

1	PROPOSAL OF REVISIONS TO
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16	REPEAL OF
17	SUBCHAPTER D. PROCEDURES IN CONTESTED CASES

1 **INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes amendments to 43
2 Texas Administrative Code (TAC) Chapter 206, Subchapter A, Organization and Responsibilities, §206.1
3 and §206.2; Subchapter B, Public Meetings and Hearings, §206.22 and §206.23; Subchapter C, Procedure
4 for Petition to Adopt Rules, §206.41; Subchapter E, Advisory Committees, §206.92 and §206.93;
5 Subchapter F, Department Vehicle Fleet Management, §206.111; Subchapter G, Electronic Signatures,
6 §206.131; and Subchapter H, Risk-Based Monitoring and Preventing Fraudulent Activity, §206.151. The
7 department proposes new Subchapter E, Advisory Committees, §206.101. The department is also
8 adopting the repeal of Subchapter D, Procedures in Contested Cases, §§206.61-206.73.

9 The proposed amendments and proposed new section in Chapter 206 would bring the rules into
10 alignment with statute; remove language that is redundant with statute; clarify existing requirements;
11 modernize language; improve readability through the use of consistent terminology; clarify or delete
12 unused, archaic, or inaccurate definitions, terms, and references; and more specifically describe the
13 department's methods and procedures, including its process for internal risk monitoring regarding the
14 department's internal users of the department's Registration and Title System (RTS).

15 The proposed repeal of Subchapter D of Chapter 206 would enable the board of the Texas
16 Department of Motor Vehicles (board) to consolidate all of the department's contested case rules into
17 proposed new Chapter 224, Adjudicative Practice and Procedure. In this issue of the *Texas Register*, the
18 department proposes new Chapter 224, which would include all of the department's adjudicative practice
19 and procedure rules in one chapter.

20 **EXPLANATION.** The department is conducting a review of its rules in Chapter 206 in compliance with
21 Government Code, §2001.039. Notice of the department's plan to review Chapter 206 is published in this

1 issue of the *Texas Register*. As a part of the rule review, the department is adopting necessary amendments
2 and repeals, as detailed in the following paragraphs.

3 Subchapter A. Organization and Responsibilities

4 The proposed amendments to Subchapter A would clarify the authority of the executive director
5 and remove rules that are redundant with statute. The proposed amendments to §206.1 would cite to the
6 statutory provision under which the executive director receives authority to delegate certain duties or
7 responsibilities to department staff and would clarify that such delegation must be consistent with
8 applicable law.

9 The proposed amendments to §206.2(a) would clarify that the executive director hires and
10 oversees the department's general counsel, to align the rule with Transportation Code, §1001.041 and
11 §1001.0411. The proposed amendment to §206.2(a)(3) would remove unnecessary limitations on the
12 executive director's powers to delegate to staff. The proposed amendment to §206.2(b) would remove
13 unnecessary language regarding the Texas Open Meetings Act because the subsection already references
14 Government Code, Chapter 551. A proposed amendment to §206.2 would strike §206.2(c) because it is
15 duplicative of Transportation Code, §1001.004.

16 Subchapter B. Public Meetings and Hearings

17 In Subchapter B, proposed amendments to §206.22 would delete subsection (f) and remove a
18 cross-reference to subsection (f) because its provisions on contested cases would be combined with the
19 department's other rules on contested cases in proposed new Chapter 224, Adjudicative Practice and
20 Procedure. Proposed amendments to §206.22(b) and (c) would simplify and clarify the language, in
21 addition to revising existing terminology for consistency with other department rules and with current
22 practice. For example, when closed session is expected to last at least an hour, the board chairman allows

1 open comments prior to going into closed session, instead of taking open comments at the end of the
2 posted agenda. A proposed amendment to §206.22(c) would delete the words “with disabilities” because
3 anyone who has special communication or accommodation needs who plans to attend a board meeting
4 may request auxiliary aids or services. Proposed amendments to §206.22(d) would clarify that the public
5 is authorized to make public comments, rather than presentations, at board meetings.

6 Proposed amendments to §206.23(b) would clarify and streamline the language without changing
7 its meaning. Proposed amendments to §206.23(c) and (d) would provide that the executive director or the
8 executive director’s designee may represent the department in a public hearing as well as the board chair
9 or presiding officer. Proposed amendments to §206.23(d) would remove the term “with disabilities” to
10 clarify that anyone with special communication or accommodation needs who plans to attend board
11 hearings may contact the department to request auxiliary aids or services. The proposed amendments to
12 §206.23(d) would also specify that if a hearing is conducted by the department’s executive director or
13 designee rather than the board, persons requesting auxiliary aids or services may contact the
14 department’s public affairs officer.

15 Subchapter C. Procedure for Petition to Adopt Rules

16 Proposed amendments to Subchapter C, §206.41 would clarify the procedure for submitting to
17 the department a petition to adopt rules under Texas Government Code, §2001.021, and the required
18 content of a petition. Proposed amendments to §206.41 would also remove unnecessary language.

19 Subchapter D. Procedures in Contested Cases

20 The proposed repeal of Subchapter D, Procedures in Contested Cases, would delete the
21 subchapter to enable the consolidation of all the department’s contested case rules into proposed new
22 Chapter 224, Adjudicative Practice and Procedure. Chapter 224 would contain modified portions of

1 Subchapter D, as applicable. Due to the proposed repeal of Subchapter D, the remaining subchapters in
2 Chapter 206 would be re-lettered.

3 Subchapter E. Advisory Committees

4 This subchapter is proposed to be re-lettered as Subchapter D as current Subchapter D is
5 proposed for repeal and the subsequent subchapters are proposed to be re-lettered accordingly.

6 Proposed amendments to §206.92 would delete the definition of “division director” because
7 the term is not used elsewhere in the subchapter, and would renumber the subsequent paragraphs in
8 §206.92 accordingly. A proposed amendment would move the language from §206.93(c) to §206.93(b)
9 regarding the prohibition against board members serving as advisory committee members. Proposed
10 amendments to §206.93(b) and the proposed deletion of §206.93(c) would streamline and clarify the
11 qualifications and appointment requirements for advisory committee members into one subsection. The
12 proposed deletion of §206.93(c) would also remove language that is redundant with Transportation Code,
13 §1001.031(b). Proposed amendments to §206.93 would re-letter the remaining subsections of §206.93
14 due to the proposed deletion of §206.93(c). Proposed amendments to §206.93(g) and (h), which are
15 proposed to be re-lettered to subsections (f) and (g), would remove unnecessary statutory titles. A
16 proposed amendment would delete §206.93(i) because proposed new §206.101 would clarify the
17 requirements and parameters for public comment during advisory committee meetings. Proposed
18 amendments to §206.93(k), which is proposed to be re-lettered to subsection (i), would clarify that both
19 the executive director and the board shall consider an advisory committee’s written recommendations in
20 developing policy, and would remove redundant language describing advisory committee
21 communications. The proposed deletion of §206.93(m) would remove unnecessary language that is
22 duplicative of Texas Government Code, §2110.008.

1 Proposed new §206.101 would clarify the requirements and parameters for public comment
2 during advisory committee meetings. Proposed new §206.101 would closely parallel the requirements for
3 public comments during board meetings in existing §206.93(i) and §206.22 (relating to Public Access to
4 Board Meetings). Proposed new §206.101 would allow each public commenter three minutes to comment
5 on any advisory committee agenda item or in an open comment period on any topic within the scope of
6 the specific advisory committee. Proposed new §206.101(c) would set out the procedures for a member
7 of the public to request a disability accommodation for an advisory committee meeting with the same
8 process described in §206.22(c) for board meetings. Proposed new §206.101(d) would set requirements
9 for conduct and decorum at advisory committee meetings to assist the acting advisory committee chair
10 in maintaining order, which would be the same as the requirements for conduct and decorum at board
11 meetings under §206.22(d). Proposed new §206.101(e) would allow the acting advisory committee chair
12 to waive any requirements of §206.101 as necessary to allow the advisory committee or the department
13 to perform their responsibilities. It would thereby allow the acting advisory committee chairs to remain
14 responsive to the need for public comment while preventing proposed new §206.101 from unnecessarily
15 encumbering the public comment process. Proposed new §206.101 does not include written public
16 comment for advisory committee meetings to streamline the process and provide a consistent method of
17 receiving comments, and to ensure that advisory committee members are able to ask follow-up questions
18 of the commenters.

19 Subchapter F. Department Vehicle Fleet Management

20 This subchapter is proposed to be re-lettered as Subchapter E as current Subchapter D is proposed
21 for repeal and the subsequent subchapters are proposed to be re-lettered accordingly.

1 An amendment to §206.111 is proposed to clarify that a written documented finding must be
2 signed by the executive director to support an assignment of a department vehicle to an individual
3 employee on an everyday basis.

4 Subchapter G. Electronic Signatures

5 This subchapter is proposed to be re-lettered as Subchapter F as current Subchapter D is proposed
6 for repeal and the subsequent subchapters are proposed to be re-lettered accordingly.

7 Amendments to §206.131 are proposed to rename the title of the subchapter from “Electronic
8 Signatures” to “Digital Certificates” for accuracy and consistency. A proposed amendment to
9 §206.131(d)(2)(A) would clarify that one form of acceptable identity verification is an unexpired personal
10 identification certificate with a photograph. A proposed amendment to §206.131(d)(2)(B) would delete a
11 concealed handgun license as an acceptable form of identification because such license is no longer
12 required by law. Proposed amendments to §206.131(d)(2)(E) and (G) would correct the name of the
13 federal agency that issues a form I-94. A proposed amendment to §206.131(g) would clarify that the rule
14 refers to digital certificates. Proposed amendments to §206.131(i) would substitute the word “certificate”
15 for “signature” to increase consistency and accuracy.

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

17 This subchapter is proposed to be re-lettered as Subchapter G because current Subchapter D is
18 proposed for repeal and the subsequent subchapters are proposed to be re-lettered accordingly.

19 Amendments to §206.151 are proposed to clarify and specify the division’s internal risk-based
20 monitoring system required by Transportation Code, §520.004(4). The proposed amendments would
21 subject the department’s internal users of RTS to periodic examination to determine whether to assign
22 the RTS user a classification of priority or non-priority. Priority levels determine the minimum number of

1 inspections the department would like to conduct on the internal RTS user each year. The inspections are
2 conducted to determine whether there is evidence of fraud by the RTS user. The proposed amendments
3 would base the classification of priority or non-priority on certain factors, including the RTS user's
4 transaction volume, the RTS user's past violations of department rules and procedures within the past five
5 years, title error investigations performed by the department on titles issued by the RTS user, public
6 complaints received against the RTS user, and discrepancies in data reflecting the RTS user's transactions.
7 The proposed amendments would also provide that RTS users who are classified as a priority shall be
8 inspected not less than twice per year, and a RTS user classified as a non-priority shall be inspected not
9 less than once per year. The proposed amendments further provide that the inspections may be virtual,
10 on premises at the RTS user's location, or a combination of both.

11 Additional non-substantive amendments are proposed throughout Chapter 206 to correct
12 punctuation, grammar, and capitalization.

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

17 Executive Director Daniel Avitia has determined that there will be no measurable effect on local
18 employment or the local economy as a result of the proposal.

19 **PUBLIC BENEFIT AND COST NOTE.** Mr. Avitia has also determined that for each year of the first five years
20 the proposed amended sections and repeals are in effect, the anticipated public benefit as a result of
21 enforcing or administering the amendments and repeals will be the simplification, clarification, and
22 streamlining of agency rules.

1 Anticipated Cost to Comply with the Proposal. Mr. Avitia anticipates that there will be no costs to comply
2 with the proposed amendments and repeals.

3 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government
4 Code, §2006.002, the department has determined that the proposed amendments and repeals will not
5 have an adverse economic impact on small businesses, micro-businesses, and rural communities because
6 there are no anticipated economic costs for persons required to comply with the proposed amendments
7 and repeals. Therefore, the department is not required to prepare a regulatory flexibility analysis under
8 Government Code, §2006.002.

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

13 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the
14 first five years the proposed amendments and repeals are in effect, no government program would be
15 created or eliminated. Implementation of the proposed amendments and repeals would not require the
16 creation of new employee positions or elimination of existing employee positions. Implementation would
17 not require an increase or decrease in future legislative appropriations to the department or an increase
18 or decrease of fees paid to the department. The proposed amendments and repeals do not create a new
19 regulation; however, they expand an existing regulation regarding the department's internal risk-based
20 monitoring system of internal users of RTS. While the repeal of Subchapter D of Chapter 206 is proposed,
21 proposed new Chapter 224, Adjudicative Practice and Procedure, would contain modified portions of

1 Subchapter D, as applicable. Lastly, the proposed amendments and repeals do not affect the number of
2 individuals subject to Chapter 206's applicability and will not affect this state's economy.

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

9 SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

10 **43 TAC §206.1 AND §206.2**

11 The department proposes amendments to Chapter 206 under Transportation Code, §1002.001,
12 which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules
13 that are necessary and appropriate to implement the powers and the duties of the department;
14 Transportation Code, §1001.041, which requires the executive director to appoint deputies, assistants and
15 other personnel, including a general counsel; Transportation Code, §1001.0411(b), which allows the
16 executive director to delegate duties or responsibilities; Transportation Code, §1001.0411(c), which
17 requires the executive director to hire and oversee a general counsel to advise the department; and
18 Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles
19 with the authority to adopt rules that are necessary and appropriate to implement the powers and the
20 duties of the department; and Government Code, §2001.004, which requires state agencies to adopt rules
21 of practice stating the nature and requirements of all available formal and informal procedures.

1 **CROSS REFERENCE TO STATUTE.** The proposed amendments would implement Government Code,
2 §2001.021(b) and Chapter 2110; and Transportation Code, §520.004 and Chapters 643, 1001, 1002, 1003,
3 and 1004.

4
5 Text.

6 §206.1. Delegation.

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

11
12 §206.2. Texas Department of Motor Vehicles.

13 (a) Executive director.

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

16 (2) The executive director shall:

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

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

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

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

1 ~~(E)~~ ~~[(D)]~~ perform other responsibilities as required by law or assigned by the
2 board.

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

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

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

8 (A) formulating and applying operating procedures; and

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

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

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

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

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

19

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

21 **43 TAC §206.22 AND §206.23**

22 **STATUTORY AUTHORITY.**

1 The department proposes amendments to Chapter 206 under Transportation Code, §1002.001,
2 which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules
3 that are necessary and appropriate to implement the powers and the duties of the department;
4 Transportation Code, §1001.0411(b), which allows the executive director to delegate duties or
5 responsibilities; Transportation Code, §1004.002, which requires the board and the department to
6 develop and implement policies that provide the public with a reasonable opportunity to appear before
7 the board or the department and to speak on any issue under the jurisdiction of the board or the
8 department; and Government Code, §2001.004, which requires state agencies to adopt rules of practice
9 stating the nature and requirements of all available formal and informal procedures.

10 **CROSS REFERENCE TO STATUTE.** The proposed amendments would implement Government Code,
11 §2001.021(b) and Chapter 2110; and Transportation Code, §520.004 and Chapters 643, 1001, 1002, 1003,
12 and 1004.

13

14 Text.

15 §206.22. Public Access to Board Meetings.

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

20 (1) prior to a vote by the board on the item; and

21 (2) for a maximum of three minutes, except as provided in subsections (d)(6) ~~[r]~~ and (e)

22 ~~[, and (f)]~~ of this section.

23 (b) Open comment period.

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

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

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

10 (c) Disability accommodation. Persons ~~[with disabilities,]~~ who have special communication or
11 accommodation needs and who plan to attend a meeting, may contact the department in Austin to
12 request auxiliary aids or services. Requests shall be made at least two days before a meeting. The
13 department shall make every reasonable effort to accommodate these needs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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§206.23 Public Hearings.

(a) The board may hold public hearings:

(1) to consider adoption of rules;

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

(3) to provide, when deemed appropriate by the board or when otherwise required by law, for public input regarding any other issue under the jurisdiction of the board.

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

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

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

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

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

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

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

1 (d) Persons ~~[with disabilities,]~~ who have special communication or accommodation needs and
2 who plan to attend a hearing to be held by the board, may contact the department in Austin to request
3 auxiliary aids or services. ~~For [in the case of]~~ a hearing conducted by the executive director or designee,
4 ~~[department,]~~ those persons may contact the public affairs officer, whose address and telephone
5 number appear in the public notice for the [that] hearing, to request auxiliary aids or services. Requests
6 shall be made at least two days before the hearing. The department shall make every reasonable effort
7 to accommodate these needs.

8

9 SUBCHAPTER C. PROCEDURE FOR PETITION TO ADOPT RULES

10 **43 TAC §206.41**

11 **STATUTORY AUTHORITY.**

12 The department proposes amendments to Chapter 206 under Transportation Code, §1002.001,
13 which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules
14 that are necessary and appropriate to implement the powers and the duties of the department;
15 Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature
16 and requirements of all available formal and informal procedures; Government Code, §2001.004, which
17 requires state agencies to adopt rules of practice stating the nature and requirements of all available
18 formal and informal procedures; and Government Code, §2001.021(b), which requires state agencies to
19 adopt rules that prescribe the form and procedures for a petition for rulemaking.

20 **CROSS REFERENCE TO STATUTE.** The proposed amendments would implement Government Code,
21 §2001.021(b) and Chapter 2110; and Transportation Code, §520.004 and Chapters 643, 1001, 1002, 1003,
22 and 1004.

23

1 Text.

2 §206.41. Petition.

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

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12 SUBCHAPTER D. PROCEDURES IN CONTESTED CASES

13 **STATUTORY AUTHORITY.**

14 The department proposes repeals to Chapter 206 under Transportation Code, §1002.001, which
15 provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are
16 necessary and appropriate to implement the powers and the duties of the department; and Government
17 Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and
18 requirements of all available formal and informal procedures.

19 **CROSS REFERENCE TO STATUTE.** The proposed amendments would implement Government Code,
20 §2001.021(b) and Chapter 2110; and Transportation Code, §520.004 and Chapters 643, 1001, 1002, 1003,
21 and 1004.

22

23 Text.

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

2 ~~[\$206.61. Scope and Purpose.]~~

3 ~~[This subchapter describes the procedures to be followed in contested cases arising under Government~~
4 ~~Code, Chapter 2001. Contested cases shall be governed by the procedural rules of the State Office of~~
5 ~~Administrative Hearings.]~~

6

7 ~~[\$206.62. Definitions.]~~

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

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

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

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

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

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

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

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

3

4 ~~[\$206.63. Filing of Petition.]~~

5 ~~[An individual, representative, partnership, corporation, association, governmental subdivision, or public~~
6 ~~or private organization, the department, or any other entity may seek to initiate a contested case by~~
7 ~~filing an original, and one copy of a petition, with the executive director at the department's~~
8 ~~headquarters building in Austin.]~~

9

10 ~~[\$206.64. Content of Petition.]~~

11 ~~[(a) A petition must include:]~~

12 ~~[(1) the name of the petitioner;]~~

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

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

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

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

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

2 ~~[(7) a department reference number, if applicable.]~~

3 ~~[(b) No document including a settlement offer by a party may be enclosed with the petition, and~~
4 ~~the petition may not refer to the substance of a settlement offer]~~

5

6 ~~[\$206.65. Examination by Executive Director.]~~

7 ~~[(a) The executive director will examine a petition and make a preliminary determination~~
8 ~~whether the petition states a claim that entitles the petitioner to initiate a contested case and whether~~
9 ~~the petition meets the procedural requirements of §206.63 and §206.64 of this subchapter (relating to~~
10 ~~Filing of Petition and Content of Petition) and of Government Code, Chapter 2001.]~~

11 ~~[(b) If the executive director finds that the petition does not meet all legal requirements, the~~
12 ~~executive director will return the petition to the petitioner along with a statement of the reasons for~~
13 ~~rejecting it. The petitioner will be given at least 10 days in which to file a corrected petition.]~~

14 ~~[(c) If a corrected petition is rejected under this section, the executive director will return the~~
15 ~~corrected petition to the petitioner along with a statement of the reasons for rejecting it. The petitioner~~
16 ~~will not be given an opportunity to file another corrected petition.]~~

17 ~~[(d) The executive director's preliminary determination of a petition's legal sufficiency is without~~
18 ~~prejudice to the department's right to assert, in litigation, that a contested case should be dismissed for~~
19 ~~any reason.]~~

20

1 ~~§206.66. Initiation of Contested Cases, Service of Notice of Hearing, Standard of Review, and Burden of~~
2 ~~Proof.]~~

3 ~~[(a) Initiation.]~~

4 ~~[(1) If the executive director finds that a petition meets all legal requirements, the~~
5 ~~department will initiate a contested case in accordance with the rules of the State Office of~~
6 ~~Administrative Hearings.]~~

7 ~~[(2) The department may initiate a contested case on its own initiative in accordance~~
8 ~~with the rules of the State Office of Administrative Hearings.]~~

9 ~~[(b) Service of notice of hearing. Service of the notice of hearing shall be accomplished by~~
10 ~~certified or registered mail to the party's last known address as shown in the department's records. A~~
11 ~~notice of a hearing in a contested case is sufficient for purposes of notice if it includes a copy of the~~
12 ~~petition, prepared in accordance with §206.64 of this subchapter (relating to Content of Petition), and~~
13 ~~the following information, unless it is included in the petition:]~~

14 ~~[(1) a statement of the time, place, and nature of the hearing;]~~

15 ~~[(2) a statement of the legal authority and jurisdiction under which the hearing is to be~~
16 ~~held; and]~~

17 ~~[(3) reference to the particular sections of the statutes and rules involved.]~~

18 ~~[(c) Standard of review for department's decision or action.]~~

1 ~~[(1) The standard of review is whether the department was reasonable for claims made~~
2 ~~pursuant to Transportation Code, §681.012, Seizure and Revocation of Placard, and other claims not~~
3 ~~specified in paragraph (2) of this subsection.]~~

4 ~~[(2) The standard of review is whether the department's decision or action was based on~~
5 ~~fraud, misconduct, or such gross mistake as would imply bad faith or failure to exercise an honest~~
6 ~~judgment for:]~~

7 ~~[(A) claims related to Occupations Code, Chapter 2302, Salvage Vehicle Dealers;]~~

8 ~~[(B) claims related to motor carrier and leasing company registration,~~
9 ~~Transportation Code, Chapter 643; and]~~

10 ~~[(C) claims related to single state registration for motor carriers, Transportation~~
11 ~~Code, Chapter 645.]~~

12 ~~[(d) Burden of proof. A party seeking monetary damages or penalties shall bear the burden of~~
13 ~~proof. In all other instances, the party challenging a department decision or action shall bear the burden~~
14 ~~of proof.]~~

15
16 ~~[\$206.67. Discovery.]~~

17 ~~[(a) Commissions to take depositions. At the written request of a party, the executive director~~
18 ~~will issue a written commission directed to officers, authorized by statute, to take a deposition of a~~
19 ~~witness.]~~

1 ~~[(b) Subpoenas for the production of documents. At the verified written request of a party, the~~
2 ~~executive director will issue a subpoena for the production of documents. The written request must~~
3 ~~identify the documents with as much detail as possible and must include a statement of their relevance~~
4 ~~to the issues in the case.]~~

5 ~~[(c) Subpoenas for attendance at hearings. At the written request of a party, the executive~~
6 ~~director will issue a subpoena for the attendance of a witness at a hearing in a contested case. The~~
7 ~~subpoena may be directed to any person within the department's jurisdiction, without regard to the~~
8 ~~distance between the location of the witness and the location of the hearing.]~~

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

15

16 ~~[\$206.68. Evidence.]~~

17 ~~[The admissibility of evidence in a contested case shall be governed by Government Code,~~
18 ~~Chapter 2001, and by the rules of the State Office of Administrative Hearings, except that a settlement~~
19 ~~offer shall not be admissible for any purpose.]~~

20

21 ~~[\$206.69. Withdrawal or Amendment of Proposal for Decision.]~~

1 ~~[The administrative law judge may withdraw or amend a proposal for decision at any time before~~
2 ~~a final order is issued.]~~

3

4 ~~[\$206.70. Filing of Exceptions and Replies.]~~

5 ~~[(a) A party may file exceptions to an administrative law judge's proposal for decision or an~~
6 ~~amended proposal for decision no more than 20 days after service of the proposal for decision. A reply~~
7 ~~to exceptions must be filed no more than 15 days after the filing of the exceptions.]~~

8 ~~[(b) Exceptions and replies to exceptions must be filed with the executive director at the~~
9 ~~department's headquarters building in Austin. A copy must be filed simultaneously with the~~
10 ~~administrative law judge.]~~

11 ~~[(c) A request for an extension of time in which to file exceptions or a reply must be filed with~~
12 ~~the executive director no later than three days before the date sought to be extended. The request must~~
13 ~~be served on all parties by facsimile or hand delivery on the date on which it is filed, or if that is not~~
14 ~~feasible, by overnight delivery service. A request for an extension of time will be granted only in~~
15 ~~extraordinary circumstances when it is necessary in the interest of justice.]~~

16

17 ~~[\$206.71. Form of Exceptions and Replies.]~~

18 ~~[Exceptions and replies must conform to the following standards.]~~

1 ~~[(1) Exceptions and replies must be typewritten or printed on paper 8-1/2 inches wide by~~
2 ~~11 inches long with an inside margin at least one inch wide. Reproductions are acceptable if all copies~~
3 ~~are legible.]~~

4 ~~[(2) Exceptions and replies must contain:]~~

5 ~~[(A) the names of all parties;]~~

6 ~~[(B) a concise statement of the facts and law on which the submitting party~~
7 ~~relies;]~~

8 ~~[(C) a statement of the relief desired;]~~

9 ~~[(D) a certificate of service;]~~

10 ~~[(E) the signature of the submitting party or the submitting party's authorized~~
11 ~~representative; and]~~

12 ~~[(F) any other matter required by statute.]~~

13 ~~[(3) Each specific exception must be separately numbered, separately set forth, and~~
14 ~~concisely stated, and it must incorporate all facts and law relating to that specific exception.]~~

15

16 ~~[\$206.72. Motions for Rehearing.]~~

17 ~~[(a) A party may file a motion for rehearing no more than 20 days after service of the final order.~~
18 ~~A reply to a motion for rehearing must be filed no more than 15 days after the filing of the motion.]~~

19 ~~[(b) A request for an extension of time in which to file a motion for rehearing will not be~~
20 ~~granted.]~~

1 ~~[(c) A motion for rehearing must conform to the standards for exceptions and replies set forth in~~
2 ~~§206.71 of this subchapter (relating to Form of Exceptions and Replies).]~~

3

4 ~~[§206.73. Extension of Time for Final Order.]~~

5 ~~[When the administrative law judge determines that a final order cannot reasonably be issued~~
6 ~~within 60 days after the date on which the hearing is finally closed, the administrative law judge shall~~
7 ~~announce, at the conclusion of the hearing, that the time for a final order will be extended. The proposal~~
8 ~~for decision shall include a reference to the announced extension. The extension shall be for a period~~
9 ~~extending at least 45 days after the issuance of the proposal for decision to ensure enough time for the~~
10 ~~filing of exceptions and replies. A longer extension shall be granted in matters of unusual complexity.]~~

11

12 §206.61. Scope and Purpose

13 §206.62. Definitions

14 §206.63. Filing of Petition

15 §206.64. Content of Petition

16 §206.65. Examination by Executive Director

17 §206.66. Initiation of Contested Cases, Service of Notice of Hearing, Standard of Review, and Burden of
18 Proof

19 §206.67. Discovery

20 §206.68. Evidence

21 §206.69. Withdrawal or Amendment of Proposal for Decision

22 §206.70. Filing of Exceptions and Replies

1 §206.71. Form of Exceptions and Replies

2 §206.72. Motions for Rehearing

3 §206.73. Extension of Time for Final Order

4

5 SUBCHAPTER E. ADVISORY COMMITTEES

6 **43 TAC §206.92, §206.93 AND NEW §206.101**

7 **STATUTORY AUTHORITY.**

8 The department proposes amendments to Chapter 206 and proposed new §206.101 under
9 Transportation Code, §643.155, which authorizes the department to adopt rules to create a rules advisory
10 committee consisting of the public, the department, and representatives of motor carriers transporting
11 household goods using small, medium, and large equipment; Transportation Code, §1001.031, which
12 requires the board to establish advisory committees; Transportation Code, §1001.0411(b), which allows
13 the executive director to delegate duties or responsibilities; Transportation Code, §1002.001, which
14 provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are
15 necessary and appropriate to implement the powers and the duties of the department; Transportation
16 Code, §1004.002, which requires the board and the department to develop and implement policies that
17 provide the public with a reasonable opportunity to appear before the board or the department and to
18 speak on any issue under the jurisdiction of the board or the department; Government Code, §2001.004,
19 which requires state agencies to adopt rules of practice stating the nature and requirements of all available
20 formal and informal procedures; Government Code, §2001.021(b), which requires state agencies to adopt
21 rules that prescribe the form and procedures for a petition for rulemaking; and Government Code, Chapter
22 2110, which sets out the requirements for advisory committees and requires that the agency make rules

1 to establish the purpose and tasks of the committee and the manner in which the committee will report
2 to the agency.

3 **CROSS REFERENCE TO STATUTE.** The proposed amendments would implement Government Code,
4 §2001.021(b) and Chapter 2110; and Transportation Code, §520.004 and Chapters 643, 1001, 1002, 1003,
5 and 1004.

6

7 Text.

8

SUBCHAPTER D[~~E~~]. ADVISORY COMMITTEES

9 §206.92. Definitions.

10 The following words and terms, when used in this subchapter, shall have the following
11 meanings, unless the context clearly indicates otherwise.

12 (1) Advisory committee--Any committee created by the board to make
13 recommendations to the board or to the executive director pursuant to Transportation Code, §1001.031
14 and §643.155.

15 (2) Board--The board of the Texas Department of Motor Vehicles.

16 (3) Department--The Texas Department of Motor Vehicles.

17 [~~(4) Division director--The chief administrative officer in charge of a division of the~~
18 ~~department.]~~

19 (4) [(5)] Executive director--The chief executive officer of the Texas Department of
20 Motor Vehicles.

21 (5) [(6)] Member--An appointed member of an advisory committee created under this
22 subchapter.

1 (6) ~~[(7)]~~ Presiding officer--The presiding officer of an advisory committee elected by the
2 membership of the advisory committee created under this subchapter.

3

4 §206.93. Advisory Committee Operations and Procedures.

5 (a) Role of advisory committee. The role of an advisory committee under this subchapter is to
6 provide advice and recommendations to the board or executive director. Advisory committees shall
7 meet and carry out their functions upon a request from the department or board for advice and
8 recommendations on any issues.

9 (b) Appointment and qualifications of advisory committee members. The board shall appoint
10 members to an advisory committee in accordance with Transportation Code, §643.155 and
11 §1001.031(b) by selecting potential members from a list provided to the board by the executive
12 director. Board members shall not serve as advisory committee members. Each advisory committee
13 shall elect from its members a presiding officer, who shall report the advisory committee's
14 recommendations to the board or the executive director in accordance with subsection (i) of this
15 section. The executive director may designate a division or divisions of the department to participate
16 with, or to provide subject-matter expertise, guidance, or administrative support to the advisory
17 committee as necessary.

18 ~~[(c) Member qualifications. Members shall have knowledge about and interests in, and~~
19 ~~represent a broad range of viewpoints about, the work of the committee or applicable division(s). Board~~
20 ~~members shall not serve as advisory committee members.]~~

21 (c) ~~[(d)]~~ Composition of advisory committees. In making appointments to the advisory
22 committees, the board shall, to the extent practical, ensure representation of members from diverse
23 geographical regions of the state.

1 (d) ~~[(e)]~~ Committee size and quorum requirements. An advisory committee shall be composed
2 of a reasonable number of members not to exceed 24 as determined by the board. A simple majority of
3 advisory committee members will constitute a quorum. An advisory committee may only deliberate on
4 issues within the jurisdiction of the department or any public business when a quorum is present.

5 (e) ~~[(f)]~~ Terms of service. Advisory committee members will serve terms of four years. A member
6 will serve on the committee until the member resigns, is dismissed or replaced by the board, or the
7 member's term expires.

8 (f) ~~[(g)]~~ Member training requirements. Each member of an advisory committee must receive
9 training regarding ~~[the Open Meetings Act,]~~ Government Code, Chapter 551; and ~~[the Public~~
10 ~~Information Act,]~~ Government Code, Chapter 552.

11 (g) ~~[(h)]~~ Compliance with Open Meetings ~~[Act]~~. The advisory committee shall comply with ~~[the~~
12 ~~Open Meetings Act,]~~ Government Code, Chapter 551.

13 ~~[(i) Public input and participation. The advisory committee shall accept public comments made~~
14 ~~in person at advisory committee meetings or submitted in writing. Public comments made in writing~~
15 ~~should be submitted to the advisory committee five business days in advance of the advisory committee~~
16 ~~meeting with sufficient copies for all members.]~~

17 (h) ~~[(j)]~~ Reporting recommendations. Recommendations of the advisory committee shall be
18 reported to the board at a board meeting prior to board action on issues related to the
19 recommendations. The recommendations shall be in writing and include any necessary supporting
20 materials. The presiding officer of the advisory committee or the presiding officer's designee may
21 appear before the board to present the committee's advice and recommendations. This subsection does
22 not limit the ability of the advisory committee to provide advice and recommendations to the executive
23 director as necessary.

1 (i) ~~[(k)]~~ Board and executive director use of advisory committee recommendations. In
2 developing department policies, the board and the executive director shall consider the written
3 recommendations ~~[and reports]~~ submitted by advisory committees.

4 (j) ~~[(l)]~~ Reimbursement. The department may, if authorized by law and the executive director,
5 reimburse advisory committee members for reasonable and necessary travel expenses.

6 ~~[(m) Expiration dates for advisory committees. Unless a different expiration date is established
7 by the board for the advisory committee, each advisory committee is abolished on the fourth
8 anniversary of its creation by the board.]~~

9
10 §206.101. Public Access to Advisory Committee Meetings.

11 (a) Posted agenda items. A person may speak before an advisory committee on any matter on a
12 posted agenda by submitting a request, in a form and manner as prescribed by the department, prior to
13 the matter being taken up by the advisory committee. A person speaking before an advisory committee
14 on an agenda item will be allowed an opportunity to speak:

15 (1) prior to a vote by the advisory committee on the item; and

16 (2) for a maximum of three minutes, except as provided in subsections (d)(6) and (e) of
17 this section.

18 (b) Open comment period.

19 (1) At each regular advisory committee meeting, the advisory committee shall allow an
20 open comment period, not to exceed one hour, to receive public comment on any other matter that is
21 within the scope of the specific advisory committee under §206.94(a) of this title (relating to Motor
22 Vehicle Industry Regulation Advisory Committee (MVIRAC)), §206.95(a) of this title (relating to Motor
23 Carrier Regulation Advisory Committee (MCRAC)), §206.96(a) of this title (relating to Vehicle Titles and

1 Registration Advisory Committee (VTRAC)), §206.97(a) of this title (relating to Customer Service and
2 Protection Advisory Committee (CSPAC)), or §206.98(a) of this title (relating to Household Goods Rules
3 Advisory Committee (HGRAC)).

4 (2) A person wanting to make a comment under this subsection shall complete a
5 registration form, as provided by the department, prior to the beginning of the open comment period.

6 (3) Except as provided in subsections (d)(6) and (e) of this section, each person shall be
7 allowed to speak for a maximum of three minutes for each comment in the order in which the requests
8 to speak were received.

9 (c) Disability accommodation. Persons who have special communication or accommodation
10 needs and who plan to attend a meeting, may contact the department in Austin to request auxiliary aids
11 or services. Requests shall be made at least two days before a meeting. The department shall make
12 every reasonable effort to accommodate these needs.

13 (d) Conduct and decorum. An advisory committee shall receive public input as authorized by this
14 section, subject to the following guidelines:

15 (1) questioning of speakers shall be reserved to advisory committee members and the
16 department's administrative staff;

17 (2) organizations, associations, or groups are encouraged to present their commonly
18 held views, and same or similar comments, through a representative member where possible;

19 (3) comments shall remain pertinent to the issue being discussed;

20 (4) a person who disrupts an advisory committee meeting shall leave the meeting room
21 and the premises if ordered to do so by the acting advisory committee chair;

22 (5) time allotted to one speaker may not be reassigned to another speaker; and

1 (6) the time allotted for comments under this section may be increased or decreased by
2 the acting advisory committee chair, as may be appropriate to assure opportunity for the maximum
3 number of persons to appear.

4 (e) Waiver. Subject to the approval of the acting advisory committee chair, a requirement of this
5 section may be waived in the public interest if necessary for the performance of the responsibilities of
6 the advisory committee or the department.

7

8 SUBCHAPTER F. DEPARTMENT VEHICLE FLEET MANAGEMENT

9 **43 TAC §206.111**

10 **STATUTORY AUTHORITY.**

11 The department proposes amendments to Chapter 206 under Transportation Code,
12 §1001.0411(b), which allows the executive director to delegate duties or responsibilities; Transportation
13 Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority
14 to adopt rules that are necessary and appropriate to implement the powers and the duties of the
15 department; and Government Code, §2001.004, which requires state agencies to adopt rules of practice
16 stating the nature and requirements of all available formal and informal procedures.

17 **CROSS REFERENCE TO STATUTE.** The proposed amendments would implement Government Code,
18 §2001.021(b) and Chapter 2110; and Transportation Code, §520.004 and Chapters 643, 1001, 1002, 1003,
19 and 1004.

20

21 Text.

22 **SUBCHAPTER E [~~F~~]. DEPARTMENT VEHICLE FLEET MANAGEMENT**

23 §206.111. Restrictions on Assignment of Vehicles.

1 (a) Definitions. The following words and terms, when used in this section, shall have the
2 following meanings, unless the context clearly indicates otherwise.

3 (1) Department--The Texas Department of Motor Vehicles.

4 (2) Division director--The chief administrative officer in charge of a division of the
5 department.

6 (3) Executive Director--The executive director of the Texas Department of Motor
7 Vehicles or the executive director's designee not below the level of division director.

8 (b) Motor pool. Each department vehicle, with the exception of a vehicle assigned to a field
9 employee, shall be assigned to the department's motor pool and be available for checkout.

10 (c) Regular vehicle assignment. The department may assign a vehicle to an individual
11 administrative or executive employee on a regular or everyday basis only if the executive director makes
12 a signed, written documented finding that the assignment is critical to the needs and mission of the
13 department.

14

15 SUBCHAPTER G. ELECTRONIC SIGNATURES

16 **43 TAC §206.131**

17 **STATUTORY AUTHORITY.**

18 The department proposes amendments to Chapter 206 under Transportation Code, §1002.001,
19 which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules
20 that are necessary and appropriate to implement the powers and the duties of the department; and
21 Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature
22 and requirements of all available formal and informal procedures.

1 **CROSS REFERENCE TO STATUTE.** The proposed amendments would implement Government Code,
2 §2001.021(b) and Chapter 2110; and Transportation Code, §520.004 and Chapters 643, 1001, 1002, 1003,
3 and 1004.

4
5 Text.

6 **SUBCHAPTER F ~~[G]~~. DIGITAL CERTIFICATES ~~[ELECTRONIC SIGNATURES]~~**

7 §206.131. Digital Certificates.

8 (a) General. This section prescribes the requirements that govern the issuance, use, and
9 revocation of digital certificates issued by the Texas Department of Motor Vehicles (department) for
10 electronic commerce in eligible department programs. The provisions of 1 TAC Chapter 203, Subchapter
11 B govern this section in the event of a conflict between that subchapter and a provision of this section.

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

14 (1) Business entity--An entity recognized by law through which business is conducted
15 with the department, including a sole proprietorship, partnership, limited liability company, corporation,
16 joint venture, educational institution, governmental agency, or non-profit organization.

17 (2) Certificate holder--An individual to whom a digital certificate is issued.

18 (3) Digital certificate--A certificate, as defined by 1 TAC §203.1, issued by the
19 department for purposes of electronic commerce.

20 (4) Digital signature--Has the same meaning assigned by 1 TAC §203.1.

21 (5) Division director--The chief administrative officer of a division of the department.

22 (c) Program authorization. A division director may authorize the use of digital signatures for a
23 particular program based on whether the applicable industries or organizations are using such

1 technology, the frequency of document submission, and the appropriateness for the program. The
2 solicitation documentation for eligible programs will include the information that digital signatures may
3 be used.

4 (d) Application and issuance of digital certificate.

5 (1) A request for a digital certificate shall be in writing and shall be signed by the
6 individual authorized by the business entity to request a digital certificate.

7 (2) The department may request information necessary to verify the identity of the
8 individual requestor or the identity of the individual to whom the certificate is to be issued. To verify
9 identity under this paragraph a person shall present:

10 (A) an unexpired Texas driver's license or unexpired personal identification
11 certificate with a photograph;

12 (B) an unexpired [~~concealed handgun license or~~] license to carry a handgun
13 issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

14 (C) an unexpired United States passport;

15 (D) a United States citizenship (naturalization) certificate with identifiable
16 photograph;

17 (E) an unexpired United States Customs and Border Protection [~~Bureau of~~
18 ~~Citizenship and Immigration Services~~] document that:

19 (i) was issued for a period of at least one year;

20 (ii) is valid for not less than six months from the date it is presented to
21 the department with a completed application; and

22 (iii) contains verifiable data and an identifiable photograph;

1 (F) an unexpired United States military identification card for active duty,
2 reserve, or retired personnel with an identifiable photograph; or

3 (G) a foreign passport with a valid or expired visa issued by the United States
4 Department of State with an unexpired United States Customs and Border Protection [~~Bureau of~~
5 ~~Citizenship and Immigration Services~~] Form I-94:

6 (i) that was issued for a period of at least one year, is marked valid for a
7 fixed duration, and is valid for not less than six months from the date it is presented to the department
8 with a completed application; or

9 (ii) that is marked valid for the duration of the person's stay and is
10 accompanied by appropriate documentation.

11 (3) The department may take actions necessary to confirm that the individual who
12 signed the request is authorized to act on behalf of the business entity, including requiring the individual
13 requestor or the person authorizing the request to personally appear at the department location
14 responsible for the issuing of the certificate.

15 (4) The department shall issue a digital certificate only to an individual. Information
16 identifying the business entity that authorized the issuance of the certificate may be embedded in the
17 digital certificate.

18 (e) Refusal to issue a digital certificate. The department shall not issue a digital certificate if the
19 identity of the individual to whom the certificate is to be issued, or the identity of the individual
20 requesting the certificate on behalf of a business entity, cannot be established. The department will not
21 issue a digital certificate if the business entity on whose behalf the request is allegedly being made does
22 not authorize its issuance.

23 (f) Responsibilities of certificate holder. A certificate holder shall:

- 1 (1) maintain the security of the digital certificate;
 - 2 (2) use the certificate solely for the purpose for which it was issued; and
 - 3 (3) renew the certificate in a timely manner, if continued use is intended.
- 4 (g) Responsibilities of business entity. A business entity is responsible for:
- 5 (1) determining what individual may request a certificate for the business entity;
 - 6 (2) determining to what individual a certificate is to be issued; and
 - 7 (3) requesting within a reasonable time the revocation of the business entity's digital
 - 8 certificate if the security of the certificate has been compromised or if the business entity is changing its
 - 9 certificate holder.
- 10 (h) Revocation of certificate. The department shall revoke a digital certificate:
- 11 (1) upon receipt of a written request for revocation of the business entity's digital
 - 12 certificate, signed by an individual authorized to act on behalf of the business entity for which it was
 - 13 issued;
 - 14 (2) for suspension or debarment of the individual or business entity; or
 - 15 (3) if the department has reason to believe that continued use of the digital certificate
 - 16 would present a security risk.
- 17 (i) Use of digital certificate.
- 18 (1) A digital certificate [~~signature~~] issued by the department shall only be used for the
 - 19 purpose of digitally signing electronic documents filed with the department. Use of a [A] digital
 - 20 certificate [~~signature~~] is binding on the individual to whom the certificate was issued and the
 - 21 represented business entity, as if the document were signed manually.
 - 22 (2) The department may use the digital certificate to identify the certificate holder when
 - 23 granting or verifying access to secure computer systems used for electronic commerce.

1 (j) Forms. The department may prescribe forms to request, modify, or revoke a digital
2 certificate.

3

4 SUBCHAPTER H. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY

5 **43 TAC §206.151**

6 **STATUTORY AUTHORITY.**

7 The department proposes amendments to Chapter 206 under Transportation Code, §520.004,
8 which requires the department by rule to establish a risk-based system of monitoring and preventing
9 fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and
10 personnel; Transportation Code, §1002.001, which provides the board of the Texas Department of Motor
11 Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers
12 and the duties of the department; and Government Code, §2001.004, which requires state agencies to
13 adopt rules of practice stating the nature and requirements of all available formal and informal
14 procedures.

15 **CROSS REFERENCE TO STATUTE.** The proposed amendments would implement Government Code,
16 §2001.021(b) and Chapter 2110; and Transportation Code, §520.004 and Chapters 643, 1001, 1002, 1003,
17 and 1004.

18

19 Text.

20 **SUBCHAPTER G [H]. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY**

21 §206.151. Internal Risk-Based Monitoring System.

22 (a) All users of the Registration and Title System (RTS) at the Texas Department of Motor
23 Vehicles (department) are subject to periodic examination by the department. As a result of the

1 examination, the department will assign each RTS user a classification of priority or non-priority for the
2 purposes of prioritizing inspections to determine whether there is evidence of fraud by the user. In
3 classifying an RTS user, the department may consider factors including, but not limited to:

4 (1) the RTS user's transaction volume;

5 (2) the RTS user's past violations of the department's rules and procedures within the
6 last five years;

7 (3) title error investigations performed by the department on titles issued by the RTS
8 user;

9 (4) public complaints received by the department against the RTS user; and

10 (5) discrepancies in data reflecting the RTS user's transactions.

11 (b) It is the department's goal to inspect each RTS user as follows:

12 (1) if the RTS user is classified as priority, the RTS user will be inspected not less than
13 twice per year; or

14 (2) if the RTS user is classified as non-priority, the RTS user will be inspected not less
15 than once per year.

16 (c) Inspections under this section may be virtual, on premises at the RTS user's location, or a
17 combination of both.

18 ~~[The department shall establish a risk-based system of monitoring and preventing fraudulent~~
19 ~~activity related to vehicle registration and titling in order to efficiently allocate resources and personnel,~~
20 ~~including:]~~

21 ~~[(1) establishing a risk-based system of monitoring the department's regional service~~
22 ~~centers;]~~

1 ~~[(2) developing criteria to determine varying risk levels for the department's internal~~
2 ~~fraud monitoring functions to strategically allocate resources and personnel;]~~

3 ~~[(3) reviewing the department's methods for collecting and evaluating related~~
4 ~~information; and]~~

5 ~~[(4) developing and providing training to department staff.]~~

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

9 Filed with the Office of the Secretary of State on December 14, 2023.

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/s/ Laura Moriaty
Laura Moriaty, General Counsel