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**ADOPTION OF NEW CHAPTER**

**SUBCHAPTER A. GENERAL PROVISIONS**

**43 TAC §§224.1–224.31**

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

**43 TAC §§224.50–224.64**

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

**43 TAC §§224.80–224.94**

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

**43 TAC §§224.110–224.130**

**SUBCHAPTER E. CONTESTED CASES REFERRED TO SOAH**

**43 TAC §§224.150–224.166**

**SUBCHAPTER F. BOARD PROCEDURES IN CONTESTED CASES**

**43 TAC §§224.190–224.206**

**SUBCHAPTER G. LEMON LAW AND WARRANTY PERFORMANCE CLAIMS**

**43 TAC §§224.230–224.268**

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) adopts new 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §§224.1, 224.3, 224.5, 224.7, 224.9, 224.11, 224.13, 224.15, 224.17, 224.19, 224.21, 224.23, 224.25, 224.27, 224.29, 224.31; Subchapter B, Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement, §§224.50, 224.52, 224.54, 224.56, 224.58, 224.60, 224.62, 224.64; Subchapter C, Contested Cases Between Motor Vehicle Industry License Holders

1 or Applicants, §§224.80, 224.82, 224.84, 224.86, 224.88, 224.90, 224.92, 224.94; Subchapter D, Motor  
2 Carrier and Oversize or Overweight Vehicle or Load Enforcement, §§224.110, 224.112, 224.114 - 224.116,  
3 224.118, 224.120, 224.122, 224.124, 224.126, 224.128, 224.130; Subchapter E, Contested Cases Referred  
4 to SOAH, §§224.150, 224.152, 224.154, 224.156, 224.158, 224.162, 224.164, 224.166; Subchapter F,  
5 Board Procedures in Contested Cases, §§224.190, 224.192, 224.194, 224.196, 224.198, 224.200, 224.202,  
6 224.204, 224.206; and Subchapter G, Lemon Law and Warranty Performance Claims, §§224.230, 224.232,  
7 224.234, 224.236, 224.238, 224.240, 224.242, 224.244, 224.246, 224.248, 224.250, 224.252, 224.254,  
8 224.256, 224.258, 224.260, 224.262, 224.264, 224.266, and 224.268.

9         The department adopts §§224.1, 224.3, 224.5, 224.7, 224.9, 224.11, 224.13, 224.15, 224.17,  
10 224.19, 224.21, 224.23, 224.25, 224.27, 224.29, 224.31, 224.50, 224.56, 224.60, 224.62, 224.80, 224.82,  
11 224.84, 224.86, 224.88, 224.92, 224.94, 224.110, 224.112, 224.114, 224.116, 224.118, 224.120, 224.122,  
12 224.124, 224.126, 224.128, 224.130, 224.150, 224.152, 224.154, 224.158, 224.162, 224.164, 224.166,  
13 224.192, 224.194, 224.200, 224.202, 224.204, 224.206, 224.230, 224.232, 224.234, 224.236, 224.238,  
14 224.240, 224.242, 224.244, 224.246, 224.248, 224.250, 224.252, 224.254, 224.256, 224.258, 224.260,  
15 224.262, 224.264, 224.266, and 224.268 without changes to the proposed text as published in the  
16 December 29, 2023, issue of the *Texas Register* (48 TexReg 8298). These rules will not be republished.

17         The department adopts §§224.52, 224.54, 224.58, 224.64, 224.90, 224.115, 224.156, 224.190,  
18 224.196, and 224.198 with changes to the proposed text as published in the December 29, 2023, issue of  
19 the *Texas Register* (48 TexReg 8298). The department adopts §§224.64, 224.90, 224.156, 224.190 and  
20 224.198 with nonsubstantive changes as described below. The department adopts §§224.52, 224.54,  
21 224.115, and 224.196 with substantive changes, which are described below in the department's response  
22 to comments. The department adopts §224.58 with a substantive change, which is described below.

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

8           To the extent the department’s prior rules regarding adjudicative practices and procedures  
9 worked well and are currently authorized by law, the department incorporated the relevant language  
10 from those rules into new Chapter 224. The department did not change adjudicative practices and  
11 procedures unless there was a reason to do so. The department, prior parties, and the representatives for  
12 prior parties are familiar with the department’s prior rules regarding adjudicative practices and  
13 procedures, which evolved over time to provide predictability and fairness to the parties.

14           To the extent the department’s prior rules regarding adjudicative practices and procedures did  
15 not include language that is required by law, the department added the language to new Chapter 224. For  
16 example, Government Code, §2001.004, requires state agencies to adopt rules of practice stating the  
17 nature and requirements of all available formal and informal procedures. Additional statutory  
18 requirements are summarized in this preamble in the sections regarding statutory authority.

19           To the extent the department’s prior rules regarding adjudicative practices and procedures did  
20 not include clarifications that would be helpful to parties and others involved in adjudicative practices and  
21 procedures, the department added clarifications to new Chapter 224.

22

23 Subchapter A. General Provisions

1           Adopted new §224.1 describes the purpose and scope of new Chapter 224, which includes all  
2 contested case matters in which the department has jurisdiction. Subchapter A applies to all contested  
3 case matters unless expressly excluded or limited in another subchapter. Language regarding the purpose  
4 or scope of contested case matters from the following sections of this title are incorporated into new  
5 Chapter 224: §206.61, relating to Scope and Purpose; §215.21, relating to Purpose and Scope; §215.201,  
6 relating to Purpose and Scope; §218.70, relating to Purpose; and §219.120, relating to Purpose. These  
7 provisions are all adopted for repeal or amendment in this issue of the *Texas Register*.

8           Adopted new §224.3 includes definitions for terms used throughout Chapter 224. New §224.3  
9 incorporates terms defined in relevant content from 1 TAC §155.5, relating to Definitions, which are  
10 definitions used by SOAH. Relevant contested case-related definitions from the following sections of this  
11 title are also incorporated into new §224.3: §215.2, relating to Definitions; Conformity with Statutory  
12 Requirements; §221.2, relating to Definitions; and §206.62, relating to Definitions.

13           Adopted new §224.5 addresses prohibited communication during a contested case, including *ex*  
14 *parte* communication, and incorporates the provisions of §215.22 of this title, relating to Prohibited  
15 Communications, which is repealed in this issue of the *Texas Register*.

16           Adopted new §224.7 addresses the appearance by an authorized representative, intervention in  
17 a contested case, and the invitation of a person who is not a contested case party to participate in  
18 mediation. Relevant content is incorporated into new §224.7 from 1 TAC §155.201, relating to  
19 Representation of Parties, as well as §215.23 of this title, relating to Appearances, which is repealed in  
20 this issue of the *Texas Register*.

21           Adopted new §224.9 provides guidance on computing time consistent with Government Code,  
22 §311.014. New §224.9 also incorporates relevant content from the provisions of §215.29 of this title,  
23 relating to Computing Time, which is repealed in this issue of the *Texas Register*.

1           Adopted new §224.11 provides general procedures related to filing and service of documents.  
2           New §224.11 incorporates relevant content from 1 TAC §155.101 (a-d), relating to Filing Documents.  
3           New §224.11 also incorporates other sections of this title—§215.30, relating to Filing of Documents, and  
4           §215.49, relating to Service of Pleading, Petitions, Briefs, and Other Documents—which are repealed in  
5           this issue of the *Texas Register*.

6           Adopted new §224.13 addresses discovery matters, including the requirement for cooperation  
7           between the contested case parties and criteria and processes for a party to request a commission or  
8           subpoena. New §224.13 incorporates relevant content from 1 TAC §155.259, relating to Discovery  
9           Motions. New §224.113 also incorporates content from §206.67 of this title, relating to Discovery, which  
10          is repealed in this issue of the *Texas Register*.

11          Adopted new §224.15 addresses hearing recording and transcription costs. New §224.15  
12          incorporates relevant content from 1 TAC §155.423, relating to Making a Record of the Proceeding. New  
13          §224.15 also incorporates relevant content from §215.37(a–c) of this title, relating to Recording and  
14          Transcriptions of Hearing Cost, which are repealed in this issue of the *Texas Register*.

15          Adopted new §224.17 addresses when proceedings may be consolidated. New §224.17  
16          incorporates relevant provisions from §215.38 of this title, relating to Consolidation of Proceedings,  
17          which is repealed in this issue of the *Texas Register*.

18          Adopted new §224.19 addresses the timing and criteria for informally disposing of a contested  
19          case. New §224.19 incorporates relevant content from §215.316 of this title, relating to Informal  
20          Disposition, which is repealed in this issue of the *Texas Register*.

21          Adopted new §224.21 addresses criteria for when a party may waive a hearing and consent to  
22          an agreed order. New §224.21 incorporates relevant content from §215.39 of this title, relating to  
23          Waiver of Hearing, which is repealed in this issue of the *Texas Register*.

1           Adopted new §224.23 requires a contested case hearing to be open to the public. New §224.23  
2 incorporates content from §215.36 of this title, relating to Hearings To Be Public, which is repealed in  
3 this issue of the *Texas Register*.

4           Adopted new §224.25 addresses when a deadline may or may not be extended. New §224.25  
5 incorporates content from §215.32 of this title, relating to Extension of Time, which is repealed in this  
6 issue of the *Texas Register*.

7           Adopted new §224.27 implements provisions of Government Code Chapter 2001, Subchapter F  
8 that govern the issuance of final orders and motions for rehearing. New §224.27 includes related content  
9 from the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.55,  
10 relating to Final Decision, §215.501, relating to Final Decisions and Orders; Motions for Rehearing,  
11 §215.505, relating to Denial of Dealer or Converter Access to Temporary Tag System, and §221.93, relating  
12 to Final Decisions and Orders; Motions for Rehearing.

13           Adopted new §224.29 addresses delegation of final order authority in accordance with  
14 Occupations Code, §2301.154(c) and §2301.711; and Transportation Code, §1003.005(b), as applicable.  
15 New §224.29 incorporates relevant content from the following sections of this title, which are repealed  
16 in this issue of the *Texas Register*: §215.43, relating to Conduct and Decorum, §215.58, relating to  
17 Delegation of Final Order Authority, and §221.95, relating to Delegation of Final Order Authority.

18           Adopted new §224.31 addresses the cost of providing a contested case record for appeal  
19 purposes. New §224.31 incorporates relevant content from the following sections of this title, which are  
20 repealed in this issue of the *Texas Register*: §215.37(d), relating to Recording and Transcriptions of Hearing  
21 Cost, §218.75, relating to Cost of Preparing the Agency Record, and §219.127, relating to Cost of Preparing  
22 Agency Record.

23

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

2 Adopted new §224.50 addresses the purpose and scope of this subchapter and identifies the  
3 other subchapters that apply to these types of contested cases. New §224.50 incorporates relevant  
4 content from the following sections of this title, which are repealed in this issue of the *Texas Register*:  
5 §215.21, relating to Purpose and Scope, and §215.201, relating to Purpose and Scope.

6 Adopted new §224.52 addresses procedures related to cease and desist orders issued under  
7 Occupations Code, Chapters 2301 or 2302, including the notice and opportunity required for due process.  
8 New §224.52 also addresses the delegation of signature authority to the department’s Enforcement  
9 Division Director to sign interlocutory cease-and-desist orders. New §224.52 incorporates relevant  
10 content from the following sections of this title, which are repealed in this issue of the *Texas Register*:  
11 §215.314, relating to Cease and Desist Orders, and §221.96, relating to Cease and Desist Order. The  
12 delegation of signature authority for an interlocutory cease-and-desist order is new text that was not  
13 contained in the department’s sections of this title. The delegation of signature authority is necessary to  
14 address a situation in which the facts warrant the issuance of an interlocutory cease-and-desist order as  
15 soon as possible. Additionally, new §224.52 clarifies the notice and opportunity to respond for an  
16 individual who may be subject to a cease-and-desist order, to ensure consistent due process. The  
17 department adopts §224.52(b)(2) with changes at adoption to correct the references from subsection (c)  
18 to subsection (b) of this section.

19 Adopted new §224.54 addresses criteria used by the department to assess a civil penalty or to  
20 revoke a license consistent with and under the authority of Occupations Code, §2301.801 and §2302.354;  
21 and Transportation Code, §503.095, as applicable. These criteria are currently reflected in the  
22 department’s disciplinary matrix for motor vehicle dealers that is published on the department’s website.  
23 Adopted new §224.54 also addresses the department’s disciplinary matrix regarding the matters under

1 Chapter 224, Subchapter B. The department adopts §224.54(e) with changes at adoption to add language  
2 to address concerns raised by the Texas Independent Automobile Dealers Association (TIADA) in a public  
3 comment described below. The text added at adoption clarifies that the disciplinary matrix published on  
4 the department’s website at the time of the violation will be the applicable matrix for guiding the  
5 department’s decisions on penalties and sanctions, but also notes that the disciplinary matrix does not  
6 limit either the department from seeking or the board from ordering penalties and sanctions that are  
7 outside the ranges recommended in the penalty matrix. The text added at adoption brings more  
8 predictability for license holders but still allows the department and the board to exercise discretion as  
9 necessary within statutory limits. New §224.54 creates clarity and ease of reference for license holders,  
10 administrative law judges, and board members seeking to determine the appropriate penalty in a  
11 contested case. At adoption the department also changed the title by adding “and Revocation” before  
12 “Assessment” to better reflect the scope of the rule.

13       Adopted new §224.56 addresses the requirements for a notice of department decision issued to  
14 a person who is alleged to have violated a statute or department rule. New §224.56 incorporates relevant  
15 content from the following: §215.500 of this title, regarding Administrative Sanctions and Procedures,  
16 which is amended in this issue of the *Texas Register*, and §221.91 of this title, regarding Notice of  
17 Department Decision, which is repealed in this issue of the *Texas Register*.

18       Adopted new §224.58 addresses the process for denying access to the temporary tag system as  
19 authorized under Transportation Code, §503.0632(f). New §224.58 incorporates content from §215.505  
20 of this title, regarding Denial of Dealer or Converter Access to Temporary Tag System, which is repealed  
21 in this issue of the *Texas Register*. At adoption, the text “listed on the application” in §224.58(a)(5) was  
22 deleted, as the requirement to disclose a storage lot on the application was changed at adoption to a



1 more limited requirement that a GDN holder disclose the location of a storage lot or location of a motor  
2 vehicle in inventory upon request by the department.

3 Adopted new §224.60 describes the process for filing and service of documents under this  
4 subchapter. New §224.60 incorporates relevant content from 1 TAC §155.101 (a-d), relating to Filing  
5 Documents, as well as the following sections of this title, which are repealed in this issue of the *Texas*  
6 *Register*: §215.30, relating to Filing of Documents, and §215.49, relating to Service of Pleading, Petitions,  
7 Briefs, and Other Documents.

8 Adopted new §224.62 addresses the process for referring a contested case under this  
9 subchapter to SOAH. New §224.62 incorporates relevant content from 1 TAC §155.51, relating to  
10 Jurisdiction, and §155.53, relating to Request to Docket Case, as well as §215.306 of this title, relating to  
11 Referral to SOAH, which is repealed in this issue of the *Texas Register*.

12 Adopted new §224.64 addresses the process for the department to issue a notice of hearing for  
13 contested cases under this subchapter. New §224.64 incorporates relevant content from the following  
14 sections of this title, which are repealed in this issue of the *Texas Register*: §215.34, relating to Notice of  
15 Hearing in Contested Case, and §221.92, relating to Notice of Hearing. The department adopts §224.64  
16 with changes at adoption to replace the word “notifies” with “shall notify.”

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

19 Adopted new §224.80 addresses the purpose and scope of this subchapter and identifies the  
20 other subchapters that apply to these types of contested cases for clarity and ease of reference. New  
21 §224.80 incorporates relevant content from the following sections of this title, which are repealed in  
22 this issue of the *Texas Register*: §215.21, relating to Purpose and Scope, and §215.201, relating to  
23 Purpose and Scope.

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

5           Adopted new §224.84 addresses how a protest, complaint, or other document must be filed,  
6 including the requirement to file any document electronically, and include all assigned docket numbers.  
7 New §224.84 incorporates relevant content from 1 TAC §155.101 (a-d), relating to Filing Documents, as  
8 well as the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.24,  
9 relating to Petitions, §215.30, relating to Filing of Documents, §215.49, relating to Service of Pleading,  
10 Petitions, Briefs, and Other Documents, and §215.305, relating to Filing of Complaints, Protests, and  
11 Petitions; Mediation.

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

16           Adopted new §224.88 describes the department’s procedure for docketing a contested case  
17 under this subchapter, the issuance of a stay as authorized by Occupations Code, §2301.803, the notice  
18 to the parties, the opportunity for the parties to accept or decline a department mediator and retain a  
19 private mediator, and the deadline to notify the department regarding the mediator option chosen by the  
20 parties. Mediation is required under Occupations Code, Chapter 2301, Subchapter K and §2301.703.

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

1 SOAH whether a party refused to participate in or attend mediation. New §224.90 allows a SOAH  
2 Administrative Law Judge (ALJ) to recommend a sanction in the final proposal for decision for refusal to  
3 attend or participate in a statutorily required mediation. New §224.90 incorporates relevant content  
4 from §215.305 of this title, relating to Filing of Complaints, Protests, and Petitions; Mediation, which is  
5 repealed in this issue of the *Texas Register*. The department adopts §224.90 with the following  
6 nonsubstantive changes to the text at adoption: 1) changed the word “the” to “this” in subsections  
7 (g)(2) and (h)(4) to refer to “§224.88 of this title”; and 2) added the word “in” and changed the order of  
8 the words in subsection (m) to be consistent with the language in subsection (l)(3), which refers to a  
9 party who “refused to attend or participate in a mediation.”

10 Adopted new §224.92 addresses the process for referring a contested case under this  
11 subchapter to SOAH. New §224.92 incorporates relevant content from 1 TAC §155.51, relating to  
12 Jurisdiction, and §155.53, relating to Request to Docket Case, as well as §215.306 of this title, relating to  
13 Referral to SOAH, which is repealed in this issue of the *Texas Register*.

14 Adopted new §224.94 addresses the process for the department to issue a notice of hearing for  
15 contested cases under this subchapter. New §224.94 incorporates relevant content from §215.34 of this  
16 title, relating to Notice of Hearing in Contested Cases, which is repealed in this issue of the *Texas*  
17 *Register*.

18  
19 Subchapter D. Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement

20 Adopted new §224.110 addresses the purpose and scope of this subchapter and identifies the  
21 other subchapters that apply to these types of contested cases. New §224.110 incorporates relevant  
22 content from the following sections of this title: §218.1, relating to Purpose, §218.70, relating to  
23 Purpose, §219.1, relating to Purpose and Scope, and §219.120, relating to Purpose.

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

4           Adopted new §224.114 addresses procedures related to cease-and-desist orders issued under  
5 Transportation Code, §643.256. New §224.114 incorporates relevant content from §218.77, relating to  
6 Cease and Desist Order, which is repealed in this issue of the *Texas Register*.

7           Adopted new §224.115 addresses criteria used by the department to assess an administrative  
8 penalty under Transportation Code, §§623.271, 623.272, and 643.251. Transportation Code, §643.251  
9 provides the dollar caps for administrative penalties, as well as the factors on which the administrative  
10 penalty shall be based. Transportation Code, §623.271 and §623.272 state that the amount of an  
11 administrative penalty imposed under §623.271 and §623.272, respectively, is calculated in the same  
12 manner as the amount of an administrative penalty imposed under Transportation Code, §643.251. New  
13 §224.115 also addresses the criteria the department will use to determine whether to probate a  
14 suspension of a motor carrier’s registration, as well as the length of the probation and the reporting  
15 requirements during the probation. Many of these criteria are currently reflected in the department’s  
16 disciplinary matrix for motor carriers that is published on the department’s website. Adopted new  
17 §224.115 also addresses the department’s disciplinary matrix regarding the matters under Chapter 224,  
18 Subchapter D. The department’s disciplinary matrix for motor carriers includes the factors on which the  
19 administrative penalty and sanction shall be based for the most common violations. Although an  
20 administrative penalty may generally be called a sanction, Transportation Code, §643.252, which is titled  
21 “Administrative Sanctions,” lists the factors for which the department may suspend, revoke, or deny a  
22 registration issued under Transportation Code, Chapter 643. Transportation Code, §643.251, which is

1 titled “Administrative Penalty,” addresses administrative penalties that the department may impose  
2 against a motor carrier.

3         The department adopts new §224.115(e) with changes at adoption to add language to address  
4 concerns raised by TIADA in a public comment described below. The text added at adoption clarifies that  
5 the disciplinary matrix published on the department’s website at the time of the violation will be the  
6 applicable matrix for guiding the department’s decisions on penalties and sanctions, but also notes that  
7 the disciplinary matrix does not limit either the department from seeking or the director from ordering  
8 penalties and sanctions that are outside the ranges recommended in the penalty matrix. The text added  
9 at adoption brings more predictability for motor carriers but still allows the department and the director  
10 to exercise discretion as necessary within statutory limits. The department also changed the title of  
11 §224.115 at adoption by adding “Sanction Assessment;” because §224.115 references the disciplinary  
12 matrix that the department will publish on its website to provide guidance to motor carriers on the  
13 penalties and sanctions that may be assessed for the most common violations.

14         Adopted new §224.115 creates clarity and provides ease of reference for motor carriers,  
15 administrative law judges, and the Motor Carrier Division Director seeking to determine the appropriate  
16 administrative penalty and sanction in a contested case. New §224.115 incorporates relevant content  
17 from §218.71, relating to Administrative Penalties; §218.72, relating to Administrative Sanctions;  
18 §219.121, relating to Administrative Penalties; and §219.126 relating to Administrative Penalty for False  
19 Information on Certificate by a Shipper, which are amended in this issue of the *Texas Register*.

20         Adopted new §224.116 addresses procedures when the department decides to take  
21 enforcement action under any of the following sections of this title: §218.16, relating to Insurance  
22 Requirements; §218.64, relating to Rates; §218.71, relating to Administrative Penalties; §218.72,  
23 relating to Administrative Sanctions; §219.121, relating to Administrative Penalties and Sanctions under

1 Transportation Code, §623.271; or §219.126, relating to Administrative Penalty for False Information on  
2 Certificate by a Shipper. New §224.116 incorporates relevant content from the following sections of this  
3 title, which are amended or repealed in this issue of the *Texas Register*: §218.71, relating to  
4 Administrative Penalties; §218.73, relating to Administrative Proceedings; and §219.124, relating to  
5 Administrative Proceedings.

6 Adopted new §224.118 requires a person to file a document according to written instructions  
7 provided by the department as different systems and methods may be used depending on the party and  
8 type of enforcement action.

9 Adopted new §224.120 describes the procedures followed by the department upon receiving a  
10 final order issued under Family Code, §§232.003, 232.008, or 232.009, regarding child support  
11 enforcement. New §224.120 incorporates relevant content from §218.76 of this title, relating to  
12 Registration Suspension Ordered Under the Family Code, which is repealed in this issue of the *Texas*  
13 *Register*.

14 Adopted new §224.122 prescribes the requirements for a vehicle registrant that wants to appeal  
15 a decision against the registrant of an assessment (a financial penalty under §217.56(c)(2)(G) of this title,  
16 relating to Registration Reciprocity Agreements) or a cancellation or revocation of the registrant's  
17 apportioned registration under the International Registration Plan (IRP). New §224.122 incorporates  
18 relevant content from §217.56(c)(2)(J)(iii) of this title, which is amended in this issue of the *Texas*  
19 *Register*.

20 Adopted new §224.124 describes the appeal process for a person who is denied registration  
21 under a new, renewal, or reregistration application under Transportation Code, Chapter 643. New  
22 §224.124 incorporates relevant content from §218.78 of this title, relating to Appeal of Denial, which is  
23 repealed in this issue of the *Texas Register*.

1           Adopted new §224.126 describes the appeal process for a person whose application for self-  
2 insured status is denied under §218.16(d), relating to Insurance Requirements. Relevant content is  
3 incorporated from §218.16(d), which is amended in this issue of the *Texas Register*.

4           Adopted new §224.128 addresses the process for referring a contested case under this  
5 subchapter to SOAH. Relevant content is incorporated from 1 TAC §155.51, relating to Jurisdiction, and  
6 §155.53, relating to Request to Docket Case.

7           Adopted new §224.130 addresses the process for the department to issue a notice of hearing for  
8 contested cases under this subchapter consistent with the statutory requirements under Government  
9 Code, Chapter 2001, and SOAH’s rule regarding notice of hearing in 1 TAC §155.401, relating to Notice of  
10 Hearing.

11  
12 Subchapter E. Contested Cases Referred to SOAH

13           Adopted new §224.150 describes the types of contested cases that are referred to SOAH, the  
14 transfer of jurisdiction from the department to SOAH, and the transfer of jurisdiction from SOAH back to  
15 the department. New §224.150 incorporates relevant content from the following sections of this title,  
16 which are repealed in this issue of the *Texas Register*: §215.21, relating to Purpose and Scope; §215.201,  
17 relating to Purpose and Scope; and §215.303, relating to Application of Board and SOAH Rules.

18           Adopted new §224.152 describes the department’s procedures for referring a contested case to  
19 SOAH consistent with SOAH’s rules. Relevant content is incorporated into new §224.152 from SOAH’s  
20 related rules in 1 TAC §155.51, relating to Jurisdiction, and §155.53, relating to Request to Docket Case,  
21 as well as §215.306 of this title, relating to Referral to SOAH, which is repealed in this issue of the *Texas*  
22 *Register*.

1           Adopted new §224.154 addresses applicable notice of hearing requirements under Government  
2 Code, §2001.052; Occupations Code, §2301.705; 1 TAC §155.401, relating to Notice of Hearing; and  
3 Transportation Code, Chapters 623 and 643; provides for service on parties outside the United States to  
4 the extent authorized by applicable law; and addresses the amendment of a notice of hearing under  
5 Government Code, §2001.052(b). New §224.154 incorporates relevant content from SOAH’s related rules  
6 in 1 TAC §155.401, as well as the following sections of this title, which are repealed in this issue of the  
7 *Texas Register*: §215.34, relating to Notice of Hearing in Contested Cases; §215.307, relating to Notice of  
8 Hearing; §218.73, relating to Administrative Proceedings; §219.124, relating to Administrative  
9 Proceedings; and §221.92, related to Notice of Hearing. Transportation Code, §643.2525(a) requires the  
10 department to give written notice to the motor carrier by first class mail for an enforcement action under  
11 Transportation Code, §643.251 or §643.252 regarding administrative penalties and sanctions,  
12 respectively. Transportation Code, §623.271(b) and §623.272(b) state that the notice and hearing  
13 requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty  
14 or revocation of a permit under §623.271 and the imposition of an administrative penalty under §623.272.

15           Adopted new §224.156 describes the process for a party to reply to a notice of hearing and the  
16 consequences for when a party does not appear at a hearing. New §224.156 incorporates relevant  
17 content from §215.308 of this title, relating to Reply to Notice of Hearing and Default Proceedings,  
18 which is repealed in this issue of the *Texas Register*. Adopted new §224.156 also incorporates applicable  
19 sections of SOAH’s rules of procedure for contested cases within SOAH’s jurisdiction, including 1 TAC  
20 §155.301 relating to Required Form of Pleadings, and §155.501, relating to Failure to Attend Hearing  
21 and Default Proceedings. The department adopts §224.156(a) with changes at adoption to replace the  
22 word “on” with the word “in” in the last clause of the second sentence.



1           Adopted new §224.158 describes the process and deadlines for an ALJ to consider an amicus  
2 brief. The new rule allows amicus briefs to be incorporated into the administrative record of the  
3 contested case for review and consideration by the ALJ, as well as the board, the board delegate, or the  
4 director responsible for issuing a final order in the case. New §224.158 incorporates relevant content  
5 from §215.311 of this title, relating to Amicus Briefs, which is repealed in this issue of the *Texas Register*.

6           Adopted new §224.162 addresses an ALJ’s responsibilities to hear and rule on a request  
7 regarding a statutory stay and the right for a party to file an interlocutory appeal with the board.

8           Adopted new §224.162 incorporates relevant content from §215.315 of this title, relating to Statutory  
9 Stay, which is repealed in this issue of the *Texas Register*.

10           Adopted new §224.164 describes the ALJ and party responsibilities relating to a proposal for  
11 decision in a contested case. New §224.164 incorporates relevant content from SOAH’s related rule in 1  
12 TAC §155.507, relating to Proposals for Decision; Exceptions and Replies, as well as §215.310 of this title,  
13 relating to Issuance of Proposals for Decision and Orders, which is repealed in this issue of the *Texas*  
14 *Register*.

15           Adopted new §224.166 describes the process by which jurisdiction transfers back to the board or  
16 board delegate for a final decision, consistent with the requirements of Government Code, Chapter 2001.

17  
18 Subchapter F. Board Procedures in Contested Cases

19           Adopted new §224.190 describes the scope of the subchapter, which includes review and  
20 consideration of a contested case and issuance of a final order by the board or board delegate. New  
21 §224.190 incorporates relevant content from the following sections of this title, which are repealed in  
22 this issue of the *Texas Register*: §215.21, relating to Purpose and Scope, and §215.201, relating to

1 Purpose and Scope. The department adopts §224.190 with changes at adoption to change the  
2 semicolons to commas at the end of paragraphs one and two.

3 Adopted new §224.192 describes the process for a person to appeal an interlocutory cease-and-  
4 desist or stay order authorized under Occupations Code, Chapter 2301, to comply with the statutory  
5 requirement that the board rule on appeals of such interlocutory orders. New §224.192 incorporates  
6 relevant content from the following sections of this title, which are repealed in this issue of the *Texas*  
7 *Register*: §215.314, relating to Cease and Desist Orders, and §221.96, relating to Cease and Desist Order.  
8 New §224.192 also clarifies the timelines and process through which a party would request to make an  
9 oral presentation or to provide written materials to the board when it reviews the appeal of the  
10 interlocutory order. New §224.192 also stipulates that the board’s review of an appeal of an interlocutory  
11 order is limited to the review and changes allowed under Texas Government Code, §2001.058(e), to clarify  
12 the separate roles of the SOAH ALJ and the board in reviewing an interlocutory order issued by the  
13 department.

14 Adopted new §224.194 describes the process for scheduling the review of a contested case by  
15 the board or a board delegate and allows the decision-making authority to review the case during a public  
16 meeting to increase public insight into the decision-making process.

17 Adopted new §224.196 describes department’s procedures, deadlines, and order of  
18 presentations, if a contested case party wants to make an oral presentation to the board as part of the  
19 board’s consideration of the contested case. New §224.196 incorporates relevant content from §215.59  
20 of this title, relating to Request for Oral Presentation, which is repealed in this issue of the *Texas*  
21 *Register*. New §224.196 complies with Transportation Code, §1004.002, which requires the board to  
22 develop policies that provide the public with a reasonable opportunity to appear before the board and  
23 speak on any issue under the jurisdiction of the board. A party that complies with the requirements

1 under new §224.196 will be allowed a maximum of 15 minutes to make their oral presentation to the  
2 board unless the board chair increases this time under new §224.200. The department adopts  
3 §224.196(e) with a change at adoption to address a comment from TIADA, which is described in further  
4 detail below. The change to the text at adoption allows a party to speak as a public commenter on a  
5 contested case agenda item only if the party is not also making an oral presentation to the board. This  
6 will allow parties who failed to give the proper and timely notice necessary to make an oral presentation  
7 an opportunity to briefly address and answer questions from the board, so that a missed oral  
8 presentation deadline does not completely preclude a party from appearing before the board to defend  
9 its position in a contested case.

10 Adopted new §224.198 describes the responsibilities and deadlines for a party that wants to  
11 provide written materials to the board as part of the board’s consideration of the contested case. New  
12 §224.198 incorporates relevant content from §215.60 of this title, relating to Written Materials and  
13 Evidence, which is repealed in this issue of the *Texas Register*. The department made a nonsubstantive  
14 change to §224.198(b) at adoption by changing the word “aren’t” to “are not” for stylistic consistency.

15 Adopted new §224.200 describes the responsibilities and limitations for a party making an oral  
16 presentation as part of the board’s consideration of the contested case. New §224.200 incorporates  
17 relevant content from the following sections of this title, which are repealed in this issue of the *Texas*  
18 *Register*: §206.22(f), relating to Public Access to Board Meetings, §215.61, relating to Limiting Oral  
19 Presentation and Discussion to Evidence in the Administrative Record, and §215.62, relating to Order of  
20 Presentations to the Board for Review of a Contested Case.

21 Adopted new §224.202 describes the order of presentations at the board meeting in which the  
22 board is considering a contested case. New §224.202 incorporates relevant content from the following  
23 sections of this title, which are repealed in this issue of the *Texas Register*: §206.22(f), relating to Public

1 Access to Board Meetings, and §215.62, relating to Order of Presentations to the Board for Review of a  
2 Contested Case.

3 Adopted new §224.204 addresses board member conduct while reviewing and considering a  
4 contested case. New §224.204 incorporates relevant content from §215.63 of this title, relating to Board  
5 Conduct and Discussion When Reviewing a Contested Case, which is repealed in this issue of the *Texas*  
6 *Register*.

7 Adopted new §224.206 describes the requirements for a final order issued by the board or a  
8 board delegate and when the order is final. New §224.206 incorporates relevant content from §215.501  
9 of this title, relating to Final Decisions and Orders; Motions for Rehearing, which is repealed in this issue  
10 of the *Texas Register*.

11  
12 Subchapter G. Lemon Law and Warranty Performance Claims

13 Adopted new §224.230 describes the scope of this subchapter, provides statutory references,  
14 and defines terms used in the subchapter. New §224.230 incorporates relevant content from the  
15 following sections of this title, which are repealed in this issue of the *Texas Register*: §215.21, regarding  
16 Purpose and Scope, and §215.201, regarding Purpose and Scope.

17 Adopted new §224.232 describes the requirements for a person to file a lemon law or warranty  
18 performance claim, the process, and the assistance available from the department to enable a person to  
19 do so. New §224.232 incorporates relevant content from the following sections of this title, which are  
20 repealed in this issue of the *Texas Register*: §215.27, relating to Complaints, and §215.202, relating to  
21 Filing of Complaints.

22 Adopted new §224.234 describes how the department reviews a complaint to determine if the  
23 department has jurisdiction and meets minimum statutory requirements. New §224.234 incorporates

1 relevant content from §215.203 of this title, relating to Review of Complaints, which is repealed in this  
2 issue of the *Texas Register*.

3 Adopted new §224.236 describes the process regarding the notification to the manufacturer,  
4 distributor, or converter. New §224.236 incorporates relevant content from §215.204 of this title,  
5 relating to Notification to Manufacturer, Converter, or Distributor, which is repealed in this issue of the  
6 *Texas Register*.

7 Adopted new §224.238 describes the process for mediation, settlement, and referral for hearing  
8 with a hearings examiner. New §224.238 incorporates relevant content from §215.205 of this title,  
9 relating to Mediation; Settlement, which is repealed in this issue of the *Texas Register*.

10 Adopted new §224.240 describes the notice of hearing requirements consistent with  
11 Government Code, Chapter 2001. New §224.240 incorporates relevant content from §215.34 of this  
12 title, relating to Notice of Hearing in Contested Cases, which is repealed in this issue of the *Texas*  
13 *Register*.

14 Adopted new §224.242 describes the requirements for a party to make a motion, as well as the  
15 fact that a motion is not granted unless a hearings examiner makes a ruling. New §224.242 incorporates  
16 relevant content from §215.47 of this title, relating to Motions, which is repealed in this issue of the  
17 *Texas Register*.

18 Adopted new §224.244 describes the methods by which a document may be filed and served in  
19 this subchapter. New §224.244 incorporates relevant content from §215.49 of this title, relating to  
20 Service of Pleading, Petitions, Briefs, and Other Documents, which is repealed in this issue of the *Texas*  
21 *Register*.

1           Adopted new §224.246 describes the role and powers of the hearings examiner and the recusal  
2 or substitution process. New §224.246 incorporates relevant content from §215.41 of this title, relating  
3 to Presiding Officials, which is repealed in this issue of the *Texas Register*.

4           Adopted new §224.248 describes the criteria for the granting of a continuance by a hearings  
5 examiner. New §224.248 incorporates relevant content from §215.40 of this title, relating to  
6 Continuance of Hearing, which is repealed in this issue of the *Texas Register*.

7           Adopted new §224.250 describes a party’s rights during the hearing, provides guidance as to  
8 how a hearing will be conducted, and addresses participant conduct and decorum in a hearing. New  
9 §224.250 incorporates relevant content from the following provisions of this title, which are repealed in  
10 this issue of the *Texas Register*: §215.42, relating to Conduct of Hearing, and §215.43, relating to  
11 Conduct and Decorum.

12           Adopted new §224.252 addresses the procedure that will be followed during a hearing. New  
13 §224.252 incorporates related content from §215.206 of this title, relating to Hearings, which is  
14 repealed in this issue of the *Texas Register*.

15           Adopted new §224.254 addresses the standards and handling of evidence during a hearing. New  
16 §224.254 incorporates relevant content from the following sections of this title, which are repealed in  
17 this issue of the *Texas Register*: §215.44, relating to Evidence, and §215.45, relating to Stipulation of  
18 Evidence.

19           Adopted new §224.256 addresses how objections and exceptions may be handled during a  
20 hearing conducted by a hearings examiner. New §224.256 incorporates relevant content from §215.46  
21 of this title, relating to Objections and Exceptions, which is repealed in this issue of the *Texas Register*.

1           Adopted new §224.258 specifies that the hearings examiner has final order authority in cases  
2 under this subchapter. New §224.258 incorporates relevant content from §215.55 of this title, relating  
3 to Final Decision, which is repealed in this issue of the *Texas Register*.

4           Adopted new §224.260 describes how lemon law relief decisions will be evaluated by a hearings  
5 examiner, the presumptions that may be applied, and how refunds may be calculated, in addition to  
6 other important criteria. New §224.260 incorporates content from §215.208 of this title, relating to  
7 Lemon Law Relief Decisions, which is repealed in this issue of the *Texas Register*. However, language in  
8 §215.208 requiring a different presumptive useful life calculation for a towable recreational vehicle that  
9 is lived in full-time was omitted as useful life may vary based on whether the towable recreational  
10 vehicle is at a fixed location or used for traveling. New §224.260 allows the hearings examiner to  
11 consider the evidence presented regarding usage and adjust the calculation accordingly.

12           Adopted new §224.262 details which incidental costs may be included in a final refund amount  
13 ordered by a hearings examiner. New §224.262 incorporates relevant content from §215.209 of this  
14 title, relating to Incidental Expenses, which is repealed in this issue of the *Texas Register*.

15           Adopted new §224.264 describes the requirements for a hearings examiner to issue a final  
16 order, the process for filing and considering a motion for rehearing, and notification to the parties. New  
17 §224.264 incorporates relevant content from §215.207 of this title, relating to Contested Cases: Final  
18 Orders, which is repealed in this issue of the *Texas Register*.

19           Adopted new §224.266 describes the complainant’s option to accept or reject the final order  
20 and the responsibilities of a manufacturer, distributor, or converter if a complainant accepts the final  
21 order. New §224.266 incorporates relevant content from §215.210 of this title, relating to Compliance  
22 with Order Granting Relief, which is repealed in this issue of the *Texas Register*.

1           Adopted new §224.268 describes the process for a party to appeal a final order in Travis County  
2 district court under Government Code, Chapter 2001, subject to Occupations Code, §2301.609. New  
3 §224.268 incorporates relevant content from §215.207(f) of this title, relating to Contested Cases: Final  
4 Orders, which is repealed in this issue of the *Texas Register*.

5 **SUMMARY OF COMMENTS.**

6           The department received two written comments on the proposal. The department received a  
7 written comment from an individual and TIADA.

8 **§224.54**

9 **Comment:** TIADA recommended that the department add a sentence to §224.54(e), stating the  
10 department will consider the disciplinary matrix published at the time of the offense and that the  
11 disciplinary matrix does not prevent the department from seeking sanctions above or below the  
12 recommended ranges. TIADA stated that an administrative law judge in a prior case was not certain which  
13 of two versions of the disciplinary matrix that were in effect during the pendency of the litigation should  
14 apply to that particular case.

15 **Response:** The department agrees with the comment. In response to the comment, the department  
16 added a modified version of the recommended language to §224.54 and §224.115.

17           The department added language to §224.54(e), stating the department will consider the  
18 disciplinary matrix published at the time of the violation, rather than at the time of the offense, to be  
19 consistent with the terminology used in §224.54 and the relevant statutes. In addition to stating the  
20 disciplinary matrix does not prevent the department from seeking administrative penalties and sanctions  
21 above or below the recommended ranges listed in the disciplinary matrix, the department added clarifying  
22 language that says the disciplinary matrix does not prevent the board or the board's delegate from  
23 ordering administrative penalties and sanctions above or below the recommended ranges listed in the



1 disciplinary matrix. This clarifying language documents the current practice in which neither the board nor  
2 the board’s delegate are bound by the published disciplinary matrix that applies to matters that fall within  
3 the scope of Chapter 224, Subchapter B of this title (relating to Motor Vehicle, Salvage Vehicle, and Trailer  
4 Industry Enforcement). The proposed text stated that the published disciplinary matrix provides guidance  
5 to license holders on the sanctions that may be assessed for the most common violations; however, it is  
6 preferable to provide more detail to license holders to explain what this text means. Also, the department  
7 amended the heading for §224.54 and added language to §224.54(e) to include the assessment regarding  
8 revocation because §224.54 also addresses factors regarding whether license revocation is appropriate.

9         Although the commenter did not cite to §224.115, the department also added language to  
10 §224.115(e), stating the department will consider the disciplinary matrix published at the time of the  
11 violation because §224.115 addresses the disciplinary matrix for contested cases under Chapter 224,  
12 Subchapter D of this title (relating to Motor Carrier and Oversize or Overweight Vehicle or Load  
13 Enforcement). In addition to stating the disciplinary matrix does not prevent the department from seeking  
14 penalties and sanctions above or below the recommended ranges listed in the disciplinary matrix, the  
15 department also added clarifying language that says the disciplinary matrix does not prevent the director  
16 from ordering administrative penalties and sanctions above or below the recommended ranges listed in  
17 the disciplinary matrix. The proposed text stated that the published disciplinary matrix provides guidance  
18 to motor carriers on the penalties and sanctions that may be assessed for the most common violations;  
19 however, it is preferable to provide more detail to motor carriers to explain what this text means. The  
20 added language references the director because the board delegated final order authority to the  
21 department’s Motor Carrier Division director under §224.29(c) to the extent the director does not already  
22 have such authority under statutes, such as Transportation Code, §643.2525.

1           Also, the department amended the title of §224.115 at adoption to include the assessment of  
2 sanctions because §224.115 references the disciplinary matrix that the department will publish on its  
3 website to provide guidance to motor carriers on the penalties and sanctions that may be assessed for  
4 the most common violations. Although an administrative penalty may generally be called a sanction,  
5 Transportation Code, §643.252, which is titled “Administrative Sanctions,” lists the factors for which the  
6 department may suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643.  
7 Transportation Code, §643.251, which is titled “Administrative Penalty,” addresses administrative  
8 penalties that the department may impose against a motor carrier.

9           **§224.196**

10           **Comment:** TIADA recommended that the department strike rule text that says if a party fails to timely  
11 submit a written request for an oral presentation, that party shall not make an oral presentation at the  
12 board meeting. TIADA says that most other tribunals do not require a party to notify the tribunal that the  
13 party will attend a scheduled hearing and that the department should follow those tribunals.

14           **Response:** The department agrees with the comment in part, with respect to the opportunity for a party  
15 to make a public comment even when it has failed to submit a timely request to make an oral  
16 presentation, and made certain changes to §224.196.

17           The department disagrees, however, that the board should follow the procedures used in  
18 tribunals. The board is not a tribunal. The board is not authorized to retry the contested case, and the  
19 board has limited authority under Government Code, §2001.058(e) to change a finding of fact or  
20 conclusion of law made by the SOAH ALJ. Also, the board is prohibited from considering evidence that is  
21 not contained within SOAH’s administrative record, so the parties do not need to appear before the board  
22 to present new evidence. In addition, the board has access to the entire SOAH administrative record for  
23 each case and is able to review every exhibit, testimony transcript, and filing made in the case.

1           Since February 2021, the department has operated under §206.22(f) of this title, relating to Public  
2 Access to Board Meetings, and §215.59 of this title, relating to Request for Oral Presentation, which are  
3 repealed in this issue of the *Texas Register*. Sections 206.22(f) and 215.59 only authorize a party to a  
4 contested case to make an oral presentation to the board if the party timely submitted a written request  
5 to make an oral presentation. However, if a party failed to timely submit a written request to make an  
6 oral presentation to the board, the board chairman authorized the party to make a public comment under  
7 §206.22(a) on the agenda item for the contested case. This process worked well for the two contested  
8 cases that the board considered at the December 2023 and February 2024 board meetings.

9           It is not fair to the party who timely submitted a written request if the board allows the other  
10 party to make an oral presentation without timely submitting a request. Also, Transportation Code,  
11 §1004.002 requires the board to develop and implement policies that provide the public with a reasonable  
12 opportunity to appear before the board and to speak on any issue under the jurisdiction of the board and  
13 the rule to be adopted is consistent with this statutory requirement.

14           For these reasons, the department will retain the requirement under §224.196 for a party to  
15 timely submit a written request for an oral presentation before the party is allowed to make an oral  
16 presentation to the board under Chapter 224, Subchapter F (relating to Board Procedures in Contested  
17 Cases).

18           The department amended §224.196(e) to authorize a party to make a public comment regarding  
19 the party's contested case during the posted agenda item for the contested case under §206.22 of this  
20 title (relating to Public Access to Board Meetings); however, a party is not authorized to make a public  
21 comment regarding the party's contested case under §206.22 in addition to making an oral presentation  
22 regarding the party's contested case. If a party timely complies with the requirements to make an oral  
23 presentation under Subchapter F of Chapter 224, §224.196 authorizes the party to make an oral

1 presentation to the board for up to 15 minutes unless the board chair increases the time under §224.200.  
2 Fifteen minutes is ample time for a party to make an oral presentation to the board, so a party does not  
3 need an additional three minutes to make a public comment regarding their contested case. Also, the  
4 time that a party spends answering board questions is not counted against their 15 minutes. In addition,  
5 if the board chair decides that the parties need more than 15 minutes to make an oral presentation,  
6 §224.200 authorizes the board chair to increase the oral presentation time. If a party fails to comply with  
7 the requirements to make an oral presentation, the party can attend the board meeting and make a public  
8 comment under §206.22 for up to three minutes unless the board chair increases the time.

9 **§224.198**

10 **Comment:** An individual recommended that the department add a sentence to §224.198 that says a  
11 proposed final order or a draft motion for possible board action are not counted against the 15-page limit  
12 under §224.198(d) for written materials. The individual stated that allowing the parties to a contested  
13 case to propose a final order or a motion for board action will assist board members in focusing on the  
14 key points in the case and will help them to reach a final decision.

15 **Response:** The department disagrees with the comment and declines to make the requested change.  
16 Adopted new §224.198—like §215.60 of this title (relating to Written Materials and Evidence), which is  
17 repealed in this issue of the *Texas Register*—imposes a 15-page limit for written materials that a party can  
18 submit to the department to provide to the board. New §224.198 expressly allows a party to provide a  
19 proposed final order and a draft motion for possible board action if the party complies with the  
20 requirements under §224.198. The 15-page limit has been sufficient for prior contested cases that were  
21 submitted to the board for a final order under §215.60, which was adopted in February 2021. In at least  
22 one case, a party submitted a proposed three-page final order as part of their 15 pages of written  
23 materials under §215.60. Also, in the five contested cases in which the board issued a final order from

1 April of 2023 to February of 2024, the longest final order was five pages, not including the Proposal for  
2 Decision that was incorporated into one of the final orders. The parties can choose to submit a proposed  
3 final order or motion as part of their 15 pages of written materials without using all 15 pages for the  
4 proposed final order or motion.

5           The commenter’s requested change opens the door to allowing a party to submit an unlimited  
6 number of pages of written materials to the board, which is unnecessary because the board is not  
7 authorized to relitigate the case or to receive new evidence in the case. The board has limited authority  
8 under Government Code, §2001.058(e) to change a finding of fact or conclusion of law made by the SOAH  
9 ALJ. The board is prohibited from considering evidence not contained within SOAH’s administrative  
10 record, and the board has access to the entire SOAH administrative record for each case and is able to  
11 review every exhibit, testimony transcript, and filing made in the case. Further, the department includes,  
12 at a minimum, the following materials in the board books provided to board members and published on  
13 the department’s website, so the parties can direct board members to specific pages, rather than  
14 providing the materials to the board members again in written materials: 1) the SOAH ALJ’s Proposal for  
15 Decision; 2) any exceptions that a party filed with SOAH regarding the ALJ’s Proposal for Decision; and 3)  
16 the SOAH ALJ’s exceptions letter regarding the Proposal for Decision. Finally, it is not necessary for a party  
17 to submit a proposed final order or a proposed motion for possible board action. If a board member needs  
18 assistance with drafting a proposed motion or proposed final order, the department’s general counsel is  
19 available to assist the board member.

20 **§224.202**

21 **Comment:** TIADA recommended that the department strike the language in §224.202(b) and (c). TIADA  
22 also recommended that the department modify the order of oral presentations to the board to follow

1 typical judicial procedure, which allows the party that brought the lawsuit to present first, rather than  
2 allowing the party that is adversely affected to present first.

3 **Response:** The department disagrees with the comment and declines to make the requested changes.  
4 The board is not a court. Also, requiring the adversely affected party to present first helps the board to  
5 focus on issues the board is authorized to address, and recognizes the SOAH ALJ's role in assessing the  
6 evidence, deciding fact issues, and making a recommendation in the Proposal for Decision.

7 Adopted new §224.202—like §215.62 of this title (relating to Order of Presentations to the Board  
8 for Review of a Contested Case), which is repealed in this issue of the *Texas Register*—authorizes the party  
9 that is adversely affected by the ALJ's Proposal for Decision to make their oral presentation to the board  
10 first, followed by the party or parties that are not adversely affected. This process worked well under  
11 §215.62, which became effective in February 2021. Moreover, the board has already considered and  
12 decided this issue: when the department proposed §215.62, the board considered and addressed public  
13 comments regarding the order of presentation, including comments requesting that the adversely  
14 affected party present first.

15

16

#### SUBCHAPTER A. GENERAL PROVISIONS

17

#### 43 TAC §§224.1–224.31

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**STATUTORY AUTHORITY.** The department adopts new Chapter 224 under Government Code, §2001.004,  
which requires state agencies to adopt rules of practice stating the nature and requirements of all  
available formal and informal procedures; Government Code, §2001.054, which specifies the  
requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of  
a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale  
and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise

1 that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications  
2 of license holders; ensure that the distribution, sale and lease of motor vehicles is conducted as required  
3 by statute and board rules; to provide for compliance with warranties; to prevent fraud, unfair practices,  
4 discrimination, impositions, and other abuses in connection with the distribution and sale of motor  
5 vehicles; and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code,  
6 Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or  
7 convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before  
8 the board; Occupations Code, §2301.602, which requires the board to adopt rules for the enforcement  
9 and implementation of Subchapter M of Occupations Code, Chapter 2301; Occupations Code, §2301.651,  
10 which authorizes the board to deny an application for a license, revoke or suspend a license, place on  
11 probation a person whose license has been suspended, or reprimand a licensee; Occupations Code,  
12 §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code,  
13 Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to  
14 administer Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the  
15 department to adopt and enforce rules to carry out the International Registration Plan (IRP);  
16 Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of  
17 Transportation Code, Chapter 503; Transportation Code, §621.008, which authorizes the board to adopt  
18 rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation  
19 Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce  
20 Transportation Code, Chapter 622; Transportation Code, §623.002, which authorizes the board to adopt  
21 rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation  
22 Code, §623.271, which authorizes the department to impose an administrative penalty or revoke an  
23 oversize or overweight permit issued under Transportation Code, Chapter 623, and states that the notice

1 and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an  
2 administrative penalty or the revocation of a permit under §623.271; Transportation Code, §623.272,  
3 which authorizes the department to impose an administrative penalty on a shipper who violates a  
4 provision under §623.272, and states that the notice and hearing requirements under Transportation  
5 Code, §643.2525 apply to the imposition of an administrative penalty under §623.272; Transportation  
6 Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code,  
7 Chapter 643; Transportation Code, §643.102, which authorizes a motor carrier to comply with the  
8 requirements under Transportation Code, §643.101 through self-insurance if it complies with the  
9 requirements; Transportation Code, §643.251, which authorizes the department to impose an  
10 administrative penalty against a motor carrier required to register under Subchapter B of Transportation  
11 Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation  
12 Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under  
13 Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended;  
14 Transportation Code, §643.2525, which provides the process for an administrative hearing under  
15 Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to  
16 appeal the denial of an application for registration, renewal of registration, or reregistration under  
17 Transportation Code, Chapter 643; Transportation Code, §645.003, which authorizes the department to  
18 adopt rules providing for administrative penalties for a failure to register or submit information and  
19 documents under the unified carrier registration plan and agreement or for a violation of the unified  
20 carrier registration plan and agreement; Transportation Code, §1002.001, which authorizes the board to  
21 adopt rules that are necessary and appropriate to implement the powers and duties of the department;  
22 Transportation Code, §1003.005, which authorizes the board by rule to delegate any power relating to a  
23 contested case, including the power to issue a final order, to one or more board members or certain



1 department staff; and the statutory authority referenced throughout this preamble and in the rule text,  
2 which is incorporated herein by reference.

3 **CROSS REFERENCE TO STATUTE.** These new rules implement Government Code, Chapter 2001;  
4 Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 621–623, 643,  
5 645, and 1002–1005.

6  
7 Text.

8 §224.1. Purpose and Scope.

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

14  
15 §224.3. Definitions.

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

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

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

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

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

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

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

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

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

12 (8) Day--A calendar day.

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

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

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

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

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

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

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

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

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

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

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

18                               (B) communication concerning uncontested administrative or uncontested  
19 procedural matters;

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

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

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

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

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

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

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

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

15 (21) License holder--A person holding a license under Occupations Code, Chapters  
16 2301 or 2302, or a GDN or other license issued under Transportation Code, Chapter 503.

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

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

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

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

1                   (26) Personal identifying information--As defined by Business and Commerce Code,  
2 §521.002(1).

3  
4                   (27) Pleading--A filed document that requests procedural or substantive relief,  
5 makes a claim, alleges a fact, denies an allegation, makes or responds to a legal argument, or  
6 otherwise addresses a matter involved in a contested case.

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

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

10                   (30) Sensitive personal information--As defined by Business and Commerce Code,  
11 §521.002(2).

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

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

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

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

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

20  
21 §224.5. Prohibited Communication.

22                   (a) No person, party, attorney of record, or authorized representative in any contested  
23 case shall violate Government Code, §2001.061 by directly or indirectly engaging in ex parte

1 communication concerning a contested case with an ALJ, board member, board delegate, or a  
2 hearings examiner assigned to render a decision or make findings of fact and conclusions of law in  
3 a contested case.

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

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

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

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

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

15

16 §224.7. Appearance.

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

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

1 (c) Attorney in charge. When more than one attorney makes an appearance in a contested case  
2 on behalf of a party, the attorney whose signature appears first on the initial document filed in the  
3 contested case shall be the attorney in charge for that party unless another attorney is specifically  
4 designated in writing. All communication sent by the department or other party regarding the contested  
5 case shall be sent to the attorney in charge unless otherwise requested by a party.

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

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

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

15

16 §224.9. Computing Time.

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

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

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

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

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

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

8

9 §224.11. Filing and Service of Documents.

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

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

15 (1) the department, and

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

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



1 (d) To be timely filed, a document must be received by the department within the time specified  
2 by statute, rule, or department order. A document received after the specified time, notwithstanding the  
3 means of delivery, shall be deemed untimely. Electronic filing is considered timely if the document is  
4 received by 5:00 p.m. Central Standard Time or Daylight Savings Time when in effect. Electronic filing  
5 after 5:00 p.m. shall be deemed received on the following day or the next business day if filed on a  
6 Saturday, Sunday, or legal holiday.

7 (e) A document filed electronically must:

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

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

11 (3) not be locked;

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

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

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

18 (7) include an electronic signature.

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

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

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

10

11 §224.13. Discovery.

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

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

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

1 (d) Subpoena to produce documents. Upon the written request of a party, the executive director  
2 may issue a subpoena for the production of documents. The written request must identify the  
3 documents with as much detail as possible and must include a statement of their relevance to the issues  
4 in the contested case.

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

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

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

17

18 §224.15. Hearing Recording and Transcription Cost.

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

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

3 (1) assessed to a party requesting the transcript in a contested case;

4 (2) shared by the parties in a contested case under Subchapter C of this chapter (relating  
5 to Contested Cases Between Motor Vehicle Industry License Holders or Applicants); or

6 (3) assessed as directed by the ALJ or hearings examiner.

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 any duplication costs incurred by the department.

9

10 §224.17. Consolidation of Proceedings.

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

14

15 §224.19. Informal Disposition.

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

19 (b) If the parties have settled or otherwise determined that a contested case proceeding is not  
20 required, the party who initiated the contested case shall file a motion to dismiss the contested case

1 from the docket and present a proposed agreed order or dismissal order to the final order authority. If  
2 the party who initiated the contested case fails to file a motion to dismiss as required under this  
3 subsection, the final order authority may issue a dismissal order after providing the parties with a 30-day  
4 notice.

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

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

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

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

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

11

12 §224.21. Waiver of Hearing.

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

16

17 §224.23. Hearings to be Public.

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

19

20 §224.25. Extension of Time.

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

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

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

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

10

11 §224.27. Final Order; Motion for Rehearing.

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

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

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

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

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

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

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

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

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

14

15 §224.29. Delegation of Final Order Authority.

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

21 (1) by settlement;

1 (2) by agreed order;

2 (3) by withdrawal of the complaint;

3 (4) by withdrawal of a protest;

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

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

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

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

12 (6) by dismissal for want of jurisdiction;

13 (7) by summary judgment or summary disposition;

14 (8) by default judgment; or

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

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

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



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

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

6

7 §224.31. Cost of Record on Appeal.

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

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

14

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

16 **43 TAC §§224.50–224.64**

17 **STATUTORY AUTHORITY.** The department adopts new Chapter 224 under Government Code, §2001.004,  
18 which requires state agencies to adopt rules of practice stating the nature and requirements of all  
19 available formal and informal procedures; Government Code, §2001.054, which specifies the  
20 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of  
21 a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale  
22 and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise

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

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

21  
22 Text.

23 §224.50. Purpose and Scope.

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

6

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

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

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

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

20           (3) At least three days prior to entering an interlocutory order requiring a person to  
21 cease and desist, the department must send a letter notifying the person of the allegations against them  
22 to all current addresses for the person in the department's records by both electronic service and  
23 certified mail, return receipt requested.

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

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

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

11                                 (A) the date and hour of issuance;

12                                 (B) a statement of which of the conditions in Occupations Code,  
13 §2301.802(b) the department determined were present to necessitate the cease-and-desist order;

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

15                                 (D) the reasons for its issuance; and

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

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

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

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

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

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

13 (A) a summary of the factual allegations;

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

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

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

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

20 (F) notice to the person that the department will issue a cease-and-desist  
21 order that will become final on the date specified if the person fails to timely request a hearing.

22 (2) A person to whom a cease-and-desist notice letter under subsection (b) is sent  
23 may file a written request for a hearing before a SOAH ALJ. The person must submit, in writing, a

1 request for a hearing under this section to the department’s contact listed in the notice letter  
2 provided under subsection (b)(1) of this section. The department must receive the request for a  
3 hearing within 26 days of the date the notice letter is mailed.

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

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

11

12 §224.54. Civil Penalty and Revocation Assessment.

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

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

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

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

21 (3) any history of previous violations including whether the license holder  
22 previously entered into an agreed order with the department or otherwise received a warning or  
23 reduced penalty;

1 (4) the amount necessary to deter a future violation; and

2 (5) any other matter that justice may require, including:

3 (A) the number of violations or number of consumers harmed by  
4 violation(s);

5 (B) whether the consumer received a title;

6 (C) whether the license holder misused license plates or temporary tags;

7 (D) whether the license holder attempted to conceal a violation;

8 (E) whether the act constituting the violation was intentional,  
9 premeditated, knowing, or grossly negligent; and

10 (F) whether an order issued by the department was violated.

11 (c) In determining whether license revocation is appropriate, the department will consider  
12 the following factors:

13 (1) whether the license holder is unfit under standards governing the occupation,  
14 including qualifications for a license;

15 (2) whether the license holder made a material misrepresentation in any written  
16 communication or information provided to the department;

17 (3) whether the license holder willfully defrauded a purchaser;

18 (4) whether the license holder misused license plates or temporary tags, including  
19 whether the license holder attempted to use an internet-down tag to avoid inspection  
20 requirements;

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

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

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

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

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

7                         (3) efforts to correct a violation.

8                   (e) The department will publish a disciplinary matrix on the department website to provide  
9 guidance to license holders on the administrative penalties and other sanctions that may be  
10 assessed for the most common violations. The department will consider the disciplinary matrix  
11 published at the time of the violation; however, the disciplinary matrix does not prevent the  
12 department from seeking administrative penalties and other sanctions above or below the  
13 recommended ranges listed in the disciplinary matrix. Also, the disciplinary matrix does not  
14 prevent the board or the board’s delegate from ordering administrative penalties and other  
15 sanctions above or below the recommended ranges listed in the disciplinary matrix.

16

17 §224.56. Notice of Department Decision.

18                   (a) The department shall issue a Notice of Department Decision to a license applicant,  
19 license holder, or other person by certified mail, return receipt requested, to the last known  
20 address and email address upon a determination under Occupations Code, Chapters 2301 and  
21 2302 or Transportation Code, Chapter 503 that:

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

23                         (2) an administrative sanction should be imposed.



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

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

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

5 (2) a description of each alleged violation;

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

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

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

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

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

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

1 (e) If the department receives a timely request for a hearing, the department will contact  
2 the license holder and attempt to informally resolve the contested case. If the license holder and  
3 the department cannot informally resolve the contested case, the department will refer the  
4 contested case to SOAH to set a hearing date and will give notice to the license applicant, license  
5 holder, or other person of the date, time, and location of the hearing.

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

10

11 §224.58. Denial of Dealer or Converter Access to Temporary Tag System.

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

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

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

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

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

3 (5) temporary tags issued for a vehicle or a motor vehicle not located at a licensed  
4 location or a storage lot.

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

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

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

21 (e) The department may also issue a Notice of Department Decision stating administrative  
22 violations as provided in §224.56 of this title (relating to Notice of Department Decision) concurrently

1 with the notice of denial of access under this section. A Notice of Department Decision may include  
2 notice of any violation, including a violation listed under subsection (a) of this section.

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

6

7 §224.60. Filing and Service of Documents.

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

11

12 §224.62. Referral to SOAH.

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

16 (b) When SOAH accepts the department's request to docket a contested case, jurisdiction  
17 transfers to SOAH.

18

19 §224.64. Notice of Hearing.



1 Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to  
2 administer Transportation Code, Chapter 502; Transportation Code, §503.002, which authorizes the board  
3 to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code,  
4 §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement  
5 the powers and duties of the department; Transportation Code, §1003.005, which authorizes the board  
6 by rule to delegate any power relating to a contested case, including the power to issue a final order, to  
7 one or more board members or certain department staff; and the statutory authority referenced  
8 throughout this preamble and in the rule text, which is incorporated herein by reference.

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

11  
12 Text.

13 §224.80. Purpose and Scope.

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

18  
19 §224.82. Form of a Protest or Complaint.

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

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

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

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

3 §215.119 of this title (relating to Standing to Protest) to protest the application;

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

5 (5) state that the protest is not made for purposes of delay or for any other

6 purpose except for justifiable cause.

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

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

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

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

15

16 §224.84. Filing and Service of a Protest, Complaint, or Other Document.

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

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

23

1 §224.86. Review of a Protest or Complaint.

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

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

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

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

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

10

11 §224.88. Docketing and Notice of a Protest or Complaint.

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

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

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

18 (1) accept the assigned department mediator; or

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



1

2 §224.90. Mediation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16                  (i) All communication and documents provided by a contested case party or invited person in a  
17 mediation are confidential and subject to the Governmental Dispute Resolution Act, Government Code,  
18 §2009.054.

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

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

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

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

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

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

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

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

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

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

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

13

14 §224.92. Referral to SOAH.

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

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

19

1 §224.94. Notice of Hearing.

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

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

7

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

9 **43 TAC §§224.110–224.130**

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

1 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271;  
2 Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on  
3 a shipper who violates a provision under §623.272, and states that the notice and hearing requirements  
4 under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under  
5 §623.272; Transportation Code, §643.003, which authorizes the department to adopt rules to administer  
6 Transportation Code, Chapter 643; Transportation Code, §643.102, which authorizes a motor carrier to  
7 comply with the requirements under Transportation Code, §643.101 through self-insurance if it complies  
8 with the requirements; Transportation Code, §643.251, which authorizes the department to impose an  
9 administrative penalty against a motor carrier required to register under Subchapter B of Transportation  
10 Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation  
11 Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under  
12 Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended;  
13 Transportation Code, §643.2525, which provides the process for an administrative hearing under  
14 Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to  
15 appeal the denial of an application for registration, renewal of registration, or reregistration under  
16 Transportation Code, Chapter 643; Transportation Code, §645.003, which authorizes the department to  
17 adopt rules providing for administrative penalties for a failure to register or submit information and  
18 documents under the unified carrier registration plan and agreement or for a violation of the unified  
19 carrier registration plan and agreement; Transportation Code, §1002.001, which authorizes the board to  
20 adopt rules that are necessary and appropriate to implement the powers and duties of the department;  
21 and the statutory authority referenced throughout this preamble and in the rule text, which is  
22 incorporated herein by reference.

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

3  
4 Text.

5 §224.110. Purpose and Scope.

6 This subchapter and Subchapters A, E, and F of this chapter describe the procedures by  
7 which the department will adjudicate alleged violations and claims under Transportation Code,  
8 Chapters 502, 621–623, 643, and 645. These contested cases involve registrants under the  
9 International Registration Plan, motor carriers, motor carrier leasing businesses, motor  
10 transportation brokers, and household goods carriers. Contested cases involving persons operating  
11 oversize or overweight vehicles or moving oversize or overweight loads are also included.

12  
13 §224.112. Definitions.

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

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

20  
21 §224.114. Cease and Desist Order.

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

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

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

4                   (3) to protect public health and safety.

5           (b) The order shall:

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

8                   (2) include:

9                               (A) a summary of the factual allegations;

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

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

14                   (3) state the effective date of the order.

15           (c) The department's cease and desist order is final, unless within ten days of the service of  
16 the order, the respondent files with the department a written request for hearing.

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

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

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

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

6 (2) refer the matter to the appropriate authority to institute actions for:

7 (A) an injunction against violation of the cease-and-desist order;

8 (B) collection of any administrative penalty assessed by the department; or

9 (C) any other remedy provided by law.

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

12

13 §224.115. Administrative Penalty and Sanction Assessment; Probation of Suspension

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

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

18 (2) In an action brought by the department, the aggregate amount of administrative  
19 penalty shall not exceed \$5,000 unless it is found that the person or the holder of the permit knowingly  
20 committed a violation.



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

7                   (4) In an action brought by the department, if it is found that the person or the holder of  
8 the permit knowingly committed multiple violations, the aggregate amount of administrative penalty for  
9 the multiple violations shall not exceed \$30,000.

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

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

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

15                   (2) The amount of an administrative penalty imposed under this subsection is calculated  
16 in the same manner as the amount of an administrative penalty imposed under subsection (a) of this  
17 section.

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

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

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

4                   (3) In an action brought by the department, if it is found that the motor carrier  
5 knowingly committed a violation, the aggregate amount of administrative penalty shall not exceed  
6 \$15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation, or  
7 acting with deliberate ignorance of or reckless disregard for the violation involved. Actual awareness  
8 may be inferred from the conduct of the alleged violator or from the history of previous violations by  
9 the alleged violator.

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

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

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

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

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

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

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

3                   (e) The department will publish a disciplinary matrix on the department website to provide  
4 guidance to motor carriers on the penalties and sanctions that may be assessed for the most  
5 common violations. The department will consider the disciplinary matrix published at the time of  
6 the violation; however, the disciplinary matrix does not prevent the department from seeking  
7 administrative penalties and sanctions above or below the recommended ranges listed in the  
8 disciplinary matrix. Also, the disciplinary matrix does not prevent the director from ordering  
9 administrative penalties and sanctions above or below the recommended ranges listed in the  
10 disciplinary matrix.

11

12 §224.116. Administrative Proceedings.

13                   (a) If the department decides to take an enforcement action under §218.16 of this title (relating  
14 to Insurance Requirements) for the revocation of self-insured status, §218.64 of this title (relating to  
15 Rates), §218.71 of this title (relating to Administrative Penalties), §219.121 of this title (relating to  
16 Administrative Penalties and Sanctions under Transportation Code, §623.271), §218.72 of this title  
17 (relating to Administrative Sanctions), or §219.126 of this title (relating to Administrative Penalty for  
18 False Information on Certificate by a Shipper), the department shall mail a Notice of Department  
19 Decision to the person by first class mail to the last known address as shown in department records. If  
20 the enforcement action falls under the Memorandum of Agreement with the Federal Motor Carrier  
21 Safety Administration (FMCSA) under §218.71, the department shall mail the Notice of Department  
22 Decision to the person by first class mail to the last known address as shown in FMCSA's records.

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

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

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

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

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

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

8 (c) A person must submit to the department a written request for a hearing to the address  
9 provided in the Notice of Department Decision not later than the 26th day after the date the notice is  
10 mailed by the department; however, this requirement does not apply to a contested case that falls under  
11 §218.64 and Transportation Code, §643.154.

12 (d) If a person submits a timely written request for a hearing or the contested case that falls  
13 under §218.64 and Transportation Code, §643.154, the department will contact the person and attempt  
14 to informally resolve the contested case. If the person and the department cannot informally resolve the  
15 contested case, the department will refer the contested case to SOAH to set a hearing date and will give  
16 notice of the time and place of the hearing to the person.

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

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

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

10

11 §224.118. Filing of Documents.

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

15

16 §224.120. Registration Suspension Ordered Under Family Code.

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

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

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

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

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

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

10

11 §224.122. Appeal of Decision Regarding Assessment, Cancellation, or Revocation Under §217.56.

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

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

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

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

20

1 §224.124. Appeal of a Denial Under Transportation Code, §643.2526.

2 (a) Pursuant to Transportation Code, §643.2526, an applicant may appeal the denial of an  
3 application for registration, renewal of registration, or reregistration under Transportation Code, Chapter  
4 643.

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

7 (c) The applicant's appeal will be considered untimely if it is not filed with the department by the  
8 26th day after the date of the department's denial of the application. The department will not consider  
9 an untimely appeal.

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

12

13 §224.126. Appeal of a Denial of Self-Insured Status.

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

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

18 (c) The applicant's appeal will be considered untimely if it is not filed with the department by the  
19 26th day after the date of the department's denial of the application. The department will not consider  
20 an untimely appeal.

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§224.128. Referral to SOAH.

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

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

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

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

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

§224.130. Notice of Hearing.

(a) Once SOAH provides the department with the initial hearing date, time, and place, the department will issue to the contested case parties a notice of hearing that complies with Government Code, Chapter 2001 and SOAH rules.

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

**SUBCHAPTER E. CONTESTED CASES REFERRED TO SOAH**



1 **43 TAC §§224.150–224.166**

2 **STATUTORY AUTHORITY.** The department adopts new Chapter 224 under Government Code, §2001.004,  
3 which requires state agencies to adopt rules of practice stating the nature and requirements of all  
4 available formal and informal procedures; Government Code, §2001.054, which specifies the  
5 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of  
6 a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale  
7 and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise  
8 that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications  
9 of license holders; ensure that the distribution, sale and lease of motor vehicles is conducted as required  
10 by statute and board rules; to prevent fraud, unfair practices, discrimination, impositions, and other  
11 abuses in connection with the distribution and sale of motor vehicles; and to enforce and administer  
12 Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155,  
13 which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code,  
14 Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651,  
15 which authorizes the board to deny an application for a license, revoke or suspend a license, place on  
16 probation a person whose license has been suspended, or reprimand a licensee; Occupations Code,  
17 §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code,  
18 Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to  
19 administer Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the  
20 department to adopt and enforce rules to carry out IRP; Transportation Code, §503.002, which authorizes  
21 the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code,  
22 §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce  
23 Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt

1 rules that are necessary to implement and enforce Transportation Code, Chapter 622; Transportation  
2 Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce  
3 Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to  
4 impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation  
5 Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code,  
6 §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under  
7 §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative  
8 penalty on a shipper who violates a provision under §623.272, and states that the notice and hearing  
9 requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty  
10 under §623.272; Transportation Code, §643.003, which authorizes the department to adopt rules to  
11 administer Transportation Code, Chapter 643; Transportation Code, §643.102, which authorizes a motor  
12 carrier to comply with the requirements under Transportation Code, §643.101 through self-insurance if it  
13 complies with the requirements; Transportation Code, §643.251, which authorizes the department to  
14 impose an administrative penalty against a motor carrier required to register under Subchapter B of  
15 Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter  
16 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a  
17 registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose  
18 registration is suspended; Transportation Code, §643.2525, which provides the process for an  
19 administrative hearing under Transportation Code, Chapter 643; Transportation Code, §643.2526, which  
20 authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or  
21 reregistration under Transportation Code, Chapter 643; Transportation Code, §645.003, which authorizes  
22 the department to adopt rules providing for administrative penalties for a failure to register or submit  
23 information and documents under the unified carrier registration plan and agreement or for a violation

1 of the unified carrier registration plan and agreement; Transportation Code, §1002.001, which authorizes  
2 the board to adopt rules that are necessary and appropriate to implement the powers and duties of the  
3 department; and the statutory authority referenced throughout this preamble and in the rule text, which  
4 is incorporated herein by reference.

5 **CROSS REFERENCE TO STATUTE.** These new rules implement Government Code, Chapter 2001;  
6 Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 621–623, 643,  
7 645, and 1002–1005.

8  
9 Text.

10 §224.150. Purpose and Scope.

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

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

18 (1) 1 TAC Chapter 155, and

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

20 (c) When SOAH disposes of a contested case, jurisdiction transfers from SOAH back to the  
21 department. The department will issue a final order under §224.29 of this title (relating to  
22 Delegation of Final Order Authority) or under Subchapter F of this chapter (relating to Board  
23 Procedures in Contested Cases).

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§224.152. Referral to SOAH.

(a) The department shall refer contested cases to SOAH upon determination that a hearing is appropriate under Occupations Code, Chapter 2301 or 2302, or Transportation Code, Chapters 502, 503, 621–623, 643, 645, or 1001–1005, 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 protest or complaint filed under Occupations Code, Chapter 2301, Subchapters I or J;

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

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

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

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

§224.154. Notice of Hearing.

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

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

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

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

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

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

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

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

20

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

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

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

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

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

14  
15 §224.158. Amicus Briefs.

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

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

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

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§224.162. Statutory Stay.

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

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

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

§224.164. Issuance of a Proposal for Decision.

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

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

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

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

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

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

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

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

14

15 **SUBCHAPTER F. BOARD PROCEDURES IN CONTESTED CASES**

16 **43 TAC §§224.190–224.206**

17 **STATUTORY AUTHORITY.** The department adopts new Chapter 224 under Government Code, §2001.004,  
18 which requires state agencies to adopt rules of practice stating the nature and requirements of all  
19 available formal and informal procedures; Government Code, §2001.054, which specifies the  
20 requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of  
21 a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale  
22 and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise  
23 that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications



1 of license holders; ensure that the distribution, sale and lease of motor vehicles is conducted as required  
2 by statute and board rules; to prevent fraud, unfair practices, discrimination, impositions, and other  
3 abuses in connection with the distribution and sale of motor vehicles; and to enforce and administer  
4 Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155,  
5 which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code,  
6 Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651,  
7 which authorizes the board to deny an application for a license, revoke or suspend a license, place on  
8 probation a person whose license has been suspended, or reprimand a licensee; Occupations Code,  
9 §2301.709, which requires the board to adopt rules that establish standards for reviewing a case under  
10 Subchapter O of Chapter 2301 of the Occupations Code; Occupations Code, §2302.051, which authorizes  
11 the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation  
12 Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code,  
13 Chapter 502; Transportation Code, §502.091(b), which authorizes the department to adopt and enforce  
14 rules to carry out IRP; Transportation Code, §503.002, which authorizes the board to adopt rules for the  
15 administration of Transportation Code, Chapter 503; Transportation Code, §621.008, which authorizes  
16 the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621;  
17 Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to  
18 implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which  
19 authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code,  
20 Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an  
21 administrative penalty or revoke an oversize or overweight permit issued under Transportation Code,  
22 Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525  
23 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271;

1 Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on  
2 a shipper who violates a provision under §623.272, and states that the notice and hearing requirements  
3 under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under  
4 §623.272; Transportation Code, §643.003, which authorizes the department to adopt rules to administer  
5 Transportation Code, Chapter 643; Transportation Code, §643.251, which authorizes the department to  
6 impose an administrative penalty against a motor carrier required to register under Subchapter B of  
7 Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter  
8 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a  
9 registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose  
10 registration is suspended; Transportation Code, §643.2525, which provides the process for an  
11 administrative hearing under Transportation Code, Chapter 643; Transportation Code, §643.2526, which  
12 authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or  
13 reregistration under Transportation Code, Chapter 643; Transportation Code, §645.003, which authorizes  
14 the department to adopt rules providing for administrative penalties for a failure to register or submit  
15 information and documents under the unified carrier registration plan and agreement or for a violation  
16 of the unified carrier registration plan and agreement; Transportation Code, §1002.001, which authorizes  
17 the board to adopt rules that are necessary and appropriate to implement the powers and duties of the  
18 department; Transportation Code, §1003.005, which authorizes the board by rule to delegate any power  
19 relating to a contested case, including the power to issue a final order, to one or more board members or  
20 certain department staff; and the statutory authority referenced throughout this preamble and in the rule  
21 text, which is incorporated herein by reference.

1 **CROSS REFERENCE TO STATUTE.** These new rules implement Government Code, Chapter 2001;  
2 Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 621–623, 643,  
3 645, and 1002–1005.

4  
5 Text.

6 §224.190. Purpose and Scope.

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

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

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

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

15  
16 §224.192. Appeal of an Interlocutory Order.

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

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

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

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

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

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

19  
20 §224.194. Contested Case Review.

21 (a) After SOAH submits a final proposal for decision and transfers SOAH's administrative  
22 record to the department, the board has jurisdiction and the record required to issue a final order

1 and will review the contested case during the public session of a board meeting, in accordance  
2 with the APA.

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

5  
6 §224.196. Request for Oral Presentation.

7 (a) At least 30 days prior to the scheduled date of a board meeting, the department shall notify  
8 the parties regarding the opportunity to attend and provide an oral presentation concerning a proposal  
9 for decision before the board. The department will deliver notice electronically to the last known email  
10 address provided to the department by the party or party's authorized representative in accordance with  
11 §224.11 of this title (relating to Filing and Service of Documents).

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

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

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

4 (e) Section 206.22 of this title (relating to Public Access to Board Meetings) authorizes a party to  
5 speak as a public commenter regarding the party's contested case during the posted agenda item for the  
6 contested case; however, a party is not authorized to make a public comment regarding the party's  
7 contested case under §206.22 in addition to making an oral presentation regarding the party's contested  
8 case under this subchapter.

9  
10 §224.198. Written Materials and Evidence.

11 (a) If a party wants to provide written materials at the board meeting, the party must provide  
12 the written materials to the department and all other parties in accordance with §224.11 of this title  
13 (relating to Filing and Service of Documents) at least 21 days prior to the date of the board meeting. If a  
14 party fails to timely provide written materials to the department or any other party, the department  
15 shall not provide the written materials to the board and the party shall not provide the written materials  
16 to the board at the board meeting. Non-parties are not authorized to provide written materials to the  
17 board.

18 (b) For the purposes of this section, written materials are defined as language or images  
19 including photographs or diagrams, that are contained in the SOAH administrative record and recorded  
20 in paper form except as stated otherwise in this subsection. The language or images in the written  
21 materials must be taken without changes from the SOAH administrative record; however, proposed final  
22 orders and draft motions for possible board action are allowed to be included in a party's written

1 materials even if they contain arguments or requests that are not contained in the SOAH administrative  
2 record. Written materials shall be limited to evidence contained in the SOAH administrative record and  
3 consistent with the scope of the board's authority to act under Government Code, §2001.058(e) and  
4 Occupations Code, Chapters 2301 and 2302, and Transportation Code, Chapters 502, 503, 621–623, 643,  
5 645, or 1001–1005, as applicable.

6 (c) All information in the written materials shall include a citation to the SOAH administrative  
7 record on all points to specifically identify where the information is located. The citations may be  
8 provided in an addendum to the written materials that is not counted against the 15-page limit under  
9 subsection (d) of this section; however, the addendum must not include any information other than a  
10 heading that lists the name of the party, the caption for the contested case, and text that lists the  
11 citations and page numbers.

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

17

18 §224.200. Oral Presentation Limitations and Responsibilities.

19 (a) A party to a contested case under review by the board shall limit oral presentation and  
20 discussion to evidence in the SOAH administrative record. Also, oral presentation and discussion shall be  
21 consistent with the scope of the board's authority to act under Government Code, §2001.058(e);

1 Occupations Code, Chapters 2301 and 2302; and Transportation Code Chapter 502, 503, 621–623, 643,  
2 645, or 1001–1005, as applicable.

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

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

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

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

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

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

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

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

17

18 §224.202. Order of Oral Presentations to the Board.

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



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

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

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

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

7 (c) The other party or parties not adversely affected will then have an opportunity to make a  
8 presentation. If more than one party is not adversely affected, each party will have an opportunity to  
9 respond in alphabetical order based on the name of the party in the pleadings in the SOAH  
10 administrative record, except as stated otherwise in §224.196 of this title (relating to Request for Oral  
11 Presentation).

12

13 §224.204. Board Conduct and Discussion When Reviewing a Contested Case or Interlocutory Order.

14 (a) The board shall conduct its contested case review in compliance with Government Code,  
15 Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code Chapters 502, 503,  
16 621—623, 643, 645, or 1001—1005, as applicable, including the limitations on changing a finding of fact  
17 or conclusion of law made by a SOAH ALJ, and the prohibition on considering evidence outside of the  
18 SOAH administrative record.

19 (b) A board member may question a party or the department on any matter that is relevant to  
20 the proposal for decision; however, a question shall be consistent with the scope of the board's authority  
21 to take action under Government Code, §2001.058(e); Occupations Code, Chapters 2301 and 2302; and

1 Transportation Code, Chapters 502, 503, 621–623, 643, 645, or 1001–1005, as applicable; a question  
2 must be limited to evidence contained in the SOAH administrative record; and the communication must  
3 comply with §224.5 of this title (relating to Prohibited Communication). In considering a contested case,  
4 a board member is authorized to ask a question regarding a request to remand the case to SOAH,  
5 including a remand to SOAH for further consideration of the evidence.

6 (c) A board member may use personal expertise in the industry to understand a contested case  
7 and make effective decisions, consistent with the scope of the board's authority to act under  
8 Government Code, §2001.058(e); Occupations Code, Chapters 2301 and 2302; and Transportation Code  
9 Chapters 502, 503, 621–623, 643, 645, or 1001–1005, as applicable. However, a board member is not an  
10 advocate for a particular industry. A board member is an impartial public servant who takes an oath to  
11 preserve, protect, and defend the Constitution and laws of the United States and Texas.

12

13 §224.206. Final Orders.

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

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

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

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

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

1 (d) A decision or order in a contested case is final in accordance with Government Code,  
2 §2001.144.

3

4 **SUBCHAPTER G. LEMON LAW AND WARRANTY PERFORMANCE CLAIMS**

5 **43 TAC §§224.230–224.268**

6 **STATUTORY AUTHORITY.** The department adopts new Chapter 224 under Government Code, §2001.004,  
7 which requires state agencies to adopt rules of practice stating the nature and requirements of all  
8 available formal and informal procedures; Occupations Code, §2301.152, which authorizes the board to  
9 provide for compliance with warranties; Occupations Code, §2301.155, which authorizes the board to  
10 adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301; Occupations Code,  
11 §2301.602, which requires the board to adopt rules for the enforcement and implementation of  
12 Subchapter M of Occupations Code, Chapter 2301; Transportation Code, §1002.001, which authorizes the  
13 board to adopt rules that are necessary and appropriate to implement the powers and duties of the  
14 department; and the statutory authority referenced throughout this preamble and in the rule text, which  
15 is incorporated herein by reference.

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

18

19 Text.

20 §224.230. Purpose, Scope, and Definitions.

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

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

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

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

9 (3) Lemon law--Refers to Occupations Code, Chapter 2301, Subchapter M  
10 (§§2301.601–2301.613).

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

12

13 §224.232. Filing a Complaint.

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

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

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

22 (2) provide the following information:

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

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

4 (C) the type of warranty coverage;

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

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

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

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

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

12 (iii) the complaint was filed;

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

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

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

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

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

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

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

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

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

6 or

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

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

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

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

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

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

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

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

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

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

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

21

1 §224.234. Complaint Review.

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

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

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

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

13

14 §224.236. Notification to Manufacturer, Distributor, or Convertor.

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

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

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



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

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

5

6 §224.238. Mediation; Settlement or Referral for Hearing.

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

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

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

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

15

16 §224.240. Notice of Hearing.

17 (a) Each party is entitled to an opportunity for a hearing, in accordance with Government Code,  
18 §2001.051.

19 (b) A notice of hearing in a contested case shall comply with the requirements of Government  
20 Code, §2001.052(a) and the department shall serve the notice upon the parties by certified mail, return

1 receipt requested to the last known address of a party or the party's authorized representative in  
2 accordance with Occupations Code, §2301.705.

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

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

6

7 §224.242. Motions.

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

10 (1) the relief sought; and

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

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

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

17

18 §224.244. Service of Documents.

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

1 (1) first-class mail; or

2 (2) email.

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

4 (1) email;

5 (2) fax; or

6 (3) first-class mail.

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

8

9 §224.246. Presiding Official.

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

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

15 (1) administer oaths;

16 (2) examine witnesses;

17 (3) rule upon the admissibility of evidence;

18 (4) rule upon motions; and

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

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

8 (d) Recusal.

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

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

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

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

21

1 §224.248. Hearing Continuance.

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

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

7

8 §224.250. Conduct of Hearing.

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

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

14 (1) conduct themselves with dignity;

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

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

17 and

18 (4) adhere to the time schedule.

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

20 (1) issue a warning;

1 (2) recess the hearing; or

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

4

5 §224.252. Hearings.

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

7 (b) When possible, an in-person hearing will be held in the city in which the complainant resides.  
8 A hearing may also be conducted by telephone or videoconference.

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

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

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

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

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

17 (h) Hearings will be conducted informally. A party has a right to be represented by an attorney at  
18 a hearing, although an attorney is not required. A party who intends to be represented at a hearing by  
19 an attorney or other authorized representative must notify the hearings examiner and any other party in

1 writing at least five business days prior to the hearing. Failure to provide notice will result in  
2 postponement of the hearing if requested by another party.

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

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

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

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

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

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

18

19 §224.254. Evidence.

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

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

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

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

9

10 §224.256. Objections and Exceptions.

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

12

13 §224.258. Final Order Authority.

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

16 (b) This authority includes a contested case in which a case is resolved:

17 (1) by settlement;

18 (2) by agreed order;

19 (3) by withdrawal of the complaint;



1 (4) by dismissal for want of prosecution or continued failure to communicate with the  
2 department;

3 (5) by dismissal for want of jurisdiction;

4 (6) by summary judgment or summary disposition;

5 (7) by a default judgment; or

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

7

8 §224.260. Lemon Law Relief Decisions.

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

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

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

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

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

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

8 (1) When a refund is ordered, the purchase price shall be the total purchase price of the  
9 motor vehicle, excluding the amount of any interest, finance charge, or insurance premiums. The refund  
10 amount to the motor vehicle owner shall include reimbursement of the amount of the lemon law  
11 complaint filing fee paid by, or on behalf of, the motor vehicle owner. The refund shall be made payable  
12 to the motor vehicle owner and to any lienholder, respective to each person's ownership interest in the  
13 motor vehicle.

14 (2) There is a rebuttable presumption that the expected useful life of a motor vehicle is  
15 120,000 miles. Except in cases where the preponderance of the evidence shows the motor vehicle has a  
16 longer or shorter expected useful life than 120,000 miles, the reasonable allowance for the owner's use  
17 of the motor vehicle shall be the sums of the amounts obtained by adding subparagraphs (A) and (B) of  
18 this paragraph.

19 (A) The product obtained by multiplying the total purchase price, as defined in  
20 paragraph (1) of this subsection, of the motor vehicle by a fraction having as its denominator 120,000  
21 and having as its numerator the number of miles that the motor vehicle traveled from the time of

1 delivery to the owner to the date of the date of the first report of the defect or condition forming the  
2 basis of the repurchase order; and

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

7 (3) There is a rebuttable presumption the expected useful life of a towable recreational  
8 vehicle is 5,475 days or 15 years. Except in cases where a preponderance of the evidence shows that the  
9 vehicle has a longer or shorter expected useful life than 5,475 days or 15 years, the reasonable  
10 allowance for the owner's use of the towable recreational vehicle shall be the sum of the amount  
11 obtained by adding subparagraphs (A) and (B) of this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (2) Upon a replacement of a complainant's motor vehicle, the complainant shall be  
9 responsible for payment or financing of the reasonable allowance for use of the complainant's vehicle,  
10 any outstanding liens on the complainant's vehicle, and applicable taxes and fees associated with the  
11 new sale of a comparable motor vehicle, excluding documentary fees.

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

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

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

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

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

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

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

21

22 §224.262. Incidental Costs.

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

6 (1) alternate transportation;

7 (2) towing;

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

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

12 (5) loss or damage to personal property;

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

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

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

20 (c) When awarding reimbursement for the cost of items or accessories presented under  
21 subsection (a)(7) of this section, the hearings examiner shall consider the permanent nature,



1 functionality, and value added by the items or accessories and whether the items or accessories are  
2 original equipment manufacturer (OEM) parts or non-OEM parts.

3

4 §224.264. Final Orders.

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

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

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

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

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

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

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

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

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

5

6 §224.266. Compliance with Order Granting Relief.

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

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

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

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

14 (e) If a manufacturer, distributor, or converter replaces or repurchases a motor vehicle pursuant  
15 to a final order, then the manufacturer, distributor, or converter shall, prior to the resale of such motor  
16 vehicle, retitle the vehicle in Texas and shall:

17 (1) issue a disclosure statement on a form provided by or approved by the department;

18 and

19 (2) affix a department-approved disclosure label in a conspicuous location in or on the  
20 motor vehicle.

1 (f) The disclosure statement and disclosure label required under subsection (e) of this section  
2 shall accompany the motor vehicle through the first retail purchase. No person holding a license or GDN  
3 issued by the department under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503  
4 shall remove or cause the removal of the disclosure label until delivery of the motor vehicle to the first  
5 retail purchaser.

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

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

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

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

21

22 §224.268. Judicial Appeal of a Final Order.

1           (a) A party who has exhausted all administrative remedies may appeal a final order in a Travis  
2 County district court under Government Code, Chapter 2001, and subject to Occupations Code,  
3 §2301.609.

4           (b) A party appealing a final order must serve a copy of the petition for judicial review on the  
5 department and all parties of record. After service of the petition and within the time allowed for filing  
6 an answer, the department shall transmit to the reviewing court the original or a certified copy of the  
7 entire record of the proceeding. If the court orders that new evidence be presented to a hearings  
8 examiner, the hearings examiner may modify the findings and decision or order by reason of the new  
9 evidence and shall transmit the additional record to the court.  
10