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**PROPOSAL OF REVISIONS TO**

**SUBCHAPTER A. GENERAL PROVISIONS**

**43 TAC §215.1 and §215.2**

**SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE**

**43 TAC §§215.21–215.63**

**SUBCHAPTER C. LICENSES, GENERALLY**

**43 TAC §§215.82–215.89**

**SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS**

**43 TAC §§215.101–215.113, 215.115–215.217, and 215.120–215.121**

**SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS**

**43 TAC §§215.131–215.152, 215.154–215.155, and 215.160–161**

**SUBCHAPTER F. LESSORS AND LEASE FACILITATORS**

**43 TAC §§215.171–215.180**

**SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS**

**43 TAC §§215.201–215.210**

**SUBCHAPTER H. ADVERTISING**

**43 TAC §§215.242, 215.244, 215.249, 215.250, 215.257, 215.261, 215.264, 215.268, and 215.270**

**SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE OF**

**ADMINISTRATIVE HEARINGS**

**43 TAC §§215.301–215.317**

**SUBCHAPTER J. ADMINISTRATIVE SANCTIONS**

**43 TAC §§215.500–215.502 and 215.505**

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §215.1 and §215.2; repeal of Subchapter B, Adjudicative Practice and Procedure, §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.35 - 215.49, 215.55, 215.56, 215.58 - 215.63; amendments to Subchapter C. Licenses, Generally, §§215.82, 215.83, 215.87, and 215.89; in Subchapter D. Franchised Dealers, Manufacturers, Distributors, and Converters, amendments to §§215.101, 215.103 - 215.111, 215.113, 215.115 - 215.217, and 215.119, repeal of §215.112, and new proposed §§215.102, 215.120, and §215.121; in Subchapter E. General Distinguishing Numbers, proposes amendments to §§215.131–133; 215.135–215.142; 215.144, 215.145, 215.147 - 215.152, 215.154, 215.155, 215.160, and 215.161, repeal of §215.146, and new §215.134 and §215.143; proposes amendments to Subchapter F. Lessors and Lease Facilitators, §§215.171–215.180; proposes repeal of Subchapter G. Warranty Performance Obligations, §§215.201–215.210; proposes amendments to Subchapter H. Advertising, §§215.242, 215.244, 215.249, 215.250, 215.257, 215.261, 215.268, and 215.270; proposes repeal of Subchapter I. Practice and Procedure for Hearings Conducted by The State Office of Administrative Hearings, §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311, 215.314 - 215.317; and in Subchapter J. Administrative Sanctions, proposes amendments and partial repeal of §215.500, and repeal of §§215.501, 215.502, and 215.505.

The proposed amendments are necessary to modify language to be consistent with statutes and other chapters in Title 43 of the Texas Administrative Code; to delete language describing actions for which the department does not have rulemaking authority; to clarify the purpose of a rule by amending the rule title and language; to modify language to be consistent with current practice including use of records or electronic systems; to amend certain application requirements consistent with regulatory best practices; to increase temporary tag allocations for new franchised dealers based on department experience; to improve readability through the use of consistent terminology; to clarify or delete unused,

1 archaic, or inaccurate definitions, terms, references or other language; to implement statutory changes;  
2 to deter fraud or abuse by expanding fingerprint requirements to other license types issued under  
3 Transportation Code, Chapter 503; to clarify existing requirements, and to modernize language and  
4 improve readability. Amendments are proposed to implement SB 422, 88th Legislature, Regular Session  
5 (2023), which amended Occupations Code, §§55.004, 55.0041, and 55.005 affecting licensing of military  
6 service members.

7 New sections are proposed to document and clarify current licensing application requirements,  
8 procedures for issuing industry license plates, and sanctions relating to manufacturers, distributors,  
9 converters, franchised dealers, and to document and clarify application requirements and procedures for  
10 issuing industry license plates to drive-away operators.

11 Repeals are proposed to move an existing rule to the designated subchapter for that license type;  
12 to move adjudicative rules to proposed new Chapter 224, which is proposed to include all department  
13 adjudicative practice and procedure rules; and to implement statutory changes in Senate Bill (SB) 604,  
14 86th Legislature, Regular Session (2019). Certain subchapters are proposed for relettering because  
15 preceding subchapters are being proposed for repeal. The title of one subchapter is proposed to be  
16 amended to describe the types of licenses to which the subchapter applies. Proposed new Chapter 224 is  
17 also published in this issue of the Texas Register.

18 In 2019, the Sunset Commission recommended the board establish advisory committees and  
19 adopt rules regarding standard advisory committee structure and operating criteria. The board adopted  
20 rules in 2019 and advisory committees have since provided valuable input on rule proposals considered  
21 by the board for proposal or adoption. In September 2023, the department provided an early draft of  
22 these rules to two department advisory committees, the Motor Vehicle Industry Regulation Advisory  
23 Committee (MVIRAC) and the Customer Service and Protection Advisory Committee (CSPAC). Committee

members voted on formal motions and provided informal comments on other provisions. Input from both committees was incorporated in proposed §§215.83, 215.102, 215.103, 215.132, 215.144, 215.244, and 215.250.

**EXPLANATION.** The department is conducting a review of its rules under Chapter 215 in compliance with Government Code, §2001.039. Notice of the department’s plan to review is also published in this issue of the *Texas Register*. As a part of the review, the department is proposing necessary amendments and repeals, as detailed in the following paragraphs.

#### Subchapter A. General Provisions

A proposed amendment to §215.1 and §215.2(a) would delete a stray reference to Transportation Code, Chapter 1000, which does not exist. Proposed amendments to §215.1 would delete an incomplete list of license types regulated by the department, delete the word “motor” from the phrase “motor vehicle,” and add the word “industry” to more accurately reflect the scope of the department’s responsibility to encompass all vehicles including trailers and all license types under Occupations Code, Chapter 2301, and Transportation Code, Chapter 503. A proposed amendment to §215.1 would clarify the scope of the rules in Chapter 215, which is to describe licensing requirements and rules governing the operation of license holders, recognizing that other chapters also prescribe policies and procedures that apply to the motor vehicle industry.

Proposed amendments to §215.2(b) would delete definitions for terms used in contested cases because rules that use these terms are proposed for repeal in this chapter and are included in proposed new Chapter 224, Adjudicative Practice and Procedure, which is published in this same issue of the *Texas Register*. The definitions proposed for deletion include the terms ALJ, executive director, final order authority, hearing officer, motion for rehearing authority, and SOAH, and the remaining definitions would be renumbered accordingly. Proposed amendments in renumbered §215.2(b)(1) would clarify that only a

12/14/23 Exhibit A

board member or a person employed by the department may be authorized to serve as a board delegate as provided under Occupations Code, §2301.154. A proposed amendment to renumbered §215.2(b)(2) would add a definition for “day” and is necessary for standardization and consistency throughout the chapter. Proposed amendments to §215.2(b)(3) would substitute the term “division” for “department” to correctly refer to the responsible organizational unit in the department and would substitute the term “department staff” for “personnel” for clarity and consistency. A proposed amendment to renumbered §215.2(b)(4) would add a reference to Transportation Code, Chapter 503, which defines the types of general distinguishing numbers that the department may issue. A proposed amendment to renumbered §215.2(b)(5) would clarify that any state agency other than the department is included in the definition of a governmental agency. A proposed amendment to renumbered §215.2(b)(6) would add a new definition for standard license plate. This definition is necessary to differentiate a standard license plate issued to a dealer under Transportation Code, §503.061 from a personalized prestige license plate issued to a dealer under Transportation Code, §503.0615, recognizing that each plate has a different term and cost prescribed in statute and is obtained from the department through a different process.

#### Subchapter B. Adjudicative Practice and Procedure

All sections of Subchapter B, Adjudicative Practice and Procedure, are proposed for repeal because the substance of each rule and any proposed amendments would be incorporated into proposed new Chapter 224. Adjudicative Practice and Procedure. The proposed repeal includes §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.35 - 215.49, 215.55, 215.56, 215.58 - 215.63..

#### Subchapter C. Licenses, Generally

1           This subchapter is proposed to be relettered as Subchapter B as the current Subchapter B is  
2 proposed for repeal.

3           Proposed amendments would delete §215.82(a) and (b) and reletter the remaining subsections  
4 as necessary, because §215.82(a) and (b) refer to an archaic process that the department no longer  
5 follows. A license holder is not required to request a duplicate license from the department; rather, a  
6 license holder may print a license copy on demand in the electronic system designated by the department  
7 for licensing. Proposed amendments to §215.82(c) would delete the subsection designation and  
8 substitute “standard” for “metal” to identify which plate type applies to the replacement process.  
9 Proposed amendments to §215.82(c) would also clarify that the same process applies for obtaining a  
10 replacement sticker, and that a request for a replacement license plate or sticker must be submitted  
11 electronically in the department-designated system.

12           Proposed amendments to §215.83(a)(1) and (d) would clarify that an application for a new license,  
13 a license amendment, or a license renewal must be filed electronically. A proposed amendment to  
14 §215.83(a)(3) would specify which electronic payment forms are accepted. Paper checks are no longer  
15 accepted because fee payment must be completed before an application may be submitted and  
16 processed. A proposed amendment to §215.83(b) would clarify that an authorized representative who  
17 files an application on behalf of an applicant or license holder may be required to provide written proof  
18 of authority to act. A proposed amendment to §215.83(c) would clarify that a pending new license number  
19 will not be released to a person who is not an applicant, license holder, or authorized representative,  
20 unless that person files a written request under Government Code, Chapter 552. Once a license is  
21 approved and issued, the license number may be published on the department’s website or otherwise  
22 provided in response to an inquiry consistent with Government Code, §552.11765 and other requirements  
23 in Government Code, Chapter 552.

1 A proposed amendment to §215.83(d)(2) would delete an archaic reference to an envelope  
2 postmark for a renewal application to comport with §215.133(c), which requires a license application be  
3 submitted electronically in the department’s designated licensing system.

4 Proposed amendments to §215.83(e) would delete redundant language and combine the  
5 language in §215.83(e) and §215.83(f) for consistency and ease of understanding without changing the  
6 meaning. Other proposed amendments would reletter the remaining subsections and internal references  
7 accordingly.

8 Proposed amendments to relettered §215.83(i) would add the phrase “military service members  
9 or” in multiple places in subparagraphs (1), (2), and (3). These proposed amendments are necessary to  
10 implement SB 422, which added military service members who hold out-of-state licenses as persons  
11 eligible for special business or occupational authorization or licensing consideration. A proposed  
12 amendment to relettered §215.83(i) would clarify that the requirements and procedures authorized  
13 under Texas law do not modify or alter rights under federal law.

14 In relettered §215.83(i)(1), proposed amendments would delete two duplicative references to  
15 Occupations Code, §55.0041. Also, in relettered §215.83(i)(1), a proposed amendment would substitute  
16 the phrase “being stationed” for “residency” to clarify that eligibility for special licensing consideration for  
17 both the military member and military spouse is based on the military member being stationed in Texas,  
18 rather than on the spouse’s residency.

19 Additional amendments to relettered §215.83(i)(3) are proposed to implement SB 422. Proposed  
20 amendments would change the word “may” to “shall” and would add the phrase “within 30 days” to set  
21 a deadline by which the department must issue a license to a military service member or spouse. This  
22 change is necessary to implement changes to Occupations Code, §55.005(a) from SB 422, which requires  
23 a state agency to issue a license no later than the 30th day after an application is filed. Issuing a license

1 within 30 days would also fulfill the requirement of Occupations Code, §55.0041, as amended by SB 422,  
2 that the department provide confirmation within 30 days that the military service member or military  
3 spouse is authorized to engage in the licensed business or occupation. Another proposed amendment to  
4 relettered §215.83(i)(3) would add the phrase “modified or” to recognize that provisions of Occupations  
5 Code, Chapter 55 may require the department to modify standard licensing processes when processing  
6 an application for a military service member or military spouse and to clarify that the department’s  
7 licensing process for military service members and military spouses will be in accordance with all  
8 Occupations Code, Chapter 55 requirements.

9 A proposed amendment to relettered §215.83(j) would add a reference to Government Code,  
10 §2001.054 for ease of reference. An amendment to relettered §215.83(k) increases the time from 10 to  
11 15 days in which a license holder may dispute whether a renewal application was timely received by the  
12 department.

13 A proposed amendment to relettered §215.83(n) substitutes the term “standard” for “metal” to  
14 more accurately describe the type of dealer’s license plate addressed in this subsection and adds the  
15 phrase “is canceled” to clarify that a standard dealer’s license plate expires on the date a dealer’s GDN is  
16 canceled under Transportation Code, §503.038.

17 A proposed amendment to §215.84(a) would insert an introductory paragraph with a statutory  
18 cite to Occupations Code, §2301.002 to enable a person to more easily determine whether the section  
19 applies and to clarify the basic statutory prohibition against brokering and would reletter the remaining  
20 subparagraphs accordingly. Proposed amendments to relettered §215.84(b) would add two clarifying  
21 phrases “in the definition of broker” and “acting as a” to clarify language related to the term broker and  
22 to be more consistent with the statute and delete duplicate phrasing to improve readability. Proposed  
23 amendments to relettered §215.84(c) would add the term “franchised” in §215.84(c)(3) to more



1 accurately describe the type of dealer to which a buyer referral service, program, or club may refer a  
2 potential new vehicle buyer, would correct punctuation in relettered §215.84(c), and would move a  
3 requirement from §215.84(d) regarding compliance with advertising rules to relettered §215.84(c)(7) for  
4 completeness and ease of reference, and would update a reference to the relettered subchapter  
5 containing the advertising rules. Proposed amendments to relettered §215.84(d) would clarify that  
6 §215.84 does not apply to a person who is not a broker as defined in Occupations Code, §2301.002, and  
7 would delete a redundant phrase “or entity” as entities are included in the definition of “person” in  
8 Occupations Code, §2301.002. A proposed amendment would delete current §215.84(d) because the  
9 content of that the subsection is incorporated into proposed relettered §215.84(c)(7).

10 Proposed amendments to §215.85(b) would correct punctuation and move language from  
11 §215.85(c) to §215.85(b)(7) for completeness and clarity without changing the meaning. A proposed  
12 amendment to §215.85(c) would delete the redundant subsection moved to §215.85(b)(7). Proposed  
13 amendments to §215.85(d) would reletter the subsection to (c) and delete redundant terms “licensed”  
14 and “independent motor vehicle” from this subsection.

15 Proposed amendments to §215.87 would substitute the term “standard” for the phrase “metal  
16 dealer’s” in the rule title and in §215.87(a) - (c) to more accurately describe the type of dealer’s license  
17 plate addressed in this subsection. A proposed amendment to §215.87(a) would add a list of license types  
18 eligible to request a standard license plate for completeness and clarity. A proposed amendment to  
19 §215.87(b) would clarify that a standard license plate expires when the associated license is canceled. A  
20 proposed amendment to §215.87(c) would clarify that a license holder may be required to pay tax when  
21 ordering a standard plate as required under Tax Code, §152.027. Another proposed amendment would  
22 create new §215.87(d) to describe the process a dealer must use to apply for or renew a personalized  
23 prestige plate issued under Transportation Code, §501.0615.

Proposed amendments to §215.89(a) and (b) would delete the redundant “or department” because the word “board” is defined to include department staff to whom the board delegates a duty. A proposed amendment to §215.89(a)(2) would add a reference to Transportation Code, §503.034, which authorizes the department to deny a new or renewal application for a dealer general distinguishing number or a Wholesale Motor Vehicle Auction general distinguishing number if the applicant is guilty of conduct that would result in the cancellation of the general distinguishing number under Transportation Code, §503.038. A proposed amendment to §215.89(b)(6) would add the phrase “or other legal entity” for completeness because legal entities other than a corporation can fail to maintain authority to conduct business in Texas. Proposed amendments to §215.89(b)(10) would add “final” and substitute the “after” for “through” for clarity and consistency with department contested case procedures.

#### Subchapter D. Franchised Dealers, Manufacturers, Distributors, and Converters

This subchapter is proposed to be relettered as Subchapter C as current Subchapter B is proposed for repeal and the subsequent subchapters are proposed to be relettered accordingly.

Proposed amendments to §215.101 would delete an incorrect reference to a non-existent Transportation Code, Chapter 1000 and add the license types to which this subchapter applies for clarity.

Proposed new §215.102 would describe application requirements for manufacturers, distributors, converters, and franchised dealers for new, renewal, and amendment license applications including the requirement to attach documents, pay required fees, and submit applications electronically on a prescribed form in the department's designated licensing system. Occupations Code, §2301.257 and §2301.258 authorize the department to prescribe the application form and require any information necessary to determine the applicant's qualifications to adequately serve the public. Occupations Code, §2301.651(b) gives the board authority to deny an application for an act or omission by an officer, director,

1 partner, trustee, or other person acting in a representative capacity that would be cause for denying a  
2 license. Fees are prescribed by statute in Occupations Code, §2301.264. Proposed new §215.102(c) would  
3 require a license holder renewing or amending a license to review current license information, update  
4 information that has changed, provide related supporting information or documents for any change or  
5 new requirement, and allow the department to implement its responsibilities under Occupations Code  
6 §§2301.251, 2301.252, 2301.256–2301.260, 2301.303, and 2301.304. Proposed new §215.101(a-d) would  
7 include requirements that apply to all four license types. Proposed new §215.101(e)(1) would describe  
8 the information that must be submitted in the application, denoting any differences by license type.  
9 Proposed new §215.101(e)(2) would describe the documents that must be attached to the application,  
10 denoting any differences by license type. Proposed information and attachment requirements vary for  
11 each license type based on statutory requirements and related consumer fraud or public safety  
12 considerations resulting from the license holder’s operation, business model including distribution  
13 methods, and the specific new products manufactured or offered for sale. These proposed requirements  
14 incorporate best practice recommendations from the American Association of Motor Vehicle  
15 Administrators (AAMVA) regarding internet sales. Proposed new §215.101(e)(3) would describe the fees  
16 that must be paid when an applicant applies online for a license. To prevent consumer fraud and abuse,  
17 proposed new §215.101(f) would state that a license applicant may not use a name or assumed name that  
18 could be confused with a governmental entity, or could be deceptive or misleading to the public. Proposed  
19 new §215.101(g) would set out the process through which a manufacturer or distributor may add a new  
20 line make to an existing license during the license period.

21 Proposed amendments to §215.103(a) would substitute “performs” for the phrase “will only  
22 perform” and add the phrase “and not new motor vehicle sales” to clarify that the franchised dealer  
23 activity that may not be performed at a service-only facility is new motor vehicle sales. The phrase “and

1 nonwarranty” would be deleted because the department does not regulate non-warranty repair services.  
2 Similarly, the last sentence in §215.103(a) is proposed for deletion as Occupations Code, Chapter 2301  
3 does not require warranty repair services to be performed only at a licensed dealer location. This  
4 proposed change would provide franchised dealers with more flexibility in performing warranty repair  
5 services. Proposed amendments to §215.103(b) would delete a redundant word and change the term  
6 “line” to “line-make” for consistency. A proposed amendment to §215.103(d) would delete the word  
7 “only” as the word is not required by statute and the franchised dealer may prefer to have contracting  
8 flexibility to obtain more attractive commercial terms.

9 Proposed amendments to §215.104(a) and §215.104 (b)(3) would delete unnecessary words to  
10 improve readability without changing meaning. Proposed amendments throughout §215.104 would  
11 update and modernize the amendment process by requiring a franchised dealer to submit an amendment  
12 application electronically in the system designated for licensing. A proposed amendment in  
13 §215.104(a)(1) would clarify that amendment application attachments must be legible and accurate  
14 electronic images, and a proposed amendment in §215.104(a)(2) would add a reference to the new  
15 proposed Chapter 224, which would include procedures related to processing protests of a franchised  
16 dealer’s application. A proposed amendment in §215.104(b)(3) would modernize and standardize the  
17 process through which a publicly held corporation informs the department of an ownership change by  
18 requiring that the corporation file an amendment application electronically when a person or entity  
19 acquires a 10% ownership share. A proposed amendment to §215.104(c)(5) would delete an archaic  
20 requirement for a franchised dealer to notify the department if the dealer’s facsimile number has  
21 changed, and renumber accordingly. A proposed amendment to §215.104(d)(1) would replace “oversees”  
22 with “is in charge of” for consistency and clarity without a change to the meaning of the provision.  
23 Proposed amendments to §215.104(e) and §215.104(f) would add “franchised” and delete the phrase

1 “licensed new motor vehicle,” for consistency in describing a dealer under this subchapter and would add  
2 the word “amendment” to describe the type of application required to process the change described to  
3 the franchised dealer’s license.

4 Proposed amendments to §215.105(b) and §215.105(c) would add “franchised” and delete the  
5 phrase “licensed new motor vehicle” for consistency in describing a dealer under this subchapter. A  
6 proposed amendment to §215.105(d) would clarify and modernize the process for a franchised dealer to  
7 file a protest by specifying that a franchised dealer with standing to protest must file a timely protest  
8 electronically in the department-designated system for licensing and pay the required fee.

9 A proposed amendment to §215.106(a)(1) would clarify that a notice of protest must be received  
10 by 5:00 p.m. Central Time, which will be either Central Standard Time or Central Daylight Time as  
11 applicable. A proposed amendment to §215.106(a)(2) would modernize the protest process by requiring  
12 the notice of protest to be filed in the department’s designated electronic filing system, and a proposed  
13 amendment to §215.106(a)(3) would clarify that the fee must be paid at the time the application is  
14 submitted. A proposed amendment to §215.106(b)(2) would clarify that the protest will be rejected if  
15 payment is not made or is later dishonored.

16 A proposed amendment to §215.108 would add the word “franchised” and delete the phrase  
17 “licensed new motor vehicle,” for consistency in describing a dealer under this subchapter.

18 A proposed amendment to §215.109 would add the word “franchised” and delete the phrase  
19 “licensed new motor vehicle,” for consistency in describing a dealer under this subchapter. A proposed  
20 amendment to §215.109(4) would require a franchised dealer to submit a dealership replacement  
21 application electronically in the department system designated for licensing.

22 Proposed amendments to §215.110(a) would split the subsection into three separate sections  
23 lettered (a) through (c), would modify internal references in relettered (b) and (c) from “subsection” to

“section” to reflect the new organization, and would reletter current subsection (b) to subsection (d) accordingly. Proposed amendments to §215.110(a) and relettered §215.110(d) would add the word “franchised” or “franchised dealer” and delete the phrase “licensed new motor vehicle,” for consistency in describing a dealer under this subchapter. Proposed amendments in §215.110(a) would remove unnecessary language and clarify that the applicant must submit legible and accurate electronic images of the franchise agreement pages that identify the parties, the parties’ signatures, each line-make listed in the application, and the address of the franchised dealership’s physical location. A proposed amendment to relettered §215.110(b) would clarify that an applicant may submit temporary evidence of franchise electronically, and proposed amendments to relettered §215.110(c) would clarify that an applicant is required to provide the designated franchise agreement pages to the department before a license may be issued.

Proposed amendments to §215.111 would organize the existing language into two subsections to improve readability. A proposed amendment to new §215.111(a) clarifies that a manufacturer or distributor must provide notice of termination or discontinuation as required under Occupations Code, §2301.453 and would remove language that duplicates the statute. A proposed amendment to new §215.111(b) would require a franchised dealer to file a written notice of protest electronically in the department’s designated system for licensing.

SB 604, 86th Legislature, Regular Session (2019), eliminated the department’s authority to approve a vehicle show or exhibition under Occupations Code, §2301.358, effective September 1, 2019. As a result, §215.112 is proposed for repeal as the §215.112(a) expressly limits applicability of the rule to motor home shows that require department approval.

A proposed amendment to the title of §215.113 would correct the spelling of “Franchised” as the statutory term in Occupations Code, §2301.002 is “franchised dealer.” Proposed amendments to

§215.113(a) - (c) and (f) would add the word “franchised” and delete the phrase “new motor vehicle,” for consistency in describing a dealer under this subchapter. Proposed amendments to §215.113(a), (d), and (e) would require the notice of protest to be filed electronically in the department’s designated system for licensing. Proposed amendments to §215.113(c) would substitute the more general Occupations Code subchapter designation for the specific section series reference so any future statutory changes will not require a rule change and would add a reference to the subchapter in proposed new Chapter 224 which applies to this subsection. Proposed amendments to §215.113(f) would add a reference to the subchapter in proposed new Chapter 224, which applies to this subsection, would delete archaic language as contested case hearing scheduling is determined by the State Office of Administrative Hearings (SOAH) and its procedural rules, and would substitute the word “issued” for “rendered” for consistency.

A proposed amendment to the title of §215.115 adds the phrase “Vehicle Sales” to describe the scope of the section more accurately. Proposed amendments to §215.115(a), (b), (d) and (f) would delete the phrase “a representative of” as the phrase is unnecessary. Proposed amendments to §215.115(a), (b), and (f) would add language to allow a record to be submitted to the department electronically upon request. Proposed amendments to §215.115(b) would correct preposition use to improve readability without changing the meaning.

A proposed amendment to title of §215.116 would add the term “Franchised Dealership” to describe the scope of this section more accurately. A proposed amendment to §215.116(a) would add the descriptor “franchised” to the term dealer and delete duplicate language without changing meaning.

Proposed amendments to §215.117 would improve the readability of the section without changing the meaning.

Proposed new §215.120 would set out the requirements for manufacturers, distributors and converters using license plates issued by the department. Proposed new §215.120(a) would specify when

a manufacturer, distributor, or converter may apply for a standard license plate and proposed new §215.120(a) and (b) would specify the type of vehicle and purposes for which a license plate may be used. Proposed new §215.120(c) would explain where the license plate is to be placed on the vehicle. Proposed new §215.120(d) would contain the record requirements for these plates. Proposed new §215.120(e) and (f) would explain what a manufacturer, distributor or converter is required to do if a license plate is lost, stolen, or damaged. Proposed new §215.120(g) would require license plate records be available for inspection or review if requested by the department. Proposed new §215.120(h) would specify the criteria the department will use to evaluate a request for additional standard license plates. Proposed new §215.120(i) would require a manufacturer, distributor, or converter to return department-issued license plates to the department within 10 days of the associated license being closed, canceled, or revoked.

Proposed new §215.121 would set out the powers of the board and department to sanction a manufacturer, distributor, or converter. Proposed new §215.121(a) would describe existing administrative sanctions that the board or department may take if a manufacturer, distributor, or converter violates a law or rule enforced by the department. Proposed new §215.121(b) would describe which actions may result in a sanction.

#### Subchapter E. General Distinguishing Numbers

This subchapter is proposed to be relettered as Subchapter D as current Subchapter B is proposed for repeal and the subsequent subchapters are proposed to be relettered accordingly. An amendment to the title of this subchapter is proposed to reflect that the scope of the chapter also includes in-transit licenses issued to drive-a-way operators under Transportation Code, §503.023.



1 Proposed amendments to §215.131 would add a reference to Transportation Code, Chapters  
2 1001–1005 and would clarify that provisions in this subchapter apply to general distinguishing numbers  
3 and drive-a-way operator in-transit licenses issued by the department.

4 Proposed amendments to §215.132 would delete an unused definition for charitable  
5 organization, delete an unnecessary definition for license, and add a definition for municipality, which is  
6 defined by reference to Local Government Code, Chapter 1. Proposed amendments would renumber the  
7 remaining provisions accordingly.

8 A proposed amendment to §215.133 would retitle the section to “Application Requirements for  
9 a Dealer or a Wholesale Motor Auction” to accurately reflect the scope of the section. A proposed  
10 amendment to §215.133(a) would add a reference to a wholesale motor vehicle auction and delete a  
11 redundant word. Proposed amendments to §215.133(c) would add multiple references to wholesale  
12 motor vehicle auction throughout, add a reference to §215.83, and clarify an existing requirement for a  
13 license holder to pay any outstanding civil penalties owed the department under a final order before  
14 renewing a GDN. Proposed amendments to §215.133(c)(1) would clarify existing application requirements  
15 in §215.133(c)(1)(C); add new §215.133(c)(1)(D), which requires an applicant to provide a contact name  
16 and contact details for a person who can provide business information about the applicant so the  
17 department knows who to contact for related questions; reletter the remaining subparagraphs; add in  
18 §215.133(c)(1)(I) the requirement for a telephone number for a dealer’s temporary tag database account  
19 administrator; and correct in §215.133(c)(1)(O) the name of a form. Proposed amendments to  
20 §215.133(c)(2) would clarify in §215.133(c)(2)(D) by adding “unexpired” and deleting “current” in the  
21 related clauses and substituting the modern phrase “military identification card” for armed forces  
22 identification and would add the word “business” in §215.133(c)(2)(G) to clarify the phrase premises  
23 photos. Proposed amendments to §215.133(c)(3) would delete a redundant phrase in §215.133(c)(3)(A),

1 add a reference in §215.133(c)(3)(B) to applicable taxes, and substitute “standard” for “metal” for a more  
2 precise description of a dealer plate. In §215.133(d), proposed amendments would add a fingerprint  
3 requirement for wholesale motor vehicle auction GDNs to allow the department to evaluate the criminal  
4 histories of applicants and update the title of a §211.6. Proposed amendments to §215.133(e) would  
5 delete “dealer” to clarify that all GDNs must follow the assumed name requirements in that subsection  
6 and would add the phrase “a name or” to denote that an applicant cannot use either a business name or  
7 an assumed name that is confusing, deceptive, or otherwise misleading to the public. Proposed new  
8 §215.133(j) would clarify that a person holding an independent motor vehicle GDN and performing  
9 salvage activities must apply for a National Motor Vehicle Title Information System (NMVTIS)  
10 Identification number and provide that number to the department in the application, to allow the  
11 department to verify that the applicant meets federal registration requirements and is qualified to  
12 perform salvage activities; the next subsection is proposed to be relettered accordingly.

13 Proposed new §215.134 would define the application requirements for a drive-a-way operator in-  
14 transit license. Proposed new §215.134(a) would set out the requirement for a license. Proposed new  
15 §215.134(b) would require an applicant to complete an application form prescribed by the department  
16 and submit it through the department’s designated electronic system. Proposed new §215.134(c) would  
17 requires a license holder renewing or amending a license to verify current information and provide related  
18 information and documents for any changes to the license, as well as pay required fees. Proposed new  
19 §215.134(d) would instruct a new applicant how to register in the department-designated licensing  
20 system. Proposed new §215.134(e)(1) would describe the information that must be submitted in the  
21 application for a drive-a-way operator in-transit license. Proposed new §215.134(e)(2) would describe  
22 the documents that must be attached to the application based on statutory requirements and related  
23 consumer fraud or public safety considerations resulting from the license holder’s operation or business

1 model. Proposed new §215.134(e)(3) would describe the fees that must be paid when an applicant  
2 applies for a license. Proposed new §215.134(f) would require a license applicant to comply with  
3 fingerprint requirements to allow the department to confirm an applicant’s identity and perform a more  
4 comprehensive review of the applicant’s criminal record. Proposed new §215.134(g) would protect the  
5 public by requiring an in-transit license holder to not use a business name or assumed name that would  
6 be confusing, deceptive, or misleading to prevent consumer fraud and abuse.

7 Proposed amendments to §215.135(a) and (b) would substitute “municipality” for “city” as  
8 municipality is a defined term in the Local Government Code, Chapter 1, and is proposed to be a defined  
9 term in §215.132. A proposed amendment to §215.135(a) would update a reference to the title of  
10 §215.140. Proposed amendments to §§215.135(b) and (c) would correct punctuation. A proposed  
11 amendment to §215.135(d) would require a GDN holder to notify the department of a new, closed or  
12 relocated business location by filing an amendment electronically in the system designated by the  
13 department for licensing.

14 Proposed amendments to §215.137(a) would substitute “GDN” for “license” and delete  
15 “dealership” for consistency in terminology. Proposed amendments to §215.137(c) would rephrase a  
16 sentence for clarity and consistency without changing the meaning.

17 Proposed amendments to the title of §215.138 and throughout the section would delete “metal”  
18 or “assigned metal dealer’s” to describe a dealer license plate for specificity and consistency. A proposed  
19 amendment to §215.138(a) would delete the requirement to attach a plate to a license plate holder and  
20 would instead refer a license holder to §217.27 for plate placement requirements. Minor edits are  
21 proposed in §215.138(b) for clarity and would not change the meaning. Proposed amendments would  
22 combine the definition of light truck in §215.138(e) and rule language in §215.138(f) into relettered  
23 §215.138(e) for clarity, and the remaining sections would be relettered accordingly. Proposed

1 amendments to relettered §215.138(h) would clarify that a dealer must keep records of all license plates  
2 issued by the department for dealer use, including both standard and personalized prestige plates.  
3 Proposed amendments to relettered §215.138(i) and (j) would clarify the procedures for reporting a  
4 license plate that is lost, stolen, or damaged. Proposed new §215.138(k) would require that a dealer's  
5 license plate record be available for inspection or to submit to the department electronically upon request  
6 to allow the department to inspect dealers for potential misuse of license plates. Proposed new  
7 §215.138(l) would require a dealer to return to the department all plates, stickers, and related receipts  
8 within 10 days, consistent with the requirements of Transportation Code §503.038.

9 Proposed amendments to the title of §215.139 and throughout the section and attached graphics  
10 would delete "metal" and add "standard" to describe a dealer plate more accurately and consistently. In  
11 §215.139(d) and in §215.139(f)(2), proposed minor edits would improve readability without changing  
12 meaning. In the attached graphic to §215.139(f)(1), proposed amendments would correct the number of  
13 plates that a dealer selling 50 to 99 vehicles during the previous 12 months is eligible to request and add  
14 a missing category for a dealer selling 100 to 200 vehicles during the previous 12 months. These proposed  
15 amendments would correct inadvertent errors made when the graphic was last published. The proposed  
16 amendments would delete §215.139(h) as an unnecessary disclaimer because other proposed  
17 amendments to §215.87(d) and §215.138(h) would explicitly address procedures relating to personalized  
18 prestige dealer plates.

19 A proposed amendment to §215.140 would add a subsection letter (a) to distinguish premises  
20 requirements for GDN dealers from premises requirements for wholesale motor vehicle auctions, which  
21 are proposed in new subsection (b). Proposed amendments to §215.140(a)(1)(B) and §215.140(a)(2)  
22 would clarify that the dealer's business hours must be posted in a manner and location that is accessible  
23 to the public to meet the requirements of Transportation Code, §503.032. Proposed amendments to

1 §215.140(a)(5)(F) would clarify that an established and permanent location must be capable of receiving  
2 U.S. mail and must have an assigned emergency services property address to allow the department to  
3 verify the physical location. A proposed amendments to §215.140(a)(5)(F) would delete “metal” to  
4 describe the dealer’s license plate more consistently. A proposed amendment to §215.140(a)(11)(B)(ii)  
5 would clarify that a display area must be reserved exclusively for the dealer’s inventory. Proposed  
6 amendments to §215.140(a)(11)(B)(iv) and (vii) would clarify that a barrier that cannot be readily removed  
7 is one that cannot be easily moved by one person and typically weighs more than 50 pounds. This weight  
8 guideline is consistent with Occupation Health and Safety Administration guidelines for the maximum  
9 weight that one person may safely lift without assistance. Proposed amendments to §215.140(a)(11)(C)  
10 would clarify by replacing “dealer” with “GDN holder” and would add a requirement for a GDN holder to  
11 disclose in an application or license amendment the location of a storage lot, if the lot is not located at  
12 the licensed business address. The department must be able to determine where a storage lot is located,  
13 so the department can inspect the lot to ensure compliance with department rules. The proposed changes  
14 in §215.140(11) are necessary to prevent fraud and consumer abuse and to protect public health and  
15 safety. A proposed amendment to §215.140(a)(12) would delete an exclusion for salvage pool operators  
16 as this exclusion is not consistent with public welfare and to ensure that no member of the public is misled  
17 about the status or condition of a salvage vehicle. If a dealer is selling both motor vehicles and salvage  
18 vehicles, each salvage vehicle should be clearly and conspicuously marked. A proposed amendment to  
19 §215.140(a)(14) would move the requirement to post a dealer’s GDN and bond notice in each location to  
20 the end of the paragraph to improve clarity without changing meaning. Proposed new §215.140(b) would  
21 add premises requirements for wholesale motor vehicle auctions consistent with the requirements of  
22 Transportation Code, §503.032.

1 Proposed amendments to §215.141(a) would reorder language for consistency with §215.141(b)  
2 and add a reference to a cease-and-desist order, which is an action the board is authorized to take under  
3 Occupations Code, §2301.153 and §2301.802. Proposed amendments to §215.141(b)(1) would add a  
4 reference to the relevant statute and a reference to the requirement to post a bond notice and would  
5 delete an archaic reference to a bond amount. Proposed new §215.141(b)(2) would address the fact that  
6 the failure of a license holder to meet or maintain the established and permanent place of business  
7 premises requirements is one of the most common violations requiring a sanction under this subchapter;  
8 the remaining paragraphs would be renumbered accordingly. Proposed amendments to relettered  
9 §215.141(b)(4) would clarify that a license holder under this subchapter may be sanctioned for either  
10 failing to provide electronic records, or for refusing or failing to comply with a department request to  
11 review records at the licensed business location. Proposed new §215.141(b)(4)(D) would add the  
12 Certificate of Occupancy, Certificate of Compliance, business license or permit, or other official  
13 documentation confirming compliance with county and municipal laws or ordinances for a vehicle  
14 business at the licensed physical location as records the department may request to confirm compliance  
15 with Transportation Code requirements. Proposed amendments would reletter the remaining subsections  
16 to accommodate proposed new §215.141(b)(4)(D). A proposed amendment to relettered §215.141(b)(6)  
17 would delete a redundant reference to §215.140 as a reference to that section is proposed in  
18 §215.141(b)(2) and would remove subsection delineations within §215.141(b)(6) because they would be  
19 unnecessary. Proposed amendments to relettered §215.141(b)(8) would clarify that a license holder  
20 under this subchapter may be sanctioned if the license holder fails to submit a license amendment in the  
21 electronic system designated by the department to change an address, including the address of a storage  
22 lot, within 10 days of the change. A proposed amendment to relettered §215.141(b)(9) would clarify that  
23 a license holder under this subchapter may be sanctioned if a person fails to submit a license amendment

1 in the electronic system designated by the department to notify the department of a change in name or  
2 change in management or ownership within 10 days of the change. The proposed amendments to  
3 §§215.141(b)(8) and (9) would incentivize licensees to make timely updates to their information through  
4 the department's electronic system. Proposed amendments to relettered §215.141(b)(12) and (13) would  
5 delete "metal" from the description of license plate consistent with statutory language in Transportation  
6 Code, Chapter 503. A proposed amendment to relettered §215.141(b)(16) would delete an incorrect  
7 reference to non-existent Transportation Code, Chapter 1000. A proposed amendment to relettered  
8 §215.141(b)(17) would clarify by adding a reference to §211.3. A proposed amendment to relettered  
9 §215.141(b)(20) would clarify that providing a false or forged document to the department may result in  
10 a sanction. A proposed amendment to relettered §215.141(b)(22) would clarify that providing a false or  
11 forged identity document, photograph, image, or document to the department is a material  
12 misrepresentation and may result in a sanction. Proposed new §215.141(b)(25) would clarify that a license  
13 holder's failure to comply with the requirements for dealer's issuance of temporary tags under §215.150  
14 may result in a sanction. Proposed amendments to relettered §215.141(b)(28) would delete an archaic  
15 effective date and clarify by adding the title of the statutory provision referenced. Proposed new  
16 §215.141(b)(29) adds failure to issue a refund as ordered by the board or department as an action that  
17 may result in a sanction, to ensure that the board is able to enforce its refund orders. Proposed new  
18 §215.141(b)(30) would add failure to acquire or maintain a certificate, business license, permit, or other  
19 documents confirming compliance with county or municipal laws or ordinances for a vehicle business as  
20 an action that may result in a sanction, as a license holder must comply with county and local laws to have  
21 and maintain an established and permanent place of business. An established and permanent place of  
22 business is a requirement for GDN holders under Transportation Code §503.032 and wholesale motor  
23 vehicle auctions under Transportation Code §503.030.

1 Proposed new §215.143 would set out the requirements for drive-away operator in-transit license  
2 plates. Proposed new §215.143(a) would specify when a drive-a-way operator may apply for an in-transit  
3 standard license plate. Proposed new §215.143(b) would explain when and where the license plate is to  
4 be placed on the vehicle. Proposed new §215.143(c) would contains the record requirements for these  
5 plates. Proposed §215.143(d) and (e) would explain what a drive-a-way operator is required to do if a  
6 license plate is lost, stolen, or damaged. Proposed new §215.143(f) would require that license plate  
7 records be available for inspection or review if requested by the department. Proposed new §215.143(g)  
8 would specify the criteria the department will use to evaluate a request for additional in-transit standard  
9 license plates. Proposed new §215.143(h) would require a drive-a-way operator to return department-  
10 issued license plates to the department within 10 days of the associated license being closed, canceled,  
11 or revoked.

12 A proposed amendment to the title of §215.144 would add “Vehicle” to the title to describe the  
13 scope more accurately as pertaining to vehicle records. Proposed amendments to §215.144(a) would add  
14 a reference to a wholesale motor vehicle auction and delete a redundant phrase. A proposed amendment  
15 to §215.144(b) would add a reference to records that must be kept by an independent mobility motor  
16 vehicle dealer for ease of reference. A proposed amendment to §215.144(c) would delete unnecessary  
17 punctuation. Proposed amendments to §215.144(d) would simplify the language for the requirement that  
18 a dealer must reply within 15 days of receiving a department records request regardless of the method in  
19 which the department makes the request and would correct a reference from division to department for  
20 consistency. Proposed amendments to §215.144(e)(7) would delete an archaic reference to the title of a  
21 tax receipt form and substitute the general phrase “county tax assessor-collector receipt marked paid,”  
22 as the form of the receipt may vary by county. Proposed amendments to §215.144(e)(8) would add clarity  
23 by improving sentence structure, clarifying that records must be kept for both the purchase and the sale



1 of a vehicle, deleting a reference to an archaic form, and adding requirements to keep a copy of the  
2 purchaser's photo identification, the odometer disclosure statement signed by the buyer, and the rebuilt  
3 salvage disclosure, if applicable. These additional record requirements §§215.144(e)(8)(L) - (N) are  
4 necessary to prevent consumer harm and reduce potential for fraud. Proposed amendments to  
5 §215.144(e)(9) would rephrase the existing requirement for readability without changing the meaning.  
6 Proposed amendments to §215.144(f)(2) would add a reference to a statutory exemption and update the  
7 language consistent with current statutory requirements that any willing county tax-assessor-collector  
8 may process a title or registration request. Proposed amendments to §215.144(f)(3) would change the  
9 presumed reasonable time for a dealer to apply for a title and registration from 20 working days to 30  
10 days and add references to title processing to clarify that the same presumed time limit applies to both  
11 titling and registration dealer responsibilities. A proposed amendment to §215.144(g)(1) changes the  
12 presumed reasonable time for a dealer to act for out-of-state sales from 20 working days to 30 days;  
13 "days" is proposed to be defined under §215.2(b)(2) as calendar days. Proposed amendments to  
14 §215.144(h) would update the language consistent with current statutory requirements that any willing  
15 county tax-assessor-collector may process a title or registration request. Proposed amendments to  
16 §215.144(j) would delete the unnecessary phrase "a representative of" to describe the department, would  
17 simplify the language in §215.144(j)(2) regarding the requirement that a wholesale motor vehicle auction  
18 must reply within 15 days of receiving a department records request regardless of the method in which  
19 the department makes the request, and would update a citation to the federal odometer disclosure  
20 requirements in §215.144(j)(3)(F). A proposed amendment to §215.144(k) would delete the unnecessary  
21 phrase "a representative of" in describing the department. Proposed amendments to §215.144(l) would  
22 update the subsection title to refer to the department's electronic titling and registration system for  
23 clarity and delete unnecessary punctuation.

1 A proposed amendment to §215.145(a) would delete a duplicative word. Proposed amendments  
2 to §215.145(b) would clarify that a dealer must submit a license amendment electronically in the  
3 department's designated licensing system. Proposed amendments to §215.145(c) - (f) would remove  
4 redundant language or restate language to improve readability without changing the meaning. Another  
5 proposed amendment to §215.145(f) would modernize the provision by adding a reference to filing a GDN  
6 application electronically in the department's designated licensing system. A proposed amendment to  
7 §215.145(g) would delete unnecessary punctuation and correct the title of a referenced statute.

8 The entirety of §215.146 is proposed for repeal as this rule would be incorporated into new  
9 proposed §215.120, relating to License Plates.

10 Proposed amendments to §215.147(a) would correct a reference to the driver license and delete  
11 an archaic reference to a concealed handgun license. A proposed amendment to §215.147(b) would  
12 substitute "dealer's" for "license holder's" for consistency in terminology and does not change the  
13 meaning. A proposed amendment to §215.147(c) would add "Vehicle" for consistency with a proposed  
14 title change to §215.144, relating to Vehicle Records.

15 Proposed amendments to §215.148 would add references to Transportation Code, Chapter 503,  
16 and proposed new Chapter 224, Adjudicative Practice and Procedure, would update a proposed title  
17 change to §215.144, and would remove redundant and unnecessary words and punctuation.

18 Proposed amendments to §215.149 would change the title to "Sales of New Mobility Motor  
19 Vehicles" to reflect the section scope and add references to "new" mobility motor vehicles for clarity.

20 A proposed amendment to §215.150(a) would add "or lease" to clarify that a dealer may issue a  
21 temporary tag for a vehicle leased to a customer. A proposed amendment to §215.150(b)(1) would update  
22 a reference to proposed new Chapter 224, Adjudicative Practice and Procedure. Proposed amendments  
23 to §215.150(c) would change word order to "buyer's temporary tag" for consistency.

1 A proposed amendment to §215.151(a) would add “governmental agency” to the list of entities  
2 that must display temporary tags on the rear of a vehicle in operation. As a result, §215.151(b) is proposed  
3 for deletion and the remaining subsections are proposed to be relettered accordingly. Proposed  
4 amendments to relettered §215.151(c) would delete duplicate language from a referenced statute and  
5 add a statutory reference for allowed uses of a converter’s temporary tag for completeness and ease of  
6 reference.

7 Proposed amendments to §215.152(a) and (b) would delete an unnecessary phrase as a  
8 governmental agency is defined in §215.2 to include federal, state, and local agencies. Proposed  
9 amendments in §215.152(f) would increase the allotment of temporary tags for a franchised dealer from  
10 600 to 1,000 based on the department’s historical experience. Since maximum tag limits were put in place,  
11 the department has been monitoring temporary tag usage and processing requests for additional  
12 temporary tags. The one dealer category that has consistently required more temporary tags to be  
13 allocated is a new franchised dealer, so increasing the initial amount allocated to this dealer type is  
14 necessary to ensure a new franchise dealer has the requisite number of tags necessary to support daily  
15 operations. Proposed amendments in §215.152(i) would clarify the process and procedure for requesting  
16 additional temporary tags and for appealing a denial of a request, but do not change existing process or  
17 procedure. Another amendment to §215.152(i) would clarify that temporary tag allotments do not carry  
18 over to subsequent years.

19 A proposed amendment to §215.154(a) would add “or lease” to clarify that a dealer may issue a  
20 dealer’s temporary tag for a vehicle the dealer is authorized to lease. A proposed amendment to  
21 §215.154(c) would delete “metal” and add “standard or personalized prestige” to accurately describe  
22 the plate types the dealer may use. A proposed amendment to §215.154(d)(2)(B) would add a reference  
23 to §215.138(d) for clarity and ease of reference. Proposed amendments to §215.154(e) and (g) would

1 delete these two subsections as the language in these subsections duplicates §215.138, which is proposed  
2 to be added for reference in §215.154(d)(2)(B), and the remaining subsections would be relettered  
3 accordingly.

4 Proposed amendments to §215.155(a) would clarify that a buyer's temporary tag may only be  
5 displayed on a vehicle from the selling dealer's inventory, would reorganize and combine the content in  
6 §215.155(a) and (b) in a numbered list for clarity and readability, and would add "or lease" to clarify that  
7 a dealer may issue a dealer's temporary tag for a vehicle the dealer is authorized to lease. Proposed new  
8 §215.155(b) would clarify that in accordance with Texas Transportation Code §503.063, a buyer's  
9 temporary tag must be issued and provided to a buyer of a vehicle that is to be titled but not registered  
10 and would clarify that the temporary tag must not be displayed on the vehicle in these circumstances.  
11 This clarification is necessary to facilitate title-only vehicle sales for vehicles that will not be driven on  
12 Texas roads. A proposed amendment to §215.155(c) would delete "metal" for consistency. Proposed  
13 amendments to §215.155(e) would delete unnecessary punctuation and phrasing without changing the  
14 meaning. Proposed amendments to §215.155(f) and proposed new §215.155(g) would reorganize and  
15 rephrase language in §215.155(f) to improve clarity and readability without changing the meaning.

16 A proposed amendment to §215.160(b) would increase the required font size from 11 pt to 14 pt  
17 in the rebuilt vehicle acknowledgment or vehicle disclosure form to increase legibility. A proposed  
18 amendment in §215.160(c) would require a separate signature on the acknowledgment or disclosure  
19 form. Proposed amendments in §215.160(d) would reorder language to improve clarity and would update  
20 a referenced section title. The proposed amendments increasing the required font size and requiring a  
21 signature are necessary to protect consumers and prevent consumer harm.

Proposed amendments to §215.161 would update the title to add “Provider” as the requirements in this section relate to motor vehicle licensing education course providers. Proposed new §215.161(f) would clarify that the department does not offer an approved licensing education course.

#### Subchapter F. Lessors and Lease Facilitators

This subchapter is proposed to be relettered as Subchapter E as current Subchapter B is proposed for repeal and the following subchapters are proposed to be relettered accordingly.

Proposed amendments to §215.171 would update statutory references including references to relevant Transportation Code chapters.

Proposed amendments to §215.173(a) would edit language and provide a statutory reference for clarity and to improve readability.

The proposed amendments to §215.174 would modernize the provision by implementing the requirements necessary for the department’s electronic licensing system. Proposed amendments to §215.174(a) would add a reference to §215.83 and clarify that applications, including supporting documentation and fees, are to be submitted electronically in the department’s licensing system. Proposed new §215.174(b) would require a license holder renewing or amending a license to verify current information and provide related information and documents for any changes to the license as well as pay required fees, to ensure that licensees provide the department with updated information through the electronic licensing system. Proposed new §215.174(c) would instruct a new applicant how to register in the department-designated licensing system. Proposed new §215.174(d) would describe the information that must be submitted in the application, and the remaining subsections would be relettered accordingly. Proposed amendments to relettered §215.174(e) would specify the supporting documentation that an applicant for a vehicle lessor’s license must provide to allow the department to

1 thoroughly investigate the applicant and its business practices. The proposed amendments to relettered  
2 §215.174(e) would clarify that a document submitted as part of a vehicle lessor’s license application must  
3 be a legible and accurate electronic image, describe the business organization documents required, add  
4 current identity document requirements, and require a vehicle lessor not located in Texas to provide a list  
5 of vehicle lessor licenses in other states, if applicable, and any other information required to evaluate the  
6 application under current law. Proposed amendments to relettered §215.174(f) would specify the  
7 supporting documentation that an applicant for a vehicle lease facilitator’s license must provide to allow  
8 the department to thoroughly investigate the applicant and its business practices. The proposed  
9 amendments to relettered §215.174(f) would clarify that a document submitted as part of a vehicle lease  
10 facilitator’s license application must be a legible and accurate electronic image, describe the business  
11 organization documents required, add current identity document requirements, delete a requirement for  
12 a vehicle lease facilitator to update a vehicle lessor list, and require a vehicle lease facilitator to provide  
13 any other information required to evaluate the application under current law. Proposed new §215.174(g)  
14 would protect the public by prohibiting a vehicle lessor or vehicle lease facilitator from using a business  
15 name or assumed name that would be confusing, deceptive, or misleading to prevent consumer fraud and  
16 abuse. Proposed new §215.174(h) would clarify an existing requirement that during the license term, a  
17 vehicle lessor or vehicle lease facilitator must update the list of authorized vehicle lease facilitators or  
18 vehicle lessors, as applicable, and notify the department within 10 days of a change by electronically  
19 submitting a license amendment in the system designated by the department for licensing.

20 Proposed amendments to §215.175(b)(5) and (6) would clarify that a vehicle lessor or vehicle  
21 lease facilitator must notify the department of a change in address, name, assumed name, or change in  
22 management or ownership by electronically submitting a license amendment in the system designated by  
23 the department for licensing. A proposed amendment to §215.175(b)(7) would update a statutory

reference. A proposed amendment to §215.175(b)(8) would update a subchapter designation to match the proposed relettering. Proposed amendments to §215.175(b)(13) would delete the term “willfully” to make any omission of material information sanctionable conduct and would clarify that a material misrepresentation includes providing a false or forged identity document or a false or forged photograph, electronic image, or document. Proposed amendments to §215.175(c) and (d) would clarify that the vehicle lessor and the vehicle lease facilitator must notify the department by electronically submitting a license amendment in the system designated by the department for licensing.

A proposed amendment to §215.176 would add “business” to the title of the section and a proposed amendment in §215.176(b) would substitute “municipality” for “city” for consistency with the term proposed to be defined in §215.132.

A proposed amendment to the title of §215.177 would add “Premises Requirements” to describe the scope of the section. A proposed amendment to §215.177(a) would remove unnecessary words. A proposed amendment to §215.177(a)(1)(A) would enhance a license holder’s responsiveness to the public by adding a requirement that the business telephone be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine, and that a caller must be able to speak to a natural person or leave a message during these hours. Proposed amendments to §215.177(a)(1)(B) would clarify that “chairs” is interpreted as two chairs and by clarifying that a vehicle lessor or vehicle facilitator’s office must have internet access to ensure a license holder has the minimum level of facilities necessary to provide adequate service the public. Proposed amendments to §215.177(a)(1)(C) would further ensure facilities for the public by requiring that a vehicle lessor or vehicle facilitator’s office have a permanent roof, requiring the office to be in a building open to the public, requiring the physical address to have an assigned emergency services property address, and stating that the office may not be virtual or provided by a subscription for office space or office services. Proposed

1 amendments to §215.177(a)(1)(E) and (F) would make minor editing changes that do not change the  
2 meaning of the subparagraph. Proposed amendments to §215.177(a)(2) would protect the public from  
3 being misled or confused by a licensee’s signage by adding “business” to clarify that the requirements are  
4 for a business sign, requiring that the business name used on the sign be substantially similar to the name  
5 of the licensed entity, and adding criteria to determine whether the sign is conspicuous and permanent.  
6 Proposed amendments to §215.177(a)(3) clarify premises lease requirements and modernize the  
7 language. The proposed amendments in §215.177(a) are consistent with the minimum requirements for  
8 a retail dealer, deter fraud, and protect consumers. A proposed amendment would delete the  
9 requirements in §215.177(b) for out-of-state vehicle lessors who do not deal directly with the public as  
10 these requirements are unnecessary and unenforceable, and the remaining following subsections would  
11 be relettered accordingly.

12 Proposed amendments to §215.178(a)(1) would add “complete” to describe records for  
13 consistency, delete an archaic requirement to keep records for prior periods at a location in the same  
14 county or within 25 miles of the license location, and simplify the language regarding the requirement  
15 that a dealer must reply within 15 days of receiving a request for records from the department regardless  
16 of the method in which the department makes the request. Proposed amendments to §215.178(b) would  
17 make multiple edits throughout the subsection to improve clarity and readability and would revise the  
18 requirement to provide a vehicle lease facilitator’s employees’ home addresses to a more relevant  
19 requirement to provide a work address. Proposed new §215.178(c) would be added to describe the  
20 vehicle lessor’s record requirements if a leased vehicle is later sold, and the following subsections are  
21 relettered accordingly. Proposed amendments to relettered §215.178(d) would consist of minor edits  
22 throughout to improve clarity and readability and would not change the meaning. Proposed amendments  
23 to relettered §215.178(f) would delete redundant language and clarify that a letter of representation or



1 appointment between a vehicle lessor and a vehicle lease facilitator must be executed and maintained by  
2 each party. Proposed amendments to relettered §215.178(g) would modernize the rule by adding the  
3 option for a vehicle lessor or a vehicle lease facilitator to send records to the department electronically  
4 and would make minor edits to improve readability.

5 Proposed amendments throughout §215.179 would modernize the rule by specifying that a  
6 vehicle lessor or vehicle facilitator must submit a notice of a change to a license electronically in the  
7 system designated by the department for licensing, would remove redundant or unnecessary language,  
8 and would update the title of a referenced section of this chapter.

9 A proposed amendment to §215.180 would substitute a subchapter designation for a list of  
10 sections so a future statutory change will not require a rule change.

#### 12 Subchapter G. Warranty Performance Obligations

13 All sections of Subchapter G. Warranty Performance Obligations are proposed for repeal because  
14 the substance of each rule and any proposed amendments are incorporated into proposed new Chapter  
15 224, Adjudicative Practice and Procedure. The proposed repeal includes §§ 215.201–215.210.

#### 17 Subchapter H. Advertising

18 This subchapter is proposed to be relettered as Subchapter F as current Subchapters B and G are  
19 proposed for repeal and the remaining subchapters are proposed to be relettered accordingly.

20 A proposed amendment to §215.242 would substitute “deemed” for “considered” for  
21 consistency.

1 Proposed amendments to §215.244(11) would delete an unnecessary definition for a license  
2 holder and renumber the remaining definitions. A proposed amendment to renumbered §215.244(17)  
3 would clarify and specify that the communication referred to in the rule is a notice of opportunity to cure.

4 A proposed amendment to the title of §215.249 would substitutes “or” for “/” for clarity. A  
5 proposed amendment to §215.249(c) would delete “the State of” for consistency.

6 Proposed amendments to §215.250(a) would delete “new or used” as unnecessary and add a  
7 requirement for a dealer to disclose a market adjustment if one is added to the sales price so that the  
8 public is aware of the pricing. Proposed amendments to §215.250(b) would rephrase for clarity that fees  
9 and charges expressly allowed by law do not have to be included in a featured sales price.

10 A proposed amendment to §215.257 would clarify that the term “authorized dealer” or similar  
11 term may not be used unless a dealer holds both a franchised dealer license and a franchised dealer GDN.

12 Proposed amendments to the title and text of §215.261 would substitute “or” for “/” for clarity  
13 and style consistency.

14 A proposed amendment to §215.264(c) would substitute “other disclosure or deal term” for the  
15 lengthy list of disclosures and deal terms in this section for clarity and brevity. Proposed amendments to  
16 §215.264(f) and (h) would delete references to specific paragraphs within a referenced subsection as the  
17 paragraph references are unnecessary.

18 Proposed amendments to §215.268 would delete language and substitute terms for consistency  
19 and would not change the meaning of the rule.

20 Proposed amendments to §215.270(b) would identify the referenced notice as an opportunity to  
21 cure for clarity and update a reference to the proposed new Notice of Department Decision section in  
22 proposed new Chapter 224.

Subchapter I. Practice and Procedure for Hearings Conducted by The State Office of Administrative Hearings

All sections of Subchapter I, Practice and Procedure for Hearings Conducted by The State Office of Administrative Hearings, are proposed for repeal because the substance of each rule and any proposed amendments are incorporated into proposed new Chapter 224 Adjudicative Practice and Procedure. The proposed repeal includes §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311, 215.314 - 215.317.

Subchapter J. Administrative Sanctions

This subchapter is proposed to be relettered as Subchapter G, because current Subchapters B, G, and I are proposed for repeal and the remaining subchapter is being proposed to be relettered accordingly.

A proposed amendment to the title of §215.500 would delete “and Procedures” as the procedures from this section are proposed for repeal and are proposed to be included in new Chapter 224, Adjudicative Practice and Procedure. Proposed amendments to §215.500(a) would delete the (a) designation and correct a reference to a referenced rule section. The remaining subsections are proposed for repeal and are proposed to be included in proposed new Chapter 224: §§215.501, 215.502, and §215.505.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the proposal will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Monique Johnston, Director of the Motor Vehicle Division (MVD), has determined that there will be no significant impact on local employment or the local economy as a result of the proposal.

1 **PUBLIC BENEFIT AND COST NOTE.** Ms. Johnston also determined that, for each year of the first five years  
2 the proposal is in effect, several significant public benefits are anticipated, and certain applicants and  
3 license holders may incur costs to comply with the proposal. The department prioritized the public  
4 benefits associated with reducing fraud and related crime and improving public health and safety, while  
5 carefully considering potential costs to GDN dealers consistent with board and department  
6 responsibilities.

7 Proposed amendments to §§215.102, 215.133, 215.134, and 215.174 may require applicants and  
8 license holders to provide more information in the application. While some applicants may be required to  
9 spend more time completing an application or providing additional information Ms. Johnston has  
10 determined these costs will be offset by the reduced risk of applicants and holders incurring financial  
11 penalties due to noncompliance with applicable federal, state, or local statutes or property owner  
12 requirements which will benefit both license holders and the public. Importantly, this information allows  
13 the department to investigate an applicant more thoroughly and is consistent with the department's  
14 obligations to detect and deter fraud in the application process to prevent consumer harm.

15 In proposed amendments to §§215.102, 215.133, 215.134, and 215.174, an applicant or license  
16 holder may not use a name or assumed name that may be confused with or is similar to that of a  
17 governmental entity or that is otherwise deceptive or misleading to the public. Ms. Johnston estimates  
18 that a small number of current license holders may have to change a confusing, deceptive, or misleading  
19 business name or assumed name and may incur related secretary of state or county filing fees or signage  
20 cost. The Secretary of State filing fee to amend a business name is \$150. Department research suggests  
21 the cost for an exterior sign will vary between \$30 to \$167, with an average expected cost of about \$80.  
22 The department recognizes that these costs may vary widely based on business owner style and design  
23 preferences. The department's civil penalty guidelines for license holders who violate statutory provisions

1 range \$500 to \$10,000 per violation. Ms. Johnston has determined that the signage cost will be offset by  
2 the reduced risk of these license holders incurring financial penalties due to noncompliance with laws and  
3 regulations and will benefit the public by informing the public and preventing consumer harm.

4 Proposed amendments to §§215.120, 215.138, and 215.143 require license holders that purchase  
5 industry license plates to return plates, stickers, and receipts when the associated license is closed. In  
6 Fiscal Year 2019, license holders started returning industry plates when a license was closed. Since then,  
7 more than 10,150 industry plates have been returned to the department, significantly reducing the  
8 potential for fraudulent plate use. Department research suggest that the average cost to mail a plate is  
9 \$9.65. Ms. Johnston has determined that the cost for a license holder to mail or return a plate to the  
10 department after the associated license is closed is reasonable and necessary to reduce potential fraud.

11 Proposed amendments to §215.133 and §215.134 add fingerprint requirements for wholesale  
12 motor vehicle auction GDN and drive-a-way operator in-transit license applicants and holders. Fingerprint  
13 requirements allow the department to verify the identity of license applicants, preventing fraudulent  
14 applications under false or stolen identities, while giving the department access to more accurate and  
15 comprehensive criminal history record information to use in evaluating fitness for licensure under its  
16 criminal offense guidelines in §211.3. These new fingerprint requirements benefit the public by preventing  
17 bad actors with a history of criminal offenses that directly relate to the duties and responsibilities of a  
18 license holder from obtaining licenses from the department and using those licenses to perpetrate  
19 fraudulent and criminal actions, or otherwise taking advantage of the position of trust created by the  
20 license. Ms. Johnston anticipates that there will be no additional costs on regulated persons to comply  
21 with the fingerprint requirements under this proposal as the new section does not establish fees for  
22 fingerprinting or processing criminal background checks. Fees for fingerprinting and access to criminal  
23 history reports are established by DPS under the authority of Texas Government Code Chapter 411.

1 Proposed amendments to §215.144 require a dealer to keep copies of the purchaser's photo  
2 identification, the odometer disclosure statement signed by the buyer, and the rebuilt salvage disclosure,  
3 if applicable in the vehicle sales file. Ms. Johnston anticipates that while most bona fide dealers already  
4 comply with these requirements, a few dealers may have to add two to three additional pages to the sales  
5 file. Department research suggests that the cost of a copy ranges from \$0.14 to \$0.22 per page. She has  
6 determined that these costs are necessary to prevent fraud and protect consumers.

7 Proposed amendments to §215.160 require a dealer offering a rebuilt vehicle for sale to use a  
8 minimum 14-point font size in the disclosure statement and for the disclosure statement to have a  
9 separate buyer signature. Ms. Johnston anticipates that many bona fide dealers already comply with these  
10 requirements, however, some dealers may have to adjust existing forms. These formatting changes may  
11 be performed easily at little or no cost using available free word processing software or at a print shop.  
12 Department research suggests that the cost of reformatting this disclosure ranges from \$10 to \$48. Ms.  
13 Johnston has determined that these costs are necessary to prevent fraud and protect consumers.

14 Proposed changes to §215.177 require a vehicle lessor or vehicle lease facilitator to ensure that  
15 the business telephone is answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee,  
16 owner, answering service, voicemail service, or answering machine, and requires that the office have  
17 internet access. Ms. Johnston anticipates that while most bona fide vehicle lessors or vehicle lease  
18 facilitators already comply with these requirements, a few vehicle lessors or vehicle lease facilitators may  
19 have to purchase a mobile phone with a data plan to comply. Department research suggests that this cost  
20 ranges from \$15 to \$90 per month. Ms. Johnston has determined that these requirements are reasonable  
21 minimum standards as the department and the public must be able to communicate with a license holder,  
22 and these requirements are necessary to prevent fraud and consumer harm.

1 Proposed amendments to §215.140 require GDN applicants and holders to disclose the physical  
2 address of a storage lot if the address is different than the physical address of the licensed location.  
3 Applicants for a new GDN will not incur an additional fee. Current dealer GDN holders will incur a \$25  
4 statutorily required license amendment fee to add or change the physical address of a storage lot. Ms.  
5 Johnston has determined that the public benefit derived from the department's more thorough fitness  
6 for licensure investigation, reduction in fraud, and enforcement of department statutes and rules  
7 substantially outweighs this cost and are necessary.

8 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government  
9 Code §2006.002, the department has determined that this proposal may have an adverse economic effect  
10 or disproportionate economic impact on small or micro businesses. The department has determined that  
11 the proposed amendments will not have an adverse economic effect on rural communities because rural  
12 communities are exempt from the requirement to hold a GDN under Transportation Code §503.024.

13 The cost analysis in the Public Benefit and Cost Note section of this proposal determined that  
14 proposed amendments may result in additional costs for certain license holders. Based on data from the  
15 Comptroller and the Texas Workforce Commission, the department estimates that most license holders  
16 are small or micro-businesses. The department has tried to minimize costs to license holders. The new  
17 proposed requirements are designed to be the minimum standards that will prevent fraud in the  
18 application process, prevent consumer abuse, and protect public health and safety. These requirements  
19 do not include requirements that will cause a license holder to incur unnecessary or burdensome costs,  
20 such as employing additional persons.

21 Under Government Code §2006.002, the department must perform a regulatory flexibility  
22 analysis. The department considered the alternatives of not adopting amendments, exempting small and  
23 micro-business license holders from these amendments, and adopting a limited version of these

1 amendments for small and micro-business applicants and license holders. The department rejects all three  
2 options. The department reviewed licensing records, including records for license holders who have been  
3 denied access to the temporary tag system, and determined that small and micro-business license holders  
4 are largely the bad actors perpetrating fraud in the application process. The department, after considering  
5 the purpose of the authorizing statutes, does not believe it is feasible to waive or limit the requirements  
6 of the proposed amendments for small or micro-business GDN dealers. Also, Government Code  
7 §2006.002(c-1) does not require the department to consider alternatives that might minimize possible  
8 adverse impacts on small businesses and micro-businesses if the alternatives would not be protective of  
9 the health and safety of the state.

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

14 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the  
15 first five years the proposed repeal and amendments are in effect the amendments will not create or  
16 eliminate a government program; will not require the creation of new employee positions and will not  
17 require the elimination of existing employee positions; will not require an increase or decrease in future  
18 legislative appropriations to the department; will require an increase in fees paid to the department by  
19 certain license holders who are required to file a license amendment to add an address; will expand  
20 existing regulations, delete some existing regulations, and make other existing regulations more flexible  
21 as described in the explanation section of this proposal; will repeal existing regulations to improve overall  
22 organization of department rules in conjunction with the proposal of new Chapter 224 published in this  
23 issue of the *Texas Register*; will not increase or decrease the number of individuals subject to the rule's



1 applicability; and will positively affect the Texas economy by deterring fraud and preventing consumer  
2 harm.

3 **REQUEST FOR PUBLIC COMMENT.**

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

10 **STATUTORY AUTHORITY.** The department proposes amendments to Chapter 215 under Occupations  
11 Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease of motor  
12 vehicles and the authority to take any action that is necessary or convenient to exercise that authority;  
13 Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license  
14 holders, ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute  
15 and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in  
16 connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations  
17 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which  
18 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter  
19 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives  
20 the board authority to deny an application for a license, revoke or suspend a license, place on probation,  
21 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,  
22 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds  
23 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government

Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

**CROSS REFERENCE TO STATUTE.** These proposed revisions would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 503 and 1002.

SUBCHAPTER A. GENERAL PROVISIONS

**43 TAC §215.1 and §215.2**

1   **STATUTORY AUTHORITY.** The department proposes amendments to Chapter 215 under Occupations  
2   Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor  
3   vehicles and the authority to take any action that is necessary or convenient to exercise that authority;  
4   Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license  
5   holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by  
6   statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses  
7   in connection with the distribution and sale of motor vehicles, and to enforce and administer  
8   Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155,  
9   which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code,  
10   Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651,  
11   which gives the board authority to deny an application for a license, revoke or suspend a license, place  
12   on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material  
13   misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor  
14   vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a  
15   motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history  
16   record information maintained by DPS; Government Code, §411.12511, which authorizes the  
17   department to obtain criminal history record information from DPS and the FBI for license applicants,  
18   license holders, and representatives whose act or omission would be cause for denying, revoking, or  
19   suspending a general distinguishing number or license issued under Transportation Code, Chapter 503,  
20   or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the  
21   board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code,  
22   §503.002, which authorizes the board to adopt rules for the administration of Transportation Code,  
23   Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain

1 contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring  
2 that an applicant for an original or renewal general distinguishing number who proposes to be an  
3 independent motor vehicle dealer complete web-based education and training developed or approved  
4 by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe  
5 the form of the notice of a surety bond and the procedure by which a claimant may recover against the  
6 surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the  
7 issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which  
8 require the board to adopt rules necessary to implement and manage the department's temporary tag  
9 databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are  
10 necessary and appropriate to implement the powers and the duties of the department, as well as the  
11 statutes referenced throughout this preamble.

12 The department also proposes amendments under the authority of Transportation Code,  
13 §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition  
14 to the statutory authority referenced throughout this preamble.

15 Transportation Code, §501.0041 authorizes the department to adopt rules to administer  
16 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt  
17 rules to administer Transportation Code, Chapter 502.

18 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the  
19 nature and requirements of all available formal and informal procedures. Government Code, §2001.039  
20 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing  
21 the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal,  
22 revocation, suspension, annulment, or withdrawal of a license.

**CROSS REFERENCE TO STATUTE.** These proposed revisions would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503, 1001–1003, and 1005.

Text.

215.1. Purpose and Scope.

Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1001~~[1000]~~–1005 require the Texas Department of Motor Vehicles to license and regulate the [motor-]vehicle industry ~~[dealers, manufacturers, distributors, converters, representatives, vehicle lessors and vehicle lease facilitators, in order]~~ to ensure a sound system of distributing and selling ~~[motor-]~~vehicles; provide for compliance with manufacturers' warranties; and to prevent fraud, unfair practices, discrimination, impositions, and other abuses of the people of this state in connection with the distribution and sale of ~~[motor-]~~vehicles. This chapter describes licensing requirements and the rules governing. ~~[prescribes the policies and procedures for the regulation of the motor vehicle industry.]~~

215.2. Definitions; Conformity with Statutory Requirements.

(a) The definitions contained in Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1001~~[1000]~~–1005 govern this chapter. In the event of a conflict, the definition or procedure referenced in Occupations Code, Chapter 2301 controls.

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

~~[(1)ALJ--An Administrative Law Judge of the State Office of Administrative Hearings.]~~

(1) ~~[(2)-]~~Board--The Board of the Texas Department of Motor Vehicles, including department staff ~~[any personnel]~~ to whom the board delegates a ~~[any]~~ duty~~[-assigned]~~.

1                    (2) Day--The word "day" refers to a calendar day.

2                    (3) Director—The director of the division~~[department]~~ that regulates the distribution  
3 and sale of motor vehicles, including any department staff ~~[personnel]~~ to whom the director delegates a  
4 ~~[any]~~ duty assigned under this chapter.

5                    ~~[(4) Executive director—The executive director of the Texas Department of Motor~~  
6 ~~Vehicles.]~~

7                    ~~[(5) Final order authority—The person(s) with authority under Occupations Code,~~  
8 ~~Chapter 2301; Transportation Code, Chapters 503 and 1000 – 1005; or board rules to issue a final order.]~~

9                    (4) [(6)] GDN--General distinguishing number, a license issued under Transportation  
10 Code, Chapter 503.

11                    (5) [(7)] Governmental agency—A state agency other than the department, [All other  
12 ~~state and]~~all local governmental agencies, and all agencies of the United States government, whether  
13 executive, legislative, or judicial.

14                    (6) Standard license plate--A motor vehicle license plate issued by the department to a  
15 license holder for use by the license holder that is not a personalized prestige dealer's license plate  
16 issued under Transportation Code §503.0615.

17                    ~~[(8) [Hearing officer—An ALJ, a hearings examiner, or any other person designated,~~  
18 ~~employed, or appointed by the department to hold hearings, administer oaths, receive pleadings and~~  
19 ~~evidence, issue subpoenas to compel the attendance of witnesses, compel the production of papers and~~  
20 ~~documents, issue interlocutory orders and temporary injunctions, make findings of fact and conclusions~~  
21 ~~of law, issue proposals for decision, and recommend or issue final orders.]~~

~~[(9) Motion for rehearing authority--The person(s) with authority under Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000--1005; or board rules to decide a motion for rehearing.]~~

~~[(10) SOAH--The State Office of Administrative Hearings.]~~

SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

**43 TAC §§215.21–215.63**

**STATUTORY AUTHORITY.** The department proposes repeals to Chapter 215 under 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 gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal

1 history record information from DPS and the FBI for license applicants, license holders, and  
2 representatives whose act or omission would be cause for denying, revoking, or suspending a general  
3 distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,  
4 Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as  
5 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which  
6 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;  
7 Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases;  
8 Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of  
9 dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the  
10 board to adopt rules necessary to implement and manage the department's temporary tag databases;  
11 and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and  
12 appropriate to implement the powers and the duties of the department, as well as the statutes referenced  
13 throughout this preamble.

14 The department also proposes repeals under the authority of Transportation Code, §501.0041  
15 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the  
16 statutory authority referenced throughout this preamble.

17 Transportation Code, §501.0041 authorizes the department to adopt rules to administer  
18 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt  
19 rules to administer Transportation Code, Chapter 502.

20 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature  
21 and requirements of all available formal and informal procedures. Government Code, §2001.039 requires  
22 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.



1 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,  
2 suspension, annulment, or withdrawal of a license.

3 **CROSS REFERENCE TO STATUTE.** These repeals would implement Government Code, Chapters 411 and  
4 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503, 1001–  
5 1003, and 1005.

6 §215.21. Purpose and Scope.

7 §215.22. Prohibited Communications.

8 §215.23. Appearances.

9 §215.24. Petitions.

10 §215.27. Complaints.

11 §215.29. Computing Time.

12 §215.30. Filing of Documents.

13 §215.32. Extension of Time.

14 §215.34. Notice of Hearing in Contested Cases.

15 §215.35. Reply.

16 §215.36. Hearings To Be Public.

17 §215.37. Recording and Transcriptions of Hearing Cost.

18 §215.38. Consolidation of Proceedings.

19 §215.39. Waiver of Hearing.

20 §215.40. Continuance of Hearing.

21 §215.41. Presiding Officials.

22 §215.42. Conduct of Hearing.

23 §215.43. Conduct and Decorum.

- 1 §215.44. Evidence.
- 2 §215.45. Stipulation of Evidence.
- 3 §215.46. Objections and Exceptions.
- 4 §215.47. Motions.
- 5 §215.48. Briefs.
- 6 §215.49. Service of Pleading, Petitions, Briefs, and Other Documents.
- 7 §215.55. Final Decision.
- 8 §215.56. Submission of Amicus Briefs.
- 9 §215.58. Delegation of Final Order Authority.
- 10 §215.59. Request for Oral Presentation.
- 11 §215.60. Written Materials and Evidence.
- 12 §215.61. Limiting Oral Presentation and Discussion to Evidence in the Administrative Record.
- 13 §215.62. Order of Presentations to the Board for Review of a Contested Case.
- 14 §215.63. Board Conduct and Discussion When Reviewing a Contested Case.
- 15 Text.

16 ~~[SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE]~~

17 ~~[215.21. Purpose and Scope.]~~

18 ~~[(a) The purpose of this subchapter is to ensure adjudication of the rights of parties in~~  
19 ~~matters within the jurisdiction of Occupations Code, Chapter 2301 and Transportation Code,~~  
20 ~~Chapters 503 and 1000—1005; and to ensure effective administration of Occupations Code,~~  
21 ~~Chapter 2301 and Transportation Code, Chapters 503 and 1000—1005 by the department, in~~  
22 ~~accordance with Government Code, Chapter 2001 and Occupations Code, §2301.001 and~~  
23 ~~§2301.152.]~~

~~[(b) Practice and procedure in contested cases heard by SOAH are addressed in:~~

~~(1) 1 TAC Chapter 155;~~

~~(2) Subchapter I of this chapter (relating to Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings); and~~

~~(3) this subchapter, where not in conflict with SOAH rules.]~~

~~[(c) This subchapter applies to contested cases filed under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503; and to complaints filed on or after January 1, 2014, under Occupations Code, §2301.204 or §§2301.601–2301.613, to the extent they do not conflict with state law, rule, or court order.]~~

~~[215.22. Prohibited Communications.]~~

~~[(a) No person, party, attorney of record, or authorized representative in any contested case shall engage in, directly or indirectly, any ex parte communication, in violation of Government Code, §2001.061, concerning the contested case with the board or hearing officer assigned to render a decision or make findings of fact and conclusions of law in a contested case.]~~

~~[(b) Except as prohibited by Government Code §2001.061, department staff may advise the board, the hearing officer, and a person delegated power from the board under Occupations Code §2301.154 regarding the contested case and any procedural matters. However, the department staff shall not recommend a final decision to the board unless the department is a party to the contested case.]~~

~~[(c) Violations of this section shall be promptly reported to the hearing officer, as applicable, and the general counsel of the department. The general counsel shall ensure that a copy or summary of the~~

~~ex parte communication is included with the record of the contested case and that a copy is forwarded to all parties or their authorized representatives. The general counsel may take any other appropriate action otherwise provided by law.]~~

~~[215.23. Appearances.]~~

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

~~[(b) Intervention. Any public official or other person having an interest in a contested case may, upon request to the hearing officer, be permitted to intervene. Any person desiring to intervene in a contested case may be required to disclose that person's interest in the contested case before permission to appear will be granted.]~~

~~[215.24. Petitions.]~~

~~[(a) Petitions shall be in writing and shall:~~

~~(1) state the petitioner's interest in the subject matter, the facts relied upon, and the relief sought; and~~

~~(2) cite the specific code provision(s) or other appropriate law.]~~

~~[(b) The original of each petition, pleading, motion, brief, or other document permitted or required to be filed with the department in a contested case shall be signed by the party or the party's authorized representative.]~~

~~[(c) All pleadings filed in a contested case shall be printed or typed on 8-1/2 inch by 11 inch paper in no smaller than 11 point type with margins of at least one inch at the top, bottom, and each side. Each page shall be numbered at the bottom. All text, except block quotations and footnotes, shall be double spaced.]~~

~~[215.27. Complaints.]~~

~~[(a) Complaints alleging violations of Occupations Code, Chapter 2301 or Transportation Code, Chapters 503 and 1000 – 1005 shall be in writing, addressed to the department, and signed by the complainant. Complaint forms will be supplied by the department for the purpose of filing complaints.]~~

~~[(b) A complaint shall contain the name and address of the complainant, the name and address of the party against whom the complaint is made, and a brief statement of the facts forming the basis of the complaint.]~~

~~[(c) If requested by the department, complaints shall be under oath. Before initiating an investigation or other proceeding to determine the merits of the complaint, the department may require from the complainant additional information necessary to evaluate the merits of the complaint.]~~

~~[215.29. Computing Time.] [Any period of time prescribed or allowed by this chapter, by order of the board, or by any applicable statute shall be computed in accordance with Government Code, §311.014.]~~

~~[215.30. Filing of Documents.]~~

~~[(a) Each document required or permitted to be filed with the department under this chapter shall be delivered:~~

~~(1) in person;~~

~~(2) by first-class mail to the address of the department; or~~

~~(3) by electronic document transfer to a destination designated by the department.]~~

~~[(b) Delivery by electronic document transfer is considered timely if the document is received by 5:00 p.m. Central Standard Time (CST). Delivery by electronic document transfer after 5:00 p.m. CST shall be deemed received on the following day.]~~

~~[(c) A certificate by the party or party's authorized representative showing timely delivery of a document in a manner described in this section shall be prima facie evidence of timely delivery. Nothing herein shall preclude the department or any party from offering proof that the document was not timely delivered.]~~

~~[(d) To be timely filed, a document must be received by the department within the time specified by statute, rule, or department order. A document received after the specified time, notwithstanding the date of mailing or other means of delivery, shall be deemed untimely.]~~

~~[215.32. Extension of Time.]~~

~~[(a) Except as provided by subsection (b) of this section, when an act is required or allowed to be done at or within a specified time in accordance with this chapter, the board or the hearing officer, with good cause shown, may:~~

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

3                   ~~(2) permit the act to be done after the expiration of the specified period, provided good~~  
4   ~~cause is shown for the failure to act.]~~

5                   ~~[(b) Notwithstanding subsection (a) of this section, the board or hearing officer may not extend~~  
6   ~~the time for filing a document when a statute or rule specifies the time period by which a document~~  
7   ~~must be received by the department.]~~

8  
9   ~~[215.34. Notice of Hearing in Contested Cases.]~~

10                  ~~[(a) In a contested case, each party is entitled to a hearing, in accordance with Government~~  
11   ~~Code, §2001.051.]~~

12                  ~~[(b) A notice of hearing in a contested case shall comply with the requirements of Government~~  
13   ~~Code, §2001.052(a) and shall be served upon the parties in person or by certified mail, return receipt~~  
14   ~~requested to the last known address of the parties or their authorized representatives, in accordance~~  
15   ~~with Occupations Code, §2301.705.]~~

16                  ~~[(c) The last known address of a license applicant, license holder, or other person is the last~~  
17   ~~mailing address provided to the department when the license applicant applies for its license, when a~~  
18   ~~license holder renews its license, or when the license holder notifies the department of a change in the~~  
19   ~~license holder's mailing address.]~~

20                  ~~[(d) A notice of hearing in a contested case may be amended in accordance with Government~~  
21   ~~Code, §2001.052(b).]~~

~~[215.35. Reply.]~~

~~[(a) Within 20 days after service of a notice of hearing in a contested case or within 10 days after service of an amended notice of hearing, a party may file a reply.]~~

~~[(b) A reply shall include the docket number of the contested case and shall be filed by the party or party's authorized representative. The original reply shall be filed with the department and a copy shall be served on any other parties to the contested case.]~~

~~[(c) A party may file an amended reply prior to the contested case hearing. In any contested case when the notice of hearing has been amended at the contested case hearing, a party, at the discretion of the hearing officer, shall have an opportunity to file an amended reply.]~~

~~[(d) Upon the motion of a party, with good cause shown, the department may extend the time to file a reply.]~~

~~[(e) All allegations shall be deemed admitted by any party not appearing at the contested case hearing on the merits.]~~

~~[215.36. Hearings To Be Public.][Hearings in contested cases shall be open to the public.]~~

~~[215.37. Recording and Transcriptions of Hearing Cost.]~~



1           ~~[(a) Except as provided by Subchapter G of this chapter (relating to Warranty Performance~~  
2           ~~Obligations), hearings in contested cases will be transcribed by a court reporter or recorded by the~~  
3           ~~hearing officer.]~~

4           ~~[(b) In a contested case in which the hearing is transcribed by a court reporter, the costs of~~  
5           ~~transcribing the hearing and for the preparation of an original transcript of the record for the~~  
6           ~~department shall be assessed to the requesting party in the contested case, unless otherwise directed.]~~

7           ~~[(c) Copies of recordings or transcriptions of a contested case hearing will be provided to any~~  
8           ~~party upon written request and upon payment for the cost of the recordings or transcriptions.]~~

9           ~~[(d) In the event a final decision in a contested case is appealed and the department is required~~  
10          ~~to transmit to the court the original or a certified copy of the record, or any part thereof, the appealing~~  
11          ~~party shall, unless waived by the department, pay the costs of preparation of the record that is required~~  
12          ~~to be transmitted to the court.]~~

13  
14          ~~[215.38. Consolidation of Proceedings.][No contested case proceedings including two or more~~  
15          ~~complaints or petitions shall be jointly heard without the consent of all parties, unless the hearing officer~~  
16          ~~finds that justice and efficiency are better served by the consolidation.]~~

17  
18          ~~[215.39. Waiver of Hearing.][After the issuance of a notice of hearing in a contested case, and in~~  
19          ~~accordance with the deadlines prescribed by §215.35 of this title (relating to Reply), a party may waive a~~  
20          ~~hearing and consent to the entry of an agreed order. Agreed orders proposed by the parties remain~~  
21          ~~subject to the approval of the final order authority.]~~

~~[215.40. Continuance of Hearing.]~~

~~[After a contested case has been called on the date assigned for hearing pursuant to notice, a continuance of the contested case hearing will be granted only upon a showing of good cause. A motion for continuance of a contested case hearing shall be filed and served on all parties at least five days before the hearing date, except when good cause is shown to consider a motion for continuance filed after the deadline.]~~

~~[215.41. Presiding Officials.]~~

~~[(a) Hearing officer. The term "hearing officer" as used in this section includes the board when presiding over a hearing.]~~

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

~~(1) administer oaths;~~

~~(2) examine witnesses;~~

~~(3) rule upon the admissibility of evidence;~~

~~(4) rule upon motions; and~~

~~(5) regulate the course of the contested case hearing and the conduct of the parties and their authorized representatives.]~~

1           ~~[(c) Recusal.~~

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

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

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

11           ~~[(d) Substitution of hearing officer. If the hearing officer is disqualified, dies, becomes disabled,~~  
12 ~~or withdraws during any contested case proceeding, the chief hearing officer may appoint another~~  
13 ~~hearing officer to preside over the remainder of the contested case proceeding.]~~

14  
15           ~~[215.42. Conduct of Hearing.][Each party in a contested case shall have the right to notice, cross~~  
16 ~~examination, presentation of evidence, objection, motion, argument, and all other rights essential to a~~  
17 ~~fair contested case hearing. Except as provided by this chapter or in the notice of hearing, the Texas~~  
18 ~~Rules of Civil Procedure, as applied to non-jury civil cases, shall be applicable to hearings in contested~~  
19 ~~cases, as far as reasonably practical.]~~

20  
21           ~~[215.43. Conduct of Decorum.]~~

12/14/23

Exhibit A

1           ~~[(a) All parties, witnesses, counsel, and authorized representatives shall conduct themselves in~~  
2           ~~all contested case hearings with proper dignity, courtesy, and respect for the board, the hearing officer,~~  
3           ~~and other parties.]~~

4           ~~[(b) Upon violation of this section, any party, witness, attorney, or authorized representative may~~  
5           ~~be:~~

6                     ~~(1) excluded from the contested case hearing for such period and upon such conditions~~  
7           ~~as are just; or~~

8                     ~~(2) subject to other just, reasonable, and lawful disciplinary action as the board, hearing~~  
9           ~~officer, or department may order.]~~

10  
11           ~~[215.44. Evidence.]~~

12           ~~[(a) General. The Texas Rules of Evidence shall apply in all contested cases, in accordance with~~  
13           ~~Government Code, Chapter 2001.]~~

14           ~~[(b) Documents in department files. The hearing officer may take judicial notice of documents or~~  
15           ~~information in the department's files, in accordance with Government Code, Chapter 2001.]~~

16           ~~[(c) Exhibits. Exhibits shall be limited to facts with respect to the relevant and material issues~~  
17           ~~involved in a particular contested case. Documentary exhibits shall not unduly encumber the record.~~  
18           ~~Where practical, the sheets of each exhibit shall not be more than 8-1/2 inches by 11 inches in size, and~~  
19           ~~shall be numbered and labeled. The original and one copy of each exhibit offered shall be tendered to~~  
20           ~~the reporter or hearing officer for identification, and a copy shall be furnished to each party. In the event~~  
21           ~~an offered exhibit has been excluded after objection and the party offering the exhibit withdraws the~~

~~offer, the hearing officer shall return the exhibit. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification and be included in the record only for the purpose of preserving the exception together with the hearing officer's ruling.]~~

~~[215.45. Stipulation of Evidence.][Evidence may be stipulated by agreement of all parties.]~~

~~[215.46. Objections and Exceptions.][Formal exceptions to the ruling of the hearing officer is not necessary.]~~

~~[215.47. Motions.]~~

~~[(a) Each motion in a contested case, unless made during a contested case hearing, shall be in writing and shall state:~~

~~(1) the relief sought; and~~

~~(2) the specific reasons and grounds.]~~

~~[(b) If the motion is based upon matters which do not appear of record, the motion must be supported by affidavit.]~~

~~[(c) Any motion not made during a contested case hearing shall be filed with the hearing officer and a copy shall be served on all parties or their authorized representatives.]~~

~~[215.48. Briefs.][The hearing officer may direct that the parties file briefs in any pending contested case.]~~

~~[215.49. Service of Pleadings, Petitions, Briefs, and other Documents.]~~

~~[(a) A copy of each document filed in any contested case shall be served upon all parties or their authorized representatives and upon the department by sending a copy properly addressed to each party by:~~

~~(1) first-class mail;~~

~~(2) hand delivery;~~

~~(3) facsimile; or~~

~~(4) email.]~~

~~[(b) A copy of each document may be served upon the department by electronic document transfer at a destination designated by the department.]~~

~~[(c) A certificate of service shall accompany each document.]~~

~~[215.55. Final Decision.]~~

~~[(a) Except as provided by §215.58 of this title (relating to Delegation of Final Order Authority), the board has final order authority in a contested case initiated by a complaint filed before January 1, 2014, under Occupations Code, §2301.204 or §§2301.601 – 2301.613.]~~

1           ~~[(b) The hearings examiner has final order authority in a contested case filed on or after January~~  
2   ~~1, 2014, under Occupations Code, §2301.204 or §§2301.601–2301.613.]~~

3           ~~[(c) Except as provided by subsections (a) and (b) of this section and §215.58 of this title, the~~  
4   ~~board has final order authority in a contested case filed under Occupations Code, Chapter 2301 or under~~  
5   ~~Transportation Code, Chapter 503.]~~

6           ~~[(d) An order shall be deemed final and binding on all parties and all administrative remedies are~~  
7   ~~deemed to be exhausted as of the effective date, unless a motion for rehearing is filed with the~~  
8   ~~appropriate authority as provided by law.]~~

9  
10   ~~[215.56. Submission of Amicus Briefs.]~~

11           ~~[(a) Any interested person may submit an amicus brief for consideration in a contested case and~~  
12   ~~should file the brief no later than the deadline for filing exceptions.]~~

13           ~~[(b) A party may submit one written response to the amicus brief no later than the deadline for~~  
14   ~~filing replies to exceptions.]~~

15           ~~[(c) Any amicus brief, or response to that brief, not filed within the deadlines prescribed by~~  
16   ~~subsection (b) of this section will not be considered, unless good cause is shown why the deadline~~  
17   ~~should be waived or extended.]~~

18  
19   ~~[215.58. Delegation of Final Order Authority.]~~

1           ~~[(a) In accordance with Occupations Code, §2301.154(c), except as provided by subsection (b) of~~  
2   ~~this section, the director is authorized to issue, where there has not been a decision on the merits, a~~  
3   ~~final order in a contested case, including, but not limited to a contested case resolved:~~

4                     ~~(1) by settlement;~~

5                     ~~(2) by agreed order;~~

6                     ~~(3) by withdrawal of the complaint;~~

7                     ~~(4) by withdrawal of a protest;~~

8                     ~~(5) by dismissal for want of prosecution;~~

9                     ~~(6) by dismissal for want of jurisdiction;~~

10                    ~~(7) by summary judgment or summary disposition;~~

11                    ~~(8) by default judgment; or~~

12                    ~~(9) when a party waives opportunity for a contested case hearing.]~~

13           ~~[(b) In accordance with Occupations Code, §2301.154(c), the director is authorized to issue a~~  
14   ~~final order in a contested case filed prior to January 1, 2014, under Occupations Code, §2301.204 or~~  
15   ~~§§2301.601–2301.613.]~~

16           ~~[(c) In a contested case in which the board has delegated final order authority under subsections~~  
17   ~~(a) or (b) of this section, a motion for rehearing shall be filed with and decided by the final order~~  
18   ~~authority delegate.]~~



~~[215.59. Request for Oral Presentation.]~~

~~[(a) At least 30 days prior to the date of a proposed board meeting during which the board may review a contested case, department staff shall notify the parties regarding the opportunity to attend and provide an oral presentation concerning a proposal for decision before the board. The department will deliver notice in accordance with §215.30 of this title (relating to Filing of Documents), using the last known address that the parties provided to the department.]~~

~~[(b) If a party seeks to provide an oral presentation at the board meeting, it must submit a written request for an oral presentation to the department's contact listed in the notice provided under subsection (a) of this section and copy all other parties in accordance with §215.49 of this title (relating to Service of Pleadings, Petitions, Briefs, and Other Documents) at least 14 days prior to the date of the board meeting at which the party's contested case will be considered.]~~

~~[(c) If there is more than one other party who was not adversely affected by the proposal for decision, such parties may agree on the order of their presentations in lieu of the order prescribed under §215.62(c) of this title (relating to Order of Presentations to the Board for Review of a Contested Case). If the parties who were not adversely affected by the proposal for decision do not timely provide the department and the other parties with notice under subsection (b) of this section regarding their agreed order of presentation, their order of presentation will be determined under §215.62(c) of this title.]~~

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

~~[215.60. Written Materials and Evidence.]~~

~~[(a) If a party seeks to provide written materials to the board, it must provide the written materials to the department and all other parties in accordance with §215.30 of this title (relating to Filing of Documents) and §215.49 of this title (relating to Service of Pleadings, Petitions, Briefs, and Other Documents) at least 21 days prior to the date of the board meeting. If a party fails to timely provide written materials to the department or any other party, the department shall not provide the written materials to the board and the party shall not provide the written materials to the board at the board meeting.]~~

~~[(b) For the purposes of this section, written materials are defined as language or images that are contained in the SOAH administrative record that are recorded in paper form. The language or images in the written materials must be taken without changes from the administrative record. Proposed final orders are not prohibited from being included in a party's written materials. Written materials shall be limited to evidence contained in the SOAH administrative record and consistent with the scope of the board's authority to take action under Government Code §2001.058(e) and Occupations Code, Chapter 2301. However, any party may argue that the board should remand the case to SOAH.]~~

~~[(c) All information in the written materials shall include a cite to the SOAH administrative record on all points to specifically identify where the information is located.]~~

~~[(d) Written materials shall be single-sided, double-spaced, 8.5 inches by 11 inches, and at least 12-point type. Written materials are limited to 15 pages per party. If a party provides the department with written materials that contain more pages than the maximum allowed, the department shall not provide the written materials to the board and the party shall not provide the written materials to the board at the board meeting.]~~

~~[216.61. Limiting Oral Presentation and Discussion to Evidence in the Administrative Record.]~~

~~[(a) The parties to a contested case under review by the board shall limit their oral presentation and discussion to evidence in the SOAH administrative record, and their oral presentation and discussion shall be consistent with the scope of the board's authority to take action under Government Code §2001.058(e) and Occupations Code, Chapter 2301. However, any party may argue that the board should remand the case to SOAH.]~~

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

~~[215.62. Oral Presentations to the Board for Review of a Contested Case.]~~

~~[(a) The department's staff will present the procedural history and summary of the contested case.]~~

~~[(b) The party that is adversely affected has the opportunity to make its oral presentation first. However, the board chairman is authorized to determine the order of each party's oral presentation in the event of the following:~~

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

~~(2) it appears as though more than one party is adversely affected; or~~

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

1           ~~[(c) The other party or parties who were not adversely affected then have an opportunity to~~  
2           ~~make their oral presentation. If there is more than one other party, each party will have an opportunity~~  
3           ~~to respond in alphabetical order based on the name of the party in the pleadings in the SOAH~~  
4           ~~administrative record, except as stated otherwise in §215.59(c) of this title (relating to Request for Oral~~  
5           ~~Presentation).]~~

6           ~~[(d) A party must timely comply with the requirements of §215.59 of this title before the party is~~  
7           ~~authorized to provide an oral presentation to the board.]~~

8           ~~[(e) Each party is limited to the time allotted under §206.22(f) of this title (relating to Public~~  
9           ~~Access to Board Meetings).]~~

10  
11           ~~[215.63. Board Conduct and Discussion When Reviewing a Contested Case.]~~

12           ~~[(a) The board shall conduct its review of a contested case in compliance with Government Code~~  
13           ~~Chapter 2001 and Occupations Code, Chapter 2301, including the limitations on changing a finding of~~  
14           ~~fact or conclusion of law made by the administrative law judge at SOAH, and the prohibition on~~  
15           ~~considering evidence outside of the SOAH administrative record.]~~

16           ~~[(b) Board members may question any party or the department on any matter that is relevant to~~  
17           ~~the proposal for decision; however, any questions shall be consistent with the scope of the board's~~  
18           ~~authority to take action under Government Code §2001.058(e) and Occupations Code, Chapter 2301;~~  
19           ~~any questions must be limited to evidence contained in the SOAH administrative record; and the~~  
20           ~~communication must comply with §215.22 of this title (relating to Prohibited Communications). In~~

1 ~~addition, board members are authorized to ask questions regarding a request to remand the case to~~  
2 ~~SOAH, including a remand to SOAH for further consideration of the evidence.]~~

3 ~~[(c) Board members may use their industry expertise to help them understand the case and~~  
4 ~~make effective decisions, consistent with the scope of the board's authority to take action under~~  
5 ~~Government Code §2001.058(e) and Occupations Code, Chapter 2301. However, board members are not~~  
6 ~~advocates for a particular industry. Board members are public servants who take an oath to preserve,~~  
7 ~~protect, and defend the Constitution and laws of the United States and Texas.]~~

8  
9 SUBCHAPTER C. LICENSES, GENERALLY

10 **43 TAC §§215.82–215.89**

11 **STATUTORY AUTHORITY.** The department proposes amendments to Chapter 215 under Occupations  
12 Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor  
13 vehicles and the authority to take any action that is necessary or convenient to exercise that authority;  
14 Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license  
15 holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute  
16 and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in  
17 connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations  
18 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which  
19 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter  
20 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives  
21 the board authority to deny an application for a license, revoke or suspend a license, place on probation,  
22 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,

1 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds  
2 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government  
3 Code, §411.122(d), which authorizes department access to criminal history record information  
4 maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal  
5 history record information from DPS and the FBI for license applicants, license holders, and  
6 representatives whose act or omission would be cause for denying, revoking, or suspending a general  
7 distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,  
8 Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as  
9 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which  
10 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;  
11 Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases;  
12 Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for  
13 an original or renewal general distinguishing number who proposes to be an independent motor vehicle  
14 dealer complete web-based education and training developed or approved by the department;  
15 Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice  
16 of a surety bond and the procedure by which a claimant may recover against the surety bond;  
17 Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of  
18 dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the  
19 board to adopt rules necessary to implement and manage the department's temporary tag databases;  
20 and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and  
21 appropriate to implement the powers and the duties of the department, as well as the statutes referenced  
22 throughout this preamble.

The department also proposes amendments under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

**CROSS REFERENCE TO STATUTE.** These proposed revisions would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters Occupations Code, Chapters 53, 55, 2301, and 2302; and Transportation Code, Chapters 501–503, 1001–1003, and 1005.

Text.

#### **SUBCHAPTER B[C]. LICENSES, GENERALLY**

215.82. Duplicate [~~Licenses and~~]Plates and Stickers.

~~[(a) A request for a duplicate license must:]~~

~~[(1) be made on a department approved form;]~~

~~[(2) state the reason for the duplicate license; and]~~

~~[ (3) be accompanied by the required duplicate license fee.]~~

~~[(b) A license holder may receive one duplicate license at no charge if the license holder:]~~

1                   ~~[(1) did not receive the original license; and]~~  
2                   ~~[(2) makes the request within 45 days of the date the license was mailed to the~~  
3 ~~license holder.]~~

4           ~~[(c)]~~ A license holder may receive a replacement standard~~[metal]~~ dealer's, converter's,  
5 drive-a-way in-transit, or manufacturer's license plate or assigned sticker, as~~[if]~~ applicable, at no  
6 charge if the license holder:

7           (1) did not receive the applicable standard~~[metal dealer's]~~ license plate or sticker; ~~and]~~  
8           (2) makes the request within 45 days of the date the applicable standard~~[metal dealer's]~~  
9 license plate or sticker was mailed to the license holder; ~~and [on a department's approved form.]~~

10           (3) submits a request electronically in the system designated by the department for  
11 licensing.

12  
13 215.83. License Applications, Amendments, or Renewals.

14           (a) An application for a new license, license amendment, or license renewal filed with the  
15 department must be:

16                   (1) filed electronically in the department-designated licensing system on a form  
17 approved by the department;

18                   (2) completed by the applicant, license holder, or authorized representative who is  
19 an employee, a licensed attorney, or a certified public accountant;

20                   (3) accompanied by the required fee, paid by~~[check,]~~ credit card~~;~~ or by electronic  
21 funds transfer, drawn from an account held by the applicant or license holder, or drawn from a  
22 trust account of the applicant's attorney or certified public accountant; and

23                   (4) accompanied by proof of a surety bond, if required.



(b) An authorized representative of the applicant or license holder who files an application with the department on behalf of an applicant or license holder may be required to provide written proof of authority to act on behalf of the applicant or license holder.

(c) The department will not provide information regarding the status of an application, application deficiencies, or pending new license numbers to a person other than a person listed in subsection (a)(2) of this section, unless that person files a written request under Government Code, Chapter 552.

(d) Prior to the expiration of a license, a license holder or authorized representative must electronically file with the department a sufficient license renewal application. Failure to receive notice of license expiration from the department does not relieve the license holder from the responsibility to timely file a sufficient license renewal application. A license renewal application is timely filed if[=]

~~[(1)]~~ the department receives a sufficient license renewal application on or before the date the license expires[; ~~or~~].

~~(2) a legible postmark on the envelope transmitting the sufficient license renewal application clearly indicates that the license holder or authorized representative mailed the license renewal application on or before the date the license expires.]~~

(e) An application for a new license<sub>2</sub> ~~[or]~~ license amendment, or license renewal filed with the department must be sufficient. An application is sufficient if the application:

(1) includes all information and documentation required by the department; and

(2)] is filed in accordance with subsection (a) of this section.

~~[(f) A license renewal application received by the department is sufficient if:~~

~~(1) the renewal application form is completed by the license holder or authorized representative of the license holder who is an employee, an unpaid agent, a licensed attorney, or certified public accountant;~~

~~(2) accompanied by the required license renewal application fee payment; and~~

~~(3) accompanied by proof of a surety bond, if required.]~~

(f) ~~[(g)]~~ If an applicant, license holder, or authorized representative does not provide the information or documentation required by the department, the department will issue a written notice of deficiency. The information or documentation requested in the written notice of deficiency must be received by the department within 20 calendar days of the date of the notice of deficiency, unless the department issues a written extension of time. If an applicant, license holder, or authorized representative fails to respond or fully comply with all deficiencies listed in the written notice of deficiency within the time prescribed by this subsection, the application will be deemed withdrawn and will be administratively closed.

(g) ~~[(h)]~~ The department will evaluate a sufficient application for a new license, license amendment, or license renewal in accordance with applicable rules and statutes to determine whether to approve or deny the application. If the department determines that there are grounds for denial of the application, the department may pursue denial of the application in accordance with Subchapter G~~[(j)]~~ of this chapter (relating to Administrative Sanctions).

(h) ~~[(i)]~~ The department will process an application for a new license, license amendment, or license renewal filed by a military service member, military spouse, or military veteran in accordance with Occupations Code, Chapter 55. A license holder who fails to timely file a sufficient application for a license renewal because that license holder was on active duty is exempt from

any increased fee or penalty imposed by the department for failing to renew the license in a timely manner.

(i) [(j)] A military service member or military spouse may engage in a business or occupation for which a department issued license is required if the military service member or military spouse meets the requirements of Occupations Code, §55.0041 and this section. This section establishes requirements and procedures authorized or required by Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

(1) ~~[To meet the requirements of Occupations Code, §55.0041, a]~~A military service member or military spouse must submit to the department:

(A) notice of the military service member or military spouse's intent to engage in a business or occupation in Texas for which a department issued license is required;

(B) proof of the military service member or military spouse's being stationed ~~[residency]~~ in Texas and a copy of the military service member or military spouse's military identification card~~[, as required by Occupations Code, §55.0041(b)(2)]~~; and

(C) documentation demonstrating that the military service member or military spouse is licensed and in good standing in another jurisdiction for the relevant business or occupation.

(2) Upon receipt of the notice and documentation required by paragraphs (1)(B) and (1)(C) of this subsection, the department shall:

(A) confirm with the other licensing jurisdiction that the military service member or military spouse is currently licensed and in good standing for the relevant business or occupation; and

(B) conduct a comparison of the other jurisdiction's license requirements, statutes, and rules with the department's licensing requirements to determine if the requirements are substantially equivalent.

(3) If the department confirms that a military service member or military spouse is currently licensed in good standing in another jurisdiction with substantially equivalent licensing requirements, the department ~~shall~~may issue a license to the military service member or military spouse for the relevant business or occupation within 30 days. The license is subject to requirements in Chapter 215 of this title and Occupations Code, Chapter 2301 in the same manner as a license issued under the standard application process, unless modified or exempted under Occupations Code, Chapter 55.

~~(j)~~(i) A license holder who timely files a sufficient license renewal application in accordance with subsection (d) of this section may continue to operate under the expired license until the license renewal application is determined in accordance with Government Code §2001.054.

~~(k)~~(j) A license holder who fails to timely file a sufficient license renewal application in accordance with subsection (d) of this section is not authorized to continue licensed activities after the date the license expires. A license holder may dispute a decision that a license renewal application was not timely or sufficient by submitting evidence to the department demonstrating that the license renewal application was timely and sufficient. Such evidence must be received by the department within ~~15~~10 calendar days of the date the department issues notice that a timely or sufficient license renewal application was not received by the department.

~~(l)~~(i) The department shall accept a late license renewal application up to 90 days after the date the license expires. In accordance with subsection ~~(k)~~(j) of this section, the license

holder is not authorized to continue licensed activities after the date the license expires until the department approves the late license renewal application. If the department grants a license renewal under this section, the licensing period begins on the date the department issues the renewed license. The license holder may resume licensed activities upon receipt of the department's written verification or upon receipt of the renewed license.

(m) ~~[(n)]~~ If the department has not received a late license renewal application within 90 days after the date the license expires, the department will close the license. A person must apply for and receive a new license before that person is authorized to resume activities requiring a license.

(n) ~~[(o)]~~ A ~~[metal-]~~dealer's standard license plate issued in accordance with Transportation Code, Chapter 503, Subchapter C expires on the date the associated license expires, is canceled, or when a license renewal application is determined, whichever is later.

#### 215.84. Brokering, New Motor Vehicles.

(a) Unless excluded from the definition of "Broker" in Occupations Code, §2301.002, a person may not act, offer to act, or claim to be a broker.

(b) ~~[(a)]~~ For purposes of this chapter ~~[subchapter]~~, the phrase "arranges or offers to arrange a transaction," as used in the definition of broker in Occupations Code, §2301.002, includes the practice of arranging or offering to arrange a transaction involving the sale of a new motor vehicle for a fee, commission, or other valuable consideration. Advertising is not acting as a broker~~[brokering]~~, provided the person's business primarily ~~is~~includes the business of broadcasting, printing, publishing, or advertising for others in their own names.

1           (c)(b) A buyer referral service, program, plan, club, or any other entity that accepts a fee  
2           for arranging a transaction involving the sale of a new motor vehicle is a broker. The payment of a  
3           fee to such entity is aiding and abetting brokering. However, a referral service, program, plan, club,  
4           or other entity that forwards a referral to a franchised dealership may lawfully operate in a  
5           manner that includes all of the following conditions:[-]

6                   (1) There is no exclusive market area offered to a dealer by the program. All dealers  
7           are allowed to participate in the program on equal terms.

8                   (2) Participation by a dealer in the program is not restricted by conditions, such as  
9           limiting the number of line-makes or discrimination by size of dealership or location. The total  
10          number of participants in the program may be restricted if the program is offered to all dealers at  
11          the same time, with no regard to the line-make.

12                  (3) All participants pay the same fee for participation in the program. The program  
13          fee shall be a weekly, monthly, or annual fee, regardless of the size, location, or line-makes sold by  
14          the franchised dealer.

15                  (4) A person is not to be charged a fee on a per referral fee basis or any other basis  
16          that could be considered a transaction-related fee.

17                  (5) The program does not set or suggest to the dealer any price of a motor vehicle  
18          or a trade-in.

19                  (6) The program does not advertise or promote its plan in a manner that implies  
20          that the buyer, as a customer of that program, receives a special discounted price that cannot be  
21          obtained unless the customer is referred through that program.

22                  (7) A program must comply with Subchapter F of this chapter (related to  
23          Advertising).

(d)~~[(c) Subsections (a)–(c) of this]~~This section does ~~[do]~~not apply to a~~[any]~~ person ~~[or~~  
entity]who is not a ~~[exempt from the]~~ broker as defined~~[definition]~~ in Occupations Code,  
§2301.002.

~~[(d) All programs must comply with Subchapter H of this chapter (relating to Advertising).]~~

215.85. Brokering, Used Motor Vehicles.

(a) Transportation Code, §503.021 prohibits a person from engaging in business as a dealer,  
directly or indirectly, including by consignment without a GDN. Except as provided by this section,  
"directly or indirectly" includes the practice of arranging or offering to arrange a transaction  
involving the sale of a used motor vehicle for a fee, commission, or other valuable consideration. A  
person who is a bona fide employee of a dealer holding a GDN and acts for the dealer is not a  
broker for the purposes of this section.

(b) A buyer referral service, program, plan, club, or any other entity that accepts a fee for  
arranging a transaction involving the sale of a used motor vehicle is required to meet the  
requirements for and obtain a GDN, unless the referral service, program, plan, or club is operated  
in the following manner:~~[-]~~

(1) There is no exclusive market area offered to a dealer by the program. All dealers  
are allowed to participate in the program on equal terms.

(2) Participation by a dealer in the program is not restricted by conditions, such as  
limiting the number of line-makes or discrimination by size of dealer~~[ship]~~ or location. The total  
number of participants in the program may be restricted if the program is offered to all dealers at  
the same time, with no regard to the line-make.

(3) All participants pay the same fee for participation in the program. The program fee shall be a weekly, monthly, or annual fee, regardless of the size, location, or line-makes sold by the dealer.

(4) A person is not to be charged a fee on a per referral fee basis or any other basis that could be considered a transaction-related fee.

(5) The program does not set or suggest to the dealer any price of a motor vehicle or a trade-in.

(6) The program does not advertise or promote its plan in a manner that implies that the buyer, as a customer of that program, receives a special discounted price that cannot be obtained unless the customer is referred through that program.

(7) A program complies with Subchapter F of this chapter (relating to Advertising).

~~[(c) All programs must comply with Subchapter H of this chapter (relating to Advertising).]~~

(c)[~~(d)~~] A [~~licensed~~]dealer holding a GDN pursuant to Transportation Code, §503.029(a)(6)(B), may pay a referral fee in cash or value to an individual who has purchased a vehicle from the [~~licensed~~]dealer within the four-year period preceding the referral. The fee may be paid contingent upon either the new referred individual:

(1) purchasing a vehicle from the [~~independent motor vehicle~~]dealer; or

(2) the referral of a new potential purchaser.

215.87. License and Standard~~[Metal Dealer's]~~License Plate Terms and Fees.

(a) Except as provided by other law, the term of a license or standard~~[metal dealer's-]~~ license plate issued by the department to a dealer, converter, drive-a-way operator, distributor, or



1 manufacturer under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 is two  
2 years.

3 (b) A standard~~[-metal dealer's]~~ license plate issued by the department expires on the date  
4 the associated license expires or is canceled.

5 (c) The fee for a license or standard~~[-metal dealer's]~~ license plate is computed by  
6 multiplying the applicable annual fee by the number of years of the license term. The entire[  
7 ~~amount of the~~] fee including any tax owed under Tax Code §152.027 is due at the time of  
8 application for the license or license renewal.

9 (d) A dealer may apply for a personalized prestige plate issued under Transportation Code  
10 §503.0615 by completing a department form, providing a copy of a department-issued license, and  
11 submitting payment to a county tax assessor-collector. A personalized prestige plate may be  
12 renewed in an electronic system designated by the department.

13  
14 215.89. Fitness.

15 (a) In determining a person's fitness for a license issued or to be issued by the department  
16 under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, the board~~[-or~~  
17 ~~department]~~ will consider:

18 (1) the requirements of Occupations Code, Chapter 53;

19 (2) the provisions of Occupations Code, §2301.651 and Transportation Code  
20 §503.034;

21 (3) any specific statutory licensing criteria or requirements;

22 (4) mitigating factors; and

1 (5) other evidence of a person's fitness, as allowed by law, including the standards  
2 identified in subsection (b) of this section.

3 (b) The board~~[-or department]~~ may determine that a person is unfit to perform the duties  
4 and discharge the responsibilities of a license holder and may, following notice and an opportunity  
5 for hearing, deny a person's license application or revoke or suspend a license if the person:

6 (1) fails to meet or maintain the qualifications and requirements of licensure;

7 (2) is convicted, or considered convicted under Occupations Code §53.021(d), by  
8 any local, state, federal, or foreign authority of an offense that directly relates to the duties or  
9 responsibilities of the licensed occupation as described in §211.3 of this title (relating to Criminal  
10 Offense Guidelines) or is convicted, or considered convicted under Occupations Code §53.021(d),  
11 of an offense that is independently disqualifying under Occupations Code §53.021;

12 (3) omits information or provides false, misleading, or incomplete information on  
13 an initial application, renewal application, or application attachment, for a license or other  
14 authorization issued by the department or by any local, state, or federal regulatory authority;

15 (4) is found to have violated an administrative or regulatory requirement based on  
16 action taken on a license, permit, or other authorization, including disciplinary action, revocation,  
17 suspension, denial, corrective action, cease and desist order, or assessment of a civil penalty,  
18 administrative fine, fee, or similar assessment, by the board, department, or any local, state, or  
19 federal regulatory authority;

20 (5) is insolvent or fails to obtain or maintain financial resources sufficient to meet  
21 the financial obligations of the license holder;

22 (6) is a corporation or other legal entity that fails to maintain its charter, certificate,  
23 registration, or other authority to conduct business in Texas;

(7) is assessed a civil penalty, administrative fine, fee, or similar assessment, by the board, department, or a local, state, or federal regulatory authority, for violation of a requirement governing or impacting the distribution or sale of a vehicle or a motor vehicle, or the acquisition, sale, repair, rebuild, reconstruction, or other dealing of a salvage motor vehicle or nonrepairable motor vehicle, and fails to comply with the terms of a final order or fails to pay the penalty pursuant to the terms of a final order;

(8) was or is a person described in §211.2 of this title (relating to Application of Subchapter) whose actions or omissions could be considered unfit, who is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment;

(9) has an ownership, organizational, managerial, or other business arrangement, that would allow a person the power to direct or cause the direction of the management, policies, and activities, of an applicant or license holder, whether directly or indirectly, when the person could be considered unfit, ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority, has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the board, department, or any local, state, or federal regulatory authority;

(10) is found in a~~an~~ final order issued after~~through~~ a contested case hearing to be unfit or acting in a manner detrimental to the system of distribution or sale of motor vehicles in Texas, the economy of the state, the public interest, or the welfare of Texas residents [citizens].

SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

**43 TAC §§215.101–215.111, 215.115–215.217, and 215.120–215.121**

**STATUTORY AUTHORITY.** The department proposes amendments to Chapter 215 under 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 gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as

1 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which  
2 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;  
3 Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases;  
4 Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of  
5 dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the  
6 board to adopt rules necessary to implement and manage the department's temporary tag databases;  
7 and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and  
8 appropriate to implement the powers and the duties of the department, as well as the statutes referenced  
9 throughout this preamble.

10 The department also proposes amendments under the authority of Transportation Code,  
11 §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition  
12 to the statutory authority referenced throughout this preamble.

13 Transportation Code, §501.0041 authorizes the department to adopt rules to administer  
14 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt  
15 rules to administer Transportation Code, Chapter 502.

16 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature  
17 and requirements of all available formal and informal procedures. Government Code, §2001.039 requires  
18 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.  
19 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,  
20 suspension, annulment, or withdrawal of a license.

21 **CROSS REFERENCE TO STATUTE.** These proposed revisions would implement Government Code, Chapters  
22 411 and 2001; Occupations Code, Chapters Occupations Code, Chapters 53, 55, 2301, and 2302; and  
23 Transportation Code, Chapters 501–503, 1001–1003, and 1005.

Text.

**SUBCHAPTER C[~~D~~]. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS**

215.101. Purpose and Scope.

This subchapter implements Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1001[1000] – 1005, and applies to franchised dealers, manufacturers, distributors, and converters.

215.102. Application Requirements.

(a) No person may engage in business, serve in the capacity of, or act as a manufacturer, distributor, converter, or franchised dealer in Texas unless that person holds a license.

(b) A license application shall be on a form prescribed by the department and properly completed by the applicant. A license application shall include all required information, supporting documents, and fees and shall be submitted to the department electronically in a system designated by the department for licensing.

(c) A license holder renewing or amending its license must verify current license information, provide related information and documents for any new license requirements or changes to the license, and pay required fees including any outstanding civil penalties owed the department under a final order.

(d) An applicant for a new license must register for an account in the department-designated licensing system by selecting the licensing system icon on the dealer page of the department website. An applicant must designate the account administrator and provide the name and email address for that person, and provide the business telephone number, name, business type, and social security number or

employer identification number, as applicable. The applicant's licensing account administrator must be an owner, officer, manager, or bona fide employee.

(e) Once registered, an applicant may apply for a new license and must provide the following:

(1) Required information:

(A) type of license requested;

(B) business information, including the name, physical and mailing addresses, telephone number, Secretary of State file number (if applicable), and website address (if applicable);

(C) contact name, email address, and telephone number of the person submitting the application;

(D) contact name, email address, and telephone number of a person who can provide information about business operations and the motor vehicle products or services offered;

(E) the name, social security number, date of birth, identity document information, and ownership percentage for each owner, partner, member, beneficiary, or principal if the applicant is not a publicly traded company;

(F) the name, social security number, date of birth, and identity document information for each officer, director, manager, trustee, or other representative authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal entity;

(G) the name, employer identification number, ownership percentage, and non-profit or publicly traded status for each legal entity that owns the applicant in full or in part;

1                   (H) criminal history record information under the laws of Texas, another  
2                   state in the United States, the United States, and any foreign jurisdiction for each person listed in  
3                   the application, including offense description, date, and location;

4                   (I) military service status;

5                   (J) licensing history required to evaluate fitness for licensure under §215.89  
6                   of this title (relating to Fitness);

7                   (K) if applying for a manufacturer, distributor, or converter license:

8                               (i) financial resources, business integrity and experience, facilities  
9                   and personnel for serving franchised dealers;

10                              (ii) a description of the business model or business process and  
11                   product and services used or offered sufficient to allow the department to determine if the license  
12                   type applied for is appropriate under Texas law; and

13                              (iii) number of standard license plates requested.

14                   (L) if applying for a manufacturer or distributor license:

15                              (i) if the applicant or any entity controlled by the applicant owns an  
16                   interest in a Texas motor vehicle dealer or dealership, controls a Texas dealer or dealership, or acts  
17                   in the capacity of a Texas dealer;

18                              (ii) a statement regarding the manufacturer's compliance with  
19                   Occupations Code Chapter 2301, Subchapter I and §§2301.451-2301.476;

20                              (iii) if a franchise agreement for each line-make being applied for  
21                   exists which states the obligations of a Texas franchised dealer to the applicant and the obligations  
22                   of the applicant to the Texas franchised dealer; and



1                                    (iv) the terms of the contract under which the distributor will act for  
2 the manufacturer.

3                                    (M) if applying for a manufacturer license, the line-make information  
4 including the world manufacturer identifier assigned by the National Highway Traffic Safety  
5 Administration, line-make name, and vehicle type;

6                                    (N) if applying for a distributor license:  
7                                    (i) the manufacturer for whom the distributor will act;  
8                                    (ii) whether the manufacturer is licensed in Texas;  
9                                    (iii) the person in this state who is responsible for compliance with  
10 the warranty covering the motor vehicles to be sold; and  
11                                    (iv) whether a franchise agreement for each line-make being applied  
12 for exists which states the obligations of a Texas franchised dealer to the applicant and the  
13 obligations of the applicant to the Texas franchised dealer.

14                                    (O) if applying for a converter license:  
15                                    (i) a name and description for each conversion package; and  
16                                    (ii) the manufacturer or distributor and line-make of the underlying  
17 new motor vehicle chassis to be converted.

18                                    (P) if applying for a franchised dealer license:  
19                                    (i) reason for the new application;  
20                                    (ii) dealership location on a system-generated map;  
21                                    (iii) if the dealership is under construction and expected completion  
22 date;

1 (iv) information about the performance of sales or warranty services  
2 at the location; and

3 (v) information necessary to obtain a franchised dealer GDN under  
4 §215.133 of this title (relating to General Distinguishing Number).

5 (Q) signed Certificate of Responsibility, which is a form provided by the  
6 department; and

7 (R) any other information required by the department to evaluate the  
8 application under current law and board rules.

9 (2) A legible and accurate electronic image of each applicable required document:

10 (A) the certificate of filing, certificate of incorporation, or certificate of  
11 registration on file with the Secretary of State, if applicable;

12 (B) each assumed name certificate on file with the Secretary of State or  
13 county clerk;

14 (C) at least one of the following unexpired identity documents for each  
15 natural person listed in the application:

16 (i) driver license;

17 (ii) Texas Identification Card issued by the Texas Department of  
18 Public Safety under Transportation Code, Chapter 521, Subchapter E;

19 (iii) license to carry a handgun issued by the Texas Department of  
20 Public Safety under Government Code, Chapter 411, Subchapter H;

21 (iv) passport; or

22 (v) United States armed forces identification.

1                   (D) if applying for a manufacturer, distributor, or converter license, a  
2 written description of the business model or business process and brochures, photos, or other  
3 documents describing products and services sufficient to allow the department to identify a motor  
4 vehicle product type and the appropriate license required under Texas law;

5                   (E) if applying for a manufacturer or distributor license:

6                   (i) a list of each franchised dealer in Texas including the dealer's  
7 name and physical address, or if offers for sale or sales of motor vehicle in Texas will solely be over  
8 the internet, a list of each out-of-state dealer authorized by the manufacturer or distributor to sell  
9 a product online to a Texas resident including the dealer's name, physical address, and dealer  
10 license number issued by the state in which the dealer is located; and

11                   (ii) a list of motor vehicle product line-makes manufactured or  
12 distributed for sale;

13                   (F) if applying for a manufacturer license:

14                   (i) a list of authorized distributors or representatives; and  
15                   (ii) a franchised dealer's preparation and delivery obligations before  
16 delivery of a new vehicle to a retail purchaser and the schedule of compensation to be paid to the  
17 franchised dealer;

18                   (G) if applying for a distributor license, either:

19                   (i) a copy of the distribution agreement between a manufacturer  
20 and distributor; or

21                   (ii) a completed department-provided questionnaire containing the  
22 information required under Occupations Code, §2301.260, and signed by the applicant as true and  
23 complete.

1                   (H) if applying for a franchise dealer license, pages of the executed  
2 franchise agreement containing at minimum the following:

3                   (i) the legal business name of each party;  
4                   (ii) authorized signature of each party;  
5                   (iii) authorized dealership location;  
6                   (iv) list of motor vehicle line-makes and vehicle types to be sold or  
7 serviced; and

8                   (v) a department Evidence of Relocation form signed by the  
9 manufacturer or distributor (if applicable); and

10                  (I) any other documents required by the department to evaluate the  
11 application under current law and board rules.

12                  (3) Required fees:

13                  (A) the license fee as prescribed by law; and

14                  (B) the fee as prescribed by law for each plate requested by the applicant.

15                  (f) An applicant operating under a name other than the applicant shall use the name under  
16 which the applicant is authorized to do business, as filed with the Secretary of State or county  
17 clerk, and the assumed name of such legal entity shall be recorded by the applicant on the  
18 application using the letters "DBA." The applicant may not use a name or assumed name that may  
19 be confused with or is similar to that of a governmental entity or that is otherwise deceptive or  
20 misleading to the public.

21                  (g) A manufacturer or distributor may add a new line-make to an existing license during the  
22 license period by submitting a license amendment application and providing brochures, photos, or  
23 other documents describing the new line-make sufficient to allow the department to identify the

line-make and vehicle product type. A license amendment to add a line-make to a manufacturer or distributor license must be approved by the department before the new line-make may be added to a franchised dealer's license.

215.103. Service-only Facility.

(a) A service-only facility is a location occupied and operated by a franchised dealer that is a completely separate, noncontiguous site, from the franchised dealer's new motor vehicle sales and service or sales only location, where the franchised dealer performs ~~[will only perform]~~ warranty~~[and nonwarranty]~~ repair services and not new motor vehicle sales. ~~[Except as allowed in subsection (d) of this section, warranty repair services may only be performed at either a licensed dealership or a licensed service-only facility.]~~

(b) A franchised dealer must obtain a license to operate a service-only facility. A dealer may not obtain a service-only facility license to service a ~~[particular]~~ line-make of new motor vehicles, unless that dealer is franchised and licensed to sell that line-make.

(c) A service-only facility is a dealership subject to protest under Occupations Code, Chapter 2301.

(d) Upon the manufacturer's or distributor's prior written approval, which cannot be unreasonably withheld, ~~[only]~~ a franchised dealer of the manufacturer or distributor may contract with another person as a subcontractor to perform warranty repair services that the dealer is authorized to perform under a franchise agreement with a manufacturer or distributor. Payment shall be made by the franchised dealer to the subcontractor and not by the manufacturer or distributor to the subcontractor.

(e) A person with whom a franchised dealer contracts to perform warranty repair services is not eligible to obtain a service-only facility license and may not advertise the performance of warranty repair services in any manner to the public.

215.104. Changes to Franchised Dealer's License.

(a) In accordance with Occupations Code, §2301.356, a franchised dealer must file an application to amend the franchised dealer's license ~~[in order]~~ to request~~[-inclusion of]~~ an additional line-make at the dealer's currently licensed showroom. The amendment application must be filed electronically in a system designated by the department for licensing.

(1) In accordance with §215.110 of this title (relating to Evidence of Franchise), the franchised dealer must attach to the amendment application a legible and accurate electronic image[copy] of:

(A) the executed franchise agreement;  
(B) the required excerpt from the executed franchise agreement; or  
(C) an evidence of franchise form completed by the manufacturer, distributor, or representative.

(2) The amendment application for an additional franchise at the showroom is considered an original application and is subject to protest, in accordance with Occupations Code, Chapter 2301, this chapter, and Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

(b) A franchised dealer may propose to sell or assign to another any interest in the licensed entity, whether a corporation or otherwise, provided the physical location of the licensed entity remains the same.

(1) The franchised dealer shall notify the department in writing within 10 days of the sale or assignment of interest by filing an application to amend the franchised dealer's license electronically in a system designated by the department for licensing.

(2) If the sale or assignment of any portion of the business results in a change of business entity, then the purchasing entity or assignee must apply for and obtain a new license in the name of the new business entity.

(3) A publicly-held corporation must file an amendment application~~[needs only to inform the department of a change in ownership]~~ if one person or entity acquires 10% or greater interest in the licensed entity.

(c) A franchised dealer is required to file an amendment application electronically in a system designated by the department for licensing within 10 days of a license change, including:

(1) deletion of a line-make from the dealer's license;

(2) a change of assumed name on file with the Office of the Secretary of State or county clerk;

(3) a change of mailing address;

(4) a change of telephone number; or

~~[(5) a change of facsimile number; or]~~

(5)(6) a change of email address.

(d) A franchised dealer is required to file a business entity amendment application electronically in a system designated by the department for licensing within 10 days of an entity change, including:

1 (1) a change in management, dealer principal, or change of other person who  
2 oversees~~[is in charge of]~~ a franchised dealer's business activities, including a managing partner,  
3 officer, director of a corporation, or similar person; or

4 (2) a change of legal entity name on file with the Office of the Secretary of State.

5 (e) If a franchised~~[licensed new motor vehicle]~~ dealer changes or converts from one type of  
6 business entity to another type of business entity without changing ownership of the dealership,  
7 the submission of a franchise agreement in the name of the new entity is not required in  
8 conjunction with an amendment application. The franchise agreement on file with the department  
9 prior to the change or conversion of the dealer's business entity type applies to the successor  
10 entity until the parties agree to replace the franchise agreement. This subsection does not apply to  
11 a sole proprietorship or general partnership.

12 (f) If a franchised dealer adopts a plan of conversion under a state or federal law that  
13 allows one legal entity to be converted into another legal entity, only an amendment  
14 application~~[to amend the license]~~ is necessary to be filed with the department. The franchise  
15 agreement on file with the department continues to apply to the converted entity. If a license  
16 holder becomes another legal entity by any means other than by conversion, a new application is  
17 required, subject to subsection (e) of this section.

18 (g) In addition to obtaining permission from the manufacturer or distributor, a franchised  
19 dealer shall obtain department approval prior to opening a supplemental location or relocating an  
20 existing location by filing an amendment application electronically in a system designated by the  
21 department for licensing. A franchised dealer must notify the department electronically in a  
22 system designated by the department for licensing when closing an existing location.



1     215.105. Notification of License Application; Protest Requirements.

2            (a) The provisions of this section are not applicable to an application filed with the department  
3     for a franchised dealer license as a result of the purchase or transfer of an existing entity holding a  
4     current franchised dealer's license that does not involve a physical relocation of the purchased or  
5     transferred line-makes.

6            (b) Upon receipt of an application for a franchised~~[new motor vehicle]~~ dealer's license, including  
7     an application filed with the department by reason of the relocation of an existing dealership, the  
8     department shall give notice of the filing of the application to each franchised dealer that may have  
9     standing to protest the application.

10           (c) If it appears to the department that there are no franchised dealers with standing to protest,  
11     then no notice shall be given.

12           (d) A person holding a franchised dealer's license for the sale of the same line-make of a new  
13     motor vehicle as proposed for sale in the subject application and that has standing to protest the  
14     application may file with the department a notice of protest opposing the granting of a license by timely  
15     filing a protest electronically in the system designated by the department for licensing, and paying the  
16     required fee.

17           (e) A franchised dealer that wishes to protest the application shall give notice in accordance with  
18     Occupations Code, Chapter 2301.

19                (1) The notice of protest shall be in writing and shall be signed by an authorized officer  
20     or other official authorized to sign on behalf of the protesting dealer filing the notice.

(2) The notice of protest shall state the statutory basis upon which the protest is made and assert how the protesting dealer meets the standing requirements under §215.119 of this title (relating to Standing to Protest) to protest the application.

(3) The notice of protest shall state that the protest is not made for purposes of delay or for any other purpose except for justifiable cause.

(4) If a protest is filed against an application for the establishment of a dealership or for addition of a line-make at an existing dealership, the notice of protest shall state under which provision of Occupations Code, Chapter 2301 the protest is made.

#### 215.106. Time for Filing Protest.

(a) A notice of protest must be:

(1) received by the department not later than 5:00 p.m. Central ~~[Standard ]~~Time (CST or CDT, as applicable) on the date 15 days from the date of mailing of the department's notification to the license holder of the filing of the application;

(2) filed in ~~[with the department by United States mail, facsimile, hand delivery, or through]~~the department's designated electronic filing system~~[-when available; however, a notice of protest may not be filed by email];~~ and

(3) ~~[accompanied by the required filing fee]~~ submitted with the filing fee paid.~~[If the filing fee does not accompany the notice of protest, the fee must be received by the department not later than 5:00 p.m. CST on the date 20 days from the date of mailing of the department's notification to the license holder of the filing of the application.]~~

(b) The department will reject a notice of protest if:

(1) the complete notice of protest is not filed within 15 days from the date of mailing of the department's notification to the license holder of the filing of the application; or

(2) the required filing fee is not paid when the protest is submitted in the department's designated electronic filing system or is later dishonored~~[-remitted within 20 days from the date of mailing of the department's notification to the license holder of the filing of the application.]~~

215.108. Addition or Relocation of Line-make.

An application to amend an existing franchised~~[new motor vehicle]~~ dealer's license for the addition of another line-make at the existing dealership or for the relocation of a line-make to the existing dealership shall be deemed an "application to establish a dealership" insofar as the line-make to be added is concerned, and shall be subject to the provisions of §215.105 of this title (relating to Notification of License Application; Protest Requirements) and §215.106 of this title (relating to Time for Filing Protest).

215.109. Replacement Dealership.

An application for a franchised~~[new motor vehicle]~~ dealer's license for a dealership intended as a replacement for a previously existing dealership shall be deemed an application for a "replacement dealership" required to be established in accordance with Occupations Code, §2301.453 and shall not be subject to protest under the provisions of §215.105 of this title (relating to Notification of License Application; Protest Requirements), provided that:

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(1) the application states that the applicant is intended as a replacement dealership and identifies the prior dealership to be replaced;

(2) the manufacturer or distributor of the line-make gives notice to the department and to other dealers franchised for the same line-make that meet the provisions of Occupations Code, §2301.652(b) and (c);

(3) the notice under paragraph (2) of this subsection is given within 60 days following the closing of the prior dealership;

(4) the application is filed electronically in the system designated by the department for licensing, [with the department] not later than one year following the closing of the prior dealership; and

(5) the location of the applicant's proposed dealership is not more than two miles from the location of the prior dealership.

215.110. Evidence of Franchise.

(a) Upon application for a franchised~~[new motor vehicle]~~ dealer's license or an amendment of an existing franchised~~[new motor vehicle]~~ dealer's license to add a line-make, the applicant must submit a legible and accurate electronic image~~[photocopy]~~ of the ~~[pages of the]~~franchise agreement~~[(s)]~~ pages that reflect:

(1) the parties~~[ to the agreement(s)]~~,

(2) the authorized signatures of the parties~~[to the agreement(s)]~~, ~~[and]~~

1                   (3) each line-make listed in the application, and

2                   (4) the address of the franchised dealership's physical location.

3                   (b) To meet this requirement temporarily for the purpose of application processing, a form  
4 prescribed by the department and completed by the manufacturer or distributor may be electronically  
5 submitted with the application in lieu of the information described in this section ~~[subsection]~~.

6                   (c) The applicant must submit the required ~~[photocopies of the]~~ franchise ~~[agreement{(s)}]~~ pages  
7 described in this section ~~[subsection]~~ immediately upon the applicant's receipt of the franchise  
8 agreement~~{(s)}~~ as the department will not issue a license without verifying that the franchise agreement  
9 has been executed.

10                   (d){(b)} Upon application to relocate a franchised~~[new motor vehicle]~~ dealership, the franchised  
11 dealer applicant must submit a form prescribed by the department and completed by the manufacturer  
12 or distributor that identifies the license holder and the new franchised dealership location.

13  
14                   215.111. Notice of Termination or Discontinuance of Franchise and Time for Filing Protest.

15                   (a) A manufacturer or distributor must give notice of termination or discontinuance of a dealer's  
16 franchise to a franchised dealer and the department ~~[shall be given by a manufacturer or distributor]~~ in  
17 accordance with Occupations Code, §2301.453~~[not less than 60 days prior to the effective date of the~~  
18 ~~franchise termination or discontinuance]~~.

19                   (b) A dealer must file a written notice of protest of the franchise termination or discontinuance~~[~~  
20 ~~by a dealer]~~ pursuant to Occupations Code, §2301.453 ~~[shall be in writing and shall be filed with the~~  
21 ~~department]~~ electronically in the system designated by the department for licensing, prior to the

effective date of the franchise termination or discontinuance stated in the notice from the manufacturer or distributor.

~~[215.112. Motor Home Show Limitations and Restrictions]~~

~~[(a) Applicability. This rule implements Occupations Code, §2301.358 and is expressly limited to motor home shows that require department approval in accordance with subsection (b) of this section.]~~

~~[(b) Show approval required. Without written approval by the department, a person may not promote or conduct a show involving a new motor home that will be sold or offered for sale.]~~

~~[(c) Show requirements. The department may approve a motor home show in accordance with this section if the show:~~

~~(1) does not exceed six consecutive days;~~

~~(2) is not conducted within 90 days of a previous show in the same county; and~~

~~(3) complies with Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000—1005; and board rules.]~~

~~[(d) Additional motor home shows. The department may authorize additional motor home shows in any county upon a showing of good cause by the promoter for waiver from the show requirements of subsection (c) of this section.]~~

~~[(e) Show approval requirements. For purposes of this section, the promoter or coordinator of a motor home show must submit an application to the department. The application must:~~

1                   ~~(1) be completed and submitted on a form and in the manner prescribed by the~~  
2   ~~department;~~

3                   ~~(2) be accompanied by all required attachments;~~

4                   ~~(3) be submitted no less than 30 days and no more than 90 days before the proposed~~  
5   ~~show date;~~

6                   ~~(4) be accompanied by a \$25,000 surety bond if the promoter or coordinator of the~~  
7   ~~show is not a license holder, an association of license holders, or an organization of license holders;~~

8                   ~~(5) affirm that at least three franchised dealers of new motor homes, each participating~~  
9   ~~with at least one different line make, will participate in the show;~~

10                  ~~(6) affirm that each franchised dealer that participates in the show holds a valid~~  
11   ~~franchised dealer's license issued by the department for each motor home line make that the franchised~~  
12   ~~dealer will participate with in the show; and~~

13                  ~~(7) designate either Saturday or Sunday for suspension of the sale of any motor home, in~~  
14   ~~accordance with Transportation Code, Chapter 728, Subchapter A, when the show is conducted over a~~  
15   ~~consecutive Saturday and Sunday.]~~

16                  ~~[(f) Dealer participation approval required. Without written approval by the department, a~~  
17   ~~motor home dealer may not participate in a show of new motor homes, where a motor home will be~~  
18   ~~sold or offered for sale.]~~

19                  ~~[(g) Dealer participation requirements. A dealer of new motor homes requesting approval to~~  
20   ~~participate in a show must submit a sufficient application to the department. To be sufficient, the~~

1 ~~application must be on a form prescribed by the department and accompanied by all required~~  
2 ~~attachments.]~~

3 ~~[(h) Located within 70 miles of show site. For the purpose of this section, a franchised dealer~~  
4 ~~located within 70 miles of the site of the proposed show has a right equal to any other franchised dealer~~  
5 ~~that is also located within 70 miles of the show site to participate in the show with a like-line motor~~  
6 ~~home.]~~

7 ~~[(i) Located more than 70 miles from show site. For the purpose of this section, a franchised~~  
8 ~~dealer that is located more than 70 miles from the proposed show site does not have a right to~~  
9 ~~participate in the show; however, the department may approve that franchised dealer to participate in~~  
10 ~~the motor home show, if:~~

11 ~~(1) there is no franchised dealer of a like-line motor home located within 70 miles of the~~  
12 ~~proposed show site; or~~

13 ~~(2) the franchised dealer obtains a written waiver from each like-line franchised motor~~  
14 ~~home dealer located within 70 miles of the proposed show site.]~~

15 ~~[(j) Suspension of sales. For the purpose of this section and pursuant to Transportation Code,~~  
16 ~~Chapter 728, Subchapter A, when a show is conducted over a consecutive Saturday and Sunday, all~~  
17 ~~franchised dealers of motor homes will suspend sales on the same Saturday or Sunday, as designated by~~  
18 ~~the show promoter or coordinator. On the day sales are suspended, a motor home dealer:~~

19 ~~(1) may quote a price;~~

20 ~~(2) may open and attend to the motor home product;~~



(3) may not sell, offer to sell, negotiate a price, or enter into a contract or letter of intention to contract for the sale of the motor home; and

(4) is not required to remove or cover the suggested retail price the manufacturer may have affixed to the motor home.]

215.113. Manufacturer Ownership of Franchised Dealer; Good Cause Extension; Dealer Development.

(a) In the absence of a showing of good cause, an application for a franchised~~[new motor vehicle]~~ dealer's license of which a manufacturer or distributor owns any interest in or has control of the dealership entity must be submitted to the department electronically in the system designated by the department for licensing no later than 30 days before:

(1) the opening of the dealership;

(2) close of the buy-sell agreement; or

(3) the expiration of the current license.

(b) If a manufacturer or distributor applies for a franchised~~[new motor vehicle]~~ dealer's license of which the manufacturer or distributor holds an ownership interest in or has control of the dealership entity in accordance with Occupations Code, §2301.476(d) - (f), the license application must contain a sworn statement from the manufacturer or distributor that the dealership was purchased from a franchised dealer and is for sale at a reasonable price and under reasonable terms and conditions, and that the manufacturer or distributor intends to sell the dealership to a person not controlled or owned by the manufacturer or distributor within 12 months of acquiring the dealership, except as provided by subsection (h) of this section.

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(c) A request for an extension of the initial 12-month ~~[12-month]~~ period for manufacturer or distributor ownership or control of a franchised~~[new motor vehicle]~~ dealership, in accordance with Occupations Code, §2301.476(e), must be submitted to the department in accordance with subsection (a) of this section along with a sufficient application to renew the new motor vehicle dealer's license. The request must contain a detailed explanation, including appropriate documentary support, to show the manufacturer's or distributor's good cause for failure to sell the dealership within the initial 12-month ~~[12-month]~~ period. The director will evaluate the request and determine whether the license should be renewed for a period not to exceed 12 months or deny the renewal application. If the renewal application is denied, the manufacturer or distributor may request a hearing on the denial in accordance with Occupations Code, Chapter 2301, Subchapter O ~~[\$§2301.701–2301.713]~~ and the matter will be referred to SOAH for a hearing under Chapter 224, Subchapter C of this title (relating to Motor Vehicle, Salvage Vehicle, and Trailer Industry License Enforcement).

(d) Requests for extensions after the first extension is granted, as provided by Occupations Code, §2301.476(e), must be submitted at least 120 days before the expiration of the current license electronically in the system designated by the department for licensing. Upon receipt of a subsequent request, the department~~[board]~~ will initiate a hearing in accordance with Occupations Code, Chapter 2301, Subchapter O ~~[\$§2301.701–2301.713]~~, at which the manufacturer or distributor will be required to show good cause for the failure to sell the dealership. The manufacturer or distributor has the burden of proof and the burden of going forward on the sole issue of good cause for the failure to sell the dealership.

(e) The department will give notice of the hearing described in subsection (d) of this section to all other franchised dealers holding franchises for the sale and service or service only of the same line-

1 make of new motor vehicles that are located in the same county in which the dealership owned or  
2 controlled by the manufacturer or distributor is located or in an area within 15 miles of the dealership  
3 owned or controlled by the manufacturer or distributor. Such dealers, if any, will be allowed to intervene  
4 and protest the granting of the subsequent extension. Notices of intervention by dealers afforded a right  
5 to protest under Occupations Code, §2301.476(e) must be filed with the department electronically in  
6 the system designated by the department within 15 days of the date of mailing of the notice of  
7 hearing, and a copy must be provided to the manufacturer or distributor. The department will reject a  
8 notice of intervention if the notice is not filed at least 30 days before:

9 (1) the opening of the dealership;

10 (2) close of the buy-sell agreement; or

11 (3) the expiration of the current license.

12 (f) A hearing under subsection (d) of this section will be referred to SOAH for a hearing under  
13 Chapter 224, Subchapter C of this title (relating to Contested Cases Between Motor Vehicle Industry  
14 License Holders or Applicants). ~~(conducted as expeditiously as possible, but not later than 120 days after~~  
15 ~~receipt of the subsequent request for extension from the manufacturer or distributor. An ALJ will~~  
16 ~~prepare a written decision and proposed findings of fact and conclusions of law as soon as possible, but~~  
17 ~~not later than 60 calendar days after the hearing is closed.]~~ The franchised~~(new motor vehicle)~~ dealer's  
18 license that is the subject of the hearing will continue in effect until a final decision on the request for a  
19 subsequent extension is issued~~rendered~~ by the board.

20 (g) The procedures described in subsections (d) - (f) of this section will be followed for all  
21 extensions requested by the manufacturer or distributor after the initial extension.

(h) An application for a new motor vehicle dealer's license of which a manufacturer or distributor owns any interest in the dealership entity in accordance with Occupations Code, §2301.476(g) must contain sufficient documentation to show that the applicant meets the requirements of Occupations Code, §2301.476(g).

215.115. Manufacturer, Distributor, and Converter Vehicle Sales Records.

(a) A manufacturer or distributor must maintain, for a minimum period of 48 months, a record of each vehicle sold to any person in this state. The manufacturer or distributor shall make the record available during business hours for inspection and copying by ~~a representative of~~ the department or be available to submit electronically to the department upon request.

(b) A converter must maintain, for a minimum period of 48 months, a record of each vehicle converted ~~for~~~~to~~ a~~any~~ person in this state, including ~~to~~ a Texas franchised dealer. The converter shall make the record available during business hours for inspection and copying by ~~a representative of~~ the department or be available to submit electronically to the department upon request.

(c) A manufacturer, distributor, or converter is required to maintain at its licensed location a record reflecting each purchase, sale, or conversion for a minimum period of 24 months. Records for prior time periods may be kept off-site.

(d) Within 15 days of receipt of a request sent by mail or electronic document transfer from ~~a representative of~~ the department, a manufacturer, distributor, or converter must submit a copy of specified records to the address listed in the request.

(e) Records required to be maintained and made available to the department must include the following:

(1) the date of sale or conversion of the motor vehicle;

(2) the VIN;

(3) the name and address of the person purchasing the motor vehicle~~[dealer or converter];~~

(4) a copy of or a record with the information contained in the manufacturer's certificate of origin or title;

(5) information regarding the prior status of the motor vehicle such as the Reacquired Vehicle Disclosure Statement;

(6) the repair history of any motor vehicle subject to a warranty complaint;

(7) technical service bulletin or equivalent advisory; and

(8) any audit of a franchised dealership.

(f) Any record required by the department may be maintained in an electronic format, if the electronic record can be printed at the licensed location upon request ~~[for the record]~~ by ~~a representative of~~ the department or be available to submit electronically to the department upon request.

215.116. Franchised Dealership Lease or Sublease Listing.

1 A franchised dealer that lists its dealership for lease or sublease to mitigate damages in  
2 accordance with Occupations Code, §2301.4651(e) is required to list~~[-for lease or sublease]:~~

3 (1) the entire real property if the termination or discontinuance effectively terminates all  
4 line-makes and all franchises for the entire dealership; or

5 (2) only that portion of the real property associated with the terminated line-make or  
6 franchise, if the termination or discontinuance does not affect all line-makes and all franchises of the  
7 dealership.

8  
9 215.117. Market Value Property Appraisal.

10 (a) An appraiser performing a[A] market value property appraisal~~[-assessment made]~~ in  
11 accordance with Occupations Code, §2301.482(c) must be a Texas-~~[requires three general]~~certified real  
12 estate appraiser~~[appraisers-certified by the State of Texas]~~.

13 (b) Necessary real estate and necessary construction are each determined by the applicable  
14 property use agreement.

15 (c) The~~[To determine-]~~market value of property in accordance with Occupations Code,  
16 §2301.482(c), is the~~[an]~~ average of the market value property appraisals~~[-will be calculated from the~~  
17 ~~independent market value property assessment determinations]~~ of the three ~~[general]~~certified real  
18 estate appraisers.

19  
20 215.120 License Plates.

1           (a) A manufacturer, distributor, or converter may apply for a manufacturer or converter standard  
2           license plate for use on a new unregistered vehicle of the same vehicle type assembled or modified in  
3           accordance with Transportation Code §503.064 or §503.0618, as applicable:

4                     (1) when applying for a new or renewal license, or  
5                     (2) by submitting a plate request application electronically in the system designated by  
6           the department.

7           (b) A manufacturer may use a manufacturer's standard plate to test a prototype motor vehicle  
8           on a public street or highway including a commercial motor vehicle prototype designed to carry a load. A  
9           manufacturer's standard plate may not be used on a commercial motor vehicle prototype or new  
10           commercial motor vehicle to carry a load for which the manufacturer or other person receives  
11           compensation.

12           (c) A manufacturer, distributor, or converter shall attach a license plate to the rear of a vehicle in  
13           accordance with §217.27 of this title (relating to Vehicle Registration Insignia).

14           (d) A manufacturer, distributor, or converter shall maintain a record of each license plate issued  
15           to the manufacturer, distributor, or converter by the department. The record of each license plate issued  
16           must contain:

17                     (1) the license plate number;

18                     (2) the year and make of the vehicle to which the license plate is affixed;

19                     (3) the VIN of the vehicle; and

20                     (4) the name of the person in control of the vehicle to which the license plate is affixed.

(e) If a manufacturer, distributor, or converter cannot account for a license plate or a license plate is damaged, the manufacturer, distributor, or converter must:

(1) document the license plate as "void" in plate record in subsection (c); and

(2) within three days of discovering that the license plate is missing or damaged, report the license plate as lost, stolen, or damaged electronically in the system designated by the department; and

(3) if found after reported missing, cease use of the license plate.

(f) A license plate is no longer valid for use after the manufacturer, distributor, or converter reports to the department that the plate is lost, stolen, or damaged. A manufacturer, distributor, or converter must render a void plate unusable by permanently marking the front of the plate with the word "VOID" or a large "X" and once marked, must destroy or recycle the license plate, or return the license plate to the department within 10 days.

(g) The license holder's license plate record must be available for inspection and copying by the department during normal business hours or be available to submit electronically to the department upon request.

(h) In evaluating requests for additional standard license plates, the department will consider the business justification provided by a license holder including the following:

(1) the number of vehicles assembled or modified;

(2) the highest number of motor vehicles in inventory in the prior 12 months;

(3) the size and type of business;



(4) how the license holder typically uses the plates;

(5) the license holder's record of tracking and reporting missing or damaged plates to the department; and

(6) any other factor the Department in its discretion deems necessary to support the number of plates requested.

(i) a license holder must return a department-issued license plate to the department within 10 days of the license holder closing the associated license or the associated license being revoked, canceled, or closed by the department.

215.121. Sanctions.

(a) The board or department may take the following actions against a license applicant, a license holder, or a person engaged in business for which a license is required:

(1) deny an application;

(2) revoke a license;

(3) suspend a license;

(4) assess a civil penalty;

(5) issue a cease and desist order; or

(6) take other authorized action.

(b) The board or department may take action described in subsection (a) of this section if a license applicant, a license holder, or a person engaged in business for which a license is required:

(1) fails to maintain records required under this chapter;

(2) refuses or fails to timely comply with a request for records made by a representative of the department;

(3) sells or offers to sell a motor vehicle to a retail purchaser other than through a licensed or authorized dealer;

(4) fails to submit a license amendment application in the electronic system designated by the department for licensing to notify the department of a change of the license holder's physical address, mailing address, telephone number, or email address within 10 days of the change;

(5) fails to timely submit a license amendment application in the electronic system designated by the department for licensing to notify the department of a license holder's business or assumed name change, deletion of a line-make, or management or ownership change;

(6) fails to notify the department or pay or reimburse a franchised dealer as required by law;

(7) misuses or fails to display a license plate as required by law;

(8) is a manufacturer or distributor and fails to provide a manufacturer's certificate for a new vehicle;

1                   (9) fails to remain regularly and actively engaged in the business of manufacturing,  
2   assembling, or modifying a new motor vehicle of the type and line make for which a license has been  
3   issued by the department;

4                   (10) violates a provision of Occupations Code, Chapter 2301; Transportation Code  
5   Chapters 501–503 or 1001–1005; a board order or rule; or a regulation of the department relating to the  
6   manufacture, assembly, sale, lease, distribution, financing, or insuring of vehicles, including advertising  
7   rules under Subchapter H of this chapter (relating to Advertising);

8                   (11) is convicted of an offense that directly relates to the duties or responsibilities of the  
9   occupation in accordance with §211.3 of this title (relating to Criminal Offense Guidelines);

10                  (12) is determined by the board or department, in accordance with §215.89 of this title  
11   (relating to Fitness), to be unfit to hold a license;

12                  (13) omits information or makes a material misrepresentation in any application or other  
13   documentation filed with the department including providing a false or forged identity document or a  
14   false or forged photograph, electronic image, or other document;

15                  (14) fails to remit payment as ordered for a civil penalty assessed by the board or  
16   department;

17                  (15) violates any state or federal law or regulation relating to the manufacture,  
18   distribution, modification, or sale of a motor vehicle;

19                  (16) fails to issue a refund as ordered by the board or department; or

20                  (17) fails to participate in statutorily required mediation without good cause.

SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

**43 TAC §215.112**

STATUTORY AUTHORITY. The department proposes a repeal to Chapter 215 under 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 gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which

authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes repeals under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

**CROSS REFERENCE TO STATUTE.** This repeal would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503, 1001–1003, and 1005.

§215.112. Motor Home Show Limitations and Restrictions.

1

2 SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

3 **43 TAC §§215.131–215.145, 215.152, 215.154–215.155, and 215.160–161**

4 **STATUTORY AUTHORITY.** The department proposes amendments to Chapter 215 under Occupations  
5 Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor  
6 vehicles and the authority to take any action that is necessary or convenient to exercise that authority;  
7 Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license  
8 holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute  
9 and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in  
10 connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations  
11 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which  
12 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter  
13 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives  
14 the board authority to deny an application for a license, revoke or suspend a license, place on probation,  
15 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,  
16 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds  
17 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government  
18 Code, §411.122(d), which authorizes department access to criminal history record information  
19 maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal  
20 history record information from DPS and the FBI for license applicants, license holders, and  
21 representatives whose act or omission would be cause for denying, revoking, or suspending a general  
22 distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,  
23 Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as

1 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which  
2 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;  
3 Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases;  
4 Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for  
5 an original or renewal general distinguishing number who proposes to be an independent motor vehicle  
6 dealer complete web-based education and training developed or approved by the department;  
7 Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice  
8 of a surety bond and the procedure by which a claimant may recover against the surety bond;  
9 Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of  
10 dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the  
11 board to adopt rules necessary to implement and manage the department's temporary tag databases;  
12 and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and  
13 appropriate to implement the powers and the duties of the department, as well as the statutes referenced  
14 throughout this preamble.

15 The department also proposes amendments under the authority of Transportation Code,  
16 §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition  
17 to the statutory authority referenced throughout this preamble.

18 Transportation Code, §501.0041 authorizes the department to adopt rules to administer  
19 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt  
20 rules to administer Transportation Code, Chapter 502.

21 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature  
22 and requirements of all available formal and informal procedures. Government Code, §2001.039 requires  
23 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.

Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

**CROSS REFERENCE TO STATUTE.** These proposed revisions would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters Occupations Code, Chapters 53, 55, 2301, and 2302; and Transportation Code, Chapters 501–503, 1001–1003, and 1005.

Text.

**SUBCHAPTER D[E]. GENERAL DISTINGUISHING NUMBERS AND IN-TRANSIT LICENSES.**

215.131. Purpose and Scope.

This subchapter implements Transportation Code, Chapters [Chapter] 503 and 1001–1005, and Occupations Code, Chapter 2301, and applies to general distinguishing numbers and drive-a-way operator in-transit licenses issued by the department.

215.132. Definitions.

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

(1) Barrier--A material object or set of objects that separates or demarcates.

~~[(2) Charitable organization--Has the meaning assigned by Transportation Code, §503.062(e).]~~

(2) [(3)] Consignment sale--The owner-authorized sale of a motor vehicle by a person other than the owner.

(3) [(4)] House trailer--A nonmotorized vehicle designed for human habitation and for carrying persons and property on its own structure and for being drawn by a motor vehicle. A



house trailer does not include manufactured housing. A towable recreational vehicle, as defined by Occupations Code, §2301.002, is included in the terms "house trailer" or "travel trailer."

~~[(5) License--A dealer's GDN assigned by the department identifying the type of business for a specified location from which the person engages in business.]~~

(4) Municipality--As defined according to the Local Government Code, Chapter 1.

(5)[(6)] Person--Has the meaning assigned by Occupations Code, §2301.002.

(6)[(7)] Sale--With regard to a specific vehicle, the transfer of possession of that vehicle to a purchaser for consideration.

(7)[(8)] Temporary tag--A buyer's temporary tag, converter's temporary tag, or dealer's temporary tag as described under Transportation Code, Chapter 503.

(8)[(9)] Towable recreational vehicle--Has the same meaning as "house trailer" defined by this section.

(9)[(10)] Travel Trailer--Has the same meaning as "house trailer" defined by this section.

(10)[(11)] Vehicle--Has the meaning assigned by Transportation Code, §503.001.

(11)[(12)] VIN--Vehicle identification number.

215.133. GDN[General Distinguishing Number] Application Requirements for a Dealer or a Wholesale Motor Vehicle Auction.

(a) No person may engage in business as a dealer or as a wholesale motor vehicle auction unless that person has a ~~currently~~ valid GDN assigned by the department for each location from which the person engages in business. A dealer must also hold a GDN for a consignment location, unless the consignment location is a wholesale motor vehicle auction.

(b) Subsection (a) of this section does not apply to a person exempt from the requirement to obtain a GDN under Transportation Code §503.024.

(c) A GDN dealer or wholesale motor vehicle auction application shall be on a form prescribed by the department and properly completed by the applicant as required under §215.83 of this title (relating to License Applications, Amendments, or Renewals). A GDN dealer or wholesale motor vehicle auction application shall include all required information, required supporting documents, and required fees and shall be submitted to the department electronically in a system designated by the department for licensing. A GDN dealer or wholesale motor vehicle auction GDN holder renewing or amending its GDN must verify current license information, provide related information and documents for any new requirements or changes to the GDN, and pay required fees including any outstanding civil penalties owed the department under a final order. An applicant for a new dealer or wholesale motor vehicle auction GDN must provide the following:

(1) Required information:

(A) type of GDN requested;

(B) business information, including the name, physical and mailing addresses, telephone number, Secretary of State file number (if applicable), and website address (if applicable);

(C) ~~[application contact name, email address, and telephone number]~~ contact name, email address, and telephone number of the person submitting the application;

1                            (D) contact name, email address, and telephone number of a person who  
2   can provide information about business operations and the motor vehicle products or services  
3   offered;

4                            (E)[(D)] the name, social security number, date of birth, identity document  
5   information, and ownership percentage for each owner, partner, member, or principal if the  
6   applicant is not a publicly traded company;

7                            (F)[(E)] the name, social security number, date of birth, and identity  
8   document information for each officer, director, manager, trustee, or other representative  
9   authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal  
10   entity;

11                           (G)[(F)] the name, employer identification number, ownership percentage,  
12   and non-profit or publicly traded status for each legal entity that owns the applicant in full or in  
13   part;

14                           (H)[(G)] the name, social security number, date of birth, and identity  
15   document information of at least one manager or other bona fide employee who will be present at  
16   the established and permanent place of business if the owner is out of state or will not be present  
17   during business hours at the established and permanent place of business in Texas;

18                           (I)[(H)] if a dealer, the name, telephone number, and business email address  
19   of the temporary tag database account administrator designated by the applicant who must be an  
20   owner or representative listed in the application;

21                           (J)[(I)] criminal history record information under the laws of Texas, another  
22   state in the United States, the United States, and any foreign jurisdiction for each person listed in  
23   the application, including offense description, date, and location;

1                    ~~(K)~~~~(J)~~ military service status;

2                    ~~(L)~~~~(K)~~ licensing history required to evaluate fitness for licensure under

3    §215.89 of this title (relating to Fitness);

4                    ~~(M)~~~~(L)~~ information about the business location and business premises,

5    including whether the applicant will operate as a salvage vehicle dealer at the location;

6                    ~~(N)~~~~(M)~~ history of insolvency, including outstanding or unpaid debts,

7    judgments, or liens, unless the debt was discharged under 11 U.S.C. §§101 et seq. (Bankruptcy Act)

8    or is pending resolution under a case filed under the Bankruptcy Act;

9                    ~~(O)~~~~(N)~~ signed Certification~~Certificate~~ of Responsibility, which is a form

10   provided by the department; and

11                    ~~(P)~~~~(O)~~ any other information required by the department to evaluate the

12   application under current law and board rules.

13                    (2) A legible and accurate electronic image of each applicable required document:

14                    (A) proof of a surety bond if required under §215.137 of this title (relating

15   to Surety Bond);

16                    (B) the certificate of filing, certificate of incorporation, or certificate of

17   registration on file with the Secretary of State, if applicable;

18                    (C) each assumed name certificate on file with the Secretary of State or

19   county clerk;

20                    (D) at least one of the following unexpired identity documents for each

21   natural person listed in the application:

22                    (i) ~~current~~ driver license;

- 1 (ii) ~~[current]~~ Texas Identification Card issued by the Texas  
2 Department of Public Safety under Transportation Code, Chapter 521, Subchapter E;  
3 (iii) ~~[current]~~ license to carry a handgun issued by the Texas  
4 Department of Public Safety under Government Code, Chapter 411, Subchapter H;  
5 (iv) ~~[current]~~ passport; or  
6 (v) ~~[current]~~ United States military identification card~~[armed forces~~  
7 ~~identification]~~.
- 8 (E) a certificate of occupancy, certificate of compliance, or other official  
9 documentation confirming the business location complies with municipal ordinances, including  
10 zoning, occupancy, or other requirements for a vehicle business;
- 11 (F) documents proving business premises ownership, or lease or sublease  
12 agreement for the license period;
- 13 (G) business premises photos and a notarized affidavit certifying that all  
14 premises requirements in §215.140 of this title (relating to Established and Permanent Place of  
15 Business Premises Requirements) are met and will be maintained during the license period;
- 16 (H) evidence of franchise if applying for a franchised motor vehicle dealer  
17 GDN;
- 18 (I) proof of completion of the dealer education and training required under  
19 Transportation Code §503.0296, if applicable; and
- 20 (J) any other documents required by the department to evaluate the  
21 application under current law and board rules.
- 22 (3) Required fees:

(A) the fee ~~[for the GDN]~~ for each type of license requested as prescribed by law; and

(B) the fee, including applicable taxes, for each standard~~[metal]~~ dealer plate requested by the applicant as prescribed by law.

(d) An applicant for a dealer or wholesale auction GDN must also comply with fingerprint requirements in §211.6 of this title (relating to Fingerprint Requirements for Designated License Types~~[General Distinguishing Numbers]~~), if applicable.

(e) An applicant for a ~~[dealer]~~ GDN operating under a name other than the applicant's business name ~~[applicant]~~ shall use the assumed name under which the applicant is authorized to do business, as filed with the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant on the application using the letters "DBA." The applicant may not use a name or~~an~~ assumed name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

(f) A wholesale motor vehicle dealer GDN holder may sell or exchange vehicles with licensed or authorized dealers only. A wholesale motor vehicle dealer GDN holder may not sell or exchange vehicles at retail.

(g) An independent mobility motor vehicle dealer shall retain and produce for inspection all records relating to the license requirements under Occupations Code, §2301.002(17-b) and all information and records required under Transportation Code §503.0295.

(h) In evaluating a new or renewal~~[dealer]~~ GDN application or an application for a new GDN location, the department may require a site visit to determine if the business location meets the requirements in §215.140. The department will require the applicant or GDN holder to provide

1 a notarized affidavit confirming that all premises requirements are met and will be maintained  
2 during the license period.

3 (i) A person holding an independent motor vehicle GDN does not have to hold a salvage  
4 vehicle dealer license to:

5 (1) act as a salvage vehicle dealer or rebuilder; or  
6 (2) store or display a motor vehicle as an agent or escrow agent of an insurance  
7 company.

8 (j) A person holding an independent motor vehicle GDN and performing salvage activities  
9 under subsection (i) must apply for a National Motor Vehicle Title Information System (NMVTIS)  
10 identification number and provide the number to the department in the GDN application.

11 (k)(j) To be eligible for an independent motor vehicle GDN, a person must complete dealer  
12 education and training specified by the department, except as provided in this subsection:

13 (1) once a person has completed the required dealer education and training, the  
14 person will not have to retake the dealer education and training for subsequent GDN renewals, but  
15 may be required to provide proof of dealer education and training completion as part of the GDN  
16 renewal process;

17 (2) a person holding an independent motor vehicle GDN for at least 10 years as of  
18 September 1, 2019, is exempt from the dealer education and training requirement; and.

19 (3) a military service member, military spouse, or military veteran will receive  
20 appropriate credit for prior training, education, and professional experience and may be exempted  
21 from the dealer education and training requirement.

22  
23 215.134. Requirements for a Drive-a-way Operator In-Transit License.

1           (a) No drive-a-way operator may engage in business in Texas unless that person has a  
2           currently valid drive-a-way operator in-transit license issued by the department.

3           (b) A drive-a-way operator in-transit application shall be on a form prescribed by the  
4           department and properly completed by the applicant as required under §215.83 of this title  
5           (relating to License Applications, Amendments, or Renewals). A drive-a-way operator in-transit  
6           application shall include all required information, required supporting documents, and required  
7           fees, and shall be submitted to the department electronically in a system designated by the  
8           department for licensing.

9           (c) A drive-a-way operator in-transit license holder renewing or amending its license must  
10          verify current license information, provide related information and documents for any new  
11          requirements or changes to the license, and pay required fees.

12          (d) An applicant for a new license must register for an account in the department-designated  
13          licensing system by selecting the licensing system icon on the dealer page of the department website. An  
14          applicant must designate the account administrator and provide the name and email address for that  
15          person, and provide the business telephone number, name, business type, and social security number or  
16          employer identification number, as applicable. The applicant's licensing account administrator must be  
17          an owner, officer, manager, or bona fide employee.

18          (e) Once registered, an applicant may apply for a new license and must provide the  
19          following:

20                   (1) Required information:

21                           (A) type of license requested;



1                   (B) business information, including the name, physical and mailing  
2 addresses, telephone number, Secretary of State file number (if applicable), and website address  
3 (if applicable);

4                   (C) contact name, email address, and telephone number of the person  
5 submitting the application;

6                   (D) contact name, email address, and telephone number of a person who  
7 can provide information about business operations and the motor vehicle services offered;

8                   (E) the name, social security number, date of birth, identity document  
9 information, and ownership percentage for each owner, partner, member, beneficiary, or principal  
10 if the applicant is not a publicly traded company;

11                   (F) the name, social security number, date of birth, and identity document  
12 information for each officer, director, manager, trustee, or other representative authorized to act  
13 on behalf of the applicant if the applicant is owned in full or in part by a legal entity;

14                   (G) the name, employer identification number, ownership percentage, and  
15 non-profit or publicly traded status for each legal entity that owns the applicant in full or in part;

16                   (H) criminal history record information under the laws of Texas, another  
17 state in the United States, the United States, and any foreign jurisdiction for each person listed in  
18 the application, including offense description, date, and location;

19                   (I) military service status;

20                   (J) licensing history required to evaluate fitness for licensure under §215.89  
21 of this title (relating to Fitness);

22                   (K) signed Certification of Responsibility, which is a form provided by the  
23 department; and

1                            (L) any other information required by the department to evaluate the  
2 application under current law and board rules.

3                            (2) A legible and accurate electronic image of each applicable required document:

4                            (A) the certificate of filing, certificate of incorporation, or certificate of  
5 registration on file with the Secretary of State, if applicable;

6                            (B) each assumed name certificate on file with the Secretary of State or  
7 county clerk;

8                            (C) at least one of the following unexpired identity documents for each  
9 natural person listed in the application:

10                            (i) driver license;

11                            (ii) Texas Identification Card issued by the Texas Department of  
12 Public Safety under Transportation Code, Chapter 521, Subchapter E;

13                            (iii) license to carry a handgun issued by the Texas Department of  
14 Public Safety under Government Code, Chapter 411, Subchapter H;

15                            (iv) passport; or

16                            (v) United States military identification card;

17                            (D) a list of manufacturers, distributors, dealers, or auctions for which the  
18 applicant provides drive-a-way services;

19                            (E) a description of the business model or business process, transportation  
20 methods, compensation agreements, products, and services used or offered sufficient to allow  
21 department to determine if the license type applied for is appropriate under Texas law; and

22                            (F) any other documents required by the department to evaluate the  
23 application under current law and board rules.

1                   (3) Required fees:

2                               (A) the license fee as prescribed by law; and

3                               (B) the fee, including any taxes, for each standard drive-a-way in-transit  
4 license plate requested by the applicant as prescribed by law.

5                   (f) An applicant for a drive-a-way operator in-transit license must also comply with  
6 fingerprint requirements in §211.6 of this title (relating to Fingerprint Requirements for  
7 Designated License Types).

8                   (g) An applicant operating under a name other than the applicant's business name shall use  
9 the name under which the applicant is authorized to do business, as filed with the Secretary of  
10 State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant  
11 on the application using the letters "DBA." The applicant may not use a name or assumed name  
12 that may be confused with or is similar to that of a governmental entity or that is otherwise  
13 deceptive or misleading to the public.

14  
15   215.135. More than One Location.

16                   (a) A dealer that holds a GDN for a particular type of vehicle may operate from more than one  
17 location within the limits of a municipality~~[city]~~, provided each location is operated by the same legal  
18 entity and meets the requirements of §215.140 of this title (relating to Established and Permanent Place  
19 of Business Premises Requirements).

20                   (b) Additional locations not located within the limits of the same municipality~~[city]~~ of the initial  
21 dealership are required to:

22                               (1) obtain a new GDN; and

(2) provide a new surety bond reflecting the additional location~~[7]~~ unless the licensed location is exempt by statute from the surety requirement.

(c) A dealer that relocates from a point outside the limits of a city or relocates to a point not within the limits of the same city of the initial location is required to:

(1) obtain a new GDN; and

(2) provide a new surety bond reflecting the new address~~[7]~~ unless the licensed location is exempt by statute from the surety requirement.

(d) A dealer shall notify the department in writing within 10 days of opening, closing, or relocating ~~a[any]~~ licensed location by filing an amendment application electronically in the system designated by the department for licensing. Each location must meet and maintain the requirements of §215.140.

(e) A dealer may not commence business at any location until the department issues a license specific to that location.

#### 215.137. Surety Bond.

(a) The surety bond required by Transportation Code, §503.033 shall be in the legal business name in which the dealer's GDN~~[license]~~ will be issued and shall contain the complete physical address of each ~~[dealership]~~ location licensed under the GDN that the surety bond is intended to cover.

(b) A surety bond executed by an agent representing a bonding company or surety must be supported by an original power of attorney from the bonding company or surety.

(c) The identity of the obligee on a surety bond or a rider to a surety bond must be approved by the department. An obligee may be identified as~~[A surety bond or rider to a surety bond may be identified as]~~:

(1) a person who obtains a court judgment assessing damages and attorney's fees for an act or omission on which the bond is conditioned; or

(2) unknown.

(d) A bonding company that pays any claim against a surety bond shall immediately report the payment to the department.

(e) A bonding company shall give written notice to the department 30 days prior to canceling any surety bond.

(f) The surety bond required by this section does not apply to a:

(1) franchised motor vehicle dealer licensed by the department;

(2) franchised motorcycle dealer licensed by the department;

(3) franchised house trailer or travel trailer dealer licensed by the department; or

(4) trailer or semitrailer dealer licensed by the department.

215.138. Use of ~~[Metal]~~ Dealer's License Plates.

(a) A ~~metal~~ dealer's license plate shall be attached to the rear ~~[license plate holder]~~ of a vehicle in accordance with §217.27 of this title (relating to Vehicle Registration Insignia)~~[Transportation Code, §503.061]~~.

(b) A copy of the receipt for a ~~the metal~~ dealer's standard license plate issued by the department should be carried in the vehicle to present~~[so that the receipt can be presented]~~ to law enforcement personnel upon request.

(c) A ~~metal~~ dealer's license plate may not be displayed on:

(1) a laden commercial vehicle being operated or moved on the public streets or highways; or

(2) the dealer's service or work vehicle, except as provided by Transportation Code, §503.068(b-1).

(d) For purposes of this section, a dealer's service or work vehicle includes:

(1) a vehicle used for towing or transporting another vehicle;

(2) a vehicle, including a light truck, used in connection with the operation of the dealer's shops or parts department;

(3) a courtesy car on which a courtesy car sign is displayed;

(4) a rental or lease vehicle; and

(5) a boat trailer owned by a dealer or manufacturer that is used to transport more than one boat.

1           ~~[(e) As used in this section, "light truck" has the meaning assigned by Transportation Code,~~  
2   ~~§541.201.]~~

3           ~~(e)~~ [(f) For purposes of this section, a light truck as defined by Transportation Code, §541.201, is  
4 not considered a laden commercial vehicle when it is:

5                   (1) mounted with a camper unit; or

6                   (2) towing a trailer for recreational purposes.

7           ~~(f)~~ [(g)] A ~~metal~~ dealer's license plate may be displayed only on the type of vehicle for which the  
8 GDN is issued and for which a dealer is licensed to sell. A nonfranchised dealer may not display a ~~metal~~  
9 dealer's license plate on a new motor vehicle.

10          ~~(g)~~ [(h)] A ~~metal~~ dealer's license plate may be displayed only on a vehicle that has a valid  
11 inspection in accordance with Transportation Code, Chapter 548.

12          ~~(h)~~ [(i)] A dealer shall maintain a record of each ~~metal dealer's~~ license plate issued by the  
13 department to that dealer including standard and personalized prestige plates. The record must contain:

14                   (1) the ~~assigned metal dealer's~~ license plate number;

15                   (2) the year and make of the vehicle to which the ~~metal~~ dealer's license plate is affixed;

16                   (3) the VIN of the vehicle; and

17                   (4) the name of the person in control of the vehicle.

18          ~~(i)~~ [(j)] If a dealer cannot account for a ~~metal~~ dealer's license plate that the department issued  
19 to that dealer, the dealer must:

(1) document the~~[-metal]~~ dealer's license plate as "void" in the~~[-metal]~~ dealer's license plate record;

(2) within three days of discovering that the~~[-metal]~~ dealer's license plate is missing~~[,] or~~ damaged, report the dealer's license plate as lost, stolen, or damaged in the electronic system designated by the department~~[report to the department in writing that the metal dealer's license plate is lost or stolen];~~ and

(3) if found, cease use of the ~~[-metal]~~dealer's license plate.

~~(j) [(k)]~~ A~~[-metal]~~ dealer's license plate is no longer valid for use after the dealer reports to the department that the~~[-metal]~~ dealer's license plate is lost, stolen, or damaged~~[-missing]~~. A dealer must render a void plate unusable by permanently marking the front of the plate with the word "VOID" or a large "X" and once marked, must destroy or recycle the license plate, or return the license plate to the department for recycling within 10 days.

(k) A dealer's license plate record must be available for inspection and copying by the department during normal business hours or be available to submit electronically to the department upon request.

(l) A dealer must return a department-issued license plate, sticker, or receipt to the department within 10 days of the license holder closing the associated license or the department revoking or canceling the license.

215.139. ~~[-Metal]~~Dealer's Standard License Plate Allocation.



(a) The number of ~~[metal]~~dealer's standard license plates a dealer may order for business use is based on the type of license for which the dealer applied and the number of vehicles the dealer sold during the previous year.

(b) A new license applicant is allotted a predetermined number of ~~[metal]~~dealer's standard license plates for the duration of the dealer's first license term.

(c) Unless otherwise qualified under this section, the maximum number of ~~[metal]~~dealer's standard license plates the department will issue to a new license applicant during the applicant's first license term is indicated in the following table.

Attached Graphic

(d) A dealer applying ~~[that submits an application to the department]~~for a license is not subject to the initial allotment limits described in this section and may rely on that dealer's existing allocation of ~~[metal]~~ dealer's standard license plates if that dealer is:

(1) a franchised dealership subject to a buy-sell agreement, regardless of a change in the entity or ownership;

(2) any type of dealer that is relocating and has been licensed by the department for a period of one year or longer; or

(3) any type of dealer that is changing its business entity type and has been licensed by the department for a period of one year or longer.

(e) The maximum number of ~~[metal]~~ dealer's standard license plates the department will issue to a vehicle dealer per license term is indicated in the following table.

1 Attached Graphic

2 (f) A dealer may obtain more than the maximum number of ~~[metal]~~ dealer's standard license  
3 plates provided by this section by submitting to the department proof of sales for the previous 12-month  
4 period that justifies additional allocation.

5 (1) The number of additional ~~[metal]~~ dealer's standard license plates the department  
6 will issue to a dealer that demonstrates a need through proof of sales is indicated in the following table.

7 Attached Graphic

8 (2) For purposes of this section, proof of sales for the previous 12-month period may  
9 consist of a copy of the most recent vehicle inventory tax declaration or monthly statements filed with  
10 the taxing authority in the county of the dealer's licensed location. Each copy must be stamped as  
11 received by the taxing authority. The department will consider a[A] franchised dealer's license renewal  
12 application that indicates sales of more than 200 units ~~[is considered]~~ to be proof of sales of more than  
13 200 units and no additional proof is required.

14 (3) The department may not issue more than two ~~[metal]~~ dealer's standard license  
15 plates to a wholesale motor vehicle dealer. For purposes of this section, a wholesale motor vehicle  
16 dealer's proof of sales may be demonstrated to the department by submitting:

17 (A) evidence of the wholesale motor vehicle dealer's sales for the previous 12-  
18 month period, if the wholesale motor vehicle dealer has been licensed during those 12 months; or

19 (B) other documentation approved by the department demonstrating the  
20 wholesale motor vehicle dealer's transactions.

(g) The director may waive the ~~[metal]~~dealer's standard license plate issuance restrictions if the waiver is essential for the continuation of the business. The director will determine the number of ~~[metal]~~dealer's standard license plates the department will issue based on the dealer's past sales, dealer's inventory, and any other factor the director determines pertinent.

(1) A request for a waiver must be submitted to the director in writing and specifically state why the additional plate is necessary for the continuation of the applicant's business.

(2) A request for a waiver must be accompanied by proof of the dealer's sales for the previous 12-month period, if applicable.

(3) A wholesale motor vehicle dealer may not apply for a waiver of the ~~[metal]~~dealer's standard license plate issuance restrictions.

(4) A waiver granted by the director under this section for a specific number of ~~[metal]~~dealer's standard license plates is valid for four years.

~~[(h) This section does not apply to a personalized prestige dealer's license plate issued in accordance with Transportation Code, §503.0615.]~~

#### 215.140. Established and Permanent Place of Business Premises Requirements.

(a) A dealer must meet the following requirements at each licensed location and maintain the requirements during the term of the license. If multiple dealers are licensed at a location, each dealer must maintain the following requirements during the entire term of the license.

(1) Business hours for retail dealers.

(A) A retail dealer's office shall be open at least four days per week for at least four consecutive hours per day and may not be open solely by appointment.

(B) The retail dealer's business hours for each day of the week must be posted at the main entrance of the retail dealer's office in a manner and location that is accessible to the public. The owner or a bona fide employee of the retail dealer shall be at the retail dealer's licensed location during the posted business hours for the purposes of buying, selling, exchanging, or leasing vehicles. If the owner or a bona fide employee is not available to conduct business during the retail dealer's posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time the retail dealer will resume operations. Regardless of the retail dealer's business hours, the retail dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(2) Business hours for wholesale motor vehicle dealers. A dealer that holds only a wholesale motor vehicle dealer's GDN must post its business hours at the main entrance of the wholesale motor vehicle dealer's office in a manner and location that is accessible to the public. A wholesale motor vehicle dealer or bona fide employee shall be at the wholesale motor vehicle dealer's licensed location at least two weekdays per week for at least two consecutive hours per day. A wholesale motor vehicle dealer may not be open solely by appointment. Regardless of the wholesale motor vehicle dealer's business hours, the wholesale motor vehicle dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(3) Business sign requirements for retail dealers.

(A) A retail dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the retail dealer's business name or assumed name substantially similar to the name reflected on the retail dealer's GDN under which the retail dealer conducts business.

A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(B) The sign must be permanently mounted at the physical address listed on the application for the retail dealer's GDN. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground.

(C) A retail dealer may use a temporary sign or banner if that retail dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(D) A retail dealer is responsible for ensuring that the business sign complies with municipal ordinances, and that any lease signage requirements are consistent with the signage requirements in this paragraph.

(4) Business sign requirements for wholesale motor vehicle dealers.

(A) Exterior Sign

(i) A wholesale motor vehicle dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the wholesale motor vehicle dealer's

business name or assumed name substantially similar to the name reflected on the wholesale motor vehicle dealer's GDN under which the wholesale motor vehicle dealer conducts business. Effective September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers" in letters at least three inches in height. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(ii) The sign must be permanently mounted on the business property at the physical address listed on the application. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground. A wholesale motor vehicle dealer may use a temporary exterior sign or banner if the wholesale motor vehicle dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(B) Interior Sign

(i) If the wholesale motor vehicle dealer's office is located in an office building with one or more other businesses and an outside sign is not permitted by the property owner, a conspicuous permanent business sign permanently mounted on or beside the main door to the wholesale motor vehicle dealer's office with letters at least two inches in height is acceptable. Effective September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers" in letters at least one inch in height.

(ii) An interior business sign is considered conspicuous if it is easily visible to the public within 10 feet of the main entrance of the wholesale motor vehicle dealer's office.

1 An interior sign is considered permanent if made from durable material and has lettering that cannot be  
2 changed. An interior sign is considered permanently mounted if bolted or otherwise permanently affixed  
3 to the main door or nearby wall. A wholesale motor vehicle dealer may use a temporary interior sign or  
4 banner if the wholesale motor vehicle dealer can show proof that a sign that meets the requirements of  
5 this paragraph has been ordered and provides a written statement that the sign will be promptly and  
6 permanently mounted upon delivery.

7 (C) A wholesale motor vehicle dealer is responsible for ensuring that the  
8 business sign complies with municipal ordinances and that any lease signage requirements are  
9 consistent with the signage requirements in this paragraph.

10 (5) Office requirements for a retail dealer and a wholesale motor vehicle dealer.

11 (A) A dealer's office must be located in a building with a permanent roof and  
12 connecting exterior walls on all sides.

13 (B) A dealer's office must comply with all applicable municipal ordinances,  
14 including municipal zoning ordinances. The dealer is responsible for obtaining a certificate of occupancy,  
15 certificate of compliance, or other required document issued by a municipal government to show  
16 compliance, including a new certificate or document when the building is altered or remodeled, or when  
17 the building use changes.

18 (C) A dealer's office may not be located in a residence, apartment, hotel, motel,  
19 rooming house, or any room or building not open to the public.

(D) A dealer's office may not be located in a restaurant, gas station, or convenience store, unless the office has a separate entrance door that does not require a dealer's customer to pass through the other business.

(E) A dealer's office may not be virtual or provided by a subscription for office space or office services. Access to an office space or office services is not considered an established and permanent location.

(F) The physical address of the dealer's office must be in Texas and recognized by the U.S. Postal Service, ~~be~~ capable of receiving U.S. mail, and have an assigned emergency services property address. The department will not mail a ~~metal~~ dealer's license plate to an out-of-state address.

(G) A portable-type office building may qualify as an office only if the building meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(H) The dealer's office space must:

(i) include at least 100 square feet of interior floor space, exclusive of hallways, closets, or restrooms;

(ii) have a minimum seven-foot-high ceiling;

(iii) accommodate required office equipment; and

(iv) allow a dealer and customer to safely access the office and conduct business in private while seated.



(6) Required office equipment for a retail dealer and a wholesale motor vehicle dealer.

At a minimum, a dealer's office must be equipped with:

(A) a desk;

(B) two chairs;

(C) internet access; and

(D) a working telephone number listed in the business name or assumed name under which the dealer conducts business.

(7) Number of retail dealers in one building. Not more than four retail dealers may be located in the same building. Each retail dealer located in the same building must meet the requirements of this section.

(8) Number of wholesale motor vehicle dealers in one office building. Not more than eight wholesale motor vehicle dealers may be located in the same office building. Each wholesale motor vehicle dealer located in the same office building must meet the requirements of this section.

(9) Office sharing prohibition for retail dealers and wholesale motor vehicle dealers. Unless otherwise authorized by the Transportation Code, a retail dealer and a wholesale motor vehicle dealer licensed after September 1, 1999, may not be located in the same building.

(10) Dealer housed with other business.

(A) If a person conducts business as a dealer in conjunction with another business owned by the same person and under the same name as the other business, the same

1 telephone number may be used for both businesses. If the name of the dealer differs from the name of  
2 the other business, a separate telephone listing and a separate sign for each business are required.

3 (B) A person may conduct business as a dealer in conjunction with another  
4 business not owned by that person only if the dealer owns the property on which business is conducted  
5 or has a separate lease agreement from the owner of that property that meets the requirements of this  
6 section. The same telephone number may not be used by both businesses. The dealer must have  
7 separate business signs, telephone listings, and office equipment required under this section.

8 (C) A dealer's office must have permanent interior walls on all sides and be  
9 separate from any public area used by another business.

10 (11) Display area and storage lot requirements.

11 (A) A wholesale motor vehicle dealer is not required to have display space at the  
12 wholesale motor vehicle dealer's business premises.

13 (B) A retail dealer must have an area designated as display space for the retail  
14 dealer's inventory. A retail dealer's designated display area must comply with the following  
15 requirements.

16 (i) The display area must be located at the retail dealer's physical  
17 business address or contiguous to the retail dealer's physical address. The display area may not be in a  
18 storage lot.

19 (ii) The display area must be of sufficient size to display at least five  
20 vehicles of the type for which the GDN is issued. The display area~~[Those spaces]~~ must be reserved  
21 exclusively for the retail dealer's inventory and may not be used for customer parking, employee parking,

1 general storage, or shared or intermingled with another business or a public parking area, a driveway to  
2 the office, or another dealer's display area.

3 (iii) The display area may not be on a public easement, right-of-way, or  
4 driveway unless the governing body having jurisdiction of the easement, right-of-way, or driveway  
5 expressly consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part  
6 of the state highway system, use as a display area may only be authorized by a lease agreement.

7 (iv) If a retail dealer shares a display or parking area with another  
8 business, including another dealer, the dealer's vehicle inventory must be separated from the other  
9 business's display or parking area by a material object or barrier that cannot be readily removed. A  
10 barrier that cannot be readily removed is one that cannot be easily moved by one person and typically  
11 weighs more than 50 pounds. A material object or barrier must be in place on all sides except for the  
12 space necessary to allow for entry and exit of vehicle inventory.

13 (v) If a dealer's business location includes gasoline pumps or a charging  
14 station or includes another business that sells gasoline or has a charging station, the dealer's display area  
15 may not be part of the parking area for fuel or charging station customers and may not interfere with  
16 access to or from the gasoline pumps, fuel tanks, charging station, or fire prevention equipment.

17 (vi) The display area must be adequately illuminated if the retail dealer  
18 is open at night so that a vehicle for sale can be properly inspected by a potential buyer.

19 (vii) The display area may be located inside a building; however, if  
20 multiple dealers are displaying vehicles inside a building, each dealer's display area must be separated by  
21 a material object or barrier that cannot be readily removed. A barrier that cannot be readily removed is

one that cannot be easily moved by one person and typically weighs more than 50 pounds. A material object or barrier must be in place on all sides except for the space necessary to allow for entry and exit of vehicle inventory.

(C) A GDN holder~~[dealer]~~ may maintain a storage lot only if the storage lot is not accessible to the public and no sales activity occurs at the storage lot. A sign stating the license holder's~~[dealer's]~~ name, contact information, and the fact the property is a storage lot is permissible. A storage lot must be fenced or in an access-controlled location to be considered not accessible to the public. An applicant must include the physical address of a storage lot in an application for a new license if the storage lot is located at a different physical address than the licensed business. If a storage lot is established after a license is issued and is located at a different physical address than the licensed business, the dealer must submit a license amendment to add the physical address of the storage lot within 10 days of the storage lot being established.

(12) Dealers authorized to sell salvage motor vehicles. If an independent motor vehicle dealer offers a salvage motor vehicle for sale on the dealer's premises, the vehicle must be clearly and conspicuously marked with a sign informing a potential buyer that the vehicle is a salvage motor vehicle. ~~[This requirement does not apply to a licensed salvage pool operator.]~~

(13) Lease requirements. If the premises from which a dealer conducts business, including any display area, is not owned by the dealer, the dealer must maintain a lease that is continuous during the period of time for which the dealer's license will be issued. The lease agreement must be on a properly executed form containing at a minimum:

(A) the name of the property owner as the lessor of the premises and the name of the dealer as the tenant or lessee of the premises;

(B) the period of time for which the lease is valid;

(C) the street address or legal description of the property, provided that if only a legal description of the property is included, a dealer must attach a statement verifying that the property description in the lease agreement is the physical street address identified on the application as the physical address for the established and permanent place of business;

(D) the signature of the property owner as the lessor and the signature of the dealer as the tenant or lessee; and

(E) if the lease agreement is a sublease in which the property owner is not the lessor, the dealer must also obtain a signed and notarized statement from the property owner including the following information:

(i) property owner's full name, email address, mailing address, and phone number; and

(ii) property owner's statement confirming that the dealer is authorized to sublease the location and may operate a vehicle sales business from the location.

(14) Dealer must display GDN and bond notice. A dealer must display the dealer's GDN issued by the department at all times in a manner that makes the GDN easily readable by the public and in a conspicuous place at each place of business for which the dealer's GDN is issued. ~~[If the dealer's GDN applies to more than one location, a copy of the GDN and bond notice must be displayed in each supplemental location.]~~ A dealer required to obtain a surety bond must post a bond notice adjacent to and in the same manner as the dealer's GDN is displayed. The notice must include the bond company name, bond identification number, and procedure by which a claimant can recover under the bond. The

notice must also include the department's website address and notify a consumer that a dealer's surety bond information may be obtained by submitting a request to the department. If the dealer's GDN applies to more than one location, a copy of the GDN and bond notice must be displayed in each supplemental location.

(b) Wholesale motor vehicle auction premises requirements. A wholesale motor vehicle auction must comply with the following premises requirements:

(1) a wholesale motor vehicle auction GDN holder must hold a motor vehicle auction on a regular periodic basis at the licensed location, and an owner or bona fide employee must be available at the business location during each auction and during posted business hours. If the owner or a bona fide employee is not available to conduct business during the posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time operations will resume.

(2) the business telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(3) a wholesale motor vehicle auction GDN holder must display a business sign that meets the following requirements:

(A) The sign must be a conspicuous, permanent sign with letters at least six inches in height showing the business name or assumed name substantially similar to the name reflected on the GDN under which the GDN holder conducts business. A business sign is considered conspicuous

1 if it is easily visible to the public within 100 feet of the main entrance of the business office. A business  
2 sign is considered permanent only if it is made of durable, weather-resistant material.

3 (B) The sign must be permanently mounted at the physical address listed on the  
4 application for the wholesale motor vehicle auction GDN. A business sign is considered permanently  
5 mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign  
6 support permanently installed in the ground.

7 (C) An applicant may use a temporary sign or banner if the applicant can show  
8 proof that a sign that meets the requirements of this paragraph has been ordered and provides a written  
9 statement that the sign will be promptly and permanently mounted upon delivery.

10 (D) An applicant or holder is responsible for ensuring that the business sign  
11 complies with municipal ordinances, and that any lease signage requirements are consistent with the  
12 signage requirements in this paragraph.

13 (4) The business office of a wholesale motor vehicle auction GDN applicant and holder  
14 must meet the following requirements:

15 (A) The office must be located in a building with a permanent roof and  
16 connecting exterior walls on all sides.

17 (B) The office must comply with all applicable municipal ordinances, including  
18 municipal zoning ordinances. The wholesale motor vehicle auction is responsible for obtaining a  
19 certificate of occupancy, certificate of compliance, or other required document issued by a municipal  
20 government to show compliance, including a new certificate or document when the building is altered or  
21 remodeled, or when the building use changes.

1                    (C) The office may not be located in a residence, apartment, hotel, motel,  
2 rooming house, or any room or building not open to the public.

3                    (D) The office may not be located in a restaurant, gas station, or convenience  
4 store, unless the office has a separate entrance door that does not require a customer to pass through  
5 the other business.

6                    (E) The office may not be virtual or provided by a subscription for office space or  
7 office services. Access to office space or office services is not considered an established and permanent  
8 location.

9                    (F) The physical address of the office must be in Texas and recognized by the U.S.  
10 Postal Service, capable of receiving U.S. mail, and have an assigned emergency services property  
11 address.

12                    (G) A portable-type office building may qualify as an office only if the building  
13 meets the requirements of this section and is not a readily moveable trailer or other vehicle.

14                    (5) A wholesale motor vehicle auction GDN applicant and holder must have the following  
15 office equipment:

16                    (A) a desk;

17                    (B) a chair;

18                    (C) internet access; and

19                    (D) a working telephone number listed in the business name or assumed name  
20 under which business is conducted.



1                   (6) A wholesale motor vehicle auction must meet the following display area and storage  
2 lot requirements:

3                   (A) The area designated as display space for inventory must be located at the  
4 physical business address or contiguous to the physical address. The display area may not be in a storage  
5 lot.

6                   (B) The display area must be of sufficient size to display at least five vehicles.  
7 Those spaces must be reserved exclusively for inventory and may not be used for customer parking,  
8 employee parking, general storage, or shared or intermingled with another business or a public parking  
9 area, or a driveway to the office.

10                  (C) The display area may not be on a public easement, right-of-way, or driveway  
11 unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly  
12 consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part of the  
13 state highway system, use as a display area may only be authorized by a lease agreement.

14                  (D) If the business location includes gasoline pumps or a charging station or  
15 includes another business that sells gasoline or has a charging station, the display area may not be part  
16 of the parking area for fuel or charging station customers and may not interfere with access to or from  
17 the gasoline pumps, fuel tanks, charging station, or fire prevention equipment.

18                  (E) The display area must be adequately illuminated if open at night so that a  
19 vehicle for sale can be properly inspected by a potential buyer.

20                  (F) The display area may be located inside a building.

1                   (G) A wholesale motor vehicle auction may maintain a storage lot only if the  
2 storage lot is not accessible to the public and no sales activity occurs at the storage lot. A sign stating the  
3 business name, contact information, and the fact the property is a storage lot is permissible. A storage  
4 lot must be fenced or in an access-controlled location to be considered not accessible to the public. An  
5 applicant must include the physical address of a storage lot in an application for a new license if the  
6 storage lot is located at a different physical address. If a storage lot is established after a license is issued  
7 and is located at a different physical address, the dealer must submit a license amendment to add the  
8 physical address of the storage lot within 10 days of the storage lot being established.

9                   (7) A wholesale motor vehicle auction must meet the following lease requirements if the  
10 business premises, including any display area, is not owned by the wholesale motor vehicle auction:

11                   (A) the applicant or holder must maintain a lease that is continuous during the  
12 period of time for which the GDN will be issued;

13                   (B) The lease agreement must be on a properly executed form containing at a  
14 minimum:

15                   (i) the name of the property owner as the lessor of the premises and the  
16 name of the GDN applicant or holder as the tenant or lessee of the premises;

17                   (ii) the period of time for which the lease is valid;

18                   (iii) the street address or legal description of the property, provided that  
19 if only a legal description of the property is included, a wholesale motor vehicle auction must attach a  
20 statement verifying that the property description in the lease agreement is the physical street address

identified on the application as the physical address for the established and permanent place of business;

(iv) the signature of the property owner as the lessor and the signature of the applicant or holder as the tenant or lessee; and

(C) if the lease agreement is a sublease in which the property owner is not the lessor, the wholesale motor vehicle auction must also obtain a signed and notarized statement from the property owner including the following information:

(i) property owner's full name, email address, mailing address, and phone number; and

(ii) property owner's statement confirming that the dealer is authorized to sublease the location and may operate a wholesale motor vehicle auction business from the location.

215.141. Sanctions.

(a) The board or department may take the following actions against a license applicant, a license holder, or a person engaged in business for which a license is required:

(1) deny an application;

(2) revoke a license;

(3) suspend a license; ~~and~~

(4) assess a civil penalty; ~~[or other action against a license applicant, a license holder, or a person engaged in business for which a license is required.]~~

1                   (5) issue a cease and desist order; or

2                   (6) or take other authorized action.

3                   (b) The board or department may take action described in subsection (a) of this section if a  
4 license applicant, a license holder, or a person engaged in business for which a license is required:

5                   (1) fails to maintain a good and sufficient bond or post the required bond notice ~~in the~~  
6 ~~amount of \$25,000~~ if required under Transportation Code §503.033 (relating to Security Requirement);

7                   (2) fails to meet or maintain the requirements of §215.140 (relating to Established and  
8 Permanent Place of Business Premises Requirements);

9                   (3) [2] fails to maintain records required under this chapter;

10                   (4)[3] refuses or fails to comply with a request by ~~a representative of~~ the department  
11 for electronic records or to examine and copy during the license holder's business hours at the licensed  
12 business location:

13                   (A) sales records required to be maintained by §215.144 of this title (relating to  
14 Records);

15                   (B) ownership papers for a vehicle owned by that dealer or under that dealer's  
16 control;

17                   (C) evidence of ownership or a current lease agreement for the property on  
18 which the business is located; or

(D) the Certificate of Occupancy, Certificate of Compliance, business license or permit, or other official documentation confirming compliance with county and municipal laws or ordinances for a vehicle business at the licensed physical location.

(5)[(4)] refuses or fails to timely comply with a request for records made by a representative of the department;

(6)[(5)] holds a wholesale motor vehicle dealer's license and[:]

~~[(A) fails to meet the requirements of §215.140 of this title (relating to Established and Permanent Place of Business); or~~

(B)] sells or offers to sell a motor vehicle to a person other than a licensed or authorized dealer;

(7)[(6)] sells or offers to sell a type of vehicle that the person is not licensed to sell;

(8)[(7)] fails to submit a license amendment application in the electronic system designated by the department for licensing to notify the department of a change of the license holder's physical address, mailing address, telephone number, or email address within 10 days of the change, including a change in the physical address of a storage lot;

(9)[(8)] fails to submit a license amendment application in the electronic system designated by the department for licensing to notify the department of a license holder's name change, or management or ownership change within 10 days of the change;

(10)[(9)] except as provided by law, issues more than one buyer's temporary tag for the purpose of extending the purchaser's operating privileges for more than 60 days;

(11)[(10)] fails to remove a license plate or registration insignia from a vehicle that is displayed for sale;

(12)[(11)] misuses a [meta]dealer's license plate or a temporary tag;

(13)[(12)] fails to display a [meta]dealer's license plate or temporary tag, as required by law;

(14)[(13)] holds open a title or fails to take assignment of a certificate of title, manufacturer's certificate, or other basic evidence of ownership for a vehicle acquired by the dealer, or fails to assign the certificate of title, manufacturer's certificate, or other basic evidence of ownership for a vehicle sold;

(15)[(14)] fails to remain regularly and actively engaged in the business of buying, selling, or exchanging vehicles of the type for which the GDN is issued by the department;

(16)[(15)] violates a provision of Occupations Code, Chapter 2301; Transportation Code Chapters 503 and 1001[1000]–1005; a board order or rule; or a regulation of the department relating to the sale, lease, distribution, financing, or insuring of vehicles, including advertising rules under Subchapter F[H] of this chapter (relating to Advertising);

(17)[(16)] is convicted of an offense that directly relates to the duties or responsibilities of the occupation in accordance with §211.3 of this title (relating to Criminal Offense Guidelines);

(18)[(17)] is determined by the board or department, in accordance with §215.89 of this title (relating to Fitness), to be unfit to hold a license;

(19)[(18)] has not assigned at least five vehicles in the prior 12 months, provided the dealer has been licensed more than 12 months;

1                   (20)[(19)] files or provides a false or forged:

2                               (A) title document, including an affidavit making application for a certified copy  
3 of a title; or

4                               (B) tax document, including a sales tax statement or affidavit;

5                   (21)[(20)] uses or allows use of that dealer's license or location for the purpose of  
6 avoiding a provision of Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 -  
7 1005; or other laws;

8                   (22)[(21)] omits information or makes a material misrepresentation in any application or  
9 other documentation filed with the department including providing a false or forged identity document  
10 or a false or forged photograph, electronic image, or other document;

11                   (23)[(22)] fails to remit payment as ordered for a civil penalty assessed by the board or  
12 department;

13                   (24)[(23)] sells a new motor vehicle without a franchised dealer's license issued by the  
14 department;

15                   (25)[(24)] fails to comply with a dealer responsibility under §215.150 of this title  
16 (relating to Authorization to Issue Temporary Tags);

17                   (26) utilizes a temporary tag that fails to meet the requirements of §215.153 of this title  
18 (relating to Specifications for All Temporary Tags);

19                   (27)[(25)] violates any state or federal law or regulation relating to the sale of a motor  
20 vehicle; [or]

1                   ~~(28)~~~~[(26) effective January 1, 2017,]~~ knowingly fails to disclose that a motor vehicle has  
2       been repaired, rebuilt, or reconstructed and issued a title under Transportation Code, §501.100 (relating  
3       to Application for Regular Certificate of Title for Salvage Vehicle);.

4                   (29) fails to issue a refund as ordered by the board or department; or

5                   (30) fails to acquire or maintain a required certificate of occupancy, certificate of  
6       compliance, business license or permit, or other official documentation for the licensed location  
7       confirming compliance with county or municipal laws or ordinances or other local requirements for a  
8       vehicle business.

9  
10       215.143. Drive-a-way Operator In-Transit License Plates.

11               (a) A drive-a-way operator may apply for a drive-a-way in-transit standard license plate:

12                   (1) when applying for a new or renewal in-transit license, or

13                   (2) by submitting a plate request application electronically in the system designated by  
14       the department.

15               (b) A drive-a-way operator must display an in-transit license plate in the rear of each transported  
16       motor vehicle from the vehicle's point of origin to its point of destination in Texas in accordance with  
17       §217.27 of this title (relating to Vehicle Registration Insignia).

18               (c) A drive-a-way operator shall maintain a record of each license plate issued to the operator by  
19       the department. The record of each license plate issued must contain:

20                   (1) the license plate number;



1                   (2) the year and make of the vehicle to which the license plate is affixed;

2                   (3) the VIN of the vehicle; and

3                   (4) the name of the person in control of the vehicle.

4                   (d) If a drive-a-way operator cannot account for a license plate or a license plate is damaged, the  
5 operator must:

6                   (1) document the license plate as "void" in the operator's plate record;

7                   (2) within three days of discovering that the license plate is missing or damaged, report  
8 the license plate as lost, stolen, or damaged in the electronic system designated by the department; and

9                   (3) if found once reported, cease use of the license plate.

10                  (e) A license plate is no longer valid for use after the drive-a-way operator reports to the  
11 department that the plate is lost, stolen, or damaged. A drive-a-way operator must render a void plate  
12 unusable by permanently marking the front of the plate with the word "VOID" or a large "X" and once  
13 marked, may destroy or recycle the license plate, or return the license plate to the department for  
14 recycling within 10 days.

15                  (f) The drive-a-way operator's license plate record must be available for inspection and copying  
16 by the department during normal business hours or be available to submit electronically to the  
17 department upon request.

18                  (g) In evaluating requests for additional license plates, the department will consider the business  
19 justification provided by a drive-a-way operator including the following:

20                  (1) the number of vehicles currently being transported to a location in Texas;

(2) the highest number of motor vehicles transported in the prior 12 months;

(3) the size and type of business; and

(4) the operator's record of tracking and reporting missing or damaged plates to the department.

(h) If a drive-a-way operator closes the associated license or the associated license is revoked or canceled by the department, the operator must return a license plate to the department within 10 days.

215.144. Vehicle Records.

(a) Purchases and sales records. A dealer and wholesale motor vehicle auction must maintain a complete record of all vehicle purchases and sales for a minimum period of 48 months and make the record available for inspection and copying by ~~[a representative]~~ of the department during business hours.

(b) Independent mobility motor vehicle dealers. An independent mobility motor vehicle dealer must keep a complete written record of each vehicle purchase, vehicle sale, and any adaptive work performed on each vehicle for a minimum period of 36 months after the date the adaptive work is performed on the vehicle. An independent mobility motor vehicle dealer shall also retain and produce for inspection all records relating to the license requirements under Occupations Code, §2301.002(17-b) and all information and records required under Transportation Code §503.0295.

(c) Location of records. A dealer's record reflecting purchases and sales for the preceding 13 months must be maintained at the dealer's licensed location. Original titles are not required to be kept

at the licensed location[,] but must be made available to the agency upon reasonable request. A dealer's record for prior time periods may be kept off-site.

(d) Request for records. Within 15 days of receiving a request~~[receipt of a request sent by mail or electronic document transfer]~~ from the department, a dealer must deliver a copy of the specified records to the address listed in the request. If a dealer has a concern about the origin of a records request, the dealer may verify that request with the department~~[division]~~ prior to submitting its records.

(e) Content of records. A dealer's complete record for each vehicle purchase or vehicle sale must contain:

- (1) the date of the purchase;
- (2) the date of the sale;
- (3) the VIN;
- (4) the name and address of the person selling the vehicle to the dealer;
- (5) the name and address of the person purchasing the vehicle from the dealer;
- (6) the name and address of the consignor if the vehicle is offered for sale by consignment;
- (7) except for a purchase or sale where the Tax Code does not require payment of motor vehicle sales tax, a county tax assessor-collector receipt marked paid~~[copy of the receipt, titled "Tax Collector's Receipt for Texas Title Application/Registration/Motor Vehicle Tax"]~~;
- (8) a copy of all documents, forms, and agreements applicable to a particular sale, including a copy of:

- 1 (A) the title application;
- 2 (B) the work-up sheet;
- 3 (C) the front and back of the manufacturer's certificate of origin or  
4 manufacturer's statement of origin, unless the dealer obtains the title ~~[is obtained]~~ through the  
5 electronic title system;
- 6 (D) the front and back of the title for the purchase and the sale, unless the  
7 dealer enters or obtains the title ~~[is obtained]~~ through the electronic title system;
- 8 (E) the factory invoice, if applicable;
- 9 (F) the sales contract;
- 10 (G) the retail installment agreement;
- 11 (H) the buyer's order;
- 12 (I) the bill of sale;
- 13 (J) any waiver;
- 14 (K) any other agreement between the seller and purchaser; ~~[and]~~
- 15 (L) the purchaser's photo identification; ~~[Form VTR-136, relating to County of~~  
16 ~~Title Issuance, completed and signed by the buyer;]~~
- 17 (M) the odometer disclosure statement signed by the buyer; and
- 18 (N) the rebuilt salvage disclosure, if applicable.

(9) the original manufacturer's certificate of origin, original manufacturer's statement of origin, or original title for a new motor vehicle~~[vehicles]~~ offered for sale by a dealer which must be~~[-and a]~~ properly stamped ~~[original manufacturer's certificate of origin, original manufacturer's statement of origin, or original title for motor vehicles sold by a dealer]~~ if the title transaction is entered into the electronic titling system by the dealer;

(10) the dealer's monthly Motor Vehicle Seller Financed Sales Returns, if any; and

(11) if the vehicle sold is a motor home or a towable recreational vehicle subject to inspection under Transportation Code, Chapter 548, a copy of the written notice provided to the buyer at the time of the sale, notifying the buyer that the vehicle is subject to inspection requirements.

(f) Title assignments.

(1) For each vehicle a dealer acquires or offers for sale, the dealer must properly take assignment in the dealer's name of any:

(A) title;

(B) manufacturer's statement of origin;

(C) manufacturer's certificate of origin; or

(D) other evidence of ownership.

(2) Unless not required by Transportation Code, §501.0234(b), a~~[A]~~ dealer must apply in the name of the purchaser of a vehicle for the title and registration, if applicable, of the vehicle with a~~[the appropriate]~~ county tax assessor-collector~~[-as selected by the purchaser]~~.

(3) To comply with Transportation Code, §501.0234(f), a registration is considered filed within a reasonable time if the registration is filed within:

(A) 30~~[20 working]~~ days of the date of sale of the vehicle for a vehicle titled or registered in Texas; or

(B) 45 days of the date of sale of the vehicle for a dealer-financed transaction involving a vehicle that is titled or registered in Texas.

(4) The dealer is required to provide to the purchaser the receipt for the title and registration application.

(5) The dealer is required to maintain a copy of the receipt for the title and registration application in the dealer's sales file.

(g) Out-of-state sales. For a sale~~[sales transaction]~~ involving a vehicle to be transferred out of state, the dealer must:

(1) within 30~~[20 working]~~ days of the date of sale, either file the application for certificate of title on behalf of the purchaser or deliver the properly assigned evidence of ownership to the purchaser; and

(2) maintain in the dealer's record at the dealer's licensed location a photocopy of the completed sales tax exemption form for out of state sales approved by the Texas Comptroller of Public Accounts.

(h) Consignment sales. A dealer offering a vehicle for sale by consignment shall have a written consignment agreement or a power of attorney for the vehicle, and shall, after the sale of the vehicle, take assignment of the vehicle in the dealer's name and, pursuant to subsection (f), apply in the name of  
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the purchaser for transfer of title and registration, if the vehicle is to be registered, with ~~a~~the  
~~appropriate~~ county tax assessor-collector~~[-as selected by the purchaser]~~. The dealer must, for a  
minimum of 48 months, maintain a record of each vehicle offered for sale by consignment, including the  
VIN and the name of the owner of the vehicle offered for sale by consignment.

(i) Public motor vehicle auctions.

(1) A GDN holder that acts as a public motor vehicle auction must comply with  
subsection (h) of this section.

(2) A public motor vehicle auction:

(A) is not required to take assignment of title of a vehicle it offers for sale;

(B) must take assignment of title of a vehicle from a consignor prior to making  
application for title on behalf of the buyer; and

(C) must make application for title on behalf of the purchaser and remit motor  
vehicle sales tax within 20 working days of the sale of the vehicle.

(3) A GDN holder may not sell another GDN holder's vehicle at a public motor vehicle  
auction.

(j) Wholesale motor vehicle auction records. A wholesale motor vehicle auction license holder  
must maintain, for a minimum of 48 months, a complete record of each vehicle purchase and sale  
occurring through the wholesale motor vehicle auction. The wholesale motor vehicle auction license  
holder shall make the record available for inspection and copying by ~~a representative of~~ the  
department during business hours.

(1) A wholesale motor vehicle auction license holder must maintain at the licensed location a record reflecting each purchase and sale for at least the preceding 24 months. Records for prior time periods may be kept off-site.

(2) Within 15 days of receiving a department request~~[receipt of a request sent by mail or by electronic document transfer from a representative of the department]~~, a wholesale motor vehicle auction license holder must deliver a copy of the specified records to the address listed in the request.

(3) A wholesale motor vehicle auction license holder's complete record of each vehicle purchase and sale shall, at a minimum, contain:

(A) the date of sale;

(B) the VIN;

(C) the name and address of the person selling the vehicle;

(D) the name and address of the person purchasing the vehicle;

(E) the dealer license number of both the selling dealer and the purchasing dealer, unless either is exempt from holding a license;

(F) all information necessary to comply with the federal odometer disclosure requirements in 49 CFR Part 580~~[Truth in Mileage Act]~~;

(G) auction access documents, including the written authorization and revocation of authorization for an agent or employee, in accordance with §215.148 of this title (relating to Dealer Agents);



(H) invoices, bills of sale, checks, drafts, or other documents that identify the vehicle, the parties, or the purchase price;

(I) any information regarding the prior status of the vehicle such as the Reacquired Vehicle Disclosure Statement or other lemon law disclosures; and

(J) a copy of any written authorization allowing an agent of a dealer to enter the auction.

(k) Electronic records. A license holder may maintain a record in an electronic format if the license holder can print the record at the licensed location upon request by ~~[a representative of]~~ the department, except as provided by subsection (I) of this section.

(l) Use of department electronic titling and registration systems~~[webDEALER]~~. A license holder utilizing the department's web-based title application known as webDEALER, as defined in §217.71 of this title (relating to Automated and Web-Based Vehicle Registration and Title Systems), must comply with §217.74 of this title (relating to Access to and Use of webDEALER). Original hard copy titles are not required to be kept at the licensed location~~;~~ but must be made available to the department upon request.

215.145. Change of Dealer's Status.

(a) A dealer's name change requires a new bond or a rider to the existing bond reflecting the new ~~[dealer]~~ name, unless the dealer is not otherwise required to purchase a bond.

(b) A dealer shall notify the department in writing within 10 days of a change of ownership by submitting a license amendment application in the department-designated electronic system for

1 licensing. A licensed dealer that proposes to sell or assign to another any interest in the licensed entity,  
2 whether a corporation or otherwise, and provided the physical location of the licensed entity remains  
3 the same, shall notify the department in writing within 10 days of the change by filing an application to  
4 amend the license in the department-designated electronic system for licensing. If the sale or  
5 assignment of any portion of the business results in a change of entity, then the new entity must apply  
6 for and obtain a new license. A publicly held corporation only needs to inform the department of a  
7 change in ownership if one person or entity acquires a 10% or greater interest in the licensed entity.

8 (c) Upon the death of a dealer operating [ ~~of a dealership operated~~] as a  
9 sole proprietor [ ~~proprietorship~~], either the surviving spouse of the deceased dealer or other individual  
10 deemed qualified by the department shall submit to the department a bond rider adding the name of  
11 the surviving spouse or other qualifying person to the bond for the remainder of the bond and license  
12 term. The surviving spouse or other qualifying person may continue operating[ ~~dealership operations~~  
13 ]under the current dealer license until the end of the license term.

14 (d) For purposes of subsection (c) of this section, [ ~~if the qualifying person is~~] the sole proprietor's  
15 surviving spouse [ ~~then the surviving spouse~~] may change the ownership of the dealership at the time the  
16 license is renewed without applying for a new GDN. At the time the renewal application is filed, the sole  
17 proprietor's surviving spouse must[ ~~is required to~~] submit to the department:

18 (1) an application to amend the business entity;

19 (2) a copy of the sole proprietor's certificate of death, naming the surviving spouse;

20 (3) the required ownership information; and

21 (4) if applicable, a bond in the name of the surviving spouse.

(e) For purposes of subsection (c) of this section, ~~[if the qualifying person is not the surviving spouse, then the]~~ a qualifying person who is not the surviving spouse may operate the sole proprietorship business during the term of the license. The qualifying person must file with the department:

(1) an application to amend the business entity, identifying the qualifying person as the manager;

(2) an ownership information form, indicating that the qualifying person has no ownership interest in the business; and

(3) a bond rider adding the qualified person's~~[individual's]~~ name to the existing bond.

(f) For purposes of subsection (c) of this section, ~~[if the qualifying person is not the surviving spouse, then at the time the license is due to be renewed, the]~~ a qualifying person who is not the surviving spouse must file with the department an application for a new GDN on or before the expiration of the license term in the department-designated electronic system for licensing.

(g) A determination made under this section does not impact a decision made by the board under Occupations Code, §2301.462~~[,]~~(relating to Succession Following Death of Franchised Dealer).

~~[215.146. Metal Converter's License Plates]~~

~~[(a) A metal converter's license plate shall be attached to the rear license plate holder of a vehicle in accordance with Transportation Code, §503.0618.]~~

~~[(b) A converter shall maintain a record of each metal converter's license plate issued to that converter. The record of each metal converter's license plate issued must contain:~~

~~(1) the assigned metal converter's license plate number;~~

~~(2) the year and make of the vehicle to which the metal converter's license plate is affixed;~~

~~(3) the VIN of the vehicle; and~~

~~(4) the name of the person in control of the vehicle.]~~

~~[(c) If a converter cannot account for a metal converter's license plate that the department issued to the converter, the converter must:~~

~~(1) document the metal converter's license plate as "void" in the converter's metal license plate record;~~

~~(2) within three days of discovering that the plate is missing, report to the department in writing that the metal converter's license plate is lost or stolen; and~~

~~(3) if found, cease use of the metal converter's license plate.]~~

~~[(d) A metal converter's license plate is no longer valid for use after the converter reports to the department that the plate is missing.]~~

~~[(e) A metal converter's license plate record shall be made available for inspection and copying by the department at the converter's licensed location during the converter's posted business hours.]~~

215.147. Export Sales.

(a) Before selling a motor vehicle for export from the United States to another country, a dealer must obtain a legible photocopy of the buyer's government-issued photo identification document. The photo identification document must be issued by the jurisdiction where the buyer resides and be:

(1) a passport;

(2) a driver [~~driver's~~] license;

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

(4) a national identification certificate or identity document; or

(5) other identification document containing the:

(A) name of the issuing jurisdiction;

(B) buyer's full name;

(C) buyer's foreign address;

(D) buyer's date of birth;

(E) buyer's photograph; and

(F) buyer's signature.

(b) A dealer that sells a vehicle for export from the United States shall place a stamp on the title that includes the words "For Export Only" and includes the dealer's [~~license holder's~~] GDN. The stamp must be legible, in black ink, at least two inches wide, and placed on the:

1 (1) back of the title in all unused dealer reassignment spaces; and

2 (2) front of the title in a manner that does not obscure any names, dates, mileage

3 statements, or other information printed on the title.

4 (c) In addition to the records required to be maintained by §215.144 of this title (relating to

5 Vehicle Records), a dealer shall maintain, for each motor vehicle sold for export, a sales file record. The

6 sales file record shall be made available for inspection and copying upon request by the department. The

7 sales file record of each vehicle sold for export shall contain:

8 (1) a completed copy of the Texas Motor Vehicle Sales Tax Exemption Certificate for

9 Vehicles Taken Out of State, indicating that the vehicle has been purchased for export to a foreign

10 country;

11 (2) a copy of the front and back of the title of the vehicle, showing the "For Export Only"

12 stamp and the GDN of the dealer; and

13 (3) if applicable, an Export-only Sales Record Form, listing each motor vehicle sold for

14 export only.

15 (d) A dealer, at the time of sale of a vehicle for export, shall:

16 (1) enter the information required by Transportation Code, §503.061 in the temporary

17 tag database;

18 (2) designate the sale as "For Export Only"; and

19 (3) issue a buyer's temporary tag, in accordance with Transportation Code, §503.063.

20

1     215.148. Dealer Agents.

2             (a) A dealer must provide written authorization to each person with whom the dealer's agent or  
3     employee will conduct business on behalf of the dealer, including to a person that:

4                     (1) buys and sells motor vehicles for resale; or

5                     (2) operates a licensed auction.

6             (b) If a dealer's agent or employee that conducts business on behalf of the dealer commits an  
7     act or omission that would be cause for denial, revocation, or suspension of a license in accordance with  
8     Occupations Code, Chapter 2301 or Transportation Code, Chapter 503, the board may:

9                     (1) deny an application for a license; or

10                    (2) revoke or suspend a license.

11             (c) The board may take action described in subsection (b) of this section after notice and an  
12     opportunity for hearing, in accordance with Occupations Code, Chapter 2301 and Chapter 224 of this  
13     title (relating to Adjudicative Practice and Procedure).

14             (d) A dealer's authorization to an agent or employee shall:

15                     (1) be in writing;

16                     (2) be signed by the dealer principal or person in charge of daily activities of the  
17     dealership;

18                     (3) include the agent's or employee's name, current mailing address, and telephone  
19     number;

(4) include the dealer's business name, address, and dealer license number or numbers;

(5) expressly authorize buying or selling by the specified agent or employee;

(6) state that the dealer is liable for any act or omission regarding a duty or obligation of the dealer that is caused by that agent or employee, including any financial considerations to be paid for the vehicle;

(7) state that the dealer's authorization remains in effect until the recipient of the written authorization is notified in writing of the revocation of the authority; and

(8) be maintained as a required dealer's record and made available upon request by a representative of the department, in accordance with the requirements of §215.144 of this title (relating to Vehicle Records).

(e) A license holder, including a wholesale motor vehicle auction~~[-license holder]~~ that buys and sells vehicles on a wholesale basis, including by sealed bid, is required to verify the authority of any person claiming to be an agent or employee of a licensed dealer who purports to be buying or selling a motor vehicle:

(1) on behalf of a licensed dealer; or

(2) under the written authority of a licensed dealer.

(f) A title to a vehicle bought by an agent or employee of a dealer shall be:

(1) reassigned to the dealer by the seller or by the auction; and

(2) shall not be delivered to the agent or employee~~[,]~~ but delivered only to the dealer or the dealer's financial institution.



(g) Notwithstanding the prohibitions in this section, an authorized agent or employee may sign a required odometer statement.

(h) In a wholesale transaction for the purchase of a motor vehicle, the seller may accept as consideration only:

(1) a check or a draft drawn on the purchasing dealer's account;

(2) a cashier's check in the name of the purchasing dealer; or

(3) a wire transfer from the purchasing dealer's bank account.

215.149. Sales of New Mobility Motor Vehicles~~[Independent Mobility Motor Vehicle Dealers]~~.

In accordance with Occupations Code, §2301.361, a transaction occurs through or by a franchised dealer of the motor vehicle's chassis line-make if the franchised dealer applies for title and registration of a new~~[the]~~ mobility motor vehicle in the name of the purchaser. An independent mobility motor vehicle dealer may prepare the documentation necessary for a franchised dealer to comply with the requirements of Transportation Code, §501.0234 in connection with the sale of a new mobility motor vehicle.

215.150. Authorization to Issue Temporary Tags.

(a) A dealer that holds a GDN may issue a dealer's temporary tag, buyer's temporary tag, or a preprinted Internet-down temporary tag for authorized purposes only for each type of vehicle the dealer

1 is licensed to sell or lease. A converter that holds a converter's license under Occupations Code, Chapter  
2 2301 may issue a converter's temporary tag for authorized purposes only.

3 (b) A license holder may issue an applicable dealer's temporary tag, buyer's temporary tag, or  
4 converter's temporary tag until:

5 (1) the department denies access to the temporary tag database under Transportation  
6 Code §503.0632(f) and §224.58~~§215.505~~ of this title (relating to Denial of Dealer or Converter Access  
7 to Temporary Tag System);

8 (2) the license holder issues the maximum number of temporary tags authorized under  
9 Transportation Code §503.0632(a)-(d); or

10 (3) the license is canceled, revoked, or suspended.

11 (c) A federal, state, or local governmental agency that is exempt under Section 503.024 from the  
12 requirement to obtain a dealer general distinguishing number may issue one ~~[temporary]~~ buyer's  
13 temporary tag, or one preprinted Internet-down temporary tag, in accordance with Transportation Code  
14 §503.063. A governmental agency that issues a ~~[temporary]~~ buyer's temporary tag, or preprinted  
15 Internet-down temporary tag, under this subsection:

16 (1) is subject to the provisions of Transportation Code §503.0631 and §503.067  
17 applicable to a dealer; and

18 (2) is not required to charge the registration fee under Transportation Code §503.063(g).

19 (d) A dealer or converter is responsible for all use of and access to the applicable temporary tag  
20 database under the dealer's or converter's account, including access by any user or unauthorized person.

Dealer and converter duties include monitoring temporary tag usage, managing account access, and taking timely and appropriate actions to maintain system security, including:

(1) establishing and following reasonable password policies, including preventing the sharing of passwords;

(2) limiting authorized users to owners and bona fide employees with a business need to access the database;

(3) removing users who no longer have a legitimate business need to access the system;

(4) securing printed tags and destroying expired tags, by means such as storing printed tags in locked areas and shredding or defacing expired tags; and

(5) securing equipment used to access the temporary tag database and print temporary tags.

215.151. Temporary Tags, General Use Requirements, and Prohibitions.

(a) A dealer, governmental agency, or converter shall secure a temporary tag to a vehicle in the license plate display area located at the rear of the vehicle, so that the entire temporary tag is visible and legible at all times, including when the vehicle is being operated.

~~[(b) A federal, state, or local governmental agency shall secure a temporary buyer's tag or preprinted Internet-down temporary tag issued under 215.150(c) of this title (relating to Authorization to Issue Temporary Tags) to a vehicle in the license plate display area located at the rear of the vehicle, so~~

1 ~~that the entire temporary tag is visible and legible at all times, regardless of whether the vehicle is being~~  
2 ~~operated.]~~

3 (b)(e) All printed information on a temporary tag must be visible and may not be covered or  
4 obstructed by any plate holder or other device or material.

5 (c)(d) A motor vehicle that is being transported ~~[using the full mount method, the saddle mount~~  
6 ~~method, the tow bar method, or any combination of those methods]~~ in accordance with Transportation  
7 Code, §503.068(d) or §503.0625, must have a dealer's temporary tag, a converter's temporary tag, or a  
8 buyer's temporary tag, whichever is applicable, affixed to the motor vehicle being transported.

9  
10 215.152. Obtaining Numbers for Issuance of Temporary Tags.

11 (a) A dealer, a ~~[federal, state, or local]~~ governmental agency, or a converter is required to have  
12 internet access to connect to the temporary tag databases maintained by the department.

13 (b) Except as provided by §215.157 of this title (relating to Advance Numbers, Preprinted  
14 Internet-down Temporary Tags), before a temporary tag may be issued and displayed on a vehicle, a  
15 dealer, a ~~[federal, state, or local]~~ governmental agency, or converter must:

16 (1) enter in the temporary tag database true and accurate information about the vehicle,  
17 dealer, converter, or buyer, as appropriate; and

18 (2) obtain a specific number for the temporary tag.

19 (c) The department will inform each dealer annually of the maximum number of buyer's  
20 temporary tags the dealer is authorized to issue during the calendar year under Transportation Code

§503.0632. The number of buyer's temporary tags allocated to each dealer by the department will be determined based on the following formula:

(1) Sales data determined from the department's systems from the previous three fiscal years. A dealer's base number will contain the sum of:

(A) the greater number of:

(i) in-state buyer's temporary tags issued in one fiscal year during the previous three fiscal years; or

(ii) title transactions processed through the Registration and Title System in one fiscal year during the previous three fiscal years; but

(iii) the amount will be limited to an amount that is not more than two times the number of title transactions identified in subparagraph (ii) of this paragraph; and

(B) the addition of the greatest number of out-of-state buyer's temporary tags issued in one fiscal year during the previous three fiscal years;

(2) the total value of paragraph (1) of this subsection will be increased by a multiplier based on the dealer's time in operation giving a 10 percent increase in tags for each year the dealer has been in operation up to 10 years;

(3) the total value of paragraph (2) of this subsection will be increased by a multiplier that is the greater of:

(A) the dealer's actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of title transactions processed through the

1 Registration and Title System plus the growth of the number of out-of-state buyer's temporary tags  
2 issued, except that it may not exceed 200 percent; or

3 (B) the statewide actual growth rate percentage identified from the preceding  
4 two fiscal years, calculated by the growth of the number of title transactions processed through the  
5 Registration and Title System plus the growth of the number of out-of-state buyer's temporary tags  
6 issued, not less than zero, to determine the buyer's temporary tag allotment; and

7 (4) the department may increase the determined allotment of buyer's temporary tags  
8 for dealers in the state, in a geographic or population area, or in a county, based on:

9 (A) changes in the market;

10 (B) temporary conditions that may affect sales; and

11 (C) any other information the department considers relevant.

12 (d) The department will inform each dealer annually of the maximum number of agent  
13 temporary tags and vehicle specific temporary tags the dealer is authorized to issue during the calendar  
14 year under Transportation Code §503.0632. The number of agent temporary tags and vehicle specific  
15 temporary tags allocated to each dealer by the department, for each tag type, will be determined based  
16 on the following formula:

17 (1) dealer temporary tag data for agent temporary tags and vehicle specific temporary  
18 tags determined from the department's systems from the previous three fiscal years. A dealer's base  
19 number will contain the maximum number of dealer temporary tags issued during the previous three  
20 fiscal years;

(2) the total value of paragraph (1) of this subsection will be increased by a multiplier based on the dealer's time in operation giving a 10 percent increase in tags for each year the dealer has been in operation up to 10 years; and

(3) the total value of paragraph (2) of this subsection will be increased by a multiplier that is the greater of:

(A) the dealer's actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of dealer's temporary tags issued, except that it may not exceed 200 percent; or

(B) the statewide actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of dealer's temporary tags issued, not less than zero, to determine the dealer's temporary tag allotment; and

(4) the department may increase a dealer's allotment of agent temporary tags and vehicle specific temporary tags for dealers in the state, in a geographic or population area, or in a county, based on:

(A) changes in the market;

(B) temporary conditions that may affect sales; and

(C) any other information the department considers relevant.

(e) The department will inform each converter annually of the maximum number of temporary tags the converter is authorized to issue during the calendar year under Transportation Code §503.0632. The number of temporary tags allocated to each converter by the department will be determined based on the following formula:

12/14/23

Exhibit A

(1) converter temporary tag data determined from the department's systems from the previous three fiscal years. A converter's base number will contain the maximum number of converter temporary tags issued during the previous three fiscal years;

(2) the total value of paragraph (1) of this subsection will be increased by a multiplier based on the converter's time in operation giving a 10 percent increase in tags for each year the dealer has been in operation up to 10 years; and

(3) the total value of paragraph (2) of this subsection will be increased by a multiplier that is the greater of:

(A) the converter's actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of converter's temporary tags issued, except that it may not exceed 200 percent; or

(B) the statewide actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of converter's temporary tags issued, not less than zero, to determine the converter's temporary tag allotment;

(4) the department may increase a converter's allotment of converter temporary tags for converters in the state, in a geographic or population area, or in a county, based on:

(A) changes in the market;

(B) temporary conditions that may affect sales; and

(C) any other information the department considers relevant.



(f) A dealer or converter that is licensed after the commencement of a calendar year shall be authorized to issue the number of temporary tags allotted in this subsection prorated on all or part of the remaining months until the commencement of the calendar year after the dealer's or converter's initial license expires. The initial allocations shall be as determined by the department in granting the license, but not more than:

(1) 1,000~~600~~ temporary tags for a franchised dealer per each tag type, buyer's temporary tags, agent temporary tags, and vehicle specific tags, unless:

(A) the dealer provides credible information indicating that a greater number of tags is warranted based on anticipated sales, and growth, to include new and used vehicle sales, including information from the manufacturer or distributor, or as otherwise provided in this section; and

(B) if more than 1,000~~600~~ temporary tags are determined to be needed based on anticipated sales and growth, the total number of temporary tags needed, including the 1,000~~600~~, will be doubled;

(2) 300 temporary tags for a nonfranchised dealer per each tag type, buyer's temporary tags, agent temporary tags, and vehicle specific tags, unless the dealer provides credible information indicating that a greater number of tags is warranted based on anticipated sales as otherwise provided in this section; and

(3) A converter will be allocated 600 temporary tags, unless the converter provides credible information indicating that a greater number of tags is warranted based on anticipated sales, including information from the manufacturer or distributor, or as otherwise provided in this section.

(g) An existing dealer or converter that is:

(1) moving its operations from one location to a different location will continue with its allotment of temporary tags and not be allocated temporary tags under subsection (f) of this section;

(2) opening an additional location will receive a maximum allotment of temporary tags based on the greater of the allotment provided to existing locations, including franchised dealers opening additional locations for different line makes, or the amount under subsection (f) of this section;

(3) purchased as a buy-sell ownership agreement will receive the maximum allotment of temporary tags provided to the location being purchased and not be allocated temporary tags under subsection (f) of this section; and

(4) inherited by will or laws of descent will receive the maximum allotment of temporary tags provided to the location being inherited and not be allocated temporary tags under subsection (f) of this section.

(h) A new dealer or converter may also provide credible information supporting a request for additional temporary tags to the amount allocated under subsection (f) of this section based on:

(1) franchised dealer, manufacturer, or distributor sales expectations;

(2) a change in license required by death or retirement, except as provided in subsection (g) of this section;

(3) prior year's sales by a dealership moving into the state; or

(4) other similar change of location or ownership that indicates some continuity in existing operations.

(i) After using 50 percent of the allotted maximum number of temporary tags, a dealer or converter may request an increase in the number of temporary tags by submitting a request in the department's eLICENSING system.

(1) The dealer or converter must provide information demonstrating the need for additional temporary tags results from business operations, including anticipated needs, as required by §503.0632(c). Information may include documentation of sales and tax reports filed as required by law, information of anticipated need, or other information of the factors listed in §503.0632(b).

(2) The department shall consider the information presented and may consider information not presented that may weigh for or against granting the request that the department in its sole discretion determines to be relevant in making its determination. Other relevant information may include information of the factors listed in §503.0632(b), the timing of the request, and the applicant's temporary tag activity.

(3) The department may allocate a lesser or greater number of additional temporary tags than the amount requested~~[by the dealer or converter]~~. Allocation of a lesser or greater number of additional temporary tags is not a denial of the request. Allocation of additional temporary tags under this paragraph does not limit the dealer's or converter's ability to submit additional requests for more temporary tags.

(4) If a request is denied, the denial will be sent to the dealer or converter by email to the requestor's email address~~[a dealer or converter may appeal the denial to the Director of the Motor Vehicle Division whose decision is final]~~.

(A) A dealer or converter may appeal the denial to the Motor Vehicle Division Director.~~[The denial will be sent to the license holder by email to the email used by the license holder in the request.]~~

(B) The appeal must be requested through the eLICENSING system within 15~~10~~  
~~business~~ days of the date the department emailed the denial to the dealer or converter~~[the denial being sent to the department through the eLICENSING system].~~

(C) The appeal may discuss information provided in the request but may not include additional information.

(D) The Motor Vehicle Division Director will review the submission and any additional statements concerning the information submitted in the original request and render an opinion within 15~~10 business~~ days of receiving the appeal. The Motor Vehicle Division Director may decide to deny the request and issue no additional tags~~;~~ or award an amount of additional temporary tags that is lesser, equal to, or greater than the request.

(E) The requesting dealer or converter~~[license holder]~~ will be notified as follows:

(i) If the Motor Vehicle Division Director ~~[director]~~ decides ~~[has decided]~~ to deny the appeal, the department will contact the license holder ~~[will be contacted]~~ by email regarding the decision and options to submit a new request with additional relevant credible supporting documentation or to pursue a claim in district court; or

(ii) If the Motor Vehicle Division Director awards ~~[has decided to award]~~ an amount of additional temporary tags that is lesser, equal to, or greater than the request, the additional temporary tags will be added to the dealer's or converter's ~~[license holders]~~ account and the

license holder will be contacted by email regarding the decision, informed that the request has not been denied, and options ~~[the license holder has]~~ to submit a new request.

(5) The Motor Vehicle Division Director's decision on appeal is final.

~~(6)~~ Once a denial is final, a dealer or converter may only submit a subsequent request for additional temporary tags during that calendar year if the dealer or converter is able to provide additional information not considered in ~~a~~the prior request.

(j) A change in the allotment under subsection (i) of this section does not create a dealer or converter base for subsequent year calculations.

(k) The department may at any time initiate an enforcement action against a dealer or converter if temporary tag usage suggests that misuse or fraud has occurred as described in Transportation Code §§503.038, 503.0632(f), or 503.067.

(l) Unused temporary~~dealer or converter~~ tag allotments from a calendar year do not roll over to subsequent years.

#### 215.154. Dealer's Temporary Tags.

(a) A dealer's temporary tag may be displayed only on the type of vehicle for which the GDN is issued and for which the dealer is licensed by the department to sell or lease.

(b) A wholesale motor vehicle auction license holder that also holds a dealer GDN may display a dealer's temporary tag on a vehicle that is being transported to or from the licensed auction location.

(c) When an unregistered vehicle is sold to another dealer, the selling dealer shall remove the selling dealer's temporary tag. The purchasing dealer may display its dealer's ~~dealer~~ temporary tag or its ~~metal~~ dealer's standard or personalized prestige license plate on the vehicle.

(d) A dealer's temporary tag:

(1) may be displayed on a vehicle only as authorized in Transportation Code §503.062;  
and

(2) may not be displayed on:

(A) a laden commercial vehicle being operated or moved on the public streets or highways;

(B) on the dealer's service or work vehicles as described in §215.138(d) of this chapter (relating to Use of Dealer's License Plates);

(C) a golf cart as defined under Transportation Code Chapter 551; or

(D) an off-highway vehicle as defined under Transportation Code Chapter 551A.

(e) ~~[For purposes of this section, a dealer's service or work vehicle includes:]~~

~~[(1) a vehicle used for towing or transporting other vehicles;]~~

~~[(2) a vehicle, including a light truck, used in connection with the operation of the dealer's shops or parts department;]~~

~~[(3) a courtesy car on which a courtesy car sign is displayed;]~~

~~[(4) a rental or lease vehicle; and]~~

1                   ~~[(5) any boat trailer owned by a dealer or manufacturer that is used to transport more~~  
2 ~~than one boat.]~~

3           (e)[(f)] For purposes of subsection (d) of this section, a vehicle bearing a dealer's temporary tag  
4 is not considered a laden commercial vehicle when the vehicle is:

5                   (1) towing another vehicle bearing the same dealer's temporary tags; and

6                   (2) both vehicles are being conveyed from the dealer's place of business to a licensed  
7 wholesale motor vehicle auction or from a licensed wholesale motor vehicle auction to the dealer's  
8 place of business.

9           ~~[(g) As used in this section, "light truck" has the meaning assigned by Transportation Code,~~  
10 ~~§541.201.]~~

11           (f)[(h)] A dealer's temporary tag may not be used to operate a vehicle for the personal use of a  
12 dealer or a dealer's employee.

13           (g)[(i)] A dealer's temporary tag must show its expiration date, which must not exceed 60 days  
14 after the date the temporary tag was issued.

15           (h)[(j)] A dealer's temporary tag may be issued by a dealer to a specific motor vehicle in the  
16 dealer's inventory or to a dealer's agent who is authorized to operate a motor vehicle owned by the  
17 dealer.

18           (i)[(k)] A dealer that issues a dealer's temporary tag to a specific vehicle must ensure that the  
19 following information is placed on the temporary tag:

20                   (1) the vehicle-specific number from the temporary tag database;

(2) the year and make of the vehicle;

(3) the VIN of the vehicle;

(4) the month, day, and year of the temporary tag's expiration; and

(5) the name of the dealer.

~~(j)(4)~~ A dealer that issues a dealer's temporary tag to an agent must ensure that the following information is placed on the temporary tag:

(1) the specific number from the temporary tag database;

(2) the month, day, and year of the temporary tag's expiration; and

(3) the name of the dealer.

215.155. Buyer's Temporary Tags.

(a) A buyer's temporary tag may be displayed only on a vehicle; ~~[from the seller's inventory that can be legally operated on the public streets and highways and for which a sale has been consummated.]~~

(1) from the selling dealer's inventory; and

(2) that can be legally operated on the public streets and highways; and

(3) for which a sale or lease has been consummated; and

(4) that has a valid inspection in accordance with Transportation Code Chapter 548,

unless:

(A) an inspection is not required under Transportation Code §503.063(i) or (j); or



1                                (B) the vehicle is exempt from inspection under Chapter 548.

2                                (b) A buyer's temporary tag must be issued and provided to the buyer of a vehicle that is to be  
3                                titled but not registered but the temporary tag must not be displayed on the vehicle.

4                                ~~[(b) A buyer's temporary tag may be displayed only on a vehicle that has a valid inspection in~~  
5                                ~~accordance with Transportation Code Chapter 548, unless:]~~

6                                ~~[(1) an inspection is not required under Transportation Code §503.063(i) or (j); or]~~

7                                ~~[(2) the vehicle is exempt from inspection under Chapter 548.](c) For a wholesale~~  
8                                transaction, the purchasing dealer places on the motor vehicle its own:

9                                (1) dealer's temporary tag; or

10                               (2) ~~[metal]~~ dealer's license plate.

11                               (d) A buyer's temporary tag is valid until the earlier of:

12                               (1) the date on which the vehicle is registered; or

13                               (2) the 60th day after the date of purchase.

14                               (e) The dealer[,], or ~~[federal, state, or local]~~ governmental agency, must ensure that the following  
15                               information is placed on a buyer's temporary tag~~[that the dealer issues]:~~

16                               (1) the vehicle-specific number obtained from the temporary tag database;

17                               (2) the year and make of the vehicle;

18                               (3) the VIN of the vehicle;

19                               (4) the month, day, and year of the expiration of the buyer's temporary tag; and

(5) the name of the dealer or ~~[federal, state, or local]~~ governmental agency.

(f) A dealer shall charge a buyer a fee of \$5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456. ~~[ A federal, state, or local governmental agency may charge a buyer a fee of \$5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456]. A dealer shall remit the fee [shall be remitted by a dealer ]to the county[ in conjunction] with the title transfer application[, and, if collected, by a federal, state, or local governmental agency, to the county,] for deposit to the credit of the Texas Department of Motor Vehicles fund. If[, unless] the vehicle is sold by a dealer to an out-of-state resident[, in which case]:~~

(1) the dealer shall remit the entire fee to the department for deposit to the credit of the Texas Department of Motor Vehicles fund if payment is made through the department's electronic title system; or

(2) the dealer shall remit the fee to the county for deposit to the credit of the Texas Department of Motor Vehicles fund.

(g) A governmental agency may charge a buyer a fee of \$5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456. If collected by a governmental agency, the fee must be sent to the county for deposit to the credit of the Texas Department of Motor Vehicles fund.

215.160. Duty to Identify Motor Vehicles Offered for Sale as Rebuilt.

(a) For each motor vehicle a dealer displays or offers for retail sale and which the dealer knows has been a salvage motor vehicle as defined by Transportation Code, §501.091(15) and a regular title subsequently issued under Transportation Code, §501.100, a dealer shall disclose in writing that the motor vehicle has been repaired, rebuilt, or reconstructed and issued a title under Transportation Code, §501.100. The written disclosure must:

(1) be visible from outside of the motor vehicle; and

(2) contain lettering that is reasonable in size, stating as follows: *"This motor vehicle has been repaired, rebuilt or, reconstructed after formerly being titled as a salvage motor vehicle."*

(b) Upon the sale of a motor vehicle which has been a salvage motor vehicle as defined by Transportation Code, §501.091(15) and a regular title subsequently issued under Transportation Code, §501.100, a dealer shall obtain the purchaser's signature on the vehicle disclosure form or on an acknowledgement written in fourteen~~eleven~~ point or larger font that states as follows: *"I, (name of purchaser), acknowledge that at the time of purchase, I am aware that this vehicle has been repaired, rebuilt, or reconstructed and was formerly titled as a salvage motor vehicle."*

(c) The purchaser's acknowledgement as required in subsection (b) of this section may be incorporated in a Buyer's Order, a Purchase Order, or other disclosure document. This disclosure requires ~~does not require~~ a separate signature.

(d) An original signed acknowledgement or vehicle disclosure form required by subsection (b) of this section ~~[or a signed vehicle disclosure form]~~ shall be given to the purchaser and a copy of the signed acknowledgement or vehicle disclosure form shall be retained by the dealer in the records of motor vehicles sales required by §215.144 of this title (relating to Vehicle Records). If the acknowledgement is

1 incorporated in a Buyer's Order, a Purchase Order, or other disclosure document, a copy of that  
2 document must be given to the purchaser and a copy retained in the dealer's records in accordance with  
3 §215.144.

4 (e) This section does not apply to a wholesale motor vehicle auction.

5  
6 215.161. Licensing Education Course Provider Requirements.

7 (a) A motor vehicle dealer licensing education course provider must be a Texas institution of  
8 higher education, as defined by Education Code, §61.003, or a motor vehicle trade association domiciled  
9 in this state.

10 (b) The licensing education course must be approved by the department and must include  
11 information on the laws and rules applicable to motor vehicle dealers and the consequences of violating  
12 those laws and rules.

13 (c) The licensing education course must consist of at least 6 hours of online instruction for new  
14 applicants and 3 hours of online instruction for renewal applicants.

15 (d) The cost for the licensing education course must not exceed \$150 per person. A trade  
16 association course provider may not charge a different rate to a nonmember.

17 (e) The course provider must issue a certificate of completion to each person who successfully  
18 completes the licensing education course.

19 (f) The dealer training provided by the department is not an approved licensing education course  
20 under this section.

1 SUBCHAPTER E. GENERAL DISTINGUISHING NUMBER

2 **43 TAC §215.146**

3 STATUTORY AUTHORITY. The department proposes a repeal to Chapter 215 under Occupations Code,  
4 §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles  
5 and the authority to take any action that is necessary or convenient to exercise that authority;  
6 Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license  
7 holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute  
8 and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in  
9 connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations  
10 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which  
11 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter  
12 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives  
13 the board authority to deny an application for a license, revoke or suspend a license, place on probation,  
14 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,  
15 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds  
16 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government  
17 Code, §411.122(d), which authorizes department access to criminal history record information  
18 maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal  
19 history record information from DPS and the FBI for license applicants, license holders, and  
20 representatives whose act or omission would be cause for denying, revoking, or suspending a general  
21 distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,  
22 Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as  
23 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which

1 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;  
2 Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases;  
3 Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of  
4 dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the  
5 board to adopt rules necessary to implement and manage the department's temporary tag databases;  
6 and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and  
7 appropriate to implement the powers and the duties of the department, as well as the statutes referenced  
8 throughout this preamble.

9 The department also proposes repeals under the authority of Transportation Code, §501.0041  
10 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the  
11 statutory authority referenced throughout this preamble.

12 Transportation Code, §501.0041 authorizes the department to adopt rules to administer  
13 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt  
14 rules to administer Transportation Code, Chapter 502.

15 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature  
16 and requirements of all available formal and informal procedures. Government Code, §2001.039 requires  
17 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.  
18 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,  
19 suspension, annulment, or withdrawal of a license.

20 **CROSS REFERENCE TO STATUTE.** This repeal would implement Government Code, Chapters 411 and 2001;  
21 Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503, 1001–1003,  
22 and 1005.

23 §215.146. Metal Converter's License Plates.

1

2 SUBCHAPTER F. LESSORS AND LEASE FACILITATORS

3 **43 TAC §§215.171–215.180**

4 **STATUTORY AUTHORITY.** The department proposes amendments to Chapter 215 under Occupations  
5 Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor  
6 vehicles and the authority to take any action that is necessary or convenient to exercise that authority;  
7 Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license  
8 holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute  
9 and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in  
10 connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations  
11 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which  
12 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter  
13 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives  
14 the board authority to deny an application for a license, revoke or suspend a license, place on probation,  
15 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,  
16 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds  
17 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government  
18 Code, §411.122(d), which authorizes department access to criminal history record information  
19 maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal  
20 history record information from DPS and the FBI for license applicants, license holders, and  
21 representatives whose act or omission would be cause for denying, revoking, or suspending a general  
22 distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,  
23 Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as

1 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which  
2 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;  
3 Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases;  
4 Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of  
5 dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the  
6 board to adopt rules necessary to implement and manage the department's temporary tag databases;  
7 and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and  
8 appropriate to implement the powers and the duties of the department, as well as the statutes referenced  
9 throughout this preamble.

10 The department also proposes amendments under the authority of Transportation Code,  
11 §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition  
12 to the statutory authority referenced throughout this preamble.

13 Transportation Code, §501.0041 authorizes the department to adopt rules to administer  
14 Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt  
15 rules to administer Transportation Code, Chapter 502.

16 Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature  
17 and requirements of all available formal and informal procedures. Government Code, §2001.039 requires  
18 state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule.  
19 Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation,  
20 suspension, annulment, or withdrawal of a license.

21 **CROSS REFERENCE TO STATUTE.** These proposed revisions would implement Government Code, Chapters  
22 411 and 2001; Occupations Code, Chapters Occupations Code, Chapters 53, 55, 2301, and 2302; and  
23 Transportation Code, Chapters 501–503, 1001–1003, and 1005.



Text.

**SUBCHAPTER ~~E~~[F]. LESSORS AND LEASE FACILITATORS**

215.171. Purpose and Scope.

This subchapter implements Occupations Code, Chapter 2301 ~~[and more]~~ specifically, §§2301.251, 2301.253, 2301.254, 2301.261, 2301.262, 2301.357, and Subchapter L. Vehicle Lessors and Vehicle Lease Facilitators~~[2301.551 – 2301.556]~~, and Transportation Code Chapters 1001 - 1005.

215.173. License.

(a) No person may engage in business as a vehicle lessor or a vehicle lease facilitator unless that person holds a valid license issued by the department[,], or is ~~[otherwise]~~ exempt~~[by law]~~ from obtaining such a license under Occupations Code §2301.254.

(b) Any person who facilitates vehicle leases on behalf of a vehicle lease facilitator must:

(1) be on the vehicle lease facilitator's payroll and receive compensation from which social security, federal unemployment tax, and all other appropriate taxes are withheld from the representative's paycheck and paid to the proper taxing authority; and

(2) have work details such as when, where, and how the final results are achieved, directed, and controlled by the vehicle lease facilitator.

215.174. Application for a License.

(a) An applicant for a vehicle lessor's or vehicle lease facilitator's license must submit a sufficient application to the department as required under §215.83 of this title (relating to License

1 Applications, Amendments, or Renewals). To be sufficient, the application must be on a form  
2 prescribed by the department,~~and~~ accompanied by all required supporting documentation, and  
3 required fees, and submitted to the department electronically in a system designated by the  
4 department for licensing.

5 (b) A license holder renewing or amending a license must verify current license  
6 information, provide related information and documents for any new requirements or changes to  
7 the license, and pay required fees.

8 (c) An applicant for a new license must register for an account in the department-designated  
9 licensing system by selecting the licensing system icon on the dealer page of the department website. An  
10 applicant must designate the account administrator and provide the name and email address for that  
11 person, and provide the business telephone number, name, business type, and social security number or  
12 employer identification number, as applicable. The applicant's licensing account administrator must be  
13 an owner, officer, manager, or bona fide employee.

14 (d) Once registered, an applicant may apply for a new license and must provide the  
15 following:

16 (1) type of license requested;

17 (2) business information, including the name, physical and mailing addresses,  
18 telephone number, Secretary of State file number (if applicable), and website address (if  
19 applicable);

20 (3) contact name, email address, and telephone number of the person submitting  
21 the application;

22 (4) contact name, email address, and telephone number of a person who can  
23 provide information about business operations and the motor vehicle services offered;

1                   (5) the name, social security number, date of birth, identity document information,  
2                   and ownership percentage for each owner, partner, member, beneficiary, or principal if the  
3                   applicant is not a publicly traded company;

4                   (6) the name, social security number, date of birth, and identity document  
5                   information for each officer, director, manager, trustee, or other representative authorized to act  
6                   on behalf of the applicant if the applicant is owned in full or in part by a legal entity;

7                   (7) the name, employer identification number, ownership percentage, and non-  
8                   profit or publicly traded status for each legal entity that owns the applicant in full or in part;

9                   (8) criminal history record information under the laws of Texas, another state in the  
10                  United States, the United States, and any foreign jurisdiction for each person listed in the  
11                  application, including offense description, date, and location;

12                  (9) military service status;

13                  (10) licensing history required to evaluate fitness for licensure under §215.89 of  
14                  this title (relating to Fitness);

15                  (11) signed Certification of Responsibility, which is a form provided by the  
16                  department; and

17                  (12) any other information required by the department to evaluate the application  
18                  under current law and board rules.

19                  ~~(e)[(b)]~~ The supporting documentation for a vehicle lessor's license application shall  
20                  include a legible and accurate electronic image of each applicable required document:

21                  (1) Certificate of incorporation, registration, or formation filed with the Texas  
22                  Secretary of State~~[verification of the criminal background of each owner and officer of the~~  
23                  applicant, if applicable];

(2) at least one of the following current identity documents for each natural person listed in the application:

(A) driver license;

(B) Texas Identification Card issued by the Texas Department of Public Safety under Transportation Code Chapter 521, Subchapter E;

(C) license to carry a handgun issued by the Texas Department of Public Safety under Government Code Chapter 411, Subchapter H;

(D) passport; or

(E) United States military identification card

~~[(2) the fee required by law for each type of license required];~~

(3) a copy of each assumed name certificate on file with the appropriate recording entity, such as the Office of the Secretary of State or the county clerk;

(4) a sample copy of the vehicle lease agreement between the vehicle lessor and a lessee;

(5) a sample copy of the required fee disclosure statement regarding fees paid by the vehicle lessor to a vehicle lease facilitator for the facilitation of a vehicle lease or a statement that no such fees were or will be paid;

(6) a list including the business name(s), DBA(s), and addresses of lease facilitators with whom the applicant conducts or intends to conduct business;

(7) a list of other satellite offices that conduct business in the State of Texas that includes the address, phone number, and name of the contact person for each location;[-]

(8) if a vehicle lessor does not deal directly with the public to execute vehicle leases and has a licensed location in another state, a vehicle lessor must provide the jurisdiction name,

1 licensed business address, and license number for each location that leases a motor vehicle to a  
2 Texas resident; and

3 (9) any other information required by the department to evaluate the application  
4 under current law and board rules.

5 (f)[(e)] The supporting documentation for a vehicle lease facilitator's license application  
6 shall include a legible and accurate electronic image of each applicable required document:

7 (1) Certificate of incorporation, registration, or formation filed with the Texas  
8 Secretary of State~~[verification of the criminal background of each owner and officer of the~~  
9 ~~applicant, if applicable];~~

10 (2) at least one of the following unexpired identity documents for each natural  
11 person listed in the application:

12 (A) driver license;

13 (B) Texas Identification Card issued by the Texas Department of Public  
14 Safety under Transportation Code Chapter 521, Subchapter E;

15 (C) license to carry a handgun issued by the Texas Department of Public  
16 Safety under Government Code Chapter 411, Subchapter H;

17 (D) passport; or

18 (E) United States military identification card;

19 ~~[(2) the fee required by law for each type of license required;]~~

20 (3) a copy of each assumed name certificate on file with the appropriate recording  
21 entity, such as the Office of the Secretary of State or the county clerk;

22 (4) a sample copy of the vehicle lease agreement between each of the lessors the  
23 lease facilitator represents, and the lessee;

(5) a sample copy of the required fee disclosure statement regarding fees paid by a vehicle lessor to the vehicle lease facilitator for the facilitation of a vehicle lease or a statement that no such fees were or will be paid;

(6) a list of all vehicle lessors, including names and addresses, for whom any vehicle lease facilitator solicits or procures a lessee;~~[-The vehicle lease facilitator shall update the list upon renewal of a license and within 10 days of the addition of any vehicle lessor to this list; and]~~

(7) a copy of the representation agreement between the vehicle lease facilitators and each lessor; and[-]

(8) any other information required by the department to evaluate the application under current law and board rules.

(g) An applicant operating under a name other than the applicant's business name shall use the name under which the applicant is authorized to do business, as filed with the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant on the application using the letters "DBA." The applicant may not use a name or assumed name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

(h) During the term of a license, a vehicle lessor must add, delete, or update the previously submitted list of lease facilitators and a lease facilitator must add, delete, or update the previously submitted list of new vehicle lessors within 10 days by electronically submitting a license amendment in the system designated by the department for licensing.

215.175. Sanctions.

(a) The board or department may:

1                   (1) deny a vehicle lessor or vehicle lease facilitator application;  
2                   (2) revoke or suspend a vehicle lessor or vehicle lease facilitator license; or  
3                   (3) assess a civil penalty or take other action on a vehicle lessor or vehicle lease  
4 facilitator applicant or license holder, or a person engaged in business for which a vehicle lessor or  
5 vehicle lease facilitator license is required.

6                   (b) The board or department may take action described in subsection (a) of this section if a  
7 vehicle lessor or vehicle lease facilitator applicant or license holder, or a person engaged in  
8 business for which a vehicle lessor or vehicle lease facilitator license is required:

9                   (1) fails to maintain an established and permanent place of business required by  
10 §215.177 of this title (relating to Established and Permanent Place of Business);

11                   (2) fails to maintain records required under this subchapter;

12                   (3) refuses or fails to comply with a request by a representative of the department  
13 to examine during the vehicle lessor's or vehicle lease facilitator's posted business hours at the  
14 vehicle lessor's or vehicle lease facilitator's licensed location:

15                   (A) a vehicle leasing record required to be maintained by §215.178 of this  
16 title (relating to Records Required for Vehicle Lessors and Vehicle Lease Facilitators);

17                   (B) ownership papers for a vehicle owned, leased, or under that vehicle  
18 lessor's or vehicle lease facilitator's control; or

19                   (C) evidence of ownership or a current premises lease agreement for the  
20 property upon which the business is located;

21                   (4) refuses or fails to timely comply with a request for records made by a  
22 representative of the department;

(5) fails to notify the department in writing by electronically submitting a license amendment in the system designated by the department for licensing within 10 days of a change of the vehicle lessor or vehicle lease facilitator license holder's:

- (A) mailing address;
- (B) physical address;
- (C) telephone number; or
- (D) email address;

(6) fails to notify the department in writing by electronically submitting a license amendment in the system designated by the department for licensing within 10 days of a change of the vehicle lessor or vehicle lease facilitator license holder's name, assumed name, management, or ownership;

(7) fails to comply with the fee restrictions or other requirements under Occupations Code, §2301.357 or Chapter 2301, Subchapter L. Vehicle Lessors and Vehicle Lease Facilitators~~§§2301.551 – 2301.556~~;

(8) fails to maintain advertisement records or otherwise fails to comply with the advertising requirements of:

- (A) §215.178; or
- (B) Subchapter F~~H~~ of this chapter (relating to Advertising);

(9) violates any law relating to the sale, lease, distribution, financing, or insuring of motor vehicles;

(10) is convicted of an offense that, in accordance with Occupations Code, Chapter 53 and with §215.88 of this title (relating to Criminal Offense and Action on License), directly relates to the duties or responsibilities of the licensed occupation;



(11) is determined by the board or department, in accordance with §215.89 of this title (relating to Fitness), to be unfit to hold a vehicle lessor or vehicle lease facilitator license;

(12) uses or allows use of a vehicle lessor or vehicle lease facilitator license in violation of any law or for the purpose of avoiding any provision of Occupations Code, Chapter 2301; or

(13) ~~willfully~~ omits material information or makes a material misrepresentation in any application or other documentation filed with the department including providing a false or forged identity document or a false or forged photograph, electronic image, or other document.

(c) The board or department may take action on a vehicle lessor's license or assess civil penalties for the vehicle lessor's failure to notify the department in writing by electronically submitting a license amendment in the system designated by the department for licensing within 10 days of any change, addition, or deletion to the list of vehicle lease facilitators with whom the vehicle lessor conducts business, including any change to a vehicle lease facilitator's mailing address, physical address, telephone number, or email address.

(d) The board or department may take action on a vehicle lease facilitator's license or assess civil penalties for the failure to notify the department in writing within 10 days by electronically submitting a license amendment in the system designated by the department for licensing of any change, addition, or deletion to the list of vehicle lessors for whom the vehicle lease facilitator conducts business, including any change to a vehicle lessor's mailing address, physical address, telephone number, or email address.

(e) The board or department may take action on a vehicle lessor's or vehicle lease facilitator's license if the vehicle lessor or vehicle lease facilitator accepts a fee from a dealer,

1 directly or indirectly, for referring a customer who purchases or considers purchasing a motor  
2 vehicle.

4 215.176. More Than One Business Location.

5 (a) A vehicle lease facilitator must be licensed separately for each business location.

6 (b) A vehicle lessor or vehicle lease facilitator that relocates from a point outside the limits  
7 of a municipality~~[city]~~ or relocates to a point not within the limits of the same municipality~~[city]~~ of  
8 the initial business location is required to obtain a new license.

9 (c) A vehicle lessor is required to obtain a license for the vehicle lessor's primary location. A  
10 vehicle lessor must provide the address, telephone number, and the name of a contact person for  
11 all other satellite offices that conduct business in the state of Texas.

13 215.177. Established and Permanent Place of Business Premises Requirements.

14 (a) A vehicle lessor or vehicle lease facilitator operating within ~~[the State of]~~ Texas must  
15 meet the following requirements at each location where vehicles are leased or offered for lease.

16 (1) Physical location requirements.

17 (A) A vehicle lessor or vehicle lease facilitator operating within~~[the State of]~~  
18 Texas must be open to the public. The vehicle lessor's or vehicle lease facilitator's business hours  
19 for each day of the week must be posted at the main entrance of the office. The business telephone  
20 must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering  
21 service, voicemail service, or answering machine. A caller must be able to speak to a natural person or  
22 leave a message during these hours. The owner or an employee of the vehicle lessor or vehicle lease  
23 facilitator must be at the location during the posted business hours for the purpose of leasing

vehicles. In the event the owner or an employee is not available to conduct business during the posted business hours, a separate sign must be posted indicating the date and time such owner or employee will resume vehicle leasing operations.

(B) A vehicle lessor's or vehicle leasing facilitator's office structure must be of sufficient size to accommodate the following required equipment:

(i) a desk and two chairs from which the vehicle lessor or vehicle lease facilitator transacts business;~~and~~

(ii) a working telephone number listed in the business name or assumed name under which the vehicle lessor or vehicle lease facilitator conducts business; and~~and~~

(iii) internet access.

(C) A vehicle lessor or vehicle lease facilitator that files an application for a new license or a vehicle lessor that files an application for a satellite location must comply with the following requirements:

(i) The office must be located in a building with a permanent roof and connecting exterior walls on all sides.

(ii) The office must comply with all applicable local zoning ordinances and deed restrictions.

(iii) The office may not be located within a residence, apartment, hotel, motel, or rooming house or building not open to the public.

(iv) The physical address of the office must be recognized by the U.S. Postal Service,~~and~~ capable of receiving U.S. mail, and have an assigned emergency services property address.

1                                   (v) The office may not be virtual or provided by a subscription for  
2 office space or office services. Access to office space or office services is not considered an  
3 established and permanent location.

4                                   (D) A portable-type office structure may qualify as an office only if the  
5 structure meets the requirements of this section and is not a readily moveable trailer or other  
6 vehicle.

7                                   (E) One or more licensed vehicle lessors or vehicle lease facilitators, or a  
8 combination of one or more licensed vehicle lessors and vehicle lease facilitators may occupy the  
9 same business structure and conduct vehicle leasing operations in accordance with the license  
10 held by the vehicle lessor or licensed vehicle lease facilitator. Each ~~person engaged in business as~~  
11 ~~a~~ vehicle lessor or vehicle lease facilitator must have:

12                                   (i) a separate desk from which that vehicle lessor or vehicle lease  
13 facilitator transacts business;

14                                   (ii) a separate working telephone number listed in the vehicle lessor  
15 or vehicle lease facilitator's business name or assumed name;

16                                   (iii) a separate right of occupancy that meets the requirements of  
17 this section; and

18                                   (iv) a vehicle lessor or vehicle lease facilitator license issued by the  
19 department in the name of the vehicle lessor or vehicle lease facilitator.

20                                   (F) A vehicle lease facilitator's established and permanent place of business  
21 must be physically located within ~~the State of~~ Texas.

22                                   (2) Business Sign requirements. A vehicle lessor or vehicle lease facilitator shall  
23 display a conspicuous and permanent business sign at the licensed location showing the name

under which the vehicle lessor or vehicle lease facilitator conducts business. Outdoor business signs must contain letters that are at least six inches in height. The business name or assumed name on the sign must be substantially similar to the name reflected on the license issued by the department. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(3) Premises lease requirements. If the premises from which a licensed vehicle lessor or vehicle lease facilitator conducts business is not owned by the license holder, the license holder must maintain for the licensed location a valid premises lease that is continuous during the period of time for which the vehicle lessor's or vehicle lease facilitator's license will be issued. The premises lease agreement must be on a properly executed form containing at a minimum:

(A) the name of the property owner~~[landlord]~~ of the premises and the name of the vehicle lease facilitator as the tenant or lessee of the premises;

(B) the street address or legal description of the property, provided that if only a legal description of the property is included, the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application as the physical address for the established and permanent place of business; ~~[and]~~

(C) the signature of the property owner as the lessor and the signature of the applicant or holder as the tenant or lessee;

~~(D)~~~~[(C)]~~ the period of time for which the premises lease is valid; ~~[-]~~ and

(E) if the lease agreement is a sublease in which the property owner is not the lessor, the applicant or holder must also obtain a signed and notarized statement from the property owner including the following information:

(i) property owner's full name, email address, mailing address, and  
phone number; and

(ii) property owner's statement confirming that the license holder is  
authorized to sublease the location and may operate a motor vehicle leasing business from the location.

~~[(b) A vehicle lessor that does not deal directly with the public to execute vehicle leases  
and whose licensed location is in another state must meet the following requirements at each  
location.~~

~~(1) Physical location requirements.~~

~~(A) The vehicle lessor's office structure must be of sufficient size to  
accommodate the following required equipment:~~

~~(i) a desk and chairs from which the vehicle lessor transacts  
business; and~~

~~(ii) a working telephone number listed in the business name or  
assumed name under which the vehicle lessor conducts business.~~

~~(B) A vehicle lessor that files an application for a new license or a satellite  
location with a primary licensed location in another state must conform to the following  
requirements:~~

~~(i) The office must be located in a building with connecting exterior  
walls on all sides.~~

~~(ii) The office must comply with all applicable local zoning  
ordinances and deed restrictions.~~

~~(iii) The office may not be located within a residence, apartment, hotel, motel, or rooming house.~~

~~(iv) The physical address of the office must be recognized by the U.S. Postal Service and capable of receiving U.S. mail.~~

~~(C) A portable type office structure may qualify as an office only if the structure meets the requirements of this section and is not a readily moveable trailer or other vehicle.~~

~~(D) More than one licensed vehicle lessor may occupy the same business structure and conduct vehicle leasing operations under different names in accordance with the license held by each vehicle lessor. Each person engaged in business as a vehicle lessor must have:~~

~~(i) a separate desk from which that vehicle lessor transacts business;~~

~~(ii) a separate working telephone number listed in the vehicle lessor's business name or assumed name;~~

~~(iii) a separate right of occupancy that meets the requirements of this section; and~~

~~(iv) a vehicle lessor license issued by the department in the name of the vehicle lessor.~~

~~(2) Sign requirements. An out of state vehicle lessor shall display a conspicuous and permanent sign at the licensed location showing the name under which the vehicle lessor conducts business. Outdoor signs must contain letters at least six inches in height.~~

~~(3) Premises lease requirements. If the out of state premises from which a licensed vehicle lessor conducts business is not owned by the license holder, the license holder must maintain a valid premises lease for the property of the licensed location. The premises lease must~~

~~be continuous during the period of time for which the license will be issued. The premises lease agreement must be on a properly executed form containing at a minimum:~~

~~(A) the name of the landlord of the premises and the name of the licensed lessor identified as the tenant of the premises;~~

~~(B) the street address or legal description of the property, provided that if only a legal description of the property is included, the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application; and~~

~~(C) the period of time for which the premises lease is valid.]~~

~~(b)[(c)]~~ A vehicle lessor or vehicle lease facilitator shall be independent of financial institutions and dealerships in location and in business activities, unless that vehicle lessor or vehicle lease facilitator is an:

(1) employee or legal subsidiary of the financial institution or dealership; or

(2) entity wholly owned by the financial institution or dealership.

~~(c)[(d)]~~ For purposes of this section, an employee is a person who meets the requirements of §215.173(b) of this title (relating to License).

#### 215.178. Records Required for Vehicle Lessors and Vehicle Lease Facilitators.

(a) Purchase and leasing records. A vehicle lessor or vehicle lease facilitator must maintain a complete record of all vehicle purchases and sales for at least one year after the expiration of the vehicle lease.

(1) Complete records ~~[Records]~~ reflecting vehicle lease transactions that occurred within the preceding 24 months must be maintained at the licensed location. Records for prior



time periods may be kept off-site~~[at a location within the same county or within 25 miles of the licensed location]~~.

(2) Within 15 days of receipt of a request~~[sent by mail or by electronic document transfer]~~ from a representative of the department, a vehicle lessor or vehicle lease facilitator must deliver a copy of the specified records to the address listed in the request.

(b) Content of records for lease transaction. A complete record for a vehicle lease transaction must contain:

(1) the name, address, and telephone number of the vehicle lessor~~[of the vehicle subject to the transaction]~~;

(2) the name, mailing address, physical address, and telephone number of each vehicle lessee~~[of the vehicle subject to the transaction]~~;

(3) the name, address, telephone number, and license number of the lease facilitator~~[of the vehicle subject to the transaction]~~;

(4) the name, work~~[home]~~ address, and telephone number of each employee of the vehicle lease facilitator that handled the transaction;

(5) a complete description of the vehicle involved in the transaction, including the VIN;

(6) the name, address, telephone number, and GDN of the dealer selling the vehicle, as well as the franchised dealer license number ~~[of the dealer]~~ if the vehicle~~[involved in the transaction]~~ is a new motor vehicle;

(7) the amount of fee paid to the vehicle lease facilitator or a statement that no fee was paid;

(8) a copy of the buyer's order and sales contract for the vehicle;

(9) a copy of the vehicle lease contract;

(10) a copy of all other contracts, agreements, or disclosures between the vehicle lease facilitator and the consumer lessee; and

(11) a copy of the front and back of the manufacturer's statement of origin, manufacturer's certificate of origin, or the title of the vehicle, as applicable~~[if the vehicle involved in the transaction is a new motor vehicle.]~~

(c) Content of records for sale of leased vehicle. A vehicle lessor's complete record for each vehicle sold at the end of a lease to a lessee, a dealer, or at a wholesale motor vehicle auction must contain:

(1) the date of the purchase;

(2) the date of the sale;

(3) the VIN;

(4) the name and address of the person selling the vehicle to the vehicle lessor;

(5) the name and address of the person purchasing the vehicle from the vehicle lessor;

(6) except for a purchase or sale where the Tax Code does not require payment of motor vehicle sales tax, a tax assessor-collector receipt marked paid;

(7) a copy of all documents, forms, and agreements applicable to a particular sale, including a copy of:

(A) the title application;

(B) the work-up sheet;

- 1                    (C) the front and back of manufacturer's certificate of origin or manufacturer's  
2 statement of origin, unless the title is obtained through the electronic title system;
- 3                    (D) the front and back of the title, unless the title is obtained through the  
4 electronic title system;
- 5                    (E) the factory invoice;
- 6                    (F) the sales contract;
- 7                    (G) the retail installment agreement;
- 8                    (H) the buyer's order;
- 9                    (I) the bill of sale;
- 10                   (J) any waiver;
- 11                   (K) any other agreement between the seller and purchaser; and
- 12                   (L) the purchaser's photo identification if sold to a lessee;
- 13                   (8) a copy of the original manufacturer's certificate of origin, original manufacturer's  
14 statement of origin, or title for motor vehicle offered for sale, or a properly stamped original  
15 manufacturer's certificate of origin, original manufacturer's statement of origin, or original title for a  
16 title transaction entered into the electronic titling system by a dealer;
- 17                   (9) the monthly Motor Vehicle Seller Financed Sales Returns, if any; and

1                   (10) if the vehicle sold is a motor home or a towable recreational vehicle subject to  
2   inspection under Transportation Code, Chapter 548, a copy of the written notice provided to the buyer at  
3   the time of the sale, notifying the buyer that the vehicle is subject to inspection requirements.

4           (d) [(e)] Records of advertising. A vehicle lessor or vehicle lease facilitator must maintain a  
5   copy of all advertisements, brochures, scripts, or an electronically reproduced copy in whatever  
6   medium appropriate, of promotional materials for a period of at least 18 months. Each copy is  
7   subject to inspection upon request by ~~[a representative of]~~ the department at the business ~~[of the~~  
8   ~~licenseholder]~~ location during posted business hours.

9           (1) A vehicle lessor and a vehicle lease facilitator ~~[Vehicle Lessors and vehicle lease~~  
10   ~~facilitators]~~ must comply with all federal and state advertising laws and regulations, including  
11   Subchapter ~~F~~[H] of this chapter (relating to Advertising).

12           (2) A vehicle lessor's ~~[lessor]~~ or vehicle lease facilitator's advertising or promotional  
13   materials ~~[facilitator]~~ may not state or infer ~~[in any advertisement]~~, either directly or indirectly,  
14   that the business involves the sale of new motor vehicles.

15           (e) [(d)] Title assignments. Each certificate of title, manufacturer's certificate of origin, or  
16   other evidence of ownership for a vehicle that has been acquired by a vehicle lessor for lease must  
17   be properly assigned from the seller in the vehicle lessor's name.

18           (f) [(e)] Letters of representation or appointment. A letter of representation or appointment  
19   between a vehicle lessor and a vehicle lease facilitator ~~[with whom the vehicle lessor conducts~~  
20   ~~business]~~ must be executed by both parties and maintained by each party.

21           (g) [(f)] Electronic records. Any record required to be maintained by a vehicle lessor or  
22   vehicle lease facilitator may be maintained in an electronic format, provided the electronic record

1 can be printed at the licensed location or sent electronically upon department request~~[for the~~  
2 ~~record by a representative of the department]~~.

3  
4 215.179. Change of Vehicle Lessor or Vehicle Lease Facilitator Status.

5 (a) Change of ownership. A vehicle lessor or vehicle lease facilitator that ~~[proposes to~~  
6 ~~sell]~~sells or assigns ~~[assign]~~ to another any interest in the licensed entity, whether a corporation or  
7 otherwise, provided the physical location of the licensed entity remains the same, shall notify the  
8 department in writing within 10 days by filing an application to amend the license in the electronic  
9 system designated by the department for licensing. If the sale or assignment of any portion of the  
10 business results in a change of entity, then the purchasing or assignee entity must apply for and  
11 obtain a new license by submitting a new license application in the electronic system designated  
12 by the department for licensing. A publicly held corporation licensed as a vehicle lessor or vehicle  
13 lease facilitator needs only inform the department of a change in ownership if one person or entity  
14 acquires 10% or greater interest in the licensed entity by submitting a license amendment  
15 application in the electronic system designated by the department for licensing.

16 (b) Change of operating status of business location. A license holder shall obtain  
17 department approval prior to opening a satellite location or relocating an existing location, in  
18 accordance with §215.176 of this title (relating to More than One Business Location) by  
19 electronically submitting a new license application in the system designated by the department for  
20 licensing and receiving electronic notice of approval prior to relocating or opening a satellite  
21 location. A license holder must notify the department when closing an existing location or a  
22 satellite location by electronically submitting a license amendment to close the license or close the  
23 satellite location in the system designated by the department for licensing.

215.180. Required Notices to Lessees.

Vehicle lessors and vehicle lease facilitators shall provide notice of the complaint procedures provided by Occupations Code, §[§]2301.204 and Subchapter M (relating to Warranties: Rights of Vehicle Owners),~~[2301.601—2301.613]~~ to each lessee of a new motor vehicle with whom they enter into a vehicle lease.

SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS

**43 TAC §§215.201–215.210**

**STATUTORY AUTHORITY.** The department proposes repeals to Chapter 215 under 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 gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government

Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes repeals under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires

state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

**CROSS REFERENCE TO STATUTE.** These repeals would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503, 1001–1003, and 1005.

§215.201. Purpose and Scope.

§215.202. Filing of Complaints.

§215.203. Review of Complaints.

§215.204. Notification to Manufacturer, Converter, or Distributor.

§215.205. Mediation; Settlement.

§215.206. Hearings.

§215.207. Contested Cases: Final Orders.

§215.208. Lemon Law Relief Decisions.

§215.209. Incidental Expenses.

§215.210. Compliance with Order Granting Relief.

**Text.**

**[SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS]**

~~[215.201. Purpose and Scope.]~~

~~[(a) This subchapter implements Occupations Code, §§2301.204 and §§2301.601–~~

~~2301.613.]~~

~~[(b) Practice and procedure in contested cases heard by the department's Office of~~

~~Administrative Hearings (OAH) are addressed in Subchapter B of this chapter (relating to~~



~~Adjudicative Practice and Procedure) and the provisions of this subchapter to the extent that the provisions do not conflict with state law, rule, or court order.]~~

~~[(c) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.~~

~~(1) Comparable Motor Vehicle—A new motor vehicle, with comparable mileage, from the same manufacturer, converter, or distributor's product line and the same model year or newer as the motor vehicle to be replaced or as reasonably equivalent to the motor vehicle to be replaced.~~

~~(2) Lemon Law—Refers to Occupations Code, Chapter 2301, Subchapter M (§§2301.601–2301.613).~~

~~(3) Warranty Performance—Refers to Occupations Code, §2301.204.]~~  
~~[215.202. Filings of Complaints.]~~

~~[(a) Lemon law complaints.~~

~~(1) Complaints seeking relief under the lemon law must be in writing and filed with the department. A complaint filed with the department shall be delivered:~~

~~(A) in person to the department;~~

~~(B) by mail to the address of the department;~~

~~(C) by email to a department-designated email address; or~~

~~(D) by facsimile transmission to a department-designated facsimile number.~~

~~(2) Complaints may be submitted in letter or other written format, or on complaint forms provided by the department.~~

1                   ~~(3) Complaints shall state sufficient facts to enable the department and the party~~  
2 ~~complained against to know the nature of the complaint and the specific problems or~~  
3 ~~circumstances forming the basis of the claim for relief under the lemon law.~~

4                   ~~(4) Complaints shall, at a minimum, provide the following information:~~

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

6                             ~~(B) the identification of the motor vehicle, including the make, model, year,~~  
7 ~~and manufacturer's VIN;~~

8                             ~~(C) the type of warranty coverage;~~

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

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

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

15                                     ~~(i) the motor vehicle was purchased or leased;~~

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

17                                     ~~(iii) the complaint was filed;~~

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

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

22                                     ~~(i) the date and mileage of each repair; and~~

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

~~(I) the date the motor vehicle manufacturer, converter, or distributor received written notification of the complaint;~~

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

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

~~(5) The department's staff will provide information concerning the complaint procedure and complaint forms to any person requesting assistance.~~

~~(6) The filing fee required under the lemon law should be remitted with the complaint by any form of payment accepted by the department. The filing fee is nonrefundable, but a complainant that prevails in a case is entitled to reimbursement of the filing fee from the nonprevailing party. Failure to remit the filing fee with the complaint will delay commencement of the 150-day period referenced in paragraph (8) of this subsection and may result in dismissal of the complaint.~~

~~(7) The commencement of a lemon law proceeding occurs on the date the filing fee is received by the department or its authorized agent.~~

~~(8) If the hearings examiner has not issued an order within 150 days after the commencement of the lemon law proceeding in accordance with paragraph (7) of this subsection, department staff shall notify the parties by mail that the complainant may file a civil action in state district court to seek relief under the lemon law. The notice will inform the complainant of the complainant's right to continue the lemon law complaint through the department. The 150-day period shall be extended upon request of the complainant or if a delay in the proceeding is caused by the complainant.]~~

~~[(b) Warranty performance complaints (repair only relief).~~

~~(1) Complaints for warranty performance relief filed with the department must comply with the requirements of subsection (a)(1) – (4) of this section.~~

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

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

~~(4) If the defect is not resolved pursuant to §215.205 of this title (relating to Mediation; Settlement), a hearing will be scheduled and conducted in accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O and this subchapter.~~

~~(5) The final order authority will issue an order on the warranty performance complaint. A party who disagrees with the order may oppose the order in accordance with §215.207 of this title (relating to Contested Cases: Final Orders).~~

~~(6) Department staff will provide information concerning the complaint procedure and complaint forms to any person requesting assistance.]~~

~~[215.203. Review of Complaints.][Department staff will promptly review a complaint to determine if the complaint meets the minimum requirements of a lemon law or a warranty performance complaint.~~

~~(1) If department staff cannot determine whether a complaint meets the minimum lemon law or warranty performance requirements, the complainant will be contacted for additional information.~~

~~(2) If department staff determines that the complaint meets the minimum lemon law or warranty performance requirements, the complaint will be processed in accordance with this subchapter.]~~

~~[215.204. Notification to Manufacturer, Converter, or Distributor.]~~

~~[(a) Upon receipt of a complaint for lemon law or warranty performance relief, the department will:~~

~~(1) provide notification of the complaint to, and request a response from, the appropriate manufacturer, converter, or distributor; and~~

~~(2) provide a copy of the complaint to, and may request a response from, the selling dealer and any other dealer involved with the complaint.]~~

~~[(b) The manufacturer shall, upon request by the department, provide a copy of the warranty for the motor vehicle subject to the lemon law or warranty performance complaint.]~~

~~[215.205. Mediation; Settlement.]~~

~~[(a) Department staff will attempt to settle or resolve a lemon law or warranty performance complaint through nonbinding mediation before a hearing on the complaint is scheduled:]~~

~~[(b) The parties are required to participate in the nonbinding mediation process in good faith.]~~

1           ~~[(c) In a case filed under Occupations Code, §2301.204 or §§2301.601 – 2301.613, the~~  
2           ~~mediator shall qualify for appointment as an impartial third party in accordance with Civil Practice~~  
3           ~~and Remedies Code, Chapter 154.]~~

4  
5           ~~[215.206. Hearings.] [Lemon law or warranty performance complaints that satisfy the jurisdictional~~  
6           ~~requirements of the Occupations Code will be set for hearing. Notification of the date, time, and place of~~  
7           ~~the hearing will be given to all parties by certified mail. Additional information contained in the notice of~~  
8           ~~hearing shall be consistent with §215.34 of this title (relating to Notice of Hearing in Contested Cases).~~

9                     ~~(1) When possible, hearings will be held in the city in which the complainant resides.~~

10                    ~~(2) Hearings will be scheduled at the earliest date possible, provided that a 10-day notice~~  
11           ~~or other notice required by law is given to all parties.~~

12                    ~~(3) Hearings will be conducted expeditiously by a hearings examiner in accordance with~~  
13           ~~Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O; and with~~  
14           ~~the provisions of Subchapter B of this chapter (relating to Adjudicative Practice and Procedure) and this~~  
15           ~~subchapter.~~

16                    ~~(4) Hearings will be conducted informally. The parties have the right to be represented~~  
17           ~~by attorneys at a hearing, although attorneys are not required. Any party who intends to be represented~~  
18           ~~at a hearing by an attorney or an authorized representative must notify the hearings examiner, the~~  
19           ~~department, and any other party in writing at least five business days prior to the hearing. Failure to~~  
20           ~~provide notice will result in postponement of the hearing if requested by any other party.~~

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

4                   ~~(6) By agreement of the parties and with the written approval of the hearings examiner,~~  
5                   ~~the hearing may be conducted by written submission only or by telephone.~~

6                   ~~(7) Except for a hearing conducted by written submission, each party may be questioned~~  
7                   ~~by the other party at the discretion of the hearings examiner.~~

8                   ~~(8) Except for a hearing conducted by written submission or by telephone, the~~  
9                   ~~complainant must bring the motor vehicle in question to the hearing so that the motor vehicle may be~~  
10                  ~~inspected and test driven, unless otherwise ordered by the hearings examiner upon a showing of good~~  
11                  ~~cause by the complainant.~~

12                  ~~(9) The department may have the motor vehicle in question inspected by an expert prior~~  
13                  ~~to the hearing, if the department determines that an expert opinion may assist in arriving at a decision.~~  
14                  ~~An inspection under this section shall be made only upon prior notice to all parties, who shall have the~~  
15                  ~~right to be present at such inspection. A copy of any findings or report from such inspection will be~~  
16                  ~~provided to all parties before, or at, the hearing.~~

17                  ~~(10) Except for hearings conducted by written submission, all hearings will be recorded~~  
18                  ~~by the hearings examiner. A copy of the recording will be provided to any party upon request and upon~~  
19                  ~~payment for the cost of the copy, as provided by law or board rules.]~~

20  
21                  ~~[215.207. Contested Cases: Final Orders.]~~

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

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

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

11                     ~~(1) be filed with the chief hearings examiner;~~

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

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

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

19           ~~[(e) If the chief hearings examiner or the chief hearings examiner's designee grants a motion for~~  
20           ~~rehearing, the parties will be notified by mail and a rehearing will be scheduled promptly. After~~  
21           ~~rehearing, a final order shall be issued with any additional findings of fact or conclusions of law, if~~



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

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

13  
14 ~~[215.208. Lemon Law Relief Decisions.]~~

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

18 ~~(1) If it is found that the manufacturer, distributor, or converter is not able to conform~~  
19 ~~the motor vehicle to an applicable express warranty by repairing or correcting a defect in the~~  
20 ~~complainant's motor vehicle, creating a serious safety hazard or substantially impairing the use or~~  
21 ~~market value of the motor vehicle after a reasonable number of attempts, and that the affirmative~~

1 ~~defenses provided under Occupations Code, §2301.606 are not applicable, the final order authority shall~~  
2 ~~issue a final order to the manufacturer, distributor, or converter to:~~

3 ~~(A) replace the motor vehicle with a comparable motor vehicle, less a~~  
4 ~~reasonable allowance for the owner's use of the vehicle; or~~

5 ~~(B) accept the return of the motor vehicle from the owner and refund the full~~  
6 ~~purchase price of the motor vehicle to the owner, less a reasonable allowance for the owner's use of the~~  
7 ~~motor vehicle.~~

8 ~~(2) In any decision in favor of the complainant, the final order authority will, to the~~  
9 ~~extent possible, accommodate the complainant's request with respect to replacement or repurchase of~~  
10 ~~the motor vehicle.]~~

11 ~~[(b) This subsection applies only to the repurchase of motor vehicles.~~

12 ~~(1) When a refund of the purchase price of a motor vehicle is ordered, the purchase~~  
13 ~~price shall be the total purchase price of the motor vehicle, excluding the amount of any interest, finance~~  
14 ~~charge, or insurance premiums. The award to the motor vehicle owner shall include reimbursement of~~  
15 ~~the amount of the lemon law complaint filing fee paid by, or on behalf of, the motor vehicle owner. The~~  
16 ~~refund shall be made payable to the motor vehicle owner and to any lienholder, respective to their~~  
17 ~~ownership interest.~~

18 ~~(2) There is a rebuttable presumption that a motor vehicle has a useful life of 120,000~~  
19 ~~miles. Except in cases where the preponderance of the evidence shows that the motor vehicle has a~~  
20 ~~longer or shorter expected useful life than 120,000 miles, the reasonable allowance for the owner's use~~

1 ~~of the motor vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this~~  
2 ~~paragraph.~~

3 ~~(A) The product obtained by multiplying the purchase price, as defined in~~  
4 ~~paragraph (1) of this subsection, of the motor vehicle by a fraction having as its denominator 120,000~~  
5 ~~and having as its numerator the number of miles that the motor vehicle traveled 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; and~~

8 ~~(B) 50% of the product obtained by multiplying the purchase price by a fraction~~  
9 ~~having as its denominator 120,000 and having as its numerator the number of miles that the motor~~  
10 ~~vehicle traveled after the first report of the defect or condition forming the basis of the repurchase~~  
11 ~~order. The number of miles during the period covered in this paragraph shall be determined from the~~  
12 ~~date of the first report of the defect or condition forming the basis of the repurchase order through the~~  
13 ~~date of the hearing.~~

14 ~~(3) There is a rebuttable presumption that the useful life of a towable recreational~~  
15 ~~vehicle is 3,650 days or 10 years. Except in cases where a preponderance of the evidence shows that the~~  
16 ~~vehicle has a longer or shorter expected useful life than 3,650 days or 10 years, the reasonable~~  
17 ~~allowance for the owner's use of the towable recreational vehicle shall be that amount obtained by~~  
18 ~~adding subparagraphs (A) and (B) of this paragraph.~~

19 ~~(A) The product obtained by multiplying the purchase price, as defined in~~  
20 ~~paragraph (1) of this subsection, of the towable recreational vehicle by a fraction having as its~~  
21 ~~denominator 3,650 days or 10 years, except the denominator shall be 1,825 days or five years, if the~~  
22 ~~towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of~~

~~days from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order.~~

~~(B) 50% of the product obtained by multiplying the purchase price by a fraction having as its denominator 3,650 days or 10 years, except the denominator shall be 1,825 days or five years, if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of days of ownership after the first report of the defect or condition forming the basis of the repurchase order. The number of days during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.~~

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

~~[(c) This subsection applies only to leased motor vehicle relief.~~

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

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

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

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

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

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

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

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

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

~~(3) Refunds shall be made to the lessee, vehicle lessor, and to any lienholder, respective to their ownership interest. The refund to the lessee under paragraph (1)(A) of this subsection shall be~~

~~reduced by a reasonable allowance for the lessee's use of the motor vehicle. A reasonable allowance for use shall be computed in accordance with subsection (b)(2) or (3) of this section, using the amount in paragraph (1)(B)(i) of this subsection as the applicable purchase price.]~~

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

~~(1) Upon issuance of an order from the final order authority to a manufacturer, converter, or distributor to replace a motor vehicle, the manufacturer, converter, or distributor shall:~~

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

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

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

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

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

~~(2) Upon any replacement of a complainant's motor vehicle, the complainant shall be responsible for payment or financing of the usage allowance of the complainant's vehicle, any outstanding liens on the complainant's vehicle, and applicable taxes and fees associated with the new sale, excluding documentary fees.~~

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

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

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

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

~~[(e) If the final order authority finds that a complainant's motor vehicle does not qualify for replacement or repurchase, an order may be entered in any proceeding, where appropriate, requiring repair work to be performed or other action taken to obtain compliance with the manufacturer's, converter's, or distributor's warranty obligations.]~~

~~[(f) If the motor vehicle is substantially damaged or if there is an adverse change in the motor vehicle's condition beyond ordinary wear and tear, from the date of the hearing to the date of repurchase, and the parties are unable to agree on an amount allowed for such damage or condition,~~

1 ~~either party may request reconsideration by the final order authority of the repurchase price contained~~  
2 ~~in the final order.]~~

3 ~~[(g) In any award in favor of a complainant, the final order authority may require the dealer~~  
4 ~~involved to reimburse the complainant, manufacturer, converter, or distributor for the cost of any items~~  
5 ~~or options added to the motor vehicle if one or more of those items or options contributed to the defect~~  
6 ~~that is the basis for the order, repurchase, or replacement. This subsection shall not be interpreted to~~  
7 ~~require a manufacturer, converter, or distributor to repurchase a motor vehicle due to a defect or~~  
8 ~~condition that was solely caused by a dealer add-on item or option.]~~

9  
10 ~~[215.209. Incidental Expenses:]~~

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

16 ~~(1) alternate transportation;~~

17 ~~(2) towing;~~

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

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



1                   ~~(5) loss or damage to personal property;~~

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

4                   ~~(7) items or accessories added to the motor vehicle at or after purchase, less a~~  
5 ~~reasonable allowance for use.]~~

6                   ~~[(b) Incidental expenses shall be included in the final repurchase price required to be paid by a~~  
7 ~~manufacturer, converter, or distributor to a prevailing complainant or in the case of a motor vehicle~~  
8 ~~replacement, shall be tendered to the complainant at the time of replacement.]~~

9                   ~~[(c) When awarding reimbursement for the cost of items or accessories presented under~~  
10 ~~subsection (a)(7) of this section, the hearings examiner shall consider the permanent nature,~~  
11 ~~functionality, and value added by the items or accessories and whether the items or accessories are~~  
12 ~~original equipment manufacturer (OEM) parts or non-OEM parts.]~~

13

14                   ~~[215.210. Compliance with Order Granting Relief.]~~

15                   ~~[(a) Compliance with an order issued by the final order authority will be monitored by the~~  
16 ~~department.]~~

17                   ~~[(b) A complainant is not bound by a final decision and order.]~~

18                   ~~[(c) If a complainant does not accept the final decision, the proceeding before the final order~~  
19 ~~authority will be deemed concluded and the complaint file closed.]~~

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

4           ~~[(e) If a manufacturer, converter, or distributor replaces or repurchases a motor vehicle pursuant~~  
5           ~~to an order issued by the final order authority, then the manufacturer, converter, or distributor shall,~~  
6           ~~prior to the resale of such motor vehicle, retitle the vehicle in Texas and shall:~~

7                     ~~(1) issue a disclosure statement on a form provided by or approved by the department;~~  
8           ~~and~~

9                     ~~(2) affix a department-approved disclosure label in a conspicuous location in or on the~~  
10           ~~motor vehicle.]~~

11           ~~[(f) The disclosure statement and disclosure label required under subsection (e) of this section~~  
12           ~~shall accompany the motor vehicle through the first retail purchase. No person or entity holding a license~~  
13           ~~or GDN issued by the department under Occupations Code, Chapter 2301 or Transportation Code,~~  
14           ~~Chapter 503 shall remove or cause the removal of the disclosure label until delivery of the motor vehicle~~  
15           ~~to the first retail purchaser.]~~

16           ~~[(g) A manufacturer, converter, or distributor shall provide to the department the name, address,~~  
17           ~~and telephone number of the transferee to whom the manufacturer, distributor, or converter transfers~~  
18           ~~the motor vehicle on the disclosure statement within 60 days of each transfer. The selling dealer shall~~  
19           ~~return the completed disclosure statement to the department within 60 days of the retail sale of a~~  
20           ~~reacquired motor vehicle.]~~

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

5           ~~[(i) In the event this section conflicts with the terms contained in a cease and desist order, the~~  
6 ~~terms of the cease and desist order shall prevail.]~~

7           ~~[(j) The failure of any manufacturer, converter, distributor, or dealer to comply with a final order~~  
8 ~~issued by the final order authority within the time period prescribed in the order may subject the~~  
9 ~~manufacturer, converter, distributor, or dealer to formal action by the department, including the~~  
10 ~~assessment of civil penalties or other sanctions prescribed by Occupations Code, Chapter 2301, for the~~  
11 ~~failure to comply with an order issued by the final order authority.]~~

12  
13       SUBCHAPTER H. ADVERTISING

14       **43 TAC §§215.242, 215.244, 215.249, 215.250, 215.257, 215.261, 215.264, 215.268, and 215.270**

15       **STATUTORY AUTHORITY.** The department proposes amendments to Chapter 215 under Occupations  
16 Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor  
17 vehicles and the authority to take any action that is necessary or convenient to exercise that authority;  
18 Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license  
19 holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute  
20 and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in  
21 connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations  
22 Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which

1 authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter  
2 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives  
3 the board authority to deny an application for a license, revoke or suspend a license, place on probation,  
4 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,  
5 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds  
6 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government  
7 Code, §411.122(d), which authorizes department access to criminal history record information  
8 maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal  
9 history record information from DPS and the FBI for license applicants, license holders, and  
10 representatives whose act or omission would be cause for denying, revoking, or suspending a general  
11 distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,  
12 Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as  
13 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which  
14 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;  
15 Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases;  
16 Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for  
17 an original or renewal general distinguishing number who proposes to be an independent motor vehicle  
18 dealer complete web-based education and training developed or approved by the department;  
19 Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice  
20 of a surety bond and the procedure by which a claimant may recover against the surety bond;  
21 Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of  
22 dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the  
23 board to adopt rules necessary to implement and manage the department's temporary tag databases;

and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes amendments under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

**CROSS REFERENCE TO STATUTE.** These proposed revisions would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503, 1001–1003, and 1005.

Text.

**SUBCHAPTER F[H]. ADVERTISING**

215.242. General Prohibition.

A person advertising motor vehicles shall not use false, deceptive, unfair, or misleading advertising. In addition to a violation of a specific advertising rule, any other advertising or advertising practices found

by the department to be false, deceptive, or misleading, whether herein described, shall be deemed a violation of Occupations Code, Chapter 2301 and shall also be deemed[considered] a violation of this rule.

215.244. Definitions.

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

(1) Advertisement--

(A) An oral, written, graphic, or pictorial statement or representation made in the course of soliciting business, including, but not limited to a statement or representation:

- (i) made in a newspaper, magazine, or other publication;
- (ii) contained in a notice, sign, poster, display, circular, pamphlet, or letter;
- (iii) aired on the radio;
- (iv) broadcast on the internet or television; or
- (v) streamed via an online service.

(B) Advertisement does not include direct communication between a person or person's representative and a prospective purchaser.

(2) Advertising provision--

(A) A provision of Occupations Code, Chapter 2301, relating to the regulation of advertising; or

(B) A rule relating to the regulation of advertising, adopted pursuant to the authority of Occupations Code, Chapter 2301.

1                   (3) Bait advertisement--An alluring but insincere offer to sell or lease a product of which  
2 the primary purpose is to obtain a lead to a person interested in buying or leasing merchandise of the  
3 type advertised and to switch a consumer from buying or leasing the advertised product in order to sell  
4 or lease some other product at a higher price or on a basis more advantageous to the dealer.

5                   (4) Balloon payment--Any scheduled payment made as required by a consumer credit  
6 transaction that is more than twice as large as the average of all prior scheduled payments except the  
7 down payment.

8                   (5) Clear and conspicuous--The statement, representation, or term being disclosed is of  
9 such size, color, contrast, and audibility and is presented so as to be readily noticed and understood. All  
10 language and terms, including abbreviations, shall be used in accordance with their common or ordinary  
11 usage and meaning.

12                   (6) Dealership addendum--A form that is displayed on a window of a motor vehicle when  
13 a~~the~~ dealership installs special features, equipment, parts, or accessories, or charges for services not  
14 already compensated by the manufacturer or distributor for work required to prepare a motor vehicle for  
15 delivery to a buyer.

16                               (A) The purpose of the addendum is to disclose:

17                                       (i) that it is supplemental;

18                                       (ii) any added feature, service, equipment, part, or accessory, including  
19 the retail price, charged and added by the dealership;

20                                       (iii) any additional charge to the selling price such as additional dealership  
21 markup; and

22                                       (iv) the total dealer selling price.

(B) The dealership addendum form shall not be deceptively similar in appearance to the Monroney label, as defined by paragraph (13) ~~[(14)]~~ of this section.

(7) Demonstrator--A new motor vehicle that is currently in the inventory of the automobile dealership and used primarily for test drives by customers and for other purposes designated by the dealership.

(8) Disclosure--Required information that is clear, conspicuous, and accurate.

(9) Distributor Suggested Retail Price (DSRP)--means the total price shown on the Monroney Label as specified by subparagraph ~~[sub-paragraph]~~ (D) of paragraph (13) ~~[(14)]~~ of this section.

(10) Factory executive/official motor vehicle--A new motor vehicle that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor, or their subsidiaries.

~~[(11) License holder--Any person required to obtain a license from the department.]~~

(11)~~[(12)]~~ Limited rebate--A rebate that is not available to every consumer purchasing or leasing a motor vehicle because qualification for receipt of the rebate is conditioned or restricted in some manner. A rebate conditioned or restricted to purchasers who are residents of the contiguous United States is not a limited rebate.

(12)~~[(13)]~~ Manufacturer's Suggested Retail Price (MSRP)--means the total price shown on the Monroney Label as specified by subparagraph ~~[sub-paragraph]~~ (D) of paragraph (13) of this section.

(13)~~[(14)]~~ Monroney Label--The label required by the Automobile Information Disclosure Act, 15 U.S.C. §§1231 - 1233, to be affixed to the windshield or side window of certain new motor vehicles delivered to the dealer and that contains information about the motor vehicle, including, but not limited to:



(A) the retail price of the motor vehicle suggested by the manufacturer or distributor, as applicable;

(B) the retail delivered price suggested by the manufacturer or distributor, as applicable, for each accessory or item of optional equipment, physically attached to the motor vehicle at the time of its delivery to a dealer, which is not included within the price of the motor vehicle as stated in subparagraph (A) of this paragraph;

(C) the amount charged, if any, to a dealer for the transportation of the motor vehicle to the location at which it is delivered to the dealer; and

(D) the total of the amounts specified pursuant to subparagraphs (A), (B), and (C) of this paragraph.

~~(14)~~~~[(15)]~~ Online service--A network that connects computer users.

~~(15)~~ ~~[(16)]~~ Rebate or cash back--A sum of money applied to the purchase or lease of a motor vehicle or refunded after full payment has been rendered for the benefit of the purchaser.

~~(16)~~~~[(17)]~~ Savings claim or discount--An offer to sell or lease a motor vehicle at a reduced price, including, but not limited to, a manufacturer's or distributor's customer rebate, a dealer discount, or a limited rebate.

~~(17)~~~~[(18)]~~ Subsequent violation--Conduct that is the same or substantially the same as conduct the department has previously alleged in a notice of an opportunity to cure~~[an earlier communication ]~~to be a violation of an advertising provision.

215.249. Manufacturer's or~~[/]~~ Distributor's Suggested Retail Price.

(a) Except as provided by subsection (b) of this section, the suggested retail price of a new motor vehicle advertised by a manufacturer or distributor shall include all costs and charges for the motor vehicle advertised.

(b) The following costs and charges may be excluded if an advertisement described in subsection (a) of this section clearly and conspicuously states the costs and charges are excluded:

(1) destination and dealer preparation charges;

(2) registration, certificate of title, license fees, or an additional registration fee, if any;

(3) taxes; and

(4) other fees or charges that are allowed or prescribed by law.

(c) Except as provided by this subsection, if the price of a motor vehicle is stated in an advertisement placed with local media in ~~the State of~~ Texas by a manufacturer or distributor and the names of the local dealers for the motor vehicles advertised are included in that advertisement, then the price must include all costs and charges for the motor vehicle advertised, including destination and dealer preparation charges. The only costs and charges that may be excluded from the price are:

(1) registration, certificate of title, license fees, or an additional registration fee, if any;

(2) taxes; and

(3) other fees or charges that are allowed or prescribed by law.

215.250. Dealer Price Advertising; Savings Claims; Discounts.

(a) When featuring a sales price of a ~~new or used~~ motor vehicle in an advertisement, the dealer must be willing to sell the motor vehicle for that featured sales price to any retail buyer. The featured sales price shall be the price before the addition or subtraction of any other negotiated items. Destination and dealer preparation charges and additional dealership markup, if any must be included in the featured sales price.

(b) The only costs and charges that may be excluded from the featured sales price are:

(1) registration, certificate of title, or license fees;

(2) taxes; and

(3) other fees or charges that are expressly allowed [~~or prescribed~~] by law.

(c) A qualification may not be used when featuring a sales price for a motor vehicle such as "with trade," "with acceptable trade," "with dealer-arranged financing," "rebate assigned to dealer," or "with down payment."

(d) Advertising an "internet price," "e-price," or using similar terms that indicate or create the impression that there is a different or unique sales price for an online or internet consumer or transaction is prohibited.

(e) A savings claim or discount offer is prohibited except to advertise a new motor vehicle. No person may advertise a savings claim or discount offer on a used motor vehicle.

(f) Statements such as "up to," "as much as," and "from" shall not be used by a dealer in connection with savings claims or discount offers.

(g) The savings claim or discount offer for a new motor vehicle, when advertised by a dealer, must be the savings claim or discount available to any and all members of the buying public.

(h) If an advertisement includes a savings claim or discount offer, the amount and type of each incentive that makes up the total amount of the savings claim or discount offer must be disclosed.

(1) If a savings claim or discount offer includes only a dealer discount, that incentive must be disclosed as a deduction from the MSRP/DSRP, as applicable. The following are acceptable formats for advertising a dealer discount with and without a sales price.

Attached Graphic

(2) If a savings claim or discount offer includes only a customer rebate, that incentive must be disclosed as a deduction from the MSRP/DSRP, as applicable. The following are acceptable formats for advertising a customer rebate with and without a sales price.

Attached Graphic

(3) If a savings claim or discount offer includes both a customer rebate and a dealer discount, the incentives must be disclosed as deductions from the MSRP/DSRP, as applicable. The following are acceptable formats for advertising both a customer rebate and a dealer discount with and without a sales price.

Attached Graphic

(i) If a savings claim or discount offer includes an option package discount, that discount should be disclosed above, or prior to, the MSRP/DSRP, as applicable, with a total sales price of the motor vehicle before option discounts. Any additional savings or discounts should then be disclosed below the MSRP/DSRP, as applicable. The following are acceptable formats for advertising an option package discount with and without a sales price.

Attached Graphic

(j) Except as provided herein, the calculation of the featured sales price or featured savings claim or discount may not include a limited rebate. A limited rebate may be advertised by providing the amount of the limited rebate and explaining the conditions or restrictions on qualification for the limited rebate in a statement below the featured sales price or featured savings claim or discount.

Attached Graphic

(k) In an internet advertisement with multiple limited rebates available on an advertised new motor vehicle, a dealer may display each limited rebate separately allowing a potential buyer to "click" on the

limited rebate to view the sales price after deducting the applicable limited rebate or applicable multiple rebates.

Attached Graphic

(I) If a dealer has added an option that was not obtained from the manufacturer or distributor of the motor vehicle, a dealer discount may not be advertised for that vehicle. If a dealer has added an option obtained from the manufacturer or distributor and disclosed that option and its suggested retail price on a dealership addendum, the dealer may advertise a dealer discount for that motor vehicle if the option is listed, and the difference is shown between the dealer's sales price and the MSRP/DSRP, as applicable, of the vehicle including the option obtained from the manufacturer or distributor.

Attached Graphic

#### 215.257. Authorized Dealer.

The term "authorized dealer" or a similar term shall not be used unless the advertising dealer holds both a franchised dealer license and a franchised dealer GDN[dealer license] to sell the motor vehicles the dealer identifies itself as "authorized" to sell.

#### 215.261. Manufacturer or [/]Distributor Sales and Wholesale Prices.

A motor vehicle shall not be advertised for sale in any manner that creates the impression that it is being offered for sale by the manufacturer or distributor of the motor vehicle. An advertisement shall not:

(1) contain terms such as "factory sale," "fleet prices," "wholesale prices," "factory approved," "factory sponsored," "manufacturer sale," or "distributor sale";

(2) use a manufacturer's or [/] distributor's name or abbreviation in any manner calculated or likely to create an impression that the motor vehicle is being offered for sale by the manufacturer or distributor; or

(3) use any other similar terms which indicate sales other than retail sales from the dealer.

215.264. Payment Disclosure - Vehicle Lease.

(a) An advertisement that promotes a consumer lease and contains the amount of any payment or that contains either a statement of any capitalized cost reduction or other payment or a statement that no payment is required at consummation or prior to consummation or delivery, if delivery occurs after consummation, must clearly and conspicuously include the following:

(1) that the transaction advertised is a vehicle lease;

(2) the total amount due at consummation or prior to consummation or delivery, if delivery occurs after consummation;

(3) the number, amount, and due date or period of scheduled payments under the vehicle lease;

(4) a statement of whether a security deposit is required; and

(5) a statement that an extra charge may be imposed at the end of the vehicle lease term where the lessee's liability, if any, is based on the difference between the residual value of the leased property and its realized value at the end of the vehicle lease term.

(b) Except for a periodic payment, a reference to a charge described in subsection (a)(2) of this section cannot be more prominently advertised than the disclosure of the total amount due at vehicle lease signing or delivery.

(c) Except for disclosures of limitations on rate information, if a percentage rate is advertised, that rate shall not be more prominently advertised than any other disclosure or deal term ~~[of the following disclosures in the advertisement].~~

~~[(1) Description of payments.]~~

~~[(2) Amount due at vehicle lease signing or delivery.]~~

~~[(3) Payment schedule and total amount of periodic payments.]~~

~~[(4) Other itemized charges that are not included in the periodic payment. These charges include the amount of any liability that the vehicle lease imposes upon the lessee at the end of the vehicle lease term.]~~

~~[(5) Total number of payments.]~~

~~[(6) Payment calculation, including:]~~

~~[(A) gross capitalized cost;]~~

~~[(B) capitalized cost reduction;]~~

~~[(C) adjusted capitalized cost;]~~

~~[(D) residual value;]~~

~~[(E) depreciation and any amortized amounts;]~~

~~[(F) rent charge;]~~

~~[(G) total of base periodic payments;]~~

~~[(H) vehicle lease term;]~~

~~[(I) base periodic payment;]~~

~~[(J) itemization of other charges that are a part of the periodic payment; and]~~

~~[(K) total periodic payment.]~~

~~[(7) Early termination conditions and disclosure of charges.]~~

~~[(8) Maintenance responsibilities.]~~

~~[(9) Purchase option.]~~

~~[(10) Statement referencing nonsegregated disclosures.]~~

~~[(11) Liability between residual and realized values.]~~

~~[(12) Right of appraisal.]~~

~~[(13) Liability at the end of the vehicle lease term based on residual value.]~~

~~[(14) Fees and taxes.]~~

~~[(15) Insurance.]~~

~~[(16) Warranties or guarantees.]~~

~~[(17) Penalties and other charges for delinquency.]~~

~~[(18) Security interest.]~~

(d) If a vehicle lessor provides a percentage rate in an advertisement, a notice stating "this percentage may not measure the overall cost of financing this lease" shall accompany the rate disclosure. The vehicle lessor shall not use the terms "annual percentage rate," "annual lease rate," or any equivalent terms in any advertisement containing a percentage rate.

(e) A multi-page advertisement that provides a table or schedule of the required disclosures is considered a single advertisement, provided that for vehicle lease terms appearing without all of the required disclosures, the advertisement refers to the page or pages on which the table or schedule appears.

(f) A merchandise tag stating any item listed in subsection (a) of this section must comply with subsection (a)~~[(1)–(5)]~~ of this section by referring to a sign or to a display prominently posted in the vehicle lessor's place of business. The sign or display must contain a table or schedule of the required disclosures under subsection (a)~~[(1)–(5)]~~.



(g) An advertisement made through television or radio stating any item listed in subsection (a) of this section, must include the following statements:

- (1) that the transaction advertised is a vehicle lease;
- (2) the total amount due at consummation or due prior to consummation or delivery, if delivery occurs after consummation; and
- (3) the number, amount, and due date or period of scheduled payments under the vehicle lease.

(h) In addition to the requirements of subsection (g)~~[(1)–(3)]~~ of this section, an advertisement made through television or radio stating any item listed in subsection (a) of this section, must:

- (1) provide a toll-free telephone number along with a statement that the telephone number may be used by consumers to obtain the information in subsection (a) of this section; or
- (2) direct the consumer to a written advertisement in a publication of general circulation in the community served by the media station, including the name and the date of the publication, with a statement that the required disclosures in subsection (a) of this section are included in the advertisement.

(i) The toll-free telephone number required by subsection (h)(1) of this section shall be available for at least 10 days, beginning on the date of the broadcast. Upon request, the vehicle lessor shall provide the information in subsection (a) of this section orally or in writing.

(j) The written advertisement required by subsection (h)(2) of this section shall be published beginning at least three days before the broadcast and ending at least 10 days after the broadcast.

215.268. Bankruptcy and Liquidation Sales.

1 A person who advertises a liquidation sale, auction sale, or going out of business sale shall state  
2 the correct name and permanent address of the ~~owner of the~~ business in the advertisement. The phrases  
3 "going out of business," "closing out," "shutting doors forever," "bankruptcy sale," "foreclosure,"  
4 "bankruptcy," or similar phrases or words indicating that a business~~(an enterprise)~~ is ceasing  
5 operation~~(business)~~ shall not be used unless the business is closing its operations and follows the  
6 procedures required by Business and Commerce Code, Chapter 17, Subchapter F.

7  
8 215.270. Enforcement.

9 (a) The department may file a Notice of Department Decision against a license holder alleging a violation  
10 of an advertising provision pursuant to Occupations Code, §2301.203, provided the department can show:

11 (1) that the license holder who allegedly violated an advertising provision has received  
12 from the department a notice of an opportunity to cure the violation by certified mail, return receipt  
13 requested, in compliance with subsection (b) of this section; and

14 (2) that the license holder committed a subsequent violation of the same advertising  
15 provision.

16 (b) An effective notice of an opportunity to cure issued under subsection (a)(1) of this section must:

17 (1) state that the department has reason to believe that the license holder violated an  
18 advertising provision and must identify the provision;

19 (2) set forth the facts upon which the department bases its allegation of a violation; and

20 (3) state that if the license holder commits a subsequent violation of the same advertising  
21 provision, the department will ~~formally~~ file a Notice of Department Decision under §224.56 of this title  
22 (relating to Notice of Department Decision).

(c) As a part of the cure procedure, the department may require a license holder who allegedly violated an advertising provision to publish a retraction notice to effect an adequate cure of the alleged violation.

A retraction notice must:

(1) appear in a newspaper of general circulation in the area in which the alleged violation occurred;

(2) appear in the portion of the newspaper devoted to motor vehicle advertising, if any;

(3) identify the date and the medium of publication, print, electronic, or other, in which the advertising alleged to be a violation appeared; and

(4) identify the alleged violation of the advertising provision and contain a statement of correction.

(d) A cure is made solely for the purpose of settling an allegation and is not an admission of a violation of these rules; Occupations Code, Chapter 2301; or other law.

#### SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

#### **43 TAC §§215.301–215.317**

**STATUTORY AUTHORITY.** The department proposes repeals to Chapter 215 under 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 gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for an original or renewal general distinguishing number who proposes to be an independent motor vehicle dealer complete web-based education and training developed or approved by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice of a surety bond and the procedure by which a claimant may recover against the surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the

board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes repeals under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

**CROSS REFERENCE TO STATUTE.** These repeals would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503, 1001–1003, and 1005.

§215.301. Purpose and Scope.

§215.302. Conformity with Statutory Requirements.

§215.303. Application of Board and SOAH Rules.

§215.305. Filing of Complaints, Protests, and Petitions; Mediation.

§215.306. Referral to SOAH.

- 1 §215.307. Notice of Hearing.
- 2 §215.308. Reply to Notice of Hearing and Default Proceedings.
- 3 §215.310. Issuance of Proposals for Decision and Orders.
- 4 §215.311. Amicus Briefs.
- 5 §215.314. Cease and Desist Orders.
- 6 §215.315. Statutory Stay.
- 7 §215.316. Informal Disposition.
- 8 §215.317. Motion for Rehearing.

9 **Text.**

10 ~~[SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE~~  
11 ~~OF ADMINISTRATIVE HEARINGS]~~

12 ~~[215.301. Purpose and Scope.]~~

13 ~~[(a) This subchapter implements the practice and procedure for contested cases under the~~  
14 ~~jurisdiction of the department that are conducted by an ALJ under Occupations Code, Chapter~~  
15 ~~2301 and Transportation Code, Chapters 503 and 1000—1005.]~~

16 ~~[(b) A contested case hearing held by an ALJ shall be conducted in accordance with~~  
17 ~~Government Code, Chapter 2001; applicable SOAH rules; and board rules.]~~

18 ~~[(c) Unless otherwise provided by statute or by this chapter, this subchapter governs~~  
19 ~~practice and procedure relating to contested cases filed with the department on or after~~  
20 ~~September 1, 2007.]~~

21 ~~[(d) Practice and procedure in contested cases filed on or after January 1, 2014, under~~  
22 ~~Occupations Code, Chapter 2301, Subchapters E or M are addressed in Subchapter B of this~~  
23 ~~chapter (relating to Adjudicative Practice and Procedure).]~~

~~[215.302. Conformity with Statutory Requirements.][In the event of a conflict between Occupations Code, Chapter 2301 and Transportation Code, Chapter 503, the definition or procedure referenced in Occupations Code, Chapter 2301 controls.]~~

~~[215.303. Application of Board and SOAH Rules.][Upon referral by the department of a contested case to SOAH, the rules contained in 1 TAC Chapter 155 and the provisions of this subchapter, to the extent they are not in conflict with 1 TAC Chapter 155, govern the processing of the contested case until the ALJ disposes of the contested case.]~~

~~[215.305. Filing of Complaints, Protests, and Petitions; Mediation.]~~

~~[(a) All complaints, protests, and petitions required or allowed to be filed under Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 – 1005; or this chapter must be delivered to the department:~~

~~(1) in person;~~

~~(2) by first-class mail; or~~

~~(3) by electronic document transfer at a destination designated by the department.]~~

~~[(b) Except as provided by subsections (d), (n), and (o) of this section, parties to a contested case filed under Occupations Code, Chapter 2301 or Transportation Code, Chapters 503 and 1000 – 1005 are~~

~~required to participate in mediation, in accordance with this section, before the case is referred for hearing.]~~

~~[(c) The term "mediation" as used in this section has the meaning assigned by Occupations Code, §2301.521.]~~

~~[(d) This section does not limit the parties' ability to settle a case without mediation.]~~

~~[(e) The department shall provide mediation services.]~~

~~[(f) The mediator shall qualify for appointment as an impartial third party in accordance with Civil Practice and Remedies Code, Chapter 154.]~~

~~[(g) The mediation process will conclude within 60 days of the date a contested case is assigned to a mediator unless, at the department's discretion, the mediation deadline is extended.]~~

~~[(h) The department will assign a different mediator if:~~

~~(1) either party promptly and with good cause objects to an assigned mediator; or~~

~~(2) an assigned mediator is recused.]~~

~~[(i) At any time before a contested case is referred for hearing, the parties may file a joint notice of intent to retain an outside mediator. The notice must include:~~

~~(1) the name, address, email address, facsimile number, and telephone number of the outside mediator selected;~~

~~(2) a statement that the parties have entered into an agreement with the outside mediator regarding the mediator's rate and method of compensation;~~



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

~~(4) a statement that the mediation will conclude within 60 days of the date of the joint notice of retention unless, at the department's discretion, the mediation deadline is extended.]~~

~~[(j) All communications in a mediation are confidential and subject to the provisions of the Governmental Dispute Resolution Act, Government Code, §2009.054.]~~

~~[(k) Agreements reached by the parties in mediation shall be reduced to writing by the mediator and signed by the parties before the mediation concludes or as soon as practical.]~~

~~[(l) Within 10 days of the conclusion of the mediation period, a mediator shall provide to the department and to the parties a written report stating:~~

~~(1) whether the parties attended the mediation;~~

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

~~(3) any unresolved issues; and~~

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

~~[(m) Upon receipt of the mediator's report required under this section, the department shall:~~

~~(1) enter an order disposing of resolved issues; and~~

~~(2) refer unresolved issues for hearing.]~~

~~[(n) Parties to a contested case filed as an enforcement action brought by the department are not required to participate in mediation.]~~

~~[(o) Parties to a contested case filed under Occupations Code, §2301.204 or §§2301.601–2301.613, must participate in mediation in accordance with §215.205 of this title (relating to Mediation; Settlement).]~~

~~[215.306. Referral to SOAH.][Contested cases shall be referred to SOAH upon determination that a hearing is appropriate under Occupations Code, Chapter 2301, Subchapter O; Transportation Code, Chapter 503; or this chapter, including contested cases relating to:~~

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

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

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

~~(4) issuance of a cease and desist order, whether the order is issued with or without prior notice at the time the order takes effect; or~~

~~(5) any other contested matter that meets the requirements for a hearing at SOAH under Occupations Code, Chapter 2301.]~~

~~[215.307. Notice of Hearing.]~~

~~[(a) The requirements for a notice of hearing in a contested case are provided by Government Code, §2001.052; Occupations Code, §2301.705; and 1 TAC §155.401, as applicable.]~~

1           ~~[(b) For service of parties outside of the United States, in addition to service under Occupations~~  
2           ~~Code, §2301.265, the department may serve a notice of hearing by any method allowed under Texas~~  
3           ~~Rules of Civil Procedure, Rule 108a(1) or that provides for confirmation of delivery to the party.]~~

4           ~~[(c) The last known address of a license applicant, license holder, or other person is the last~~  
5           ~~mailing address provided to the department when the license applicant applies for its license, when a~~  
6           ~~license holder renews its license, or when the license holder notifies the department of a change in the~~  
7           ~~license holder's mailing address.]~~

8  
9           ~~[215.308. Reply to Notice of Hearing and Default Proceedings.]~~

10           ~~[(a) On or before the 20th day after a notice of hearing has been served on a party in a contested~~  
11           ~~case referred by the department to SOAH, the party may file a written reply or pleading responding to all~~  
12           ~~allegations. The written reply or responsive pleading must be filed with SOAH in accordance with 1 TAC~~  
13           ~~§155.101 and must identify the SOAH and department docket numbers as reflected on the notice of~~  
14           ~~hearing.]~~

15           ~~[(b) Any party filing a reply or responsive pleading shall serve a copy of the reply or responsive~~  
16           ~~pleading on each party or party's representative in compliance with 1 TAC §155.103. Any party filing a~~  
17           ~~reply or responsive pleading shall also provide a copy to the department. The presumed time of receipt~~  
18           ~~of served documents is subject to 1 TAC §155.103.]~~

19           ~~[(c) A party may file an amended or supplemental reply or responsive pleading in accordance~~  
20           ~~with 1 TAC §155.301.]~~

~~[(d) If a party properly noticed under this chapter does not appear at the hearing, a party may request that the ALJ dismiss the contested case from the SOAH docket. If the contested case is dismissed from the SOAH docket, the case may be presented to the board for disposition based on the default pursuant to 1 TAC §155.501. The board may enter a final order finding that the allegations in the petition are deemed admitted and granting relief in accordance with applicable law. No later than 10 days after the hearing date, if a final order has not been issued, a party may file a motion with the board to set aside the default and reopen the record. The board, for good cause shown, may grant the motion, set aside the default, and refer the case back to SOAH for further proceedings.]~~

~~[215.310. Issuance of Proposals for Decision and Orders.]~~

~~[(a) All proposals for decision prepared by the ALJ shall be submitted to the board and copies furnished to the parties.]~~

~~[(b) All decisions and orders issued by the board shall be furnished to the parties and to the ALJ.]~~

~~[215.311. Amicus Briefs.]~~

~~[(a) Any interested person may submit an amicus brief for consideration by the board in a contested case by the deadline for exceptions under 1 TAC §155.301. A party may submit one written response to the amicus brief no later than the deadline for replies to exceptions under 1 TAC §155.301.]~~

~~[(b) Amicus briefs and responses to amicus briefs must be submitted to the board and the ALJ, and copies must be served on all parties.]~~

1           ~~[(c) Any amicus brief, or response to that brief, not submitted to the board and the ALJ within~~  
2           ~~the deadlines prescribed by subsection (a) of this section will not be considered by the board, unless~~  
3           ~~good cause is shown why the deadline should be waived or extended.]~~

4           ~~[(d) The ALJ may amend the proposal for decision in response to any amicus brief or response to~~  
5           ~~an amicus brief.]~~

6  
7           ~~[215.314. Cease and Desist Orders.]~~

8           ~~[(a) Whenever it appears that a person is violating any provision of Occupations Code, Chapter~~  
9           ~~2301, Transportation Code, Chapter 503; or a board rule or order, an order requiring the person to cease~~  
10          ~~and desist from the violation may be entered.]~~

11          ~~[(b) If it appears from specific facts shown by affidavit or by verified complaint that one or more~~  
12          ~~of the conditions in Occupations Code, §2301.802(b) will occur before notice can be served and a~~  
13          ~~hearing held, the order may be issued without notice; otherwise, the order must be issued after a~~  
14          ~~hearing has been held to determine the validity of the order and to allow the person who requested the~~  
15          ~~order to show good cause why the order should remain in effect during the pendency of the contested~~  
16          ~~case.]~~

17          ~~[(c) Each cease and desist order issued without notice must include:~~

18                   ~~(1) the date and hour of issuance;~~

19                   ~~(2) a statement of which of the conditions in Occupations Code, §2301.802(b) will occur~~  
20          ~~before notice can be served and a hearing held; and~~

~~(3) a notice of hearing for the earliest date possible to determine the validity of the order and to allow the person who requested the order to show good cause why the order should remain in effect during the pendency of the contested case.]~~

~~[(d) Each cease and desist order shall:~~

~~(1) state the reasons for its issuance; and~~

~~(2) describe in reasonable detail the act or acts to be restrained.]~~

~~[(e) A cease and desist order shall not be issued unless the person requesting the order presents a petition or complaint, verified by affidavit, containing a plain statement of the grounds for seeking the cease and desist order.]~~

~~[(f) A cease and desist order issued without notice expires as provided in the order, but shall not exceed 20 days.]~~

~~[(g) A cease and desist order may be extended for a period of time equal to the period of time granted in the original order if, prior to the expiration of the previous order, good cause is shown for the extension or the party against whom the order is directed consents to the extension.]~~

~~[(h) The person against whom a cease and desist order was issued without notice may request that the scheduled hearing be held earlier than the date set in the order.]~~

~~[(i) After the hearing, the ALJ shall prepare a written order, including a justification explaining why the cease and desist order should remain in place during the pendency of the contested case.]~~

~~[(j) A party may appeal to the board an order granting or denying a motion for a cease and desist order.]~~

1           ~~[(k) An appeal of an order granting or denying a motion for a cease and desist order must be~~  
2           ~~made to the board before a person may seek judicial review of an order issued under this section.]~~

3           ~~[(l) Upon appeal to a district court of an order issued under this section, the order may be stayed~~  
4           ~~by the board upon a showing of good cause by a party.]~~

5           ~~[(m) Prior to the commencement of a proceeding by SOAH, the director is authorized to issue a~~  
6           ~~cease and desist order under this section. An ALJ shall hold a hearing to determine whether an~~  
7           ~~interlocutory cease and desist order should remain in effect during the pendency of the proceeding.]~~

8  
9           ~~[215.315. Statutory Stay.]~~

10           ~~[(a) A person affected by a statutory stay imposed by Occupations Code, Chapter 2301 may~~  
11           ~~request a hearing before an ALJ to modify, vacate, or clarify the extent and application of the statutory~~  
12           ~~stay.]~~

13           ~~[(b) After a hearing on a motion to modify, vacate, or clarify a statutory stay, the ALJ shall~~  
14           ~~expeditiously prepare a written order, including a justification explaining why the statutory stay should or~~  
15           ~~should not be modified, vacated, or clarified.]~~

16           ~~[(c) A person affected by a statutory stay imposed by Occupations Code, Chapter 2301 may~~  
17           ~~initiate a proceeding before the board to modify, vacate, or clarify the extent and application of the~~  
18           ~~statutory stay.]~~

19  
20           ~~[215.316. Informal Disposition.]~~

1           ~~[(a) Notwithstanding any other provision in this subchapter, at any time during the contested~~  
2 ~~case, the board may informally dispose of a contested case by stipulation, agreed settlement, dismissal,~~  
3 ~~or consent order.]~~

4           ~~[(b) If the parties have settled or otherwise determined that a contested case proceeding is not~~  
5 ~~required, the party who brought the protest, complaint, or petition shall file a motion to dismiss the~~  
6 ~~contested case from SOAH's docket and present a proposed agreed order or dismissal order to the~~  
7 ~~board.]~~

8           ~~[(c) Agreed orders must contain proposed findings of fact and conclusions of law that are signed~~  
9 ~~by all parties or their authorized representatives.]~~

10           ~~[(d) Upon receipt of the agreed order, the board may:~~

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

12                     ~~(2) reject the settlement agreement and remand the contested case for a hearing before~~

13 ~~SOAH; or~~

14                     ~~(3) take other action that the board finds just.]~~

15  
16 ~~[215.317. Motion for Rehearing.]~~

17           ~~[(a) A motion for rehearing and any reply to a motion for rehearing will be processed in~~  
18 ~~accordance with Government Code, Chapter 2001.]~~



1           ~~[(b) For an order issued by the board, a motion for rehearing and reply to a motion for rehearing~~  
2           ~~must be filed with the department and decided by the board unless the board specifically delegates~~  
3           ~~motion for rehearing authority.]~~

4           ~~[(c) For an order issued by a board delegate, a motion for rehearing and reply to a motion for~~  
5           ~~rehearing must be filed with the department and decided by the board delegate who issued the order.]~~

6           ~~[(d) The requirements for a motion for rehearing regarding a complaint filed on or after January~~  
7           ~~1, 2014, under Occupations Code, §2301.204 or §§2301.601–2301.613 are governed by §215.207 of this~~  
8           ~~title (relating to Contested Cases: Final Orders).]~~

10       SUBCHAPTER J. ADMINISTRATIVE SANCTIONS

11       **43 TAC §§215.500**

12       **STATUTORY AUTHORITY.** The department proposes amendments to Chapter 215 under Occupations  
13       Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor  
14       vehicles and the authority to take any action that is necessary or convenient to exercise that authority;  
15       Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license  
16       holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute  
17       and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in  
18       connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations  
19       Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which  
20       authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter  
21       2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives  
22       the board authority to deny an application for a license, revoke or suspend a license, place on probation,

1 or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation,  
2 violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds  
3 a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government  
4 Code, §411.122(d), which authorizes department access to criminal history record information  
5 maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal  
6 history record information from DPS and the FBI for license applicants, license holders, and  
7 representatives whose act or omission would be cause for denying, revoking, or suspending a general  
8 distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code,  
9 Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as  
10 necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which  
11 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503;  
12 Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases;  
13 Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for  
14 an original or renewal general distinguishing number who proposes to be an independent motor vehicle  
15 dealer complete web-based education and training developed or approved by the department;  
16 Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice  
17 of a surety bond and the procedure by which a claimant may recover against the surety bond;  
18 Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of  
19 dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the  
20 board to adopt rules necessary to implement and manage the department's temporary tag databases;  
21 and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and  
22 appropriate to implement the powers and the duties of the department, as well as the statutes referenced  
23 throughout this preamble.

The department also proposes amendments under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

**CROSS REFERENCE TO STATUTE.** These amendments would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503, 1001–1003, and 1005.

Text.

#### **SUBCHAPTER G[~~F~~]. ADMINISTRATIVE SANCTIONS**

215.500. Administrative Sanctions[~~and Procedures~~].

~~(a)~~ An administrative sanction may include:

- (1) denial of an application for a license;
- (2) suspension of a license;
- (3) revocation of a license;
- (4) the imposition of civil penalties; or

(5) a refund under §215.504 of this title (relating to Buyer ~~[concerning buyer]~~  
or Lessee Refund ~~[lessee-refund]~~).

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

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

~~(2) administrative sanctions should be imposed.]~~

~~[(c) The last known address of a license applicant, license holder, or other person is the last  
mailing address provided to the department when the license applicant applies for its license,  
when a license holder renews its license, or when the license holder notifies the department of a  
change in the license holder's mailing address.]~~

~~[(d) The Notice of Department Decision shall include:~~

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

~~(2) a description of each alleged violation;~~

~~(3) a description of each administrative sanction being adopted;~~

~~(4) a statement regarding the legal basis for each administrative sanction;~~

~~(5) a statement regarding the license applicant, license holder, or other person's  
right to request a hearing;~~

~~(6) the procedure to request a hearing, including the deadline for filing; and~~

~~(7) notice to the license applicant, license holder, or other person that the adopted  
decision and administrative sanctions in the Notice of Department Decision will become final on~~

~~the date specified if the license applicant, license holder, or other person fails to timely request a hearing.]~~

~~[(e) The license applicant, license holder, or other person must submit, in writing, a request for a hearing under this section. The department must receive a request for a hearing within 26 days of the date of the Notice of Department Decision.]~~

~~[(f) If the department receives a timely request for a hearing, the department will set a hearing date and give notice to the license applicant, license holder, or other person of the date, time, and location of the hearing.]~~

~~[(g) If the license applicant, license holder, or other person does not make a timely request for a hearing or enter into a settlement agreement within 27 days of the date of the Notice of Department Decision, the department decision becomes final.]~~

#### SUBCHAPTER G[J]. ADMINISTRATIVE SANCTIONS

#### **43 TAC §§215.501, 215.502, and 215.505**

**STATUTORY AUTHORITY.** The department proposes repeals to Chapter 215 under 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 gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for an original or renewal general distinguishing number who proposes to be an independent motor vehicle dealer complete web-based education and training developed or approved by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice of a surety bond and the procedure by which a claimant may recover against the surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and

appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes repeals under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

**CROSS REFERENCE TO STATUTE.** These repeals would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501–503, 1001–1003, and 1005.

§215.501. Final Decisions and Orders; Motions for Rehearing.

§215.502. Judicial Review of Final Order.

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

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

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

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/s/ Laura Moriaty  
Laura Moriaty, General Counsel



Figure: 43 TAC §215.139(c)

If a new license applicant is:	Maximum number of <del>[metal-]</del> dealer's <u>standard</u> license plates issued during the first license term is:
1. a franchised motor vehicle dealer	5
2. a franchised motorcycle dealer	5
3. an independent motor vehicle dealer	2
4. an independent motorcycle dealer	2
5. a franchised or independent travel trailer dealer	2
6. a trailer or semi-trailer dealer	2
7. an independent mobility motor vehicle dealer	2
8. a wholesale motor vehicle dealer	1

Figure: 43 TAC §215.139(e)

If a vehicle dealer is:	Maximum number of <del>metal</del> dealer's <u>standard</u> license plates issued per license term is:
1. a franchised motor vehicle dealer	30
2. a franchised motorcycle dealer	10
3. an independent motor vehicle dealer	3
4. an independent motorcycle dealer	3
5. a franchised or independent travel trailer dealer	3
6. a trailer or semi-trailer dealer	3
7. an independent mobility motor vehicle dealer	3
8. a wholesale motor vehicle dealer	1

Figure: 43 TAC §215.139(f)(1)

If a vehicle dealer is:	Number of additional <u>standard</u> <del>[metal-dealer's]</del> license plates issued to a dealer with a <del>[that]</del> <u>demonstrated need</u> <del>[demonstrates a-need]</del> through proof of sales is:
1. a wholesale motor vehicle dealer	1
2. a dealer selling fewer than 50 vehicles during the previous 12-month period	1
3. a dealer selling 50 to 99 vehicles during the previous 12-month period	<u>2</u> <del>[5]</del>
<u>4. a dealer selling 100 to 200 vehicles during the previous 12-month period</u>	<u>5</u>
<u>5</u> <del>[4]</del> . a dealer selling more than 200 vehicles during the previous 12-month period	any number of <u>standard</u> <del>[metal-dealer's]</del> license plates the dealer requests.