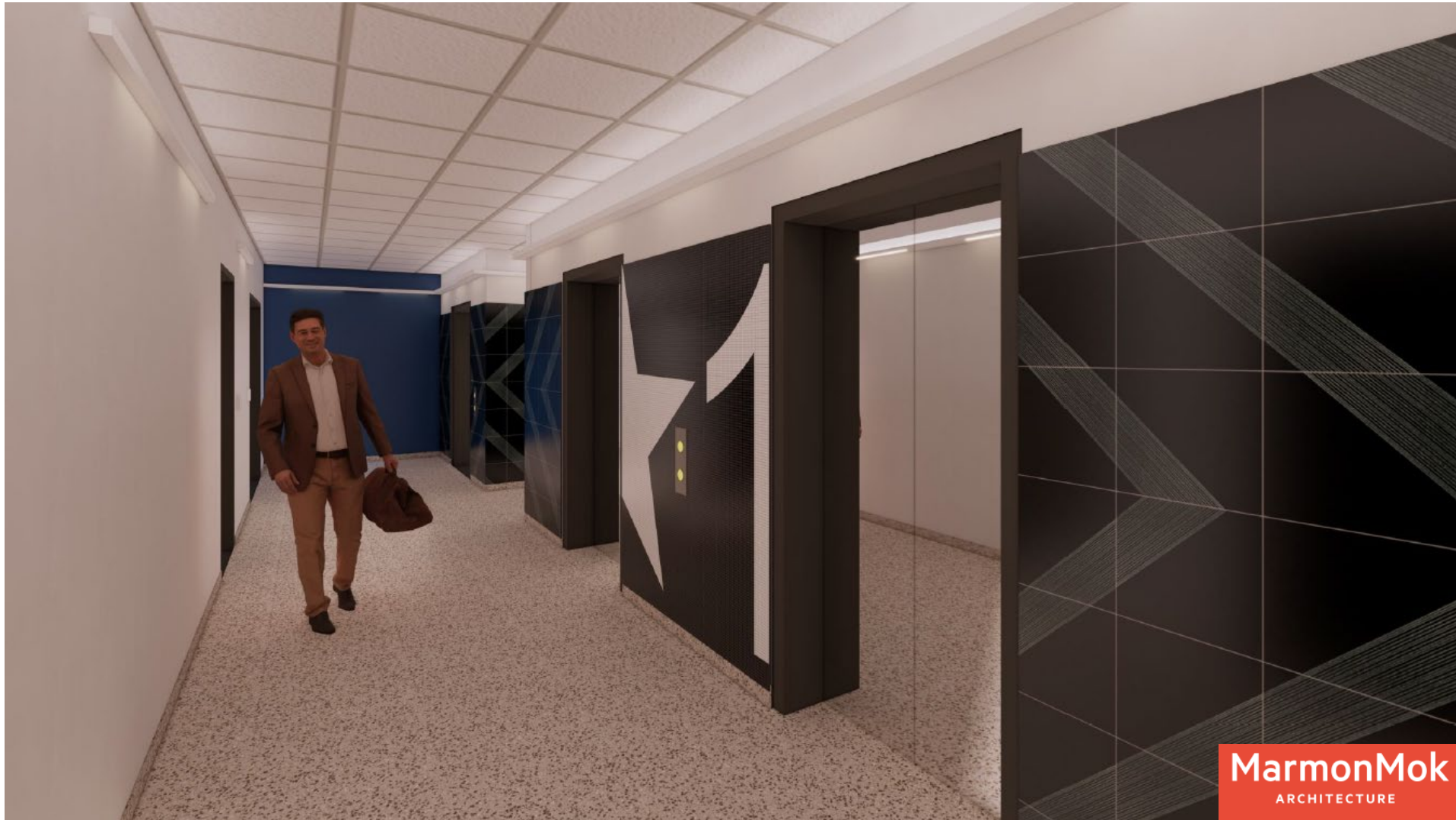


CH6 Renovated Lobby Design

MarmonMok
ARCHITECTURE



CH6 Elevator Lobby Design



Birds Eye View of Walkway to CH6



MarmonMok
ARCHITECTURE



New Building Entrance Looking South to CH6



New Building Entrance



MarmonMok
ARCHITECTURE

NOT FOR REGULATORY APPROVAL, PERMITTING, OR CONSTRUCTION | BRITNEY HANKEWICZ - ARCHITECT - REGISTRATION NUMBER 13889



Texas Department *of* Motor Vehicles

To: Texas Department of Motor Vehicles Board
From: Roland Luna, Deputy Executive Director
Agenda Item: 18.A.ii
Subject: Enterprise Projects – House Bill (HB) 718 Implementation

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

TxDMV developed an implementation plan for House Bill 718, which eliminates various temporary tags and timed permits. Staff will provide an overview of the statutory changes, operational impacts, operational considerations, and coordination with stakeholders.

FINANCIAL IMPACT

For the implementation of HB 718, TxDMV was appropriated \$35 million for the 2024-2025 biennium with 2.0 FTEs in 2024 and 42.0 FTEs in 2025. For the last three years in the fiscal note published by the Legislative Budget Board (LBB), the cost to TxDMV Fund (0010), is \$26,408,666 and 44.0 FTEs. TxDMV will have the opportunity to request the funds for 2026-2028 in future Legislative Appropriations Requests (LARs).

BACKGROUND AND DISCUSSION

TxDMV began working on the implementation of HB718 by creating various committees to assist with different components of the legislation. Five (5) committees were formed to structure and manage the implementation of HB 718. Each committee is tasked with clearly defined goals to make the implementation of HB 718 seamless and efficient across the TxDMV. A chair was appointed to each committee to organize the committee's goals, tasks, and coordinate cross-committee efforts.

Committees include Technology, License Plate Design & Manufacturing, Compliance, Regulatory Affairs, and Executive Advisory.

The Technology Committee is responsible for the acquisition of a new Inventory Management System (IMS) and is chaired by ITSD Application Services Director, Jeffrey Armstrong and VTR Registration Services Manager, Romeo McCain. The License Plate Design & Manufacturing Committee is responsible for designing the new plates, determining security, distribution, and manufacturing of inventory needed. This committee is chaired by VTR's Registration Services Section Director, Stefan Krisch. The Regulatory Affairs Committee's responsibilities are centered around rule development, rule proposal, and adoption. The Regulatory Affairs Committee Chair is Deputy General Counsel, Ashley Healy. The Compliance Committee is responsible for developing compliance policies and procedures around system requirements, manufacturing, TACs, and security. Enforcement Division, Field Services Manager, Charlie Escobedo is the committee chair. Lastly, an Executive Advisory Committee was formed consisting of senior executive management to advise and guide the committee chairs in decision-making and address items elevated for their review.

The HB 718 implementation committees have received demonstrations from various companies that specialize in inventory management system solutions and connected with various state DMV offices throughout the nation. TxDMV has also developed and presented draft rules before the Vehicle Titles and Registration, Motor Vehicle Industry, and Customer Service and Protection advisory committees. Advisory committees provided various stakeholders with the opportunity to ask questions about the rules. TxDMV staff have also completed the initial designs for the three (3) new plate types; temporary registration plate, dealer demo plate, and the out-of-state buyer plate. Additional testing is underway to ensure the plate designs are consistent with department license plate manufacturing and safety standards. Department staff have also participated in several dealer events with the Texas Independent Automobile Dealers Association and focused on providing dealers with an understanding of HB 718's requirements. Dealers are required to submit transactions via webDEALER on July 1, 2025. Staff have developed a robust training schedule to teach dealers how to sign up for webDEALER and how to use the application, some of which have included joint training sessions in conjunction with tax assessor-collectors. The webDEALER training is provided in-person and virtually, and staff have provided training to more than 400 dealers.

To: Texas Department of Motor Vehicles Board
From: Annette Quintero, Vehicle Titles & Registration Division Director
Agenda Item: 18.A.iii
Subject: Enterprise Projects – Regional Service Center (RSC) Expansions, Moves and Renovations

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

The Texas Department of Motor Vehicles (TxDMV) Vehicle Titles and Registration (VTR) Division continues to actively work on the Regional Service Center (RSC) expansions, moves, and renovation projects.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

VTR's efforts on the RSC expansion projects also known as the Long-Range Facilities Plan (LRFP) is a project in response to the request from the Legislative Budget Board for a 10-year plan for VTR's Regional Services Section (RSS). This endeavor is a multi-year initiative focused on maximizing regional service center efficiencies to meet customer demands. Currently, VTR is reviewing information gathered from each of the 16 RSCs to assess their needs to recommend improvements across the state. The TxDMV's recommendations for the Long-Range Facilities Plan are due by December 1, 2024.

Furthermore, VTR received funding during the 88th Legislative Session to open additional service centers in the Dallas and Houston areas to accommodate the growing service demands of customers. TxDMV was appropriated \$2.8 million and 6 total FTEs for a second RSC in Dallas and Houston.

VTR has completed a statewide service mapping to determine the best course of action regarding the most suitable location. These efforts include working with the Texas Facilities Commission (TFC) to evaluate space, leasing options, and lease requirements. The initial Request for Proposals (RFP) for each location has been submitted to TFC and is undergoing the review process for posting by TFC. The estimated posting date for the RFP, based on TFC's routine review and posting timeline is April 30, 2024.

Remodel and relocation projects are also currently underway to make improvements in Odessa and San Antonio. The Odessa remodel project is designed to remodel the interior of the current office space in a Texas Department of Transportation (TxDOT) building. The San Antonio RSC is being relocated to allow for increased services to the region to accommodate future growth.

To: Texas Department of Motor Vehicles Board
From: Wendy Barron, Chief Information Officer
Agenda Item: 18.B.i
Subject: Technology Projects – RTS Replacement and Ecosystem Modernization

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

To provide an update on the status of the Registration and Title System (RTS) Replacement and Ecosystem Modernization project.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

RTS Replacement and Modernization

RTS was originally designed and built by the Texas Department of Transportation 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 be completed by the end of the 2024-2025 fiscal biennium:

- Updates to existing systems.
- 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 expected to begin in fiscal year 2026 and will include implementation and buildout of the replacement ecosystem following the plans developed in Phase One.

Project Status:

- Software updates of existing systems have been started and are in progress.
- The Internal Assessment has been initiated. The project vendor, Deloitte, is gathering information.
- The procurement solicitation for the External Assessment has been sent to Department of Information Resources vendors. Bids are due back to the TxDMV in early April.

- The contract project manager is facilitating work sessions and developing the Quality Assurance Team documentation.

Project End Date: Phase One end date Aug 2025

To: Texas Department of Motor Vehicles Board
From: Wendy Barron, Chief Information Officer
Agenda Item: 18.B.ii
Subject: Technology Projects - Other Projects

RECOMMENDATION

Briefing only.

PURPOSE AND EXECUTIVE SUMMARY

To provide an update on the current active projects including project descriptions, status, budget, and end dates.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

Tax Assessor Collector (TAC) T1 Upgrade Project

Current network circuit technology servicing most of the county tax assessor-collector (TAC) offices is outdated, using older T1 technology. This technology is not reliable, leading to frequent losses of connectivity for our TAC partners and impacting the department's and the TACs' ability to provide good customer service to our constituents. These types of circuits are being phased out by the major service providers, including TxDMV's vendor AT&T. This project will execute the upgrade of current T1 connections to metro-ethernet. This conversion will increase circuit reliability and increase network speeds for our county TAC partners. In conjunction with the fiber upgrade, the current routing and switching equipment at the county TAC locations will be upgraded to newer equipment with LTE (cellular) capabilities. A second networking route will be established in locations where cellular is available and reliable to act as a failover in the event the fiber route became disabled. The TAC T1 Upgrade Project is a multi-phased effort. The project is in its first phase with an objective to upgrade county offices from T1 circuits to AT&T Metro Ethernet for 286 AT&T in-region sites. Network routers and switches will also be upgraded for these offices as part of phase one. Subsequent phases will transition the remaining county offices.

Project Status:

Phase I/II -

- 93% Complete (222 locations as of 3/13)
- 7% Working through various blockers for site requirements.

Phase III/IV:

- 39 of 98 orders are progressing, some cancelled due to special construction needs. 14 are completed.
- 59 of 98 locations on hold due to pending equipment purchase and budget constraints. These locations are figured into the subsequent phases total number of locations.

Subsequent Phases:

- New quotes requested from vendors.
- 211 locations are evaluated for a different solution due to site requirements that counties are unable to meet, special construction cost, or monthly reoccurring cost that is too high.

The project overall health is green. The project is on time and within scope, schedule, and budget.

Project End Date: Phase One is completed, Phase Two end date no later than August 2024.

Motor Carrier Credentialing System (MCCS) Rewrite

The MCCS Rewrite project will replace the existing legacy MCCS system with a modern, reliable application supported by an external vendor. The project will reduce the operational risk to the department using improved technologies and ensure long-term support and operability.

Project Status:

- The SOW was completed and distributed to DIR vendors.
- Responses did not meet expectations.
- An Open Market Exemption request was requested and granted.
- Open Market Solicitation is being reviewed internally.
- Project overall health is yellow because of delays in the solicitation process that have impacted the schedule. The project is within scope and within budget.

Project End Date: August 2023 (schedule will be re-baselined when a vendor is selected and provides their schedule)

Texas International Registration Program (TxIRP) Upgrade

The TxIRP Upgrade project will improve the TxIRP online user experience and reduce Out-of-Service (OOS) fraud. The project will improve user experiences through website responsiveness for mobile devices, add automated financial capabilities, and improve reporting.

Project status:

- Project is in execution phase and application is 85% complete.
- The project overall health is green. The project is on time and within scope, schedule, and budget.

Project End Date: September 2024

Okta Enterprise-Wide Integration

The intent of this project is to implement multi-factor authentication and single sign-on for critical agency applications. This project will meet statutory security requirements and improve access and identity management at the TxDMV.

Project status:

- The vendor has been selected and the kick-off meeting is complete.
- Architecture workshops are complete for in scope applications.
- Requirements gathering sessions are complete.
- The project overall health is green. The project is on time and within scope, schedule, and budget.

Project End Date: September 2024

To: Texas Department of Motor Vehicles Board
From: Chris Hayden, Deputy Chief Financial Officer
Agenda Item: 18.B.iii
Subject: Credit Cards in the RSCs

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

This item provides an update on the Credit Cards in the Regional Service Centers (RSCs) project.

FINANCIAL IMPACT

This project is sourced with funding in the Automation System capital budget for Fiscal Year (FY) 2023 and 2024.

BACKGROUND AND DISCUSSION

This project is a collaborative effort among the Finance and Operations (FAO) Division, Information Technology Services Division (ITSD), Motor Carrier Division (MCD) and the Vehicle Titles and Registration (VTR) Division to implement an over-the-counter credit card payment process at each of the 16 Regional Service Centers (RSC).

Highlights:

- TxDMV began the Texas.gov payment portal services onboarding process in FY23 through the Department of Information Resources (DIR) and its vendor, Tyler Technologies.
- Payment Card Industry (PCI) compliance and attestation has been completed.
- Credit card swipe devices and stands have been procured and received for each RSC location.
- Testing of programmatic changes to both RTS and TxIRP has been successful and has earned approval from DIR.
- Final certification testing with the Comptroller's office has been completed.
- 6 RSCs have gone live to date (Austin, Houston, Dallas, Ft. Worth, Corpus Christi, and Pharr).
- The remaining existing locations will be deployed by August 31, 2024, at a rate of two RSCs per month, except for the San Antonio and Midland/Odessa RSCs. These two offices are contingent on the remodel completion schedules. The additional RSCs in Dallas and Houston will be completed when the new offices are opened.

To: Texas Department of Motor Vehicles Board
From: Eric Horn, Director of Accounting Operations
Agenda Item: 18.B.iv
Subject: Technology Projects - Accounts Receivables Project

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

This item provides an update on the Accounts Receivable system funded by the 87th Legislature.

FINANCIAL IMPACT

This project is funded with \$3.5 million in supplemental appropriations (HB 2, 87th Legislature, RS).

BACKGROUND AND DISCUSSION

The department received \$3.5 million in supplemental appropriations in HB2 of the 87th legislative session for the deployment of an Accounts Receivable (A/R) system to ensure revenue collections are tracked accurately and consistently across the department. TxDMV contracted with Gartner, Inc. in February 2022, to complete the first phase of the project, which was a study of the current decentralized process and to determine recommendations for available software that will best fit the department's needs. Additionally, Gartner recommended TxDMV pursue a Request for Information (RFI) with the vendor community to convey TxDMV's unique system requirements and to obtain more precise cost information for each solution. TxDMV completed the RFI process in September 2022 and elected to pursue an A/R system using the Microsoft Dynamics 365 Business Central platform.

Following the system platform selection, staff from the Finance and Operations (FAO) Division and Information Technology Services Division (ITSD) collaborated with the Department of Information Resources (DIR) to initiate the procurement process. The procurement process was divided into two steps: software licenses and a Deliverables-Based Information Technology Services (DBITS) contract for development and implementation. The procurement of the software licenses was completed in January 2024. TxDMV staff drafted a Statement of Work (SOW) for the implementation of an A/R system in accordance with DIR's process and began reviewing bids in May 2023. After negotiations with the selected vendor, DIR provided final approval for the project to begin in March 2024. A project kick-off meeting commenced on March 18, 2024.

The project is currently in the define and design phase, which is expected to last through May 2024. Following this phase, the vendor will develop the system over the rest of the calendar year. A production deployment of the new A/R system is expected in January 2025 with transition and project closing activities occurring through April 2025.

To: Texas Department of Motor Vehicles Board
From: John Ralston, Director of Budget & Forecasting
Agenda Item: 19.A
Subject: Semi-Annual Financial Report

RECOMMENDATION

Briefing Only.

PURPOSE AND EXECUTIVE SUMMARY

Attached is the TxDMV fiscal year (FY) 2024 semiannual financial report for September 1, 2023–February 29, 2024. The report includes statistical and detailed information on revenues, the TxDMV Fund 0010 balance, actual expenditures, and outstanding obligations.

Highlights include:

- TxDMV deposited \$986.9 million in revenue to the General Revenue Fund (0001), State Highway Fund (0006), and TxDMV Fund (0010) in the first six months of FY 2024, which is 3.4% more than FY 2023 deposits for the same time period.
- TxDMV Fund revenue deposits total \$90.4 million, a 2.0% increase compared to FY 2023.
- The adjusted balance of the TxDMV Fund as of February 29, 2024, is \$157.0 million.
- Actual expenditures and outstanding obligations for the TxDMV Fund and General Revenue Fund total \$158.9 million (\$78.4 million in actual expenditures and \$80.5 million in outstanding obligations).
 - TxDMV Fund actual expenditures total \$78.0 million, with \$57.7 million in outstanding obligations as of February 29, 2024.
 - General Revenue Fund actual expenditures total \$359,000, with \$22.9 million in outstanding obligations as of February 29, 2024. General Revenue Fund obligations are primarily for Motor Vehicle Crime Prevention Authority (MVCPA) activities.
- In the first six months of FY 2024, the department deposited sufficient revenue to support its actual expenditures and outstanding obligations for the year.

FINANCIAL IMPACT

TxDMV is self-supporting and funds all its expenditures from revenues deposited to the TxDMV Fund, except the MVCPA, which is funded from motor vehicle insurer fees deposited to the General Revenue Fund. The department also deposits revenue to the State Highway Fund and General Revenue Fund for other state programs.

BACKGROUND AND DISCUSSION

See attached report.



Texas Department *of* Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

FY 2024 Financial Summary

Semiannual Report

(September 1, 2023–February 29, 2024)

Finance and Operations Division

April 11, 2024



Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.



FY 2024 Financial Report Semiannual Report

(September 1, 2023–February 29, 2024)

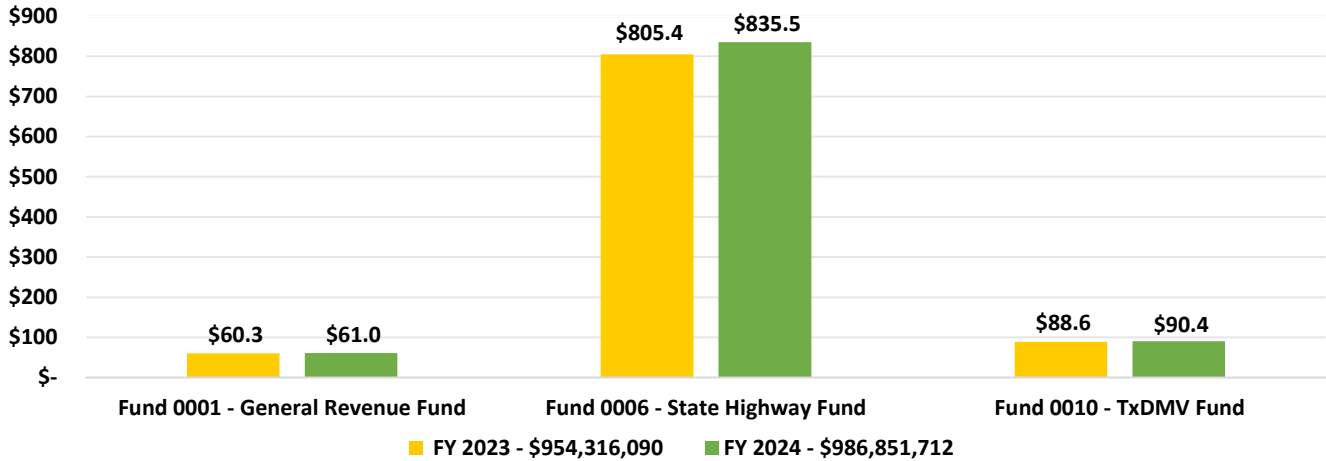
April 11, 2024

FY 2023 versus FY 2024 Revenues - All Funds

September 1 through February 29

FY 2023 and FY 2024 Comparison of Revenue by Fund

(in millions)



The Texas Department of Motor Vehicles (TxDMV or the "department") collected \$986.9 million through February 29, 2024. This is 3.4% more than FY 2023 collections. FY 2023 and FY 2024 revenue deposits for all funds by revenue category are shown in the chart below.

FY 2023 and FY 2024 Revenue by Category - All Funds

| Revenue Category | FY 2023 Actual | FY 2024 Actual | Variance | % Difference |
|-------------------------------------|-----------------------|-----------------------|----------------------|--------------|
| Motor Vehicle Certificates of Title | \$ 44,534,483 | \$ 44,506,911 | \$ (27,572) | (0.1%) |
| Motor Vehicle Registration | 783,705,579 | 813,813,914 | 30,108,335 | 3.8% |
| Motor Carrier - Oversize/Overweight | 81,780,169 | 83,802,095 | 2,021,926 | 2.5% |
| Motor Carrier Credentialing | 4,227,128 | 4,070,393 | (156,735) | (3.7%) |
| Motor Vehicle Business Licenses | 3,623,438 | 3,272,330 | (351,107) | (9.7%) |
| Miscellaneous Revenue | 9,957,102 | 10,447,441 | 490,339 | 4.9% |
| Processing and Handling Fee | 26,488,192 | 26,938,627 | 450,435 | 1.7% |
| Total | \$ 954,316,090 | \$ 986,851,712 | \$ 32,535,621 | 3.4% |

Year-to-date in FY 2024, as compared to FY 2023, the state showed growth in a number of underlying fee-generating activities, resulting in increases in all categories of revenue but three (motor vehicle certificates of title, motor carrier credentialing, and motor vehicle business licenses). Motor vehicle certificates of title revenue was about the same as in FY 2023. Decreased motor vehicle business license revenue can be attributed to tightened eligibility requirements for licensure in efforts to combat fraud, resulting in the department receiving or approving fewer license applications. The increase in motor vehicle registration revenue is mostly attributable to the additional fee paid at annual registration of certain electric vehicles following the FY 2024 implementation of Senate Bill 505, 88th Legislature, Regular Session.

TxDMV will continue to monitor the effects of these factors throughout FY 2024.

FY 2024 Projected versus Actual Revenues - All Funds

September 1 through February 29

| Revenue Category | FY 2024 Projected | FY 2024 Actual | Variance | % Difference |
|-------------------------------------|-----------------------|-----------------------|-------------------|--------------|
| Motor Vehicle Certificates of Title | \$ 44,177,129 | \$ 44,506,911 | \$ 329,782 | 0.7% |
| Motor Vehicle Registration | 811,865,447 | 813,813,914 | 1,948,467 | 0.2% |
| Motor Carrier - Oversize/Overweight | 84,635,658 | 83,802,095 | (833,563) | (1.0%) |
| Motor Carrier Credentialing | 4,201,230 | 4,070,393 | (130,837) | (3.1%) |
| Motor Vehicle Business Licenses | 3,591,172 | 3,272,330 | (318,842) | (8.9%) |
| Miscellaneous Revenue | 11,376,000 | 10,447,441 | (928,559) | (8.2%) |
| Processing and Handling Fee | 26,586,087 | 26,938,627 | 352,540 | 1.3% |
| Total | \$ 986,432,724 | \$ 986,851,712 | \$ 418,988 | 0.0% |

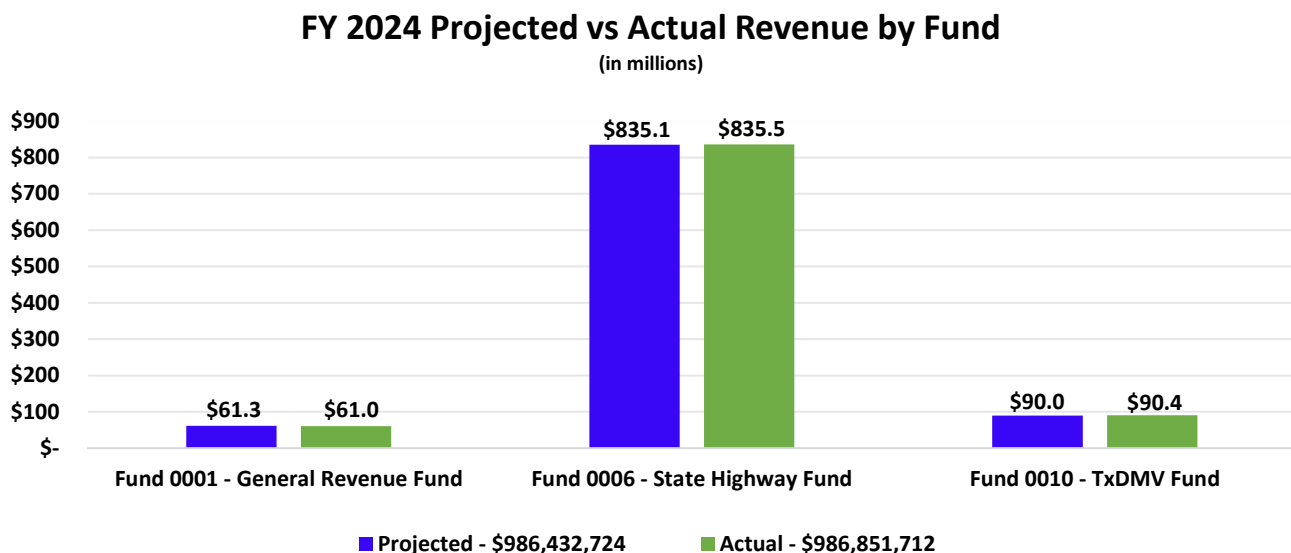
Year-to-date revenue for FY 2024 is 0.0% (\$418,988) above projections.

Motor Carrier Credentialing is 3.1% (\$130,837) below projections due to a lower-than-expected number of credentialing applications filed.

Motor Vehicle Business Licenses is 8.9% (\$318,842) below projections, resulting from a lower-than-expected number of applications submitted following enhanced pre-license requirements approved by the board to address those attempting to obtain licenses for fraudulent purposes.

The variance in miscellaneous revenue of 8.2% (\$928,559) is mostly due to lower-than-expected collections of credit-card convenience fees, Motor Carrier Act penalties, and motor vehicle dealer civil penalties.

Total projected and actual revenues by fund are shown in the chart below.

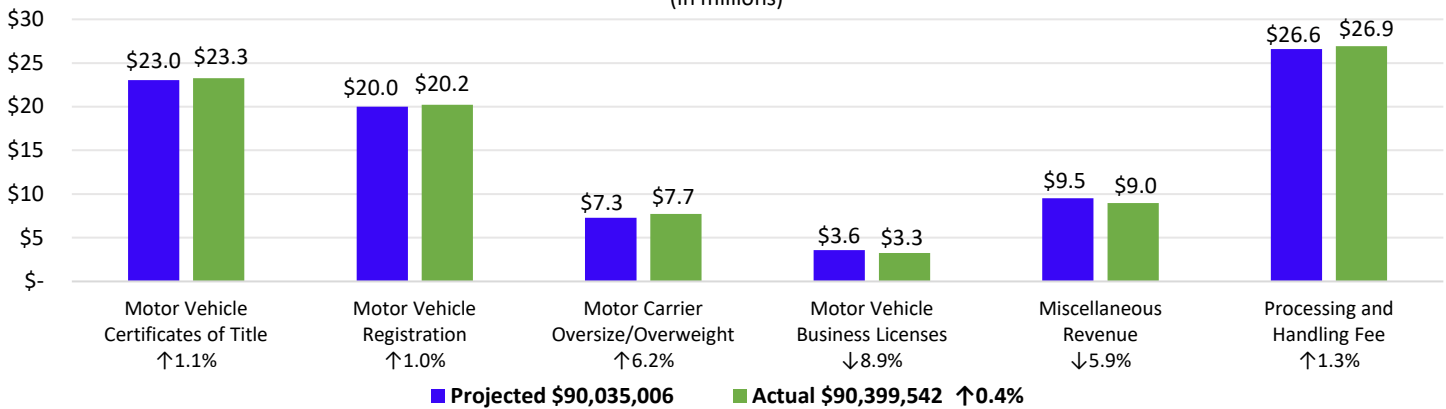


FY 2024 TxDMV Fund 0010 Revenue Highlights

September 1 through February 29

Projected vs Actual Revenue - Fund 0010

(in millions)



- TxDMV Fund 0010 revenue is 0.4% (\$364,536) above projections for FY 2024.
- Motor carrier oversize/overweight revenue is 6.2% over projections. However, this reflects a later-than-expected timing of the semiannual transfer of pass-through portions of certain permit fees from the TxDMV Fund to the comptroller for disbursement to other entities. Excluding that effect, this category would be roughly at projections year-to-date.
- Motor Vehicle Business Licenses is 8.9% below projections due to a lower-than-expected number of applications (mostly for GDNs) following implementation of enhanced pre-licensing checks by the department.
- Miscellaneous revenue is 5.9% below projections, mostly attributable to lower-than-expected collections of credit-card convenience fees and motor vehicle dealer civil penalties.

FY 2023 and FY 2024 Actual Revenue - Fund 0010

| Revenue Category | FY 2023 Actual | FY 2024 Actual | Variance | % Difference |
|-------------------------------------|----------------------|----------------------|---------------------|--------------|
| Motor Vehicle Certificates of Title | \$ 23,262,806 | \$ 23,276,951 | \$ 14,145 | 0.1% |
| Motor Vehicle Registration | 19,967,201 | 20,208,156 | 240,956 | 1.2% |
| Motor Carrier Oversize/Overweight | 7,075,775 | 7,732,622 | 656,847 | 9.3% |
| Motor Vehicle Business Licenses | 3,623,438 | 3,272,330 | (351,107) | (9.7%) |
| Miscellaneous Revenue | 8,175,226 | 8,970,855 | 795,629 | 9.7% |
| Processing and Handling Fee | 26,488,192 | 26,938,627 | 450,435 | 1.7% |
| Total | \$ 88,592,637 | \$ 90,399,542 | \$ 1,806,906 | 2.0% |

- TxDMV Fund 0010 revenue is 2.0% (\$1.8 million) higher than the same period in FY 2023. The increase in motor carrier oversize/overweight permit revenue mostly reflects pass-through revenue collected by the department that will be transferred by the comptroller from the TxDMV Fund to counties and municipalities later in the year. The decrease in motor vehicle business licenses revenue from last year is attributable to fewer applications for licensure as discussed earlier in this report, and also to unfavorable market conditions related to vehicle affordability. Higher interest rates on the fund balance resulted in increased TxDMV Fund interest credits as compared to last year (within the miscellaneous-revenue category).

FY 2024 Actual Expenditures by Fund (September 1 through February 29)

For FY 2024, TxDMV was appropriated \$422,399,717 for department operations, of which \$230,517,234 is from TxDMV Fund 0010; \$48,882,483 is from General Revenue Fund 0001 specifically for use by the Motor Vehicle Crime Prevention Authority; and \$143,000,000 is from bond proceeds for the Camp Hubbard Renewal Project. An additional \$14,131,360 from prior-year appropriations and adjustments was also available for use, as well as \$14,941,147 for employee benefits. FY 2024 expenditures excluding encumbrances totaled \$78,384,963 as shown in the last column of the table immediately below.

| <i>Operating Expenditures</i> | Fund 0010 Sep-Feb FY 24 | Fund 0001 Sep-Feb FY 24 | Grand Total Sep-Feb FY 24 |
|---|----------------------------|----------------------------|------------------------------|
| Salaries and Wages | \$ 23,972,789 | \$ 283,568 | \$ 24,256,357 |
| Other Personnel | \$ 737,948 | \$ 12,596 | \$ 750,544 |
| Professional Fees | \$ 13,983,112 | \$ - | \$ 13,983,112 |
| Fuels & Lubricants | \$ 19,540 | \$ - | \$ 19,540 |
| Consumables | \$ 430,219 | \$ - | \$ 430,219 |
| Utilities | \$ 2,506,490 | \$ 1,073 | \$ 2,507,563 |
| Travel | \$ 198,584 | \$ 22,825 | \$ 221,409 |
| Rent - Building | \$ 465,172 | \$ 5,612 | \$ 470,784 |
| Rent - Machine and Other | \$ 96,863 | \$ 1,198 | \$ 98,061 |
| Other Operating | \$ 28,702,785 (1) | \$ 28,085 | \$ 28,730,870 |
| Grants | \$ - | \$ (67,202) | \$ (67,202) |
| Other Capital | \$ - | \$ - | \$ - |
| Total Operating Expenditures | \$ 71,113,502 | \$ 287,755 | \$ 71,401,257 |
| | | | |
| <i>Fringe Benefits</i> | | | |
| Retirement | \$ 2,233,331 | \$ 24,369 | \$ 2,257,700 |
| Group Insurance | \$ 2,845,782 | \$ 26,142 | \$ 2,871,924 |
| OASI (Old Age and Survivor's Insurance) | \$ 1,804,231 | \$ 21,198 | \$ 1,825,429 |
| Unemployment Reimbursement to GR | \$ 4,337 | \$ - | \$ 4,337 |
| Benefit Replacement Pay | \$ 24,316 | \$ - | \$ 24,316 |
| Total Fringe Benefits | \$ 6,911,997 | \$ 71,710 | \$ 6,983,707 |
| Total Expenditures | \$ 78,025,499 | \$ 359,465 | \$ 78,384,963 |

TxDMV Fund 0010 Balance

FY 2024 TxDMV Fund 0010 revenue collections exceeded expenditures and encumbrances by \$12.4 million, increasing the adjusted fund balance to \$157.0 million as of February 29, 2024.

| | |
|-------------------------------------|-----------------------|
| FY 2024 Beginning Balance | \$ 202,340,107 |
| <i>Revenue</i> | |
| Motor Vehicle Certificates of Title | \$ 23,276,951 |
| Motor Vehicle Registration | \$ 20,208,156 (1) |
| Motor Carrier - Oversize/Overweight | \$ 7,732,622 |
| Motor Vehicle Business Licenses | \$ 3,272,330 |
| Miscellaneous Revenue | \$ 8,970,855 |
| Processing and Handling Fee | \$ 26,938,627 (2) |
| Total Revenue | \$ 90,399,542 |
| Total Fund 0010 Expenditures | \$ 78,025,499 |
| Ending Fund Balance | \$ 197,668,428 |
| Adjustment for Encumbrances | \$ 57,664,241 |
| Adjusted Fund Balance | \$ 157,049,909 |

FY 2024 Revenues & Expenditures



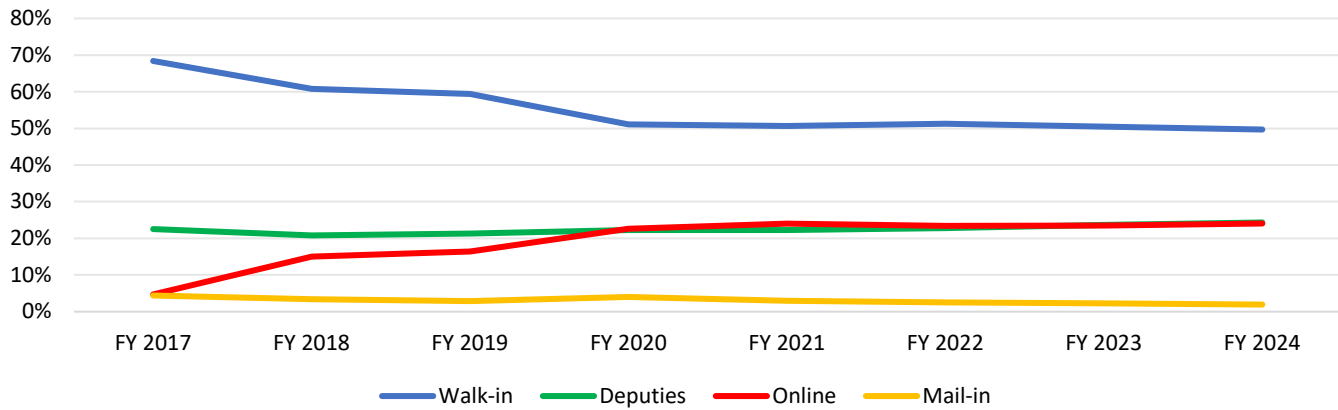
Footnotes:

(1) Included in Motor Vehicle Registration fees are MyPlates revenue collections of \$4,466,818; and included in Other Operating expenditures are MyPlates expenditures of \$4,280,535.

(2) Processing and Handling fee revenue does not include the portion of the fees retained for administrative expenses by the counties or Texas.gov, per TxDMV board rule.

Processing and Handling Fee Transactions

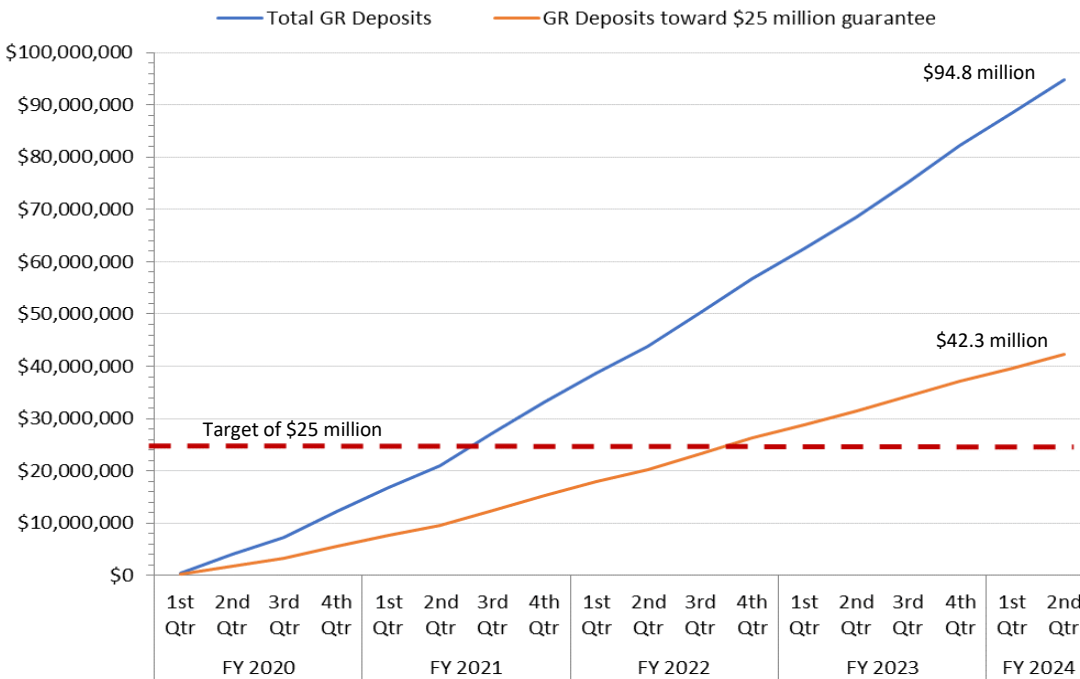
Transaction Mix from Annual Registrations



- As of February 29, 2024, about half (49.7%) of annual-registration transactions were processed at county offices.
- The percentage of annual-registration transactions conducted online increased slightly year-over-year, accounting for 24.0% (2.8 million) of the 11.7 million total transactions in FY 2024 compared to 23.5% in FY 2023.
- Deputy and mail-in percentages have remained relatively constant since FY 2017, and are at 24.3% and 1.9%, respectively, for FY 2024.

Vendor Plates

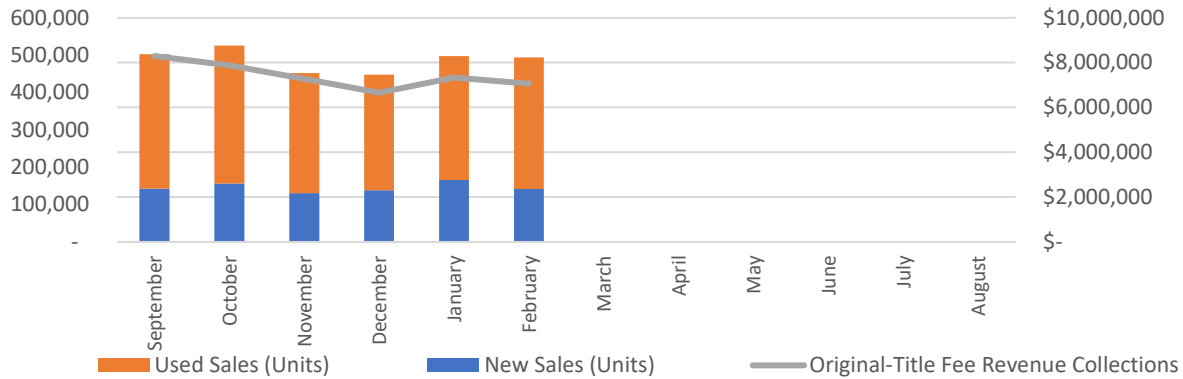
Current-Contract Cumulative Deposits to General Revenue



- General Revenue Fund 0001 deposits associated with the MyPlates contract from November 19, 2019, to February 29, 2024, totaled \$94.8 million.
- The contract's \$25 million guarantee was met in July 2022.
- Since the effective date of the current contract, new orders accounted for 41.7% of the Fund 0001 mix, and renewals accounted for 58.3%.

Motor Vehicle Certificates of Title

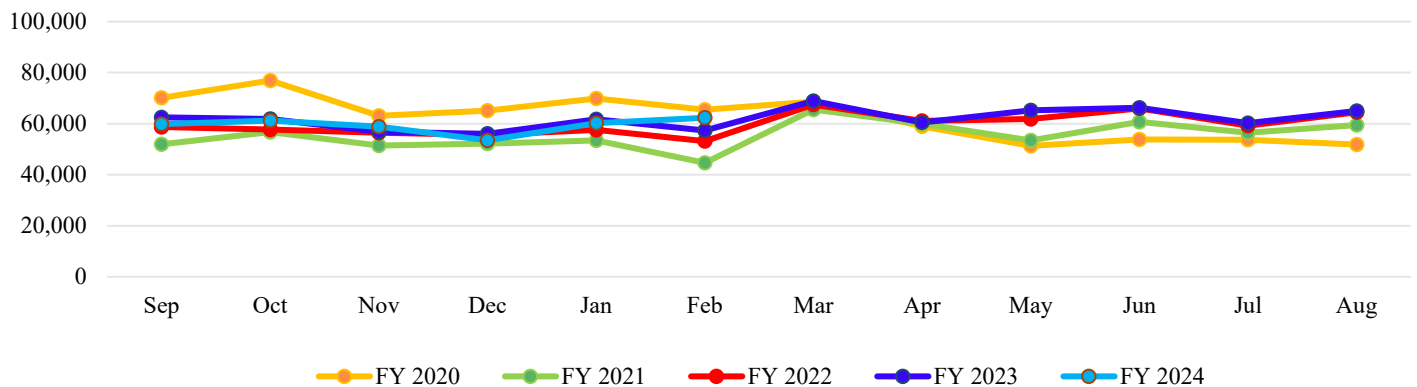
Monthly Auto Sales and Original-Title Fee Revenue Collections



- Original-title fees are the largest component of motor vehicle certificates of title revenue. In FY 2024, TxDMV collected revenue from the issuance of about 3.2 million original titles. Original-title issuance is driven by new- and used-vehicle sales; original-title revenue collections are reflected in the gray trend line above. FY 2024 saw a slight increase in overall vehicle sales as compared to the same period in FY 2023.
- Auto sales year-to-date in FY 2024 increased 0.7% from FY 2023, with used-vehicle sales down 2.9% and new-vehicle sales up 10.4%.

Motor Carrier Oversize/Overweight Permits

Monthly Oversize/Overweight Permit Issuance



- The number of motor carrier oversize/overweight permits issued in FY 2024 is 355,950 as compared to 356,380 for the same period in FY 2023, a decrease of 0.1%. Activity in the oil-and-gas and construction sectors is the chief driver of the issuance of motor-carrier permits, resulting in a steady trend in oversize/overweight fee deposits since FY 2023.
- As shown in the trend lines in the graph above, FY 2024 saw about the same number of permits issued as compared to the same period in FY 2023.
- Although permit counts have held steady, revenue in this category saw a 2.5% year-over-year increase in FY 2024.

FY 2024 Financial Summary as of February 29

FY 2024 Expenditure Highlights

- The adjusted FY 2024 budget as of February 29, 2024, was \$451.5 million. This amount includes the original baseline total as approved by the 88th Legislature and adjustments as shown in the table below.

| FY 2024 Budget | Amount |
|--|-----------------------|
| Original Baseline Appropriations | \$ 422,399,717 |
| Unexpended Balances from FY 2023 and Other Adjustments | \$ 14,131,360 |
| Benefit Costs | \$ 14,941,147 |
| Adjusted Appropriations | \$ 451,472,224 |

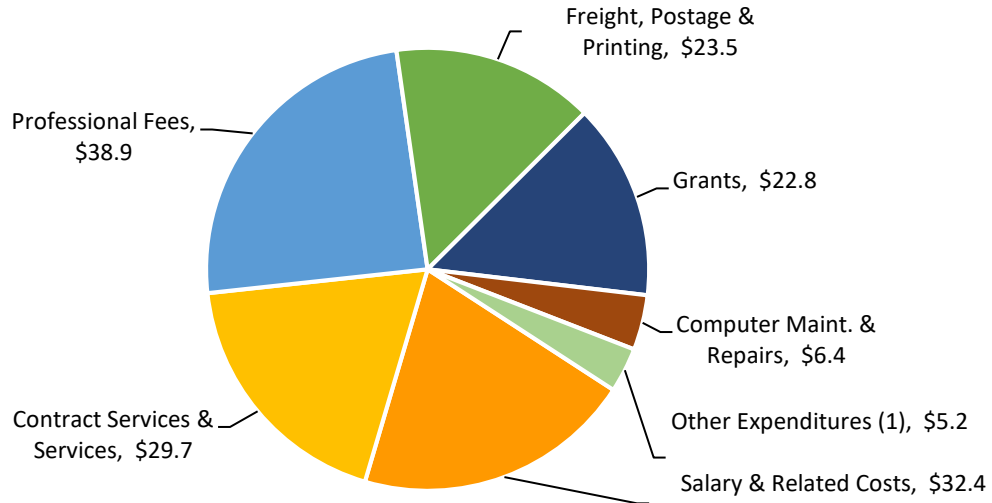
- The baseline total of \$422.4 million provides funding for 854.0 full-time equivalents (FTEs), ongoing operating costs, and FY 2024 funding for capital projects.
- Notable major items included in the original baseline appropriation are funding for the Camp Hubbard Renewal project (\$143.0 million) and funding for the implementation of requirements for House Bill 718, 88th Legislature, Regular Session (\$35.0 million).
- The \$14.1 million in unexpended balances and other adjustments as of February 29, 2024, was primarily a combination of the continuation of capital projects funded in FY 2023 and brought forward to FY 2024 and Motor Vehicle Crime Prevention Authority (MVCPA) lapses brought forward to FY 2024.
- Capital project carryforwards from FY 2023 include Automation projects (\$7.2 million), Headquarters Maintenance (\$2.2 million), and Regional Service Center (RSC) Maintenance (\$625,000).
- The Accounts Receivable project balance of \$3.1 million was also brought forward from FY 2023 to FY 2024.

FY 2024 Financial Summary as of February 29

September 1 through February 29

- Expenditures and outstanding obligations as of February 29, 2024, totaled \$158.9 million (\$78.4 million in expenditures and \$80.5 million in encumbrances).

FY 2024 Expenditures and Encumbrances by Category - All Funds
(in millions)

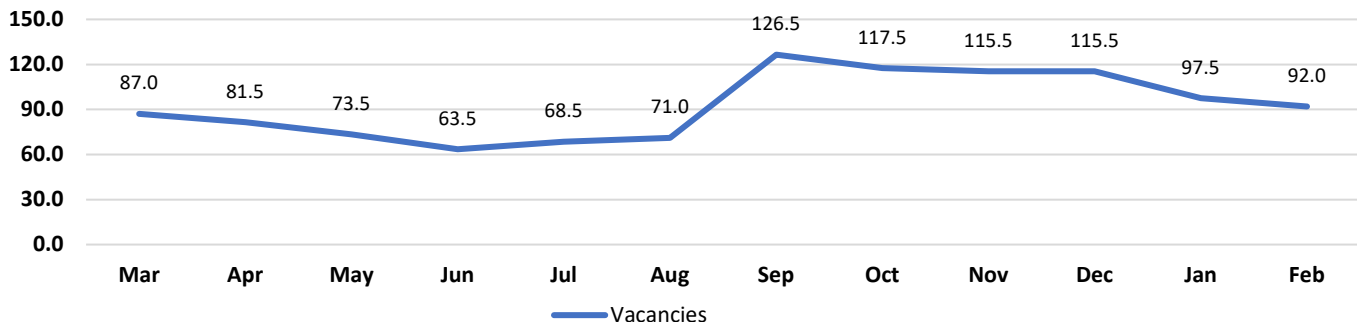


⁽¹⁾ Other Expenditures includes: Rents/Utilities (\$3.8 million), Other Expenses (\$942,000), Travel/Training (\$490,000).

Full-Time Equivalents

- The FY 2024 authorized FTE cap is 854.0, which was an increase of 46.0 FTEs over the FY 2023 cap of 808.0. Additional FTEs were approved for multiple divisions, including new positions for the expansion of RSC locations in Dallas and Houston. The increase in vacancies at the beginning of FY 2024 reflected the additional FTEs.
- In addition to the 854.0 FTEs, MVCPA was approved for an additional 4.0 FTEs for the implementation of Senate Bill 224, 88th Legislature, Regular Session.
- To implement the requirements of House Bill 718, 88th Legislature, Regular Session, 2.0 FTEs were authorized in FY 2024, with the first two being deployed to Information Technology and Enforcement. Another 42.0 FTEs will be authorized for House Bill 718 beginning in FY 2025.

Monthly Vacancies - Most Recent 12 Months



FY 2024 Financial Summary as of February 29

Capital Budget and Projects

Capital Budget Financial Status

| | Revised Budget | Expenditures | Encumbrances | Available Budget |
|--------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| TxDMV Automation System | \$ 17,705,924 | (\$3,074,957) | (\$5,176,946) | \$ 9,454,022 |
| Other Information Resources Projects | \$ 27,667,433 | (\$7,531,634) | (\$14,967,076) | \$ 5,168,723 |
| Other Capital Projects | \$ 147,460,321 | (\$6,458) | (\$578,183) | \$ 146,875,680 |
| Grand Total, Capital Budget | \$ 192,833,678 | (\$10,613,049) | (\$20,722,205) | \$ 161,498,424 |

- The Revised Capital Budget for FY 2024 includes \$10.0 million carried forward from FY 2023 and \$182.8 million in FY 2024 appropriations.

TxDMV Automation System Projects

| Project Name | FY 2024 Budget | FY 2024 Obligations | Status |
|---------------------|----------------------|---------------------|---|
| Cybersecurity | \$ 253,850 | \$ 16,584 | In progress. This project addresses two solutions - a privileged access management solution and a security information event management solution. |
| RTS Support | \$ 11,597,224 | \$ 8,235,318 | Project ongoing. |
| MCCS Rewrite | \$ 4,179,642 | | Project in procurement phase. |
| Reserve/unobligated | \$ 1,675,208 | \$ - | For reserve/future costs. |
| | \$ 17,705,924 | \$ 8,251,903 | |

- The total FY 2024 budget for the TxDMV Automation System Projects as of February 29, 2024, is \$17.7 million.
- Expenditures and encumbrances total \$8.3 million. The majority of these costs are for Registration and Title System (RTS) Support (\$8.2 million).

FY 2024 Financial Summary as of February 29

Other Information Resources Projects

| Project Name | FY 2024 Budget | FY 2024 Obligations | Status |
|---------------------------|----------------------|----------------------|---|
| County Technology | \$ 5,000,000 | \$ 4,495,696 | Major items in progress include continuing refresh of computer equipment in tax assessor-collector offices; upgrades of connectivity with tax assessor-collector offices; and implementation of credit cards in regional service centers. |
| Data Center Services | \$ 17,318,944 | \$ 17,318,944 | This project provides for annual Data Center Services costs. |
| PC Replacement | \$ 527,000 | \$ 356,036 | Provides funding for annual computer refresh. |
| Cybersecurity | \$ 400,000 | \$ 97,250 | In progress. Includes security audit contract and projects to develop a privileged access management solution and a security information event management solution. |
| RTS Replacement Phase One | \$ 4,421,489 | \$ 230,784 | This project is to modernize the Registration and Title System (RTS). The project is in progress. Meetings with vendors have begun. |
| | | | |
| | \$ 27,667,433 | \$ 22,498,710 | |

- Data Center Services provides management of applications, hardware, and technology services for TxDMV and is the largest single component of Other Information Resources Projects (\$11.7 million).
- Obligations in County Technology Replacement include routine replacement of laptops and desktops for the technology refresh program.
- The RTS Replacement Phase One is a new project for the FY 2024-2025 biennium. It is anticipated additional funds will be requested for FY 2026-2027 to complete the project.

FY 2024 Financial Summary as of February 29

Other Capital Projects

| Project Name | FY 2024 Budget | FY 2024 Obligations | Status |
|---|-----------------------|---------------------|--|
| Regional Service Center (RSC) Maintenance | \$ 1,325,000 | \$ 566,023 | This is for the Midland-Odessa Regional Service Center. Project scope of work being finalized. This funding will also be used for the Pharr Regional Service Center project. |
| Headquarters Maintenance | \$ 2,203,715 | \$ 18,618 | In progress. |
| Dallas and Houston RSC Expansion | \$ 931,606 | \$ - | Site location under way. |
| Camp Hubbard Renewal | \$ 143,000,000 | \$ - | In progress. |
| | \$ 147,460,321 | \$ 584,642 | |

- The budget for Other Capital Projects as of February 29, 2024, totals \$147.5 million and includes funding for Regional Service Center Maintenance, Headquarters Maintenance, and two new projects for FY 2024 - the Dallas and Houston RSC expansions and the Camp Hubbard Renewal Project.
- As of February 29, 2024, the major highlights of the Camp Hubbard Renewal project include: financing agreements are nearing completion; planning is underway for the relocation of staff and technology items from Building 5 to Building 6; and the closure of the cafeteria in Building 2.
- The Headquarters Maintenance capital budget is a carry forward from FY 2023. This project will address headquarters facilities as part of the transition of Camp Hubbard from the Texas Department of Transportation.

To: Texas Department of Motor Vehicles Board
From: Salem Chuah, Internal Audit Division Director
Agenda Item: 19.B
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.

FINANCIAL IMPACT

N/A

BACKGROUND AND DISCUSSION

Internal Engagements

IAD continues its work on the Investigations Processes Audit which is in the fieldwork phase. The objective is to evaluate the intake process for complaints, the method for how investigations are prioritized, and the actions taken on investigation results. The audit team interviewed investigators and attorneys in the Enforcement division to understand investigation processes, developed flowcharts of the complaint intake and review process, and obtained and reviewed reports on cases within the audit scope. IAD anticipates completing this audit in the summer.

IAD is also continuing its Inventory Management Audit which is also in the fieldwork phase. The objective is to evaluate the Department's processes for accounting for, safeguarding, and reporting inventory throughout the State. The audit team interviewed employees from various divisions, attended a walkthrough of inventory counts by Compliance Specialists, and analyzed data on equipment by location. The audit is expected to be completed in the summer.

External Engagements

There are no external engagements being tracked by IAD at this time.

Administrative Items

IAD awarded its contract on performance and information technology audit and advisory services to Weaver and Tidwell, L.L.P. after evaluating a total of seven firms who responded to the Department's Request for Qualifications. The contract has an initial term that would expire on August 31, 2025 for an amount not to exceed \$200,000. The contract also allows for extensions or renewals for a total contract term not to exceed five years.



Texas Department
of Motor Vehicles