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PROPOSAL OF
CHAPTER 215. MOTOR VEHICLE DISTRIBUTION
SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS
43 TAC §215.207 CONTESTED CASES: FINAL ORDERS

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to Title 43 TAC §215.207 concerning final orders for contested cases. These amendments are necessary to implement amended Occupations Code §2301.713, concerning motions for rehearing on contested cases involving vehicle warranties, and to more closely conform the rule language with Occupations Code §2301.711.

EXPLANATION. House Bill 3514, 87th Legislature, Regular Session (2021) amended Occupations Code §2301.713, regarding motions for rehearing on contested cases that arise under Occupations Code §2301.204 or Subchapter M of Chapter 2301. The amendments authorize the chief hearings examiner to designate a person to decide the motions for rehearing. Under Occupations Code §2301.711, any of the department's hearings examiners are authorized to sign final orders in these matters. Existing rule language only authorizes the chief hearing's examiner to respond to motions for rehearing and sign subsequent final orders. The proposed amendments to §215.207 implement this new delegation authority and eliminate any potential, inadvertent conflict between the statute and the department's rule.

The following paragraphs address the amendments in this proposal.

The amendment to subsection (a) clarifies that the final order that is the subject of the motion for rehearing may be issued by the board or a delegated person, in accordance with Occupations Code §2301.711.

The amendment to subsection (b) clarifies that the final order may be prepared and signed by any of the department's hearings examiners, in accordance with Occupations Code §2301.104 and §2301.711.

1 The amendment to paragraph (c)(1) implements the amendments to Occupations Code
2 §2301.713 by removing language that only authorizes the chief hearings examiner to decide motions for
3 rehearing.

4 An amendment to subsection (e) implements the amendments to Occupations Code §2301.713
5 by adding language that allows for the chief hearings examiner's designee to rule on a motion for
6 rehearing. Subsection (e) is also amended to remove a limitation that only the chief hearings examiner
7 can sign a new final order granting the relief requested in the motion for rehearing, to avoid any conflict
8 and to more closely conform with the authority under Occupations Code §2301.711.

9 An amendment to subsection (f) removes language that is duplicative of Occupations Code
10 §2301.751 and §2301.752 to avoid any inadvertent conflicts with those sections. Occupations Code
11 §2301.751 addresses the courts in which a party may seek judicial review of an action; Occupations Code
12 §2301.752 addresses the deadline for filing a petition for judicial review. An amendment also clarifies that
13 the petition is a petition for judicial review.

14 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,
15 has determined that for each year of the first five years the amendments will be in effect, there will be no
16 fiscal impact to the state or local governments as a result of the enforcement or administration of the
17 proposed amendments.

18 Edward Sandoval, Chief Hearings Examiner of the Office of Administrative Hearings, has
19 determined that there will be no measurable effect on local employment or the local economy as a result
20 of the proposal.

21 **PUBLIC BENEFIT AND COST NOTE.** Mr. Sandoval has also determined that, for each year of the first five
22 years the amendments are in effect, there is a public benefit anticipated as these amendments eliminate

1 any appearance of bias that might have been believed to occur when the chief hearings examiner ruled
2 on motions for rehearing, rather than the hearings examiner who heard the case.

3 Anticipated Public Benefits. The department anticipates the public will benefit as a result of a
4 fairer and more efficient appeals process, as well as rules that are consistent with the statutes.

5 Anticipated Costs To Comply With The Proposal. Mr. Sandoval anticipates that there will be no
6 costs to comply with these amendments. The amendments do not establish any additional requirements
7 on regulated persons as the amendments do not substantially modify a regulated person's filing
8 requirements. The amendments will only affect the department's internal processes after a motion for
9 rehearing has been filed.

10 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government
11 Code §2006.002, the department has determined that the proposed amendments will not have an
12 adverse economic effect on small businesses, micro-businesses, and rural communities because the
13 proposal amends §215.207 to comply with statute and imposes no requirements that are not specified in
14 statute. The proposed amendments will not have an effect on small business, micro businesses, or rural
15 communities. Therefore, the department is not required to prepare a regulatory flexibility analysis under
16 Government Code §2006.002.

17 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests
18 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property
19 that would otherwise exist in the absence of government action and, therefore, does not constitute a
20 taking or require a takings impact assessment under the Government Code §2007.043.

21 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the
22 first five years the proposed amendments are in effect, the proposed rule
23 will not create or eliminate a government program;

1 will not require the creation of new employee positions or the elimination of existing employee
2 positions;

3 will not require an increase or decrease in future legislative appropriations to the department;

4 will not require an increase or decrease in fees paid to the department;

5 will not create new regulation;

6 will not expand existing regulations;

7 will not repeal existing regulations;

8 will not increase or decrease the number of individuals subject to the rule's applicability; and

9 will not positively or adversely affect the Texas economy.

10 **REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written
11 comments by 5:00 p.m. CST on May 29, 2022. A request for a public hearing must be sent separately from
12 your written comments. Send written comments or hearing requests by email to *Rules@txdmv.gov* or by
13 mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin,
14 Texas 78731. If a hearing is held, the department will consider written comments and public testimony
15 presented at the hearing.

16 **STATUTORY AUTHORITY.** The department proposes amendments to §215.207 under Occupations Code
17 § 2301.713 and Transportation Code §1002.001.

18 Occupations Code §2301.713 authorizes the department to adopt rules to establish procedures
19 for motions for rehearing under Occupations Code §2301.204 or Subchapter M of Chapter 2301.

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

22 **CROSS REFERENCE TO STATUTE.** Occupations Code §2301.711 and §2301.713.

23 **TEXT.**

1 support the final order. ~~A [The chief]~~ hearings examiner may issue an order granting the relief requested
2 in a motion for rehearing or requested in a reply to a motion for rehearing without the need for a
3 rehearing. If a motion for rehearing and the relief requested is denied, an order will be issued.

4 (f) A party who has exhausted all administrative remedies and who is aggrieved by a final order in
5 a contested case from which appeal may be taken is entitled to judicial review pursuant to Government
6 Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter P, under the substantial
7 evidence rule. ~~[A petition for judicial review shall be filed in a district court of Travis County within 30 days~~
8 ~~after the order is final and appealable.]~~ A copy of the petition for judicial review must be served on the
9 final order authority and any other parties of record. After service of the petition and within the time
10 permitted for filing an answer, the final order authority shall transmit to the reviewing court the original
11 or a certified copy of the entire record of the proceeding. If the court orders that new evidence be
12 presented to the final order authority, the final order authority may modify the findings and decision or
13 order by reason of the new evidence, and shall transmit the additional record to the court.

14 **CERTIFICATION.** The agency certifies that legal counsel has reviewed the proposal and found it to be
15 within the state agency's legal authority to adopt.

16 Issued at Austin, Texas, on April 14, 2022.

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/s/ Aline Aucoin
Aline Aucoin, Acting General Counsel