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PROPOSAL OF NEW CHAPTER

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §§224.1–224.31

SUBCHAPTER B. MOTOR VEHICLE, SALVAGE VEHICLE, AND TRAILER INDUSTRY ENFORCEMENT

43 TAC §§224.50–224.64

SUBCHAPTER C. CONTESTED CASES BETWEEN MOTOR VEHICLE INDUSTRY LICENSE HOLDERS OR

APPLICANTS

43 TAC §§224.80–224.94

SUBCHAPTER D. MOTOR CARRIER AND OVERSIZE OR OVERWEIGHT VEHICLE OR LOAD

ENFORCEMENT

43 TAC §§224.110–224.130

SUBCHAPTER E. CONTESTED CASES REFERRED TO SOAH

43 TAC §§224.150–224.166

SUBCHAPTER F. BOARD PROCEDURES IN CONTESTED CASES

43 TAC §§224.190–224.206

SUBCHAPTER G. LEMON LAW AND WARRANTY PERFORMANCE CLAIMS

43 TAC §§224.230–224.268

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes new 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §§224.1–224.31; Subchapter B, Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement, §§224.50–224.64; Subchapter C, Contested Cases Between Motor Vehicle Industry License Holders or Applicants, §§224.80–224.94; Subchapter D, Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement, §§224.110–224.130; Subchapter

1 E, Contested Cases Referred to SOAH, §§224.150–224.166; Subchapter F, Board Procedures in Contested
2 Cases, §§224.190–224.206; and Subchapter G, Lemon Law and Warranty Performance Claims,
3 §§224.230–224.268.

4 The proposed new Chapter 224 is necessary to organize and consolidate adjudicative practice and
5 procedure into one chapter for easier reference by license applicants, license holders, permit and
6 registration holders, the public, and the department; to modify language to be consistent with current
7 practice including use of electronic systems; for consistency with related rules and rule requirements
8 promulgated by the State Office of Administrative Hearings (SOAH), to improve readability through the
9 use of consistent terminology; to clarify existing language; to delete unused, archaic, or inaccurate
10 definitions, terms, references or other language; to add new rules to address statutory requirements or
11 department adjudicative procedures; and to modernize language and improve readability.

12 In 2019, the Sunset Commission recommended the Board of the Texas Department of Motor
13 Vehicles (board) establish advisory committees and adopt rules regarding standard advisory committee
14 structure and operating criteria. The board adopted rules in 2019 and advisory committees have since
15 provided valuable input on rule proposals considered by the board for proposal or adoption. In September
16 of 2023, the department provided an early draft of these rules to two department advisory committees,
17 the Motor Vehicle Industry Regulation Advisory Committee (MVIRAC) and the Customer Service and
18 Protection Advisory Committee (CSPAC). Committee members voted on formal motions and provided
19 informal comments on other provisions. Input from both committees was incorporated into proposed
20 new §§224.52 relating to Cease and Desist Order; Delegation of Authority, 224.162 relating to Statutory
21 Stay, 224.192 relating to Appeal of an Interlocutory Order, and 224.260 relating to Lemon Law Relief
22 Decisions.

23 **EXPLANATION.**

1 In this issue of the *Texas Register*, the department proposes revisions that would delete language
2 regarding adjudicative practices and procedures in current 43 TAC §217.56 and Chapters 206, 215, 218,
3 219, and 221. The department is proposing to reorganize these rules into proposed new Chapter 224 for
4 easier reference and to add rules consistent with the department’s authority and responsibility under
5 Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; Transportation Code,
6 Chapters 502, 503, 621–623, 643, 645, and 1001–1005; and rules promulgated by the State Office of
7 Administrative Hearings (SOAH). The proposed new rules would be organized into seven subchapters.

8

9 Subchapter A. General Provisions

10 Proposed new §224.1 would describe the purpose and scope of new Chapter 224, which would
11 include all contested case matters in which the department has jurisdiction. Subchapter A would apply to
12 all contested case matters unless expressly excluded or limited in another subchapter. The following
13 current sections of this title regarding purpose or scope would be incorporated into new Chapter 224:
14 §206.61, relating to Scope and Purpose; §215.21, relating to Purpose and Scope; §215.201, relating to
15 Purpose and Scope; §218.70, relating to Purpose; and §219.120, relating to Purpose. These provisions are
16 all proposed for repeal in this issue of the *Texas Register*.

17 Proposed new §224.3 would include definitions for terms used throughout Chapter 224.
18 Proposed new §224.3 would incorporate terms defined in relevant content from 1 TAC §155.5, relating to
19 Definitions, which are definitions used by SOAH. It would also incorporate the provisions of the following
20 current sections of this title, which are proposed for repeal in this issue of the *Texas Register*: §215.2,
21 relating to Definitions; Conformity with Statutory Requirements; §221.2, relating to Definitions; and
22 §206.62, relating to Definitions.

1 Proposed new §224.5 would address prohibited communication during a contested case,
2 including ex parte communication, and would incorporate the existing provisions of current section
3 §215.22 of this title, relating to Prohibited Communications, which is proposed for repeal in this issue of
4 the *Texas Register*.

5 Proposed new §224.7 would address the appearance by an authorized representative,
6 intervention in a contested case, and the invitation of a person who is not a contested case party to
7 participate in mediation. Relevant content would be incorporated into proposed new §224.7 from 1 TAC
8 §155.201, relating to Representation of Parties, as well as current §215.23 of this title, relating to
9 Appearances, which is proposed for repeal in this issue of the *Texas Register*.

10 Proposed new §224.9 would provide guidance on computing time consistent with Government
11 Code, §311.014. Proposed new §224.9 would also incorporate relevant content from the existing
12 provisions of §215.29 of this title, relating to Computing Time, which is proposed for repeal in this issue
13 of the *Texas Register*.

14 Proposed new §224.11 would provide general procedures related to filing and service of
15 documents. Proposed new §224.11 would incorporate relevant content from 1 TAC §155.101 (a-d),
16 relating to Filing Documents. Proposed new §224.11 would also incorporate other current sections of this
17 title—§215.30, relating to Filing of Documents, and §215.49, relating to Service of Pleading, Petitions,
18 Briefs, and Other Documents—that are proposed for repeal in this issue of the *Texas Register*.

19 Proposed new §224.13 would address discovery matters, including the requirement for
20 cooperation between the contested case parties and criteria and process for a party to request a
21 commission or subpoena. Proposed new §224.13 would incorporate relevant content from 1 TAC
22 §155.259, relating to Discovery Motions, and §206.67 of this title, relating to Discovery, which is proposed
23 for repeal in this issue of the *Texas Register*.

1 Proposed new §224.15 would address hearing recording and transcription costs. Proposed new
2 §224.15 would incorporate relevant content from 1 TAC §155.423, relating to Making a Record of the
3 Proceeding, and §215.37(a–c) of this title, relating to Recording and Transcriptions of Hearing Cost, which
4 is proposed for repeal in this issue of the *Texas Register*.

5 Proposed new §224.17 would address when proceedings may be consolidated. Proposed new
6 §224.17 would incorporate relevant provisions from current §215.38 of this title, relating to
7 Consolidation of Proceedings, which is proposed for repeal in this issue of the *Texas Register*.

8 Proposed new §224.19 would address the timing and criteria for informally disposing of a
9 contested case. Proposed new §224.19 would incorporate relevant content from current §215.316 of
10 this title, relating to Informal Disposition, which is proposed for repeal in this issue of the *Texas Register*.

11 Proposed new §224.21 would address criteria for when a party may waive a hearing and
12 consent to an agreed order. Proposed new §224.21 would incorporate relevant content from current
13 §215.39 of this title, relating to Waiver of Hearing, which is proposed for repeal in this issue of the *Texas*
14 *Register*.

15 Proposed new §224.23 would require a contested case hearing to be open to the public.
16 Proposed new §224.23 would incorporate content from current §215.36 of this title, relating to Hearings
17 To Be Public, which is proposed for repeal in this issue of the *Texas Register*.

18 Proposed new §224.25 would address when a deadline may or may not be extended. Proposed
19 new §224.25 would incorporate content from current §215.32 of this title, relating to Extension of Time,
20 which is proposed for repeal in this issue of the *Texas Register* .

21 Proposed new §224.27 would implement provisions of Government Code 2001, Subchapter F that
22 govern the issuance of final orders and motions for rehearing. Proposed new §224.27 would include
23 related content from the following current sections of this title that are proposed for repeal in this issue

1 of the *Texas Register*: §215.55, relating to Final Decision, §215.501, relating to Final Decisions and Orders;
2 Motions for Rehearing, §215.505, relating to Denial of Dealer or Converter Access to Temporary Tag
3 System, and §221.93, relating to Final Decisions and Orders; Motions for Rehearing.

4 Proposed new §224.29 would address delegation of final order authority in accordance with
5 Occupations Code, §2301.154(c) and §2301.711, and Transportation Code, §1003.005(b), as applicable.
6 Proposed new §224.29 would incorporate relevant content from the following current sections of this
7 title that are proposed for repeal in this issue of the *Texas Register*: §215.43, relating to Conduct and
8 Decorum, §215.58, relating to Delegation of Final Authority, and §221.95, relating to Delegation of Final
9 Order Authority.

10 Proposed new §224.31 would address the cost of providing a contested case record for appeal
11 purposes. Proposed new §224.31 would incorporate relevant content from the following current sections
12 of this title that are proposed for repeal in this issue of the *Texas Register*: §215.37(d), relating to
13 Recording and Transcriptions of Hearing Cost, §218.75, relating to Cost of Preparing the Agency Record,
14 and §219.127, relating to Cost of Preparing Agency Record.

15

16 Subchapter B. Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement

17 Proposed new §224.50 would address the purpose and scope of this subchapter and would
18 identify the other subchapters that apply to these types of contested cases. Proposed new §224.50
19 would incorporate relevant content from the following current sections of this title that are proposed
20 for repeal in this issue of the *Texas Register*: §215.21, relating to Purpose and Scope, and §215.201,
21 relating to Purpose and Scope.

22 Proposed new §224.52 would address procedures related to cease and desist orders issued under
23 Occupations Code, Chapters 2301 or 2302, including the notice and opportunity required for due process.

1 Proposed new §224.52 would also address the delegation of signature authority to the department's
2 Enforcement Division Director to sign interlocutory cease-and-desist orders. Proposed new §224.52 would
3 incorporate relevant content from the following current sections of this title that are proposed for repeal
4 in this issue of the *Texas Register*: §215.314, relating to Cease and Desist Orders, and §221.96, relating to
5 Cease and Desist Order. The delegation of signature authority for an interlocutory cease-and-desist order
6 is new text that is not contained in the department's current sections of this title. The delegation of
7 signature authority is necessary to address a situation in which the facts warrant the issuance of an
8 interlocutory cease-and-desist order as soon as possible. Additionally, proposed new §224.52 would
9 clarify the notice and opportunity to respond for an individual who may be subject to a cease-and-desist
10 order, to ensure consistent due process.

11 Proposed new §224.54 would address criteria used by the department to assess a civil penalty
12 consistent with and under the authority of Occupations Code, §2301.801 and §2302.354, and
13 Transportation Code, §503.095. These criteria are currently reflected in the department's disciplinary
14 matrix for motor vehicle dealers that is published on the department's website. Proposed new §224.54
15 would create clarity and ease of reference for licensees, administrative law judges, and board members
16 seeking to determine the appropriate penalty in a contested case.

17 Proposed new §224.56 would address the requirements for a notice of department decision
18 issued to a person who is alleged to have violated a statute or department rule. Proposed new §224.56
19 would incorporate relevant content from the following current sections of this title that are proposed for
20 repeal in this issue of the *Texas Register*: §215.500, relating to Administrative Sanctions and Procedures,
21 and §221.91, relating to Notice of Department Decision.

22 Proposed new §224.58 would address the process for denying access to the temporary tag
23 system as authorized under Transportation Code, §503.062(f). Proposed new §224.58 would

1 incorporate content from current §215.505 of this title, regarding Denial of Dealer or Converter Access
2 to Temporary Tag System, that is proposed for repeal in this issue of the *Texas Register*.

3 Proposed new §224.60 would describe the process for filing and service of documents under this
4 subchapter. Proposed new §224.60 would be incorporate relevant content into from 1 TAC §155.101 (a-
5 d), relating to Filing Documents, and the following current sections of this title that are proposed for repeal
6 in this issue of the *Texas Register*: §215.30, relating to Filing of Documents, and §215.49, relating to
7 Service of Pleading, Petitions, Briefs, and Other Documents.

8 Proposed new §224.62 would address the process for referring a contested case under this
9 subchapter to SOAH. Proposed new §224.62 would be incorporate relevant content from 1 TAC §155.51,
10 relating to Jurisdiction, and §155.53, relating to Request to Docket Case, as well as current §215.306 of
11 this title, relating to Referral to SOAH, that is proposed for repeal in this issue of the *Texas Register*.

12 Proposed new §224.64 would address the process for the department to issue a notice of
13 hearing for contested cases under this subchapter. Proposed new §224.64 would incorporate relevant
14 content into from the following current sections of this title that are proposed for repeal in this issue of
15 the *Texas Register*: §215.34, relating to Notice of Hearing in Contested Case, and §221.92, relating to
16 Notice of Hearing.

17
18 Subchapter C. Contested Cases Between Motor Vehicle Industry License Holders or Applicants

19 Proposed new §224.80 would address the purpose and scope of this subchapter and would
20 identify the other subchapters that would apply to these types of contested cases for clarity and ease of
21 reference. Proposed new §224.80 incorporates relevant content from the following current sections of
22 this title that are proposed for repeal in this issue of the *Texas Register*: §215.21, relating to Purpose and
23 Scope, and §215.201, relating to Purpose and Scope.

1 Proposed new §224.82 would address the requirements for a franchised dealer to file a protest
2 or complaint consistent with the department’s responsibilities under Occupations Code, Chapter 2301.
3 Proposed new §224.82 would incorporate relevant content would from current §215.106 of this title,
4 relating to Time for Filing Protest.

5 Proposed new §224.84 would address how a protest, complaint, or other document must be filed,
6 including the requirement to file and pay any required fee electronically, and include all assigned docket
7 numbers. Proposed new §224.84 would incorporate relevant content into from 1 TAC §155.101 (a-d),
8 relating to Filing Documents, and the following current sections of this title that are proposed for repeal
9 in this issue of the *Texas Register*: §215.24, relating to Petitions, §215.30, relating to Filing of Documents,
10 §215.49, relating to Service of Pleading, Petitions, Briefs, and Other Documents, and §215.305, relating to
11 Filing of Complaints, Protests, and Petitions; Mediation.

12 Proposed new §224.86 would describe the process used by the department to review a protest
13 or complaint to determine if the protest or complaint meets the minimum statutory requirements and is
14 appropriate to refer to SOAH for a hearing at SOAH consistent with the department’s responsibilities
15 under Occupations Code, Chapter 2301.

16 Proposed new §224.88 would describe the department’s procedure for docketing a contested
17 case under this subchapter, the issuance of a stay as authorized by Occupations Code §2301.803, the
18 notice to the parties, the opportunity for the parties to accept or decline a department mediator and
19 retain a private mediator, and the deadline to notify the department regarding the mediator option
20 chosen by the parties. Mediation is required under Occupations Code, Subchapter K and §2301.703.

21 Proposed new §224.90 would describe the procedures related to mediation including the
22 timeline for mediation, requirements if a private mediator is selected by the parties, the requirement for
23 a mediator to submit a written report, and the department’s actions upon receiving the report including

1 notifying SOAH whether a party refused to participate or attend mediation. Proposed new §224.90
2 would allow a SOAH Administrative Law Judge (ALJ) to recommend a sanction in the final proposal for
3 decision for refusal to participate or attend statutorily required mediation. Proposed new §224.90
4 would incorporate relevant content from the following current §215.305 of this title, relating to Filing of
5 Complaints, Protests, and Petitions; Mediation, that is proposed for repeal in this issue of the *Texas*
6 *Register*.

7 Proposed new §224.92 would address the process for referring a contested case under this
8 subchapter to SOAH. Proposed new §224.92 would incorporate relevant content from 1 TAC §155.51,
9 relating to Jurisdiction, and §155.53, relating to Request to Docket Case, as well as the following current
10 §215.306 of this title, relating to Referral to SOAH, which is proposed for repeal in this issue of the *Texas*
11 *Register*.

12 Proposed new §224.94 would address the process for the department to issue a notice of
13 hearing for contested cases under this subchapter. Proposed new §224.94 would incorporate relevant
14 content from current §215.34 of this title, relating to Notice of Hearing in Contested Cases, which is
15 proposed for repeal in this issue of the *Texas Register*.

16

17 Subchapter D. Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement

18 Proposed new §224.110 would address the purpose and scope of this subchapter and identify
19 the other subchapters that would apply to these types of contested cases. Proposed new §224.110
20 would incorporate relevant content from the following current sections of this title: §218.1, relating to
21 Purpose, §218.70, relating to Purpose, §219.1, relating to Purpose and Scope, and §219.120, relating to
22 Purpose.

1 Proposed new §224.112 would reference definitions used in statute and existing rules to avoid
2 duplication and potential conflict when incorporating definitions from the Transportation Code, and the
3 following current sections of this title: §218.2, relating to Definitions, and §219.2, relating to Definitions.

4 Proposed new §224.114 would address procedures related to cease-and-desist orders issued
5 under Transportation Code, §643.256. Proposed new §224.114 would incorporate relevant content from
6 §218.77, relating to Cease and Desist Order, which is proposed for repeal in this issue of the *Texas*
7 *Register*.

8 Proposed new §224.115 would address criteria used by the department to assess an
9 administrative penalty under Transportation Code, §§623.271, 623.272, and 643.251. Transportation
10 Code, §643.251 provides the dollar caps for administrative penalties, as well as the factors on which the
11 administrative penalty shall be based. Transportation Code, §623.271 and §623.272 state that the amount
12 of an administrative penalty imposed under §623.271 and §623.272, respectively, is calculated in the
13 same manner as the amount of an administrative penalty imposed under Transportation Code, §643.251.
14 Proposed new §224.115 would also address the criteria the department would use to determine whether
15 to probate a suspension of a motor carrier's registration, as well as the length of the probation and the
16 reporting requirements during the probation. Many of these criteria are currently reflected in the
17 department's disciplinary matrix for motor carriers that is published on the department's website. The
18 department's disciplinary matrix for motor carriers also includes the factors on which the administrative
19 penalty shall be based under Transportation Code, §§623.271, 623.272, and 643.251(c). Proposed new
20 §224.115 would create clarity and provide ease of reference for motor carriers, administrative law judges,
21 and the Motor Carrier Division Director seeking to determine the appropriate administrative penalty in a
22 contested case. Proposed new §224.115 would incorporate relevant content from §218.71, relating to
23 Administrative Penalties; §218.72, relating to Administrative Sanctions; §219.121, relating to

1 Administrative Penalties; and §219.126, relating to Administrative Penalty for False Information on
2 Certificate by a Shipper, which are proposed for amendment or repeal in this issue of the *Texas Register*.

3 Proposed new §224.116 would address procedures when the department decides to take
4 enforcement action under any of the following sections of this title: §218.16, relating to Short-term
5 Lease and Substitute Vehicles; §218.64, relating to Rates; §218.71, relating to Administrative Penalties;
6 §218.72, relating to Administrative Sanctions; §219.121, relating to Administrative Penalties; §219.122,
7 relating to Administrative Sanctions; or §219.126, relating to Administrative Penalty for False
8 Information on Certificate by a Shipper. Proposed new §224.116 would incorporate relevant content
9 from the following current sections of this title that are proposed for repeal in this issue of the *Texas*
10 *Register*: §218.71, relating to Administrative Penalties; §218.73, relating to Administrative Proceedings;
11 and §219.124, relating to Administrative Proceedings.

12 Proposed new §224.118 would require a person to file a document according to written
13 instructions provided by the department as different systems and methods may be used depending on
14 the party and type of enforcement action.

15 Proposed new §224.120 would describe the procedures followed by the department upon
16 receiving a final order issued under Family Code, §§232.003, 232.008, or 232.009, regarding child
17 support enforcement. Proposed new §224.120 would incorporate relevant content from current
18 §218.76 of this title, relating to Registration Suspension Ordered Under the Family Code, which is
19 proposed for repeal in this issue of the *Texas Register*.

20 Proposed new §224.122 would prescribe the requirements for a vehicle registrant that wants to
21 appeal a decision against the registrant of an assessment (a financial penalty under §217.56(c)(2)(G)) or
22 a cancellation or revocation of the registrant's apportioned registration under the International
23 Registration Plan (IRP). Proposed new §224.122 would incorporate relevant content from current

1 §217.56(c)(2)(J)(iii) of this title, relating to Registration Reciprocity Agreements, which is proposed for
2 amendment in this issue of the *Texas Register*.

3 Proposed new §224.124 would describe the appeal process for a person who is denied
4 registration whether it be a new, renewal, or reregistration application under Transportation Code,
5 Chapter 643. Proposed new §224.124 would incorporate relevant content from current §218.78 of this
6 title, relating to Appeal of Denial, which is proposed for repeal in this issue of the *Texas Register*.

7 Proposed new §224.126 would describe the appeal process for a person whose application for
8 self-insured status is denied under §218.16(d), relating to Insurance Requirements. Relevant content
9 would be incorporated from current §218.16(d), which is proposed for amendment in this issue of the
10 *Texas Register*.

11 Proposed new §224.128 would address the process for referring a contested case under this
12 subchapter to SOAH. Relevant content would be incorporated from 1 TAC §155.51, relating to Jurisdiction,
13 and §155.53, relating to Request to Docket.

14 Proposed new §224.130 would address the process for the department to issue a notice of
15 hearing for contested cases under this subchapter consistent with the statutory requirements under
16 Government Code, Chapter 2001, and SOAH's rule regarding notice of hearing in 1 TAC §155.401, relating
17 to Notice of Hearing.

18
19 Subchapter E. Contested Cases Referred to SOAH

20 Proposed new §224.150 would describe the types of contested cases that are referred to SOAH,
21 the transfer of jurisdiction from the department to SOAH, and the transfer of jurisdiction from SOAH
22 back to the department. Proposed new §224.150 would incorporate relevant content from the following
23 current sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.21,

1 relating to Purpose and Scope; §215.201, relating to Purpose and Scope; and §215.303, relating to
2 Application of Board and SOAH Rules.

3 Proposed new §224.152 would describe the department’s procedures for referring a contested
4 case to SOAH consistent with SOAH’s rules. Relevant content would be incorporated into proposed new
5 §224.152 from SOAH’s related rules in 1 TAC §155.51, relating to Jurisdiction, and §155.53, relating to
6 Request to Docket, as well as current §215.306 of this title, relating to Referral to SOAH, which is
7 proposed for repeal in this issue of the *Texas Register*.

8 Proposed new §224.154 would address notice of hearing requirements applicable under
9 Government Code, §2001.052; Occupations Code, §2301.705; 1 TAC §155.401, relating to Notice of
10 Hearing; and Transportation Code, Chapters 621–623 and 643; would provide for service of parties
11 outside the United States to the extent authorized by applicable law; and would address the amendment
12 of a notice of hearing under Government Code, §2001.052(b). Proposed new §224.154 would incorporate
13 relevant content from SOAH’s related rules in 1 TAC §155.401, as well as the following current sections of
14 this title that are proposed for repeal in this issue of the *Texas Register*: §215.34, relating to Notice of
15 Hearing in Contested Cases; §215.307, relating to Notice of Hearing; §218.73, relating to Administrative
16 Proceedings; §219.124, relating to Administrative Proceedings; and §221.92, related to Notice of Hearing.
17 Transportation Code, §643.2525(a) requires the department to give written notice to the motor carrier
18 by first class mail for an enforcement action under Transportation Code, §643.251 or §643.252 regarding
19 administrative penalties and sanctions, respectively. Transportation Code, §623.271(b) and §623.272(b)
20 state that the notice and hearing requirements under Transportation Code, §643.2525 apply to the
21 imposition of an administrative penalty or revocation of a permit under §623.271 and the imposition of
22 an administrative penalty under §623.272.

1 Proposed new §224.156 would describe the process for a party to reply to a notice of hearing
2 and the consequences for when a party does not appear at a hearing. Proposed new §224.156 would
3 incorporate relevant content from current §215.308 of this title, relating to Reply to Notice of Hearing
4 and Default Proceedings, which is proposed for repeal in this issue of the *Texas Register*. Relevant
5 content would also incorporate applicable sections of SOAH’s rules of procedure for contested cases
6 within SOAH’s jurisdiction.

7 Proposed new §224.158 would describe the process and deadlines for an ALJ to consider an
8 amicus brief. The new proposed rule would allow amicus briefs to be incorporated into the
9 administrative record of the contested case for review and consideration by the ALJ, and the board or
10 board designate responsible for issuing a final order in the case. Proposed new §224.158 would
11 incorporate relevant content from current §215.311 of this title, relating to Amicus Briefs, which is
12 proposed for repeal in this issue of the *Texas Register*.

13 Proposed new §224.162 would address an ALJ’s responsibilities to hear and rule on a request
14 regarding a statutory stay and the right for a party to file an interlocutory appeal with the board.
15 Proposed new §224.162 would incorporate relevant content from §215.315 of this title, relating to
16 Statutory Stay, which is proposed for repeal in this issue of the *Texas Register*.

17 Proposed new §224.164 would describe the ALJ and party responsibilities relating to a proposal
18 for decision in a contested case. Proposed new §224.164 would be incorporate relevant content from
19 SOAH’s related rule in 1 TAC §155.507, relating to Proposals for Decision; Exceptions and Replies, and
20 current §215.310 of this title, relating to Issuance of Proposals for Decision and Orders, which is proposed
21 for repeal in this issue of the *Texas Register*.

1 Proposed new §224.166 would describe the process by which jurisdiction transfers back to the
2 board or board delegate for a final decision, consistent with the requirements of Government Code,
3 Chapter 2001.

4

5 Subchapter F. Board Procedures for Contested Cases

6 Proposed new §224.190 would describe the scope of the subchapter, which includes review and
7 consideration of a contested case and issuance of a final order by the board or board delegate.

8 Proposed new §224.190 would incorporate relevant content from the following current sections of this
9 title that are proposed for repeal in this issue of the *Texas Register*: §215.21, relating to Purpose and
10 Scope, and §215.201, relating to Purpose and Scope.

11 Proposed new §224.192 would describe the process for a person to appeal an interlocutory cease-
12 and-desist or stay order authorized under Occupations Code, Chapter 2301, to comply with the statutory
13 requirement that the board rule on appeals of such interlocutory orders. Proposed new §224.192 would
14 incorporate relevant content from the following current sections of this title that are proposed for repeal
15 in this issue of the *Texas Register*: §215.314, relating to Cease and Desist Orders, and §221.96, relating to
16 Cease and Desist Order. Proposed new §224.192 would also clarify the timelines and process through
17 which a party would request to make an oral presentation or to provide written materials to the board
18 when it reviews the appeal of the interlocutory order. Proposed new §224.192 would also stipulate that
19 the board’s review of an appeal of an interlocutory order is limited to the review and changes allowed
20 under Texas Government Code, §2001.058(e), to clarify the separate roles of the SOAH ALJ and the board
21 in reviewing an interlocutory order issued by the department.

1 Proposed new §224.194 would describe the process for scheduling the review of a contested case
2 by the board or a board delegate and allow for the decision-making authority to review the case during a
3 public meeting to increase public insight into the decision-making process.

4 Proposed new §224.196 would describe department’s procedures, deadlines, and order of
5 presentations, if a contested case party wants to make an oral presentation to the board as part of the
6 board’s consideration of the contested case. Proposed new §224.196 would incorporate relevant
7 content from current §215.59 of this title, relating to Request for Oral Presentation, which is proposed
8 for repeal in this issue of the *Texas Register*. In addition, language in proposed new §224.196(e) would
9 clarify that §206.22 of this title, relating to Public Access to Board Meetings, does not authorize a party
10 to speak as a public commenter regarding the party’s contested case before the board during the posted
11 agenda item or during the open comment period. Proposed new §224.196 complies with Transportation
12 Code, §1004.002, which requires the board to develop policies that provide the public with a reasonable
13 opportunity to appear before the board and speak on any issue under the jurisdiction of the board. A
14 party that complies with the requirements under proposed new §224.196 would be allowed a maximum
15 of 15 minutes to make their oral presentation to the board unless the board chair increases this time
16 under proposed new §224.200.

17 Proposed new §224.198 would describe the responsibilities and deadlines for a party that wants
18 to provide written materials to the board as part of the board’s consideration of the contested case.
19 Proposed new §224.198 would incorporate relevant content from current §215.60 of this title, relating
20 to Written Materials and Evidence, which is proposed for repeal in this issue of the *Texas Register*.

21 Proposed new §224.200 would describe the responsibilities and limitations for a party making
22 an oral presentation as part of the board’s consideration of the contested case. Proposed new §224.200
23 would incorporate relevant content from the following current sections of this title that are proposed

1 for repeal in this issue of the *Texas Register*: §§206.22(f), relating to Public Access to Board Meetings,
2 §215.61, relating to Limiting Oral Presentation and Discussion to Evidence in the Administrative Record,
3 and §215.62, relating to Order of Presentations to the Board for Review of a Contested Case.

4 Proposed new §224.202 would describe the order of presentations at the board meeting in
5 which the board is considering a contested case. Proposed new §224.202 would incorporate relevant
6 content from the following current sections of this title that are proposed for repeal in this issue of the
7 *Texas Register*: §§206.22(f), relating to Public Access to Board Meetings, and 215.62, relating to Order of
8 Presentations to the Board for Review of a Contested Case.

9 Proposed new §224.204 would address board member conduct while reviewing and considering
10 a contested case. Proposed new §224.204 would incorporate relevant content from current §215.63 of
11 this title, relating to Board Conduct and Discussion When Reviewing a Contested Case, which is
12 proposed for repeal in this issue of the *Texas Register*.

13 Proposed new §224.206 would describe the requirements for a final order issued by the board
14 or a board delegate and when the order is final. Proposed new §224.206 would incorporate relevant
15 content from §215.501 of this title, relating to Final Decisions and Orders; Motions for Rehearing, which
16 is proposed for repeal in this issue of the *Texas Register*.

17

18 Subchapter G. Lemon Law and Warranty Performance Claims

19 Proposed new §224.230 would describe the scope of this subchapter, provide statutory
20 references, and define terms used in the subchapter. Proposed new §224.230 would be incorporate
21 relevant content from the following current sections of this title that are proposed for repeal in this
22 issue of the *Texas Register*: §215.21, regarding Purpose and Scope, and §215.201, regarding Purpose
23 and Scope.

1 Proposed new §224.232 would describe the requirements for a person to file a lemon law or
2 warranty performance claim, the process, and the assistance available from the department to enable a
3 person to do so. Proposed new §224.232 would incorporate relevant content from the following current
4 sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.27, relating to
5 Complaints, and §215.202, relating to Filing of Complaints.

6 Proposed new §224.234 would describe how the department reviews a complaint to determine
7 if the department has jurisdiction and meets minimum statutory requirements. Proposed new §224.234
8 would incorporate relevant content from current §215.203 of this title, relating to Review of Complaints,
9 which is proposed for repeal in this issue of the *Texas Register*.

10 Proposed new §224.236 would describe the process regarding the notification to the
11 manufacturer, distributor, or converter. Proposed new §224.236 would be incorporate relevant content
12 from current §215.204 of this title, relating to Notification to Manufacturer, Converter, or Distributor,
13 which is proposed for repeal in this issue of the *Texas Register*.

14 Proposed new §224.238 would describe the process for mediation, settlement, and referral for
15 hearing with a hearings examiner. Proposed new §224.238 would incorporate relevant content from
16 current §215.205 of this title, relating to Mediation; Settlement, which is proposed for repeal in this
17 issue of the *Texas Register*.

18 Proposed new §224.240 would describe the notice of hearing requirements consistent with
19 Government Code, Chapter 2001. Proposed new §224.240 would incorporate relevant content from the
20 current §215.34 of this title, relating to Notice of Hearing in Contested Cases, which is proposed for
21 repeal in this issue of the *Texas Register*.

22 Proposed new §224.242 would describe the requirements for a party to make a motion, as well
23 as the fact that a motion is not granted unless a hearings examiner makes a ruling. Proposed new

1 §224.242 would incorporate relevant content from current §215.47 of this title, relating to Motions,
2 which is proposed for repeal in this issue of the *Texas Register*.

3 Proposed new §224.244 would describe the methods by which a document may be filed and
4 served in this subchapter. Proposed new §224.244 would incorporate relevant content from current
5 §215.49 of this title, relating to Service of Pleading, Petitions, Briefs, and Other Documents, which is
6 proposed for repeal in this issue of the *Texas Register*.

7 Proposed new §224.246 would describe the role and powers of the hearings examiner and the
8 recusal or substitution process. Proposed new §224.246 would incorporate relevant content from
9 current §215.41 of this title, relating to Presiding Officials, which is proposed for repeal in this issue of
10 the *Texas Register*.

11 Proposed new §224.248 would describe the criteria for the granting of a continuance by a
12 hearings examiner. Proposed new §224.248 would incorporate relevant content from current §215.40
13 of this title, relating to Continuance of Hearing, which is proposed for repeal in this issue of the *Texas*
14 *Register*.

15 Proposed new §224.250 would describe a party's rights during the hearing, provide guidance as
16 to how a hearing will be conducted, and address participant conduct and decorum in a hearing.

17 Proposed new §224.250 would incorporate relevant content from the following current provisions of
18 this title that are proposed for repeal in this issue of the *Texas Register*: §215.42, relating to Conduct of
19 Hearing, and §215.43, relating to Conduct and Decorum.

20 Proposed new §224.252 would address the procedure that will be followed during a hearing.
21 Proposed new §224.252 would incorporate related content from current §215.206 of this title, relating
22 to Mediation; Settlement, which is proposed for repeal in this issue of the *Texas Register*.

1 Proposed new §224.254 would address the standards and handling of evidence during a
2 hearing. Proposed new §224.254 would incorporate relevant content from the following current
3 sections of this title that are proposed for repeal in this issue of the *Texas Register*: §215.44, relating to
4 Evidence, and §215.45, relating to Stipulation of Evidence.

5 Proposed new §224.256 would address how objections and exceptions may be handled during a
6 hearing conducted by a hearings examiner. Proposed new §224.256 would incorporate relevant content
7 from current §215.46 of this title, relating to Objections and Exceptions, which is proposed for repeal in
8 this issue of the *Texas Register*.

9 Proposed new §224.258 would specify that the hearings examiner has final order authority in
10 cases under this subchapter. Proposed new §224.258 would incorporate relevant content from current
11 §215.55 of this title, relating to Final Decision, which is proposed for repeal in this issue of the *Texas*
12 *Register*.

13 Proposed new §224.260 would describe how lemon law relief decisions will be evaluated by a
14 hearings examiner, the presumptions that may be applied, and how refunds may be calculated, in
15 addition to other important criteria. proposed new §224.260 would incorporate content from current
16 §215.208 of this title, relating to Lemon Law Relief Decisions, which is proposed for repeal in this issue
17 of the *Texas Register*. However, language in §215.208 requiring a different presumptive useful life
18 calculation for a towable recreational vehicle that is lived in full-time would be omitted as useful life
19 may vary based on whether the towable recreational vehicle is at a fixed location or used for traveling.
20 Proposed new §224.260 would allow the hearings examiner to consider the evidence presented
21 regarding usage and adjust the calculation accordingly.

22 Proposed new §224.262 would detail which incidental costs may be included in a final refund
23 amount ordered by a hearings examiner. Proposed new §224.262 would incorporate relevant content

1 from current §215.209 of this title, relating to Incidental Expenses, which is proposed for repeal in this
2 issue of the *Texas Register*.

3 Proposed new §224.264 would describe the requirements for a hearings examiner to issue a
4 final order, the process for filing and considering a motion for rehearing, and notification of the parties.

5 Proposed new §224.264 would incorporate relevant content from current §215.207 of this title, relating
6 to Contested Cases: Final Orders, which is proposed for repeal in this issue of the *Texas Register*.

7 Proposed new §224.266 would describe the complainant’s option to accept or reject the final
8 order and the responsibilities of a manufacturer, distributor, or converter if a complainant accepts the
9 final order. Proposed new §224.266 would incorporate relevant content from current §215.210 of this
10 title, relating to Compliance with Order Granting Relief, which is proposed for repeal in this issue of the
11 *Texas Register*.

12 Proposed new §224.268 would describe the process for a party to appeal a final order in Travis
13 County district court under Government Code, Chapter 2001, and subject to Occupations Code,
14 §2301.609. Proposed new §224.268 would incorporate relevant content from current §215.207(f) of this
15 title, relating to Contested Cases: Final Orders, which is proposed for repeal in this issue of the *Texas*
16 *Register*.

17 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer,
18 has determined that for each year of the first five years the new rules will be in effect, there will be no
19 significant fiscal impact to state or local governments as a result of the enforcement or administration of
20 the proposal. Corrie Thompson, Director of the Enforcement Division, has determined that there will be
21 no significant effect on local employment or the local economy as a result of the proposal.

1 **PUBLIC BENEFIT AND COST NOTE.** Ms. Thompson has also determined that, for each year of the first five
2 years the new sections are in effect, there are several anticipated public benefits because of the proposed
3 new chapter.

4 Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include the
5 following: consolidation of the department’s rules regarding adjudicative practice and procedure into one
6 chapter that provides more clarity, more detail, easier reference, and more consistency with current
7 practice.

8 Anticipated Costs To Comply With The Proposal. Ms. Thompson anticipates that no additional
9 costs beyond those they already incur to comply with current provisions that we are incorporating, to the
10 extent that is a true statement.

11 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government
12 Code, §2006.002, the department has determined that the proposed new chapter will not have an adverse
13 economic effect on small businesses, micro-businesses, and rural communities because the proposed new
14 chapter primarily consolidates current rules into a new chapter that is consistent with current practice.
15 Also, for the cases that the department refers to SOAH, the proposed rules would not change the fact that
16 the contested case procedures and requirements are primarily governed by Government Code, Chapter
17 2001 and 1 TAC Chapter 155, which are SOAH’s rules of procedure.

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

22 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the
23 first five years the new rules are in effect, a government program would not be created or eliminated.

1 Implementation of the new rules would not require the creation of new employee positions or elimination
2 of existing employee positions. Implementation would not require an increase or decrease in future
3 legislative appropriations to the department or an increase or decrease of fees paid to the department.
4 The proposed new chapter technically creates new regulation; however, most of the new rule text is
5 consistent with current practice and rule. The proposed rules do not expand, limit or repeal existing
6 regulations since the entire chapter is new. Lastly, the proposed new rules do not affect the number of
7 individuals subject to the rule's applicability and will not affect this state's economy.

8 **REQUEST FOR PUBLIC COMMENT.**

9 If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on
10 January 28, 2024. A request for a public hearing must be sent separately from your written comments.
11 Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General
12 Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is
13 held, the department will consider written comments and public testimony presented at the hearing.

14

15 SUBCHAPTER A. GENERAL PROVISIONS

16 **43 TAC §§224.1–224.31**

17 **STATUTORY AUTHORITY.** The department proposes new Chapter 224 under 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; Government Code, §2001.054, which specifies the
20 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
21 a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale
22 and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise
23 that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications

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 provide for compliance with warranties; to prevent fraud, unfair practices,
3 discrimination, impositions, and other abuses in connection with the distribution and sale of motor
4 vehicles; and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code,
5 Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or
6 convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before
7 the board; Occupations Code, §2301.602, which requires the board to adopt rules for the enforcement
8 and implementation of Subchapter M of Occupations Code, Chapter 2301; Occupations Code, §2301.651,
9 which authorizes the board to deny an application for a license, revoke or suspend a license, place on
10 probation a person whose license has been suspended, or reprimand a licensee; Occupations Code,
11 §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code,
12 Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to
13 administer Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the
14 department to adopt and enforce rules to carry out IRP; Transportation Code, §503.002, which authorizes
15 the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code,
16 §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce
17 Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt
18 rules that are necessary to implement and enforce Transportation Code, Chapter 622; Transportation
19 Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce
20 Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to
21 impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation
22 Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code,
23 §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under

1 §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative
2 penalty on a shipper who violates a provision under §623.272, and states that the notice and hearing
3 requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty
4 under §623.272; Transportation Code, §643.003, which authorizes the department to adopt rules to
5 administer Transportation Code, Chapter 643; Transportation Code, §643.102, which authorizes a motor
6 carrier to comply with the requirements under Transportation Code, §643.101 through self-insurance if it
7 complies with the requirements; Transportation Code, §643.251, which authorizes the department to
8 impose an administrative penalty against a motor carrier required to register under Subchapter B of
9 Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter
10 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a
11 registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose
12 registration is suspended; Transportation Code, §643.2525, which provides the process for an
13 administrative hearing under Transportation Code, Chapter 643; Transportation Code, §643.2526, which
14 authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or
15 reregistration under Transportation Code, Chapter 643; Transportation Code, §1002.001, which
16 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and
17 duties of the department; Transportation Code, §1003.005, which authorizes the board by rule to
18 delegate any power relating to a contested case, including the power to issue a final order, to one or more
19 board members or certain department staff; and the statutory authority referenced throughout this
20 preamble.

21 **CROSS REFERENCE TO STATUTE.** These new rules would implement Government Code, Chapter 2001;
22 Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 621–623, 643,
23 645, and 1002–1005.

1 §224.1. Purpose and Scope.

2 This subchapter describes the procedures by which the department will adjudicate a
3 contested case arising under Occupations Code, Chapters 2301 or 2302, or Transportation Code,
4 Chapters 502, 503, 621–623, 643, 645, or 1001–1005, consistent with the requirements of
5 Government Code, Chapter 2001. Unless expressly excluded or limited, this subchapter applies to
6 every contested case in which the department has jurisdiction.

7
8 §224.3. Definitions.

9 (a) The statutory definitions govern this chapter. In the event of a conflict, the definition or
10 procedure referenced in statute controls.

11 (b) When used in this chapter, the following words and terms shall have the following
12 meanings unless the context clearly indicates otherwise.

13 (1) Administrative Law Judge or ALJ--An individual appointed to serve as a presiding
14 officer by the State Office of Administrative Hearings Chief Judge under Government Code,
15 Chapter 2003, to conduct a hearing on matters within the department's jurisdiction.

16 (2) APA--The Administrative Procedure Act, Government Code, Chapter 2001.

17 (3) Authorized representative--An attorney authorized to practice law or, if
18 authorized by the applicable subchapter, a non-attorney designated by a party to represent the
19 party.

20 (4) Board--The board of the Texas Department of Motor Vehicles, including department
21 staff personnel to whom the board delegates an assigned duty.

22 (5) Complaint--A matter filed under Occupations Code, §2301.460 or under
23 Subchapters E or M, or under Transportation Code, Chapter 503.

1 (6) Confidential Information--Information considered to be confidential under
2 constitutional or statutory law or by judicial decision.

3 (7) Contested Case--A proceeding in which the legal rights, duties, or privileges of a
4 party are determined by the department after the opportunity for an adjudicative hearing.

5 (8) Day--A calendar day.

6 (9) Department--The Texas Department of Motor Vehicles.

7 (10) Director--The division director of the department authorized by the board or by
8 statute to act, including any department personnel to whom the division director delegates a duty
9 assigned under this chapter.

10 (11) Electronic filing or filed electronically--The electronic transmission of
11 documents filed in a contested case by uploading the documents to a case docket using a
12 department-designated system or department-designated email.

13 (12) Electronic service or served electronically--The electronic transmission of
14 documents filed in a contested case and sent to a party or a party's authorized representative by
15 email or a department-designated system.

16 (13) Electronic signature or signed electronically--An electronic version of a
17 person's signature that is the legal equivalent of the person's handwritten signature, unless the
18 document is required to be notarized or sworn. Electronic signature formats include:

19 (A) an "/s/" and the person's name typed in the space where the signature
20 would otherwise appear;

21 (B) an electronic graphical image or scanned image of the signature; or

22 (C) a "digital signature" based on accepted public key infrastructure
23 technology that guarantees the signer's identity and data integrity.

1 (14) Evidence--Testimony and exhibits admitted into the hearing record by an ALJ
2 or hearings examiner to prove or disprove the existence of an alleged fact.

3 (15) Ex Parte Communication--Direct or indirect communication between a state
4 agency, party, person, or representative of those entities and an ALJ, board member, or hearings
5 examiner in connection with an issue of law or fact in a contested case where the other known
6 parties to the contested case do not have notice of the communication and an opportunity to
7 participate. Ex parte communication does not include:

8 (A) communication where all parties to the contested case have notice of
9 the communication and an opportunity to participate;

10 (B) communication concerning uncontested administrative or uncontested
11 procedural matters;

12 (C) consultation between a board member or hearings examiner and the
13 department's general counsel or hearings personnel;

14 (D) communication required for the disposition of an ex parte matter or
15 otherwise expressly authorized by law; and

16 (E) communication between a state agency, party, person, or representative
17 of those entities and a mediator made in an effort to evaluate a contested matter for mediation or
18 to mediate or settle a contested matter.

19 (16) Exhibit—A document, record, photograph, video, or other form of data
20 compilation, regardless of media, or other tangible object offered by a party as evidence.

21 (17) Filed--The receipt by the department of a document and required payment, if
22 applicable.

1 (18) Final order authority--The person with authority under statute or a board rule
2 to issue a final order.

3 (19) GDN--General distinguishing number as defined in Transportation Code,
4 Chapter 503.

5 (20) Hearings Examiner--An individual appointed by the Chief Hearings Examiner to
6 serve as a presiding officer to hear contested cases under Occupations Code, §2301.204 or
7 Subchapter M.

8 (21) License holder--A person holding a license under Occupations Code, Chapters
9 2301 or 2302, or a GDN or other license issued under Transportation Code, Chapter 503.

10 (22) Mediation--A confidential, informal dispute resolution process in which a
11 qualified impartial person facilitates communication between the contested case parties to
12 promote settlement, reconciliation, or understanding, as defined by Occupations Code, §2301.521.

13 (23) Party--A person, including the department, named or allowed to participate in
14 a contested case.

15 (24) Person--As defined in Occupations Code, §2301.002.

16 (25) Personal information--As defined by Transportation Code, §730.003(6).

17 (26) Personal identifying information--As defined by Business and Commerce Code,
18 §521.002(1).

19
20 (27) Pleading--A filed document that requests procedural or substantive relief,
21 makes a claim, alleges a fact, denies an allegation, makes or responds to a legal argument, or
22 otherwise addresses a matter involved in a contested case.

1 (28) Protest--To challenge a person's licensing application or a decision by a license
2 holder, as provided under Occupations Code, Chapter 2301.

3 (29) Redact--To remove a reference from a document.

4 (30) Sensitive personal information--As defined by Business and Commerce Code,
5 §521.002(2).

6 (31) SOAH--The State Office of Administrative Hearings.

7 (32) Stipulation--A binding agreement among opposing parties concerning a relevant
8 issue or fact.

9 (33) TAC--The Texas Administrative Code.

10 (34) TRCP--The Texas Rules of Civil Procedure, which may be found on the website of the
11 Supreme Court of Texas.

12 (35) TRE--The Texas Rules of Evidence, which may be found on the website of the
13 Supreme Court of Texas.

14
15 §224.5. Prohibited Communication.

16 (a) No person, party, attorney of record, or authorized representative in any contested
17 case shall violate Government Code, §2001.061 by directly or indirectly engaging in ex parte
18 communication concerning a contested case with an ALJ, board member, board delegate, or a
19 hearings examiner assigned to render a decision or make findings of fact and conclusions of law in
20 a contested case.

1 **(b) Unless prohibited by Government Code, §2001.061, department staff who did not**
2 **participate in the hearing may advise a board member, a board delegate, or a hearings examiner,**
3 **regarding a contested case and any procedural matters.**

4 **(c) Department staff shall not recommend a final decision to the board unless the**
5 **department is a party to the contested case.**

6 **(d) A violation of this section shall be promptly reported to the board chair or chief**
7 **hearings examiner, as applicable, and the general counsel of the department.**

8 **(e) The general counsel shall ensure that a copy or summary of the ex parte communication**
9 **is included with the record of the contested case and that a copy is forwarded to all parties or their**
10 **authorized representatives.**

11 **(f) The general counsel may take any other appropriate action otherwise provided by law.**

12
13 **§224.7. Appearance.**

14 **(a) General. Any party to a contested case may appear in person or by an authorized**
15 **representative. An authorized representative may be required to show authority to represent a party.**

16 **(b) Appearance by authorized representative. An authorized representative who has not entered**
17 **an appearance as a matter of record in a contested case shall enter an appearance by filing with the**
18 **department appropriate documentation that contains the representative's mailing address, email**
19 **address, and telephone number. If the authorized representative's authority is challenged, the**
20 **representative must show authority to appear as the party's representative.**

21 **(c) Attorney in charge. When more than one attorney makes an appearance in a contested case**
22 **on behalf of a party, the attorney whose signature appears first on the initial document filed in the**

1 contested case shall be the attorney in charge for that party unless another attorney is specifically
2 designated in writing. All communication sent by the department or other party regarding the contested
3 case shall be sent to the attorney in charge unless otherwise requested by a party.

4 (d) Intervention. Any public official or other person having an interest in a contested case may,
5 upon request to the ALJ or hearings examiner, be allowed to intervene. A person requesting to intervene
6 in a contested case may be required to disclose that person's interest in the contested case before
7 permission to intervene will be granted.

8 (e) A person may be invited to participate in a contested case mediation if all parties and the
9 mediator agree that the person's participation will facilitate understanding and resolution of the
10 contested case. However, an invited person who is not a party is not required to participate in a
11 mediation.

12 (f) This rule does not allow a person to engage in the unauthorized practice of law.

13

14 §224.9. Computing Time.

15 (a) General. Any time period prescribed or allowed by this chapter, by order of the board, or by
16 any applicable statute shall be computed in accordance with Government Code, §311.014.

17 (b) Application of this section. This section applies, unless another method is required by statute,
18 another rule in this chapter, or order.

19 (c) Computing time periods. When computing a time period under this chapter:

20 (1) the day of the act, event, or default from which the designated time period begins to
21 run is not counted; and

1 (2) the last day of the time period is counted, unless it is a Saturday, Sunday, or legal
2 holiday, in which case the period is extended to include the next day that is not a Saturday, Sunday, or
3 legal holiday.

4 (d) Calendar days. Time shall be computed using calendar days rather than business days, unless
5 otherwise specified in statute or rule.

6
7 §224.11. Filing and Service of Documents.

8 (a) Each document required or allowed to be filed with the department under this chapter must
9 be filed as required under this section and the relevant subchapter for the applicable type of contested
10 case.

11 (b) A copy of each document filed in a contested case shall be filed or served on the same date
12 upon:

13 (1) the department, and

14 (2) each party or the party's authorized representative or attorney in charge.

15 (c) A certificate of service shall accompany each document. A certificate of service by the party
16 or party's authorized representative showing timely service in a manner described in the relevant
17 subchapter shall be prima facie evidence of timely service. This section does not preclude the
18 department or any party from offering proof that the document was not timely filed or served.

19 (d) To be timely filed, a document must be received by the department within the time specified
20 by statute, rule, or department order. A document received after the specified time, notwithstanding the
21 means of delivery, shall be deemed untimely. Electronic filing is considered timely if the document is

1 received by 5:00 p.m. Central Standard Time or Daylight Savings Time when in effect. Electronic filing
2 after 5:00 p.m. shall be deemed received on the following day or the next business day if filed on a
3 Saturday, Sunday, or legal holiday.

4 (e) A document filed electronically must:

5 (1) be legible and in a portable document format (PDF), unless the department requests
6 a different format;

7 (2) be directly converted to PDF rather than scanned, to the extent possible;

8 (3) not be locked;

9 (4) include the email address of the party or authorized representative who
10 electronically filed the document;

11 (5) include the docket number and the name of the contested case in which the
12 document is filed;

13 (6) be titled or described in a manner that allows the department and the parties to
14 reasonably ascertain the contents of the document; and

15 (7) include an electronic signature.

16 (f) The department is not responsible for a filing party's user, system, transmission, or service
17 error.

18 (g) If a document is not filed or served timely due to a system outage of a department-
19 designated system, the filing party may send the document to a department-designated email address or
20 seek appropriate relief from the final order authority.

1 (h) A party must redact information in a document before filing if the document contains
2 personal identifying information, sensitive identifying information, or other confidential information that
3 is not necessary to the resolution of the case. If the information is necessary to the resolution of the
4 case, each page of the document must be conspicuously marked as “CONFIDENTIAL – NOT FOR PUBLIC
5 RELEASE” in bold 12-point or larger type in the document header or footer. A party may request a
6 document be filed under seal if allowed by other law, order, or rule.

7

8 §224.13. Discovery.

9 (a) Party Cooperation. The parties and their authorized representatives shall cooperate in
10 discovery and shall endeavor to make any agreement reasonably necessary for the efficient disposition
11 of the contested case.

12 (b) Discovery Request. A party may request that the department issue a commission or a
13 subpoena if the parties cannot agree, or a contested case requires testimony, documents, or information
14 from a person who is not a party. A party must submit a commission or subpoena request to the
15 department’s Office of General Counsel for review.

16 (c) Commission to take a deposition. Upon the written request of a party, the executive director
17 may issue a written commission directed to an officer, authorized by statute, to take a deposition of a
18 witness.

19 (d) Subpoena to produce documents. Upon the written request of a party, the executive director
20 may issue a subpoena for the production of documents. The written request must identify the

1 documents with as much detail as possible and must include a statement of their relevance to the issues
2 in the contested case.

3 (e) Subpoena for attendance at a hearing or a deposition. Upon the written request of a party,
4 the executive director may issue a subpoena for the attendance of a witness at a hearing or a deposition
5 in a contested case. The subpoena may be directed to any person without regard to the distance
6 between the location of the witness and the location of the hearing.

7 (f) The executive director is authorized to delegate the authority to department staff to issue a
8 subpoena and a commission.

9 (g) Limits on discovery. A commission or subpoena will only be issued on a showing of good
10 cause and receipt of a deposit sufficient to ensure payment of expenses and fees related to the
11 subpoena, including statutory witness fees. A commission or subpoena will not be issued if it appears to
12 be duplicative, dilatory, sought for the purpose of harassment, or if it would unduly inconvenience the
13 person to whom it is directed. Issuance of a commission or subpoena will be subject to the provisions of
14 Government Code, Chapter 2001, and SOAH rules.

15

16 §224.15. Hearing Recording and Transcription Cost.

17 (a) Except as provided by Subchapter G of this chapter (relating to Lemon Law and Warranty
18 Performance Claims), a hearing in a contested case will be transcribed by a court reporter if anticipated
19 to last longer than one day.

20 (b) The costs of transcribing the hearing and for the preparation of an original transcript of the
21 record for the department shall be:

- 1 (1) assessed to a party requesting the transcript in a contested case;
2 (2) shared by the parties in a contested case under Subchapter C of this chapter (relating
3 to Contested Cases Between Motor Vehicle Industry License Holders or Applicants); or
4 (3) assessed as directed by the ALJ or hearings examiner.

5 (c) Copies of recordings or transcriptions of a contested case hearing will be provided to any
6 party upon written request and upon payment for any duplication costs incurred by the department.

7

8 §224.17. Consolidation of Proceedings.

9 No contested case proceedings including two or more related cases or claims shall be jointly
10 heard without the consent of all parties, unless the ALJ or hearings examiner finds that justice and
11 efficiency are better served by the consolidation.

12

13 §224.19. Informal Disposition.

14 (a) Notwithstanding any other provision in this chapter, at any time during the contested case,
15 the final order authority may informally dispose of a contested case in whole or in part by stipulation,
16 agreement, dismissal, or consent order.

17 (b) If the parties have settled or otherwise determined that a contested case proceeding is not
18 required, the party who initiated the contested case shall file a motion to dismiss the contested case
19 from the docket and present a proposed agreed order or dismissal order to the final order authority. If
20 the party who initiated the contested case fails to file a motion to dismiss as required under this

1 subsection, the final order authority may issue a dismissal order after providing the parties with a 30-day
2 notice.

3 (c) A proposed agreed order submitted to the final order authority by the parties must contain
4 proposed findings of fact and conclusions of law.

5 (d) Upon receipt of the proposed agreed order, the final order authority may:

6 (1) adopt the settlement agreement and issue a final order;

7 (2) reject the settlement agreement and remand the contested case for a hearing; or

8 (3) take other action that the final order authority finds just.

9

10 §224.21. Waiver of Hearing.

11 After the department issues a notice of hearing in a contested case, a party may waive a hearing
12 and consent to an agreed order. An agreed order proposed by the parties is subject to the approval of
13 the final order authority.

14

15 §224.23. Hearings to be Public.

16 A hearing in a contested case shall be open to the public.

17

18 §224.25. Extension of Time.

1 (a) The final order authority may not extend the time for filing a document when a statute or
2 rule specifies the time period by which a document must be filed with the department.

3 (b) When an act is discretionary or allowed to be done at or within a specified time in
4 accordance with this chapter and Government Code, Chapter 2001, the final order authority, with good
5 cause shown, may:

6 (1) order the specific period extended if the extension is requested before the expiration
7 of the period previously specified; or

8 (2) allow the act to be done after the expiration of the specified period, provided good
9 cause is shown for the failure to act.

10

11 §224.27. Final Order; Motion for Rehearing.

12 (a) The provisions of Government Code, Chapter 2001, Subchapter F, govern the issuance of a
13 final order issued under this subchapter and a motion for rehearing filed in response to a final order.

14 (b) Except as provided by subsection (c) of this section and §224.29 of this title (relating to
15 Delegation of Final Order Authority), the board has final order authority in a contested case filed under
16 Occupations Code, Chapters 2301 or 2302, or under Transportation Code, Chapters 502, 503, 621-623,
17 643, 645, and 1001–1005.

18 (c) The hearings examiner has final order authority in a contested case filed under Occupations
19 Code, §2301.204 or Occupations Code Chapter 2301, Subchapter M.

1 (d) A department determination and action denying access to the temporary tag database
2 becomes final within 26 days of the date of the notice denying access to a database, unless the dealer or
3 converter:

4 (1) requests a hearing regarding the denial of access, or

5 (2) enters into a settlement agreement with the department.

6 (e) Unless a timely motion for rehearing is filed with the appropriate final order authority as
7 provided by law, an order shall be deemed final and binding on all parties. All administrative remedies
8 are deemed to be exhausted as of the effective date of the final order.

9 (f) If a timely motion for rehearing is not filed, the final order shall be deemed final and binding
10 in accordance with the provisions of Government Code, §2001.144.

11 (g) If a final and binding order includes an action on a license, the department may act on the
12 license on the date the final order is deemed final and binding, unless the action is stayed by a court
13 order.

14
15 §224.29. Delegation of Final Order Authority.

16 (a) In accordance with Occupations Code, §2301.154(c) and Transportation Code, §1003.005(b),
17 except as provided by subsection (b) of this section, the director of the division that regulates the
18 distribution and sale of motor vehicles is authorized to issue, where there has not been a decision on the
19 merits, a final order in a contested case under Subchapters B and C, including, but not limited to a
20 contested case resolved:

21 (1) by settlement;

1 (2) by agreed order;

2 (3) by withdrawal of the complaint;

3 (4) by withdrawal of a protest;

4 (5) by dismissal for want of prosecution including:

5 (A) failure of a complaining or protesting party to participate in scheduling
6 mediation or to appear at mediation as required under Subchapter C of this chapter (relating to
7 Contested Cases Between Motor Vehicle Industry License Holders or Applicants);

8 (B) failure of a complaining or protesting party to respond to department
9 requests for information or scheduling matters;

10 (C) failure of a complaining or protesting party to dismiss a contested case that
11 has been resolved by the parties;

12 (6) by dismissal for want of jurisdiction;

13 (7) by summary judgment or summary disposition;

14 (8) by default judgment; or

15 (9) when a party waives opportunity for a contested case hearing.

16 (b) In accordance with Occupations Code, §2301.704 and §2301.711, a hearings examiner is
17 authorized to issue a final order in a contested case brought under Occupations Code, §2301.204 or
18 §§2301.601–2301.613.

19 (c) In accordance with Transportation Code, §1003.005, the director of the department’s Motor
20 Carrier Division is delegated any power relating to a contested case, including the authority to issue a

1 final order, in contested cases under Subchapter D of this chapter to the extent that delegation of such
2 authority is not already provided by statute.

3 (d) In a contested case in which the board has delegated final order authority under subsection
4 (a) or (c) of this section, a motion for rehearing shall be filed with and decided by the final order
5 authority delegate.

6
7 §224.31. Cost of Record on Appeal.

8 (a) If a final decision in a contested case is appealed and the department is required to transmit
9 to the court the original or a certified copy of the administrative record, or any part thereof, the
10 appealing party shall pay the costs of preparation of the record, unless waived by the department in
11 whole or in part.

12 (b) A charge imposed as provided by this section is a court cost and may be assessed by the
13 court in accordance with the TRCP.

14
15 SUBCHAPTER B. MOTOR VEHICLE, SALVAGE VEHICLE, AND TRAILER INDUSTRY ENFORCEMENT

16 **43 TAC §§224.50–224.64**

17 **STATUTORY AUTHORITY.** The department proposes new Chapter 224 under 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; Government Code, §2001.054, which specifies the
20 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
21 a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale

1 and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise
2 that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications
3 of license holders; ensure that the distribution, sale and lease of motor vehicles is conducted as required
4 by statute and board rules; to prevent fraud, unfair practices, discrimination, impositions, and other
5 abuses in connection with the distribution and sale of motor vehicles; and to enforce and administer
6 Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155,
7 which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code,
8 Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651,
9 which authorizes the board to deny an application for a license, revoke or suspend a license, place on
10 probation a person whose license has been suspended, or reprimand a licensee; Occupations Code,
11 §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code,
12 Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to
13 administer Transportation Code, Chapter 502; Transportation Code, §503.002, which authorizes the board
14 to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code,
15 §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement
16 the powers and duties of the department; Transportation Code, §1003.005, which authorizes the board
17 by rule to delegate any power relating to a contested case, including the power to issue a final order, to
18 one or more board members or certain department staff; and the statutory authority referenced
19 throughout this preamble.

20 **CROSS REFERENCE TO STATUTE.** These new rules would implement Government Code, Chapter 2001;
21 Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 1002, and 1003.

22

23 §224.50. Purpose and Scope.

1 This subchapter, and Subchapters A, E, and F, describe the procedures by which the
2 department will adjudicate alleged violations of Occupations Code, Chapter 2301 and 2302, and
3 Transportation Code, Chapter 503 brought by the department against a license applicant, license
4 holder, or unlicensed person engaging in an activity or business that requires a license under these
5 statutes.

6
7 §224.52. Cease and Desist Order; Delegation of Authority.

8 (a) When a person is alleged to be violating a provision of Occupations Code, Chapter 2301,
9 or a board rule or order, the department may enter an interlocutory order requiring the person to
10 cease and desist from the violation under the following procedures.

11 (1) In accordance with Occupations Code, §2301.154(c) and Transportation Code,
12 §1003.005(b), the department’s Enforcement Division director is delegated the authority to issue an
13 interlocutory cease-and-desist order under the procedures established in this subsection.

14 (2) A person requesting an interlocutory cease-and-desist order must present a
15 petition or complaint, verified by affidavit, containing a plain statement of the grounds for
16 seeking the cease-and-desist order to the department’s Enforcement Division director in
17 accordance with the procedures set forth in §224.84 of this section (regarding Filing and Service
18 of a Protest, Complaint, or Other Document). The department shall not issue an interlocutory
19 cease-and-desist order without a verified petition or complaint that meets the requirements of
20 this subsection.

21 (3) At least three days prior to entering an interlocutory order requiring a person to
22 cease and desist, the department must send a letter notifying the person of the allegations against them

1 to all current addresses for the person in the department’s records by both electronic service and
2 certified mail, return receipt requested.

3 (4) The notice letter must include a statement of the alleged conduct that forms the
4 basis for the interlocutory cease-and-desist order and must provide the person the opportunity to
5 show cause in writing within three days why the department should not issue a cease-and-desist
6 order.

7 (5) In considering whether to issue an interlocutory cease-and-desist order, the
8 department must determine if the conditions set forth in Occupations Code, §2301.802(b) are present
9 and consider the person’s written response, if any, to the letter notifying the person of the alleged
10 violations. The department shall email a copy of the department’s decision to the person in addition to
11 sending a copy by certified mail, return receipt requested.

12 (6) Each interlocutory cease-and-desist order must include:

13 (A) the date and hour of issuance;

14 (B) a statement of which of the conditions in Occupations Code,
15 §2301.802(b) the department determined were present to necessitate the cease-and-desist order;

16 (C) a notice of hearing at SOAH to determine the validity of the order;

17 (D) the reasons for its issuance; and

18 (E) a description in reasonable detail of the act or acts to be restrained.

19 (7) If the ALJ determines after a hearing that the cease-and-desist order should
20 remain in place during the pendency of the contested case, the ALJ shall issue an interlocutory
21 cease-and-desist order.

22 (8) An interlocutory cease-and-desist order remains in effect until vacated or
23 incorporated in a final order.

1 (9) A party may immediately appeal an interlocutory cease-and-desist order issued by an
2 ALJ to the board under §224.192 of this title (relating to Appeal of an Interlocutory Order) while the
3 contested case is at SOAH.

4
5 (b) The department may issue a final cease-and-desist order if a person who is not licensed
6 under Occupations Code, Chapter 2302 is found, after notice and opportunity for a hearing, to
7 have violated that chapter or a rule or order adopted under that chapter. The department may
8 also issue a final cease-and-desist order under Occupations Code, Chapter 2301 to a person found,
9 after notice and opportunity for a hearing, to have violated that chapter, a board rule, or an order.

10 (1) If the department decides to seek a cease-and-desist order under subsection (b) of
11 this section, the department will send a letter notifying the person of the allegations against them to all
12 current addresses for the person in the department’s records by both electronic service and certified
13 mail, return receipt requested. The notice letter will contain:

14 (A) a summary of the factual allegations;

15 (B) a description of the statutory provision, rule or order the person is
16 alleged to have violated;

17 (C) a description in reasonable detail of the act or acts to be restrained by
18 the cease-and-desist order;

19 (D) a statement regarding the person's right to request a hearing;

20 (E) the procedure to request a hearing, including the deadline for filing; and

21 (F) notice to the person that the department will issue a cease-and-desist

22 order that will become final on the date specified if the person fails to timely request a hearing.

1 (2) A person to whom a cease-and-desist notice letter under subsection (c) is sent
2 may file a written request for a hearing before a SOAH ALJ. The person must submit, in writing, a
3 request for a hearing under this section to the department’s contact listed in the notice letter
4 provided under subsection (c)(1) of this section. The department must receive the request for a
5 hearing within 26 days of the date the notice letter is mailed.

6 (3) If the person does not make a timely written request for a hearing within 26
7 days of the date the cease-and-desist letter is mailed, the allegations are deemed admitted on the
8 27th day and a final cease-and-desist order including sanctions may be issued by the final order
9 authority.

10 (c) Once jurisdiction for the conduct of a contested case hearing transfers to SOAH, an ALJ
11 may act on a party’s motion regarding an existing cease-and-desist order issued by the department
12 or consider a new motion for a cease-and-desist order by a party.

13
14 §224.54. Civil Penalty Assessment.

15 (a) Occupations Code, §2301.801 and §2302.354, and Transportation Code, §503.095
16 govern the amount of a civil penalty that may be assessed by the department against a license
17 holder.

18 (b) In determining the amount of civil penalty to assess the department will consider the
19 following aggravating factors:

20 (1) the seriousness of the violation, including the nature, circumstances, extent,
21 and gravity of any prohibited act, and the harm or potential harm to the safety of the public;

22 (2) the economic damage to the public caused by the violation;

- 1 (3) any history of previous violations including whether the license holder
2 previously entered into an agreed order with the department or otherwise received a warning or
3 reduced penalty;
- 4 (4) the amount necessary to deter a future violation; and
- 5 (5) any other matter that justice may require, including:
- 6 (A) the number of violations or number of consumers harmed by
7 violation(s);
- 8 (B) whether the consumer received a title;
- 9 (C) whether the license holder misused license plates or temporary tags;
- 10 (D) whether the license holder attempted to conceal a violation;
- 11 (E) whether the act constituting the violation was intentional,
12 premeditated, knowing, or grossly negligent; and
- 13 (F) whether an order issued by the department was violated.
- 14 (c) In determining whether license revocation is appropriate, the department will consider
15 the following factors:
- 16 (1) whether the license holder is unfit under standards governing the occupation,
17 including qualifications for a license;
- 18 (2) whether the license holder made a material misrepresentation in any written
19 communication or information provided to the department;
- 20 (3) whether the license holder willfully defrauded a purchaser;
- 21 (4) whether the license holder misused license plates or temporary tags, including
22 whether the license holder attempted to use an internet-down tag to avoid inspection
23 requirements;

1 (5) whether the license holder failed to fulfill a written agreement with a retail
2 purchaser of a vehicle or motor vehicle; and

3 (6) whether the license holder failed to attend an approved dealer training seminar
4 as ordered in an agreed final order

5 (d) The department will consider the following mitigating factors in determining the
6 amount of civil penalty to assess or whether license revocation is appropriate:

7 (1) acknowledgment by the licensee of any wrongdoing;

8 (2) willingness to cooperate with the department; and

9 (3) efforts to correct a violation.

10 (e) The department will publish a disciplinary matrix on the department website to provide
11 guidance to license holders on the sanctions that may be assessed for the most common
12 violations.

13
14 §224.56. Notice of Department Decision.

15 (a) The department shall issue a Notice of Department Decision to a license applicant,
16 license holder, or other person by certified mail, return receipt requested, to the last known
17 address and email address upon a determination under Occupations Code, Chapters 2301 and
18 2302 or Transportation Code, Chapter 503 that:

19 (1) an application for a license should be denied; or

20 (2) an administrative sanction should be imposed.

21 (b) The last known address is the mailing address provided by the person in the
22 department-designated licensing system.

1 (c) A Notice of Department Decision shall include:

2 (1) a statement describing the department decision and the effective date;

3 (2) a description of each alleged violation;

4 (3) a description of each administrative sanction being proposed;

5 (4) a statement which sets out the legal basis for each administrative sanction;

6 (5) a statement informing the license applicant, license holder, or other person of
7 the right to request a hearing;

8 (6) the procedure to request a hearing, including the deadline for filing a request
9 with the department and the acceptable electronic methods to request a hearing; and

10 (7) notice to the license applicant, license holder, or other person that the
11 proposed decision and administrative sanctions in the Notice of Department Decision will become
12 final on the date specified if the license applicant, license holder, or other person fails to timely
13 request a hearing in accordance with subsection (d) of this section.

14 (d) To receive a hearing, the license applicant, license holder, or other person must submit
15 a written request for a hearing under this section to the department. The department must receive
16 a hearing request within 26 days of the date of the Notice of Department Decision for the request
17 to be considered timely.

18 (e) If the department receives a timely request for a hearing, the department will contact
19 the license holder and attempt to informally resolve the contested case. If the license holder and
20 the department cannot informally resolve the contested case, the department will refer the

1 contested case to SOAH to set a hearing date and will give notice to the license applicant, license
2 holder, or other person of the date, time, and location of the hearing.

3 (f) If the license applicant, license holder, or other person does not make a timely request
4 for a hearing or agree to settle the contested case within 26 days of the date of the Notice of
5 Department Decision, the allegations are deemed admitted on the 27th day and a final order
6 including sanctions may be issued by the final order authority.

7

8 §224.58. Denial of Dealer or Converter Access to Temporary Tag System.

9 (a) In this section "fraudulently obtained temporary tags from the temporary tag database"
10 means misuse by a dealer or converter account user of the temporary tag database authorized under
11 Transportation Code, §503.0626 or §503.0631 to obtain:

12 (1) an excessive number of temporary tags relative to dealer sales;

13 (2) temporary tags for a vehicle or vehicles not in the dealer's or converter's inventory (a
14 vehicle is presumed not to be in the dealer's or converter's inventory if the vehicle is not listed in the
15 relevant monthly Vehicle Inventory Tax Statement);

16 (3) access to the temporary tag database for a fictitious user or person using a false
17 identity;

18 (4) temporary tags for a vehicle or a motor vehicle when a dealer is no longer operating
19 at a licensed location; or

20 (5) temporary tags issued for a vehicle or a motor vehicle not located at a licensed
21 location or a storage lot listed on the application.

1 (b) The department shall deny a dealer or converter access to the temporary tag database
2 effective on the date the department sends notice electronically and by certified mail to the dealer or
3 converter that the department has determined, directly or through an account user, that the dealer or
4 converter has fraudulently obtained temporary tags from the temporary tag database. A dealer or
5 converter may seek a negotiated resolution with the department by demonstrating the dealer or
6 converter took corrective action or that the department's determination was incorrect.

7 (c) Notice shall be sent to the dealer's or converter's last known mailing address and last known
8 email in the department-designated licensing system.

9 (d) A dealer or converter may request a hearing on the denial of access to the temporary tag
10 database, as provided by Subchapter O, Chapter 2301, Occupations Code. The request must be in writing
11 and the dealer or converter must request a hearing under this section. The department must receive the
12 written request for a hearing within 26 days of the date of the notice denying access to the database.
13 The request for a hearing does not stay the denial of access under subsection (b) of this section. A dealer
14 or converter may continue to seek a negotiated resolution with the department after a request for
15 hearing has been submitted under this subsection by demonstrating the dealer or converter took
16 corrective action or that the department's determination was incorrect.

17 (e) The department may also issue a Notice of Department Decision stating administrative
18 violations as provided in §224.56 of this title (relating to Notice of Department Decision) concurrently
19 with the notice of denial of access under this section. A Notice of Department Decision may include
20 notice of any violation, including a violation listed under subsection (a) of this section.

1 (f) A department determination and action denying access to the temporary tag database
2 becomes final if the dealer or converter does not request a hearing or enter into a settlement agreement
3 with the department within 26 days of the date of the notice denying access to a database.

4

5 §224.60. Filing and Service of Documents.

6 Each document required or allowed to be filed with the department under this subchapter must
7 be filed electronically in a department-designated system or according to written instructions provided
8 by the department.

9

10 §224.62. Referral to SOAH.

11 (a) If the department receives a timely request for a hearing and the parties are unable to
12 informally resolve or dispose of the contested case, the department will refer the contested case to
13 SOAH by filing a Request to Docket form and related documents as required under SOAH rules.

14 (b) When SOAH accepts the department’s request to docket a contested case, jurisdiction
15 transfers to SOAH.

16

17 §224.64. Notice of Hearing.

18 Once SOAH provides the department with the initial hearing date, time, and place, the
19 department notifies the parties. The contested case proceeds according to Subchapter E of this chapter
20 (relating to Contested Cases Referred to SOAH).

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SUBCHAPTER C. CONTESTED CASES BETWEEN MOTOR VEHICLE INDUSTRY LICENSE HOLDERS OR APPLICANTS

43 TAC §§224.80–224.94

STATUTORY AUTHORITY. The department proposes new Chapter 224 under 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; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which authorizes the board to deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code,

1 §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement
2 the powers and duties of the department; Transportation Code, §1003.005, which authorizes the board
3 by rule to delegate any power relating to a contested case, including the power to issue a final order, to
4 one or more board members or certain department staff; and the statutory authority referenced
5 throughout this preamble.

6 **CROSS REFERENCE TO STATUTE.** These new rules would implement Government Code, Chapter 2001;
7 Occupations Code, Chapter 2301; and Transportation Code, Chapters 503, 1002, and 1003.

8

9 §224.80. Purpose and Scope.

10 This subchapter, and Subchapters A, E, and F of this chapter describe the procedures by
11 which the department will adjudicate a protest or complaint filed by a license holder against
12 another license holder or license applicant under Occupations Code, Chapter 2301, Subchapters H,
13 I, or J.

14

15 §224.82. Form of a Protest or Complaint.

16 (a) Protest. A franchised dealer that wishes to protest an application shall give notice in
17 accordance with Occupations Code, Chapter 2301. The notice of protest shall:

18 (1) be in writing and signed by an owner or officer authorized to sign on behalf of
19 the protesting dealer filing the notice;

20 (2) state the statutory basis upon which the protest is made;

21 (3) assert how the protesting dealer meets the standing requirements under

22 §215.119 of this title (relating to Standing to Protest) to protest the application;

23 (4) include the notice of opportunity to protest sent to the dealer; and

1 (5) state that the protest is not made for purposes of delay or for any other
2 purpose except for justifiable cause.

3 (b) Complaint. If a license holder wishes to file a complaint against another license holder
4 under Occupations Code, Chapter 2301, Subchapters H, I, or J, the complaint must:

5 (1) be in writing and signed by an owner or officer authorized to sign on behalf of
6 the complainant;

7 (2) state sufficient facts to enable the department and the party complained
8 against to know the nature of the complaint and the specific problems or circumstances forming
9 the basis of the claim for relief under the statute; and

10 (3) state the statutory provision under which the complaint is made.

11

12 §224.84. Filing and Service of a Protest, Complaint, or Other Document.

13 (a) A party must file and serve a complaint, protest, or other document required or allowed
14 to be filed with the department under this subchapter electronically in the department-designated
15 licensing system, and include a Certification of Responsibility, a form provided by the department.

16 (b) Once a docket number has been assigned to a contested case by either the department or
17 SOAH, a party must include all assigned docket numbers on a pleading, motion, correspondence, or
18 other document filed in the contested case.

19

20 §224.86. Review of a Protest or Complaint.

21 (a) The department will review a protest or complaint to determine whether:

1 (1) a hearing is appropriate under Occupations Code, Chapter 2301; Transportation
2 Code, Chapter 503; or Board rule; and

3 (2) the protest or hearing document meets minimum requirements.

4 (b) If the department cannot determine whether a complaint meets minimum requirements, the
5 department may contact the protestant, complainant, or other person for additional information.

6 (c) If the department determines that a protest or complaint meets minimum requirements, a
7 protest or complaint will be processed in accordance with this subchapter.

8
9 §224.88. Docketing and Notice of a Protest or Complaint.

10 (a) If a protest or complaint meets minimum requirements, the department will docket the
11 contested case and assign a docket number.

12 (b) The department will notify the contested case parties that a statutory stay under
13 Occupations Code, §2301.803 is in effect.

14 (c) The department will assign a department mediator and notify the contested case parties.
15 Within seven days of the department notice date, each party must either:

16 (1) accept the assigned department mediator; or

17 (2) decline the assigned department mediator and retain a private mediator and comply
18 with the requirements of §224.90 of this title (relating to Mediation).

19
20 §224.90. Mediation.

1 (a) Except as provided by subsection (b), parties to a contested case filed under this subchapter
2 are required to participate in mediation before the department will refer a contested case to SOAH for a
3 hearing.

4 (b) This section does not limit the parties' ability to settle a case without mediation.

5 (c) The department will provide mediation services by a staff member qualified to serve as an
6 impartial third party in accordance with Civil Practice and Remedies Code, Chapter 154.

7 (d) The mediation will conclude within 60 days of the date a contested case is assigned to a
8 department mediator, unless the mediation deadline is extended. The department mediator may extend
9 the mediation deadline based on a written request by a party or at the department mediator's
10 discretion.

11 (e) If the parties do not agree on a mediation date within 30 days, the department mediator may
12 set a date for mediation by notifying the parties in writing at least 10 days before the mediation date.

13 (f) At the discretion of the department mediator, a party may participate in scheduled mediation
14 either in person or remotely using telephonic or videoconferencing technology.

15 (g) A party that declines to use the assigned department mediator shall:

16 (1) confer with each contested case party; and

17 (2) within 30 days of receiving notice from the department under §224.88 of the title
18 (relating to Docketing and Notice of a Protest or Complaint), file with the department a joint notice of
19 intent to retain a private mediator.

20 (h) The joint notice of intent to retain a private mediator must include:

1 (1) the name, address, email address, and telephone number of the private mediator
2 agreed upon by the parties;

3 (2) a statement that the parties have entered into an agreement with the private
4 mediator regarding the mediator's rate, method of compensation, and party responsibility for fee
5 payment;

6 (3) an affirmation that the private mediator qualifies for appointment as an impartial
7 third party in accordance with Civil Practice and Remedies Code, Chapter 154;

8 (4) a statement that the mediation will conclude within 60 days of the department's
9 notice under §224.88 of the title, unless the mediation deadline is extended at the department's
10 discretion; and

11 (5) the signature of each party or authorized representative.

12 (i) All communication and documents provided by a contested case party or invited person in a
13 mediation are confidential and subject to the Governmental Dispute Resolution Act, Government Code,
14 §2009.054.

15 (j) An agreement reached by the contested case parties in mediation shall be reduced to writing
16 and signed by the parties.

17 (k) Within 10 days of the conclusion of a mediation, a mediator shall provide to the department
18 and to the parties a written report stating:

19 (1) whether the parties attended and participated in the mediation;

20 (2) whether the matter settled in part or in whole;

1 (3) any unresolved issues remaining in the contested case; and

2 (4) any other stipulations or matters the parties agree to report.

3 (l) Upon receipt of the mediator's report required under this section, the department shall:

4 (1) enter an order disposing of resolved issues;

5 (2) refer unresolved issues to SOAH for a hearing on the merits; and

6 (3) inform SOAH whether a party refused to attend or participate in a mediation.

7 (m) If a party refused to participate or attend a mediation, an ALJ may recommend a sanction in
8 the proposal for decision.

9

10 §224.92. Referral to SOAH.

11 (a) The department will refer to SOAH unresolved contested case issues by filing all forms and
12 documents that are required under SOAH rules to docket a case.

13 (b) When SOAH accepts the department's request to docket, jurisdiction of the contested case
14 transfers to SOAH.

15

16 §224.94. Notice of Hearing.

17 (a) Once SOAH provides the department with the initial hearing date, time, and place, the
18 department will issue to the contested case parties a notice of hearing that complies with Occupations
19 Code, §2301.705, Government Code, Chapter 2001, and 1 TAC §155.401.

1 (b) The contested case proceeds according to Subchapter E of this chapter (relating to Contested
2 Cases Referred to SOAH).

3

4 SUBCHAPTER D. MOTOR CARRIER AND OVERSIZE OR OVERWEIGHT VEHICLE OR LOAD ENFORCEMENT

5 **43 TAC §§224.110–224.130**

6 **STATUTORY AUTHORITY.** The department proposes new Chapter 224 under Government Code,
7 §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements
8 of all available formal and informal procedures; Government Code, §2001.054, which specifies the
9 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
10 a license; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer
11 Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the department
12 to adopt and enforce rules to carry out IRP; Transportation Code, §621.008, which authorizes the board
13 to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621;
14 Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to
15 implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which
16 authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code,
17 Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an
18 administrative penalty or revoke an oversize or overweight permit issued under Transportation Code,
19 Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525
20 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271;
21 Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on
22 a shipper who violates a provision under §623.272, and states that the notice and hearing requirements
23 under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under

1 §623.272; Transportation Code, §643.003, which authorizes the department to administer
2 Transportation Code, Chapter 643; Transportation Code, §643.102, which authorizes a motor carrier to
3 comply with the requirements under Transportation Code, §643.101 through self-insurance if it complies
4 with the requirements; Transportation Code, §643.251, which authorizes the department to impose an
5 administrative penalty against a motor carrier required to register under Subchapter B of Transportation
6 Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation
7 Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under
8 Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended;
9 Transportation Code, §643.2525, which provides the process for an administrative hearing under
10 Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to
11 appeal the denial of an application for registration, renewal of registration, or reregistration under
12 Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt
13 rules that are necessary and appropriate to implement the powers and duties of the department; and the
14 statutory authority referenced throughout this preamble.

15 **CROSS REFERENCE TO STATUTE.** These new rules would implement Government Code, Chapter 2001; and
16 Transportation Code, Chapters 502, 621–623, 643, 645, 1002 and 1003.

17

18 §224.110. Purpose and Scope.

19 This subchapter and Subchapters A, E, and F of this chapter describe the procedures by
20 which the department will adjudicate alleged violations and claims under Transportation Code,
21 Chapters 502, 621–623, 643, and 645. These contested cases involve registrants under the
22 International Registration Plan, motor carriers, motor carrier leasing businesses, motor

1 transportation brokers, and household goods carriers. Contested cases involving persons operating
2 oversize or overweight vehicles or moving oversize or overweight loads are also included.

3

4 §224.112. Definitions.

5 (a) The definitions contained in the relevant Transportation Code chapter apply to the
6 contested cases under this subchapter.

7 (b) The definitions contained in Chapter 217 of this title (relating to Vehicle Titles and
8 Registration), Chapter 218 of this title (relating to Motor Carriers), and Chapter 219 of this title
9 (relating to Oversize and Overweight Vehicles and Loads) apply to the relevant contested cases
10 under this subchapter.

11

12 §224.114. Cease and Desist Order.

13 (a) The department may issue a cease-and-desist order to a respondent:

14 (1) who engages or represents itself to be engaged in a motor carrier operation that
15 is in violation of this chapter;

16 (2) to prevent a violation of Chapter 218 of this title (relating to Motor Carriers); or

17 (3) to protect public health and safety.

18 (b) The order shall:

19 (1) be delivered by personal delivery or registered or certified mail, return receipt
20 requested, to the person's or entity's last known address;

21 (2) include:

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; and

6 (3) 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
8 the order, the respondent files with the department a written request for hearing.

9 (d) If a request for hearing is filed, the department shall initiate a contested case with
10 SOAH in accordance with Chapter 224, Subchapter E of this title (relating to Contested Cases
11 Referred to SOAH).

12 (e) The cease-and-desist order shall remain in effect until the respondent comes into
13 complete compliance with department directives and decisions, or unless otherwise provided by
14 an order issued after final review by the department.

15 (f) If a respondent violates a cease-and-desist order, the department may:

16 (1) impose an administrative penalty against the respondent; or

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; or

20 (C) any other remedy provided by law.

1 (g) Nothing in this section precludes the department from imposing other administrative
2 sanctions against the respondent while a cease-and-desist order is in effect.

3

4 §224.115. Administrative Penalty Assessment and Probation of Suspension

5 (a) Amount of administrative penalty under Transportation Code, §623.271.

6 (1) Transportation Code, §623.271 governs the amount of an administrative penalty that
7 the department may assess against a person or the holder of an oversize or overweight permit, as
8 applicable.

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 person or the holder of the permit knowingly
11 committed a violation.

12 (3) In an action brought by the department, if it is found that the person or the holder of
13 the permit knowingly committed a violation, the aggregate amount of administrative penalty shall not
14 exceed \$15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation,
15 or 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 person or the holder of
19 the permit knowingly committed multiple violations, the aggregate amount of administrative penalty for
20 the 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.

1 (b) Amount of administrative penalty under Transportation Code, §623.272.

2 (1) Transportation Code, §623.272 governs the amount of an administrative penalty that
3 the department may assess against a shipper.

4 (2) The amount of an administrative penalty imposed under this subsection is calculated
5 in the same manner as the amount of an administrative penalty imposed under subsection (a) of this
6 section.

7 (c) Amount of administrative penalty under Transportation Code, §643.251.

8 (1) Transportation Code, §643.251 governs the amount of an administrative penalty that
9 the department may assess against a motor carrier that is required to register under Subchapter B of
10 Chapter 643 of the Transportation Code and violates Transportation Code, Chapter 643 or a rule or
11 order adopted under Chapter 643.

12 (2) In an action brought by the department, the aggregate amount of administrative
13 penalty shall not exceed \$5,000 unless it is found that the motor carrier knowingly committed a
14 violation.

15 (3) In an action brought by the department, if it is found that the motor carrier
16 knowingly committed a violation, the aggregate amount of administrative penalty shall not exceed
17 \$15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation, or
18 acting with deliberate ignorance of or reckless disregard for the violation involved. Actual awareness
19 may be inferred from the conduct of the alleged violator or from the history of previous violations by
20 the alleged violator.

21 (4) In an action brought by the department, if it is found that the motor carrier
22 knowingly committed multiple violations, the aggregate amount of administrative penalty for the
23 multiple violations shall not exceed \$30,000.

1 (5) Each day a violation continues or occurs is a separate violation for purposes of
2 imposing an administrative penalty.

3 (d) Probation of suspension under Transportation Code, §643.252.

4 (1) Transportation Code, §643.252 authorizes the department to place on probation a
5 motor carrier whose registration is suspended.

6 (2) In determining whether to probate a suspension of a motor carrier’s registration, the
7 department will consider the factors listed in Transportation Code, §643.251 regarding the amount of an
8 administrative penalty.

9 (3) The department shall set the length of the probation based on the seriousness of the
10 violation and previous violations by the motor carrier.

11 (4) The department will require that the motor carrier report monthly to the
12 department any information necessary to determine compliance with the terms of the probation.

13 (e) The department will publish a disciplinary matrix on the department website to provide
14 guidance to motor carriers on the penalties and sanctions that may be assessed for the most
15 common violations.

16

17 §224.116. Administrative Proceedings.

18 (a) If the department decides to take an enforcement action under §218.16 of this title (relating
19 to Insurance Requirements) for the revocation of self-insured status, §218.64 of this title (relating to
20 Rates), §218.71 of this title (relating to Administrative Penalties), §219.121 of this title (relating to
21 Administrative Penalties and Sanctions under Transportation Code, §623.271), §218.72 of this title
22 (relating to Administrative Sanctions), or §219.126 of this title (relating to Administrative Penalty for

1 False Information on Certificate by a Shipper), the department shall mail a Notice of Department
2 Decision to the person by first class mail to the last known address as shown in department records. If
3 the enforcement action falls under the Memorandum of Agreement with the Federal Motor Carrier
4 Safety Administration (FMCSA) under §218.71, the department shall mail the Notice of Department
5 Decision to the person by first class mail to the last known address as shown in FMCSA’s records.

6 (b) The Notice of Department Decision shall include:

7 (1) a brief summary of the alleged violation or enforcement action being proposed;

8 (2) a statement describing each sanction, penalty, or enforcement action proposed;

9 (3) a statement informing the person of the right to request a hearing;

10 (4) a statement of the procedure a person must use to request a hearing, including the
11 deadline for filing a request with the department and the acceptable methods to request a hearing; and

12 (5) a statement that a proposed penalty, sanction, or enforcement action will become
13 final and take effect on a specific date if the person fails to request a hearing.

14 (c) A person must submit to the department a written request for a hearing to the address
15 provided in the Notice of Department Decision not later than the 26th day after the date the notice is
16 mailed by the department; however, this requirement does not apply to a contested case that falls under
17 §218.64 and Transportation Code, §643.154.

18 (d) If a person submits a timely written request for a hearing or the contested case that falls
19 under §218.64 and Transportation Code, §643.154, the department will contact the person and attempt
20 to informally resolve the contested case. If the person and the department cannot informally resolve the

1 contested case, the department will refer the contested case to SOAH to set a hearing date and will give
2 notice of the time and place of the hearing to the person.

3 (e) Except as provided by Transportation Code, §643.154, if the person does not make a timely
4 request for a hearing or agree to settle a contested case within 26 days of the date the Notice of
5 Department Decision was mailed, the allegations are deemed admitted on the 27th day and a final order
6 including sanctions and penalties may be issued by the final order authority.

7 (f) Except as provided by statute and the applicable provisions of this chapter, any SOAH
8 proceeding is governed by Government Code, Chapter 2001 and 1 TAC Chapter 155, including the
9 authority of the department to informally dispose of the contested case by stipulation, agreed
10 settlement, consent order, or default. The department will follow the process set forth in Transportation
11 Code, §643.2525 and the applicable provisions of this chapter when enforcing the federal laws and
12 regulations cited in §218.71 to the extent authorized by applicable federal laws and regulations.

13 (g) The department and the person may informally resolve the contested case by entering into a
14 settlement agreement or agreeing to stipulations at any time before the director issues a final order.
15 However, the person must pay any penalty in full prior to the execution of a settlement agreement.

16

17 §224.118. Filing of Documents.

18 Each document required or allowed to be filed with the department under this subchapter must
19 be filed according to written instructions provided by the department in the applicable notice under this
20 subchapter.

21

1 §224.120. Registration Suspension Ordered Under Family Code.

2 (a) On receipt of a final order issued under Family Code, §§232.003, 232.008, or 232.009,
3 regarding child support enforcement, the department will suspend:

4 (1) a certificate of registration issued under Chapter 218, Subchapter B (relating to
5 Motor Carrier Registration); or

6 (2) the registration of an interstate motor carrier issued under §218.17 of this title
7 (relating to Unified Carrier Registration System).

8 (b) The department will charge an administrative fee of \$10 to a person whose registration is
9 suspended under this section.

10 (c) A suspension under this section does not require the department to give notice or otherwise
11 follow the administrative process provided under §224.116 of this title (relating to Administrative
12 Proceedings).

13 (d) A registration suspended under this section may only be reinstated on receipt of an order
14 issued under Family Code, §232.013.

15

16 §224.122. Appeal of Decision Regarding Assessment, Cancellation, or Revocation Under §217.56.

17 (a) Pursuant to §217.56(c)(2)(J)(iii) of this title (relating to Registration Reciprocity Agreements),
18 a registrant may appeal the department's decision regarding an assessment, cancellation, or revocation.

19 (b) The appeal will be governed by Chapter 224, Subchapter E of this title (relating to Contested
20 Cases Referred to SOAH).

1 (c) The registrant's appeal will be considered untimely if it is not received by the director of the
2 department's Motor Carrier Division by the 26th day after the date of the department's decision. The
3 department will not consider an untimely appeal.

4 (d) A timely appeal will abate the assessment pending a final order.

5

6 §224.124. Appeal of a Denial Under Transportation Code, §643.2526.

7 (a) Pursuant to Transportation Code, §643.2526, an applicant may appeal the denial of an
8 application for registration, renewal of registration, or reregistration under Transportation Code, Chapter
9 643.

10 (b) The appeal will be governed by Chapter 224, Subchapter E of this title (relating to Contested
11 Cases Referred to SOAH).

12 (c) The applicant's appeal will be considered untimely if it is not filed with the department by the
13 26th day after the date of the department's denial of the application. The department will not consider
14 an untimely appeal.

15 (d) An application that is withdrawn under Transportation Code, §643.055 is not a denial of an
16 application for the purposes of an appeal under Transportation Code, §643.2526.

17

18 §224.126. Appeal of a Denial of Self-Insured Status.

19 (a) Pursuant to §218.16(d) of this title (relating to Insurance Requirements), an applicant may
20 appeal the denial of an application for self-insured status.

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 applicant's appeal will be considered untimely if it is not filed with the department by the
4 26th day after the date of the department's denial of the application. The department will not consider
5 an untimely appeal.

6
7 §224.128. Referral to SOAH.

8 (a) The department will refer a contested case to SOAH by filing a Request to Docket form and
9 related documents as required under SOAH rules as follows:

10 (1) if the department receives a timely request for a hearing and the parties are unable
11 to informally resolve or dispose of the case;

12 (2) if the department receives a timely appeal under §§224.122, 224.124, or 224.126; or

13 (3) the contested case falls under §218.64 of this title (relating to Rates) and
14 Transportation Code, §643.154.

15 (b) When SOAH accepts the department's Request to Docket, jurisdiction of the contested case
16 transfers to SOAH.

17

18 §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 proposes new Chapter 224 under Government Code,
10 §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements
11 of all 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,

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

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, §1002.001, which
6 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and
7 duties of the department; and the statutory authority referenced throughout this preamble.

8 **CROSS REFERENCE TO STATUTE.** These new rules would 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 §224.150. Purpose and Scope.

13 (a) This subchapter describes department practice and procedures for referring a contested
14 case to SOAH for a hearing, including a contested case under Subchapter B (relating to Motor
15 Vehicle, Salvage Vehicle, and Trailer Industry Enforcement), Subchapter C (relating to Contested
16 Cases Between Motor Vehicle Industry License Holders or Applicants), and Subchapter D (Motor
17 Carrier and Oversize or Overweight Vehicle or Load Enforcement) of this chapter.

18 (b) When SOAH accepts a referral from the department, jurisdiction of the contested case
19 transfers to SOAH, and practice and procedure in contested cases heard by SOAH are addressed in:

20 (1) 1 TAC Chapter 155, and

21 (2) subchapter A and this subchapter, where not in conflict with SOAH rules.

22 (c) When SOAH disposes of a contested case, jurisdiction transfers from SOAH back to the
23 department. The department will issue a final order under §224.29 of this title (relating to

1 Delegation of Final Order Authority) or under Subchapter F of this chapter (relating to Board
2 Procedures in Contested Cases).

3

4 §224.152. Referral to SOAH.

5 (a) The department shall refer contested cases to SOAH upon determination that a hearing is
6 appropriate under Occupations Code, Chapter 2301 or 2302, or Transportation Code, Chapters 502, 503,
7 621–623, 643, 645, or 1001–1005, including contested cases relating to:

8 (1) an enforcement complaint on the department's own initiative;

9 (2) a notice of protest that has been timely filed in accordance with §215.106 of this title
10 (relating to Time for Filing Protest);

11 (3) a protest filed under Occupations Code, §2301.360 or a protest or complaint filed
12 under Occupations Code, Chapter 2301, Subchapters I or J;

13 (4) a department-issued cease and desist order; or

14 (5) any other contested matter that meets the requirements for a hearing at SOAH.

15 (b) The department will follow SOAH procedures to file a Request to Docket Case and related
16 documents and request a setting of a hearing.

17 (c) SOAH will provide the department with the date, time, and place of the initial hearing.

18

19 §224.154. Notice of Hearing.

20 (a) In a contested case, each party is entitled to an opportunity for a hearing, in accordance with
21 Government Code, §2001.051.

1 **(b) The requirements for a notice of hearing in a contested case are provided by Government**
2 **Code, §2001.052; Occupations Code, §2301.705; the SOAH rules; and Transportation Code, Chapter 623**
3 **or 643, as applicable.**

4 **(c) For service of parties outside of the United States, in addition to service under Occupations**
5 **Code, §2301.265, the department may serve a notice of hearing by any method allowed under TRCP or**
6 **that provides for confirmation of delivery to the party to the extent authorized by applicable law.**

7 **(d) The last known address of a license applicant, license holder, or other person is the last**
8 **mailing address in department records or Federal Motor Carrier Safety Administration (FMCSA) records,**
9 **as applicable.**

10 **(e) A notice of hearing issued by the department in a contested case shall comply with the**
11 **requirements of Government Code, §2001.052(a).**

12 **(f) The department will serve a notice of hearing upon a license holder by certified mail return**
13 **receipt requested to the last known address of the license holder or authorized representative, in**
14 **accordance with Occupations Code, §2301.705.**

15 **(g) The department may serve a notice of hearing upon a person who is not a license holder by**
16 **first class mail to the person's last known address as shown in department records or Federal Motor**
17 **Carrier Safety Administration (FMCSA) records, as applicable.**

18 **(h) A notice of hearing in a contested case may be amended in accordance with Government**
19 **Code, §2001.052(b).**

20
21 **§224.156. Reply to Notice of Hearing and Default Proceedings.**

1 (a) A party may file a written reply or pleading to respond to all allegations. The written
2 reply or responsive pleading must be filed with SOAH in accordance with SOAH rules and must
3 identify the SOAH and department docket numbers, as reflected on the notice of hearing.

4 (b) Any party filing a reply or responsive pleading shall serve a copy of the reply or
5 responsive pleading on each party or party's authorized representative in compliance with SOAH
6 rules.

7 (c) A party may file an amended or supplemental reply or responsive pleading in
8 accordance with SOAH rules.

9 (d) If a party properly noticed under this chapter does not appear at the hearing, a party
10 appearing at the hearing may request that the ALJ dismiss the contested case from the SOAH
11 docket. If the contested case is dismissed from the SOAH docket, the case may be presented to the
12 final order authority for disposition pursuant to SOAH rules and §224.29 of this title (relating to
13 Delegation of Final Order Authority).
14
15 §224.158. Amicus Briefs.

16 (a) An interested person may submit an amicus brief for consideration by the ALJ in a
17 contested case by the deadline for filing exceptions in accordance with SOAH rules. A party may
18 submit one written reply to the amicus brief no later than the deadline for filing replies to
19 exceptions under SOAH rules.

20 (b) An amicus brief and a party's reply to amicus brief must be submitted to the ALJ and be
21 served on all parties.

22 (c) The ALJ may amend the proposal for decision after considering an amicus brief or a
23 party's reply to an amicus brief.

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§224.162. Statutory Stay.

(a) A person affected by a statutory stay imposed by Occupations Code, Chapter 2301 may request a hearing before a SOAH ALJ to modify, vacate, or clarify the extent and application of the statutory stay.

(b) The ALJ shall hold a hearing on a motion to modify, vacate, or clarify a statutory stay, and prepare a written order, including a justification explaining why the statutory stay should or should not be modified, vacated, or clarified.

(c) A person affected by a statutory stay imposed by Occupations Code, Chapter 2301 may request a hearing before the board to modify, vacate, or clarify the extent and application of the statutory stay under §224.192 of this chapter (relating to Appeal of an Interlocutory Order) while the contested case is at SOAH.

§224.164. Issuance of a Proposal for Decision.

(a) After a hearing on the merits, the ALJ shall submit a proposal for decision in a contested case to the department and all parties.

(b) The parties may submit to the ALJ exceptions to the proposal for decision and replies to exceptions to the proposal for decision in accordance with the SOAH rules.

(c) The ALJ will review all exceptions and replies and notify the department and parties whether the ALJ recommends any changes to the proposal for decision.

(d) The parties are not entitled to file exceptions or briefs in response to an amended proposal for decision but may raise an issue before the board as allowed at the time of oral presentation under Subchapter F of this chapter.

1
2 §224.166. Transfer of Jurisdiction for Final Decision.
3 (a) A party may appeal an interlocutory order issued under Occupations Code, Chapter
4 2301 to the board under §224.192 of this title (relating to Appeal of an Interlocutory Order). SOAH
5 retains jurisdiction on all other pending matters in the contested case, except as provided
6 otherwise in this chapter.

7 (b) If a contested case includes a hearing on the merits, SOAH’s jurisdiction transfers to the
8 board when the ALJ confirms that the proposal for decision is final.

9 (c) Once jurisdiction transfers, no new testimony, witnesses, or information may be
10 considered by the board or board delegate with final order authority.

11 (d) After SOAH transfers the SOAH administrative record to the department, the board or
12 board delegate with final order authority will consider the contested case under the provisions of
13 Subchapter F of this chapter (relating to Board Procedures in Contested Cases).

14

15 SUBCHAPTER F. BOARD PROCEDURES IN CONTESTED CASES

16 **43 TAC §§224.190–224.206**

17 **STATUTORY AUTHORITY.** The department proposes new Chapter 224 under 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; Government Code, §2001.054, which specifies the
20 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of
21 a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale
22 and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise
23 that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications

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 §2301.709, which requires the board to adopt rules that establish standards for reviewing a case under
10 Subchapter O of Chapter 2301 of the Occupations Code; Occupations Code, §2302.051, which authorizes
11 the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation
12 Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code,
13 Chapter 502; Transportation Code, §502.091(b), which authorizes the department to adopt and enforce
14 rules to carry out IRP; Transportation Code, §503.002, which authorizes the board to adopt rules for the
15 administration of Transportation Code, Chapter 503; Transportation Code, §621.008, which authorizes
16 the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621;
17 Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to
18 implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which
19 authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code,
20 Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an
21 administrative penalty or revoke an oversize or overweight permit issued under Transportation Code,
22 Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525
23 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271;

1 Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on
2 a shipper who violates a provision under §623.272, and states that the notice and hearing requirements
3 under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under
4 §623.272; Transportation Code, §643.003, which authorizes the department to adopt rules to administer
5 Transportation Code, Chapter 643; Transportation Code, §643.251, which authorizes the department to
6 impose an administrative penalty against a motor carrier required to register under Subchapter B of
7 Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter
8 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a
9 registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose
10 registration is suspended; Transportation Code, §643.2525, which provides the process for an
11 administrative hearing under Transportation Code, Chapter 643; Transportation Code, §643.2526, which
12 authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or
13 reregistration under Transportation Code, Chapter 643; Transportation Code, §1002.001, which
14 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and
15 duties of the department; Transportation Code, §1003.005, which authorizes the board by rule to
16 delegate any power relating to a contested case, including the power to issue a final order, to one or more
17 board members or certain department staff; and the statutory authority referenced throughout this
18 preamble.

19 **CROSS REFERENCE TO STATUTE.** These new rules would implement Government Code, Chapter 2001;
20 Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 621–623, 643,
21 645, and 1002–1005.

22

23 §224.190. Purpose and Scope.

1 This subchapter describes procedures for the board to review and issue a final order in a
2 contested case in which:

3 (1) a SOAH ALJ has submitted a final proposal for decision for consideration by the
4 board or board delegate with final order authority,

5 (2) a party has appealed an interlocutory cease-and-desist order issued by an ALJ,
6 or

7 (3) a party affected by a statutory stay order issued by an ALJ requested a hearing
8 to modify, vacate, or clarify the extent and application of the statutory stay order.

9
10 §224.192. Appeal of an Interlocutory Order.

11 (a) A party affected by an interlocutory cease-and-desist order or a statutory stay order under
12 Occupations Code, Chapter 2301 may appeal the order to the board by submitting to the department’s
13 general counsel a motion requesting that the board modify, vacate, or clarify the order.

14 (b) The party requesting that the board modify, vacate, or clarify an order must also
15 simultaneously serve the request on the other parties and the ALJ in accordance with §224.11 of this
16 title (relating to Filing and Service of Documents).

17 (c) The board will consider the interlocutory appeal and issue a final order at a public meeting as
18 soon as practicable. Notwithstanding the deadline listed in §224.196 of this title (relating to Request for
19 Oral Presentation), the department shall give the parties written notice at least seven days prior to the
20 board meeting at which the board is scheduled to consider the appeal. The notice shall notify the parties
21 regarding the opportunity to attend and provide an oral presentation concerning an order before the
22 board, and the opportunity to provide written materials to the board.

1 (1) Notwithstanding the deadline listed in §224.196, if a party seeks to provide an oral
2 presentation at the board meeting, the party must submit a written request for an oral presentation to
3 the department's contact listed in the notice provided under this subsection and copy all other parties in
4 accordance with §224.11 at least three days prior to the date of the board meeting at which the board is
5 scheduled to consider the party's contested case.

6 (2) Notwithstanding the deadline listed in §224.198 of this title (relating to Written
7 Materials and Evidence), if a party wants to provide written materials at the board meeting, the party
8 must provide the written materials to the department and all other parties in accordance with §224.11
9 at least three days prior to the date of the board meeting at which the board is scheduled to consider
10 the party's contested case.

11 (d) An appeal to the board of an interlocutory cease-and-desist order or a statutory stay order is
12 governed by Government Code, §2001.058(e).

13
14 §224.194. Contested Case Review.

15 (a) After SOAH submits a final proposal for decision and transfers SOAH's administrative
16 record to the department, the board has jurisdiction and the record required to issue a final order
17 and will review the contested case during the public session of a board meeting, in accordance
18 with the APA.

19 (b) For a contested case in which the board has delegated final order authority to the
20 Director of the Motor Carrier Division, a special public meeting may be scheduled.

21
22 §224.196. Request for Oral Presentation.

1 (a) At least 30 days prior to the scheduled date of a board meeting, the department shall notify
2 the parties regarding the opportunity to attend and provide an oral presentation concerning a proposal
3 for decision before the board. The department will deliver notice electronically to the last known email
4 address provided to the department by the party or party's authorized representative in accordance with
5 §224.11 of this title (relating to Filing and Service of Documents).

6 (b) If a party wants to make an oral presentation at the board meeting, a party must submit a
7 written request for an oral presentation to the department's contact listed in the notice provided under
8 subsection (a) of this section and copy all other parties in accordance with §224.11 at least 14 days prior
9 to the date of the board meeting at which the party's contested case will be reviewed.

10 (c) If more than one party was not adversely affected by the proposal for decision, such parties
11 may agree on the order of their presentations in lieu of the order prescribed under §224.202 of this title
12 (relating to Order of Oral Presentations to the Board). The order of presentations will be determined
13 under §224.202 of this title if the parties who were not adversely affected by the proposal for decision
14 do not timely provide the department and the other parties with notice under subsection (b) of this
15 section regarding their agreed order of presentation.

16 (d) If a party timely submits a written request for an oral presentation, that party may make an
17 oral presentation at the board meeting. If a party fails to timely submit a written request for an oral
18 presentation, that party shall not make an oral presentation at the board meeting.

19 (e) Section 206.22 of this title (relating to Public Access to Board Meetings) does not authorize a
20 party to speak as a public commenter regarding the party's contested case before the board during the
21 posted agenda item or during the open comment period.

22

1 §224.198. Written Materials and Evidence.

2 (a) If a party wants to provide written materials at the board meeting, the party must provide
3 the written materials to the department and all other parties in accordance with §224.11 of this title
4 (relating to Filing and Service of Documents) at least 21 days prior to the date of the board meeting. If a
5 party fails to timely provide written materials to the department or any other party, the department
6 shall not provide the written materials to the board and the party shall not provide the written materials
7 to the board at the board meeting. Non-parties are not authorized to provide written materials to the
8 board.

9 (b) For the purposes of this section, written materials are defined as language or images
10 including photographs or diagrams, that are contained in the SOAH administrative record and recorded
11 in paper form except as stated otherwise in this subsection. The language or images in the written
12 materials must be taken without changes from the SOAH administrative record; however, proposed final
13 orders and draft motions for possible board action are allowed to be included in a party's written
14 materials even if they contain arguments or requests that aren't contained in the SOAH administrative
15 record. Written materials shall be limited to evidence contained in the SOAH administrative record and
16 consistent with the scope of the board's authority to act under Government Code, §2001.058(e) and
17 Occupations Code, Chapters 2301 and 2302, and Transportation Code, Chapters 502, 503, 621–623, 643,
18 645, or 1001–1005, as applicable.

19 (c) All information in the written materials shall include a citation to the SOAH administrative
20 record on all points to specifically identify where the information is located. The citations may be
21 provided in an addendum to the written materials that is not counted against the 15-page limit under
22 subsection (d) of this section; however, the addendum must not include any information other than a

1 heading that lists the name of the party, the caption for the contested case, and text that lists the
2 citations and page numbers.

3 (d) Written materials shall be 8.5 inches by 11 inches and single-sided. Written materials must be
4 double-spaced and at least 12-point type if in text form. Written materials are limited to 15 pages per
5 party. If a party provides the department with written materials that contain more pages than the
6 maximum allowed, the department shall not provide the written materials to the board and a party shall
7 not provide the written materials to the board at the board meeting.

8

9 §224.200. Oral Presentation Limitations and Responsibilities.

10 (a) A party to a contested case under review by the board shall limit oral presentation and
11 discussion to evidence in the SOAH administrative record. Also, oral presentation and discussion shall be
12 consistent with the scope of the board's authority to act under Government Code, §2001.058(e);
13 Occupations Code, Chapters 2301 and 2302; and Transportation Code Chapter 502, 503, 621–623, 643,
14 645, or 1001–1005, as applicable.

15 (b) A party may argue that the board should remand the contested case to SOAH.

16 (c) Each party is responsible for objecting when another party attempts to make arguments or
17 engage in discussion regarding evidence that is not contained in the SOAH administrative record.

18 (d) A party's presentation to the board is subject to the following limitations and conditions:

19 (1) Each party shall be allowed a maximum of 15 minutes for their oral presentation. The
20 board chair may increase this time.

21 (2) No party is allowed to provide a rebuttal or a closing statement.

1 (3) An intervenor of record from the SOAH proceeding supporting another party shall
2 share that party's time.

3 (4) Time spent by a party responding to a board question is not counted against their
4 presentation time.

5 (5) During an oral presentation, a party to the contested case before the board may
6 object that a party presented material or argument that is not in the SOAH administrative record. Time
7 spent discussing such objections is not counted against the objecting party's time.

8

9 §224.202. Order of Oral Presentations to the Board.

10 (a) The department will present the procedural history and summary of the contested case.

11 (b) The party that is adversely affected may present first. However, the board chair is authorized
12 to determine the order of each party's presentation if:

13 (1) it is not clear which party is adversely affected;

14 (2) it appears that more than one party is adversely affected; or

15 (3) different parties are adversely affected by different portions of the contested case
16 under review.

17 (c) The other party or parties not adversely affected will then have an opportunity to make a
18 presentation. If more than one party is not adversely affected, each party will have an opportunity to
19 respond in alphabetical order based on the name of the party in the pleadings in the SOAH

1 administrative record, except as stated otherwise in §224.196 of this title (relating to Request for Oral
2 Presentation).

3
4 §224.204. Board Conduct and Discussion When Reviewing a Contested Case or Interlocutory Order.

5 (a) The board shall conduct its contested case review in compliance with Government Code,
6 Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code Chapters 502, 503,
7 621–623, 643, 645, or 1001–1005, as applicable, including the limitations on changing a finding of fact
8 or conclusion of law made by a SOAH ALJ, and the prohibition on considering evidence outside of the
9 SOAH administrative record.

10 (b) A board member may question a party or the department on any matter that is relevant to
11 the proposal for decision; however, a question shall be consistent with the scope of the board’s authority
12 to take action under Government Code, §2001.058(e); Occupations Code, Chapters 2301 and 2302; and
13 Transportation Code, Chapters 502, 503, 621–623, 643, 645, or 1001–1005, as applicable; a question
14 must be limited to evidence contained in the SOAH administrative record; and the communication must
15 comply with §224.5 of this title (relating to Prohibited Communication). In considering a contested case,
16 a board member is authorized to ask a question regarding a request to remand the case to SOAH,
17 including a remand to SOAH for further consideration of the evidence.

18 (c) A board member may use personal expertise in the industry to understand a contested case
19 and make effective decisions, consistent with the scope of the board's authority to act under
20 Government Code, §2001.058(e); Occupations Code, Chapters 2301 and 2302; and Transportation Code
21 Chapters 502, 503, 621–623, 643, 645, or 1001–1005, as applicable. However, a board member is not an

1 advocate for a particular industry. A board member is an impartial public servant who takes an oath to
2 preserve, protect, and defend the Constitution and laws of the United States and Texas.

3

4 §224.206. Final Orders.

5 (a) A final decision or order in a contested case reviewed by the board or board delegate with
6 final order authority shall be in writing and shall be signed by the board chair or board delegate, as
7 applicable.

8 (b) The department shall email a copy of the final order to the parties in the contested case in
9 addition to sending a copy of the final order certified mail, return receipt requested.

10 (c) The provisions of Government Code, Chapter 2001, Subchapter F govern:

11 (1) the issuance of a final order issued under this subchapter; and

12 (2) motions for rehearing filed in response to a final order.

13 (d) A decision or order in a contested case is final in accordance with Government Code,
14 §2001.144.

15

16 SUBCHAPTER G. LEMON LAW AND WARRANTY PERFORMANCE CLAIMS

17 **43 TAC §§224.230–224.268**

18 **STATUTORY AUTHORITY.** The department proposes new Chapter 224 under Government Code,
19 §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements
20 of all available formal and informal procedures; Occupations Code, §2301.152, which authorizes the board
21 to provide for compliance with warranties; Occupations Code, §2301.155, which authorizes the board to

1 adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301; Occupations Code,
2 §2301.602, which requires the board to adopt rules for the enforcement and implementation of
3 Subchapter M of Occupations Code, Chapter 2301; Transportation Code, §1002.001, which authorizes the
4 board to adopt rules that are necessary and appropriate to implement the powers and duties of the
5 department; and the statutory authority referenced throughout this preamble.

6 **CROSS REFERENCE TO STATUTE.** These new rules would implement Government Code, Chapter 2001;
7 Occupations Code, Chapter 2301; and Transportation Code, Chapters 1002 and 1003.

8

9 §224.230. Purpose, Scope, and Definitions.

10 (a) Subchapter A and this subchapter apply to contested cases filed under Occupations
11 Code, §2301.204 or Subchapter M, to the extent they do not conflict with state law, rule, or court
12 order.

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

15 (1) Case advisor--A department staff member responsible for evaluating,
16 investigating, and mediating lemon law and warranty performance complaints prior to a hearing.

17 (2) Comparable motor vehicle--A new motor vehicle, with comparable mileage,
18 from the same manufacturer, distributor, or converter's product line and the same model year or
19 newer as the motor vehicle to be replaced or as reasonably equivalent to the motor vehicle to be
20 replaced.

21 (3) Lemon law--Refers to Occupations Code, Chapter 2301, Subchapter M
22 (§§2301.601–2301.613).

23 (4) Warranty performance--Refers to Occupations Code, §2301.204.

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§224.232. Filing a Complaint.

(a) The department will provide information concerning the complaint procedure and a complaint form to a person requesting assistance. A person may call the department or visit the department website for information or to file a complaint electronically.

(b) A complaint alleging a violation of Occupations Code, §2301.204 or Subchapter M, must be in writing and signed by the complainant, and:

(1) state sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances forming the basis of the claim for relief under the lemon law or warranty performance statute;

(2) provide the following information:

(A) the name, address, and telephone number of the motor vehicle owner;

(B) the make, model, year, and Vehicle Identification Number or VIN of the motor vehicle;

(C) the type of warranty coverage;

(D) the name and address of the dealer or other person from whom the motor vehicle was purchased or leased, including the name and address of the vehicle lessor, if applicable;

(E) the original date of delivery of the motor vehicle to the owner and in the case of a demonstrator, the date the motor vehicle was placed into demonstrator service;

(F) the motor vehicle mileage at the time when:

1 (i) the motor vehicle was purchased or leased;

2 (ii) problems with the motor vehicle were first reported; and

3 (iii) the complaint was filed;

4 (G) the name of the dealer or the name of the manufacturer's, converter's, or
5 distributor's agent to whom the problems were first reported;

6 (H) identification of the motor vehicle's existing problems and a brief description
7 of the history of problems and repairs on the motor vehicle, including:

8 (i) the date and mileage of each repair; and

9 (ii) a copy of each repair order where possible;

10 (I) the date the motor vehicle manufacturer, distributor, or converter first
11 received written notice of the alleged defect or nonconformity;

12 (J) the date and results of the motor vehicle inspection, if the motor vehicle was
13 inspected by the manufacturer, distributor, or converter; and

14 (K) any other information the complainant deems relevant to the complaint.

15 (c) A person may file a complaint with the department:

16 (1) by mail sent to the mailing address listed on the department website at TxDMV.gov,

17 or

18 (2) electronically in the Motor Vehicle Dealer Online Complaint System which may be
19 accessed on the department website.

1 (d) Before investigating a claim, the department may require the complainant to provide
2 additional information necessary to evaluate whether the department has jurisdiction to pursue the
3 complaint.

4 (e) The following provisions apply to lemon law complaints.

5 (1) The filing fee required under the lemon law should be paid when the complaint is
6 submitted to the department and may be paid online by credit card if filing a claim electronically or by
7 check if mailing a complaint to the department. The filing fee is nonrefundable, but a complainant that
8 prevails in a case is entitled to reimbursement of the filing fee from the nonprevailing party. Failure to
9 pay the filing fee when submitting a complaint will delay the start of the 150-day period in paragraph (3)
10 of this subsection and may result in dismissal of the complaint.

11 (2) A lemon law proceeding commences on the date the filing fee is received by the
12 department.

13 (3) If the hearings examiner has not issued an order within 150 days after the
14 commencement of the lemon law proceeding in accordance with paragraph (2) of this subsection, the
15 department shall notify the parties by certified mail that the complainant may file a civil action in state
16 district court to seek relief under the lemon law. The notice will inform the complainant of the
17 complainant's right to continue the lemon law complaint with the department. The department shall
18 extend the 150-day period upon request of the complainant or if a delay in the proceedings is caused by
19 the complainant.

20 (f) The following provisions apply to warranty performance complaints (repair-only relief).

1 (1) A filing fee is not required for a complaint that is subject to a warranty performance
2 claim.

3 (2) A complaint may be filed with the department in accordance with this section if the
4 defect in the motor vehicle subject to the warranty performance complaint was reported to the
5 manufacturer, distributor, or converter prior to the expiration of the warranty period.

6 (3) If the defect is not resolved pursuant to §224.238 of this title (relating to Mediation;
7 Settlement or Referral for Hearing), the department will schedule a hearing to be conducted in
8 accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301,
9 Subchapter O and this subchapter.

10 (4) A hearings examiner will issue a final order on a warranty performance complaint. A
11 party who disagrees with the order may oppose the order in accordance with §224.264 of this title
12 (relating to Final Orders).

13

14 §224.234. Complaint Review.

15 (a) A case advisor will review a complaint to determine if the department has jurisdiction to
16 consider the complaint and whether the complaint meets the minimum statutory requirements for a
17 lemon law or a warranty performance complaint.

18 (b) If a case advisor cannot determine if the department has jurisdiction or whether a complaint
19 meets the lemon law or warranty performance minimum statutory requirements, the case advisor will
20 contact the complainant for additional information.

1 (c) The case advisor will notify the complainant if the department does not have jurisdiction over
2 the complaint.

3 (d) If a case advisor determines that the department has jurisdiction and the complaint meets
4 the minimum lemon law or warranty performance requirements, the complaint will be processed in
5 accordance with this subchapter.

6
7 §224.236. Notification to Manufacturer, Distributor, or Converter.

8 (a) Once a case advisor determines that a complaint meets the minimum statutory requirements
9 the case advisor will:

10 (1) notify the appropriate manufacturer, distributor, or converter of the complaint and
11 request a response; and

12 (2) provide a copy of the complaint to the selling dealer and any other dealer involved
13 with the complaint and may request a response.

14 (b) Upon request by the department, the manufacturer shall provide a copy of the warranty for
15 the motor vehicle subject to the lemon law or warranty performance complaint.

16 (c) The case advisor will provide a copy of any responses or documents received from the
17 manufacturer, distributor, or converter to the complainant.

18

19 §224.238. Mediation; Settlement or Referral for Hearing.

1 (a) A case advisor will attempt to settle or resolve a lemon law or warranty performance
2 complaint through nonbinding mediation before a hearing on the complaint is scheduled.

3 (b) The parties must participate in the nonbinding mediation process in good faith.

4 (c) In a case filed under Occupations Code, §2301.204 or §§2301.601–2301.613, a case advisor
5 shall qualify for appointment as an impartial third party in accordance with Civil Practice and Remedies
6 Code, Chapter 154.

7 (d) If the parties cannot resolve the complaint, a case advisor will refer the complaint for a
8 hearing with a hearings examiner.

9
10 §224.240. Notice of Hearing.

11 (a) Each party is entitled to an opportunity for a hearing, in accordance with Government Code,
12 §2001.051.

13 (b) A notice of hearing in a contested case shall comply with the requirements of Government
14 Code, §2001.052(a) and the department shall serve the notice upon the parties by certified mail, return
15 receipt requested to the last known address of a party or the party’s authorized representative in
16 accordance with Occupations Code, §2301.705.

17 (c) The last known address of a party is the last mailing address provided to the department.

18 (d) A notice of hearing in a contested case may be amended in accordance with Government
19 Code, §2001.052(b).

20

1 §224.242. Motions.

2 (a) Unless made during a contested case hearing, each motion in a contested case shall be in
3 writing and shall state:

4 (1) the relief sought; and

5 (2) the specific reasons and grounds for the relief requested.

6 (b) A motion not made during a contested case hearing shall be filed with the hearings examiner
7 and a copy shall be served on all parties or their authorized representatives at least five days prior to the
8 hearing absent a showing of good cause.

9 (c) A motion is not granted until it has been ruled on by the hearings examiner, even if the
10 motion is uncontested or agreed.

11
12 §224.244. Service of Documents.

13 (a) A copy of each document filed in a contested case shall be served upon all parties or their
14 authorized representatives by sending a copy properly addressed to each party by:

15 (1) first-class mail; or

16 (2) email.

17 (b) A copy of each document must also be filed with the department by:

18 (1) email;

19 (2) fax; or

1 (3) first-class mail.

2 (c) A certificate of service shall accompany each document.

3

4 §224.246. Presiding Official.

5 (a) Hearings examiner. A hearings examiner will preside over a hearing for a lemon law or
6 warranty performance complaint.

7 (b) Powers and duties. A hearings examiner shall conduct fair hearings and shall take all
8 necessary action to administer the disposition of contested cases. A hearings examiner's powers include,
9 but are not limited to the authority to:

10 (1) administer oaths;

11 (2) examine witnesses;

12 (3) rule upon the admissibility of evidence;

13 (4) rule upon motions; and

14 (5) regulate the course of the contested case hearing and the conduct of the parties and
15 their authorized representative.

16 (c) Expert Inspection. If a hearings examiner determines that an expert opinion may assist in
17 arriving at a decision, a hearings examiner may have the motor vehicle in question inspected by an
18 expert prior to the hearing. An inspection under this subsection shall be made only upon prior notice to
19 all parties, who shall have the right to be present at the inspection. A copy of any findings or report from
20 the expert inspection will be provided to all parties before or at the hearing.

1 (d) Recusal.

2 (1) If a hearings examiner determines that the hearings examiner should be recused
3 from a particular contested case hearing, the hearings examiner shall withdraw from the contested case
4 by giving notice on the record and by notifying the chief hearings examiner.

5 (2) A party may file a motion to recuse the hearings examiner. The motion to recuse shall
6 be supported by an affidavit setting forth the alleged grounds for disqualification. A copy of the motion
7 shall be served on the hearings examiner who shall have 10 days to reply, and a copy shall be served on
8 all parties or their authorized representatives.

9 (3) If the hearings examiner contests the alleged grounds for disqualification, the chief
10 hearings examiner shall promptly determine the validity of the grounds alleged and render a decision.

11 (e) Substitution of hearings examiner. If the hearings examiner is disqualified, dies, becomes
12 disabled, or withdraws during any contested case proceeding, the chief hearings examiner may appoint
13 another hearings examiner to preside over the remainder of the contested case proceeding.

14
15 §224.248. Hearing Continuance.

16 (a) A continuance of the contested case hearing will be granted by the hearings examiner only
17 upon a showing of good cause.

18 (b) A motion for continuance of a contested case hearing shall be filed and served on all parties
19 at least five days before the hearing date, except when good cause is shown to consider a motion for
20 continuance filed after the deadline.

21

1 §224.250. Conduct of Hearing.

2 (a) Each party in a contested case shall have the right to notice, cross examination, present
3 evidence, object, make a motion or argument, and all other rights essential to a fair contested case
4 hearing. Except as provided by this chapter or in the notice of hearing, the TCRP as applied to non-jury
5 civil cases shall be applicable to hearings in contested cases as far as reasonably practical.

6 (b) Parties, representatives, and other participants in a contested case shall:

7 (1) conduct themselves with dignity;

8 (2) show courtesy and respect for one another and the hearings examiner;

9 (3) follow any additional guidelines of decorum prescribed by the hearings examiner;

10 and

11 (4) adhere to the time schedule.

12 (c) If a participant violates this section, the hearing examiner may:

13 (1) issue a warning;

14 (2) recess the hearing; or

15 (3) exclude a person from the contested case hearing for such period and upon such
16 conditions as are just.

17

18 §224.252. Hearings.

19 (a) Depositions, interrogatories, and requests for admission shall not be allowed.

1 (b) When possible, an in-person hearing will be held in the city in which the complainant resides.

2 A hearing may also be conducted by telephone or videoconference.

3 (c) A hearing will be scheduled at the earliest date possible, provided that a 10-day notice or
4 other notice required by law is given to all parties.

5 (d) A hearing will be conducted expeditiously by a hearings examiner in accordance with
6 Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, and this subchapter.

7 (e) If a party fails to appear for the hearing, relief may be granted to the party that appears.

8 (f) Absent a showing of good cause, a complaint may be dismissed if the complainant repeatedly
9 fails to respond or communicate with the department.

10 (g) The complainant shall have the burden of proof by a preponderance of the evidence.

11 (h) Hearings will be conducted informally. A party has a right to be represented by an attorney at
12 a hearing, although an attorney is not required. A party who intends to be represented at a hearing by
13 an attorney or other authorized representative must notify the hearings examiner and any other party in
14 writing at least five business days prior to the hearing. Failure to provide notice will result in
15 postponement of the hearing if requested by another party.

16 (i) Subject to a hearings examiner ruling, a party may present that party's case in full, including
17 testimony from witnesses and documentary evidence such as repair orders, warranty documents, and
18 the motor vehicle sales contract.

19 (j) With written approval of the hearings examiner, a hearing may be conducted by written
20 submission only or by telephone or videoconference.

1 (k) Upon notice to the parties, a hearings examiner may conduct a hearing or prehearing
2 conference by telephone or videoconference.

3 (l) Except for a hearing conducted by written submission, a party may be questioned by another
4 party at the discretion of the hearings examiner.

5 (m) Except for a hearing conducted by written submission, telephone, or videoconference, the
6 complainant may bring the motor vehicle in question to the hearing so that the motor vehicle may be
7 inspected and test driven by Respondent.

8 (n) Except for a hearing conducted by written submission, a hearing will be recorded by the
9 hearings examiner. A copy of the recording will be provided to any party upon request and upon
10 payment of the cost of the copy as provided by statute or rules.

11
12 §224.254. Evidence.

13 (a) General. The TRE shall apply in all contested cases, in accordance with Government Code,
14 Chapter 2001.

15 (b) Documents in department files. The hearings examiner may take official notice of documents
16 or information in the department's files, in accordance with Government Code, Chapter 2001.

17 (c) Exhibits. Exhibits shall be limited to the relevant and material issues involved in a particular
18 contested case. If an offered exhibit has been excluded after objection and the party offering the exhibit
19 withdraws the offer, the hearings examiner shall return the exhibit. If the excluded exhibit is not
20 withdrawn, it shall be given an exhibit number for identification and be included in the record only for
21 the purpose of preserving the exception together with the hearings examiner's ruling.

1 (d) Evidence may be stipulated by agreement of all parties.

2

3 §224.256. Objections and Exceptions.

4 A party is not required to make a formal exception to a ruling of the hearings examiner.

5

6 §224.258. Final Order Authority.

7 (a) The hearings examiner has final order authority in a contested case filed under Occupations

8 Code, §2301.204 or Occupations Code, Chapter 2301, Subchapter M.

9 (b) This authority includes a contested case in which a case is 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 or continued failure to communicate with the

14 department;

15 (5) by dismissal for want of jurisdiction;

16 (6) by summary judgment or summary disposition;

17 (7) by a default judgment; or

18 (8) when a party waives the opportunity for a contested case hearing.

1

2 §224.260. Lemon Law Relief Decisions.

3 (a) Unless otherwise indicated, this section applies to decisions that relate to lemon law
4 complaints. Decisions shall give effect to the presumptions provided in Occupations Code, §2301.605,
5 where applicable.

6 (1) If a hearings examiner finds that the manufacturer, distributor, or converter is not
7 able to conform the motor vehicle to an applicable express warranty by repairing or correcting a defect
8 in the complainant's motor vehicle, creating a serious safety hazard or substantially impairing the use or
9 market value of the motor vehicle after a reasonable number of attempts, and that the affirmative
10 defenses provided under Occupations Code, §2301.606 are not applicable, the hearings examiner shall
11 issue a final order to the manufacturer, distributor, or converter to:

12 (A) replace the motor vehicle with a comparable motor vehicle; or

13 (B) accept the return of the motor vehicle from the owner and refund the full
14 purchase price of the motor vehicle to the owner, less a reasonable allowance for the owner's use of the
15 motor vehicle and any other allowances or refunds payable to the owner.

16 (2) In a decision in favor of the complainant, the hearings examiner will, to the extent
17 possible, accommodate the complainant's request with respect to replacement or repurchase of the
18 motor vehicle.

19 (b) This subsection applies only to the repurchase of motor vehicles.

20 (1) When a refund is ordered, the purchase price shall be the total purchase price of the
21 motor vehicle, excluding the amount of any interest, finance charge, or insurance premiums. The refund

1 amount to the motor vehicle owner shall include reimbursement of the amount of the lemon law
2 complaint filing fee paid by, or on behalf of, the motor vehicle owner. The refund shall be made payable
3 to the motor vehicle owner and to any lienholder, respective to each person’s ownership interest in the
4 motor vehicle.

5 (2) There is a rebuttable presumption that the expected useful life of a motor vehicle is
6 120,000 miles. Except in cases where the preponderance of the evidence shows the motor vehicle has a
7 longer or shorter expected useful life than 120,000 miles, the reasonable allowance for the owner's use
8 of the motor vehicle shall be the sums of the amounts obtained by adding subparagraphs (A) and (B) of
9 this paragraph.

10 (A) The product obtained by multiplying the total purchase price, as defined in
11 paragraph (1) of this subsection, of the motor vehicle by a fraction having as its denominator 120,000
12 and having as its numerator the number of miles that the motor vehicle traveled from the time of
13 delivery to the owner to the date of the date of the first report of the defect or condition forming the
14 basis of the repurchase order; and

15 (B) 50% of the product obtained by multiplying the total purchase price by a
16 fraction having as its denominator 120,000 and having as its numerator the number of miles that the
17 motor vehicle traveled after the first report of the defect or condition forming the basis of the
18 repurchase order through the date of the hearing.

19 (3) There is a rebuttable presumption the expected useful life of a towable recreational
20 vehicle is 5,475 days or 15 years. Except in cases where a preponderance of the evidence shows that the
21 vehicle has a longer or shorter expected useful life than 5,475 days or 15 years, the reasonable

1 allowance for the owner's use of the towable recreational vehicle shall be the sum of the amount
2 obtained by adding subparagraphs (A) and (B) of this paragraph.

3 (A) The product obtained by multiplying the total purchase price, as defined in
4 paragraph (1) of this subsection, of the towable recreational vehicle by a fraction having as its
5 denominator 5,475 days or 15 years and having as its numerator the number of days from the time of
6 delivery to the owner to the first report of the defect or condition forming the basis of the repurchase
7 order.

8 (B) 50% of the product obtained by multiplying the purchase price by a fraction
9 having as its denominator 5,475 days or 15 years and having as its numerator the number of days of
10 ownership after the date of the first report of the defect or condition forming the basis of the repurchase
11 order through the date of the hearing.

12 (C) Any day or part of a day that the vehicle is out of service for repair will be
13 deducted from the numerator in determining the reasonable allowance for use of a towable recreational
14 vehicle in this paragraph.

15 (c) This subsection applies only to the repurchase of a leased motor vehicle.

16 (1) Except in cases involving unusual and extenuating circumstances supported by a
17 preponderance of the evidence, when a refund of the total purchase price of a leased motor vehicle is
18 ordered, the refund shall be allocated and paid to the lessee and the vehicle lessor, respectively, in
19 accordance with subparagraphs (A) and (B) of this paragraph.

20 (A) The lessee shall receive the total of:

1 (i) all lease payments previously paid by the lessee to the vehicle lessor
2 under the terms of the lease; and

3 (ii) all sums previously paid by the lessee to the vehicle lessor in
4 connection with entering into the lease agreement, including, but not limited to any capitalized cost
5 reduction, down payment, trade-in, or similar cost, plus sales tax, license, registration fees, and other
6 documentary fees, if applicable.

7 (B) The vehicle lessor shall receive the total of:

8 (i) the actual price paid by the vehicle lessor for the motor vehicle,
9 including tax, title, license, and documentary fees, if paid by the vehicle lessor and evidenced in a bill of
10 sale, bank draft demand, tax collector's receipt, or similar instrument; and

11 (ii) an additional 5.0% of the purchase price plus any amount or fee paid
12 by the vehicle lessor to secure the lease or interest in the lease.

13 (C) A credit reflecting all of the payments made by the lessee shall be deducted
14 from the actual purchase price that the manufacturer, distributor, or converter is required to pay the
15 vehicle lessor, as specified in subparagraph (B)(i) and (ii) of this paragraph.

16 (2) When the hearings examiner orders a manufacturer, distributor, or converter to
17 refund the purchase price in a leased vehicle transaction, the motor vehicle shall be returned to the
18 manufacturer, distributor, or converter with clear title upon payment of the sums indicated in paragraph
19 (1)(A) and (B) of this subsection. The vehicle lessor shall transfer title of the motor vehicle to the
20 manufacturer, distributor, or converter, as necessary to effectuate the lessee's rights. The lease shall be
21 terminated without penalty to the lessee.

1 (3) Refunds shall be made to the lessee, vehicle lessor, and to any lienholder, respective
2 to their ownership interest in the motor vehicle. The refund to the lessee under paragraph (1)(A) of this
3 subsection shall be reduced by a reasonable allowance for the lessee's use of the motor vehicle. A
4 reasonable allowance for use shall be computed in accordance with subsection (b)(2) or (3) of this
5 section, using the amount in paragraph (1)(B)(i) of this subsection as the applicable total purchase price.

6 (d) This subsection applies only to replacement of motor vehicles.

7 (1) Upon a hearing examiner's issuance of a final order to a manufacturer, distributor, or
8 converter to replace a motor vehicle, the manufacturer, distributor, or converter shall:

9 (A) promptly authorize the exchange of the complainant's motor vehicle with
10 the complainant's choice of any comparable motor vehicle; and

11 (B) instruct the dealer to contract the sale of the selected comparable motor
12 vehicle with the complainant under the following terms.

13 (i) The sales price of the comparable motor vehicle shall be the vehicle's
14 Manufacturer's Suggested Retail Price or Distributor's Suggested Retail Price (MSRP/DSRP), as applicable;

15 (ii) The trade-in value of the complainant's motor vehicle shall be the
16 MSRP/DRSP, as applicable, at the time of the original transaction, less a reasonable allowance for the
17 complainant's use of the complainant's motor vehicle.

18 (iii) The reasonable allowance for replacement relief shall be calculated
19 in accordance with subsection (b)(2) and (3) of this section.

20 (2) Upon a replacement of a complainant's motor vehicle, the complainant shall be
21 responsible for payment or financing of the reasonable allowance for use of the complainant's vehicle,

1 any outstanding liens on the complainant's vehicle, and applicable taxes and fees associated with the
2 new sale of a comparable motor vehicle, excluding documentary fees.

3 (A) If the comparable motor vehicle has a higher MSRP/DSRP, as applicable, than
4 the complainant's vehicle, the complainant shall be responsible at the time of sale to pay or finance the
5 difference in the two vehicles' MSRPs/DSRPs, as applicable, to the manufacturer, converter or distributor.

6 (B) If the comparable motor vehicle has a lower MSRP/DSRP, as applicable, than
7 the complainant's vehicle, the complainant will be credited the difference in the MSRP/DSRP, as
8 applicable, between the two motor vehicles. The difference credited shall not exceed the amount of the
9 calculated reasonable allowance for use for the complainant's vehicle.

10 (3) The complainant is responsible for obtaining financing, if necessary, to complete the
11 transaction.

12 (4) The replacement transaction, as described in paragraphs (2) and (3) of this
13 subsection, shall be completed as specified in the final order. If the replacement transaction cannot be
14 completed within the ordered time period, the manufacturer shall repurchase the complainant's motor
15 vehicle in accordance with the repurchase provisions of this section. If repurchase relief occurs, a party
16 may request calculation of the refund price by the hearings examiner.

17 (e) If the hearings examiner finds that a complainant's motor vehicle does not qualify for
18 replacement or repurchase, the hearings examiner may enter an order requiring repair work to be
19 performed or other action taken to obtain compliance with the manufacturer's, converter's, or
20 distributor's warranty obligations.

1 (f) If the motor vehicle is substantially damaged or if there is an adverse change in the motor
2 vehicle's condition beyond ordinary wear and tear, from the date of the hearing to the date of
3 repurchase, and the parties are unable to agree on an amount allowed for such damage or condition,
4 either party may request reconsideration by the hearings examiner of the refund amount contained in
5 the final order.

6 (g) In any award in favor of a complainant, the hearings examiner may require the dealer
7 involved to reimburse the complainant, manufacturer, distributor, or converter for the cost of any items
8 or options added to the motor vehicle by the dealer if one or more of those items or options contributed
9 to the defect that is the basis for the final order. This subsection shall not be interpreted to require a
10 manufacturer, distributor, or converter to repurchase a motor vehicle due to a defect or condition that
11 was solely caused by an item or option added by the dealer.

12

13 §224.262. Incidental Costs.

14 (a) When a refund of the purchase price or replacement of a motor vehicle is ordered, the
15 complainant shall be reimbursed for certain incidental costs incurred by the complainant from loss of
16 use of the motor vehicle because of the defect or nonconformity which is the basis of the complaint. The
17 costs must be reasonable and verifiable. Reimbursable incidental costs include, but are not limited to the
18 following costs:

19 (1) alternate transportation;

20 (2) towing;

1 (3) telephone calls or mail charges directly attributable to contacting the manufacturer,
2 distributor, converter, or dealer regarding the motor vehicle;

3 (4) meals and lodging necessitated by the motor vehicle's failure during out-of-town
4 trips;

5 (5) loss or damage to personal property;

6 (6) attorney fees if the complainant retains counsel after notification that the
7 respondent is represented by counsel; and

8 (7) items or accessories added to the motor vehicle at or after purchase, less a
9 reasonable allowance for use.

10 (b) Incidental costs shall be included in the final refund amount required to be paid by a
11 manufacturer, distributor, or converter to a prevailing complainant, or in the case of a motor vehicle
12 replacement, shall be tendered to the complainant at the time of replacement.

13 (c) When awarding reimbursement for the cost of items or accessories presented under
14 subsection (a)(7) of this section, the hearings examiner shall consider the permanent nature,
15 functionality, and value added by the items or accessories and whether the items or accessories are
16 original equipment manufacturer (OEM) parts or non-OEM parts.

17
18 §224.264. Final Orders.

19 (a) A hearings examiner shall prepare a final order as soon as possible, but not later than 60 days
20 after the hearing is closed, or as otherwise provided by law. The final order shall include the hearings

1 examiner's findings of fact and conclusions of law. The final order shall be sent by the department to all
2 parties by certified mail.

3 (b) A party who disagrees with the final order may file a motion for rehearing in accordance with
4 Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O. A motion
5 for rehearing of a final order must:

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

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

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

11 (c) Replies to a motion for rehearing must be filed with the chief hearings examiner in
12 accordance with Government Code, Chapter 2001, subject to Occupations Code, §2301.713.

13 (d) If the chief hearings examiner or designee grants a motion for rehearing, the parties will be
14 notified by mail and a rehearing will be scheduled promptly. After rehearing, a final order shall be issued
15 with any additional findings of fact or conclusions of law, if necessary to support the final order.

16 (e) A hearings examiner may issue a final order granting the relief requested in a motion for
17 rehearing or requested in a reply to a motion for rehearing without the need for a rehearing.

18 (f) If a motion for rehearing is denied, the chief hearings examiner or designee will issue a final
19 order and notify the parties.

20

1 §224.266. Compliance with Order Granting Relief.

2 (a) Compliance with a final order will be monitored by the department.

3 (b) A complainant is not bound by a final order.

4 (c) If a complainant does not accept the final order, the proceeding before the hearings examiner
5 will be deemed concluded and the complaint file closed.

6 (d) If the complainant accepts the final decision, then the manufacturer, distributor, or converter,
7 and the dealer to the extent of the dealer's responsibility, if any, shall immediately take such action as is
8 necessary to implement the final order.

9 (e) If a manufacturer, distributor, or converter replaces or repurchases a motor vehicle pursuant
10 to a final order, then the manufacturer, distributor, or converter shall, prior to the resale of such motor
11 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 holding a license or GDN
18 issued by the department under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503
19 shall remove or cause the removal of the disclosure label until delivery of the motor vehicle to the first
20 retail purchaser.

1 (g) A manufacturer, distributor, or converter shall provide to the department the name, address,
2 and telephone number of the transferee to whom the manufacturer, distributor, or converter transfers
3 the motor vehicle on the disclosure statement within 60 days of a transfer. A dealer that sells the vehicle
4 to the first retail purchaser shall return the completed disclosure statement to the department within 60
5 days of the sale.

6 (h) The manufacturer, distributor, or converter must repair the defect or condition in the motor
7 vehicle that resulted in the vehicle being reacquired and issue a basic warranty excluding non-original
8 equipment manufacturer items or accessories, for a minimum of 12 months or 12,000 miles, whichever
9 comes first. The warranty shall be provided to the first retail purchaser of the motor vehicle.

10 (i) In the event this section conflicts with the terms contained in a cease and desist order, the
11 terms of the cease and desist order shall prevail.

12 (j) The failure of any manufacturer, distributor, converter, or dealer to comply with a final order
13 within the time period prescribed in the order may subject the manufacturer, converter, distributor, or
14 dealer to formal action by the department, including the assessment of civil penalties of up to \$10,000
15 per day per violation or other sanctions prescribed by Occupations Code, Chapter 2301.

16
17 §224.268. Judicial Appeal of a Final Order.

18 (a) A party who has exhausted all administrative remedies may appeal a final order in a Travis
19 County district court under Government Code, Chapter 2001, and subject to Occupations Code,
20 §2301.609.

1 (b) A party appealing a final order must serve a copy of the petition for judicial review on the
2 department and all parties of record. After service of the petition and within the time allowed for filing
3 an answer, the department shall transmit to the reviewing court the original or a certified copy of the
4 entire record of the proceeding. If the court orders that new evidence be presented to a hearings
5 examiner, the hearings examiner may modify the findings and decision or order by reason of the new
6 evidence and shall transmit the additional record to the court.