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ADOPTION OF
SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS
43 TAC §215.207

INTRODUCTION. The Texas Department of Motor Vehicles adopts amendments to 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. The department adopts §215.207 without changes to the proposed text as published in the April 29, 2022, issue of the *Texas Register* (47 TexReg 2498). The rule will not be republished.

REASONED JUSTIFICATION. 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 amendments to §215.207 implement this new delegation authority and eliminate any potential, inadvertent conflict between the statute and the department's rule.

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 **SUMMARY OF COMMENTS.** No comments on the proposed amendments were received.

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

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

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

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

22 **TEXT.**

23 **Subchapter G Warranty Performance Obligations**

1 **43 TAC §215.207**

2 § 215.207. Contested Cases: Final Orders.

3 (a) A motion for rehearing of a final order issued by the board or a person delegated final order
4 authority for a complaint filed under Occupations Code, Chapter 2301, Subchapters E or M shall proceed
5 in accordance with Occupations Code, §2301.713.

6 (b) A hearings examiner shall prepare a final order as soon as possible, but not later than 60 days
7 after the hearing is closed, or as otherwise provided by law. The final order shall include the hearings
8 examiner's findings of fact and conclusions of law. The final order shall be sent by the department to all
9 parties by certified mail.

10 (c) A party who disagrees with the final order may file a motion for rehearing in accordance with
11 Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O. A motion
12 for rehearing of a final order issued by a hearings examiner must:

13 (1) be filed with the chief hearings examiner;

14 (2) include the specific reasons, exceptions, or grounds asserted by a party as the basis of
15 the request for a rehearing; and

16 (3) recite, if applicable, the specific findings of fact, conclusions of law, or any other
17 portions of the final order to which the party objects.

18 (d) Replies to a motion for rehearing must be filed with the chief hearings examiner in accordance
19 with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O.

20 (e) If the chief hearings examiner or the chief hearings examiner's designee grants a motion for
21 rehearing, the parties will be notified by mail and a rehearing will be scheduled promptly. After rehearing,
22 a final order shall be issued with any additional findings of fact or conclusions of law, if necessary to
23 support the final order. A hearings examiner may issue an order granting the relief requested in a motion

1 for rehearing or requested in a reply to a motion for rehearing without the need for a rehearing. If a
2 motion for rehearing and the relief requested is denied, an order will be issued.

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

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

14 Issued at Austin, Texas, on June 30, 2022.

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16 /s/ Elizabeth Brown Fore
17 Elizabeth Brown Fore, General Counsel