AGENDA
BOARD MEETING
TEXAS DEPARTMENT OF MOTOR VEHICLES
4000 JACKSON AVE., BUILDING 1, LONE STAR ROOM
AUSTIN, TEXAS 78731
THURSDAY, SEPTEMBER 1, 2016
8:00 A.M.

All agenda items are subject to possible discussion, questions, consideration, and action by the Board of the Texas Department of Motor Vehicles (Board). Agenda item numbers are assigned for ease of reference only and do not necessarily reflect the order of their consideration by the Board. The Board reserves the right to discuss any items in executive session where authorized by the Open Meetings Act.

1. CALL TO ORDER
   A. Roll Call and Establishment of Quorum
   B. Comments and Announcements from Chair, Board Members, and Executive Director
      1. Chair's Report – Chairman Palacios
         a. Introduction of New Board Members
         b. Recognition of Service - Chair Laura Ryan
      2. Executive Director Whitney Brewster
         a. Introduction of New Internal Auditor, Sandra Menjivar-Suddeath
         b. Agency Awards
   C. Public Comment

2. ACTION AND BRIEFING ITEMS
   A. Finance & Audit Committee Update - Committee Chair Palacios
      1. Consideration of Committee Recommendation Regarding the:
         a. FY 2017 Interagency Agreement between TxDOT and TxDMV
         b. FY 2017 Internal Audit Plan
         c. FY 2017 Recommended Operating Budget
   2. Briefing Items
      a. FY 2018- 2019 Legislative Appropriation Request, Baseline and Exceptional Items
      b. FY 2016 Quarterly Financial Report
      c. Internal Audit Division Status Report
B. Projects & Operations
1. **Enterprise Projects Quarterly Report** - Judy Sandberg
2. Facilities Update - Linda M. Flores

C. Legislative & Public Affairs - Caroline Love
1. 84th Legislative Implementation
2. 85th Legislature

D. Contested Cases
   Franchised Dealer’s Complaint against Distributor under Occupations Code, §§2301.475(b) and 2301.479(b) - Daniel Avitia and Kenneth Herring
   MVD Docket No. 14-0016.LIC; SOAH Docket No. 608-14-4960.LIC;
   **Autobahn Imports, L.P. d/b/a Land Rover of Fort Worth, Complainant**
   v. **Jaguar Land Rover North America, LLC, Respondent**

E. Rules
   Proposal of Rules under Title 43, Texas Administrative Code
   1. **Chapter 215, Motor Vehicle Distribution** - David D. Duncan, Daniel Avitia, and Bill Harbeson
         (Notice of Intent Published June 19, 2015 - 40 Tex. Reg. 4012)
      b. Amendments and Repeals
      c. New §215.160, Duty to Identify Motor Vehicles Offered for Sale as a Rebuilt
   2. **Chapter 217, Vehicle Titles and Registration** - Jeremiah Kuntz
      a. **Amendments, §217.9, Bonded Titles**
      c. **Corrections (Non-Substantive Amendments), §§217.3, 217.28, 217.40, 217.42, 217.45, 217.47, 217.52, 217.54, 217.56, 217.82, 217.84, 217.86, 217.103, and 217.163**
   3. **Chapter 218, Motor Carriers**
      a. **Household Goods Rules Advisory Committee (HGRAC)**
         Recommendation - Committee Chair Jim French and Committee Member Bill Harbeson
3. EXECUTIVE SESSION
   A. Section 551.071 - Consultation with and advice from legal counsel regarding:
      1. pending or contemplated litigation, or a settlement offer;
      2. a matter in which the duty of the attorney to the government body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Government Code, Chapter 551; or
      3. any item on this agenda.

   B. Section 551.074 - Personnel matters.
      Discussion relating to the appointment, employment, evaluation, reassignment, duties, discipline, and dismissal of personnel.

4. ACTION ITEMS FROM EXECUTIVE SESSION

5. ADJOURNMENT

The Board will allow an open comment period to receive public comment on any agenda item or other matter that is under the jurisdiction of the Board. No action will be taken on matters that are not part of the agenda for the meeting. For subjects that are not otherwise part of the agenda for the meeting, Board members may respond in accordance with Government Code, Section 551.042 and consider the feasibility of placing the matter on the agenda for a future meeting.

Agenda items may be presented by the named presenters or other TxDMV staff.

Pursuant to Sections 30.06 and 30.07, Penal Code (trespass by license holder with a concealed or openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun or a handgun that is carried openly.

Any individual with a disability who plans to attend this meeting and requires auxiliary aids or services should notify the department as far in advance as possible, but no less than two days in advance, so that appropriate arrangements can be made. Contact Stacy Steenken by telephone at (512) 302-2380.

I certify that I have reviewed this document and that it conforms to all applicable Texas Register filing requirements.

CERTIFYING OFFICIAL: David D. Duncan, General Counsel, (512) 465-5665.
Governor Abbott Names Chair And Appoints Three To Board Of Department Of Motor Vehicles

Tuesday, August 23, 2016 • Austin, Texas • Appointment

Governor Greg Abbott has appointed Brett Graham to the Board of Department of Motor Vehicles for a term set to expire February 1, 2017 and appointed Kate Hardy and Gary Painter for terms set to expire February 1, 2021. Additionally, Governor Abbott has named Raymond Palacios, Jr. chair of the board. The board oversees and coordinates the development of the Texas Department of Motor Vehicles and ensures that all components of the motor vehicle industry function as a system.

Brett Graham of Denison is owner and CEO of Graham International. He is a board member of the Texas Association of Business and a member of the Texas Automobile Dealers Association and the Texas Tire Dealers Association. He is a trustee of Pottsboro Independent School District School Board, board secretary of Grayson Central Appraisal District, board chair of Texoma Health Foundation and Denison Development Foundation and a board member of Ameristate Bank. Graham received a Bachelor of Business Administration in marketing and real estate from Baylor University.

Kate Hardy of Trophy Club is director of General Motors (GM) Financial and has held various positions in the sales and marketing group with GM for over 30 years. Hardy received a Bachelor of Science in industrial management from Georgia Tech.

Gary Painter of Midland is Sheriff of Midland County and has over 45 years of law enforcement service. He is a lifetime member of the Sheriffs’ Association of Texas and a member of the National Sheriffs’ Association, Western States Sheriffs’ Association, Southwest Border Sheriffs’ Coalition and the Texas Police Association. He is a gubernatorial appointee on the Commission on Jail Standards, president of the Midland County Bail Bond Board, board member of the Attorney General’s Human Trafficking Task Force, and a member of the Interoperable Communications Board and Law Enforcement Academy Board for the Permian Basin Planning Commission. Painter received a Bachelor of Science in police administration.

Raymond Palacios, Jr. of El Paso is president of Bravo Cadillac in El Paso and Bravo Chevrolet Cadillac in Las Cruces, New Mexico. He is a member of the Community en Accion (CEA) Board, Council on Regional Economic Expansion and Educational Development Board and the Borderplex Alliance and the Board of Capital Bank Executive Board. He is a member and past district director of the Texas Automotive Dealers Association, past vice chair of General Motors’ Minority Dealer Advisory Council and past member of the National Chevrolet Dealer Advisory Council and Hummer Dealer Advisory Council. Additionally, he is founder and past president of the University of Houston Hispanic Alumni Association, past president of the Association for the Advancement of Mexican Americans and a past board member of Leadership Houston, University of Houston Alumni Association, Yucca Council of the Boy Scouts of America and the El Paso Better Business Bureau. Palacios received a Bachelor of Business Administration in accounting from the University of Houston.
To: Raymond Palacios, Chairman  
From: David Duncan, General Counsel  
Agenda Item: 2.A.1.a - FY 2017 Interagency Agreement between TxDOT and TxDMV  
Subject: Annual Interagency Contract with Texas Department of Transportation  

RECOMMENDATION  
Staff seeks the Board’s approval for the Executive Director to execute the annual Interagency Contract between TxDMV and TxDOT.

PURPOSE AND EXECUTIVE SUMMARY  
Due to shared facilities, services and equipment, TxDMV has signed an “Interagency Contract” (IAC) with the Texas Department of Transportation (TxDOT) every year since the agency’s inception. This IAC specifies the duties and obligations of the two agencies regarding IT functions, facilities operations and maintenance, and the division of costs for shared services between the two agencies. Changes have been negotiated with TxDOT staff to reflect operational changes that have occurred over the past fiscal year.

FINANCIAL IMPACT  
The not-to-exceed amount of the IAC has been reduced to $2 million this year, reflecting continued reduction in TxDMV’s need for TxDOT support.
THE STATE OF TEXAS §
THE COUNTY OF TRAVIS §

INTERAGENCY CONTRACT FOR FISCAL YEAR 2017

THIS AGREEMENT is entered into by and between the State agencies shown below under the authority granted and in compliance with the provisions of Chapter 771 of the Government Code.

I. PARTIES

TxDMV Texas Department of Motor Vehicles
TxDOT Texas Department of Transportation

II. LEGAL AUTHORITY

TxDMV and TxDOT are authorized to enter into this contract by Chapter 771, Government Code; HB 3097, 81st Leg., Regular Session, 2009 (hereafter HB 3097); and SB 1420, 82nd Leg., Regular Session, 2011 (hereafter SB 1420).

III. TERM

This contract begins September 1, 2016, and terminates at the end of August 31, 2017.

IV. MAXIMUM AMOUNT PAYABLE

The maximum amount payable by TxDMV to TxDOT under this contract shall not exceed $2.00 million, unless this amount is amended as provided by Section XIV of this contract.

The maximum amount payable by TxDOT to TxDMV under this contract shall not exceed $1 million, unless this amount is amended as provided by Section XIV of this contract.

V. SCOPE AND INTENT

It is the intent of the parties that this contract shall govern the provision of services and the reimbursement of actual costs.

VI. NOTICES
Official notices under this contract shall be sent by first-class mail. Advance copies may be sent by facsimile transmission or email. Official notices shall be directed as follows.

Notices to TxDMV:
Executive Director
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, TX 78731
(512) 465-3001 Phone
(512) 465-3004 Fax

Notices to TxDOT:
Director of Contract Services
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701
(512) 416-4620 Phone
(512) 416-4621 Fax

VII. FUNDING

The agency that provides deliverables (performing agency) to the other agency (receiving agency) shall provide an itemized invoice to the receiving agency, except as otherwise stated in this contract.

The receiving agency shall pay the actual costs of all deliverables provided by or through the performing agency under this contract, except as stated otherwise in this contract.

The basis for calculating actual costs is set forth in Attachment A, which is incorporated by reference in this contract. Actual costs shall be invoiced no more frequently than monthly and within 90 days of the date those costs are incurred.

Neither agency shall make a profit from its participation in this contract.

VIII. FACILITIES, EQUIPMENT, AND PERSONNEL

A. TxDMV personnel may occupy assigned TxDOT facilities and use TxDOT equipment on the same terms as TxDOT employees. For facilities where TxDOT controls access to buildings, TxDOT shall issue security badges to TxDMV employees, board members, and contractors. The badges shall associate the recipients with TxDMV and enable access to TxDOT facilities as required by TxDMV business operations. Neither agency shall have any right of access to buildings occupied exclusively by the other agency except to perform functions authorized by the contract. Either party may mutually agree on an ad hoc basis
to permit the other party access for the purpose of a particular function. TxDMV shall make no alterations or additions to TxDOT facilities without prior written approval from TxDOT.

B. TxDMV shall give TxDOT one year written notice of its intent to vacate a TxDOT facility (whether owned by or leased to TxDOT) unless agreed otherwise by the parties. TxDOT shall give TxDMV one year written notice to vacate prior to the date TxDMV is required to vacate a TxDOT facility, regardless of whether TxDOT owns or leases the facility, provided, however, that TxDOT shall not serve TxDMV with a notice to vacate prior to August 31, 2016.

C. TxDMV employees shall have access to TxDOT resources (such as Crossroads) as agreed to by both parties. Domain Admin and Supervisor Access will no longer be provided without agreement in advance by TxDMV and TxDOT. Use of TxDOT computer equipment by any TxDMV employee shall be conditioned on that employee’s execution of and adherence to an agreement stating the employee shall adhere to all TxDOT policies governing the use of TxDOT computer equipment. TxDMV shall take appropriate action to protect TxDOT’s network and computer system from misuse. In the case of contradiction between TxDOT and TxDMV policies or procedures governing equipment, network or systems, TxDOT policies and procedures take precedence as it relates to TxDOT equipment, network, or systems, and TxDMV policies and procedures take precedence as it relates to TxDMV equipment, networks or systems.

D. Because TxDOT has outsourced most of its information technology functions and has no way of capturing the labor or incremental cost of those functions, TxDOT shall have no responsibility for providing TxDMV with services that TxDOT obtains through a contractor.

E. TxDMV shall obtain prior approval (both via TxDMV Change Advisory Board (TxDMV CAB) and the TxDOT Change Advisory Board (TxDOT CAB)) from TxDOT before installing or maintaining hardware or software not included in the TxDOTNow Service Catalog on devices that are connected to TxDOT’s network. If agreement cannot be reached between the TxDMV Chief Information Officer and the TxDOT Information Management Division Director, then the hardware or software shall not be used on TxDOT’s network or other technical infrastructure. TxDOT may remove hardware or software placed into service that is not approved in advance via TxDMV CAB and TxDOT CAB, or cause such hardware or software to cease to function. Every effort should be made by TxDMV to add new software and hardware to the TxDMV network and not to the TxDOT network. For all software installed on the TxDOT network, TxDMV will abide by the TxDOT Software Asset Management Policy; however TxDOT must provide a copy of the Software Asset Management Policy to TxDMV within 15 days after the entry of this agreement, and must provide any amendments within 15 days after those amendments become effective.
F. Wherever and whenever TxDMV employees occupy space owned or leased by TxDOT, TxDMV and its employees shall follow facility management, building maintenance, parking, and security policies, procedures, and standards established by TxDOT. Requests for deviation from these policies, procedures, and standards shall be reviewed as needed by a committee consisting of two persons appointed by TxDOT and two persons appointed by TxDMV. No deviation is permitted without TxDOT’s advance written approval.

G. In the event of a disaster affecting TxDMV headquarters, TxDOT agrees to provide additional office space to TxDMV as specified in Appendix I.

H. During separation activities, TxDMV shall notify TxDOT of the separation of shared services and any costs anticipated as a result of the separation via TxDMV and TxDOT CAB. If TxDOT discontinues use of a shared service billed through DCS before TxDMV discontinues use of the same service, TxDMV shall pay for all DCS charges directly related to that service until DCS decommissions the service and discontinues associated billing. If TxDMV discontinues use of a shared service billed through DCS before TxDOT discontinues use of the same service, TxDOT shall pay for all DCS charges directly related to that service until DCS decommissions the service and discontinues associated billing.

IX. SHARING OF INFORMATION

The parties shall share information as necessary to fulfill the terms of this contract.

Each party shall promptly notify the other party of any changes that may reasonably affect the operations of the other party, and both parties shall cooperate fully in managing those changes. TxDMV shall promptly notify TxDOT of any significant changes in operations and shall promptly provide TxDOT with copies of any required documentation. Each party shall keep the other party informed of any significant issues relating to contemplated or pending litigation or requests for information that may affect the responsibilities of the other party.

Neither party is authorized to accept a public information request, service of a subpoena, or any other formal notice on behalf of the other party.

The parties shall cooperate fully in preparing any reports required by state or federal law.

To the extent permitted by law, each party shall treat the other party’s information as confidential. As provided in HB 3097, SB 1420 and the Texas Public Information Act (Tex. Government Code Ch. 552), confidential information of one party shall remain confidential despite its disclosure to the other party, and disclosure between the parties shall not act as a waiver of confidentiality.

TxDMV shall continue to provide TxDOT batch inquiry title and registration information from the Texas Motor Vehicle Title and Registration database and remote electronic
access through Motor Vehicle Inquiry to the Motor Vehicle Title and Registration database without charge, as further outlined in Section XI, Services to be Provided by TxDMV.

TxDOT must use its best efforts to timely provide TxDMV with current information TxDMV needs to issue and to complete permits under Chapters 621 through 623, Transportation Code. TxDOT must use its best efforts to timely provide TxDMV with such information through direct lines of communication to enable TxDMV to timely serve the motor carrier industry. TxDOT shall continue to provide access to Crossroads resources necessary for TxDMV to map restrictions and route oversize/overweight loads (as specified further in subsection X.J., below).

TxDMV shall provide access to TxDOT to all records and reports necessary to enable TxDOT to determine that accurate road and maintenance information is being used by TxDMV to issue permits under Chapters 621 through 623, Transportation Code.

Both parties must use best efforts to ensure that they do not introduce into the other party’s electronic systems any malware, including, but not limited to viruses, spyware, computer worms, Trojan horses, rootkits, dishonest adware, and other malicious or unwanted software.

Each party understands and acknowledges that it uses the other party’s systems at its own risk. Neither party shall be responsible to the other for any injury, damage, liability, claims or suits resulting from the party’s use of the other party’s systems.

X. SERVICES TO BE PROVIDED BY TxDOT

At the request of TxDMV, TxDOT shall provide the following support services to TxDMV:

A. Validation tests for license plates and other related registration and titling insignia per TxDMV specifications.

B. Facility maintenance support to include building maintenance, parking, and security.

C. Facility support and access to shop services for the TxDMV regional office employees in the same manner as TxDOT employees.

D. Contact information for two employees per district assigned to coordinate with TxDMV on permit issues during regular TxDOT office hours and emergency contact information for after hour and weekend emergency situations.
E. Information regarding road restrictions, maintenance schedules, and any other relevant information that will affect the issuance of oversize and overweight permits.

F. Auditing of TxDMV records to determine that all road information provided by TxDOT is being used in the issuance of oversize and overweight permits.

G. If TxDOT discovers that it has provided incorrect road information to TxDMV which has been or will be used in the issuance of an oversize or overweight permit, TxDOT shall take all actions available to correct the information to limit damage to the roadway or other hazards.

H. TxDOT shall cooperate with TxDMV and provide access to shared servers as TxDMV implements the Application Migration and Server Infrastructure Transformation project. TxDMV agrees to pay for any contractor cost incurred by TxDOT and not explicitly contracted for by TxDMV.

I. TxDOT shall provide continued access to TxDOT Intranet (Crossroads) resources used to map restrictions needed to route oversize/overweight loads, including:
   1. TxDOT Permanent Structure Numbers: http://crossroads/apps/psn/
   3. TxDOT’s TARHE Geodatabase
   7. TxDOT Crossroads: http://crossroads/
   8. TxDOT statewide mapping: http://crossroads/org/tpp/StatewideMapping/
   9. TPP: http://crossroads/org/tpp/
   12. UCDB: http://iapps/apps/ucdb/
   13. LIDAR data and updates: received from Bridge Division
   14. Daily posting of Structure.Pontis_Brinsap_Mst_Pnt feature class data (Pontis data) from TxDOT GIS GDB to PSDC FTP site for use by TxPROS.
J. TxDMV shall send a representative to the weekly TxDOT CAB in order to receive notification of changes to shared infrastructure. In addition, TxDOT will distribute TxDOT CAB meeting minutes via the CAB distribution list, which includes key TxDMV IT personnel.

K. TxDOT shall ensure that TxDOT district offices and coordinate with TxDMV the handling of oversize or overweight (OS/OW) traffic in emergency/disaster events. TxDOT will maintain TxDMV on TxDOT’s statewide Emergency Operations Center (EOC) notification list. TxDOT District Permit Coordinators and/or Maintenance Supervisors/Area Engineers shall provide TxDMV with timely emergency road closure notifications, including contra flow locations through the TxDMV’s Emergency Operations Center email address MCD-EOC@txdmv.gov. TxDOT District Permit Coordinators and/or Maintenance Supervisors/Area Engineers shall provide TxDMV with alternate contact information, including contacts for local law enforcement and/or other emergency personnel, for the purposes of assisting with OS/OW loads in emergency/disaster events.

L. TxDOT shall provide TxDMV access to crash records information (CRIS) without charge.

XI. SERVICES TO BE PROVIDED BY TxDMV

A. TxDMV shall scan any bonds filed with TxDMV (that are payable to TxDOT) and provide TxDOT with an electronic copy of any bond, upon TxDOT’s request. TxDOT authorizes TxDMV to destroy the original bond once TxDMV creates an electronic copy.

B. TxDMV shall provide contract management services for any enhancements or modifications TxDOT requests regarding the Texas Permitting & Routing Optimization System (TxPROS). TxDMV shall bill TxDOT for any time and materials associated with such contract management services.

C. TxDMV shall not alter or disregard road information provided by TxDOT for the purposes of oversize or overweight permits. To the extent TxDOT provides TxDMV with a notification of a route or road restriction, TxDMV shall not issue an oversize or overweight permit that does not apply the new route or road information. TxDMV shall also not alter a route designated or approved by TxDOT in the issuance of an oversize or overweight permit. If TxDMV needs to vary a route to complete a requested permit, TxDMV must work with TxDOT to obtain approval on an alternate route designation.
D. If TxDOT discovers that TxDMV did not take into account road information provided by TxDOT in the issuance of an oversize or overweight permit, TxDMV shall take all actions available to correct the permit to limit damage to the roadway.

E. TxDMV shall not take actions that allow permitted loads to be routed onto any TxDOT-operated toll road, as long as TxDOT provides TxDMV with the applicable road restriction information as required by Section X.E. of this contract.

F. TxDMV shall continue to provide TxDOT batch inquiry title and registration information from the Texas Motor Vehicle Title and Registration database without charge. TxDMV shall continue providing the information to TxDOT or its vendor in a secure manner as it has under prior versions of the Interagency Contract with TxDOT. TxDOT shall ensure its vendors use the Texas Motor Vehicle Title and Registration database and all data retrieved only for TxDOT operations and as requested by TxDMV, will provide signed certifications from vendors verifying compliance. The parties may agree, through their respective Chief Information Officers, to a different delivery method. TxDMV shall also work with TxDOT to ensure the batch inquiry is inclusive of all Texas plates and tags registered with TxDMV, including, but not limited to eTags, temporary permits, commercial fleet plates such as apportioned plates, and dealer license plates. TxDMV shall also continue to provide the files required for processing special license plates. TxDMV and TxDOT shall jointly develop a process for exchanging updated customer address information to ensure the most current information available is maintained between the two agency systems who utilize registration information.

G. TxDMV shall take the actions required by Texas Transportation Code §502.011 to deny registration of a motor vehicle after TxDOT provides written notice of a final determination that the registered owner of a motor vehicle is a habitual violator (HV) in accordance with Transportation Code, Subchapter C, Chapter 372. TxDOT Toll Operations Division (TOD) shall provide the list of habitual violators, pay required fees for entry of registration blocks, and notify TxDMV when an HV is no longer determined to be a habitual violator or an appeal has been perfected.

H. TxDMV shall also provide TxDOT with remote electronic access through Motor Vehicle Inquiry to the Motor Vehicle Title and Registration database without charge. Upon request from TxDOT, TxDMV shall provide a written certification
verifying the accuracy of the Motor Vehicle Title and Registration database. Except in connection with a criminal investigation or prosecution, TxDOT shall be assessed the required fee(s) for TxDMV staff to conduct title history research, production of title history documents, and certification of these documents, provided, however, that TxDMV shall provide the first 20 certified title history searches to TxDOT at no charge.

I. TxDMV and TxDOT will discuss possible interfaces between TxDOT toll operations and TxDMV regional service centers. Any recommendations developed through these discussions may be considered for possible inclusion of additional terms in the FY 2018 Interagency Contract.

J. TxDMV will provide TxDOT District offices with emergency contact information and instructions necessary to reach TxDMV OS/OW staff in the event of an emergency requiring coordination as required under paragraph X.K, above. The TxDMV will notify the EOC groups via email of procedures and hours of operations for each emergency/disaster situation. In no event shall OS/OW traffic be routed onto TxDOT toll roads without specific written approval from TxDOT’s Toll Operations Division.

XII. LITIGATION AND LIABILITY

TxDMV shall be solely responsible for any litigation that was managed before November 1, 2009, by one of the TxDMV divisions that transferred under HB 3097, without regard to when the litigation arose or was filed. TxDMV shall be solely responsible for any litigation that was managed before January 1, 2012, by the TxDOT Motor Carrier Division that transferred under SB 1420, without regard to when the litigation arose or was filed. With respect to any other litigation arising out of events that occurred before the November 1, 2009, transfer under HB 3097 or the January 1, 2012, transfer under SB 1420, TxDOT shall retain responsibility, without regard to whether the litigation relates to activities or employees of TxDMV.

Whenever one party is involved in litigation that relates to activities or employees of the other party or that may reasonably involve payments from appropriation strategies that are allocated to the other party, the party managing the litigation shall provide the other party with timely copies of all pleadings and shall not settle the litigation without the prior consent of the other party. Liability arising from litigation shall be charged to the appropriations strategy of the activity that gave rise to the litigation.

XIII. RESPONSIBILITIES OF THE PARTIES

This contract does not create a partnership, joint venture, or other joint enterprise. It is
an agreement between two independent state agencies governing their mutual rights and obligations. Each party acknowledges that it is not an agent, servant, or employee of the other party. Each party is solely responsible for its own acts and deeds and for those of its agents, servants, or employees.

XIV. AMENDMENTS

This contract may only be amended by a written supplement executed by both parties prior to the expiration of the contract.

XV. TERMINATION

This contract may be terminated by satisfactory completion of all services and obligations contained in this contract, by mutual written agreement, or as provided by Section III of this contract.

XVI. COMPLIANCE WITH LAWS

The parties shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations and with the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this contract.

XVII. RIGHTS AND OBLIGATIONS OF THE PARTIES REGARDING TxPROS

A. Although all ownership rights in TxPROS transferred to TxDMV on January 1, 2012, TxDMV shall provide TxDOT with reasonable access to and the right to use TxPROS for the purposes of carrying out TxDOT’s statutory functions. TxDMV shall provide this access to TxDOT at no cost.

B. TxDMV shall be responsible for maintaining TxPROS, using money specifically appropriated for this purpose.

C. Each party is responsible for paying for any modifications or enhancements that it makes or causes to be made to TxPROS. TxDMV is responsible for contracting with a vendor or otherwise providing personnel to make any modifications or enhancements that TxDMV authorizes to be made to TxPROS.

D. If TxDOT wants to make any modifications or enhancements to TxPROS, the TxDOT Information Management Division Director shall provide to the TxDMV
Chief Information Officer the specifications and scope of work for the proposed modifications or enhancements. If agreement cannot be reached between the TxDMV Chief Information Officer and the TxDOT Information Management Division Director regarding any TxDOT proposed modifications or enhancements, then TxDOT’s Executive Director may escalate the issue to the TxDMV Executive Director for consideration.

E. The contact information for the respective Chief Information Officers is as follows:

   Eric Obermier  
   TxDMV Chief Information Officer  
   E-mail: eric.obermier@txdmv.gov  
   Phone: (512) 465-4040

   Tim Jennings  
   TxDOT Information Management Division Director  
   E-mail: tim.jennings@txdot.gov  
   Phone: (512) 467-3837

F. TxDMV has the final say on any TxDOT requested modifications or enhancements to TxPROS. To the extent TxDMV determines any TxDOT proposed modification or enhancement shall not be made, TxDMV shall supply TxDOT with written justification for the decision.

G. The primary purpose for TxPROS is for the permitting and routing of oversize or overweight motor vehicles. TxDMV shall consider this fact when making any decisions regarding any modifications or enhancements to TxPROS. Also, TxDOT is only authorized to request modifications or enhancements to TxPROS to enable TxPROS to run reports or to provide improvements on the collection of road information provided by TxDOT.

H. To the extent TxDMV wants to make any modifications or enhancements to TxPROS that affect the report, access, or audit capabilities of TxDOT, the TxDMV Chief Information Officer shall coordinate those modifications with the TxDOT Information Management Division Director, including the specifications and scope of work for the proposed modifications or enhancements.

I. The parties shall act in good faith regarding any modifications or enhancements
to TxPROS to minimize the impact to the other agency’s operations.

J. To the extent TxDMV authorizes any TxDOT proposed modifications or enhancements, TxDMV shall serve as the contract manager for the modifications or enhancements.

K. Regarding any TxDOT proposed enhancements or modifications to TxPROS, TxDOT shall do the following:

1. Jointly participate in any contract negotiations,
2. Approve any contracts prior to signature,
3. Jointly review any deliverables with the TxDMV contract manager,
4. Approve any receiving reports that TxDMV creates,
5. Timely notify TxDMV of any reason to dispute payment under Chapter 2251, Government Code, and
6. Timely transfer money to TxDMV to pay for any deliverables prior to any payment deadlines under Chapter 2251, Government Code. TxDOT is responsible for any interest that results from an overdue payment if the late payment is due to TxDOT’s failure to timely transfer money to TxDMV to pay any invoice.

L. With the exception of the following, TxDOT owns the data it inputs or causes to be input into TxPROS:

1. Data regarding the issuance and completion of any permits; and
2. Any data purchased from a third party under a contract that says otherwise.

M. TxDMV owns the data regarding the issuance and completion of any permits.

XVIII. SEVERABILITY

If any provision of this contract is held by a final judgment or order of a court of competent jurisdiction to be invalid, unenforceable, or illegal, such provision shall be reformed to the minimum extent necessary to permit enforcement thereof. The validity, enforceability, or legality of the remaining provisions of this contract shall not be affected or impaired, even if such invalid, unenforceable, or illegal provision cannot be reformed.

THE UNDERSIGNED PARTIES bind their respective agency to the faithful performance of this contract.
Attachment A

Cost of Services Provided by TxDOT Generally to State Agencies

TxDOT provides some services to multiple state agencies, including flight services and printing services. These services shall not be included or invoiced under this contract, and TxDMV shall be eligible to use these services in the same way and on the same terms as other state agencies.

Cost of Operating and Maintaining Facilities

TxDOT shall invoice TxDMV for time and materials associated with routine building operations, including utilities, routine building and grounds maintenance, security, and lease payments made by TxDOT on TxDMV’s behalf unless the expense was included in TxDOT’s appropriations. As of September 1, 2016, this amount is estimated at $50,000 per month and shall be adjusted to reflect demonstrated changes in the number or quantity of services provided by TxDOT with regard to facilities. TxDMV shall reimburse TxDOT for actual costs associated with requests for the relocation of fixed walls.

All Other Costs

All other costs shall be billed on the basis of actual costs incurred by TxDOT or TxDMV. Time of TxDOT or TxDMV employees shall be invoiced on an hourly basis at their appropriate pay rate. Materials shall be invoiced on a unit basis and shall consist of the actual cost to TxDOT or TxDMV for those materials.

Interagency Contract (IAC) Management

TxDOT and TxDMV agree to appoint a single point-of-contact for information technology (IT) issues, a single point-of-contact for non-IT issues, and back-up personnel to facilitate the process for requesting services and invoicing for those services between the two agencies. The designated points-of-contact in each agency shall act as the TxDMV and TxDOT project manager(s).

The Project Managers are as follows:
TxDOT Project Manager, Non-IT: Casey Rowe, Revenue Accounting Manager
TxDOT Back-Up Project Manager, Non-IT: Crystal Myers, Accounting Specialist
TxDMV Project Manager, IT: Tim Jennings, Information Management Division Director
TxDMV Back-Up Project Manager, IT: Dan Teczar, Operations Excellence Coordinator

TxDOT Project Manager, Non-IT: Sergio Rey, Director of Accounting
TxDMV Back-Up Project Manager, Non-IT: David Chambers, Director of Purchasing
TxDMV Project Manager, IT: Eric Obermier, CIO
TxDMV Back-Up Project Manager, IT: Josh Kuntz, Information Security Officer
TxDOT Project Manager, Non-IT: Casey Rowe, Revenue Accounting Manager
TxDOT Back-Up Project Manager, Non-IT: Crystal Myers, Accounting Specialist
TxDMV Project Manager, IT: Tim Jennings, Information Management Division Director
TxDMV Back-Up Project Manager, IT: Dan Teczar, Operations Excellence Coordinator
“Emergency situation” is defined as any unexpected, non-routine event which damages or affects the utility or safety of any building, system, or portion or component of a building in such a way that it prevents the reasonable business operational use of some or all of the facility. This does not include routine maintenance or normal wear and tear events.

Non-Emergency Services
Except in the event of an emergency situation, all work to be performed under this contract involving the cost of labor for agency employees shall be requested and performed through the use of a "Work Authorization" (WA). A single WA shall be issued on recurring services at the beginning of the fiscal year.

The receiving agency’s Project Manager (PM) shall provide the performing agency’s PM with a signed WA prior to any non-emergency work being done. If the receiving agency has not issued a WA, the performing agency shall have no obligation to provide the requested services. Any non-emergency work done without a signed WA shall not be billable under this contract. All approvals regarding work to be done under this contract shall occur between the TxDMV and TxDOT PM's.

Performing agency shall respond to all WA requests for non-emergency work within 10 days, unless mutually agreed by both parties.

Emergency Services
In the event of an emergency situation requiring work to be performed before a WA can be issued, the receiving agency’s PM must submit a request to the performing agency’s PM in writing, outlining the requested work and noting that the work requested is due to an emergency. The receiving agency shall follow up with a written WA within two business days of the event. Upon receipt of an itemized invoice, the receiving agency will reimburse the performing agency for its actual costs in performing the work. The receiving agency can request review of the causation of the emergency situation to determine if acts or omissions of the performing agency contributed to the event, and request that the performing agency pay some or all of the cost. In the event the parties assigned to the task cannot reach an agreement on allocation of costs, the WA may subsequently be subject to the Dispute Resolution Procedure set forth in this Attachment.

Routine Maintenance, Service and Utility Costs
Receiving agency shall pay for routine facility costs as set forth in Appendix II. The designated Non-IT Project Managers for the receiving and performing agency may review and adjust the charges on a periodic basis without the need for amending this contract, so long as any changes would not result in an expenditure in excess of an agency’s overall "not to exceed" budget amount in Paragraph IV of the agreement.

Data Center Services
TxDMV shall reimburse TxDOT monthly for the actual cost of data center services (DCS) being billed through TxDOT and not directly to TxDMV. The amount shall be
adjusted based on changes in the number or quantity of services that are billed through TxDOT. TxDOT will be conducting significant consolidation and decommissioning activities this year. If these activities will impact a TxDMV/TxDOT shared service, TxDOT shall provide TxDMV notification in advance and parties shall coordinate as needed. Conversely, any DCS changes initiated by TxDMV that impact TxDOT infrastructure shall be approved in TxDOT CAB prior to the change being implemented by DCS.

**Technology Daily Operations**
Requests for unusual support or involving the performance of work by TxDOT employees shall be billed by TxDOT to TxDMV at actual cost. Any requests by TxDMV that are implemented by a TxDOT contractor, including NTT DATA, shall be coordinated under a direct agreement between TxDMV and the application contractor. Billings shall be made directly to TxDMV with no TxDOT involvement or action required.

**Billing Review for IT Services**
On a quarterly basis the IT Project Managers (IT PMs) shall review the receiving agency’s use of DCS, software and server components governed by this agreement. The IT PMs may agree to adjust the charges for IT services without the need for amendment to this agreement, so long as any changes would not result in expenditure in excess of an agency’s overall “not to exceed” budget amount in Paragraph IV of the agreement.

**Work Authorization**
Each WA shall include the following information:
- the date of the request;
- the date range of work authorized to be performed;
- the amount of time authorized for delivery of services;
- the amount of expenditure authorized;
- a description of the deliverables/services authorized;
- the physical location where the services are authorized to be performed, including address, complex, and building number;
- a WA number;
- the receiving agency’s division number; and
- the receiving agency’s index to be charged.

**Submitting Invoices**
The receiving agency shall pay the performing agency on the basis of itemized invoices submitted to and approved by the receiving agency, showing:
- a reference to the WA number by line item;
- the performing agency’s Agency Number and Recurring Transaction Index (RTI);
- the performing agency’s non-IT PM’s e-mail address and phone number;
- the date range of work performed for the associated charge, unless otherwise specified on the WA or supporting documentation;
- copies of the original documentation that validates the charges, including third
party invoices with clear, legible descriptions, and the performing agency’s Staff Name/Salary Rate/Hours Worked.

f. the USAS Comptroller Object of Expense used by TxDOT;
g. allocation methodology; and
h. a certification that the charges shown are reasonable and necessary, and all appropriate and required supporting documentation is attached.

TxDOT must e-mail all invoices and supporting documentation to TxDMV at: DMV_FIN-INVOICES@txdmv.gov

TxDMV must e-mail all invoices and supporting documentation to TxDOT at: FIN_Invoices@txdot.gov.

If the invoices are clear, complete, and include all required supporting documentation, then the receiving agency shall process payment for all performing agency invoices submitted in accordance with this contract and Comptroller Post-Payment Audit guidelines. The receiving agency shall reimburse the performing agency within 30 calendar days of receipt. If the invoices are not clear and complete, then the receiving agency shall notify the performing agency of the need for clarification or documentation within five (5) calendar days of receipt. The receiving agency may also request additional documentation necessary for post-payment audit purposes. In addition, the receiving agency shall inform the performing agency of disputed items in any invoice within five (5) calendar days of receipt. Any items not disputed within this five calendar day period will be deemed acceptable.

Dispute Resolution

Any dispute over billing, payment or other issues arising in this Attachment or the Interagency Contract (IAC) generally shall be first discussed and negotiated by the two parties assigned to the task under the IAC. If they cannot agree on a resolution, the matter shall be summarized by the two parties and submitted to the non-IT Project Managers (PMs) specified under the IAC. If the two PMs cannot agree on a resolution, the matter shall be summarized and submitted to the Chief Financial Officer (CFO) of each agency. The agency CFOs shall be the final arbiter of all disputes.
Appendix I

TxDMV Use of TxDOT Austin Regional Office Space in the Event of Disaster

This Appendix is made part of the Interagency Contract between TxDOT and TxDMV, and is subject to all of the general terms and conditions of that Contract.

TxDMV responsibilities:

A. TxDMV shall provide written notice (email allowed) to TxDOT upon declaration of a disaster. A disaster for which the TxDMV Continuity of Operations Plan is implemented may be declared only by the TxDMV Executive Director, Deputy Executive Director, Chief Financial Officer, Chief Information Officer or General Counsel. The notice shall reference this Appendix to the Interagency Contract and request use of the Austin Regional Center (ARC) at the TxDOT Austin Parmer Lane Regional Office pursuant to the requirements and limitations of this Appendix.

B. TxDMV shall directly pay for and oversee any modifications necessary to the ARC, and any temporary installations, temporary facilities such as portable restrooms, generators, air conditioning or heating systems, computer or phone equipment, lighting, utilities or similar items needed to support temporary operations. TxDOT shall not be responsible for making any modifications unless otherwise agreed in writing.

C. TxDMV shall reimburse TxDOT for any actual costs incurred due to TxDMV’s use and occupancy of the ARC space, so long as TxDOT notifies TxDMV as soon as possible when it begins to incur costs (no longer than 48 hours after costs are being incurred) and allows TxDMV to provide alternative resources to offset TxDOT costs if possible.

D. TxDMV shall be responsible and liable for the safety, injury, and health of all TxDMV employees or contractors in the alternative facility.

E. During a disaster with a duration of more than 2 weeks, DMV may augment work space by leasing one or more temporary office trailers to be located in the ARC parking areas. TxDMV shall obtain and pay for the trailer(s) and any modifications, utility installation and expense, and all associated costs (including demobilization and removal). TxDMV shall consult with and obtain prior written permission from TxDOT for the location of these temporary trailers and all associated support structures.

F. TxDMV shall remove and pay the cost of all modifications made to the ARC after cessation of emergency operations, unless TxDOT informs TxDMV in writing to
G. TxDMV shall repair any damage to the ARC caused during TxDMV use of the facility during the emergency.

H. During the period of use of the ARC, TxDMV and its employees shall follow facility management, building maintenance, parking and security policies, procedures, and standards established by TxDOT. Requests for deviation from these policies, procedures, and standards shall be submitted in writing by TxDMV to TxDOT, who shall reply as soon as possible, but no later than 48 hours after the request.

I. During the occupancy of space at the ARC, TxDMV shall provide TxDOT weekly status reports regarding the use of the ARC and TxDMV’s progress in responding to the disaster and either returning operations to the TxDMV Headquarters site or another location.

J. Within two weeks of the conclusion of the disaster and moving all equipment and personnel out of the ARC, TxDMV shall provide a final report to TxDOT documenting all modifications performed and any repairs needed or modifications not yet removed along with a schedule for completion of those items.

**TxDOT responsibilities:**

A. Upon receipt of notice of a declared disaster as set forth in the TxDMV Responsibilities section, TxDOT shall provide as soon as practical, but in no case later than 24 hours after notice, the following support services to TxDMV for the duration of the disaster:

1. Use of:
   a. all available, unused office space in the TxDOT-controlled portions of the main building at the ARC, including all in-place utilities and fixtures;
   b. the main conference room in the main building of the ARC;
   c. two equipment maintenance bays (non-climate controlled space with overhead door access), preferably the two bays immediately adjacent at the rear of the main ARC office building.

2. For a disaster of a duration of more than two weeks, upon written request from TxDMV, space for placement of one or more temporary office trailers, in a location as near as possible to the main ARC building.

3. 24-hour controlled access to the referenced buildings, facilities and associated parking lots.

4. Cooperation on installation and use of portable or temporary equipment or
facilities such as generators, portable buildings, computer or phone equipment, tables, chairs, desks, air conditioners, fans, cabling and the like.

B. Within 30 days of notice from TxDMV of the cessation of a disaster, TxDOT shall provide notice to TxDMV of any necessary repairs or expenses incurred due to TxDMV’s use of the ARC premises, and shall include in that notice any requests to retain any equipment or modifications which would otherwise be removed or surplused by TxDMV.

C. TxDOT shall notify TxDMV within 48 hours of incurring any expenses as a result of TxDMV’s occupancy of the additional ARC space under this Appendix, and shall allow TxDMV to provide alternative services or personnel to avoid or offset such costs.
To: Board of the Texas Department of Motor Vehicles (TxDMV)
From: Sandra Menjivar-Suddeath
Agenda Item: 2. A. i. d. - FY2017 Annual Audit Plan
Subject: Approval of the FY2017 Annual Audit Plan

**RECOMMENDATION**
Recommendation to the full board for approval of the Fiscal Year 2017 Internal Audit Plan

**PURPOSE AND EXECUTIVE SUMMARY**
The Texas Internal Auditing Act (Govt Code 2102.008) requires that the annual audit plan be approved by the agency's governing Board. The Finance and Audit Committee recommends to the full board approval of the Fiscal Year 2017 Internal Audit Plan. The audit plan is the work plan for the Internal Audit Division in Fiscal Year 2017.

**FINANCIAL IMPACT**
None.

**BACKGROUND AND DISCUSSION**
The Texas Internal Auditing Act (Govt Code 2102.008) requires that the annual audit plan be approved by the agency's governing Board. The audit plan lists the following:

- 7 proposed reports, audits, and advisory services to be done in Fiscal Year 2017,
- Other Internal Audit division duties, and
- 4 contingency audits and advisory services.

Specifically, the proposed audit plan includes 2 required reports, 3 audits, 1 advisory service, and a special request placeholder. The special request placeholder will allow Internal Audit to respond and address any unforeseen risks that may come up throughout the fiscal year. This special request can come from Management, the Board, or both. If there is no special request, Internal Audit will conduct one of the contingency audits (e.g., "Other Possible Projects to consider if Resources are Available" section). A total of 4 contingency audits and advisory services have been developed that include 3 audits and 1 advisory service.

The annual audit plan was developed using a risk based approach and input from the Board members and senior management. The audit plan also considers State Auditor's Office (SAO) guidelines when developing the plan.
TxDMV Internal Audit Plan
for Fiscal Year 2017
Internal Audit Division
September 1, 2016
September 1, 2016

Mr. Raymond Palacios, Jr., Chair
Board of Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, Texas 78731

Subject: Internal Audit Plan for Fiscal Year 2017

Dear Chair Palacios:

The Internal Audit Division has finalized the proposed Texas Department of Motor Vehicles (TxDMV) Internal Audit Plan for Fiscal Year 2017 (audit plan) for the TxDMV Board’s review and approval.

The Texas Internal Auditing Act requires that internal audit develop an annual audit plan. This proposed audit plan incorporates the TxDMV Board and the agency’s senior management comments.

The proposed audit plan includes the following:

- Statutorily required reports
- Risk-based audits and an advisory service project
- One carry-over audits from the Fiscal Year (FY) 2016 audit plan that will be substantially completed by August 31, 2016 but not ready for release until FY2017
- One carry-over audit from the FY2016 audit plan that we will start in FY2017

In addition to the audit plan projects, the Internal Audit Division anticipates other activities, such as coordinating with external auditors and investigating allegations of fraud, waste, and abuse.

If you have any questions or comments, please contact me at (512) 465-4118 or Sandra.Menjivar-Suddeath@txdmv.gov.

Respectfully,

Sandra Menjivar-Suddepth
Internal Audit Director

cc: Ms. Luanne Caraway, Finance and Audit Committee Member
Mr. Guillermo “Memo” Trevino, Finance and Audit Committee Member
Mr. Robert “Barney” Barnwell, Board Member
Mr. Brett Hillman Graham, Board Member
Ms. Catherine “Kate” Wiles Hardy, Board Member
Mr. Blake Ingram, Board Member
Mr. Gary Wayne Painter, Board Member
Mr. John Henry Walker III, Board Member
Ms. Whitney Brewster, TxDMV Executive Director
Ms. Shelly Mellott, TxDMV Deputy Executive Director
TxDMV Division Directors
<table>
<thead>
<tr>
<th>Topic</th>
<th>Division</th>
<th>Background and Preliminary Objectives</th>
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<tbody>
<tr>
<td><strong>Required Reports under the Texas Internal Auditing Act</strong></td>
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<tr>
<td><strong>1. Fiscal Year 2016 Annual Internal Audit Report</strong></td>
<td>Agency-wide</td>
<td><strong>Background</strong>: A summary of internal audit activities, including the status of the FY 2016 audit plan, non-audit services provided, and external audit services procured; and the FY 2017 audit plan. This report must be submitted before November 1 of each year to the Governor, the Legislative Budget Board, the State Auditor’s Office, the Sunset Advisory Commission, and the TxDMV Board and be posted on the agency’s website (Government Code, Section 2102.009).</td>
</tr>
<tr>
<td><strong>2. Fiscal Year 2018 Internal Audit Plan</strong></td>
<td>Agency-wide</td>
<td><strong>Background</strong>: The annual audit plan is prepared using risk assessment techniques to identify individual audits to be conducted during the year. The TxDMV Board must review and approve the annual audit plan (Government Code, Section 2102.005).</td>
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<tr>
<td><strong>Audits and Advisory Services</strong></td>
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| **1. Oversize/Overweight Permitting** | Motor Carrier | **Background**: The TxDMV regulates oversize vehicles and loads on highways and bridges. In fiscal year 2014, the Oversize/Overweight Permits Section issued over 836,000 permits; responded to over 198,000 permit-related calls from customers, and collected more than $178 million in fees. The agency uses the Texas Permitting and Routing Optimization System (TxPROS), an online permitting & mapping system, to allow customers to apply for and self-issue many permits. **Tentative Objectives:**

(1) Determine whether the TxDMV issues Oversize/Overweight permits and collects the appropriate fees in accordance with laws and regulations

(2) Determine whether the TxDMV validates, updates, and communicates route restriction information on a timely basis to ensure routes are safe for permitted Oversize/Overweight loads |
<table>
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<tr>
<th>Topic</th>
<th>Division</th>
<th>Background and Preliminary Objectives</th>
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| 2. RTS Refactoring and Single Sticker Post-implementation Review | Agency-wide | Background: Refactored RTS included COGNOS reports that replaced standard reports from legacy RTS and included updated ad hoc reporting capabilities. Staff and management use information from COGNOS reports to make strategic and operational decisions.  
Tentative Objectives:  
(1) Determine whether COGNOS reports provide management and staff with complete and accurate information from RTS  
(2) Determine whether COGNOS reports provide at least the same level of information or service as reports from the legacy RTS |
| 3. TxDMV Fund tables and Process & Handling Fees | FAS, ITS, VTR | Background: SB 1512 (84th Texas Legislature) re-created and re-directs revenue sources for the TxDMV fund starting September 1, 2016. HB 6 exempts the fund and its revenues from consolidation. The intent of the bill is to separate the fund from the General Revenue and State Highway funds, allowing the TxDMV to fund its operations.  
The TxDMV Board of Directors used its authority to adopt a P&H fee structure to fund agency operations during its June board meeting. The P&H fees are effective for motor vehicle registrations starting January 2017.  
Tentative Objectives:  
(1) Determine whether appropriate revenues, including registration fees, are deposited to the TxDMV fund appropriately  
(2) Determine whether appropriate amounts are transferred to counties per agency rule |
<table>
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<tr>
<th>Topic</th>
<th>Division</th>
<th>Background and Preliminary Objectives</th>
</tr>
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<tbody>
<tr>
<td>4. Continuous Monitoring of Vehicle</td>
<td>VTR/ITS</td>
<td><strong>Background:</strong> Fiscal year 2016 had a number of suspicious and fraudulent registration and title transaction activities within the agency and through Tax-Assessor Collectors, including high visibility arrests related to alleged fraud. The agency employs 1 investigator to investigate suspected title fraud. Auditors would analyze registration and title transactions from the RTS on a scheduled basis to identify suspicious and possibly fraudulent transactions processed by the agency or Tax-Assessor Collectors. Refer suspicious and possible fraudulent transactions to VTR to investigate.</td>
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<tr>
<td>Registration and Title Transactions</td>
<td></td>
<td>1000 hours</td>
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<tr>
<td>1000 hours Advisory Project</td>
<td></td>
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<tr>
<td>5. Management or Board Request</td>
<td>TBD</td>
<td><strong>Time has been allotted to management and commission for a special request or to review a new and emerging risk for the agency. If no request is received, one of the audits from the other possible project list will be conducted.</strong></td>
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<td>350 hours</td>
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**Other Internal Audit Division Duties**

- Coordinating with external auditors and reviewers (25 hours)
- Investigating allegations of fraud, waste, and abuse that Internal Audit receives or that the State Auditor’s Office refers from its fraud hotline and advising on the Anti-Fraud, Waste, and Abuse Workgroup (300 hours)
- Conducting an annual Quality Assurance and Improvement Program as required by auditing standards (75 hours)
- Tracking and monitoring the status of prior-year audit recommendations (100 hours)
- Advising the agency’s Governance Team and Executive Steering Committees (425 hours)

**Total Budgeted Hours on Required Reports, Audits, and Advisory Service:** 4,285
**Total Budgeted Hours on Other Internal Audit Division Duties:** 925
**Total Budgeted Hours:** 5,210
## Other Possible Projects to Consider if Resources are Available

<table>
<thead>
<tr>
<th>Project Description</th>
<th>Hours</th>
<th>Agency/Division</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Planning and Requirements Analysis Process for Major Projects</strong></td>
<td>1000</td>
<td>Agency-wide</td>
</tr>
<tr>
<td><strong>2. MyPlates Contract</strong></td>
<td>600</td>
<td>FAS</td>
</tr>
<tr>
<td><strong>3. Motor Vehicle Division Licensing Process and eLicensing</strong></td>
<td>1400</td>
<td>MVD</td>
</tr>
<tr>
<td><strong>4. Enforcement Division’s Investigations Process</strong></td>
<td>600</td>
<td>ENF</td>
</tr>
</tbody>
</table>

### 1. Planning and Requirements Analysis Process for Major Projects
- **Agency-wide**
- **Background:** The TxDMV has experienced changes in scope, budget, and schedule in developing major systems. This project would review major project documentation to evaluate activities conducted during the planning and requirements analysis phases to determine what actions could be changed to facilitate a smoother system development in the future.

### 2. MyPlates Contract
- **FAS**
- **Background:** Executive Management Team rated this project for considerations for future audit plans during the FY2015 IAD risk assessment.
- **Tentative Objective:** Determine whether TxDMV and MyPlates adhere to contract provisions—including requirements related to fee collections and distributions.

### 3. Motor Vehicle Division Licensing Process and eLicensing
- **MVD**
- **Background:** The MVD adjusted its process to license independent, franchise, and salvage dealers starting in 2013, which greatly reduced the time for applicants to receive a license (from as much as 6 months). The eLicensing system is scheduled to go live in October. This project would evaluate MVD’s process after go live.
- **Tentative Objectives:**
  1. Determine if MVD’s licensing process complies with statutory and rule requirements
  2. Review eLicensing’s impact on the licensing process post-implementation.

### 4. Enforcement Division’s Investigations Process
- **ENF**
- **Background:** The Enforcement Division investigates complaints against licensees regulated by TxDMV, and files administrative charges alleging violation of laws.
- **Tentative Objectives:**
  1. Determine whether investigations are conducted according to statutes, rules, and policies & procedures
  2. Determine how the division’s key performance indicators affect investigations
Methodology

Scope

The Internal Audit Plan for Fiscal Year 2017 covers the period of September 1, 2016 to August 31, 2017.

Risk Assessment

The audit plan was developed using a risk-based methodology including input from Board members and senior management. Internal Audit also analyzed agency information to rank potential audit topics by risk, including contracting risk.

The State Auditor’s Office (SAO) guidelines for the Internal Audit Plan for Fiscal Year 2016, request that internal audit indicate which projects in the audit plan address expenditure transfers, capital budget controls, contract management, and information technology risks. The proposed audits that address these topics are the following:

- TxDMV Fund tables and Process & Handling Fees and RTS Refactoring and Single Sticker Post-implementation Review will address information technology risks
- TxDMV Fund tables and Process & Handling Fees will address expenditure transfers and capital budget controls
- TxDMV Fund tables and Process & Handling Fees and My Plates Contract—if resources are available—will address contract management

Hour Analysis

Hours were calculated using historical data and auditor’s judgement. Hours are an estimate and could be adjusted during the fiscal year.
To: Board of the Texas Department of Motor Vehicles (TxDMV)  
From: Linda M. Flores, CPA, Chief Financial Officer  
Agenda Item: 2.A.1.b. REVISED  
Subject: FY 2017 Recommended Operating Budget and Contracts for American Association of Motor Vehicle Administrators (AAMVA) and Southwest Research Institute (SwRI)

RECOMMENDATION

The Finance and Audit Committee recommends to the full board approval of the Fiscal Year 2017 Recommended Operating Budget.

Also, the Finance and Audit Committee recommends to the full board approval for the Executive Director to negotiate and execute the routine and required contracts contained in Part II of the document and specific approval of the following two contracts:

- Southwest Research Institute (SwRI) - These funds will be used to increase the current contract with SwRI, a staff-recommended contractor that provides specialized assistance and consulting services, to modify the Texas Commercial Vehicle Information Exchange Window (TxCVIEW).
- American Association of Motor Vehicle Administrators (AAMVA) National Motor Vehicle Title Information System (NMVTIS) - To allow the agency to maintain access to the AAMVA National Motor Vehicle Title Information System (NMVTIS) for September 1, 2016-August 31, 2017.

PURPOSE AND EXECUTIVE SUMMARY

2017 Recommended Operating Budget

The Texas Department of Motor Vehicles (TxDMV) develops annual operating budgets based on approved biennial appropriations. The recommended operating budget implements Year 2 of the biennium. The recommended operating budget reflects the establishment of the TxDMV Fund and is structurally balanced to support recurring expenses. The budget allocates $192 million through the agency’s organization. The budget includes the following major initiatives:

- Implementation of the processing and handling (P&H) fee
- Relocation of three regional service centers and Bull Creek staff
- Establishment of the TxDMV fund
- Implementation of the eLICENSING project and the refresh of county technology equipment

Contracts

The purpose of the contract with SwRI is to make modifications to the TxCVIEW as Federal Motor Carrier Safety Administration (FMCSA) moves their data to a cloud environment, modifies some of their web services, changes databases or requirements for TxCVIEW, and FMCSA’s rolling out a new Unified Carrier Registration application.

The purpose of the contract with AAMVA is to provide online access to meet the TxDMV’s obligation to receive and report information to the National Motor Vehicle Title Information System (NMVTIS) as required by federal statute. NMVTIS serves as a repository of information related to vehicles that have been in the possession of auto recyclers, junk yards and salvage yards. States and consumers use the information to ensure that junk or salvage vehicles are not later resold and ensures that VINS from destroyed vehicles are never used for stolen vehicles.
FINANCIAL IMPACT

2017 Recommended Operating Budget

TxDMV is a net revenue-generating agency for the state. Effective September 1, 2016, TxDMV will begin depositing revenue into a new agency fund recreated by the 84th Legislature, the TxDMV Fund (0010). The agency’s budget request is supported by collections. The staff estimates that TxDMV will collect approximately $3.86 billion for the State while retaining $39.2 million for baseline agency operations in the next fiscal year. The remainder of the agency’s budget is funded by a combination of General Revenue, the State Highway Fund (for Automation) and Federal reimbursements.

Contracts

SwRI - The Motor Carrier Division (MCD) requests to increase the SwRI contract by $310,000. Of that amount MCD projects that $130,000 will be received from the Federal Motor Carrier Safety Administration (FMCSA) 2016 CVISN grant when the grant is awarded (late August/early September) as part of a Memorandum of Understanding with the Texas Department of Public Safety (TxDPS). MCD will use $180,000 in currently budgeted funds for state match.

AAMVA - States are required to pay user fees approved by the U.S. Department of Justice and assessed by AAMVA as the system operator. AAMVA with state approval, has established a system of user fees for the states that is based on the number of vehicles titled in each state and, using a tier-based system, bills each state. Texas receives a credit from a portion of the fee paid by consumers conducting a vehicle title history inquiry (Title Check), where Texas is the current state of record. The estimated amount of the contract in Part II of the 2017 Operating Budget document reflected $240,000 (an estimate of the NMVITIS contract less credits). The contract amount requested for approval has now been adjusted to $268,075 per the invoice received from AAMVA on August 4, 2016.

BACKGROUND AND DISCUSSION

2017 Recommended Budget

The FY 2017 Recommended Operating Budget is $192 million. This budget includes $52.5 million for capital projects which will provide funding for TxDMV Automation, AMSIT, Data Center Services (DCS), County Technology Replacement, Agency Growth and Enhancement, and RSC/Bull Creek facility relocations. The budget also reflects an allocation of 763 FTEs approved as part of the 2016/17 state budget passed by the Legislature and signed by the Governor. $39.2 million of the total budget is funded by the TxDMV Fund, with the remainder of the budget funded by a combination of General Revenue, the State Highway Fund (for Automation) and Federal reimbursements.

Contracts

The agency executes contracts that are statutorily required and also executes contracts that are not required by law but enable it to perform its duties and operations. The Board’s approval of the operating budget constitutes approval of contracts listed in the operating budget.

The agency will execute approximately 195 new contracts and renewals of existing contracts that are not statutorily required but assist the agency in performing its operations.

There are two contracts that require Board approval for the award and/or renewal and proposed contract amounts for Fiscal Year 2017.

SwRI for TxCVIEW - The TxDMV provides a one-stop shop for needed permits and registrations through its Motor Carrier Division (MCD). TxDMV is also the lead agency responsible for maintaining the Texas Commercial Vehicle
Information Exchange Window (TxCVIEW), which increases Motor Carrier Safety in the state and aims to reduce fraud.

TxCVIEW currently provides the tools used to share safety and other data between TxDMV, other state agencies as well as all other states. Administration is handled by TxDMV and through a Working Group and a separate Executive Steering Committee. Voting members are TxDMV and the other state partner agencies include: the Texas Department of Transportation (TxDOT), Texas Department of Public Safety (TxDPS), and the Texas Comptroller of Public Accounts (TxCPA). Industry participates in decision making through the Texas Trucking Association (TxTA). Federal funds are available through the Federal Motor Carrier Safety Administration (FMCSA).

AAMVA for NMVTIS - The purpose of NMVTIS is to assist in efforts to prevent the introduction or reintroduction of stolen motor vehicles into interstate commerce, protect states and individual and commercial consumers from fraud, reduce the use of stolen vehicles for illicit purposes, including fundraising for criminal enterprises, and provide consumer protection from unsafe vehicles. State participation as of January 1, 2010, in the NMVTIS is mandatory.

Access allows the TxDMV Vehicle Titles and Registration (VTR) Division to seamlessly query the NMVTIS system to verify the accuracy of titles presented to them and improve the quality and method in which information is provided to the NMVTIS system.
Fiscal Year 2017 Operating Budget

Revised
August 2016
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Part I: Fiscal Year 2017 Operating Budget
Agency Summary

TxDMV is governed by a nine member board appointed by the Governor, with the advice and consent of the Senate, to serve six-year overlapping terms. The agency’s mission is “to serve, protect and advance the citizens and industries in the state with quality motor vehicle related services.”

The Executive Director, Whitney Brewster, and Deputy Executive Director, Shelly Mellott, oversee the agency’s day-to-day operations. The executive director reports to the agency board and directs staff to enact operational changes as a result of enacted legislation and implement policies and rules approved by the board.

The pie chart below reflect the Fiscal Year 2017 operating budgets by category. A description of the budget categories can be found in Appendix A.

The agency’s Fiscal Year 2017 operating budget of approximately $192 million is a net decrease of $4 million over the Fiscal Year 2016 revised budget of $196 million. The decrease is driven by reduced appropriations for technology projects (including Automation and AMSIT, which were front-loaded in 2016), and the Data Center Contract account for a $25 million decrease. The decrease is offset by additional costs for online fulfillment, credit card fees and a $10 million increase in the estimated carry-forward from Fiscal Year 2016 to 2017 (compared to the estimated carry-forward from Fiscal Year 2015 to 2016).
Beginning Fiscal Year 2017, the agency's method of financing will change from General Revenue (except for the Automobile Burglary and Theft Prevention Authority), to the TxDMV Fund, which is funded by dedicated revenue streams.

Major agency initiatives in fiscal 2017 include implementation of the processing and handling (P&H) fee, relocation of three regional service centers, establishment of the TxDMV fund and relocation of headquarters staff at Bull Creek. Major capital budget initiatives includes the refresh of county technology equipment and implementation of the eLICENSING project.

The TxDMV budget is primarily allocated to registration, titling, and license plates and upgrading agency technology. The pie chart below shows that 35.6% of the budget is allocated to technology enhancement (26.3%) and technology administration (9.3%). Of the 26.3% budgeted for technology enhancement, more than three-quarters is earmarked for Automation projects. A total of 25.5% of the agency budget is dedicated to license plates (12.6%) and the production of registration and title materials (12.9%).

Program Administration (16.6%) includes budgets for administration of agency programs including ABTPA, Motor Vehicle, Motor Carrier programs (Oversize/Overweight and Texas IRP), Inspections and Enforcement, Lemon Law (including management and administrative hearings), and Registration and Titling activities. The remainder of the budget includes funding for central administration/support services (11.2%), grants for ABTPA (7.5%), and the MyPlates contract (3.6% percent).
### Fiscal Year 2017 Strategy Appropriations

The GAA appropriated $145 million for Fiscal Year 2017. The GAA also includes additional appropriations for legislatively approved salary increases, certain unexpended balances and other allowable costs. The following chart depicts the TxDMV Fiscal Year 2017 budget by Program Goal and Strategy.

<table>
<thead>
<tr>
<th>A. Goal: Optimize Services and Systems</th>
<th>FY 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.1.1. Strategy: Titles, Registrations, and Plates</td>
<td>$73,600,156</td>
</tr>
<tr>
<td>A.1.2. Strategy: Vehicle Dealer Licensing</td>
<td>$4,094,083</td>
</tr>
<tr>
<td>A.1.3. Strategy: Motor Carrier Permits &amp; Credentials</td>
<td>$8,793,892</td>
</tr>
<tr>
<td>A.1.4. Strategy: Technology Enhancement &amp; Automation</td>
<td>$2,583,993</td>
</tr>
<tr>
<td>A.1.5. Strategy: Customer Contact Center</td>
<td>$2,154,621</td>
</tr>
<tr>
<td><strong>Total, Goal A: Optimize Services and Systems</strong></td>
<td><strong>$91,226,745</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B. Goal: Protect the Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>B.1.1. Strategy: Enforcement</td>
</tr>
<tr>
<td>B.2.1. Strategy: Automobile Theft Prevention</td>
</tr>
<tr>
<td><strong>Total, Goal B: Protect the Public</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>C. Goal: Indirect Administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>C.1.1. Strategy: Central Administration</td>
</tr>
<tr>
<td>C.1.2. Strategy: Information Resources</td>
</tr>
<tr>
<td>C.1.3. Strategy: Other Support Services</td>
</tr>
<tr>
<td><strong>Total, Goal C: Indirect Administration</strong></td>
</tr>
</tbody>
</table>

**Total TxDMV Appropriation Budget** $145,228,701

<table>
<thead>
<tr>
<th>Other Adjustments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated Appropriation Salary Increase for General State Employees Article IX Sec 18.02</td>
</tr>
<tr>
<td>Estimated Increase for Benefit Replacement Pay</td>
</tr>
<tr>
<td>Article IX, Sec. 8.15 Cost Recovery of Fees - Online Fulfillment &amp; Credit Card Fees</td>
</tr>
</tbody>
</table>

Projected Unexpended Balance Carry-forward ($37,629,162)

- Federal Grants and State Matching Fund (CVISN) | $435,000 |
- Capital - Tx Automation Systems Article VII Rider 5 | $23,693,671 |
- Article IX, Sec. 14.03(i) Limitation on Expenditures - Capital Budget
  - AMSIT | $6,990,955 |
  - Data Center Consolidation | $1,937,826 |
  - Technology Replacement & Upgrades - County Support | $3,699,003 |
  - Agency Growth & Enhancements & Relocation of RSC | $872,707 |

**Subtotal, Other Adjustments** $46,512,085

**Total TxDMV Operating Budget** $191,740,786

<table>
<thead>
<tr>
<th>Method of Finance</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Revenue Fund</td>
</tr>
<tr>
<td>DMV Fund</td>
</tr>
<tr>
<td>State Highway Fund (estimated Automation UB)</td>
</tr>
<tr>
<td>Federal Reimbursements</td>
</tr>
</tbody>
</table>

**Total, Method of Finance** $191,740,786
The General Appropriations Act provides the agency with its total appropriation amount by goal and strategy. In comparison, the purpose of the operating budget is to establish a specific operating budget allocation by division and capital project.

The table below outlines TxDMV’s Fiscal Year 2017 operating budget and the number of FTEs by division/office.

<table>
<thead>
<tr>
<th>Division/Office</th>
<th>FY 2017 Preliminary Budget</th>
<th>FTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automobile Burglary and Theft Prevention Authority</td>
<td>$14,920,849</td>
<td>5.0</td>
</tr>
<tr>
<td>Board Support Office</td>
<td>$139,177</td>
<td>1.0</td>
</tr>
<tr>
<td>Consumer Relations Division</td>
<td>$2,195,154</td>
<td>45.0</td>
</tr>
<tr>
<td>Enforcement Division</td>
<td>$5,375,828</td>
<td>82.0</td>
</tr>
<tr>
<td>Enterprise Project Management Office</td>
<td>$1,572,954</td>
<td>17.0</td>
</tr>
<tr>
<td>Executive Office*</td>
<td>$637,411</td>
<td>5.0</td>
</tr>
<tr>
<td>Finance and Administrative Services Division</td>
<td>$35,805,837</td>
<td>71.0</td>
</tr>
<tr>
<td>Office of General Counsel</td>
<td>$1,025,938</td>
<td>11.0</td>
</tr>
<tr>
<td>Government and Strategic Communications Division</td>
<td>$1,140,338</td>
<td>10.0</td>
</tr>
<tr>
<td>Human Resources Division</td>
<td>$951,564</td>
<td>8.0</td>
</tr>
<tr>
<td>Information Technology Services Division</td>
<td>$16,275,300</td>
<td>92.0</td>
</tr>
<tr>
<td>Office of Innovation &amp; Strategy</td>
<td>$128,150</td>
<td>1.0</td>
</tr>
<tr>
<td>Internal Audit Office</td>
<td>$293,500</td>
<td>3.0</td>
</tr>
<tr>
<td>Motor Carrier Division</td>
<td>$7,164,420</td>
<td>119.0</td>
</tr>
<tr>
<td>Motor Vehicle Division</td>
<td>$2,423,586</td>
<td>38.0</td>
</tr>
<tr>
<td>Office of Administrative Hearings</td>
<td>$413,685</td>
<td>5.0</td>
</tr>
<tr>
<td>Vehicle Titles and Registration Division</td>
<td>$36,219,738</td>
<td>250.0</td>
</tr>
<tr>
<td>Agency Wide**</td>
<td>$12,542,264</td>
<td>0.0</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>$139,225,693</td>
<td>763.0</td>
</tr>
</tbody>
</table>

**Capital Projects and Projected Carry-forward**

<table>
<thead>
<tr>
<th>Capital Projects and Projected Carry-forward</th>
<th>FY 2017 Preliminary Budget</th>
<th>FTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Data Center Consolidation</td>
<td>$7,636,433</td>
<td></td>
</tr>
<tr>
<td>Technology Replacement &amp; Upgrades - County Support</td>
<td>$5,500,000</td>
<td></td>
</tr>
<tr>
<td>Growth &amp; Enhancements - Agency Operations Support</td>
<td>$949,498</td>
<td></td>
</tr>
<tr>
<td>Relocation of Bull Creek Campus Facilities</td>
<td>$800,000</td>
<td></td>
</tr>
<tr>
<td>Projected Unexpended Balance Carry-Forward</td>
<td>$37,629,162</td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>$52,515,093</td>
<td></td>
</tr>
</tbody>
</table>

**Agency Total**

| Agency Total                                         | $191,740,786               |     |

**Method of Finance**

<table>
<thead>
<tr>
<th>Method of Finance</th>
<th>FY 2017 Preliminary Budget</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>General Revenue Fund</td>
<td>$38,595,666</td>
<td></td>
</tr>
<tr>
<td>DMV Fund</td>
<td>$139,190,775</td>
<td></td>
</tr>
<tr>
<td>State Highway Fund (estimated Automation UB)</td>
<td>$13,736,845</td>
<td></td>
</tr>
<tr>
<td>Federal Reimbursements</td>
<td>$217,500</td>
<td></td>
</tr>
<tr>
<td><strong>Method of Finance Total</strong></td>
<td>$191,740,786</td>
<td></td>
</tr>
</tbody>
</table>

*Executive office includes $105,330 and 1 FTE for Civil Rights Office.

**Includes costs for online fulfillment, primarily credit card fees to Tx.gov.
*Note: Although these positions report directly to the ED, rank is equivalent to the Motoring Services Division Directors. The DED assumes the responsibilities of the ED in absentia.
Part II: Fiscal Year 2017 Contracts
Fiscal Year 2017 Contract Summary

The agency executes contracts that are statutorily required and also executes contracts that are not required by law but enable it to perform its duties and operations. The Board’s approval of the operating budget constitutes approval of any contracts listed in the operating budget.

The agency will execute approximately 195 new contracts and renewals of existing contracts that are not statutorily required but assist the agency in performing its operations.

The agency anticipates the renewal of 17 statutorily required contracts in Fiscal Year 2017.

The Fiscal Year 2017 budget currently includes:

- 14 contracts of more than $200,000
  - 2 of which require board approval
- 9 contracts between $100,000-$200,000
- 137 contracts of less than $100,000
- 18 IT Staff Augmentation contracts
- 17 statutorily required contracts

The following pages detail both statutorily required and optional contracts by division, vendor, purpose, contract period, and amount.

Note:

The contracts listed on the following pages are subject to change based on the final terms and conditions negotiated.
Fiscal Year 2017 Delegated and Statewide Contracts more than $200,000

Contracts, including Statewide Contracts that have a cumulative cost value of more than $200,000, (Commodities over $25,000 and Services over $100,000 must be reviewed by the Texas Comptroller of Public Accounts; Government Code 2156.121) may be delegated to the agency by the Texas Comptroller of Public Accounts. The executive director must obtain board approval for contracts $200,000 or more prior to award or renewal unless specifically excluded and ensure that the contract is within budget guidelines in accordance with established procurement contract laws, rules, regulations and policies of oversight agencies.

The contracts listed below require Board approval for the award and/or renewal and proposed contract amounts for Fiscal Year 2017. Additional procurements may be conducted during the fiscal year and will be presented to the Board individually upon occurrence.

<table>
<thead>
<tr>
<th>Division</th>
<th>Vendor</th>
<th>Purpose</th>
<th>Contract Period</th>
<th>FY 2017 Contract Amount</th>
<th>Total Contract Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motor Carrier</td>
<td>Southwest Research Institute</td>
<td>MCD requests to increase the Southwest Research Institute purchase order by $310,000. Of that amount we project that $130,000 will be received from the Federal Motor Carrier Safety Administration (FMCSA) 2016 CVISN grant when the grant is awarded (late August/early September) to DPS. These funds will be used to make modifications to the Texas Commercial Vehicle Information Exchange Window (TxCVIEW) as FMCSA moves their data to a cloud environment, modifies some of their web services, changes databases or requirements for TxCVIEW, and FMCSA's rolling out a new Unified Carrier Registration application.</td>
<td>3/31/2014 - 1/31/2018</td>
<td>$310,000</td>
<td>$1,960,000</td>
</tr>
<tr>
<td>Vehicle Titles and</td>
<td>American Association of</td>
<td>Information systems title check through AAMVA</td>
<td>10/1/2016 - 9/30/2017</td>
<td>$268,075</td>
<td>$268,075</td>
</tr>
<tr>
<td>Registration</td>
<td>Motor Vehicle Administration</td>
<td></td>
<td></td>
<td>240,000</td>
<td>240,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Total</td>
<td>$578,075</td>
</tr>
</tbody>
</table>

*The updated contract amount reflects the revised amount including the credits per an invoice received from AAMVA on August 4, 2016.*
Excluded Contracts
The following contracts have a cumulative cost value of more than $200,000. In accordance with the Board Resolution Adopting Contract Approval Procedures, these contracts are excluded from Board approval procedures. These contracts include (1) routine operations; (2) procured from the Texas Council on Competitive Government (CCG); (3) Texas Department of Information Resources (DIR); and (4) Texas Procurement and Support Services (TPASS).

<table>
<thead>
<tr>
<th>Division</th>
<th>Vendor</th>
<th>Purpose</th>
<th>Contract Period</th>
<th>FY 2017 Contract Amount</th>
<th>Total Contract Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Projects</td>
<td>Deloitte Consulting LLP</td>
<td>e-Licensing</td>
<td>8/31/2015</td>
<td>$237,193</td>
<td>$4,570,480</td>
</tr>
<tr>
<td>Capital Projects</td>
<td>TX Dept. of Transportation</td>
<td>CVISN Advance Bridge Clearance</td>
<td>10/9/2015</td>
<td>$350,000</td>
<td>$435,000</td>
</tr>
<tr>
<td>Capital Projects</td>
<td>Deloitte Consulting LLP</td>
<td>RTS Workstream 4</td>
<td>11/19/2015</td>
<td>$3,500,000</td>
<td>$10,850,000</td>
</tr>
<tr>
<td>Capital Projects</td>
<td>INSIGHT PUBLIC SECTOR INC</td>
<td>County refresh and ongoing maintenance of County equipment</td>
<td>8/7/2016</td>
<td>$7,507,635</td>
<td>$7,915,635</td>
</tr>
<tr>
<td>Capital Projects</td>
<td>Deloitte Consulting LLP</td>
<td>RTS Refactoring</td>
<td>8/1/2013</td>
<td>$1,183,173</td>
<td>$22,349,791</td>
</tr>
<tr>
<td>Finance and Administrative Services</td>
<td>RAGSDALE-BROOK</td>
<td>Houston RSC</td>
<td>6/26/2014</td>
<td>$288,621</td>
<td>$3,037,604</td>
</tr>
<tr>
<td>Information Technology Services</td>
<td>EXPLORE INFORMATION SERVICE LLC</td>
<td>IRP Software Maintenance</td>
<td>7/17/2014</td>
<td>$322,312</td>
<td>$995,561</td>
</tr>
<tr>
<td>Information Technology Services</td>
<td>HP ENTERPRISE SERVICES LLC</td>
<td>eTags Application Maintenance</td>
<td>7/9/2014</td>
<td>$220,344</td>
<td>$710,505</td>
</tr>
<tr>
<td>Motor Carrier</td>
<td>PROMILES SOFTWARE DEVELOPMENT CORP</td>
<td>TxPROS software maintenance</td>
<td>5/12/2016</td>
<td>$603,180</td>
<td>$1,206,360</td>
</tr>
<tr>
<td>Vehicle Titles &amp; Registration</td>
<td>RR DONNELLEY COMPANY</td>
<td>Title Paper</td>
<td>3/6/2016</td>
<td>$376,228</td>
<td>$1,255,567</td>
</tr>
<tr>
<td>Finance and Administrative Services</td>
<td>Pimney Bowes</td>
<td>Postage</td>
<td>6/1/2017</td>
<td>$250,000</td>
<td>$250,000</td>
</tr>
<tr>
<td>Vehicle Titles &amp; Registration</td>
<td>Pimney Bowes</td>
<td>Postage</td>
<td>9/1/2016</td>
<td>$9,545,112</td>
<td>$9,545,112</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>Total</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$24,383,799</td>
</tr>
</tbody>
</table>
Fiscal Year 2017 Statutorily Required Contracts and Term Contracts (Informational Only)

Contracts required by statute include but are not limited to the State Office of Administrative Hearings (contested cases), the State Office of Risk Management (SORM), Workers’ Compensation, vehicle liability insurance and property insurance, and the Texas Department of Criminal Justice (manufacturing of license plates, registration stickers and placards, etc.).

**Anticipated statutorily required contracts for Fiscal Year 2017**

<table>
<thead>
<tr>
<th>Division</th>
<th>Vendor</th>
<th>Purpose</th>
<th>Contract Period</th>
<th>FY 2017 Contract Amount</th>
<th>Total Contract Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency Wide</td>
<td>State Office of Risk Management</td>
<td>Workers compensation &amp; Risk management service</td>
<td>9/1/2016 - 8/31/2017</td>
<td>$64,084</td>
<td>$128,168</td>
</tr>
<tr>
<td>Capital Projects</td>
<td>INFORMATION RESOURCES</td>
<td>Data Center Services</td>
<td>7/8/2014 - 8/31/2017</td>
<td>$7,636,433</td>
<td>$23,910,369</td>
</tr>
<tr>
<td>Finance and Administrative Services</td>
<td>ALLIANT INSURANCE SERVICES INC</td>
<td>Fleet liability ins premium</td>
<td>5/13/2016 - 8/31/2017</td>
<td>$13,500</td>
<td>$13,500</td>
</tr>
<tr>
<td>Finance and Administrative Services</td>
<td>Arthur J Gallagher Risk Management Services, Inc</td>
<td>Property Liability insurance per State Office of Risk Management</td>
<td>9/1/2016 - 8/31/2017</td>
<td>$8,500</td>
<td>$10,500</td>
</tr>
<tr>
<td>Finance and Administrative Services</td>
<td>Open Text</td>
<td>Digital Imaging services</td>
<td>9/1/2016 - 8/31/2017</td>
<td>$3,385,295</td>
<td>$6,801,171</td>
</tr>
<tr>
<td>Finance and Administrative Services</td>
<td>Texas Dept of Criminal Justice</td>
<td>Manufacturing of License Plates/Stickers</td>
<td>9/1/2016 - 8/31/2017</td>
<td>$23,271,101</td>
<td>$46,293,946</td>
</tr>
<tr>
<td>Finance and Administrative Services</td>
<td>Texas State Library</td>
<td>Records Storage</td>
<td>9/1/2016 - 8/31/2017</td>
<td>$17,000</td>
<td>$34,000</td>
</tr>
<tr>
<td>Finance and Administrative Services</td>
<td>TIBH Industries Inc.</td>
<td>BSC Janitorial Services</td>
<td>6/30/2015 - 6/30/2017</td>
<td>$261,024</td>
<td>$525,648</td>
</tr>
<tr>
<td>Finance and Administrative Services</td>
<td>TIBH Industries Inc.</td>
<td>HQ Janitorial Services</td>
<td>9/1/2016 - 8/31/2017</td>
<td>$173,238</td>
<td>$564,430</td>
</tr>
<tr>
<td>Finance and Administrative Services</td>
<td>TIBH Industries, Inc.</td>
<td>Transportation/freight services for plates provided by SVA Services</td>
<td>9/1/2016 - 8/31/2017</td>
<td>$715,000</td>
<td>$715,000</td>
</tr>
<tr>
<td>Finance and Administrative Services</td>
<td>TX Comptroller of Public Accounts</td>
<td>Fleet mnt system support fee</td>
<td>5/11/2015 - 8/31/2020</td>
<td>$407</td>
<td>$2,033</td>
</tr>
<tr>
<td>Finance and Administrative Services</td>
<td>Texas Dept of Transportation</td>
<td>Interagency contract between TxDMV &amp; TxDOT</td>
<td>9/1/2016 - 8/31/2017</td>
<td>$2,000,000</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Information Technology Services</td>
<td>NICUSA</td>
<td>Web Hosting TX.Gov</td>
<td>9/1/2016 - 8/31/2017</td>
<td>$514,620</td>
<td>$514,620</td>
</tr>
<tr>
<td>Motor Vehicle</td>
<td>State Office of Administrative Hearings</td>
<td>Intergency contract for administrative hearings</td>
<td>9/1/2015 - 8/31/2017</td>
<td>$70,900</td>
<td>$141,800</td>
</tr>
<tr>
<td>Vehicle Titles and Registration</td>
<td>Standard Register</td>
<td>Vehicle Registration Decals</td>
<td>4/16/2015 - 4/15/2017</td>
<td>$4,250,900</td>
<td>$8,738,853</td>
</tr>
<tr>
<td>Vehicle Titles and Registration</td>
<td>TIBH Industries, Inc.</td>
<td>Specialty license plates mail preparation &amp; mailing service</td>
<td>9/1/2016 - 8/31/2017</td>
<td>$146,990</td>
<td>$146,990</td>
</tr>
<tr>
<td>Agency Wide</td>
<td>NICUSA</td>
<td>Transaction Fees TX.Gov</td>
<td>9/1/2016 - 8/31/2017</td>
<td>$6,236,691</td>
<td>$6,236,691</td>
</tr>
</tbody>
</table>

**Total** $48,765,683 $96,777,719
Fiscal Year 2017 Delegated and Statewide Contracts $100,000 - $200,000 (Informational Only)

Contracts, including Statewide Contracts that have a cumulative cost value from $100,000 to $200,000 (Commodities over $25,000 and Services over $100,000 must be reviewed by the Texas Comptroller of Public Accounts; Government Code 2156.121) may be delegated to the agency by the Texas Comptroller of Public Accounts. If delegated, these are executed by FAS at the executive director’s discretion within budget guidelines in accordance with established procurement contract laws, rules, regulations and policies of oversight agencies. The executive director will report contract executions to the board.

<table>
<thead>
<tr>
<th>Division</th>
<th>Vendor</th>
<th>Purpose</th>
<th>Contract Period</th>
<th>FY 2017 Contract Amount</th>
<th>Total Contract Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consumer Relations</td>
<td>TIBH INDUSTRIES INC</td>
<td>Temporary staffing</td>
<td>5/27/2016 - 11/28/2016</td>
<td>$103,228</td>
<td>$129,412</td>
</tr>
<tr>
<td>Human Resources</td>
<td>TIBH INDUSTRIES INC</td>
<td>Temporary staffing</td>
<td>6/10/2016 - 6/15/2017</td>
<td>$125,142</td>
<td>$158,032</td>
</tr>
<tr>
<td>Finance and Administrative Services</td>
<td>SKY INVESTMENT PROPERTY INC</td>
<td>Dallas/Carrollton RSC</td>
<td>6/18/2013 - 3/31/2020</td>
<td>$121,313</td>
<td>$682,053</td>
</tr>
<tr>
<td>Agency</td>
<td>AT&amp;T MOBILITY</td>
<td>Cellular usage fees</td>
<td>4/12/2016 - 4/11/2017</td>
<td>$101,238</td>
<td>$138,301</td>
</tr>
<tr>
<td>Information Technology Services</td>
<td>NTT DATA INC</td>
<td>Server Application Software Maintenance</td>
<td>1/29/2014 - 1/31/2017</td>
<td>$130,498</td>
<td>$529,389</td>
</tr>
<tr>
<td>Information Technology Services</td>
<td>AUTO RESEARCH DIVISION</td>
<td>Web Portal subscription</td>
<td>5/1/2014 - 5/31/2017</td>
<td>$102,375</td>
<td>$314,875</td>
</tr>
<tr>
<td>Vehicle Titles and Registrations</td>
<td>TOSHIBA BUSINESS SOLUTIONS-TX</td>
<td>Copier lease</td>
<td>11/1/2014 - 9/30/2016</td>
<td>$192,341</td>
<td>$512,281</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$1,173,973</strong></td>
<td><strong>$3,321,819</strong></td>
</tr>
</tbody>
</table>
Fiscal Year 2017 Delegated and Statewide Contracts less than $100,000
(Informational Only)

Contracts, including Statewide Contracts under $100,000 for services and $25,000 for commodities are delegated to state agencies by the Texas Comptroller of Public Accounts (Government Code 2155.132). These include but are not limited to competitively bid contracts for goods and services that are executed by FAS at the executive director's discretion within budget guidelines in accordance with established procurement contract laws, rules, regulations and policies of oversight agencies.

The following table is a summary of the contracts that are less than $100,000 grouped by category.

<table>
<thead>
<tr>
<th>Category</th>
<th>Purpose</th>
<th>FY 2017 Average Contract Amount</th>
<th>FY 2017 Combined Contract Amount</th>
<th>Total Combined Contract Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Memberships &amp; Licenses</td>
<td>Bar Dues $5,831</td>
<td>$3,810</td>
<td>$152,402</td>
<td>$430,078</td>
</tr>
<tr>
<td></td>
<td>Memberships $64,186</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Subscriptions $82,385</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Technology, Hardware/Software</td>
<td>Software Maintenance $114,864</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maintenance</td>
<td>3 Contracts</td>
<td>$38,288</td>
<td>$114,864</td>
<td>$301,378</td>
</tr>
<tr>
<td>Copier Leases</td>
<td>42 Copiers $230,375</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service Contracts</td>
<td>IT-related $43,796</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cellular $8,200</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Delivery/Courier $109,973</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other $177,844</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>Mailing Services $131,268</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Miscellaneous</td>
<td>$824</td>
<td>$7,420</td>
<td>$35,260</td>
</tr>
<tr>
<td></td>
<td>9 Contracts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$976,143</td>
<td>$3,549,503</td>
<td></td>
</tr>
</tbody>
</table>
**Fiscal Year 2017 Information Technology Staff Augmentation**  
*(Informational Only)*

Generally, contracts over $200,000 must be reviewed and approved by the TxDMV Board; however, the TxDMV Board resolution adopting contract approval procedures excludes from approval those contracts with DIR for routine operations. The list of Information Technology-related staff augmentation contracts for 2017 listed below are for informational purposes only.

Note that contract amounts are subject to change based on agency needs and the final terms and conditions negotiated.

<table>
<thead>
<tr>
<th>Division</th>
<th>Vendor</th>
<th>Purpose</th>
<th>Contract Period</th>
<th>Primary Project</th>
<th>FY 2016 Estimated Expenditures</th>
<th>FY 2017 Contract Amount</th>
<th>Total Contract Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enterprise Project Management Office</td>
<td>Navayuga Infotech</td>
<td>Technology Services Staff Augmentation</td>
<td>4/11/2016 - 4/10/2017</td>
<td>WebDealer</td>
<td>$72,214</td>
<td>$182,998</td>
<td>$255,212</td>
</tr>
<tr>
<td>Enterprise Project Management Office</td>
<td>TIBH Industries, Inc.</td>
<td>Technology Services Staff Augmentation</td>
<td>6/13/2016 - 12/31/2016</td>
<td>WebDealer</td>
<td>$29,565</td>
<td>$122,013</td>
<td>$151,578</td>
</tr>
<tr>
<td>Enterprise Project Management Office</td>
<td>NF Consulting Services</td>
<td>Technology Services Staff Augmentation</td>
<td>6/29/2016 - 6/28/2017</td>
<td>WebDealer</td>
<td>$125,321</td>
<td>$195,520</td>
<td>$320,841</td>
</tr>
<tr>
<td>Enterprise Project Management Office</td>
<td>NF Consulting Services</td>
<td>Technology Services Staff Augmentation</td>
<td>11/12/2012 - 11/11/2016</td>
<td>WebDealer</td>
<td>$157,340</td>
<td>$197,600</td>
<td>$354,940</td>
</tr>
<tr>
<td>Information Technology Services</td>
<td>C &amp; T Information Technology</td>
<td>Technology Services Staff Augmentation</td>
<td>9/1/2011 - 12/9/2014</td>
<td>IT Operating</td>
<td>$162,000</td>
<td>$176,800</td>
<td>$338,800</td>
</tr>
<tr>
<td>Enterprise Project Management Office</td>
<td>National Human Resources Group, Inc.</td>
<td>Technology Services Staff Augmentation</td>
<td>7/14/2014 - 7/13/2014</td>
<td>RTS Refactoring</td>
<td>$71,820</td>
<td>$131,040</td>
<td>$202,860</td>
</tr>
<tr>
<td>Enterprise Project Management Office</td>
<td>Allied Consultants Inc.</td>
<td>Technology Services Staff Augmentation</td>
<td>9/2/2014 - 9/1/2014</td>
<td>Multiple Projects</td>
<td>$162,720</td>
<td>$166,400</td>
<td>$329,120</td>
</tr>
</tbody>
</table>

Total $2,027,744 $2,783,058 $8,799,612
Appendix A: Budget Category Definitions
Budget Category Definitions

In Alphabetical Order

**Advertising and Promotion** – Includes radio/media ads, posters, signage, brochures, flyer production, and other promotional items.

**Benefit Replacement Pay (BRP)** – Benefit Replacement Pay (BRP) is compensation authorized by the Texas Legislature to offset the loss of state-paid Social Security contributions.

**Capital** – Includes items established as “Capital Items” by the agency, or greater than $5,000, which have capital authority as outlined in Rider 2 of the General Appropriations Act, 84th Legislature, such as Acquisition of Information Resource Technology, land and buildings, relocation of facilities, and aggregate furniture purchases in excess of $100,000.

**Computer Equipment** – The purchase and replacement of personal information technology equipment and peripherals such as workstations, monitors, keyboards, and laptops.

**Consumables** – Standard consumable costs required to run the day-to-day operations of the agency such as paper, pens, pencils, media discs and USB drives, paper clips and staples.

**Contract Services** – General jobs outsourced to third party companies and organizations for the benefit of the agency such as MyPlates and PrintMailPro.

**Fees and Other Charges** – Credit card processing fees, employee health insurance fees, State Office of Risk Management insurance charges, and court filing fees.

**Freight** – Costs to transport license plates to county tax offices.

**Fuels and Lubricants** – Fleet maintenance and operation costs related to oil changes and refueling fleet vehicles.

**Grants** – Pass through funds designated for use by city, county, and other state agencies for a specific, contractual requirement.

**Maintenance and Repair** – Expenditures related to the upkeep of agency facilities, equipment, and software used on agency systems for annual application support such as e-Tags and International Registration Plan (IRP).

**Membership and Training** – Fees for training courses and conference registrations for agency staff. Also included are expenditures for memberships for agency personnel such as Texas Association of Public Purchasers, American Association of Motor Vehicle Administrators (AAMVA) and the National Board of Motor Vehicle Boards and Commissions.

**Other Expenses** – Includes office furniture and equipment, and miscellaneous non-categorized costs such as employee awards, publication purchases, parts, promotional items, and non-capitalized tools. Also included in this category is a portion of the funding for TxDMV Automation, and Growth and Enhancement.

**Postage** – Includes costs of metered mailing for license plates, registration renewal notices, and titles; and includes the cost of the rental of agency post office boxes.

**Professional Fees** – Work, requiring specific expertise, provided by third party professionals holding specific certifications and qualifications.
Rent – Building/Rent – Machine, Other – Costs associated with procurement of project facilities such as office rental, off-site training rooms; and costs associated with the rental of office equipment such as postage meters and copy machines.

Reproduction and Printing – Includes all agency printed materials primarily used in registration renewal notices and titles such as notification inserts, envelopes, and title paper.

Salary – Includes salaried workers and interns, longevity pay, health insurance contributions, and retirement contributions. Does not include contract workers who are not a part of the organization's normal payroll.

Services – Includes costs associated with services provided to TxDMV through subscription such as National Motor Vehicle Information System (NMVTIS) and LexisNexis.

Travel (In-State/Out-of-State) – Planned travel costs provided to participant. Includes transportation, meals and accommodations, and travel per-diems.

Utilities – Costs associated with providing services at facilities such as electricity, telephone, water, and natural gas.
Appendix B: Budget Terms and Definitions
Budget Terms and Definitions

Annual Operating Budget – An agency’s approved Annual Operating Budget represents a one-year financial plan supporting the agency’s business operations and addresses base operating requirements and adjustments. The budget covers funding for each division and reflects the most appropriate method of finance and strategy for core activities and continuing programs. The TxDMV Recommended Annual Operating Budget reflects Fiscal Year 2017 appropriations as identified H.B. 1, 84th Legislature, Regular Session, GAA. The agency’s final Annual Operating Budget covers a one-year period from September 1 through August 31.

Appropriated – Refers to the dollars or associated full-time equivalent (FTE) positions authorized for specific fiscal years, and to the provisions for spending authority.

Appropriation Year (AY) – Refers to the specific fiscal year for which an appropriation is made. The appropriation year dictates the year to which the expenditure is authorized/charged.

Base Request – The base request represents the basis for the agency’s biennial budget. The base request cannot exceed the appropriated amount established by the legislature through the prior biennial GAA, adjusted for Article IX appropriation reductions.

Benefit Replacement Pay – Benefit Replacement Pay (BRP) is compensation authorized by the Texas Legislature to offset the loss of state-paid Social Security contributions. S.B.102, 74th Legislature eliminated the state-paid Social Security payment, effective December 31, 1995. After this date, eligible employees began receiving a supplement known as Benefit Replacement Pay (BRP) in place of the state-paid Social Security payment. Eligible employees include those that were employed by the state and subject to FICA taxes on August 31, 1995, and have been continuously employed by the state since that date; employees that left the state but returned within 30 consecutive calendar days and those that retired before June 1, 2005, and returned to work with the state before September 30, 2005.

Biennium – Two-year funding cycle for legislative appropriations.

Capital Budget – The portion of an agency’s appropriation that is restricted to expenditures for designated capital construction projects or capital acquisitions.

Centralized Accounting and Payroll/Personnel System (CAPPs) – CAPPs is the official name of the statewide Enterprise Resource Planning (ERP) system created by the Comptroller’s of Public Accounts (CPA) office ProjectONE team. CAPPs will replace legacy systems with a single software solution for financial and Human Resources (HR)/Payroll Administration for Texas state agencies. The modules for TxDMV’s CAPPs include: Asset Management; General Ledger/Commitment Control (Budget); Payables; Purchasing/eProcurement; HR and Payroll Administration.

Expended – Refers to the actual dollars or positions utilized by an agency or institution during a completed fiscal year; a goal or strategy; an object of expense; or an amount from a particular method of finance.

Federal Funds/Grants – Funds received from the United States government by state agencies and institutions that are appropriated to those agencies for the purposes for which the federal grant, allocation, payment or reimbursement was made.

Fiscal Year (FY) – September 1 through August 31 and specified by the calendar year in which the fiscal year end, e.g. fiscal year 2017 runs from September 1, 2016 through August 31, 2017.
Full-Time Equivalents (FTEs) – Units of measure that represent the monthly average number of state personnel working 40 hours per week.

General Appropriations Act (GAA) – The law that appropriates biennial funding to state agencies for specific fiscal years and sets provisions for spending authority.

General Revenue (GR) Fund – The fund (Fund 001) that receives state tax revenues and fees considered available for general spending purposes and certified as such by the Comptroller of Public Accounts.

Lapsed Funds – The unobligated balance in an item of appropriation that has not been encumbered at the end of a fiscal year or at the end of the biennium. Appropriations expire if they are not 1) obligated by August 31 of the appropriation year in which they were made or 2) expended within two years following the last day of the annual year.

Line-item – An element of spending authority granted to an agency or institution in an appropriations bill. It is literally, a line in the General Appropriations Act specifying an agency’s appropriations for a specific designated use. In Texas, the governor may veto a line-item.

Method of Finance – This term usually appears as a heading for a table that lists the sources and amounts authorized for financing certain expenditures or appropriations made in the General Appropriations Act (GAA). A source is either a “fund” or “account” established by the comptroller or a category of revenues or receipts (e.g. federal funds).

Rider – A legislative directive or appropriation inserted in the GAA following appropriation line-items for an agency or in the special or general provisions of the act. A rider provides direction, expansion, restriction, legislative intent or an appropriation. The term also applies to special provisions at the end of each article and general provisions in the GAA. A rider appropriation is distinguished from a regular appropriation (i.e., line-items in the GAA) and a special appropriation (i.e. legislation other than the GAA).

Salary Budget – Fiscal Year 2017 salaries include projected annual costs based on Fiscal Year 2016 actual salaries with adjustments for vacancies, merits and Fiscal Year 2017 longevity costs.

State Highway Fund (Fund 006) – Constitutionally created fund that dedicates net revenues from motor vehicle registration fees and taxes on motor fuels and lubricants. Revenue in the State Highway Fund is used for highway construction and maintenance, acquisition of rights-of-way and law enforcement on public roads.

TxDMV Fund – The TxDMV Fund is a dedicated Texas Department of Motor Vehicles Fund separate from the General Revenue and State Highway Fund. Several statutorily-dedicated revenue streams including certificates of title, motor vehicle registration, oversize/overweight permitting, business dealer licenses and other miscellaneous fees are deposited to the credit of the TxDMV Fund.

Unexpended Balance (UB) or Carry-Forward – The amount left in an item of appropriation at the end of an appropriation period and includes only that part of the appropriation, if any, which has not had an obligation or commitment made by the agency in charge of spending the appropriation. The term also refers to the amount of an appropriation, a fund or a category of revenue which is brought forward (appropriated) to the succeeding fiscal year. Agencies must have legislative authority to move funds from one year to the next and/or from one biennium to the next biennium.
Appendix C: Finance and Administrative Services Contacts
Finance and Administrative Services Contacts

Linda Flores, Chief Financial Officer
512-465-4125

Renita Bankhead, Assistant Chief Financial Officer
512-465-1216

David Chambers, Purchasing Manager
512-465-1257

Sergio Rey, Financial Administration Manager
512-465-4203

Ann Pierce, Administrative Services Assistant Director
512-465-4100

Budget Analysts

Tricia Ueckert, Budget Team Lead
512-465-1401

John Ralston, Sr. Budget Analyst
512-465-4182

Diana Thomas, Budget Analyst
512-465-5831

Delores Hubbard, Budget Analyst
512-465-4195

Jack Starnes, Budget Analyst
512-465-4178

Revenue Forecasting

Theo Kosub, Financial Analyst
512-465-1448

Brian Kline, Financial Analyst
512-465-4194

Planning

Lisa Conley, Planner
512-465-4186
To: Finance and Audit Committee  
From: Linda M. Flores, CPA, Chief Financial Officer  
Agenda Item:  2.A.2.a.  
Subject: FY 2018-2019 Legislative Appropriations Request, Baseline and Exceptional Items  

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**RECOMMENDATION**

The Legislative Appropriations Request, or LAR, for the upcoming 2018-19 biennium was submitted on August 12, 2016, with approval and input from the Executive Director and the Chairman of Finance and Audit, as required by the Office of the Governor, Budget Division and the Legislative Budget Board (LBB).

**PURPOSE AND EXECUTIVE SUMMARY**

The Texas Department of Motor Vehicles (TxDMV), Finance and Audit Committee approved a biennial appropriations request of $328.3 million on August 3, 2016. As per the motion approved at the August Finance and Audit Committee meeting the other board members were briefed on the submission and changes to the LAR were approved by the Board Vice-Chair and Executive Director prior to submission.

The final submitted baseline request for the agency was $327.8 million. The exceptional items approved by the TxDMV Finance and Audit Committee in August also were adjusted from a biennial total of $105 million down to $40 million. (see final adjustments below for more information)

**FINANCIAL IMPACT**

TxDMV is a net revenue-generating agency for the state. Effective September 1, 2016, TxDMV will begin depositing revenue into a new agency fund recreated by the 84th Legislature, the TxDMV Fund (0010). The agency’s budget request is supported by collections. The staff estimates that TxDMV will collect approximately $3.86 billion for the State while retaining $327.8 million for baseline agency operations over the biennium. The majority of the LAR request will be funded from the TxDMV Fund which includes the newly created processing and handling fee (P&H). The LAR request also includes General Revenue (GR) funding for baseline and exceptional items for the Automobile Burglary & Theft Prevention Authority.

**FINAL ADJUSTMENTS TO LAR APPROVED BY FINANCE AND AUDIT COMMITTEE:**

**Baseline**

The baseline was adjusted to reduce estimates for ACH fees that were overstated by $233,389 in FY 2018 and $278,088 in FY 2019. These fees are associated with increased online registrations anticipated with the implementation of the processing and handling fee (P&H). This change only impacted strategy A.1.1. (Titles, Registration and Plates).

**Exceptional Items**

The modification to the #1 Priority item from the August approved exceptional items reduced the total TxDMV exceptional item request from $105 million to $40 million. The original biennial request of $74.8 million included funds for the purchase or construction of a new building, including land, three full-time equivalents (FTEs) and estimated ongoing costs. As a result of ongoing discussions with the Governor’s Office, Texas Facilities Commission and Texas Department of Transportation (TxDOT), the agency modified its original exceptional item request to remove funds related to the acquisition of land and the purchase or construction of a new building. The modified request now totals $9.8 million for the biennium and includes estimated costs for maintenance and repairs, janitorial and grounds-keeping, and other costs related to the upkeep of an existing facility. The three FTEs were retained in the request as they will be needed to provide skilled services previously provided by TxDOT.
BACKGROUND AND DISCUSSION

The agency’s baseline request includes several initiatives to reduce and refine the budget request to remain within the projected revenue including reducing capital expenditures primarily in automation budget requests which is offset by increased costs due to the implementation of centralized fulfillment of online registration renewals and absorbing credit card fees for online registration renewals.

The capital budget includes funding for Automation ($11.7 million) primarily for Refactoring of the Registration and Titling System; ongoing costs for the Data Center Services contract ($16.7 million); replacement of computer equipment in the counties and at TxDMV headquarters ($11.9 million); funding to relocate one regional service center and to replace aging fleet vehicles ($1.5 million).

Five exceptional items now totaling $40 million and sixteen (16) FTEs were included in the LAR submission. The agency exceptional items include:

- **TxDMV Headquarters Maintenance**
  The modified exceptional item retitled TxDMV Headquarters Maintenance now totals $9.8 million for the biennium.

- **Creation of a Special Investigation Unit**, a biennial total of $1.9 million and 13 FTEs.

- **Matching dollars for the Commercial Vehicle Information and Systems Networks (CVISN) grant** are available from the Federal Motor Carrier Safety Administration (FMCSA) for system and roadside projects that increase safety on the roads and increase the efficiency of moving commerce on the roads. TxDMV is the lead agency for CVISN in Texas. A match of $262,500 will allow the agency to receive $1.5 million in federal funds.

The exceptional item list also includes a request from the Auto Burglary and Theft Prevention Authority (ABTPA) for their items to be included in the final TxDMV LAR. The two items are restoration of the four percent GR reduction and an additional $12.6 million per year ($25.3 million biennial total) generated by a $2.00 fee imposed on motor vehicle insurance policies for the express purpose of providing additional grant allocations to local law enforcement.

The submitted LAR also includes one new rider which would allow the agency to carry forward any unexpended balances in appropriations between the first and second year of the biennium (FY 2018 and FY 2019).
Texas Department of Motor Vehicles

FY 2018 – 2019
Legislative Appropriations Request Summary
OVERVIEW

Each year, TxDMV oversees the issuance of more than 24 million vehicle registration insignias and more than seven million vehicle titles. The agency licenses more than 34,000 motor vehicle dealers and a variety of other entities engaged in the motor vehicle sales and distribution industry, as well as salvage vehicle dealers. TxDMV credentials more than 50,000 motor carriers, issues more than 800,000 oversize/overweight permits and investigates approximately 16,000 complaints against dealers and motor carriers. It is estimated that in FY 2018-2019, the agency’s deposit to the State Highway Fund will account for approximately 30 percent of that fund’s total state revenues.

OVERVIEW OF BUDGET REQUEST

Aligning with the agency’s FY 2017-2021 Strategic Plan, the agency’s workforce focuses on three broad, strategic goals identified by the Board including: 1) Being Customer Centric, 2) Optimizing Services and Innovation, and 3) Being Performance Driven.

In complying with the directives of the 84th Legislature to become self-funded, the agency took several steps to reduce and refine its baseline budget in order to remain within the projected revenue the agency will generate including:

- Reducing Capital expenditures primarily in automation budget requests;
- Creating a processing and handling fee structure to fund registration and title services; and
- Reducing costs by implementing centralized fulfillment of online registration renewals and passing the cost savings on to customers.

FINAL ADJUSTMENTS TO BUDGET REQUEST APPROVED BY FINANCE & AUDIT COMMITTEE

Baseline – Original Request $328.3 million adjusted to $327.8 million.

The baseline was adjusted to reduce estimates for ACH fees that were overstated by $233,389 in FY 2018 and $278,088 in FY 2019. These fees are associated with increased online registrations anticipated with the implementation of the processing and handling fee (P&H). This change only impacted strategy A.1.1. (Titles, Registration and Plates). The capital budget authority of $41.8 million included in the baseline was not adjusted.

Exceptional Items – Original Request $105 million adjusted to $40 million

As a result of ongoing discussions with the Governor’s Office, Texas Facilities Commission and Texas Department of Transportation (TxDOT), the agency modified its original exceptional item request to remove funds related to the acquisition of land and the purchase or construction of a new building. The original biennial request of $74.8 million included funds for the purchase or construction of a new building, including land, three FTEs and estimated ongoing costs. The modified request now total $9.8 million for the biennium and includes estimated costs for maintenance and repairs, janitorial and grounds-keeping, and other costs related to the upkeep an existing facility. All other exceptional items remained unchanged.
MAJOR FUNDING INITIATIVES

Three major initiatives have been identified as critical to TxDMV’s continued success. These items are included in the FY 2018-2019 baseline, capital budget and exceptional item appropriation request and are important steps in establishing TxDMV independence, both physically and systemically as follows:

- Acquisition and relocation of facilities;
- Automation Projects and Technological Innovation Activities; and
- Creating a Special Investigation Unit.

These initiatives are more fully discussed throughout this document.

10% GENERAL REVENUE REDUCTION

As part of the state’s budgeting instructions, state agencies are required to prepare a Legislative Appropriations Request (LAR) schedule reflecting a 10% biennial reduction to any programs funded from General Revenue (GR). The 10% reduction schedule is only implemented should the legislature decide that statewide budget cuts are needed for the upcoming biennium. Beginning in FY 2018, TxDMV will become a self-funded agency that will not be subject to the 10% GR reduction, with the exception of the Automobile Burglary and Theft Prevention Authority (ABTPA) program. The State deposits almost $46 million annually in GR through the assessment of a $2.00 fee on motor vehicle insurance policies. Statute states 50% of each fee collected may be appropriated only to the authority. Currently ABTPA is appropriated $14.9 million annually. The agency is including a 10% reduction schedule in its request for the ABTPA program. The reduction schedules are prepared in 5% increments, and it is anticipated that each of the 5% reductions will impact grant funding.

LAR SUBMISSION TIMELINE

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 16</td>
<td>Base Reconciliation Due to Legislative Budget Board (LBB)</td>
</tr>
<tr>
<td>Mid - July</td>
<td>Approval of Base Reconciliation by LBB</td>
</tr>
<tr>
<td>August 12</td>
<td>LAR submitted to LBB and Governor’s Office, Budget Division</td>
</tr>
</tbody>
</table>
TXDMV is a net revenue-generating agency for the state, collecting revenues from registrations, licenses, titles, permits, and credentials for deposit into the State Highway Fund (Fund 0006), the primary source of funding for the state’s transportation and infrastructure system, and for deposit into the General Revenue Fund (Fund 0001). Effective September 1, 2016, TXDMV will begin depositing revenue into a new agency fund recreated by the 84th Legislature, the TXDMV Fund (0010). The agency collects significantly more revenue than its budget. For every $1 the agency spends, it collects nearly $12 in revenue.

TXDMV established a processing and handling fee (P&H) of $4.75 in FY 2017. The table below reflects the impact to revenues for the five year period beginning in FY 2017, using moderate growth projections and implementation of P&H fee. For the FY 2018-19 biennium, TXDMV estimates it will collect approximately $3.86 billion in total revenues: $3.31 billion in the State Highway Fund 0006, $212 million in General Revenue Fund 0001 and $338 million in TXDMV Fund 0010. Revenue generated in General Revenue Fund 0001 remains fairly constant while revenue deposits in the State Highway Fund 0006 increase approximately $47 million annually with the implementation of a P&H fee. In addition, TXDMV Fund 0010 revenue collections are projected to increase annually from natural growth and the P&H fee.

<table>
<thead>
<tr>
<th>Fund Type</th>
<th>FY 2017</th>
<th>FY 2018</th>
<th>FY 2019</th>
<th>FY 2020</th>
<th>FY 2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Highway Fund 0006</td>
<td>$1,588,454,000</td>
<td>$1,638,652,000</td>
<td>$1,672,723,000</td>
<td>$1,708,616,000</td>
<td>$1,744,224,000</td>
</tr>
<tr>
<td>TxDMV Fund 0010</td>
<td>$149,793,685</td>
<td>$167,685,385</td>
<td>$170,898,420</td>
<td>$174,240,314</td>
<td>$177,490,658</td>
</tr>
<tr>
<td>General Revenue Fund 0001</td>
<td>$105,225,000</td>
<td>$105,866,000</td>
<td>$106,535,000</td>
<td>$107,678,000</td>
<td>$108,368,000</td>
</tr>
<tr>
<td>Total</td>
<td>$1,843,472,685</td>
<td>$1,912,203,385</td>
<td>$1,950,156,420</td>
<td>$1,990,534,314</td>
<td>$2,030,082,658</td>
</tr>
</tbody>
</table>
The following table illustrates the estimated baseline budget appropriations by strategy. The baseline represents the amount of money necessary to maintain existing operations across the agency. TxDMV staff anticipates that the Legislative Budget Board (LBB) will approve the target for FY 2018-19 by late July. The table below reflects the budget request with the P&H fee implemented; decrease in the automation capital; and increases associated with TxOnline credit card processing fees and centralized online fulfillment.

The baseline was adjusted to reduce estimates for ACH fees that were overstated by $233,389 in FY 2018 and $278,088 in FY 2019. These fees are associated with increased online registrations anticipated with the implementation of the processing and handling fee (P&H). This change only impacted strategy A.1.1. (Titles, Registrations, and Plates) highlighted in yellow below.

<table>
<thead>
<tr>
<th>Items of Appropriations</th>
<th>Appropriation</th>
<th>Base Request</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FY2016</td>
<td>FY2017</td>
<td>Biennial Total</td>
</tr>
<tr>
<td>Goal A: Optimize Services and Systems</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strategy A.1.1. – Titles, Registrations, and Plates</td>
<td>$74,020,416</td>
<td>$73,600,156</td>
<td>$147,620,572</td>
</tr>
<tr>
<td>Strategy A.1.2. – Vehicle Dealer Licensing</td>
<td>$4,094,083</td>
<td>$4,094,083</td>
<td>$8,188,166</td>
</tr>
<tr>
<td>Strategy A.1.3 – Motor Carrier Permits and Credentials</td>
<td>$7,943,892</td>
<td>$8,793,892</td>
<td>$16,737,784</td>
</tr>
<tr>
<td>Strategy A.1.5 – Customer Contact Center</td>
<td>$2,154,621</td>
<td>$2,154,621</td>
<td>$4,309,242</td>
</tr>
</tbody>
</table>

Goal B. Protect the Public

<table>
<thead>
<tr>
<th>Items of Appropriations</th>
<th>Appropriation</th>
<th>Base Request</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FY2016</td>
<td>FY2017</td>
<td>Biennial Total</td>
</tr>
<tr>
<td>Strategy B.1.1. – Enforcement</td>
<td>$5,370,265</td>
<td>$5,370,265</td>
<td>$10,740,530</td>
</tr>
<tr>
<td>Strategy B.2.1. – Automobile Theft Prevention</td>
<td>$14,912,006</td>
<td>$14,912,006</td>
<td>$29,824,012</td>
</tr>
<tr>
<td>Total, Goal B: Protect the Public</td>
<td>$20,282,271</td>
<td>$20,282,271</td>
<td>$40,564,542</td>
</tr>
</tbody>
</table>

Goal C: Indirect Administration

<table>
<thead>
<tr>
<th>Items of Appropriations</th>
<th>Appropriation</th>
<th>Base Request</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FY2016</td>
<td>FY2017</td>
<td>Biennial Total</td>
</tr>
<tr>
<td>Strategy C.1.3 – Other Support Services</td>
<td>$2,319,336</td>
<td>$3,814,023</td>
<td>$6,133,359</td>
</tr>
<tr>
<td>Total, Goal C: Indirect Administration</td>
<td>$33,668,787</td>
<td>$33,719,685</td>
<td>$67,388,472</td>
</tr>
<tr>
<td>Total Department of Motor Vehicles</td>
<td>$168,180,219</td>
<td>$145,228,701</td>
<td>$313,408,920</td>
</tr>
</tbody>
</table>

Method of Finance

<table>
<thead>
<tr>
<th>Items of Appropriations</th>
<th>Appropriation</th>
<th>Base Request</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FY2016</td>
<td>FY2017</td>
<td>Biennial Total</td>
</tr>
<tr>
<td>General Revenue (GR) Fund 0001</td>
<td>$168,180,219</td>
<td>$145,228,701</td>
<td>$313,408,920</td>
</tr>
<tr>
<td>Texas Department of Motor Vehicles Fund 0010</td>
<td>$ -</td>
<td>$130,316,695</td>
<td>$130,316,695</td>
</tr>
<tr>
<td>Total Method of Finance</td>
<td>$168,180,219</td>
<td>$145,228,701</td>
<td>$313,408,920</td>
</tr>
</tbody>
</table>

Full Time Equivalents (FTE)

<table>
<thead>
<tr>
<th>Items of Appropriations</th>
<th>Appropriation</th>
<th>Base Request</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>763.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>763.0</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Key Variances from 2016/17 Appropriation

Strategy A.1.1. – Titles, Registrations, and Plates – Net increase $25,125,461 (adjusted from $25,636,938)
  • Increase for TxOnline Credit Card Processing Fees - $25,062,326 (adjusted from $25,573,803)
  • Increase for Centralized Online Fulfillment - $6,649,189
  • Reduction to License Plate Production & Renewal Notices - ($6,263,000)
  • Legislative Salary Increase for State Employees - $482,216
  • Other adjustments – Including equalizing MyPlates expenses across the biennium - $70,260; and transfers out to other strategies for vehicles and projected operating expenses - ($875,530)

  • Reduction of Automation Projects - ($11,716,078)
  • Legislative Salary Increase for State Employees - $84,992
  • Transfer In for projected operating expenses - $185,780

Strategy B.2.1. – Automobile Theft Prevention ($1,177,954)
  • Legislative Salary Increase for State Employees - $15,632
  • 4% Base Reduction – ($1,162,322)

Other Strategy Adjustments (A.1.2., A.1.3., A.1.5., B.1.1., C.1.1., C.1.2. and C.1.3.)
  • Legislative Salary Increase for State Employees - $1,191,134
  • Transfer In for projected and vehicles operating expenses - $689,751
## FY 2018-19 Capital Budget Project Summary Baseline

The following table illustrates FY 2018-19 Capital Budget:

<table>
<thead>
<tr>
<th>Capital Budget</th>
<th>Biennial Appropriation</th>
<th>Baseline Request</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technology Replacement and Upgrades - Regional Support for County Tax Assessor</td>
<td>$ 11,000,000</td>
<td>$ 10,025,000</td>
</tr>
<tr>
<td>Collector Offices</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vehicles (33 replacements &amp; 6 new)</td>
<td>$ 871,500</td>
<td>$ 975,000</td>
</tr>
<tr>
<td>Regional Service Center Relocation</td>
<td>$ 16,078,201</td>
<td>$ 11,716,078</td>
</tr>
<tr>
<td>TxDMV Automation System</td>
<td>$ 1,898,996</td>
<td>$ 1,898,996</td>
</tr>
<tr>
<td>Growth and Enhancement – Agency Equipment</td>
<td>$ 800,000</td>
<td></td>
</tr>
<tr>
<td>Bull Creek Relocation</td>
<td>$ 16,716,655</td>
<td>$ 16,716,655</td>
</tr>
<tr>
<td>Data Center Consolidation</td>
<td>$ 7,353,955</td>
<td></td>
</tr>
<tr>
<td>Application Migration &amp; Server Infrastructure Transformation (AMSIT)</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td><strong>Total Capital Budget</strong></td>
<td>$ 54,719,307</td>
<td>$ 41,812,029</td>
</tr>
<tr>
<td><strong>Method of Finance</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Revenue Fund 0001</td>
<td>$ 39,833,376</td>
<td></td>
</tr>
<tr>
<td>Texas Department of Motor Vehicles Fund 0010</td>
<td>$ 14,885,931</td>
<td>$ 41,812,029</td>
</tr>
<tr>
<td><strong>Total Method of Finance</strong></td>
<td>$ 54,719,307</td>
<td>$ 41,812,029</td>
</tr>
</tbody>
</table>
2018-19 Capital Budget Descriptions

County Equipment Technology Replacement and Upgrades ($10 million) – This appropriation provides funding to deploy and maintain printers, computers, monitors, laptops, cash drawers, and printer toner deployed at county Tax Assessor/Collector (TAC) offices throughout the state. These funds also maintain connectivity between the county TAC offices and the TxDMV Registration and Titling (RTS) system, as well as connectivity throughout statewide TxDMV offices.

Vehicles ($975,000) – The agency is requesting to replace 33 vehicles (17 in FY 2018 and 16 in FY 2019) and procure six new vehicles (3 in FY 2018 and 3 in FY 2019) during the FY 2018-19 biennium. Thirty-one of the vehicles to be replaced will be 10 years and older; two vehicles will be eight years old; and all will exceed 150k miles by August 31, 2018. The six new vehicles will be used to support field operations.

Relocation of Regional Service Centers ($480,000) – This request provides capital funding to relocate and reconfigure one mid-size Regional Service Centers (RSC) from Texas Department of Transportation (TxDOT) facilities.

TxDMV Automation ($11.7 million) – The TxDMV Automation develops information technology assets to improve customer services and improve access to agency programs for customers and the public. This initiative is supported by a fee of $0.50 per registration. The agency continues to enhance and expand its technological infrastructure through multiple ongoing and new projects. TxDMV is requesting approximately $11.7 million in the FY 2018-19 biennium to fund the following 13 automation initiatives.

Refactoring of Registration and Titling System (RTS) - implement a variety of system enhancements to various RTS components. Improving the RTS system increases the agency’s support to county TACs and other business partners who use the system to provide quick, reliable and efficient motor vehicle registration and titling services on behalf of the agency.

Construction of Information Technology Data Center for TxDMV Headquarters - funding for modifications to create a data center room in a TxDMV Headquarters building. Although the plans for the proposed building provides space for a data center room it does not include modifications such as a raised floor, climate controls and other adjustments needed for a data center.

Fraud Dashboard - utilize a Cognos (a specialized software tool) reporting cube to create a dashboard to analyze patterns and trends in transactions in order to identify possible fraud using predetermined thresholds to set possible fraud alerts. The reports will be available to both agency staff and TAC offices.

Cybersecurity - provide increased levels of encryption and authentication.

Mobile Applications - create applications for consumers’ personal electronic devices to enable access to TxDMV’s services more conveniently.

Online Title Tracking - centralize the printing and mailing of new, replacement, and certified copies of motor vehicle titles using a single vendor providing consumers with the ability to track the status of their request online.
E-Renewal Notices and E-Reminder - reduce paper registration renewal notices by replacing them with an option to receive an electronic registration renewal notice. This results in savings to the agency as well as reducing the agency’s reliance on paper based transactions and aligns with customers’ increased reliance on digital communication.

Online Certified Records - provide the ability for consumers to obtain certified vehicle records online, 24/7.

Kiosks - provide safe, secure, 24/7 service availability in multiple languages to efficiently deliver various TxDMV products and services. Utilizing kiosks reduces TxDMV’s need for dedicated office space and staff. Kiosks can also reduce wait times in TACs and RSCs as customers will be able to complete transactions at alternative locations.

eLICENSING Project - increase self-service capabilities. The new eLICENSING system will allow current dealer and salvage licensees and those seeking licenses for the first time to renew and/or apply online. Online transactions enables dealers to attach and upload supporting documents, track the progress of a license renewal or application online and decreases the processing time needed to approve a license renewal or application. Similar benefits also apply to consumers filing complaints, including those related to Lemon Law and warranty performance

Call Center Upgrades - upgrade agency telephone equipment allowing TxDMV’s call centers to incorporate new functionality.

Commercial Vehicle Information Exchange Window (CVIEW) – upgrade the data sharing capabilities and data quality of this information database used by various state agencies to ensure commercial carrier compliance.

Enterprise Reporting – agency initiative to continue enhancements to existing reports and to create new reports to monitor and improve the performance of the agency.

External Website Renovation - update and refresh the agency’s public website.

Growth and Enhancement – Agency Equipment ($1.9 million) – This appropriation provides funding for activities that enhance or expand information resources in TxDMV individual program areas. Items included in this appropriation are computer, printer, laptop, and peripheral device replacement; telephone and communication system replacements and upgrades; and software licenses for enterprise applications.

Data Center Services ($16.7 million) – This appropriation supports information technology infrastructure assets and functions through statutorily required participation in the State Data Center maintained by the Department of Information Resources (DIR). The Data Center Services (DCS) program enables state agencies to access data center computing as a managed service. DCS fees are based on a consumption based model with costs varying based on statewide usage of DCS services.
The following table illustrates the exceptional items that will be requested by TxDMV for the FY 2018-19 biennium. Exceptional items are those desired services above the baseline request.

As noted above the exceptional item request was adjusted from the $105 million approved by the Finance and Audit Committee in August to $40 million due to an adjustment of $65 million to the agency’s #1 priority, TxDMV Headquarters.

Detailed information on the exceptional item is contained in Appendix A.

<table>
<thead>
<tr>
<th>Division</th>
<th>Exceptional Items</th>
<th>Description</th>
<th>Full Time Equivalents</th>
<th>FY 2018</th>
<th>FY 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency</td>
<td>TxDMV HQ Relocation</td>
<td>Consolidated TxDMV campus that includes the Austin Regional Service Center to allow for public “one stop shopping” in Austin.</td>
<td>3.0</td>
<td>$70,347,766</td>
<td>$4,443,555</td>
</tr>
<tr>
<td></td>
<td>TxDMV Headquarters Maintenance</td>
<td>Funding for staffing and maintenance of existing facilities. The original biennial request of $74.8 million included funds for the purchase or construction of a new building, including land, three FTEs and estimated ongoing costs. The modified exceptional item retitled TxDMV Headquarters Maintenance now totals $9.8 million for the biennium.</td>
<td>3.0</td>
<td>$5,044,750</td>
<td>$4,783,250</td>
</tr>
<tr>
<td>ENF/VTR</td>
<td>Special Investigations Unit</td>
<td>A newly-created group composed of experienced investigators and Field Service Representatives (FSRs) to operate as a Special Investigations Unit to implement an anti-fraud, waste and abuse program to prevent, detect, investigate and report fraud, waste and abuse. The request includes 13 FTEs, all related equipment and office supplies, and 4 vehicles.</td>
<td>13.0</td>
<td>$1,091,571</td>
<td>$831,560</td>
</tr>
<tr>
<td>MCD</td>
<td>CVISN</td>
<td>Commercial Vehicle Information and Systems Networks (CVISN) grants are available for system and roadside projects that increase safety on the roads and increase the efficiency of moving commerce on the roads. TxDMV is the lead agency for CVISN in Texas.</td>
<td></td>
<td>State $131,250</td>
<td>State $131,250</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Fed $743,750</td>
<td>Fed $743,750</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total TxDMV Request</td>
<td></td>
<td>16.0</td>
<td>$7,011,321</td>
<td>$6,489,810</td>
</tr>
<tr>
<td>Division</td>
<td>Exceptional Items</td>
<td>Description</td>
<td>FY 2018</td>
<td>FY 2019</td>
<td></td>
</tr>
<tr>
<td>------------------------------</td>
<td>----------------------------</td>
<td>--------------------------------------------------------------------------------------------------------</td>
<td>-----------</td>
<td>-----------</td>
<td></td>
</tr>
<tr>
<td>ABTPA</td>
<td>Reinstatement of 4% Base Reduction</td>
<td>The FY 2018-19 LAR instructions required a 4% base reduction for the FY 2018-19 biennium for all General Revenue appropriations. ABTPA is making an exceptional item request to reinstate this reduction to avoid further reduction to law enforcement agencies.</td>
<td>$ 596,793</td>
<td>$ 596,793</td>
<td></td>
</tr>
<tr>
<td>ABTPA</td>
<td>Grants</td>
<td>ABTPA will utilize the additional funds to increase the tactical size and strength of regional law enforcement programs by adding 80 law officers, along with prosecutors, and other positions to reduce motor vehicle burglary and theft. ABTPA will also purchase equipment to protect communities and motor vehicle owners against motor vehicle crime.</td>
<td>$ 12,655,912</td>
<td>$ 12,655,912</td>
<td></td>
</tr>
<tr>
<td>Total ABTPA</td>
<td></td>
<td></td>
<td>$ 13,252,705</td>
<td>$ 13,252,705</td>
<td></td>
</tr>
<tr>
<td>General Revenue Fund 0001</td>
<td></td>
<td></td>
<td>$ 13,252,705</td>
<td>$ 13,252,705</td>
<td></td>
</tr>
<tr>
<td>Texas Department of Motor Vehicles Fund 0010</td>
<td></td>
<td></td>
<td>$ 6,267,571</td>
<td>$ 5,746,060</td>
<td></td>
</tr>
<tr>
<td>Federal Funds</td>
<td></td>
<td></td>
<td>$ 743,750</td>
<td>$ 743,750</td>
<td></td>
</tr>
<tr>
<td>Total Exceptional Items</td>
<td></td>
<td></td>
<td>16.0</td>
<td>$ 20,264,026 $ 19,742,515</td>
<td></td>
</tr>
</tbody>
</table>
Riders

A “rider” is a legislative directive or appropriation inserted in the General Appropriations Act (GAA) following the Items of Appropriation for an agency or in the special or general provisions of the act. A rider provides direction, expansion, restriction, legislative intent, or an appropriation. A rider may be requested by an agency or may be drafted and inserted by the legislature.

For the FY 2018-19 LAR, the agency intends to request four riders to assist in its operations. Three of the riders were previously approved in the FY 2016-17 General Appropriations Act and will be requested again in FY 2018-19. In addition to the previously-approved riders, a new rider will be requested in FY 2018-19.

Riders Previously Approved in FY 2016-17 and Re-requested for FY 2018-19

- **My Plates** – this rider provides additional appropriations each year of the biennium for the purpose of making payments to the contract vendor for the marketing and sale of personalized license plates. The rider also allows for unexpended balances to be carried forward into the next fiscal year of the biennium for the same purposes. This rider was included in the FY 2016-17 General Appropriation Act.

- **Federal Grants and State Matching Funds** – this rider allows the agency to spend any unexpended balances of state match funds for federal grants from FY 2017 in FY 2018. This rider was included in the FY 2016-17 General Appropriation Act.

- **Capital Projects—Unexpended Balance Authority** – this rider will allow the agency to spend money appropriated for capital projects during both years of the biennium. The agency is requesting that any unexpended funds appropriated for capital projects at the end of FY 2017 be carried forward to the new biennium beginning FY 2018 for the agency’s use. This rider was included in the FY 2016-17 General Appropriation Act.

New Rider Requested for FY 2018-19

- **Unexpended Balance Authority with the Biennium** – this rider would allow the agency to spend any unexpended balances in appropriations between the fiscal years. This is a newly-requested rider.
# 2018-19 LAR Exceptional Item Request Schedule - Modified

<table>
<thead>
<tr>
<th>Code</th>
<th>Objects of Expense:</th>
<th>Total Exceptional Item Request</th>
<th>Requested w/building</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Salaries</td>
<td></td>
<td>2018</td>
</tr>
<tr>
<td>1001</td>
<td></td>
<td></td>
<td>$ 205,000</td>
</tr>
<tr>
<td>2004</td>
<td>Utilities</td>
<td></td>
<td>$ 678,500</td>
</tr>
<tr>
<td>2009</td>
<td>Other Operating Expense</td>
<td></td>
<td>$ 3,856,250</td>
</tr>
<tr>
<td>5000</td>
<td>Capital Expenditures</td>
<td></td>
<td>$ 305,000</td>
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<tr>
<td></td>
<td><strong>Total, Objects of Expense</strong></td>
<td></td>
<td><strong>$ 5,044,750</strong></td>
</tr>
<tr>
<td>001</td>
<td>Method of Financing:</td>
<td></td>
<td>2018</td>
</tr>
<tr>
<td>010</td>
<td>General Revenue</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>TxDMV Fund</td>
<td></td>
<td>$ 5,044,750</td>
</tr>
<tr>
<td></td>
<td><strong>Total, Method of Finance</strong></td>
<td></td>
<td><strong>$ 5,044,750</strong></td>
</tr>
</tbody>
</table>

**Number of Full-time Equivalent Positions (FTE):** 3.0

**Detail on Object of Expenses and FTEs: (Included above)**

- **Program Specialist VI (B23)**: $85,000
- **Program Specialist III (B19)**: $65,000
- **Program Specialist II (B18)**: $55,000
- **Consumable Supplies**: $900
- **Utilities**: $678,500
- **Building Capital (security and badge system)**: $305,000
- **Other Operating cost; training, healthcare, equipment, daily maintenance, groundkeeping, painting, window cleaning, insurance, building contingency, etc.**: $3,855,350

**Subtotal, Detail on Object of Expenses and FTEs**: $5,044,750

**Detail for Capital Appropriation Items: (Included above)**

- **Security System**: $155,000
- **Badge System**: $150,000

**Subtotal, Detail on Object of Expenses and FTEs**: $305,000

**Description/Justification**

TxDMV is requesting $9.8 million in TxDMV funds for staffing and maintenance of existing facilities. TxDOT currently provides TxDMV with facility, maintenance, grounds keeping, security, and a variety of other services, TxDMV is requesting 3 FTEs to provide facility and maintenance needs for existing office space. The projected employees are as follows but have the potential to be reclassified based on the agency's final needs: a contract administrator (Program Specialist VI), a space planner (Program Specialist II) and a day-to-day operations manager (Program Specialist III). These individuals perform skilled work in the maintenance, servicing, and repair of building, utility systems to include heating, ventilation, and air conditioning (HVAC) and may also involve electrical, plumbing, cabinetry, furniture, and equipment.
TxDMV Headquarters Relocation Modified

TxDMV headquarters operations are located on two campuses in central Austin – one on Jackson Avenue and one on Bull Creek Road and until recently, were both owned by TxDOT. In February 2015, TxDOT sold the Bull Creek campus which houses TxDMV’s Motor Carrier Division (MCD) to Milestone Community Builders. Milestone Community Builders leased backed the property to TxDOT for a period of three years, ending in February 2018. The lease back provision allows TxDMV staff to remain in the Bull Creek Campus buildings until the lease expires. In conjunction with the Texas Facilities Commission (TFC), specifications for a new location for TxDMV's MCD were developed and a request for proposal (RFP) was issued in January 2016 to relocate staff who are housed at Bull Creek.

Currently, TxDMV's headquarters staff is located in the same general area of Austin. With the sale of the Bull Creek campus, approximately 15% of the agency's headquarters staff will be geographically displaced from other headquarters operations. The agency believes that having a consolidated headquarters location is the most efficient and effective method for motor vehicle service delivery. TxDMV is aware that several options are available to facilitate headquarters consolidation. These options include purchasing an existing building, leasing an existing building or occupying an existing structure. TxDMV will continue to work with legislative leadership, the Governor’s Office, TxDOT and TFC to analyze all possible options to keep the costs to the state at a minimum. Included in the legislative appropriations request is funding for additional personnel responsible for facility maintenance and services.

TxDMV is requesting $9.8 million for maintenance costs of anticipated space utilized at the Jackson Avenue (Camp Hubbard) location and three FTEs to handle facility and maintenance needs. The ongoing costs include maintenance, grounds keeping, security, and a variety of other services. The proposed staff is subject to change: Contract administrator; space planner and a day-to-day operations manager. These individuals perform skilled work in the maintenance, building repairs, utility systems to include heating, ventilation, and air conditioning (HVAC) and may also involve electrical, plumbing, cabinetry, furniture, and equipment.
## 2018-19 LAR Exceptional Item Request Schedule

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>1001</td>
<td>Salaries</td>
<td>$732,270</td>
<td>$732,270</td>
</tr>
<tr>
<td>1002</td>
<td>Other Personnel Costs</td>
<td>$1,241</td>
<td>$1,241</td>
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<tr>
<td>2001</td>
<td>Professional Fees &amp; Services</td>
<td>$4,950</td>
<td>$4,950</td>
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<tr>
<td>2002</td>
<td>Fuels and Lubricants</td>
<td>$6,000</td>
<td>$6,000</td>
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<tr>
<td>2003</td>
<td>Consumable Supplies</td>
<td>$1,700</td>
<td>$1,700</td>
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<tr>
<td>2004</td>
<td>Utilities</td>
<td>$8,405</td>
<td>$6,379</td>
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<td>2005</td>
<td>Travel</td>
<td>$46,820</td>
<td>$48,070</td>
</tr>
<tr>
<td>2009</td>
<td>Other Operating Expense (includes law enforcement supplies for Investigators)</td>
<td>$155,045</td>
<td>$30,950</td>
</tr>
<tr>
<td>5000</td>
<td>Capital Expenditures (vehicles and THP radios)</td>
<td>$135,140</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total, Objects of Expense</strong></td>
<td><strong>$1,091,571</strong></td>
<td><strong>$831,560</strong></td>
</tr>
<tr>
<td>010</td>
<td>Method of Financing</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>TexDMV Fund</td>
<td><strong>$1,091,571</strong></td>
<td><strong>$831,560</strong></td>
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<td></td>
<td><strong>Total, Method of Finance</strong></td>
<td><strong>$1,091,571</strong></td>
<td><strong>$831,560</strong></td>
</tr>
</tbody>
</table>

### Number of Full-time Equivalent Positions (FTE):

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Quantity</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>5005</td>
<td>Acquisition of Information Resources Technologies</td>
<td>22</td>
<td>22</td>
<td>22</td>
</tr>
<tr>
<td>5006</td>
<td>Transportation Items (4 vehicles @ $25,000 each)</td>
<td>100</td>
<td>100</td>
<td>100</td>
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<tr>
<td>5007</td>
<td>Acquisition of Capital Equipment (THP Radios)</td>
<td>35</td>
<td>35</td>
<td>35</td>
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<tr>
<td></td>
<td><strong>Total, Capital Appropriation Items</strong></td>
<td><strong>$157,240</strong></td>
<td><strong>-$</strong></td>
<td></td>
</tr>
</tbody>
</table>

### Detail on Object of Expenses and FTEs: (Included above)

- Chief Investigator VI (1 @ $5,670/month) Austin $68,047 $68,047
- Investigator V (4 @ $4,695/month) (one each in Dallas/Fort Worth, San Antonio, El Paso and Houston) $237,892 $237,892
- Program Spec IV (1 @ $4,695/month) $59,473 $59,473
- Admin Assistant III (1 @ $2,926/month) $35,118 $35,118
- Attorney IV (1 @ $6,970/month) $83,640 $83,640
- Program Specialists III (5 FTE @ $4,135/month Field Service Representatives) $248,100 $248,100
Special Investigations Unit

TxDMV management requested an advisory service through TxDMV’s Internal Audit Division who identified examples of industry best practices to combat fraud. In response to the advisory service report, the agency created an Anti-Fraud, Waste and Abuse Working Group. The agency determined that creating a Special Investigations Unit (SIU) would be an effective deterrent to reduce motor vehicle-related fraud. The following categories of criminal activity pose a threat to legitimate Texas businesses and to the public at large:

- Title fraud by dealers, individuals and title services;
- Odometer fraud;
- Theft of sales tax, title, registration and other fees by title services, dealers and individuals by fraud and other means;
- Drivers Privacy Protection Act (DPPA) Violations;
- Unlicensed sale of motor vehicles (“curb stoning”);
- Unlicensed operation as motor carrier;
- Unlicensed operation as a household goods movers;
- Household goods moving fraud;
- Counterfeit of plates and temporary tags; and
- Misuse of farm, military, and other plates.

The agency is requesting funds through an exceptional item to create a SIU, including an additional 13 FTEs, four vehicles, travel and related expenses. This unit will include staff in two different divisions, Vehicle Titles and Registrations (VTR) and Enforcement (ENF), to identify, address and reduce fraud. The VTR SIU staff will be comprised of five additional Field Service Representatives (FSRs) who will focus on fraudulent activities in the agency’s Regional Service Centers (RSCs) and in 254 Tax Assessor/Collector offices including their authorized deputies. ENF is requesting eight additional staff for the SIU comprised of an attorney, five investigators, a program specialist and an administrative assistant who will focus on fraudulent activities in new and used dealerships, salvage dealers, household goods movers, commercial fleet carriers, oversize/overweight loads, etc. Combined, the SIU will have a staff of 13 FTEs who will focus on combating fraud across the state and across industries in order to ensure compliance with Texas’ laws and maximize the collection of state revenue.
Commercial Vehicle Information and Systems Network (CVISN) Projects

CVISN is a key component of the Federal Motor Carrier Safety Administration’s (FMCSA) drive to improve commercial motor vehicle safety. The CVISN program supports FMCSA’s goals of focusing safety enforcement on high-risk operators; integrating systems to improve the accuracy, integrity and verifiability of credentials; improving efficiency through electronic screening of commercial vehicles; and enabling online application and issuance of credentials. TxDMV is committed to making Texas’ roadways the safest for the motoring public. The agency is requesting funds through an exceptional items for state match to draw down federal grant dollars to fund safety enhancements to Texas roadways, at a 15% state and 85% federal reimbursement split.

CVISN grants can be used for system and roadside projects that increase safety on the roads and increase the efficiency of moving commerce on the roads. The Texas CVISN Working Group and Steering Committee determine what projects the state will finance with CVISN grants. The TxDMV is the lead agency for CVISN in Texas. CVISN will be renamed to Innovative Technology Deployment (ITD) in 2017. The CVISN or ITD grants will no longer have limits and will only require a 15 percent match by the state. An estimated $1,750,000 will be needed for the FY 2018-19 biennium. The CVISN Working Group and Steering Committee have worked since late 2015 on the following project list to pursue in the next CVISN (ITD) grant application (2017), with a decision scheduled in July 2016.

Projects include (in order of priority):

### 2018-19 LAR Exceptional Item Request Schedule

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001</td>
<td>Objects of Expense:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Professional Fees &amp; Services</td>
<td>$875,000</td>
<td>$875,000</td>
</tr>
<tr>
<td></td>
<td>Total, Objects of Expense</td>
<td>$875,000</td>
<td>$875,000</td>
</tr>
<tr>
<td>010</td>
<td>Method of Financing:</td>
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<tr>
<td></td>
<td>TxDMV Fund</td>
<td>$131,250</td>
<td>$131,250</td>
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<tr>
<td>8082</td>
<td>Federal Reimbursements</td>
<td>$743,750</td>
<td>$743,750</td>
</tr>
<tr>
<td></td>
<td>Total, Method of Finance</td>
<td>$875,000</td>
<td>$875,000</td>
</tr>
</tbody>
</table>
1. An automation project to provide permit data from TxDMV’s size and weight permitting system in a manner that TxDPS or other law enforcement agencies can use in the electronic screening of vehicles on the roadside. TxDMV’s Size and Weight Program also is looking at using TxVIEW web services to identify Out of Service (OOS) carriers that get size and weight permits and then notify enforcement. One year’s size and weight data showed 341 permits issued to carriers OOS for safety reasons and 593 OOS for failing to update their data in the federal Motor Carrier Management Information System (MCMIS). TxDMV is considering asking for legislative authority to deny permits to OOS vehicles. No cost estimate at this time.

2. Upgrade TxDPS inspection stations to identify unsafe trucks by adding thermal imaging that checks for bad wheels, hubs, and exhausts. Other states have seen great gains in faster screening and catching brake problems. Estimated cost is $780,000.

3. An automation project so that CPA can use CVIEW to complete International Registration Plan (IRP) information needed to issue International Fuel Tax Agreement (IFTA) registrations instead of providing more than 60 IRP logins to TxCPA. CPA is considering changing its day trip licenses for carriers leaving the state five or fewer times a year (IFTA not needed in these cases) from cashier checks in the truck cabs to having the carriers order online. This data would then be pushed to the CVIEW. The current system is subject to fraud. No cost estimate at this time.

4. An automation project to modify TxDMV’s Registration and Titling System (RTS) to check for OOS vehicles before issuing trip permits or registration (TxDMV is required to do this by statute). Estimated cost is $950,000.
Automobile Burglary and Theft Prevention Authority (ABTPA)

ABTPA is requesting that the 4% biennial reduction (required for the FY 2018-19 LAR for all GR-funded programs) be reinstated to prevent additional loss of grant-funded motor vehicle burglary and theft-related law enforcement positions.

### 2018-19 LAR Exceptional Item Request Schedule

<table>
<thead>
<tr>
<th>Division:</th>
<th>Automobile Burglary and Theft Prevention Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Item Name:</td>
<td>Reinstatement of 4% Reduction</td>
</tr>
<tr>
<td>Strategy:</td>
<td>B.2.1. ABTPA</td>
</tr>
<tr>
<td>Division Director:</td>
<td>Bryan Wilson</td>
</tr>
<tr>
<td>Item Priority:</td>
<td>Request to Reinvest 4% Reduction</td>
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</table>

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>2018</th>
<th>2019</th>
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</thead>
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<tr>
<td>4000</td>
<td>Objects of Expense:</td>
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<tr>
<td></td>
<td>Grants</td>
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<td>$ 596,793</td>
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<td>$ 596,793</td>
<td>$ 596,793</td>
</tr>
<tr>
<td>010</td>
<td>Method of Financing:</td>
<td></td>
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<tr>
<td></td>
<td>General Revenue</td>
<td>$ 596,793</td>
<td>$ 596,793</td>
</tr>
<tr>
<td></td>
<td>Total, Method of Finance</td>
<td>$ 596,793</td>
<td>$ 596,793</td>
</tr>
</tbody>
</table>
Automobile Burglary and Theft Prevention Authority (ABTPA)
The ABTPA will use the additional funds to increase the tactical size and strength of regional law enforcement programs and to protect communities and motor vehicle owners against motor vehicle crime. More officers will be added to existing programs and increased law enforcement coverage will be expanded to high crime areas not currently served. The plan calls for adding staff for crime analysis and conducting vehicle identification number (VIN) inspections. Currently more than 100 counties do not have reasonable access to trained law enforcement personnel who can conduct VIN inspections. The new crime analysts will use data analysis and other methods to deter criminals and to interrupt criminal economic enterprises.

A portion of the funds will be used to protect communities and motor vehicle owners by providing education on how to avoid becoming a victim. The ABTPA will target specific high crime communities and neighborhoods to reduce motor vehicle burglary and theft. Using various technologies like car data port devices, tracking technology, and web and smart phone applications, the ABTPA will protect these communities and motorists against auto crimes.
FY 2016 Financial Summary
for the 3rd Quarter ending
May 31, 2016

Finance and Administrative Services Division
August 4, 2016
Revenues:
Year-to-date revenue collections increased 1.1% or $14.1 million over the same period last year.

The largest source of this increase is attributed to registration revenue as the number of registered vehicles continues to rise in FY 2016. Revenue increases were offset by decreases in Oversize/Overweight revenue as a result of fewer permits and a slump in the oil market. The remaining revenue categories of title revenue, business dealer license revenue, collections associated with federal interstate or international commerce (Unified Carrier Registration fees), intrastate motor carrier applications and credentialing fees are flat versus year-to-date fiscal year 2015.

Expenditures:
Year-to-date expenditures through May 31, 2016 total $88,941,061. The significant expenditure categories are detailed below:

- **Salaries** ($28.4 million) – As of May 31, 2016, there were 714 filled positions and 49 vacancies.
- **Purchased Contract Services** ($21.0 million) – This line item includes Huntsville license plate production ($15.1 million); Special License Plate Fees - Rider 3, ($2.7 million); and registration renewal and specialty plate mailing ($3.2 million).
- **Professional Fees** ($13.9 million) – The majority of these expenses are Data Center Services (DCS) ($5.7 million) and Automation ($5.5 million), Information Technology staff augmentation & TxDOT DCS ($1.5 million), and CVISN ($398,000).
- **Postage** ($6.7 million) – Print Mail Pro postage permit for registration renewal mailings.
- **Reproduction & Printing** ($3.4 million) – Printing of titles ($1.8 million), title paper, envelopes, and registration inserts ($1.4 million).

Encumbrance Summary:
As of May 31, 2016, encumbrances total $55.3 million. The majority of the encumbrances (95%) are in Capital, primarily for the refactoring of the Registration and Titling System (RTS), E-Licensing system (formerly replacement of the Licensing, Administration, Consumer Affairs and Enforcement or LACE), and Application Migration and Server Infrastructure Transformation (AMSIT); Vehicle Titles and Registration (VTR) for postage and registration decals; Finance and Administrative Services (FAS) for the production of license plates; and Automobile Burglary and Theft Prevention Authority (ABTPA) for grants.

Details of the larger encumbrances by budget category are as follows:

- **Professional Fees and Services** ($24.1 million) – Automation ($17.5 million, primarily RTS Refactoring and E-Licensing), and DCS ($3.4 million). Also included are encumbrances for project services to implement the AMSIT project ($1.4 million), which will separate TxDMV applications and related information technology infrastructure components from the TxDOT network. The remainder is attributable to various items including staff augmentation and TxDOT DCS.
- **Purchased Contract Services** ($10.2 million) – Includes license plates production ($8.0 million) and imaging of registration and title documents ($1.7 million).
- **Maintenance and Repair** ($5.6 million) – Software maintenance related to RTS refactoring.
- **Grants** ($8.7 million) – ABTPA grants.

Comparison of Fiscal Year 2016 to Prior Year:
Expenditures for fiscal year 2016 are 3.5% lower than those in the same period last year due to the timing of the purchase of motor vehicle registration sticker decals and ABTPA grant reimbursements.

Encumbrances are 46.1% higher than this time last year primarily due to increased encumbrances for DCS and license plate production.
3rd Quarter FY 2016 Financial Status Highlights

**TxDMV Deposits to Fund 1 & Fund 6**

### TxDMV Total Deposits

<table>
<thead>
<tr>
<th>Quarter</th>
<th>FY 2014</th>
<th>FY 2015</th>
<th>FY 2016</th>
<th>Year to Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Quarter</td>
<td>$398,863,757</td>
<td>$422,729,651</td>
<td>$414,787,440</td>
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</tr>
<tr>
<td>2nd Quarter</td>
<td>$324,693,025</td>
<td>$364,160,725</td>
<td>$370,233,224</td>
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<td>3rd Quarter</td>
<td>$509,376,966</td>
<td>$491,911,802</td>
<td>$508,221,128</td>
<td>$1,293,244,792</td>
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</tbody>
</table>

**TxDMV Deposits to Fund 1 (General Revenue)**

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<tr>
<th>Quarter</th>
<th>FY 2014</th>
<th>FY 2015</th>
<th>FY 2016</th>
<th>Year to Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Quarter</td>
<td>$53,334,038</td>
<td>$60,072,150</td>
<td>$55,302,103</td>
<td>$164,671,061</td>
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<tr>
<td>2nd Quarter</td>
<td>$50,379,473</td>
<td>$54,911,490</td>
<td>$53,917,148</td>
<td>$169,521,296</td>
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<tr>
<td>3rd Quarter</td>
<td>$69,956,650</td>
<td>$54,557,056</td>
<td>$56,536,663</td>
<td>$165,755,915</td>
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**TxDMV Deposits to Fund 6 (State Highway Fund)**

<table>
<thead>
<tr>
<th>Quarter</th>
<th>FY 2014</th>
<th>FY 2015</th>
<th>FY 2016</th>
<th>Year to Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Quarter</td>
<td>$345,528,818</td>
<td>$362,657,504</td>
<td>$359,485,337</td>
<td>$1,068,262,685</td>
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<tr>
<td>2nd Quarter</td>
<td>$274,313,552</td>
<td>$399,549,234</td>
<td>$316,316,075</td>
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<td>3rd Quarter</td>
<td>$448,420,315</td>
<td>$437,974,145</td>
<td>$451,687,466</td>
<td>$1,127,488,878</td>
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</table>
**MyPlates Analysis**

**New Contract Revenue and Guarantee Status**

### New Contract Cumulative Deposits to General Revenue

- **Total GR Deposits**
- **GR Deposits to $15 Million Guarantee**

### Snapshot at 05/31/16

<table>
<thead>
<tr>
<th>Description</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Contract Cumulative Deposits to General Revenue*</td>
<td>$16,155,169</td>
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<tr>
<td>New Order Deposits to General Revenue</td>
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<tr>
<td>Renewal Deposits to General Revenue</td>
<td>$8,515,799</td>
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<tr>
<td>General Revenue Deposits Counted Toward $15 Million Guarantee ¹</td>
<td>$8,065,159</td>
</tr>
</tbody>
</table>

*Figures exclude refund data and are subject to minimal revision.

¹ – GR revenue from the sale of new plates and 5% of renewal plate revenue shall count toward the guarantee.
### 3rd Quarter FY 2016 Financial Status Highlights

#### Statement of Revenues and Expenditures through May 31, 2016

<table>
<thead>
<tr>
<th>Revenues:</th>
<th>Projected Revenue</th>
<th>1Q Sep - Nov</th>
<th>2Q Dec - Feb</th>
<th>3Q Mar - May</th>
<th>YTD Revenues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motor Vehicle Certificates</td>
<td>$57,958,864</td>
<td>$19,351,920</td>
<td>$19,020,758</td>
<td>$22,699,733</td>
<td>$61,072,411</td>
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<tr>
<td>Motor Vehicle Registration Fees</td>
<td>$1,078,147,644</td>
<td>$349,507,999</td>
<td>$307,196,429</td>
<td>$445,351,691</td>
<td>$1,102,056,119</td>
</tr>
<tr>
<td>Motor Carrier - Oversize / Overweight</td>
<td>$128,705,732</td>
<td>$39,214,121</td>
<td>$38,145,730</td>
<td>$36,700,874</td>
<td>$114,060,725</td>
</tr>
<tr>
<td>Commercial Transportation Fees *</td>
<td>$5,054,047</td>
<td>$3,255,514</td>
<td>$2,518,563</td>
<td>$(419,719)</td>
<td>$5,354,358</td>
</tr>
<tr>
<td>Motor Vehicle Business Licenses</td>
<td>$5,502,757</td>
<td>$1,657,698</td>
<td>$1,803,863</td>
<td>$2,025,209</td>
<td>$5,486,776</td>
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<tr>
<td>Miscellaneous Revenue</td>
<td>$5,280,523</td>
<td>$1,800,188</td>
<td>$1,547,881</td>
<td>$1,866,340</td>
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<tr>
<td><strong>Total DMV Revenue</strong></td>
<td>$1,280,649,570</td>
<td>$414,787,440</td>
<td>$370,232,224</td>
<td>$508,224,128</td>
<td>$1,293,244,792</td>
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</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries and Wages</td>
<td>$40,714,100</td>
<td>$47,734,469</td>
<td>$45,600,451</td>
<td>$43,145,082</td>
<td>$36,286,002</td>
</tr>
<tr>
<td>Benefit Replacement Pay</td>
<td>$114,563</td>
<td>$11,121</td>
<td>$7,679</td>
<td>$10,272</td>
<td>$102,073</td>
</tr>
<tr>
<td>Other Personnel Costs</td>
<td>$1,231,096</td>
<td>$293,556</td>
<td>$324,005</td>
<td>$347,124</td>
<td>$964,685</td>
</tr>
<tr>
<td>Professional Fees and Services</td>
<td>$56,382,123</td>
<td>$2,671,678</td>
<td>$5,658,671</td>
<td>$5,551,224</td>
<td>$13,881,573</td>
</tr>
<tr>
<td>Fuels &amp; Lubricants</td>
<td>$108,213</td>
<td>$7,090</td>
<td>$8,469</td>
<td>$9,664</td>
<td>$25,225</td>
</tr>
<tr>
<td>Consumable Supplies</td>
<td>$1,206,553</td>
<td>$246,901</td>
<td>$161,617</td>
<td>$360,941</td>
<td>$769,459</td>
</tr>
<tr>
<td>Utilities</td>
<td>$5,257,103</td>
<td>$725,964</td>
<td>$693,322</td>
<td>$1,156,673</td>
<td>$2,574,959</td>
</tr>
<tr>
<td>Travel In-State</td>
<td>$425,706</td>
<td>$52,883</td>
<td>$55,423</td>
<td>$85,553</td>
<td>$192,958</td>
</tr>
<tr>
<td>Travel Out-of-State</td>
<td>$73,876</td>
<td>$8,879</td>
<td>$2,968</td>
<td>$21,734</td>
<td>$33,581</td>
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<tr>
<td>Rent - Building</td>
<td>$913,847</td>
<td>$203,688</td>
<td>$159,724</td>
<td>$166,170</td>
<td>$529,592</td>
</tr>
<tr>
<td>Rent - Machine and Other</td>
<td>$337,563</td>
<td>$50,651</td>
<td>$76,646</td>
<td>$67,243</td>
<td>$194,540</td>
</tr>
<tr>
<td>Advertising &amp; Promotion</td>
<td>$504,003</td>
<td>$13,881</td>
<td>$9,252</td>
<td>$17,530</td>
<td>$40,663</td>
</tr>
<tr>
<td>Purchased Contract Services</td>
<td>$36,216,936</td>
<td>$4,569,375</td>
<td>$7,543,118</td>
<td>$8,929,741</td>
<td>$21,042,243</td>
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<tr>
<td>Computer Equipment Software</td>
<td>$1,065,661</td>
<td>$220,556</td>
<td>$139,093</td>
<td>$326,139</td>
<td>$685,778</td>
</tr>
<tr>
<td>Fees &amp; Other Charges</td>
<td>$1,257,004</td>
<td>$241,080</td>
<td>$268,270</td>
<td>$276,046</td>
<td>$785,396</td>
</tr>
<tr>
<td>Freight</td>
<td>$1,168,784</td>
<td>$166,990</td>
<td>$160,710</td>
<td>$235,004</td>
<td>$562,704</td>
</tr>
<tr>
<td>Maintenance &amp; Repair</td>
<td>$9,458,350</td>
<td>$341,746</td>
<td>$543,239</td>
<td>$1,232,837</td>
<td>$2,117,882</td>
</tr>
<tr>
<td>Memberships &amp; Training</td>
<td>$397,198</td>
<td>$81,443</td>
<td>$22,959</td>
<td>$51,309</td>
<td>$155,711</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>$3,628,150</td>
<td>$36,239</td>
<td>$91,728</td>
<td>$62,586</td>
<td>$190,553</td>
</tr>
<tr>
<td>Postage</td>
<td>$9,575,563</td>
<td>$2,234,537</td>
<td>$1,934,032</td>
<td>$2,516,573</td>
<td>$6,715,142</td>
</tr>
<tr>
<td>Reproduction &amp; Printing</td>
<td>$6,316,268</td>
<td>$1,086,917</td>
<td>$1,209,758</td>
<td>$1,185,337</td>
<td>$3,402,012</td>
</tr>
<tr>
<td>Services</td>
<td>$1,295,663</td>
<td>$140,620</td>
<td>$161,971</td>
<td>$242,526</td>
<td>$545,117</td>
</tr>
<tr>
<td>Grants</td>
<td>$13,938,820</td>
<td>$-</td>
<td>$1,255,217</td>
<td>$3,694,818</td>
<td>$4,950,035</td>
</tr>
<tr>
<td>Other Capital</td>
<td>$4,575,048</td>
<td>$-</td>
<td>$102,880</td>
<td>$7,359</td>
<td>$110,239</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$196,162,934</td>
<td>$22,799,274</td>
<td>$30,119,301</td>
<td>$36,022,486</td>
<td>$88,941,061</td>
</tr>
</tbody>
</table>

| YTD May Net Surplus (Deficit) | $1,204,383,731 |

#### Budget Adjustments

<table>
<thead>
<tr>
<th>Adjustment</th>
<th>Amount</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjusted Automation UIR</td>
<td>$6,288,000</td>
<td>(1) Unexpended balance amount adjusted to reflect payments for the RTS project that were expected to be paid in 2016 funds; however, the payments were processed at the end of 2015.</td>
</tr>
<tr>
<td>Adjustment to 2.5% Salary Increase Estimate</td>
<td>$(105,294)</td>
<td>(2) The amounts for these items were estimates, adjustments were made to reflect the actual amount budgeted.</td>
</tr>
<tr>
<td>Adjustment to Benefit Replacement Pay (BRP)</td>
<td>$(6,823)</td>
<td>(2) The amounts for these items were estimates, adjustments were made to reflect the actual amount budgeted.</td>
</tr>
</tbody>
</table>

| Total adjustment to original approved budget of $108.0 million | $(2,939,917) |

### Comparison to Prior Year

<table>
<thead>
<tr>
<th>Adjusted Fiscal Year 2015</th>
<th>Adjusted Fiscal Year 2016</th>
<th>Percent Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approved Adjusted Budget</td>
<td>$171,370,297</td>
<td>$196,162,934</td>
</tr>
<tr>
<td>Year-to-Date Expenditures</td>
<td>$92,143,072</td>
<td>$88,941,061</td>
</tr>
<tr>
<td>Available Budget</td>
<td>$79,227,225</td>
<td>$107,221,873</td>
</tr>
<tr>
<td>Encumbrances</td>
<td>$38,195,764</td>
<td>$55,300,596</td>
</tr>
<tr>
<td>Available Budget</td>
<td>$41,031,461</td>
<td>$51,921,274</td>
</tr>
</tbody>
</table>

* In November of FY 16, a Unified Carrier Registration (UCR) deposit in the amount of $1.4 million was incorrectly coded by the Comptroller’s automated lockbox processing. This resulted in an over reporting of commercial transportation fees in the Month of November FY 16. In April FY 16, a manual correction was made and the $1.4 million was moved into a special fund that is used to pay invoices received from the Indiana National Unified Carrier Registration Depository. The correction, combined with a partial reporting period, makes the commercial transportation category appear negative in this financial summary. Although the reporting period in this summary appears negative, compared to FY 15 commercial transportation fees are up 1.5% YTD in FY 16.
Capital Project Status

Technology Replacements and Upgrades - County Support
This project consists of funding to deploy and maintain printers, computers, monitors, laptops, cash drawers, etc. utilized at county Tax Assessor/Collector offices throughout the state. A major initiative in FY 2016 will be a refresh of technology at the county offices; this initiative was formally approved by the Governance Team as a project and a project manager has been appointed for the project. The technology refresh project will begin in FY 2016 and continue into FY 2017.

TxDMV Automation System
The TxDMV capital project provides for the continued development of information technology assets to improve customer services and improve access to agency programs for customers and the public.

The majority of the Automation expenditures are for the Registration and Titling System (RTS) Refactoring Project, which is estimated to be $27.0 million at year end. The Point of Sale (POS) component has been implemented in all 254 counties and the migration of RTS off the mainframe onto DCS-based servers was completed in November 2016. The overall schedule for the project has been updated and work has begun for the impact of the new Process and Handling (P&H) fee on the RTS.

A purchase order in the amount of $4.3 million for FY 2016 was issued to Deloitte for the Licensing, Administration, Consumer Affairs, and Enforcement (LACE) System Replacement, which is now known as the E-Licensing Project. Funding in 2016 will also provide for the independent verification & validation (IV&V) contract for the E-Licensing Project.

The Web Dealer Project is continuing with dealer implementation and enhancement testing. The modules implemented to date include New Vehicles, Used Vehicles, and Commercial Fleet. The next phase to be completed is the Salvage module, which is scheduled to be completed in July 2016. Adjustments are also being made for the impact to Web Dealer from the implementation of the TxDMV Fund and the new Process and Handling (P&H) fee.

The second phase of single sticker continues this fiscal year. The Automation funding for this project is $1.2 million, with the majority of that cost to be utilized for the TxDMV International Registration Plan (IRP) system upgrade, which will implement an automated inspection process to replace the manual verification process for commercial fleet services.

Growth and Enhancement – Agency Operations Support
This budget provides funds to acquire hardware/software to support agency operations. Expenditures and encumbrances to date include costs for miscellaneous computer equipment, computer monitors, and security software. Encumbrances and pre-encumbrances are for miscellaneous computer equipment, laptop and desktop computers, cabling services, and generator installation.

Commercial Vehicle Information Systems and Networks (CVISN) Grant
The Commercial Vehicle Information Systems and Networks (CVISN) is a federal grant that focuses on safety enforcement on high-risk operators; integrating systems to improve the accuracy, integrity, and verifiability of credentials; improving efficiency through electronic screening and enabling online application and issuance of credentials. $1.1 million was carry forwarded from FY 2015 to FY 2016. The Motor Carrier Division (MCD) works with three other state agencies – Texas Department of Transportation (TxDOT), Texas Department of Public Safety (DPS), and State Comptroller – to implement the grant, with expenditures planned for TxCVIEW maintenance and core augmentation, the ABC Warning Project, and travel. As of the end of May 2016 $435,000 is encumbered for TxDOT services for the ABC Warning Project and $2,000 is encumbered for work performed by the Southwest Research Institute (SwRI).

Data Center Services
The Data Center Services (DCS) program enables state agencies to access data center computing as a managed service. State agencies are billed for the amount of services consumed. Expenditures totaled $5.7 million through the end of May. The year-to-date total reflects charges through April 2016. Total projected DCS charges for FY 2016 are projected to come in below the overall total budget. The total DCS budget of $9.8 million does not include the projected $1.5 million payment to TxDOT for DCS charges, which will be paid from IT Operating in FY 2016.

Relocation of Regional Service Centers
This project provides funding in FY 2016 for the relocation of Regional Service Centers from TxDOT facilities. There are no expenditures to date; $30,000 has been encumbered for cabling services related to relocations. TxDMV staff completed work with Texas Facilities Commission (TFC) on stakeholder feedback and preliminary space planning and specifications have been submitted to TFC. The Regional Service Centers at San Antonio, Pharr, and Corpus Christi have been identified as the facilities to be relocated. Requests for Proposal (RFP) deadlines closed in March for all of the facilities, and proposals were received for San Antonio and Corpus Christi; no proposals were submitted for Pharr. A site visit was conducted for the one proposal in San Antonio, but the property was determined to not meet TxDMV needs. TFC engaged the services of a realty company to assist with property searches for Pharr and San Antonio, and the Aquila firm provided property lists for both locations that are under review. The property submitted for Corpus Christi has been determined to be suitable for TxDMV needs and a contract for lease space was submitted to the TxDMV Board at the June 2016 meeting.

Application Migration & Server Infrastructure Transformation (AMSIT)
The Application Migration and Server Infrastructure Transformation project will identify shared assets, applications, and servers to be relocated from their current position to satisfy the goal of establishing a standalone agency environment. Although this project is related to Automation, it is a separate capital project. Funds have been encumbered for project management, software implementation, and a $1.1 million purchase order was issued in February 2016 for project services, with the remaining balance of $5.8 million to be used for future project costs.
### Statement of Capital Project Expenditures through May 31, 2016

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Application Migration &amp; Server Transformation (AMSIT)</td>
<td>$ 7,353,955</td>
<td>$ 105,510</td>
<td>$ 2,329,577</td>
<td>$ 1,398,012</td>
<td>$ 5,831,565</td>
</tr>
<tr>
<td>Commercial Vehicle Information Systems &amp; Network (CVISN)</td>
<td>$ 1,078,944</td>
<td>$ 149,045</td>
<td>$ 3,096,961</td>
<td>$ 337,208</td>
<td>$ 242,753</td>
</tr>
<tr>
<td>Data Center Consolidations</td>
<td>$ 9,060,222</td>
<td>$ 1,531,362</td>
<td>$ 3,382,992</td>
<td>$ -</td>
<td>$ 3,382,992</td>
</tr>
<tr>
<td>Growth &amp; Enhancements - Agency Operations Support</td>
<td>$ 949,498</td>
<td>$ 156,610</td>
<td>$ 345,682</td>
<td>$ 307,697</td>
<td>$</td>
</tr>
<tr>
<td>Technology Replacement &amp; Upgrades - County Support</td>
<td>$ 5,500,000</td>
<td>$ 471,001</td>
<td>$ 4,402,655</td>
<td>$ 668,672</td>
<td>$ 3,733,983</td>
</tr>
<tr>
<td>TXDMV Automation System Project</td>
<td>$ 41,980,422</td>
<td>$ 3,998,133</td>
<td>$ 22,148,754</td>
<td>$ 12,763,514</td>
<td>$</td>
</tr>
<tr>
<td>Regional Office Relocation</td>
<td>$ 871,500</td>
<td>$ 113,847</td>
<td>$ 817,500</td>
<td>$ 30,000</td>
<td>$ 841,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 66,814,541</strong></td>
<td><strong>$ 6,447,522</strong></td>
<td><strong>$ 23,721,011</strong></td>
<td><strong>$</strong></td>
<td><strong>$</strong></td>
</tr>
</tbody>
</table>

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### Statement of TxDMV Automation Project Expenditures through May 31, 2016

<table>
<thead>
<tr>
<th>TxDMV Automation Project Appropriations</th>
<th>FY 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Estimated Unexpended Balance Carry-Forward from FY 2015</td>
<td>$ 28,730,221</td>
</tr>
<tr>
<td>Unexpended Balance Adjustments</td>
<td>$(2,828,000)</td>
</tr>
<tr>
<td>Fiscal Year 2016 Appropriation</td>
<td>$ 16,078,201</td>
</tr>
<tr>
<td><strong>Total Automation Appropriations</strong></td>
<td><strong>$ 41,980,422</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TxDMV Automation</th>
<th>2016 Approved Adjusted Budget</th>
<th>FY 2016 YTD Expenditures</th>
<th>FY 2016 Available Budget</th>
<th>FY 2016 Encumbrances</th>
<th>FY 2016 Available Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>813003 HQ Communication Infrastructure</td>
<td>$ 433,934</td>
<td>$ 16,148</td>
<td>$ 12,359</td>
<td>$ 86,635</td>
<td>$</td>
</tr>
<tr>
<td>813010 RTS Refactoring</td>
<td>$ 27,012,027</td>
<td>$ 2,839,920</td>
<td>$ 6,010,999</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>813013 RTS Data Purification/Name Address</td>
<td>$ 130,000</td>
<td>$ 0</td>
<td>$ -</td>
<td>$ 113,847</td>
<td>$</td>
</tr>
<tr>
<td>813015 WebDealer E-Titles</td>
<td>$ 2,652,994</td>
<td>$ 397,844</td>
<td>$ 1,169,448</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>813020 E-Licensing</td>
<td>$ 8,660,994</td>
<td>$ 528,899</td>
<td>$ 4,415,391</td>
<td>$ 3,491,420</td>
<td>$</td>
</tr>
<tr>
<td>815028 Single Sticker Phase II</td>
<td>$ 1,200,000</td>
<td>$ 215,322</td>
<td>$ 939,075</td>
<td>$ 693</td>
<td>$</td>
</tr>
<tr>
<td>84BDGT Unallocated</td>
<td>$ 1,890,472</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$ 1,890,472</td>
</tr>
<tr>
<td><strong>TxDMV Automation Total</strong></td>
<td><strong>$ 41,980,422</strong></td>
<td><strong>$ 3,998,133</strong></td>
<td><strong>$ 23,721,011</strong></td>
<td><strong>$</strong></td>
<td><strong>$</strong></td>
</tr>
</tbody>
</table>

* Balances in Automation will be brought forward to FY 2017 for project expenses.*
For more information, contact Internal Audit at (512) 465-4118 or Internal_Audit@txdmv.gov

Internal Audit Division Status Update
Finance and Audit Committee and TxDMV Board Meeting

Status of the Fiscal Year 2016

Remaining projects in FY2016 Internal Audit Plan

<table>
<thead>
<tr>
<th>Project</th>
<th>Description</th>
<th>Current Status</th>
<th>Expected Report Release/Presentation Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas International Registration Plan</td>
<td>Audit of the Motor Carrier Division's IRP audit process</td>
<td>Completed</td>
<td>See Report in Attachment 1</td>
</tr>
<tr>
<td>Drivers' Privacy Protection Act</td>
<td>Audit of the agency's processes to allow and monitor access to DPPA information</td>
<td>Finalizing Report</td>
<td>The report was released to management in August 2016. We will present the report to the TxDMV Board of Directors during FY2017.</td>
</tr>
<tr>
<td>Oversize/Overweight Permitting</td>
<td>Audit of the agency's processes to issue OS/OW permits</td>
<td>Fieldwork</td>
<td>Fieldwork is substantially done. Report will be released to management in early September 2016. We will present the report to the TxDMV Board of Directors during FY2017.</td>
</tr>
<tr>
<td>RTS Refactoring and Single Sticker Post-implementation review</td>
<td>Audit to ensure reports from Refactored RTS provide accurate data to management for decision-making.</td>
<td>Carry-over to FY2017</td>
<td>Project will commence and be finalized in Fiscal Year 2017</td>
</tr>
<tr>
<td>Fiscal Year 2017 Internal Audit Plan</td>
<td>Project to propose audit plan to the Board of Directors in accordance with the Internal Auditing Act</td>
<td>Completed</td>
<td>See Annual Audit Plan in Attachment 2</td>
</tr>
</tbody>
</table>

Coordinating External Audits

I. State Office of Risk Management
   1. On-site visit of the Waco Regional Service Center was held on August 12th

Attachments

1. Audit on the Efficiency of the Texas Internal Registration Plan Compliance Audit Process
2. FY2017 Annual Audit Plan
Audit on the Efficiency of the Texas International Registration Plan Compliance Audit Process
TxDMV 16-3

Internal Audit Division
August 04, 2016
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  Chapter 1-B: Opportunities to Cooperate with the Texas Comptroller of Public Accounts on Motor Carrier Audits are Growing .................................................. 3
  Chapter 1-C: IRP Auditor Classification May be Contributing to Turnover........ 4

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Appendix 2: Executive Director’s Management Response .............................................. 9
August 04, 2018

Mr. Raymond Palacios, Jr., Vice-Chairman
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, Texas 78731

Subject: Efficiency of the Texas International Registration Plan Compliance Audit Process (TxDMV 16-3)

Dear Vice-Chairman Palacios:

The Internal Audit Division has completed the report on the Efficiency of the Texas International Registration Plan Compliance Audit Process, which was included in the Internal Audit Plan for Fiscal Year 2016. We provided the report to the TxDMV management for their review and comment; management responses are found at the end of Chapter 1 and in Appendix 2 of the report.

The objectives of this project were to:

- evaluate the efficiency of IRP compliance audit procedures, and
- determine whether the TxDMV's IRP audit procedures overlap with audits performed by the Texas Comptroller of Public Accounts.

We thank TxDMV management and staff for their cooperation and assistance throughout this project.

If you have any questions or comments, please contact me at (512) 465-4118 or Sandra.Menjivar-Suddereth@txdot.gov.

Respectfully,

Sandra T. Menjivar-Suddereth, CISA, CIA, CGAP
Internal Audit Director

cc: Ms. Luanne Caraway, Member, Finance and Audit Committee
Mr. Guillermo “Memo” Treviño, Finance and Audit Committee
Mr. Blake Ingram, Board Member
Mr. Robert “Barney” Barnwell, Board Member
Mr. John H. Walker, III, Board Member
Ms. Whitney Brewster, TxDMV Executive Director
Ms. Shelly Melott, TxDMV Deputy Executive Director
Mr. Jimmy Archer, Motor Carrier Division Director
Audit on the Efficiency of the Texas International Registration Plan Compliance Audit Process

REPORT SUMMARY

The Texas Department of Motor Vehicles (TxDMV) has opportunities to gain efficiencies in its Texas International Registration Plan (IRP) compliance audit process by

- selecting audits annually rather than monthly, creating an annual audit plan that would allow the agency to forecast audit scheduling and auditee notifications on a longer time frame,
- establishing a two-tier review system to alleviate bottlenecks in the review process created by an increasing number of audits with one available reviewer,
- using an electronic system to document and track IRP audit work papers and eliminate the need to create, convert, store, and destroy physical audit files, and
- reducing staff time spent on manual data entry through further use of formulas in the IRP audit workbook and requiring large registrants to use electronic formats that minimize data entry.

In addition, the TxDMV should

- consider conducting a job audit, including updating job descriptions as needed, to ensure IRP auditors’ classification accurately reflects their required duties and skills.

The TxDMV should also be open to opportunities to cooperate with the Texas Comptroller of Public Accounts (CPA) on conducting motor carrier compliance audits. The CPA performs these audits in accordance with the International Fuel Tax Agreement (IFTA), a separate program than IRP. However, the International Fuel Tax Association approved a ballot measure designed to more closely align IFTA criteria for acceptable distance records with those required by IRP. In addition, both IRP and IFTA have the same record retention period for documents used as audit support.

MANAGEMENT RESPONSE

The management and staff of the Texas Department of Motor Vehicles are committed to establishing an effective system to ensure Texas International Registration Plan audits are completed in a timely and thorough manner, and we recognize that audits provide us important feedback on areas of improvement.

Management of the TxDMV agrees with the recommendations contained in the Internal Audit Division’s (IAD) report on the Efficiency of the Texas International Registration Plan Compliance Audit Process (TxDMV 16-3) and has provided within the report a plan for implementation of the recommendations (see page 5).

We appreciate the work performed by the IAD; the team was professional, capable and diligent. The team’s assessment will help us to continuously improve the efficiency and effectiveness of our operations.
Chapter 1: The IRP Compliance Audit Process Could Gain Efficiencies by Utilizing Automation and Electronic Documents and Leveraging Opportunities to Cooperate with Other State Agencies.

In November 2015, a peer review was conducted on the International Registration Plan (IRP) operations of the Texas Department of Motor Vehicles (TxDMV) Motor Carrier Division (MCD). The peer review is intended to determine a jurisdiction’s compliance with Plan requirements. The peer review team identified the state as out of compliance with its frequency of audits. The Plan requires each member jurisdiction to audit 3 percent per year of the number of fleets that renewed their registration (see textbox). According to the peer review team, Texas completed 1,849 of the 2,121 or 87 percent of the required audits for the registration years 2010 through 2014. During this period, Texas experienced an increase of nearly 14 percent registrations.

Although Texas met the required number of audits for the 2015 reporting period, TxDMV management requested that the Internal Audit Division review the current compliance audit process to identify opportunities for increased efficiency.

Chapter 1-A: The IRP Compliance Audit Processes Should Be Revised

The MCD Commercial Fleet Services Section conducts IRP audits with a staff of nine auditors and one audit supervisor. Currently, auditees are randomly selected and the registrants notified on a monthly basis. Registrants are given 30 days to provide requested audit documents, though some registrants take additional time. IRP auditors enter fleet and mileage information from the registrants’ documents and distance logs into various spreadsheets contained in an audit workbook. The audit supervisor reviews and approves all audit work before results are presented to registrants. A hardcopy audit file is maintained throughout the audit and upon completion any electronic documents are printed and placed in the hardcopy file. The file is then scanned for records retention and subsequently shredded.

Audit Selection and Notification

The TxDMV could gain efficiency from selecting audits annually rather than monthly, creating an annual audit plan that would allow the agency to forecast audit scheduling and auditee notifications on a longer time frame.

The IRP requires jurisdictions to give auditees 30 days to provide documentation. On average, 20 to 30 percent of registrants provide audit documentation approximately one month (between 27 and 34 days) after the TxDMV’s requested deadline according to our review of MCD’s audit records for IRP audits initiated between January 1, 2015 and December 31, 2015. These delays by registrants create potential bottlenecks of audit work when operating on a monthly audit cycle.

International Registration Plan and Definitions

The International Registration Plan (IRP) is an agreement among Member Jurisdictions for registration reciprocity. Under the IRP, apportionable fees are paid to various Jurisdictions in which vehicles of a fleet are operated based on the proportion of total distance operated in all Jurisdictions.

Fleet means one or more apportionable vehicles designated by a registrant for distance reporting under the IRP.

Jurisdiction means a country or a state, province, territory, possession, or federal district of a county.

Registrant means a person in whose name a properly registered vehicle is registered.

Total Distance means all distance operated by a Fleet of apportioned vehicles. Total Distance includes the full distance traveled in all vehicle movements, both interjurisdictional and intrajurisdictional, and including loaded, empty, deadhead, and bobtail distance.

An annual audit plan would allow the TxDMV to schedule auditee notifications as needed to provide registrants sufficient time to prepare and submit necessary documentation. In addition, IRP auditors could work on audits for registrants that provide timely documentation while awaiting documentation from registrants who request additional time. Registrants’ audit eligibility is based on their IRP renewal status during the prior year and therefore does not change month to month. An annual audit selection also has a supplemental benefit of saving staff time each month by eliminating the monthly selection task.

Audit Reviews

Establishing a two-tier review system may help alleviate bottlenecks in the audit process. Currently, the MCD has one supervisor tasked with reviewing all audits, which constrains the volume of audit reviews the division can perform. According to the 2015 IRP peer review, Texas experienced a nearly 14 percent increase in IRP registrations between registration years 2010 and 2014. During that period the TxDMV completed 1,849 of the 2,121 or 87 percent of the required audits. The current audit review process is unlikely to match future audit volume based on the IRP program’s growth.

A two-tier review system could include an initial review identifying data or procedural errors for correction and a second review by the supervisor to resolve more complex issues or remaining errors. An auditor not involved with preparing the audit under review could conduct the first-level review. This would spread review capability among more than one person, and shift the supervisor’s review away from clerical errors.

Audit Documentation and Retention

The TxDMV could more efficiently utilize resources by using an electronic system to document and track IRP audit work papers and eliminate the need to create, convert, store, and destroy physical audit files.

The TxDMV currently manages IRP audit documentation primarily using hardcopy files. Any electronic working papers are printed out and placed in the file. Once an audit is complete, the physical file is scanned for document retention and then shredded. This consumes unnecessary staff time and resources converting electronic files to physical files which will ultimately be shredded after conversion back into electronic format.

An electronic audit work paper filing and tracking system benefits includes ease of access to files not reliant on the location of a hardcopy folder, and availability and accessibility of individual documents for review as they are completed. The electronic files can be archived according to any retention schedules applicable to IRP audits and working papers. In addition, an electronic system would save physical space currently dedicated to storing a backlog of completed files, and staff time currently spent scanning and shredding the files.

Auditing Tools

Auditors can further utilize formulas in the IRP audit workbook to reduce time spent performing manual data entry. The audit workbook is designed to capture information about fleet size and distances traveled in each IRP member jurisdiction and calculate additional fees or refunds owed to a registrant. Registrants can submit fleet and distance records to IRP auditors in electronic spreadsheets, scanned records, or hardcopy formats. Data received in hardcopy or scanned formats must be manually entered into the workbook. Some calculations use the same mileage total that are keyed into the spreadsheet multiple times. Using formulas to populate data from one initial point of entry can reduce the need for manual data and time spent populating certain fields and spreadsheets within the workbook.

Manual data entry could also be reduced by requiring some registrants to use available online forms that allow staff to import rather than manually enter data. Some registrants already opt to
submit distance logs using the online forms or other electronic format that can be readily copied into the audit workbook. Further efficiencies could be realized by requiring carriers with large fleets, and the technological capability, to utilize these electronic formats in order to facilitate data entry and reduce the overall audit preparation time.

Chapter 1-B: Opportunities to Cooperate with the Texas Comptroller of Public Accounts on Motor Carrier Audits are Growing

The TxDMV and the Texas Comptroller of Public Accounts (CPA) are each responsible for conducting annual motor carrier compliance audits. The TxDMV conducts audits of the IRP and the CPA conducts audits in accordance with the International Fuel Tax Agreement (IFTA)\(^1\).

IRP and IFTA are separate programs with their own audit requirements and methodologies. However, the opportunity and feasibility for the agencies to conduct joint audits is growing as the International Fuel Tax Association passed a ballot measure designed to align IFTA standards more closely to IRP standards effective January 1, 2017. The ballot amends IFTA procedures language to more closely mirror the criteria for acceptable distance records defined by IRP.

In addition, both IRP and IFTA prescribe the same record retention period for documents used as audit support. The TxDMV generally selects IRP auditees with four years of program history, which aligns with the IRP’s and IFTA’s four year record retention period.\(^2\) Joint audits may benefit registrants by combining the need for registrants to gather and submit documentation for two separate audits into one joint audit.

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\(^1\) Texas implemented the provisions of the International Fuel Tax Agreement (IFTA) on July 1, 1995. The members (jurisdictions) include the 48 contiguous states and 10 Canadian provinces. The purpose of IFTA is to ensure that fuels tax is paid or accrued to jurisdictions where the fuel is used. (Audit and IFTA Software Procedures, January 2012, Texas Comptroller of Public Accounts, Audit Division)

\(^2\) International Registration Plan, Article X Records and Audits, 1000(a) Retention and Availability of Records; IFTA Procedures Manual (Last Revised January 2013) P510.100 Preservation of Records
Chapter 1-C: IRP Auditor Classification May be Contributing to Turnover

The IRP Auditors have experienced 29 percent turnover between fiscal years 2013 and 2015. MCD managers cited difficulty finding qualified applicants to fill vacant positions. IRP auditors’ official classification title may be contributing to difficulty finding qualified candidates.

We reviewed the classification and tenure of the eight IRP auditors on staff at the time fieldwork was conducted, and found all auditors held the same Accountant III classification regardless of role or experience. We found that the Accountant III classification description did not accurately reflect the duties and tasks of IRP auditors as observed during our audit.

For example, we compared the Auditor classification to IRP auditor duties and found the Auditor classification more accurately describes their work performed than the Accountant classification. We used only the Accountant and Auditor classifications in our comparison. We did not perform a comprehensive review of all potential job classifications.

The MCD should evaluate whether IRP auditor job descriptions are current and accurate. Job descriptions document the essential functions of a position and are used for job audits, job requisitions, performance plans, and employee evaluations. Current, accurate job descriptions can assist management in determining whether IRP auditors are appropriately classified.

Job descriptions can also communicate to employees which skills they need to cultivate in order to advance. The descriptions for higher positions within the same series can clearly state the skills and responsibilities expected of employees in more advanced positions, such as supervising a team or conducting quality assurance reviews.
Recommendations

The TxDMV should:

1.1 select IRP registrants for audit on an annual basis, creating an annual audit plan.

1.2 adjust auditee notification and record request scheduling as needed to provide registrants sufficient time to prepare and submit audit documentation.

1.3 establish a two-tier audit review method.

1.4 establish an electronic audit documentation system to track and archive audit work papers.

1.5 consider establishing thresholds requiring large registrants to submit documentation in formats that minimize data entry by staff.

1.6 consider conducting a job audit, including updating job descriptions as needed, to ensure IRP auditors’ classification accurately reflects their required duties and skills.

Management’s Response

Recommendation 1.1 and 1.2

TxDMV Management agrees with these recommendations. Commercial Fleet Services (CFS) has begun implementing this process of developing an annual audit plan. Specifically, International Registration Plan (IRP) Audits conducted by CFS will be selected by September 30, 2016 and will be due for review by the CFS Audit Review Team no later than October 31, 2017, of the following year. Once motor carriers are selected for audit, the CFS Audit Supervisor will assign them to individual auditors; this will provide each auditor with an inventory of work throughout the year. The due date of October 31 will allow time for the Audit Supervisor to review the audits before they are submitted to IRP. The audit reports are uploaded to the IRP audit exchange and distributed to each affected member jurisdiction. Each affected member jurisdiction has 45 days to protest the audit. The IRP due date is December 31st of each year.

Recommendation 1.3

TxDMV Management agrees with this recommendation. Establishing a two-tier review system will allow for a smoother flow of work during the review phase of the audit process. CFS will evaluate current auditors’ abilities to conduct initial reviews of audits by assigning them based on skill level and experience, and monitoring the results. If this does not prove feasible or impacts CFS’s ability to meet its annual audit goal, MCD management will review staffing patterns in the division by January 1, 2017, to ascertain whether assigning an FTE to review audits is feasible.

Recommendation 1.4

TxDMV Management agrees with this recommendation. The IRP audit workbook, correspondence and contact log are now maintained on a secure network at TxDMV. CFS will request that each registrant submit documents electronically and CFS will forward those to IT to scan for potential viruses. If a registrant cannot submit documents electronically, the auditor will manually scan the documents and maintain them on the secure network. This
will eliminate the need to send audit folders to administrative services for scanning in to the FileNet system. CFS expects to implement the electronic system by September 30, 2016.

Recommendation 1.5

TxDMV Management agrees with this recommendation. CFS will have formulas created in the IRP audit workbook to eliminate manual data entry. After the formulas have been created, the audit workbook will be sent to Explore for testing in TxIRP before placing the formulas in production. CFS expects to have the updated IRP audit workbook in the TxIRP System by June 1, 2017.

Recommendation 1.6

TxDMV Management agrees with this recommendation. This is also needed so that TxDMV complies with the State Auditor’s Office Job Classifications. The Director of the Motor Carrier Division will prepare a Job Audit Request to submit to Executive Management by November 1, 2016.
Appendix 1: Objectives, Scope, and Methodology

Objectives

In accordance with the TxDMV Internal Audit Plan for Fiscal Year 2016, the Internal Audit Division has reviewed the IRP peer review completed in November 2015 to determine the objectives of the IRP audit. To complement the work of the peer review team and to assist the Motor Carrier Division complete the required number of compliance audits annually, the audit objectives are:

- To evaluate the efficiency of IRP compliance audit procedures
- To determine whether the TxDMV’s IRP audit procedures overlap with audits performed by the Texas Comptroller of Public Accounts

Scope and Methodology

The scope of this audit included the Texas Department of Motor Vehicles (TxDMV) Motor Carrier Division’s IRP compliance audit processes and IRP audits initiated during calendar year 2015. To address audit objectives we interviewed TxDMV Motor Carrier Division management and staff, reviewed the Division’s procedures for selecting and notifying auditees, reviewing IRP audit work performed by Division staff, and managing audit file documentation. We also analyzed audit tracking records maintained by the Division to determine the frequency of responses by IRP registrants to the TxDMV’s requests for required audit documentation.

In addition, we reviewed International Fuel Tax Agreement (IFTA) audit requirements and IFTA audit procedures performed by the Texas Comptroller of Public Accounts (CPA) to identify possible areas for coordination between the CPA and the TxDMV.

Project Information

This audit was included in the Internal Audit Plan for Fiscal Year 2016. We conducted this performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was also conducted in conformance with the International Standards for the Professional Practice of Internal Auditing.

Information and documents that we reviewed included the following:

- International Registration Plan with Official Commentary, amended January 1, 2016
- International Registration Plan Audit Procedures Manual, Effective January 1, 2016
- Texas Department of Motor Vehicles Motor Carrier Division Texas Apportioned Audit Appeal procedures
- Texas Department of Motor Vehicles Motor Carrier Division audit assessment billing procedures
- Texas Department of Motor Vehicles Motor Carrier Division refund processing procedures
• Texas Department of Motor Vehicles Motor Carrier Division audit assessment fee collection procedures
• Texas Department of Motor Vehicles Motor Carrier Division International Registration Plan policy on conducting joint audits
• Texas Administrative Code Title 43, Part 10, Chapter 217, Subchapter B, Rule §217.56 Registration Reciprocity Agreements
• Texas International Registration Plan Audit Workbook v6.3
• Texas Department of Motor Vehicles Motor Carrier Division IRP Audit Tracking spreadsheet
• 2015 Texas IRP Peer Review Final Report
• Texas Response to the 2015 Texas IRP Peer Review Final Report
• Texas Department of Motor Vehicles Motor Carrier Division Accounting Specialist III Job Requisition
• Texas State Auditor’s Office State Classification Team Job Descriptions and Salary Schedule B for the 2016-2017 Biennium
• Texas Department of Motor Vehicles Human Resources employment data for the TxDMV Motor Carrier Division
• Interviews with Texas Department of Motor Vehicles Motor Carrier Division management and staff
• Texas Administrative Code Title 34, Part 1, Chapter 3, Subchapter A, Rule §3.9 Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payment by Certain Taxpayers
• Memorandum of Understanding to Exchange Information Between the Texas Comptroller of Public Accounts and the Texas Department of Motor Vehicles
• International Registration Plan, Inc. IRP Audit Training Manual, December 2008
• International Registration Plan, Inc. IRP Audit References and Best Practices Guide, January 2016

The following contributed to this report:

• Sandra H. Vice, CIA, CGAP, CISA, TxDMV Internal Audit Director
• Arby J. Gonzales, CPA, CFE, TxDMV Internal Audit Deputy Director
• Derrick D. Miller, CIA, TxDMV Internal Audit Senior Auditor

**Report Distribution**

In accordance with the Texas Internal Auditing Act (Texas Government Code, Chapter 2102) this report is distributed to the following entities:

• Board of the Texas Department of Motor Vehicles
• Governor’s Office of Budget, Planning, and Policy
• Legislative Budget Board
• State Auditor’s Office
• Sunset Advisory Commission
Appendix 2: Executive Director’s Management Response

July 7, 2016

Mr. Arby Gonzalez
Texas Department of Motor Vehicles
Internal Audit Division
4000 Jackson Ave
Austin, TX 78731

RE: Efficiency of the Texas International Registration Plan Compliance Audit Process

Dear Mr. Gonzalez:

The management and staff of the Texas Department of Motor Vehicles (TxDMV) are committed to establishing an effective system to ensure Texas International Registration Plan audits are completed in a timely and thorough manner. And we recognize that audits provide us important feedback on areas of improvement.

Management of the TxDMV agrees with the recommendations contained in the Internal Audit Division’s (IAD) report on the Efficiency of the Texas International Registration Plan Compliance Audit Process (TxDMV 16-3) and has provided within the report a plan for implementation of the recommendations.

We appreciate the work performed by the IAD; the team was professional, capable, and diligent. The team’s assessment will help us to continuously improve the efficiency and effectiveness of our operations.

Please contact me at (512) 465-3001 if there are any questions or if we can be of further assistance.

Sincerely,

Whitney Brewster
Executive Director

cc: Laura Ryan, Chairman, TxDMV Board
    Raymond Palacios, Vice-Chairman, Finance and Audit Committee Chairman, TxDMV Board
    Shelly Mellott, Deputy Executive Director, TxDMV
Enterprise Projects Quarterly Report

September 1, 2016

Texas Department of Motor Vehicles
HELPING TEXANS GO. HELPING TEXAS GROW.
## Application Migration and Server Infrastructure Transformation (AMSIT)

AMSIT plans and implements the separation of TxDMV applications and related IT infrastructure components from the TxDOT network.

**Project Manager** – R. Abdeladim  
**Business Owner** – T. Benavides  
**Executive Sponsor** – E. Obermier

**Project End Date:** 31 August 17

### Benefits to Public
- Improved agility to meet customers’ needs with system autonomy
- Improved service quality with stabilized environment

### Benefits to Agency
- Streamlined support processes and enhanced automation
- Improved information security
- Compliance with state mandates related to Data Center transformation

### August 2016 Status

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### March 2016 to July 2016 Trend Line

#### Risk/Issues

1. **I1** Vendor scope did not include migration of file shares from Novell to Windows.
   - **Mitigation (M)/Corrective Action (CA)**: Develop a high level scope; request vendor estimate.

2. **I2** Vendor scope is to migrate FTP as is to TxDMV environment. Vendor scope did not include updates/enhancements to SFTP.
   - **Mitigation (M)/Corrective Action (CA)**: Develop a high level scope; request vendor estimate.

3. **R1** - Vendor has improved resource levels to provide ongoing project progress. (There is the risk the vendor may slip.)
   - **Mitigation (M)/Corrective Action (CA)**: Cure period completed 8/8/16; pending NSOC related items.

4. **R2** - Migration from Novell to Windows is an extensive effort, project timeline may be at risk if delays in approval of a change request.
   - **Mitigation (M)/Corrective Action (CA)**: Engage of Executive Sponsor & ESC; dependent on vendor estimate, funds available in AMSIT budget.

### Accomplishments – Last 30 Days

- Vendor continuing to roll on team members.
- Vendor Phase 1 deliverables approved.
- Move Group closeouts approved.
- Continued in-depth analysis in progress for move groups.
- Scope clarified with vendor.
- Archived MIPS front end interface.

- Obtain estimates from vendor for Novell to Windows migration & FTP to SFTP
- Complete review of vendor test plan deliverable.
Facility Physical Security

The Facility Physical Security Project will install an integrated security management system (SMS) with 24-hour monitoring for all 16 Regional Service Centers (RSC).

Project Manager – C. Archer
Business Owners – W. Diggs,
Executive Sponsor – Eric Obermier

Project End Date: 31 August 2017

Benefits to Public

• Customer Safety and Security

Benefits to Agency

• Integrated security management system
• On-site control panels, monitoring and communication consoles.
• 24-hour security system monitoring

March 2016 to July 2016 Trend Line

Accomplishments – Last 30 Days

• Approved Project Charter.
• Completed Houston RSC Installation.
• Executed Lesson Learned Workshops.
• Started RSC #3 (Dallas) Installation.
• Started RSC #4 (Forth Worth) Installation.
• Executed Wichita Falls Walk Through

Milestones – Next 30 Days

• Project Change Request (PCR) - Scope
• Execute Second Batch of RSC Walk Through (Amarillo, El Paso, Lubbock, Midland)
• Complete Dallas RSC Installation
• Complete Fort Worth Installation
• Start RSC #5 – Abilene Installation
• Start RSC #6 – Wichita Falls Installation

Risk/Issues

I₁ - RSC Facility upgrade issues during walkthroughs may impact Project Scope (i.e. Server Room A/C, Electrical Capacity, Fire Compliant Doors etc.)

Mitigation/Corrective Action

I₁ – Work with ESC to identify Solution, Strategy and Funds.
**FileNet**

FileNet updates TxDMV’s Data MGMT System to IBM’s FileNet P8 (v5.2) and Kofax (v10.1) in the TxDMV environment.

**Project Manager** – J. Das  
**Business Owners** – L. Dennis, T. Benavides  
**Executive Sponsor** – E. Obermier

**Project End Date:** 30 Nov 2016

### Benefits to Public
- Improved Customer Service
- Centralized document management and reporting system

### Benefits to Agency
- Updated software
- Reduced support cost
- Separates from TxDOT infrastructure

### August 2016 Status

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**March 2016 to July 2016 Trend Line**

### Risk/Issues

**R1** – Timely completion of delta data transfer to ADC to support GoLive in mid Aug 2016.

**R2** – Response time of user operations using new FileNet will need to be better or at least in par with Legacy FileNet system.

**I1** – Timely upgrade of browsers of 439 user base needed prior to GoLive

**I2** – Timely completion of LACE integration and test effort needed prior to GoLive

**I3** – Color file conversion errors found during the initial test efforts warrants backfill of error files by the vendor.

### Accomplishments – Last 30 Days
- Migration of data completed – June 1, 2016.
- 300,000 LACE files found missing during testing migrated by the vendor.
- FileNet load testing completed

### Accomplishments – Next 30 Days
- Upgrade web browsers for 439 users.
- Continue Delta data conversion and import.
- Complete testing of LACE component.

### Mitigation/Corrective Action

**R1** – Monitoring vendor plan and progress to complete the effort on time.

**R2** – Cycle1 and Cycle2 test completed. End user results favorable.

**I1:** Solution identified, IT Desktop team is upgrading. ETC 8/15/16

**I2:** IT Target date for completion is 8/17/16.

**I3** – Vendor committed to do the backfill at no cost to TxDMV from Sept 1, 2016 to Oct 31, 2016 (Consider this when developing new MOU with TxDOT).
LACE will manage the licensing of dealers, motor vehicle converters, manufacturers etc.; track litigation and enforcement cases.

Project Manager – M. Lucas
Business Owners – D. Avitia, B. Harbeson, E. Sandoval
Executive Sponsor – S. Mellott

Project End Date: 27 March 2017

<table>
<thead>
<tr>
<th>Benefits to Public</th>
<th>Benefits to Agency</th>
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<tbody>
<tr>
<td>• Improved Customer Service with a Web based, self-service application. Online submittal of protests and complaints Online tracking of licensee applications, protests, and complaints</td>
<td>• Reduced support costs and submission errors • Improved data sharing and accuracy • Integrated case management</td>
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August 2016 Status

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March 2016 to July 2016 Trend Line

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<th>LACE</th>
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Expenditures & Encumbrances $9,381,918

Budget Remaining $511,944

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<tr>
<th>Accomplishments – Last 30 Days</th>
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<tr>
<td>• Development for 4 of 5 cycles complete</td>
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<tr>
<td>• Integration Testing of 4 of 5 cycles complete</td>
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<tr>
<td>• Conducted 2nd of 3 LACE Demos</td>
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<th>Milestones – Next 30 Days</th>
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<tr>
<td>• Complete creation of UAT Test Cases</td>
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<td>• Complete Traceability of Design Review</td>
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<td>• Present Demo 3</td>
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Risk/Issues

- R₁ – Project success may be impacted due to abbreviated training schedule and lack of training schedule alignment between teams.
- R₂ – Inadequate time to perform required TxDMV testing covering SAT and UAT. Condensed testing may not allow all functions to be fully tested.
- R₃ – Post implementation call volume in CRD will probably increase.
- R₄ – Product Configuration is behind schedule.
- R₅ – Quantity and Quality of Key Deliverables are impacting overall project schedule

Mitigation/Corrective Action

- R₁ – Align TxDMV & Deloitte training schedules and hire contractors to augment Training Team.
- R₂ – Allow end users to review product at end of each cycle before UAT.
- R₃ – Assign 3 MVD FTEs to assist with calls for 60 - 90 days. Assign ENF FTEs to assist with calls. Work with VTR to assist with R/T Calls temporarily.
- R₅ – EPMO has accelerated the review time from 5/3/3 to 1/1/2

Enterprise Projects Quarterly Report - September 1, 2016
Single Sticker Phase II

Single Sticker Phase II has completed implementation of the 90 and 180 day rules in RTS and is now focused on Single Sticker rules within the TxIRP system.

Project Manager – T. Beckley
Business Owners – J. Kuntz, J. Archer
Executive Sponsor – W. Brewster

Project End Date: 31 July 2017

### Benefits to Public
- Provides a single “Registration and Safety Inspection” Sticker process
- Aligns Safety Inspection and Registration time frames
- Reduces unsafe and environmentally unfriendly vehicles on Texas roads

### Benefits to Agency
- Compliance with HB 2305 and HB 188
- Automates TxIRP solution for Motor Carrier Division

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### Milestones – Next 30 Days
- Vendor will continue development and weekly status meetings.

### Accomplishments – Last 30 Days
- Continue execution phase of project currently on track.

### Risks/Issues
- **R1** – The implementation of the Process and Handling (P&H) Fee may negatively impact the TxIRP schedule if the vendor (Explore) needs to pull project resources to work on P&H Fee.
- **R2** – The TxIRP project has an external dependency on an RTS web service, and delay in the December RTS release will have an impact on the TxIRP project.

### Risk/Issues Mitigation/Corrective Action
- **R1** – Explore will provide an estimate and impact statement if this effort will impact the Single Sticker project team.
- **R2** – RTS development and test team attend weekly technical exchanges with Explore ensuring the teams stay in synch.
Registration and Title System (RTS) Refactoring

RTS Refactoring will refresh the RTS technology by modernizing the core RTS system and provide business intelligence reporting capabilities.

Project Manager – T. Beckley
Business Owner – J. Kuntz
Executive Sponsor – W. Brewster
Project End Date: 31 Dec 2018

Accomplishments – Last 30 Days
- Deployed ERQ4 on August 8, 2016 which included defect repairs for inventory as well as 9 report enhancements.
- Release 11, 8.6.0 which includes OAG Denial of Registration and TxDMV Fund is on track to complete UAT on August 19.
- Release 12, 8.7.0 completed general design and entered development.
- Performing requirements gathering sessions for Release 13, 8.8.0.

Milestones – Next 30 Days
- Deploy Release 11, 8.6.0 on August 27, 2016.
- Complete development on August 24, 2016 and enter test phase for Release 12, 8.7.0.
- Complete requirements gathering and general design for Release 13.

Benefits to Public
- Improved Customer Service (system modernization provides opportunities for increased efficiency when implementing improvements)

Benefits to Agency
- Modernization of the RTS system
- Business intelligence reporting capabilities
- Transitions RTS from TxDOT to the TxDMV infrastructure

Aug 2016 Status

<table>
<thead>
<tr>
<th>Overall</th>
<th>Schedule</th>
<th>Budget</th>
<th>Scope</th>
<th>Resources</th>
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<td>Y</td>
<td>G</td>
<td>G</td>
<td>G</td>
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</table>

March 2016 to July 2016 Trend Line

RTS Refactoring External Budget
Source: Automation
Total External Budget: $62,020,840
Expenditures & Encumbrances $59,575,341

Accomplishments – Last 30 Days
- Deployed ERQ4 on August 8, 2016 which included defect repairs for inventory as well as 9 report enhancements.
- Release 11, 8.6.0 which includes OAG Denial of Registration and TxDMV Fund is on track to complete UAT on August 19.
- Release 12, 8.7.0 completed general design and entered development.
- Performing requirements gathering sessions for Release 13, 8.8.0.

Milestones – Next 30 Days
- Deploy Release 11, 8.6.0 on August 27, 2016.
- Complete development on August 24, 2016 and enter test phase for Release 12, 8.7.0.
- Complete requirements gathering and general design for Release 13.

Risk/Issues
I_1 – P.O. 804 expired as of August 6, 2016.
I_2 – Technical writing duties are still being handled by GSC-OCM and EPMO with little budget.
I_3 – Knowledge transfer/training will not be complete by Year 1, which may affect schedule before key resources leave.

Mitigation/Corrective Action
I_1 – Deloitte has agreed to a one month no-cost contract extension, enabling business to continue as normal. During this period the team is conducting working group sessions to clarify aspects of the contract prior to renewal.
I_2 – IT, GSC VTR & EPMO will develop a transition to operations strategy and due date.
I_3 – Deloitte added an additional resource to create a Knowledge transfer/training plan, which is under review by TxDMV.
This project establishes the TxDMV Fund, redirecting existing fees from TxDOT Fund 6 to the TxDMV Fund 10. In addition, it will establish the Process and Handling Fees to provide funding for registration services and establish county compensation.

Project Manager – T. Beckley
Business Owner – J. Kuntz/J. Archer
Executive Sponsor – W. Brewster

Project End Date:

Benefits to Public

- Addresses limited and full deputies transaction fees.

Benefits to Agency

- Continues separation of TxDMV from TxDOT
- TxDMV will be self funded, reducing agency’s dependency on legislated budgets

August 2016 Status

Overall Schedule Budget Scope Resources

Y Y

March 2016 to July 2016 Trend Line

Accomplishments – Last 30 Days

- TxDMV Fund will complete UAT on August 19, 2016.
- TxIRP vendor (Explore) delivered their TxDMV Fund and P&H Fee code and is in UAT.
- P&H Fee development is on-going.
- HEB confirmation that they can work within our project timeline.

Milestones – Next 30 Days

- Deploy TxDMV Fund on August 27, 2016.
- Complete P&H Fee development on August 26, 2016
- Start Integration and System Test.

Risk/Issues

| I₁ | TxDMV Fund T-Codes were identified as incorrect during UAT. |
| R₁ | The availability of test environments may impact the availability of having an integration test environment prepared for the P&H Fee release. |
| R₂ | Resource conflicts between production support and P&H Fee implementation may impact development effort. |

Mitigation/Corrective Action

| I₁ | Updating tables and design documentation to reflect the most recent updates. |
| R₁ | The P&H Fee team is working to identify a solution that will mitigate this risk. |
| R₂ | The team is focusing on P&H Fee effort, limiting production support to issues that require immediate responses. |

Enterprise Projects Quarterly Report - September 1, 2016
webDEALER allows a vehicle title to be created, stored and transferred in electronic form, improving the speed and accuracy of the titling process.

Project Manager – G. Wessels
Business Owner – T. Thompson
Executive Sponsor – J. Kuntz
Project End Date: 30 April 2018

Benefits to Public
- Reduced costs for titling and registration services from motor vehicle sales.
- Improved titling and registration time by reducing manual processes.

Benefits to Agency
- Reduced costs for the county tax office and TxDMV to title and register vehicles.
- Improved system to track and manage registration and title services from Motor Vehicle Sales.
- Eliminates RSPS-DTA Processes.

August 2016 Status

<table>
<thead>
<tr>
<th>Overall</th>
<th>Schedule</th>
<th>Budget</th>
<th>Scope</th>
<th>Resources</th>
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March 2016 to July 2016 Trend Line

Risk/Issues

<table>
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<tr>
<th>Risk/Issues</th>
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</thead>
<tbody>
<tr>
<td>R₁ – P&amp;H – The required HEB black out dates and release dates that enables the webDealer/WebSub functionality may not match up with the Release 12 schedule.</td>
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</tbody>
</table>

Mitigation/Corrective Action

<table>
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<tr>
<th>Mitigation/Corrective Action</th>
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<tbody>
<tr>
<td>R₁ – This risk has been mitigated, HEB has informed us that they can meet our schedule. Also tracking at the P&amp;H project level.</td>
</tr>
</tbody>
</table>

Accomplishments – Last 30 Days

- GT approved new project plan.
- Notified QAT has been of new project plan.
- Deployed webDEALER Salvage Pilot.
- Completed webDEALER TxDMV Fund test.
- Completed webDEALER P&H Fee design.
- Completed webDEALER P&H Fee development.

Milestones – Next 30 Days

- Complete webDEALER Salvage Pilot.
- Complete webDEALER P&H Fee SIT.
- Start webDEALER P&H Fee SAT.
Closed Projects

- Governance Team Meeting January 21, 2016
  - Regional Office Project

- Governance Team Meeting March 17, 2016
  - RTS Name Parsing Project

- Governance Team Meeting July 21, 2016
  - Headquarters Communication Project
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<th>Glossary Term</th>
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<td>AMSIT</td>
<td>Application Migration Server Infrastructure Transformation</td>
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<td>BAFO</td>
<td>Best and Final Offer</td>
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<td>DCS</td>
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<td>Delta Data</td>
<td>Related to FileNet project. Indicates the volume of images which have accumulated on a TxDOT server since the previous transfer of images from TxDOT to new servers in DCS.</td>
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Agenda Item 2.c.

(1) 84th Legislative Implementation and (2) 85th Legislature

Prepared by

Government & Strategic Communications

September 1, 2016
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Conclusion..................................................................................................................................................... 4
Introduction
The Texas Department of Motor Vehicles (TxDMV) aims to deliver excellent customer service to the public and stakeholders through providing user-friendly processes. There were several pieces of legislation passed by the 84th Legislature which will provide for additional efficiencies and effective delivery of services. Implementation efforts are substantially complete, with a few highlights as noted below.

Summary of Implementation Efforts
The Government & Strategic Communications Division continues to monitor the implementation of legislation from the 84th Legislative Session that impacts TxDMV. Of the 71 enacted bill identified as having some level of implementation activity by the department, 47 of those have been fully implemented. Of the remaining 24 enacted bills, following is a summary of the implementation status.

- 2 bills are on hold due to prerequisite 3rd party actions:
  - HB 315 creating the “In God We Trust” specialty license plate is awaiting the deposit required for enactment as prescribed by law
  - HB 2424 allows insurance companies to be refunded any amounts overpaid under the Automobile Burglary and Theft Prevention Authority fee charged on all automobile insurance policies – the department is awaiting determination of eligibility and amounts by the Texas Comptroller per the legislation

- Of the 22 remaining bills solely within the purview of the department:
  - Two bills will become effective September 1, 2016:
    - SB 1512 by Hancock recreating the TxDMV Fund
    - HB 735 by Israel relating to annual reporting on alternatively fueled vehicles registered in Texas
  - Of the remaining 20 bills, all are implemented from a practical and functional standpoint. Ten are military SLP related and only require a brochure to be updated to be fully implemented. The others only have items remaining such as manual updates and one more rule adoption, which is part of the Texas Administrative Code Chapter 215 package to be considered today.

In addition, the TxDMV Board will consider rules for proposal today related to implementation efforts for HB 735. This legislation authorized the board to adopt rules related to the production of the report. It is anticipated we will complete the report within the next few months for delivery to the legislature as prescribed by the bill prior to the start of the 85th Legislative Session in January.
85th Legislature

The Texas Transportation Code charges the TxDMV Board with considering opportunities for improvement and to recommend changes to statute to the Legislature. Section 1001.025(a) of the Transportation Code states:

*The board shall consider ways in which the department’s operations may be improved and may periodically report to the legislature concerning potential statutory changes that would improve the operation of the department.*

In addition the statute requires the Chair to send a report highlighting recommendations adopted by the Board relating to the operation of the department to the Governor, Lieutenant Governor, Speaker, and presiding officers of relevant legislative committees.

To that end, the Government and Strategic Communications Division has collected from all divisions their requests for legislative changes. We are finalizing the list of changes this week and will begin the stakeholder outreach meetings to obtain additional feedback. We will also work closely with the Board’s Legislative Committee on this effort and anticipate a final report on these recommendations towards the end of this calendar year for your further consideration.

Conclusion

In addition to the many successful implementation efforts of the department, staff is continually researching opportunities to increase efficiencies and provide the best services possible to our customers and stakeholders. In the interim, the Texas Department of Motor Vehicles will continue to serve, protect and advance the citizens and industries in the state with quality motor vehicle related services.
RECOMMENDATION

Staff recommends that the Board approve the issuance of the attached proposed order.

PURPOSE AND EXECUTIVE SUMMARY

The State Office of Administrative Hearings (SOAH) issued the attached Proposal for Decision (PFD) for consideration by the Texas Department of Motor Vehicles Board.

FINANCIAL IMPACT

None

BACKGROUND AND DISCUSSION

Complainant, a franchised dealer, filed a case against the Respondent, a licensed manufacturer, alleging three separate violations of the Texas Occupations Code. As required by law, the matter was referred to SOAH for adjudication. Before a full contested case hearing was held, the Complainant submitted a Motion for Summary Disposition. After prehearing conferences on the motion, the SOAH Administrative Law Judge (ALJ) granted Complainant's motion as to two of the claims and the remaining claim was withdrawn by the Complainant. The ALJ issued the PFD which now comes before the Board. As a result of the combination of the summary dispositions and the dismissal, there are no unresolved claims. The Respondent filed exceptions to the PFD and Complainant filed replies to the exceptions. In response to the exceptions and replies, the ALJ amended the PFD by correcting typographical errors, but declined to change any legal conclusions.

The Board may change a finding of fact or conclusion of law made by the ALJ, or may vacate or modify an order issued by the ALJ, only under the restrictions of Tex. Gov. Code § 2001.058(e).

The Staff finds that Tex. Gov. Code § 2001.058(e) modification justifications are not present in this case.

For the Board’s convenience, Staff drafted a proposed order that adopts the amended PFD.

Staff recommends that the Board approve the issuance of the attached proposed order.

The following documents are attached to this Executive Summary for consideration by the Board:

- Proposed Order;
- Attachment A: SOAH ALJ’s PFD;
- Attachment B: Respondent’s Exceptions to the PFD;
- Attachment C: Complainant’s Replies to Exceptions; and
- Attachment D: The ALJ’s Response to Exceptions.

EXECUTIVE SUMMARY

Background

Complainant, a franchised dealer, filed a case against the Respondent, a licensed manufacturer, alleging three separate violations of the Texas Occupations Code. Before a full contested case hearing was held, the Complainant submitted a Motion for Summary Disposition. After prehearing conferences on the motion, the Administrative Law Judge (ALJ) granted Complainant’s motion as to two of the claims and the remaining claim was withdrawn by the Complainant. The ALJ issued the Proposal for Decision (PFD) which now comes before the Board of Texas Department of Motor Vehicles. As a result of the combination of the summary dispositions and the dismissal, there are no unresolved claims.

The Respondent filed exceptions to the PFD and Complainant filed replies to the exceptions.

In response to the exceptions and replies, the ALJ amended the PFD by correcting typographical errors, but declined to change any legal conclusions.

RECOMMENDATION

The Board may change a finding of fact or conclusion of law made by the ALJ, or may vacate or modify an order issued by the ALJ, only under the restrictions of Tex. Gov. Code § 2001.058(e).

The Staff finds that Tex. Gov. Code § 2001.058(e) modification justifications are not present in this case.

The Staff recommends that the ALJ’s conclusions be followed and the amended PFD be adopted.

DOCUMENTS
The following documents are attached to this Executive Summary for consideration by the Board:

• Proposed Order;
• Attachment A: SOAH ALJ’s PFD;
• Attachment B: Respondent’s Exceptions to the PFD;
• Attachment C: Complainant’s Replies to Exceptions; and
• Attachment D: The ALJ’s Response to Exceptions.
Proposed Order
BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

AUTOBAHN IMPORTS, L.P. DBA
LAND ROVER OF FORT WORTH,
Complainant

v.

JAGUAR LAND ROVER NORTH
AMERICA, LLC,
Respondent

MVD CAUSE NO. 14-0016 LIC
SOAH DOCKET NO. 608-14-4960.LIC

FINAL ORDER

The above referenced matter came before the Board of Texas Department of Motor Vehicles in the form of a Proposal for Decision (PFD) from the State Office of Administrative Hearings (SOAH).

In the PFD, Administrative Law Judge (ALJ) states that the Complainant filed a Motion for Summary Disposition (Motion) alleging that: (1) Respondent improperly charged back certain incentive payments for sales to leasing companies, (2) Respondent's Export Policy is invalid under the Texas Occupations Code, and (3) Respondent's payment schedule for incentive payments violates the schedule provided for by the Texas Occupations Code. Ultimately, the ALJ granted Summary Disposition to Complainant on the first two claims and upon Complainant's request, the ALJ dismissed the third claim from the docket. As a result of the combination of the summary dispositions and the dismissal, there are no unresolved claims before SOAH or the Board.

As the final order authority for the agency, the Board may change a finding of fact or conclusion of law made by the ALJ, or may vacate or modify an order issued by the ALJ, only under the restrictions of Tex. Gov. Code §2001.058(e). The Board finds that Tex. Gov. Code §2001.058(e) factors are not present in this case. The ALJ did not fail to properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions. There is
not a prior administrative decision on which the ALJ relied that is incorrect or should be changed, nor is there a technical error in a finding of fact that should be changed.

Therefore, the Board, after having considered the findings of fact, and conclusions of law presented in the PFD, Respondent’s Exceptions, Complainant’s Replies, and the ALJ’s September 30, 2015, Exceptions letter, enters this Final Order:

**IT IS ORDERED**

1. That the PFD and the ALJ’s September 30, 2015, Exceptions letter filed in this proceeding, including the findings of fact and conclusions of law, be, and hereby are, incorporated herein;

2. That Respondent improperly charged back against the Complainant certain incentive payments for sales to leasing companies and that those chargebacks are invalid and rescinded;

3. That Respondent’s Export Policy is invalid under the Texas Occupations Code; and

4. That, as to the claim that Respondent’s payment schedule for incentive payments violates the schedule provided for by the Texas Occupations Code, no further action shall be taken by the Department and the matter shall be, and hereby is, dismissed.

Date: ____________________

__________________________
Board Chair
Texas Department of Motor Vehicles

**ATTESTED:**

__________________________________________________________________________

Daniel Avitia, Director
Motor Vehicle Division
Texas Department of Motor Vehicles
Attachment A:
SOAH ALJ's PFD
State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

August 20, 2015

Daniel Avitia, Director
Motor Vehicle Division
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, TX 78731

VIA INTERAGENCY MAIL

RE: Docket No. 608-14-4960.LIC; MVD Docket No. 14-0016.LIC;
Autobahn Imports, L.P. D/B/A Land Rover of Fort Worth v. Jaguar
Land Rover North America, L.L.C.

Dear Mr. Avitia:

Please find enclosed a Proposal for Decision in this case. It contains my
recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex.
Admin. Code § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

Stephanie Frazee
Administrative Law Judge

Howard V. Rose, Attorney at Law, 111 Congress Avenue, Suite 1400, Austin, Texas 78701 – VIA
REGULAR MAIL
Richard W. Wiseman, Brown, Dean, Wiseman, Procter, Hart, & Howell, LLP, 306 West 7th
Street, Suite 200, Fort Worth, Texas 76102 – VIA REGULAR MAIL
Colm A. Moran, Hogan Lovells US LLP, 1999 Avenue of the Stars, Suite 1400, Los Angeles,
California 90067 – VIA REGULAR MAIL
Aaron R. Crane, Hogan Lovells US LLP, 700 Louisiana Street, Suite 4300, Houston, Texas 77002
– VIA REGULAR MAIL
Alice Carmona, Docket Clerk, Texas Department of Motor Vehicle, 4000 Jackson Avenue,
Austin, Texas 78731 – VIA INTERAGENCY MAIL (with Certified Evidentiary Record and 1
hearing CD)
SOAH DOCKET NO. 608-14-4960.LIC

AUTOBAHN IMPORTS, L.P. D/B/A LAND ROVER OF FORT WORTH, Complainant

§ BEFORE THE STATE OFFICE

v.

JAGUAR LAND ROVER NORTH AMERICA, L.L.C., Respondent

§ ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Autobahn Imports, L.P. d/b/a Land Rover of Fort Worth (Autobahn) filed a Motion for Summary Disposition (Motion) alleging that: (1) Jaguar Land Rover North America, L.L.C. (JLRNA) improperly charged back certain incentive payments for sales to leasing companies, (2) JLRNA’s Export Policy is invalid under the Texas Occupations Code, and (3) JLRNA’s payment schedule for incentive payments violates the schedule provided for by the Texas Occupations Code. Summary disposition has been previously granted to Autobahn on the first two claims, and the third claim has been severed and dismissed from the case. This proposal for decision (PFD) incorporates the prior orders granting summary disposition.¹

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Autobahn filed a complaint against JLRNA with the Texas Department of Motor Vehicles on May 7, 2014. The complaint was referred to the State Office of Administrative Hearings (SOAH) on August 19, 2014. Autobahn filed its Motion on October 8, 2014. On October 27, 2014, Administrative Law Judge (ALJ) Howard S. Seitzman convened a prehearing conference with the parties. Following the prehearing conference, on October 28, 2014,

¹ Order No. 6, Ruling on “End-User” Issue Identified in Order No. 5 (January 28, 2015) (Order No. 6); Order No. 10, Resolving End-User Issue (April 9, 2015) (Order No. 10); Order No. 11, Denying Motion to Dismiss, Granting Summary Disposition in Part, Denying Summary Disposition in Part, and Requiring a Status Report (June 22, 2015) (Order No. 11). For ease of reference, the backgrounds and analyses contained in Order Nos. 6 and 11 are included in this PFD. Some non-substantive changes were made for consistency and to avoid repetition.
ALJ Seitzman issued Order No. 4 abating all issues other than "whether a leasing company is an 'end-user' under the terms of the 2013 Land Rover Business Builder Program" and setting a deadline for the parties to brief the issue.²

On January 7, 2015, ALJ Paul D. Keeper held a prehearing conference on an issue ancillary to the end-user issue: "what is an approved leasing company under the terms of the 2013 Program Manual (Manual) and the September 1, 2009 Operations Bulletin [Operations Bulletin]..."³ Following the prehearing conference, ALJ Keeper issued an order requiring briefing on the ancillary issue and stating that the parties agreed that the Manual and Operations Bulletin are the sole documents that govern the issues in this proceeding.⁴

On January 28, 2015, ALJ Keeper issued Order No. 6, ruling on the end-user issue by concluding that a leasing company is considered to be an end-user under the terms of the program documents.⁵ On February 23, 2015, ALJ Stephanie Frazee held a prehearing conference during which the parties disagreed as to the effect of Order No. 6. Following the prehearing conference, ALJ Frazee issued Order No. 8, which lifted the abatement of issues.⁶ In response to the order, the parties provided an agreed schedule for briefing their positions on the effect of Order No. 6 as well as the remaining issues in the Motion.

On March 10, 2015, Autobahn supplemented its Complaint and Motion to address JLRNA's new Export Policy, which had been issued on November 24, 2014. On April 9, 2015, ALJ Frazee issued an order resolving the end-user issue by granting summary disposition in favor of Autobahn on the charge-back/end-user issue based on Order No. 6.⁷ On April 27, 2015,

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² Order No. 4, Memorializing Telephone Prehearing Conference (October 28, 2014).
³ Order No. 5, Granting Motion for Admission Pro Hac Vice and Memorializing Prehearing Conference of January 7, 2015 (January 7, 2015) (Order No. 5).
⁴ Order No. 5.
⁵ Order No. 6.
⁶ Order No. 8, Lifting Abatement of Issues and Requesting Procedural Schedule (February 23, 2015).
⁷ Order No. 10.
JLRNA filed, with its response to the Motion, a Motion to Dismiss Autobahn’s Export Policy claim due to lack of ripeness.

JLRNA’s Motion to Dismiss was denied. Summary disposition was granted to Autobahn on its claim regarding JLRNA’s Export Policy. Summary disposition was denied on Autobahn’s incentive payment schedule claim because questions of fact remained on that issue. On July 9, 2015, Autobahn filed a Motion to Dismiss and Submit, requesting that the incentive payment schedule claim be severed from the case and dismissed and that the ALJ issue a Proposal for Decision. The ALJ granted the motion on July 24, 2015, and closed the record on that date.

II. FACTUAL BACKGROUND

JLRNA is a distributor/manufacturer of vehicles, and Autobahn is a retailer/dealer of JLRNA’s vehicles. Business Builder is JLRNA’s incentive-based program contingent, among other things, on a dealer’s sales. Under Business Builder, JLRNA pays its dealers a percentage of manufacturer’s suggested retail price (MSRP) on each Land Rover sold (up to 5%) if certain requirements are met. The Manual explains which transactions are eligible for full payment under Business Builder.

Business Builder consists of five components:

(1) LEADS, which focuses on converting leads that each retailer receives into sales (a dealer gets an evaluation score each quarter, and a score of 100 translates to a 1% incentive payment for each eligible vehicle);

(2) Training, which rewards retailers for meeting a minimum level of training for employees (if a certain percentage of sales and service staff receive the required training, the dealer will get a 1% incentive payment on eligible vehicles);

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8 Order No. 11.
9 Order No. 10; Order No. 11.
(3) Select CPO, which focuses on sales of pre-owned vehicles (a formula based on two calculations determines whether the dealer receives a 1% incentive payment for each eligible vehicle);

(4) Facility Expense Reserve (FER), which requires that a retailer have an Approved Facility or an Approved Facility Plan and that a vehicle must be sold in the retailer’s payment area (a possible 2% incentive payment for each eligible vehicle); and

(5) Land Rover Way (LRW), which specifies that the amount to be paid is determined by the retailer’s score on a quarterly LRW evaluation (a possible 1% incentive payment per eligible vehicle).²⁰

A vehicle must be a new eligible retail sale and meet the above criteria to receive an incentive payment for each component. The dealer submits information on the five components to JLRNA throughout each calendar quarter. Reports are updated on a daily basis and become final at the end of the quarter. At the end of the quarter, JLRNA reviews the information and sales records to determine the amount of any payment(s) due to the retailer.

Autobahn reports each of its retail sales electronically on a retail delivery report form (RDR form) provided by JLRNA. Autobahn filed completed RDR forms for all the sales transactions concerning the charge-backs at issue in this case. Autobahn did not receive written notice of rejection of any sales for incentive purposes from JLRNA until JLRNA’s audit of Autobahn’s sales.

In February 2014, JLRNA audited Autobahn’s sales from February 1, 2013, through January 31, 2014. Autobahn made 459 retail sales during that period. The auditor selected 134 sales files, all of which involved sales to leasing companies. The auditor made ninety-one charge-backs totaling $340,469.80 in payments that JLRNA had previously paid to Autobahn under Business Builder. With one exception, the auditor’s basis for the charge-backs was “Delivery was not made to the vehicle’s end-user by an authorized Land Rover retailer representative. Lease Contract shows [name of leasing company & location] delivered the

²⁰ Motion for Summary Disposition (Motion), Ex. 6, 2013 Land Rover Business Builder Program Manual (Manual).
vehicle to the end-user [Lessee name and date]."\textsuperscript{11} Autobahn appealed the charge-backs, and JLRNA rejected the appeal for all but five sales and charged back $317,204.80 from Autobahn’s account.

The audit list also included twelve Land Rovers sold by Autobahn that were subsequently exported by the purchaser. The audit listed these vehicles as “potential” charge-backs. In a letter, JLRNA stated that it reserved the right to charge back for those transactions if it determined that Autobahn did not perform due diligence.\textsuperscript{12} The letter also advised Autobahn that it must take all steps required or recommended by the Export Policy.

JLRNA updated its Export Policy effective November 24, 2014. The new Export Policy provides that all vehicles exported within nine months of sale in excess of a quarterly threshold of 3% of sales volume during the previous quarter for dealers selling over 250 units per year will be subject to charge-back. Therefore, if the total number of vehicles sold by Autobahn and later exported (within a nine-month period) exceeded 3% of Autobahn’s sales volume for a quarter, JLRNA would penalize it in the following quarter. The penalty consists of a charge-back equaling 13.5% of MSRP, a $3,500 warranty fee, and all variable marketing program and incentive payments, as well as a two-for-one allocation penalty (i.e. the next allocation of new vehicles will be reduced by two for each vehicle exported).

The Export Policy also requires a dealer to perform due diligence to ensure that a vehicle will not be exported after sale. The due diligence requirements in the original Export Policy consist of nearly four pages of “Retailer Best Practices” and “Indicators of Potential Export or Broker Behavior.” Some of the best practices include:

- Searching known exporters;
- Searching the vehicle purchase history;
- Confirming the customer’s financials;
- Verifying title, registration, and tax information after the sale;

\textsuperscript{11} Motion, Ex. 9, Audit Results.
\textsuperscript{12} Motion, Ex. 12, Letter from Michael Stern (April 25, 2014).
• Utilizing No Export Agreements;
• Recognizing employees who may have a pattern of selling vehicles that are later exported;
• Conducting online searches to confirm the customer’s personal details;
• Searching the customer’s Facebook or LinkedIn pages;
• Running a Carfax report on vehicles listed on the customer’s insurance card;
• Confirming the customer’s address using Google Maps street view;
• Looking for any connections to businesses the customer may have failed to disclose;
• Validating the customer’s IP address and searching the IP address to identify sources that do not match the details provided by the customer; and
• Determining whether the funding of the customer’s account was recent or whether the source of funding was from outside the U.S.\textsuperscript{13}

The list of “Indicators of Potential Export or Broker Behavior” are “red flags” identified by JLRNA as indicating a high risk of an export transaction. The “red flags” include:

• The buyer doesn’t negotiate on price;
• The buyer purchases more than one vehicle over a short period of time;
• The buyer will take any equipment or color;
• The buyer asks for the vehicle to be delivered;
• The buyer does not want to register the vehicle through the retailer;
• The buyer does not have a U.S. driver’s license; and
• The buyer states that it will finance the vehicle but switches to pay in full with a check at the last minute.

Based on its 2014 sales, Autobahn’s export threshold was four vehicles in Quarter 1 of 2015.\textsuperscript{14}

\textsuperscript{13} Motion, Ex. 13, Export and Broker Policy; Supplement to Motion for Summary Disposition, Ex. 20, New Export and Broker Policy.

\textsuperscript{14} Autobahn’s Reply to Land Rover’s Response in Opposition to Autobahn’s Motion for Summary Disposition and Motion to Dismiss Autobahn’s Export Policy Claim, Ex. H, JLRNA’s Letter to Autobahn Regarding New Export Policy and Previous Quarter Threshold (March 9, 2015).
III. DISCUSSION

A. Applicable Law

The rules of the State Office of Administrative Hearings (SOAH) provide that an Administrative Law Judge (ALJ) may issue a final decision or proposal for decision on all or part of a contested case without an evidentiary hearing if the pleadings, affidavits, and other admissible evidence show that there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law.\(^\text{15}\)

The Texas Occupations Code (Code) provides that "[a] manufacturer or distributor may make charge-backs to a dealer if, after an audit, the manufacturer or distributor has reasonable grounds to conclude that the dealer committed fraud with respect to the incentive program."\(^\text{16}\)

The Code also provides for adverse action, under specific circumstances, against a dealer that sells a vehicle that is later exported:

Sec. 2301.479. Adverse Action in Connection with Export of Vehicle.

(a) Except as otherwise provided by this section, a manufacturer, distributor, or representative may not take an adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States.

(b) A franchise provision that allows a manufacturer, distributor, or representative to take adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States is enforceable only if, at the time of the original sale or lease, the dealer knew or reasonably should have known that the vehicle would be exported to a location outside the United States.

(c) A franchised dealer is presumed to have no actual knowledge that a vehicle the dealer sells or leases will be exported to a location outside the United States if, under the laws of a state of the United States:

\(^{15}\) Tex. Admin. Code § 155.505(a).

\(^{16}\) Tex. Occ. Code § 2301.475(b).
(1) the vehicle is titled;

(2) the vehicle is registered; and

(3) applicable state and local taxes are paid for the vehicle.

(d) The presumption under Subsection (c) may be rebutted by direct, clear, and convincing evidence that the franchised dealer had actual knowledge or reasonably should have known at the time of the original sale or lease that the vehicle would be exported to a location outside the United States.

(e) Except as otherwise permitted by this section, a franchise provision that allows a manufacturer, distributor, or representative to take adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States is void and unenforceable.17

In addition to the applicable rules and Code provisions, the Manual and the September 1, 2009 Operations Bulletin, “Contests and Incentives Standard Eligibility Rules for Retail Programs,” (Operations Bulletin) govern the issue of sales to leasing companies.18 The parties agree that the Manual and Operations Bulletin together constitute a contract.19

Among the requirements for receiving an incentive payment under Business Builder is the dealership’s obligation to document that it has engaged in an eligible transaction with an “end-user.”20 Although the Manual does not define the term, the Operations Bulletin defines “end-user” as “a purchaser/lessee purchasing or leasing a vehicle from an authorized dealership for retail, commercial or business use, with no intent to resell.”21 The Operations Bulletin also states that “[a]n approved leasing company purchasing to lease is considered an end-user.”22 However, neither the Manual nor the Operations Bulletin defines an “approved leasing

17 Id. § 2301.479.
18 Order No. 5.
19 Order No. 6.
20 Motion, Ex. 6, Manual at 8.
21 Motion, Ex. 16, Operations Bulletin at 12.
22 Motion, Ex. 16, Operations Bulletin at 12.
company.” Finally the Manual provides that, in the event of a conflict between the Manual and “any other [JLRNA] program, incentive, or policy, the terms of the [Manual] shall govern.”

A contract consisting of two documents that involve the same parties and relate to the same transaction will be construed by reading their provisions together to ascertain the parties’ intent. To discern intent, an ALJ is to “examine and consider the entire writing in an effort to harmonize and give effect to all the provisions of the contract so that none will be rendered meaningless. No single provision taken alone will be given controlling effect; rather, all the provisions must be considered with reference to the whole instrument.”

If the wording of a written instrument is “definite” and “certain,” then “it is not ambiguous and the court will construe the contract as a matter of law.” Only where a contract is ambiguous may a court “consider the parties’ interpretation and admit extraneous evidence to determine the true meaning of the instrument.” A contract is not ambiguous merely because the parties disagree on its meaning. Rather, “an ambiguity exists only if the contract language is susceptible to two or more reasonable interpretations.”

B. Export Policy

1. Arguments

Autobahn argued that the Export Policy automatically penalizes dealers for exports over the designated threshold, without regard to any due diligence performed by Autobahn or the

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23 Motion, Ex. 6, Manual at 11.
26 *Coker*, 650 S.W.2d at 393.
27 *Nat’l Union Fire Ins. Co. of Pittsburgh, Penn. v. CBI Indus., Inc.*, 907 S.W.2d 517, 520 (Tex. 1995).
28 *Sun Oil Co. (Delaware) v. Madeley*, 626 S.W.2d 726, 727 (Tex. 1981).
statutory presumption contained in the Code. Autobahn claimed that the Export Policy is void
and unenforceable and violates Code §§ 2301.479 and 2301.475(b).

JLRNA noted that the Export Policy is national in scope and cannot be specifically
tailored to each state. JLRNA further noted that it intends to abide by Texas laws and
regulations in its application of the policy and that the Texas Department of Motor Vehicles
closed its inquiry into the Export Policy. JLRNA argued that the Export Policy does not violate
Texas law. According to JLRNA, showing that a dealer did not perform the due diligence set
forth in the Export Policy rebuts the statutory presumption.

2. Analysis

The Export Policy issue in this case hinges on the rebuttable presumption contained in the
Code. Under the Code, JLRNA may impose a franchise provision allowing it to take adverse
action against Autobahn for selling a vehicle that is later exported “if, at the time of the original
sale or lease, the dealer knew or reasonably should have known that the vehicle would be
exported to a location outside the United States.” JLRNA may rebut that presumption by
“direct, clear, and convincing evidence” that Autobahn “had actual knowledge or reasonably
should have known at the time of the original sale or lease that the vehicle would be exported to
a location outside the United States.”

The new Export Policy, effective November 24, 2014, sets an export threshold for dealers
based on their annual vehicle sales. For Autobahn, no more than 3% of its sales volume in a
quarter may be exported. The new Export Policy also states that “[a]ll exported vehicle sales
exceeding a retailer’s quarterly threshold will be subject to . . . penalties and charge-backs.”

30 Tex. Occ. Code § 2301.479(b).
31 Id. § 2301.479(d).
32 Supplement to Motion for Summary Disposition, Ex. 20, New Export and Broker Policy (emphasis added).
The new Export Policy also specifies that “all retailers are still required to perform due diligence on all sales to identify potential exporters and resellers.”

The Code includes a presumption that the dealer did not have knowledge that a vehicle would be exported. The terms of the Export Policy place a burden on the dealer by requiring extensive due diligence. Under the Export Policy, only after performing that due diligence can it be presumed that the dealer did not have knowledge. Additionally, the terms of the Export Policy automatically impose a charge-back if the sales threshold is met. Moreover, the Export Policy’s imposition of charge-backs of marketing program and incentive payments is problematic because the Code permits charge-backs of incentive payments only when the dealer has committed fraud regarding the incentive program; however, the Export Policy imposes these charge-backs without requiring a showing of fraud.

Although JLRNA states it will apply the Export Policy in compliance with Texas law, the Code applies to the terms of the policy, not to the application of those terms. Under the Export Policy, the dealer is subject to automatic adverse action after the threshold is met, including charge-backs. Further, the dealer must show that it has performed all due diligence rather than being under a presumption of a lack of knowledge that the vehicle would be exported. These provisions violate Texas law. Therefore, Autobahn is entitled to summary disposition on its claims regarding the Export Policy.

C. Sales to Leasing Companies

1. Failure to Submit RDRs and End-User Status

JLRNA noted that the Manual requires an end-user to be listed as the primary driver of the vehicle during “the RDR process.” JLRNA claimed that Autobahn failed to submit to JLRNA any RDR forms in which Autobahn identified a leasing company as the primary driver.

33 Supplement to Motion for Summary Disposition, Ex. 20, New – Export and Broker Policy.
34 Response in Opposition to Autobahn Imports, LP’s Motion for Summary Disposition (Response) at 2.
JLRNA asserted that Autobahn’s alleged failure was proof that only “retail lessee[s], not the leasing companies,” could be eligible end-users.\textsuperscript{35}

Autobahn asserted that the term “end-user” is used in a variety of ways throughout the Manual and Operations Bulletin. Autobahn noted that the Manual refers to the end-user in terms of who is the “primary driver” of the vehicle, while the Operations Bulletin relies on the identification of the person who is acquiring the vehicle (the person or entity “purchasing or leasing a vehicle from an authorized dealership”).\textsuperscript{36} Autobahn also noted that the Operations Bulletin anticipates the possibility of multiple end-users.\textsuperscript{37} Autobahn argued that its alleged failure to submit RDR forms for leasing companies as the primary drivers carried no legal significance since Autobahn could have submitted RDR forms based on other elements of the same transactions.

The ALJ declines to adopt JLRNA’s argument that Autobahn’s alleged failure to submit RDR forms for leasing companies is proof that a leasing company may not be an end-user. Autobahn’s argument reflects a position that is within the limits of reason, particularly in light of the contract documents’ failure to conform to a consistent position.

2. Approved Leasing Company

The Operations Bulletin states that “[a]n approved leasing company purchasing to lease is considered an end-user.”\textsuperscript{38} JLRNA argued that the language was “inapplicable to the transactions at issue in the case.” JLRNA asserted that an approved leasing company meant a “fleet leasing company.” Further, JLRNA argued that because fleet leasing is not a qualified transaction under Business Builder, no transactions involving approved leasing company transactions could generate end-users. The evidence on which JLRNA relied in reaching this

\textsuperscript{35} Response at 5.

\textsuperscript{36} Motion, Ex. 6, Manual at 8, 12; Ex. 16, Operations Bulletin at 12.

\textsuperscript{37} Motion, Ex. 16, Operations Bulletin at 3.

\textsuperscript{38} Motion, Ex. 16, Operations Bulletin at 3.
conclusion was the affidavit of Michael Stern, JLRNA’s retail audit manager. Mr. Stern stated that the Operations Bulletin’s use of the term “approved leasing company” “refers to fleet leasing companies.” Mr. Stern also asserted that JLRNA has not approved any fleet leasing companies under Business Builder, thereby foreclosing the possibility that a leasing company could be an end-user.

Autobahn argued that the ambiguity of the term “approved leasing company” should result in a strict construction of the term against JLRNA’s interests and in favor of Autobahn’s. The result, argued Autobahn, is that an “approved leasing company” is a leasing company that: (1) was listed by Autobahn on an RDR form; (2) was listed on an RDR form to which JLRNA did not make a timely objection; or (3) has been approved by the State of Texas for operation in Texas. Autobahn argued that Mr. Stern’s affidavit does not constitute proof of the meaning of the disputed term.

Mr. Stern’s statement is inaccurate in stating that the reference to leasing companies refers to fleet leasing companies. The Operations Bulletin makes no reference to “fleet leasing companies” at the page cited by Mr. Stern or in any other part of the Operations Bulletin’s definitions. Although Mr. Stern’s statement may be accurate that JLRNA has not approved sales to any fleet leasing companies under Business Builder, JLRNA’s alleged non-approval of a fleet leasing company does not prove that “approved leasing company” means “fleet leasing company.” Mr. Stern relied on no independent support for his definition, and neither he nor JLRNA cited to any part of the Manual, Operations Bulletin, or any other document that allegedly governs Business Builder.

Whatever may be the intended meaning of the term, the ALJ finds no support for JLRNA’s argument that “approved leasing company” refers to fleet leasing companies. The ALJ adopts the essence of Autobahn’s argument that JLRNA may not use an undefined term in a

39 Response, Michael Stern Affidavit.
40 Response at 3.
41 Response at 3.
contract, require the other party to agree to its use, and then impose a unique definition (based on its own employee’s unsupported affidavit testimony) after a dispute has arisen in which the use of the term has gained legal significance.

3. Purposes of Delivery Requirement

JLRNA argued that Autobahn’s delivery of vehicles to a leasing company did not satisfy various purposes of JLRNA’s delivery requirement. Those purposes include the creation of a relationship between JLRNA and the end-user. To satisfy that requirement, JLRNA argued, Autobahn is required to deliver the vehicle to the end-user, give JLRNA the end-user’s name and address, and maintain documentation about the end-user’s address and about the vehicle’s registration. JLRNA asserted that the direct relationship requirement could not be satisfied if the end-users were third-party leasing companies that never were intended, as noted in the RDR forms, to be the primary drivers of those vehicles.

JLRNA did not make clear how its interest in maintaining a direct relationship with the end-user conflicts with a sale to a leasing company—particularly in light of the Operations Bulletin’s statement that an approved leasing company is considered to be an end-user. The ALJ rejects JLRNA’s argument.

4. The Settlement Agreement

In Mr. Stern’s affidavit, he relied on a September 21, 2011 settlement agreement (Settlement Agreement) between the parties and an April 23, 2014 letter from the general counsel of Autobahn to JLRNA. The upshot of his statement and JLRNA’s argument is that the parties resolved the issue of defining an “approved leasing company” when they entered into

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42 Motion, Ex. 16, Operations Bulletin at 3.
43 Motion, Ex. 16, Operations Bulletin at 8.
44 Response at 5.
45 Response, Michael Stern Affidavit at 4, Exs. B, C.
the Settlement Agreement. In reply, Autobahn asserted that the Settlement Agreement was irrelevant because the document refers to purchasers and not to lessees.

The ALJ’s goal is to ascertain the parties’ intent based on the contract documents. The Settlement Agreement does not clearly identify which previous dispute between the parties the document was intended to settle. Additionally, the document makes no reference to “leases,” “leasing companies,” or “lessees.” Accordingly, without any guidance about the underlying dispute that the Settlement Agreement allegedly resolved, the ALJ finds no basis for relying on Mr. Stern’s assertion about the document’s governing authority.

5. Conclusion

The question is whether a leasing company is an end-user under the terms of the Business Builder documents. The Manual makes no reference to leasing companies as end-users. In contrast, the Operations Bulletin recognizes that “[a]n approved leasing company purchasing to lease is considered an end-user.” The Manual governs in the event of a conflict between the Manual and the Operations Bulletin.

The Operations Bulletin’s acknowledgement of sales to leasing companies as qualified transactions and the Manual’s absence of references to lease transactions do not create a conflict. An ALJ’s obligation is to consider the entire writing “in an effort to harmonize and give effect to all the provisions of the contract so that none will be rendered meaningless.” The ALJ is prohibited from giving controlling effect to any single provision and is obligated to consider “all provisions . . . with reference to the whole instrument.” Accordingly, the ALJ finds no conflict in the Operations Bulletin permitting the use of sales to leasing companies as qualified transactions and the Manual’s silence on the subject. The provisions described in the two

46 Fort Worth Indep. Sch. Dist., 22 S.W.3d at 842.
47 Motion, Ex. 16, Operations Bulletin at 3.
48 Motion, Ex. 6, Manual at 11.
49 Seagull Energy, 207 S.W.3d at 345.
50 Id.
Business Builder documents may be harmonized by giving effect to all of the terms so that none are rendered meaningless.

In considering whether a leasing company is an end-user under the terms of Business Builder documents, the ALJ must take into account the Operations Bulletin’s provision that “[a]n approved leasing company purchasing to lease is considered an end-user.” Although “approved leasing company” has not been defined, the documents clearly anticipate that a leasing company is considered an end-user under the terms of documents.

IV. CONCLUSION

Autobahn is entitled to summary disposition on its claims regarding the terms of JLRNA’s Export Policy and the charge-backs for sales to leasing companies.

V. FINDINGS OF FACT

Background Findings

1. Jaguar Land Rover North America, L.L.C. (JLRNA) is a distributor/manufacturer of vehicles, and Autobahn Imports, L.P. d/b/a Land Rover of Fort Worth (Autobahn) is a retailer/dealer of JLRNA’s vehicles.

2. The Business Builder Program (Business Builder) is JLRNA’s incentive-based program based, among other things, on a dealer’s sales.

3. Under Business Builder, JLRNA pays its dealers a percentage of manufacturer’s suggested retail price (MSRP) on each Land Rover sold (up to 5%) if certain requirements are met.


5. A vehicle must be a new eligible retail sale and meet other criteria to receive an incentive payment for each component of Business Builder. The dealer submits information on the

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51 Motion, Ex. 16, Operations Bulletin at 3.
five components to JLRNA throughout each calendar quarter. Reports are updated on a
daily basis and become final at the end of the quarter. At the end of the quarter, JLRNA
reviews the information and sales records to determine the amount of any payment(s) due
to the retailer.

6. Autobahn reports each of its retail sales electronically on a retail delivery report form
(RDR form) provided by JLRNA. Autobahn filed completed RDR forms for all the sales
transactions concerning the charge-backs at issue in this case.

End-User Issue

7. Among the requirements for receiving an incentive payment under Business Builder is
the dealership’s obligation to document that it has engaged in an eligible transaction with
an “end-user.”

8. In February 2014, JLRNA audited Autobahn’s sales from February 1, 2013, through

9. The auditor selected 134 sales files, all of which involved sales to leasing companies.
The auditor made ninety-one charge-backs totaling $340,469.80 in payments that JLRNA
had previously paid to Autobahn under Business Builder. With one exception, the
auditor’s basis for the charge-backs was “Delivery was not made to the vehicle’s end-
user by an authorized Land Rover retailer representative. Lease Contract shows [name of
leasing company & location] delivered the vehicle to the end-user [Lessee name and
date].”

10. Autobahn appealed the charge-backs, and JLRNA rejected the appeal for all but five sales
and charged back $317,204.80 from Autobahn’s account.

11. A leasing company is considered to be an end-user under the terms of the program
documents.

Export Policy Issue

12. The audit list also included twelve Land Rovers sold by Autobahn that were subsequently
exported by the purchaser. The audit listed these vehicles as “potential” charge-backs.

13. In a letter, JLRNA stated that it reserved the right to charge back for those transactions if
it determined that Autobahn did not perform due diligence. The letter also advised
Autobahn that it must take all steps required or recommended by JLRNA’s Export Policy.
14. JLRNA’s Export Policy provides that all vehicles exported within nine months of sale in excess of a quarterly threshold of 3% of sales volume during the previous quarter for dealers selling over 250 units per year will be subject to charge-back.

15. Under the Export Policy, if the total vehicles sold by Autobahn and later exported (within a nine-month period) exceed 3% of Autobahn’s sales volume for a quarter, JLRNA will penalize it in the following quarter.

16. The Export Policy provides that the penalty for exceeding the export threshold consists of a charge-back equaling 13.5% of MSRP, a $3,500 warranty fee, and all variable marketing program and incentive payments, as well as a two-for-one allocation penalty (i.e. the next allocation of new vehicles will be reduced by two for each vehicle exported).

17. The Export Policy requires a dealer to perform due diligence to ensure that a vehicle will not be exported after sale. The due diligence requirements in the original Export Policy consist of nearly four pages of “Retailer Best Practices” and “Indicators of Potential Export or Broker Behavior.”

18. The Export Policy’s Retailer Best Practices include:

- Searching known exporters;
- Searching the vehicle purchase history;
- Confirming the customer’s financials;
- Verifying title, registration, and tax information after the sale;
- Utilizing No Export Agreements;
- Recognizing employees who may have a pattern of selling vehicles that are later exported;
- Conducting online searches to confirm the customer’s personal details;
- Searching the customer’s Facebook or LinkedIn pages;
- Running a Carfax report on vehicles listed on the customer’s insurance card;
- Confirming the customer’s address using Google Maps street view;
- Looking for any connections to businesses the customer may have failed to disclose;
- Validating the customer’s IP address and searching the IP address to identify sources that do not match the details provided by the customer; and
- Determining whether the funding of the customer’s account was recent or whether the source of funding was from outside the U.S.

19. The Export Policy’s Indicators of Potential Export or Broker Behavior include:

- The buyer doesn’t negotiate on price;
- The buyer purchases more than one vehicle over a short period of time;
- The buyer will take any equipment or color;
- The buyer asks for the vehicle to be delivered;
- The buyer does not want to register the vehicle through the retailer;
- The buyer does not have a U.S. driver’s license; and
- The buyer states that it will finance the vehicle but switches to pay in full with a check at the last minute.

20. Based on its 2014 sales, Autobahn’s export threshold was four vehicles in Quarter 1 of 2015.

21. The terms of the Export Policy automatically impose a charge-back if the sales threshold is met.

22. The terms of the Export Policy impose charge-backs without requiring a showing of fraud.

23. The terms of the Export Policy provide that a dealer must show that it has performed all required due diligence rather than the dealer being under a presumption of a lack of knowledge that the vehicle would be exported.

Procedural Findings

24. Autobahn filed a complaint against JLRNA with the Texas Department of Motor Vehicles on May 7, 2014.

25. The complaint was referred to the State Office of Administrative Hearings (SOAH) on August 19, 2014.

26. On August 22, 2014, Autobahn sent its Notice of Hearing to JLRNA. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

27. On October 8, 2014, Autobahn filed a Motion for Summary Disposition (Motion) alleging that: (1) JLRNA improperly charged back certain incentive payments for sales to leasing companies, (2) JLRNA’s Export Policy is invalid under the Texas Occupations Code (Code), and (3) JLRNA’s payment schedule for incentive payments violates the schedule provided for by the Code.

28. The parties agreed that the Manual and the Operations Bulletin rules are the sole documents that govern the issues in this proceeding.

29. On March 10, 2015, Autobahn supplemented its Complaint and Motion to address JLRNA’s new Export Policy, which had been issued on November 24, 2014.

31. On June 22, 2015, the ALJ granted summary disposition to Autobahn on its claims regarding charge-backs for sales to leasing companies and JLRNA’s Export Policy. Summary disposition was denied on Autobahn’s incentive payment schedule claim because questions of fact remained on that issue.

32. On July 24, 2015, the ALJ severed the incentive payment schedule claim from this case and dismissed it. The record closed on that date.

VI. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Occ. Code ch. 2301.

2. SOAH has jurisdiction over the contested case hearing and the authority to issue a proposal for decision, including findings of fact and conclusions of law. Tex. Gov’t Code ch. 2003; Tex. Occ. Code § 2301.704; and 43 Tex. Admin. Code ch. 8, subch. D.


4. The ALJ may issue a final decision or proposal for decision on all or part of a contested case without an evidentiary hearing if the pleadings, affidavits, and other admissible evidence show that there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law. 1 Tex. Admin. Code § 155.505(a).

5. A manufacturer or distributor may make charge-backs to a dealer if, after an audit, the manufacturer or distributor has reasonable grounds to conclude that the dealer committed fraud with respect to the incentive program. Tex. Occ. Code § 2301.475(b).

6. Code § 2301.479 provides for adverse action against a dealer that sells a vehicle that is later exported only if, at the time of the original sale or lease, the dealer knew or reasonably should have known that the vehicle would be exported to a location outside the United States. Tex. Occ. Code § 2301.479(a)-(b).

7. Under the Code, a dealer is presumed to have no actual knowledge that a vehicle the dealer sells or leases will be exported if (1) the vehicle is titled; (2) the vehicle is registered; and (3) applicable state and local taxes are paid for the vehicle. Tex. Occ. Code § 2301.479(c). This presumption may be rebutted by “direct, clear, and convincing evidence that the franchised dealer had actual knowledge or reasonably should have known at the time of the original sale or lease that the vehicle would be exported to a location outside the United States.” Id. at § 2301.479(d).
8. Except as permitted by Code § 2301.479, “a franchise provision that allows a manufacturer, distributor, or representative to take adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States is void and unenforceable.” Tex. Occ. Code § 2301.479(e).


10. Although the Manual does not define the term “end-user,” the Operations Bulletin defines it as “a purchaser/lessee purchasing or leasing a vehicle from an authorized dealership for retail, commercial or business use, with no intent to resell.” The Operations Bulletin also states that “[a]n approved leasing company purchasing to lease is considered an end-user.” However, neither the Manual nor the Operations Bulletin define an “approved leasing company.”

11. The Manual provides that, in the event of a conflict between the Manual and “any other [JLRNA] program, incentive, or policy, the terms of the [Manual] shall govern.”

12. A contract consisting of two documents that involve the same parties and relate to the same transaction will be construed by reading their provisions together in ascertaining the parties’ intent. *Fort Worth Indep. Sch. Dist. v. City of Fort Worth*, 22 S.W.3d 831, 840 (Tex. 2000).

13. To discern intent, an ALJ is to “examine and consider the entire writing in an effort to harmonize and give effect to all the provisions of the contract so that none will be rendered meaningless. No single provision taken alone will be given controlling effect; rather, all the provisions must be considered with reference to the whole instrument.” *Seagull Energy E&P, Inc. v. Eland Energy, Inc.*, 207 S.W.3d 342, 345 (Tex. 2006) (emphasis in original); *see also Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983).

14. If the wording of a written instrument is “definite” and “certain,” then “it is not ambiguous and the court will construe the contract as a matter of law.” *Coker*, 650 S.W.2d at 393. Only where a contract is ambiguous may a court “consider the parties’ interpretation and admit extraneous evidence to determine the true meaning of the instrument.” *Nat’l Union Fire Ins. Co. of Pittsburgh, Penn. v. CBI Indus., Inc.*, 907 S.W.2d 517, 520 (Tex. 1995).

16. The Operations Bulletin’s acknowledgement of sales to leasing companies and the Manual’s absence of references to such sales do not create conflict or ambiguity.

17. Read together, the Operations Bulletin and the Manual allow sales to leasing companies to be qualified transactions under Business Builder.


19. Sales to leasing companies are qualified sales under Business Builder according to the program documents.

20. Autobahn is entitled to summary disposition on its claims regarding charge-backs for sales to leasing companies and the terms of the Export Policy.

SIGNED August 20, 2015.

[Signature]

STEPHANIE FRAZER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS
# EXHIBIT LIST AND CERTIFICATION

**DOCKET NUMBER:** 608-14-4960.LIC  
**STYLE OF CASE:** Autobahn Imports, L.P. d/b/a Land Rover of Fort Worth v. Jaguar Land Rover North America, L.L.C.  
**DATE OF HEARING:** Summary Disposition

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I hereby affirm that the exhibits included on this exhibit list identify all the exhibits admitted in this proceeding. Any exhibits not admitted but included in an offer of proof are also listed and identified as such. The referenced exhibits are being placed under seal and returned to the referring agency in the condition in which they were received into evidence.

[Signature]

**ADMINISTRATIVE LAW JUDGE**

Date Signed: August 19, 2015
Attachment B: Respondent’s Exceptions to the PFD
SOAH DOCKET NO. 608-14-4960.LIC
MVD DOCKET NO. 14-0016 LIC

AUTOBAHN IMPORTS, LP,
d/b/a Land Rover of Ft Worth,

Complainant,

v.

JAGUAR LAND ROVER NORTH AMERICA, LLC

Respondent.

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

JAGUAR LAND ROVER NORTH AMERICA, LLC'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S PROPOSAL FOR DECISION

Pursuant to 1 Texas Admin. Code § 155.507(c) and 43 Tex. Admin Code § 215.53, Respondent Jaguar Land Rover North America ("JLRNA") respectfully submits these Exceptions to the August 20, 2015 Proposal for Decision (the "PFD") filed by Administrative Law Judge ("ALJ") Stephanie Frazee. JLNRA’s Exceptions are directed to the PFD in its entirety, and to certain statements, analysis, findings of fact, procedural findings, and conclusions of law therein supporting summary disposition in favor of Complainant Autobahn Imports, LP, d/b/a/ Land Rover of Fort Worth ("Autobahn").

I. INTRODUCTION

The PFD incorporates two prior orders (the "Orders") granting Autobahn’s Motion for Summary Disposition (the "Motion") with respect to Autobahn’s claims alleging violations of the Texas Occupations Code (the "Code"). In particular, Autobahn alleges that JLRNA improperly charged back incentive payments totaling $317,204.80 and that such chargeback "is an adherence to an unreasonable sales standard in violation of Code Section 2301.467, and enforces guidelines applicable to the sale of motor vehicles that result in a franchised dealer being treated inequitably or unfairly in violation of Code Section 2301.468" (the "Chargeback"
Claim”). Autobahn further alleges that JLRNA’s policies on exported vehicles violate Code § 2301.479 (the “Export Policy Claim”).

Both Orders were issued prior to discovery and, in the case of the Chargeback Claim, prior to the filing of papers opposing the Motion.

As set forth below, because the Orders were decided improperly, the PFD should be withdrawn, and this case should proceed to discovery and a hearing on the merits on both the Chargeback Claim and the Export Policy Claim.

II. BACKGROUND/PROCEDURAL HISTORY

JLRNA is the distributor of Land Rover vehicles in the United States. (Original Complaint ("Complaint"), ¶ 1.3). Autobahn is an authorized Land Rover dealer in Fort Worth. (Complaint, ¶ 1.1).

This case arises from JLRNA’s 2013 Land Rover “Business Builder” incentive program (the “Program”). Under the Program, JLRNA pays its dealers up to 6% of MSRP for each qualifying retail sale. It is undisputed that, to qualify for payment, a dealer must satisfy the following requirements:

- The Land Rover retailer must conduct the delivery of the vehicle to the end-user customer (the "Delivery Requirement"). The purpose of this requirement – as Autobahn concedes in its Complaint and Motion – is so a dealer “representative can explain the operation of the vehicle to the customer.” Motion ¶ 4.1(a); Complaint ¶ 3.1.

- The end-user’s name and the address where the vehicle is to be garaged must be submitted as the primary driver of the vehicle during the RDR\(^1\) process.

- The retailer must have and maintain the necessary documentation within its customer files to support the end-user customer address submitted.

\(^1\) "RDR", an abbreviation for “retail delivery report,” refers to the process by which a dealer reports a retail transaction to JLRNA. So, for example, when Autobahn sells a Land Rover vehicle to a customer it submits an RDR to JLRNA identifying certain key aspects of the transaction (e.g., the identity of the purchaser, the date of sale or lease).
• The retailer must have and maintain the necessary documentation to prove that the vehicle is registered with the state in which the vehicle was reported sold and contracted within 30 days of RDR, unless an extended period is permitted by state law. (Appendix, Ex. 6 at 8) (hereinafter, the “Business Builder Eligibility Requirements”).

Autobahn itself has acknowledged that failure to satisfy any of these requirements renders a transaction ineligible for Business Builder payment. (Id.; see also Complaint ¶ 2.3).

In February 2014, JLRNA audited Autobahn’s sales records (the “Audit”). The Audit concluded that in 86 instances, the Dealership failed to make the delivery of the vehicle to the retail customer that Autobahn listed in the RDR (the “Disputed Transactions”). In each of these RDRs, Autobahn listed the retail customer as the primary driver, but did not supply documentation demonstrating that it delivered the vehicle to the retail customer as required by the Program. (Appendix, Ex. 12; JLRNA’s Response in Opposition to Autobahn Imports, LP’s Motion for Summary Disposition (“Response to Motion”), Affidavit of Michael Stern (“First Stern Aff.”), ¶¶ 6-8). In fact, documentation obtained during the Audit revealed that various third-party leasing companies made the deliveries. See Id.

The Audit led JLRNA to issue chargebacks totaling $317,204.80. None of the chargebacks was based on JLRNA’s export policy.

The central issue on the Chargeback Claim, therefore, is whether Autobahn did or did not deliver vehicles to the retail customers identified by Autobahn. From the outset, however, Autobahn has steadfastly avoided taking any position on that question. Instead, Autobahn’s Motion argued principally that the Program does not require a dealer to supply documentation evidencing the delivery of the vehicle (an argument that is not addressed in the PFD or any other order). In any event, the filing of the Motion set in motion a chain of events that led to an Order
finding for Autobahn on the Chargeback Claim even though JLRNA had no chance to take
discovery and no opportunity to file papers opposing the Motion, as follows:

First, shortly after the Motion was filed, in Order No. 4 Memorializing Telephonic
Prehearing Conference ("Order No. 4"), ALJ Howard S. Seitzman directed the parties to brief
only the issue of "whether a leasing company is an end-user under the terms of the 2013 Land
Rover Business Builder Program."² In so doing, ALJ Seitzman did not permit JLRNA to file an
opposition to the Motion on the merits and abated all other proceedings in the case, including
discovery. See Order No. 4.

Second, after inheriting the case from ALJ Seitzman, ALJ Paul D. Keeper ruled in Order
No. 6 Ruling on “End-User” Issue ("Order No. 6"), issued on January 28, 2015, that “a leasing
company is considered an end-user”. More specifically, Order No. 6 found that the Program
Manual permitted a dealer to identify a leasing company as an end-user in the RDR. Order No. 6
did not, however, either (i) make any finding on the question of who Autobahn identified as the
“end user” in its submissions to JLRNA; (ii) address whether Autobahn or a leasing company
delivered the Land Rover vehicles to the retail customers that Autobahn identified in sales
reporting submissions to JRLNA; or (iii) answer the central question of whether the Disputed
Transactions were eligible for payment under the Manual and Rules.³

Third, after inheriting the case from ALJ Keeper, ALJ Frazee solicited briefing on the
effect of Order No. 6. JLRNA’s brief pointed out the limited scope of Order No. 6 and argued,

² At no point did ALJ Seitzman or his successor, ALJ Paul D. Keeper, state in any order (or otherwise advise the parties) that resolution of the “End-User” issue would resolve any part of the Motion. JLRNA submits that neither ALJ ever contemplated that a ruling favorable to Autobahn on this narrow issue would itself entitle Autobahn to summary disposition.

³ “Manual” refers to the 2013 Business Builder Program Manual, a copy of which is attached as Exhibit 6 to the Appendix. “Rules” refers to the Operations Bulletin - Contests and Incentives Standard Eligibility Rules for Retail Programs,” a copy of which is attached as Exhibit 16 to the Appendix.
among other things, that JLRNA should be permitted to take discovery and to file a full opposition to the Motion. Without expressly addressing these arguments, ALJ Frazee concluded in Order No. 10 Resolving End-User Issue ("Order No. 10") issued on April 9, 2015, that because under Order No. 6 an approved leasing company is an end-user, it must necessarily follow that it was the intent and effect of Order No. 6 that the Disputed Transactions were eligible for payment under the Program, and Autobahn was entitled to summary disposition on the Chargeback Claim. The effect of ALJ Frazee's order was, therefore, to grant summary disposition prior to discovery and prior to the filing of any opposition papers by JLRNA and without any analysis of the issues.

Finally, in Order No. 11 Denying Motion to Dismiss, Granting Summary Disposition in Part, Denying Summary Disposition in Part, and Requiring a Status Report ("Order No. 11") ALJ Frazee granted summary disposition to Autobahn on the Export Issue. ALJ Frazee made this finding despite the fact that (i) JLRNA has not issued any chargebacks to Autobahn on its export policies; and (ii) the Enforcement Division of the Texas Department of Motor Vehicles has closed its inquiry with respect to JLRNA's original export policy and stated that JLRNA's explanation of its second export policy, in place after November 24, 2014, "will suffice for the time being." See Id. In addition, the PFD, much of which is based on Order No. 11 as to the Export Issue, also conflated JLRNA's two different export policies ("Export Policy No. 1" and "Export Policy No. 2" (effective November 24, 2014), respectively, even though only Export Policy No. 1 was applicable to the Disputed Transactions.
III. EXCEPTIONS

EXCEPTION NO. 1

JLNRA excepts to the entire PFD as it relates to the Chargeback Claim, including to the ALJ’s statements, analysis, findings of fact, procedural findings, and conclusions of law. It was not proper to grant summary disposition to Autobahn on the Chargeback Claim because (i) neither Order No. 6, nor Order No. 10, nor any order that was issued, explains the basis for summary disposition or otherwise satisfies the requirements for an order granting summary disposition; (ii) genuine issues of material fact exist as to whether Autobahn satisfied the Delivery Requirement and the other elements of a valid Business Builder claim; (iii) JLRNA was not permitted to conduct any discovery in this matter or to even file a brief in opposition to Autobahn’s motion for summary disposition on the Chargeback Claim; and (iv) JLRNA has been deprived of due process.

(See PFD, including but not limited to pp. 1-9 and 11-16; Findings of Fact Nos. 2-11; Procedural Finding Nos. 30 and 31; and Conclusions of Law Nos. 4-5, 9-17, 19-20).

A. The PFD Does Not State A Valid Basis For Summary Disposition

The PFD does not provide a basis for summary disposition because it does not accurately state the grounds for JLRNA’s chargebacks and does not explain why or how those chargebacks violate the Texas Occupations Code. In fact, the PFD does not interpret, apply or even mention either of the statutes that underpin Autobahn’s argument in the Complaint (Code §§ 2301.467 and 2301.468), let alone rule that JLRNA has violated those statutes by issuing the chargebacks.

The absence of a basis for summary disposition is evident from a comparison of JLRNA’s stated chargeback grounds, the Complaint’s challenge to those grounds, and the discussion of the Chargeback Claim in the PFD.
First, as the record reflects, JLRNA imposed chargebacks of Business Builder payments based on the following facts:

- In each of its RDRs submitted to JLRNA, Autobahn identified individual retail customers as the purchasers/lessees and primary drivers.
- During the Audit, Autobahn failed to supply any documentation showing that Autobahn made the deliveries of the vehicles to the retail purchasers/lessees. Instead, the documentation reflected that such deliveries were made by leasing companies.

It is undisputed that the Program requires that the end-user’s name and the address where the vehicle is to be garaged be identified in the RDR as the primary driver of the vehicle. (Appendix, Ex. 6). In other words, by the Program’s own terms, the end-user is the same person as the primary driver. It is also undisputed that none of the RDRs submitted by Autobahn identified a leasing company as the primary driver. (Appendix, Ex. 7; Motion, Benny Miller Affidavit ("Miller Aff.") ¶4; First Stern Aff., ¶2-6, Ex. A).

Second, in the Complaint, Autobahn attacked JLRNA’s chargeback grounds without making the argument that is cited in the PFD as the sole basis for summary disposition. Specifically, the Complaint alleged that (i) JLRNA did not properly interpret the documentation it reviewed during the Audit; and (ii) Autobahn was not obliged to demonstrate that it conducted the deliveries of the vehicles. Autobahn did not claim in the Complaint that the chargebacks were unlawful because the leasing companies were themselves the “end-users” for purposes of the Disputed Transactions. In other words, the Complaint does not even make the very claim that is identified in the PFD as the sole basis for the grant of summary disposition on the Chargeback Issue. (Complaint, ¶¶ 3.1-3.5).
The PFD does not, therefore, address either JLRNA’s stated chargeback grounds or the Complaint’s stated basis for the Chargeback Claim. Instead, the PFD’s reasoning in support of summary disposition is contained in Finding of Fact No. 11: “A leasing company is considered to be an end-user under the terms of the program documents.” That this finding is the basis for the ALJ’s ruling is apparent from Procedural Finding No. 30 ( “On April 9, 2015, Administrative Law Judge Stephanie Frazee granted summary disposition in favor of Autobahn on the end-user/charge-back issue.”) and Conclusion of Law No. 20 (“Autobahn is entitled to summary disposition on its claims regarding the charge-backs for sales to leasing companies....”). It is clear that this procedural finding and conclusion of law are based entirely on Order No. 10. In Order No. 10, ALJ Frazee, without explanation or analysis, concluded that the intent and effect of Order No. 6, was to grant summary disposition to Autobahn on the Chargeback Claim:

Having reviewed the briefs as well as Order No. 6, the ALJ determined that Order No. 6 establishes that there are no genuine issues of material fact as to the end-user issue, and the effect and intent of Order No. 6 is to grant summary disposition on the end-user issue and corresponding chargebacks issue in favor of Autobahn Imports, L.P.

In Order No. 6, ALJ Keeper ruled that an approved leasing company is an end user under the Program. The scope of his ruling, however, was limited to that one issue. Order No. 6, moreover, itself did not state that it granted summary disposition to Autobahn, nor did it state that Autobahn was entitled to payment under the Program or that the chargebacks should be

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4 Procedural Finding No. 31 incorrectly states that, “On June 22, 2015, the ALJ granted summary disposition to Autobahn on its claims regarding charge-backs for sales to leasing companies and JLRNA’s Export Policy.” Although Order No. 11 granted summary disposition on the Export Policy to Autobahn, it did grant summary disposition to Autobahn on the Chargeback Claim. As set forth below in Exception No. 6, Procedural Finding No. 31 should be withdrawn.
reversed. Order No. 6 also did not address, in any way, Autobahn’s claim in the Complaint that the chargebacks violate Code §§ 2301.467 and 2301.468.  

While concluding that a leasing company “is considered an end-user,” Order No. 6 does not, for example, explain how the conclusion that a leasing company may be an end-user could establish, as a matter of law, that JLRNA’s chargeback was unlawful. Moreover, Order No. 6 does not satisfy the basic predicates to the grant of summary disposition under 1 Tex. Admin. Code § 155.505(e)(3). It does not specify “the facts about which there is no genuine issue” or “the issues for which summary disposition has been granted.”

JLRNA submits that the mere conclusion that “a leasing company is considered an end-user” cannot justify or explain the grant of summary disposition on the Chargeback Claim, for several related reasons.

First, it is undisputed that Autobahn did not identify the leasing companies as the primary drivers in the RDRs. (See Appendix, Ex. 7; Miller Aff. ¶4; First Stern Aff., ¶2-6, Ex. A). It is also undisputed that the Program Manual states that the end-user and the primary driver must be the same person, and that the Land Rover retailer must conduct the delivery of the vehicle to the end-user. See id. As a result, even assuming the accuracy of the PFD’s premise that a leasing company can be an end-user under the Program, the fact is that Autobahn did not identify the leasing companies as end-users in the RDRs for the Disputed Transactions. There has been no claim by Autobahn that it identified the leasing companies as the primary driver/end-user and no finding in any Order that Autobahn did so. The absence of such a finding precludes the grant of summary disposition on the grounds stated in the PFD.

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5 Additionally, in the telephonic hearing held on January 7, 2015, Judge Keeper stated that he was not intending to decide the Motion through the End-User Order. Unfortunately, counsel for JLRNA has been informed by the clerk’s office that no recording exists of the January 7, 2015 hearing.
Second, none of the Orders issued in this case make any finding on the question of who Autobahn identified as the “end user” in its submissions to JLRNA or the question of who made the deliveries of the vehicles that were the subject of the Disputed Transactions. JLRNA’s chargeback is based on the Audit finding that Autobahn did not make the deliveries to the retail customers identified in the RDRs as the end-users. Since even Autobahn concedes that a Land Rover dealer must conduct the delivery of the vehicle to the end-user, there has been no adjudication of the central question at issue in the chargebacks.

Third, neither Order No. 6 nor the PFD address whether the Disputed Transactions were eligible for payment under the Manual and Rules. As both ALJ Keeper and Autobahn have acknowledged, there are numerous eligibility requirements for payment under the Manual and Rules. See Order No. 6 at 2 ("to be eligible to receive payment under the Program, the dealership must satisfy certain requirements. Among those is the dealership’s obligation to document that it has engaged in an eligible transaction with an ‘end-user.’") (emphasis added)); Complaint ¶¶ 2.2 and 2.4 (listing certain payment eligibility requirements and acknowledging that any “sales transaction in which the retailer does not fulfill all of the criteria listed in [the Manual] will be disqualified from the full Business Builder Payment.”).

Any such “ultimate” and dispositive ruling would have required sufficient evidence and a finding (following discovery, briefing, and a hearing) that the following conditions precedents to payment under the Program (i.e., “those certain requirements”) were satisfied by Autobahn:

- That Autobahn delivered the vehicle to the end-user customer;
- That the end-user’s name and the address where the vehicle is to be garaged were submitted as the primary driver of the vehicle during the RDR process;
• That Autobahn possessed and maintained the necessary documentation within its customer files to support the end-user customer address submitted; and

• That Autobahn possessed and maintained the necessary documentation to prove that the vehicle was registered with the state in which the vehicle was reported sold and contracted within 30 days of the RDR, unless an extended period was permitted by state law.

"Any sales transaction [for] which the retailer does not fulfill all of the criteria listed above, will be disqualified from the full Business Builder payment." (Appendix, Ex. 6 at 8). Further, "[w]here there are multiple end users jointly purchasing/leasing one or more vehicles, only one of them may be reported to [JLRNA] as the ‘end user’, and all program eligibilities will be based solely on the qualifications of that reported end user." (Appendix, Ex. 16 at 3) (emphasis added).

When a party’s obligation under the contract is conditioned upon the happening of a future event, the condition must be performed or fulfilled exactly as set forth in the contract before the promise can be enforced. See, e.g., Centex Corp. v. Dalton, 840 S.W.2d 952, 956 (Tex. 1992) (condition precedent is an event that must happen or be performed before a right can accrue to enforce an obligation). Therefore, absent a finding supported by evidence in the record that each of the Disputed Transactions has satisfied all conditions precedent, including the requirement that the vehicle was delivered by Autobahn to the primary driver identified on the RDR, Autobahn cannot prevail on its Chargeback Claim. See, e.g., Schaffer ex rel Schaffer, 546 U.S. 49, 57-58 (2005) (party seeking relief bears burden of persuasion); see also, C. Mueller & L. Kirkpatrick, Evidence §3.1, p.104 (3d ed. 2003): see also, McCormick on Evidence §337, at
412 ("The burdens of pleading and proof with regard to most facts have been and should be assigned to the plaintiff who generally seeks to change the present state of affairs[].")

JLRNA submits that, because Autobahn listed the retail customer as the primary driver on each of the Disputed Transactions, none of the leasing companies will be able to satisfy all of the conditions precedent (i.e., since no leasing company is listed as the primary driver on any RDR, no leasing company will be able to satisfy the second eligibility requirement that the end-user be listed as the primary driver on the RDR).\(^6\) In any event, summary disposition on the Chargeback Claim is not proper unless Autobahn establishes that, as a matter of law, that JLRNA's chargeback grounds were improper and that each of the Disputed Transactions was entitled to payment under the Program. Autobahn has not made such a showing and there are insufficient findings of fact in the PFD to establish such a showing.

**B. Genuine Issues Of Material Fact Preclude Summary Disposition**

It is well-settled that summary disposition must not be granted where there are genuine issues of material fact. JLRNA submits that there are numerous issues of material fact here that cannot be resolved on summary judgment:

- JLRNA's chargebacks are based on its conclusion that Autobahn did not make the deliveries of the vehicles to the reported end-user/primary driver in the Disputed Transactions. Autobahn apparently disputes this fact, although it carefully

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\(^6\) JLRNA acknowledges that Judge Keeper ruled that even if a retail customer was listed on all of the RDRs (as is the case for all of the Disputed Transactions) it does not technically mean that the leasing company cannot be an "end-user" under the Rules. Judge Keeper, however, did not rule that a transaction in which the vehicle was delivered to a leasing company can nonetheless be eligible for payment under the Program despite the fact that the leasing company is not listed as the primary driver on the RDR. This is an important distinction. There is a difference between whether a leasing company is an "end-user" and whether the leasing company satisfies all of the Business Builder Eligibility Requirements. If Autobahn were allowed to "mix-and-match" by using different end-users to satisfy different eligibility requirements, that would violate both the requirement that the end-user be listed as the primary driver and the requirement that if there are multiple "end-users," only one end-user may be used to satisfy the Business Builder Eligibility Requirements.
avoided taking any position on who made the deliveries. At a bare minimum, the identity of the persons who made the deliveries – an indisputably necessary element of a valid Business Builder claim – is a disputed factual issue that cannot be resolved on summary disposition.

- JLRNA contends that the RDRs identified retail customers, rather than leasing companies, as the end-users/primary drivers. It has supplied competent evidence to support that conclusion. (First Stern Aff., ¶¶2-6, Ex. A). Autobahn has not presented any evidence to challenge this point. At a bare minimum, however, the issue of who was identified as the end-user/primary driver is a disputed factual issue that cannot be resolved on summary disposition.

- Autobahn concedes that a dealer has the obligation to satisfy each of the elements of a Business Builder claim listed above in order to be entitled to payment. JLRNA has supplied competent evidence demonstrating that there are inconsistencies between the RDRs submitted by Autobahn in the ordinary course of business, on the one hand, and Autobahn’s recent suggestion that leasing companies were the “end-users” in the Disputed Transactions. Id. At a bare minimum, the issue of whether Autobahn’s attack on the chargeback can be reconciled with the overall content of its prior submissions to JLRNA raises a disputed factual issue that cannot be resolved on summary disposition.

It is well-settled that such disputed factual issues preclude summary disposition. 1 Tex. Admin. Code §155.505(a) (summary disposition is not permitted where there is no evidence of one or more essential elements of a claim or defense on which the opposing party would have the burden of proof at hearing). Furthermore, “In keeping with standards for judicial summary
judgment, all doubts about the existence of a genuine issue of material fact must be resolved against the movant, and all evidence favorable to the non-movant must be accepted as true.” In the Matter of the Following Application for Initial Regular Permit to Withdraw Groundwater from the Edwards Aquifer: Elm Creek Owners Association, 2004 WL 5454428, at *3 (SOAH Jan. 26, 2004) (citing Cate v. Dover Corp., 790 SW. 2d 559, 562 (Tex. 1990), and Montgomery v. Kennedy, 669 SW. 2d 309, 311 (Tex. 1984)). In addition, “The movant has the burden in a summary judgment proceeding. To decide whether there is a disputed material fact issue precluding summary judgment, ‘evidence favorable to the non-movant must be taken as true.’ Moreover, ‘[e]very reasonable inference must be indulged in favor of the non-movant and any doubts resolved in his favor.’” Texas Department of Insurance v. Caillouet, Jr., 2004 WL 4171864, at *2 (SOAH June 14, 2004) (internal citations omitted).

C. **Summary Disposition Was Improperly Adjudicated Prior To Discovery And Without A Proper Opportunity To File Opposition Papers**

Throughout these proceedings, JLRNA has requested the opportunity to conduct discovery prior to being required to submit a further response to the Motion. (Response, at 9; Colm Moran’s Letter to ALJ Keeper dated January 14, 2015, at 2; Colm Moran’s March 16, 2015 Letter to ALJ Frazee, at 8-9). Such requests were never formally ruled upon.

Moreover, in administrative proceedings, due process requires that parties be accorded a full and fair hearing on disputed fact issues. JLRNA submits that the failure to grant (or even formally rule upon) its requests for discovery, and the failure to permit it to file a full opposition to the Motion, are inconsistent with the dictates of due process. City of Arlington v. Centerfolds, Inc., 232 S.W.3d 238, 250 (Tex. App.—Fort Worth 2007, pet. denied) (“A fair opportunity for the parties to prove their respective cases is essential to an administrative hearing comporting with due process.”); see also, J.B. Adver., Inc. v. Sign Bd. of Appeals of City of Carrollton, 883
S.W.2d 443, 448-49 (Tex. App.—Eastland 1994), writ denied (May 11, 1995) ("Although the rules applicable to courts of law need not be strictly followed, administrative proceedings still must meet the minimum requirements of due process.").

Accordingly, Exception No. 1 should be sustained and the PFD as to the Chargeback Claim should be withdrawn.

**EXCEPTION NO. 2**

JLRNA excepts to Conclusion of Law No. 5 regarding the Chargeback Claim.

(See PFD, including pp. 1-9 and 11-16; Conclusion of Law No. 5).

Conclusion of Law No. 5 provides that, "A manufacturer or distributor may make chargebacks to a dealer if, after an audit, the manufacturer or distributor has reasonable grounds to conclude that the dealer committed fraud with respect to the incentive program. Tex. Occ. Code §2301.475(b)."

Conclusion of Law No. 5 incorrectly states the law on chargebacks to the extent that it is intended to mean that JLRNA was required to prove fraud and should thus be withdrawn. Texas Occupations Code Section 2301.475 (a) provides that:

(a) Except as provided by Subsection (b), after the first anniversary of the date a manufacturer or distributor pays a claim under Section 2301.4749 (governing payments under incentive programs), the manufacturer or distributor may not:

1. charge back to a dealer money paid by the manufacturer or distributor as a result of the incentive program;
2. charge back to a dealer the cash value of a prize or other thing of value awarded to the dealer as a result of the incentive program; or
3. audit the records of a dealer to determine compliance with the terms of the incentive program, unless the manufacturer or distributor has reasonable grounds to believe the dealer committed fraud with respect to the incentive program.

(b) A manufacturer or distributor may make charge-backs to a dealer if, after an audit, the manufacturer or distributor has reasonable grounds to conclude that the dealer committed fraud with respect to the incentive program.
Tex. Occ. Code §2301.475(a)-(b) (emphasis added). By its own terms, therefore, under Section 2301.475 a manufacturer or distributor can make chargebacks to a dealer with respect to an incentive program prior to the "the first anniversary of the date" an incentive payment is made without the necessity of showing fraud. Here, the chargebacks on the Disputed Transactions were made within twelve months of the payments. (See Appendix, Ex. No. 9). Therefore, fraud is not a prerequisite to the imposition of a charge-back. Conclusion of Law No. 5 should be withdrawn and Exception No. 2 should be sustained.

EXCEPTION NO. 3

JLRNA excepts to Finding of Fact No. 11, Conclusion of Law Nos. 17 and 19 regarding the Chargeback Claim.

(See PFD, including pp. 1-9 and 11-16; Conclusion of Law Nos. 17 and 19).

Finding of Fact No. 11 provides that, "A leasing company is considered to be an end-user under the terms of the program documents." Conclusion of Law No. 17 states, "Read together, the Operations Bulletin and the Manual allow sales to leasing companies to be qualified transactions under the Business Builder." Similarly, Conclusion of Law No. 19 provides that, "Sales to leasing companies are qualified sales under Business Builder according to the program documents." These Conclusions of Law are not correct because, as set forth in Exception No. 1, supra, (1) the finding that a leasing company is an end-user is, alone, insufficient to establish that the Disputed Transactions were eligible for payment under the Program; (2) such finding does not address the fact that Autobahn's RDRs identified retail customers and not the leasing companies as the end-users; and (3) Autobahn has not otherwise established that the Disputed Transactions were allowed under the Business Builder plans.

7 JLRNA, for all of the reasons set forth in its Response (inter alia, (i) Autobahn identified the retail customer, not a leasing company, as the end-user in each transaction at issue; (ii) none of the leasing companies at issue were approved leasing companies; and (iii) Autobahn was required to deliver the vehicles to the retail customer), takes exception to the PFD to the extent that it is based on the ruling set forth in Order No. 6 with respect to the End-User Issue.
Transactions were eligible for payment. Exception No. 3 should thus be sustained and Finding of Fact No. 11, Conclusion of Law Nos. 17 and 19 should be withdrawn.

**EXCEPTION NO. 4**

JLNRA excepts to the entire PFD as it relates to the Export Issue, including to the ALJ’s statements, analysis, findings of fact, procedural findings, and conclusions of law, on the ground that the Export Issue was not and is not ripe and ALJ Frazee, in Order No. 11 improperly granted summary disposition to Autobahn on the Export Issue. In addition, the PFD, much of which is based on Order No. 11 as to the Export Issue, also conflated Export Policy No. 1 and Export Policy No. 2, each of which was in place at different times, and only one of which was applicable to the Disputed Transactions. Indeed, Export Policy No. 2 became effective on November 24, 2014, after the occurrence of each of the Disputed Transactions.

(See PFD, including but not limited to pp. 1-11; Findings of Fact Nos. 12-23; Procedural Finding No. and 32; and Conclusions of Law Nos. 6-8, 18, 20).

For several reasons, Exception No. 4 should be sustained. First, in Order No. 11, Judge Frazee granted summary disposition to Autobahn on the Export Issue. Order No. 11, however, was not properly decided because the issue has never been ripe for decision.

Autobahn has not alleged any injury arising out of either one of JLRNA’s Export Policies in effect at the time Autobahn filed its complaint or out of Export Policy No.2, effective November 24, 2014.\(^8\) In fact, JLRNA has never issued any chargeback to Autobahn under its

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\(^8\) Texas Occupations Code § 2301.479 provides that a manufacturer may take an “adverse action against a franchised dealer” if the franchised dealer “sells or leases a vehicle that is later exported to a location outside the United States” and “at the time of the original sale or lease, the dealer knew or reasonably should have known that the vehicle would be exported to a location outside the United States.” A franchised dealer is presumed to have no actual knowledge that a vehicle will be exported outside the United States if “(1) the vehicle is titled; (2) the vehicle is registered; and (3) the applicable state and local taxes are paid for the vehicle.” Id. That presumption may be overcome, though, by “direct, clear, and convincing evidence that a franchised dealer had actual knowledge or
export policies. See JLRNA’s Reply in Support of Motion to Dismiss Autobahn’s Export Policy Claim ("Reply MTD Export Claim"), Affidavit of Michael Stern ("Second Stern Aff.") ¶¶ 4-6; Appendix Ex. 12 (JLNRA letter dated April 25, 2014); JLRNA’s Response in Opposition to Autobahn’s MTD ("Response"), Colm Moran Affidavit ("Moran Aff.") Ex. 1 (letter of April 28, 2014).

What is more, the Enforcement Division of the Texas Department of Motor Vehicles (the "Enforcement Division") – the agency charged with enforcing these provisions of the Occupations Code – has advised JLRNA’s counsel that, as to Export Policy No. 1, in place prior to November 24, 2014 and thus applicable to all of the Disputed Transactions, it is “satisfied that the company understands the restrictions Texas statutes place on dealing with franchise dealers in vehicle export matters” and, therefore, explained that it was “closing [its] inquiry in this matter.” Moran Aff., Exs. 2-4 (emails dated April 29, 2014 and May 2, 2014 and letter dated April 18, 2014). It did so after reviewing JLRNA’s letter to its Texas retailers and a letter directly to the Division, setting forth JLRNA’s view of the policy and its intent to comply with Texas law in applying that policy. See id.

Similarly, with respect to Export Policy No. 2, announced on November 24, 2014, JLRNA has not applied a single chargeback against Autobahn or any other dealership in Texas. Stern Aff., ¶¶ 4-5, Ex. 1. Indeed, Autobahn does not even allege that it has been injured in any way as a result of JLRNA’s mere announcement of Export Policy No. 2. Furthermore, the Enforcement Division has declined, in the absence of any ripe dispute over a chargeback, to pursue an inquiry into Export Policy No. 2. JLRNA explained in a letter to the Division of January 6, 2015, that as of that date, “JLRNA has not taken any adverse action under the Policy reasonably should have known at the time of the original sale or lease that the vehicle would be exported to a location outside the United States.” Id.
with respect to any Texas dealer.” Moran Aff., Ex. 5 (Letter of Jan. 6, 2015). After reviewing the letter, the Enforcement Division explained that JLRNA’s letter of January 6, 2015, “will suffice for the time being” to allay concerns raised by Texas franchise dealers. Id. at Ex. 6 (email of Jan. 12, 2015).

Second, the PFD, at pages 5-11, Finding of Facts Nos. 14-23, and Conclusion of Law No. 18, wrongly conflates Export Policy No. 1 and Export Policy No. 2, thereby failing to acknowledge the fact that Export Policy No. 2, which became effective on November 24, 2014, does not apply to any of the Disputed Transactions, all of which pre-dated Export Policy No. 2.

Accordingly, because the PFD is based on Order No. 11 with respect to the Export Issue, and because the ruling set forth in Order No. 11 is without basis, Exception No. 4 should be sustained and the PFD as to the Export Issue should be withdrawn. Exception No. 4 should also be sustained on the ground that Conclusion of Law No. 20 conflates Export Policy No. 1 and Export Policy No. 2.

EXCEPTION NO. 5

JLRNA excepts to Conclusion of Law No. 4 regarding the Chargeback Claim and the Export Issue.

(See PFD, including pp. 1-16; Conclusion of Law No. 4).

Conclusion of Law No. 4 provides that, “The ALJ may issue a final decision or proposal for decision on all or part of a contested case without an evidentiary hearing if the pleadings, affidavits, and other admissible evidence show that there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law. 1 Tex. Admin. Code §155.505(a).”
As set forth above in Exception Nos. 1 and 4, supra, none of the pleadings, affidavits, or other evidence presented by Autobahn entitled it to summary disposition on either the Chargeback Claim or the Export Issue. Exception No. 5 should thus be sustained and Conclusion of Law No. 4 withdrawn.

EXCEPTION NO. 6

JLRNA excepts to Procedural Finding No. 31 regarding the Chargeback Claim and the Export Issue.

(See PFD, including pp. 1-16; Conclusion of Law No. 31).

Procedural Finding No. 31 incorrectly states that, “On June 22, 2015, the ALJ granted summary disposition to Autobahn on its claims regarding charge-backs for sales to leasing companies and JLRNA’s Export Policy.” Although Order No. 11 granted summary disposition on the Export Policy to Autobahn, it did not grant summary disposition to Autobahn on the Chargeback Claim. Exception No. 6 should be sustained, and Procedural Finding No. 31 should thus be withdrawn.

EXCEPTION NO. 7

JLRNA excepts to Procedural Finding No. 28 regarding the Chargeback Claim.

(See PFD, including pp. 1-16; Procedural Finding No. 28).

Procedural Finding No. 28 states that, “The parties agreed that the Manual and the Operations Bulletin rules are the sole documents that govern the issues in this proceeding.” However, as set forth in the Response, JLRNA submits that Autobahn has also agreed to and acknowledged, in a written settlement agreement, the requirement and importance of delivery of a vehicle to the end-user under the Program. (See First Stern Aff., ¶ 12, Ex. B at 1-2). Exception No. 7 should be sustained, and Procedural Finding No. 28 should thus be withdrawn.
EXCEPTION NO. 8

JLRNA excepts to Background Finding No. 3.

(See PFD Background Finding No. 3).

Background Finding No. 3 states that the Business Builder program pays dealer up to 5% of MSRP. The program actually pays up to 6%. See Complaint, Ex. A. Exception No. 8 should be sustained.

IV. CONCLUSION

For the reasons set forth above, the PFD should be withdrawn, and this case should proceed to discovery and a hearing on the merits on both the Chargeback Claim and the Export Policy Issue.

Respectfully submitted,

/s/ Aaron R. Crane
Aaron R. Crane
State Bar No. 24050459
HOGAN LOVELLS US LLP
Bank of America Center
700 Louisiana, Suite 4300
Houston, TX 77002
Tel: (713) 632-1400
Fax: (713) 632-1401
aaron.crane@hoganlovells.com

Colm Moran
(appearing pro hac vice)
HOGAN LOVELLS US LLP
1999 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Tel: (310) 785-4661
Fax: (310) 785-4601
colm.moran@hoganlovells.com

Attorneys for Jaguar Land Rover North America, LLC

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CERTIFICATE OF SERVICE

I certify that on September 8, 2015, a true and correct copy of the foregoing has been served on the parties listed below.

**Via Facsimile 512.465.3599**
Docketing Clerk
State Office of Administrative Hearings
William P. Clements Building
300 W. 15th Street, Suite 504
Austin, Texas 78701-1649

**Via Facsimile 512.479.1101**
Howard V. Rose, Esq.
111 Congress Avenue, Suite 1400
Austin, Texas 78701

**Via Facsimile 817.870.2427**
Richard W. Wiseman
BROWN, DEAN, WISEMAN, LISER, PROCTOR & HART, LLP
306 West 7th Street, Suite 200
Fort Worth, Texas 76102-4905

/s/ Aaron R. Crane
Aaron R. Crane
Unpublished Cases
IN THE MATTER OF the Following Application for Initial..., 2004 WL 5454428...

State of Texas
Office of Administrative Hearings
IN THE MATTER OF the Following Application for Initial Regular Permit to Withdraw Groundwater
Groundwater from the Edwards Aquifer: Elm Creek Owners Association
SOAH Docket No. XXX-XX-XXXX
EAA Application No. BE000307
January 26, 2004

PROPOSAL FOR DECISION

I. INTRODUCTION

*1 Elm Creek Owners Association ("Applicant" or "Elm Creek") has sought from the Edwards Aquifer Authority ("EAA") an initial regular permit to withdraw water from the Edwards Aquifer. The EAA referred the matter to the State Office of Administrative Hearings ("SOAH"). The EAA's General Manager subsequently filed a Motion for Summary Disposition, requesting that Elm Creek's application for a permit be denied without further hearing, on the basis that it was not timely filed in accordance with the EAA's rules. In turn, Elm Creek filed a Motion for Summary Disposition seeking to affirm that its application was validly filed.

After considering the pleadings and argument presented, the Administrative Law Judge ("ALJ") recommends that the EAA's Board of Directors ("Board") grant the General Manager's motion, deny Elm Creek's motion, and summarily deny Elm Creek's application for permit.

II. MOTIONS AND STANDARD FOR SUMMARY DISPOSITION

On October 22, 2003, the General Manager ("GM") filed a motion asking the ALJ to issue an order recommending summary denial of Elm Creek's Declaration of Historical Use (Application No. BE000307) "because it was untimely filed in contravention of the Edwards Aquifer Act and the ... Authority's Rules."

In the Motion for Summary Disposition (and in subsequent pleadings related to the same issues), the GM stresses the position that timely filing of a proper declaration of use and application is an absolute requirement for the issuance of a permit under the Edwards Aquifer Authority Act ("the Act") and implementing rules. While the disputed filing by Elm Creek itself was clearly untimely, according to the GM, another earlier, putative filing by Elm Creek's predecessor (in March of 1994) failed to satisfy several other basic prerequisites for validity, in that it was filed with the wrong entity, in the wrong format, and without the required fee.

The GM notes that the EAA was unable to begin operations or to accept filings until after the filing deadline originally established by the Act—i.e., March 1, 1994—because of lawsuits challenging the Act. When the Texas Supreme Court ultimately issued a decision on June 28, 1996, declaring the Act constitutional on its face, the Court stated, in Barshop v. Medina County Underground Water District:

[The] March 1, 1994 deadline was intended to provide existing users six months to file their declarations of historical use. In accordance with legislative intent, we interpret the Act as requiring declarations of historical use to be filed six months after the Authority becomes effective.2

*2 Consistent with the Court's opinion, the EAA formally adopted rules requiring all declarations to be filed with the agency by December 30, 1996, in order to comply with the Act.
IN THE MATTER OF the Following Application for Initial..., 2004 WL 5454428...

The GM concludes that the EAA—as a political subdivision strictly bound by governing statutes—simply lacks the power to grant an application like Elm Creek’s, which failed to satisfy the filing deadline or other terms defined by the Act (as judicially interpreted) and by the implementing rules.

As to the 1994 filing by Elm Creek’s predecessor, the GM asserts that an applicant cannot satisfy its statutory obligation to file a proper declaration with the EAA by filing a non-conforming document with institutions that are “wholly separate and distinct” from the EAA. In this case, the predecessor filed its declaration with the Texas Natural Resource Conservation Commission (“TNRCC”)—since renamed the Texas Commission on Environmental Quality (“TCEQ”)—and with a Federal court. Such filings failed to provide timely notice of historical groundwater use to the EAA, contends the GM, any more than if an applicant had filed such documents with a next-door neighbor.

Moreover, urges the GM, giving effect to such filings (which are, as a practical matter, unavailable to the EAA in the normal course of events) would undermine the policy goals of the Act. The EAA’s ability to manage withdrawals from the aquifer and to achieve conservation depends upon a firm deadline for identifying all existing users and the volume of historical water use that must be encompassed within the regulatory system.

Material submitted with the GM’s motion (and with subsequent pleadings supplementing the motion) included the following:

1. A “Declaration of Historical Use of Water from Edwards Aquifer,” dated March 1, 1994, by H.O.K. Investment, Inc. (Applicant’s predecessor in title), along with correspondence indicating efforts to file the document with the TNRCC and with a Federal court;

2. An “Application for Initial Regular Permit and Declaration of Historical Use” filed with the EAA by Applicant on November 16, 1998.

3. Applicant’s responses to discovery requests by the GM in this proceeding;

4. A letter from a TCEQ open records coordinator indicating a lack of agency records relating to the H.O.K. Investment document of March 1, 1994 (noted in Item No. 1 above);

5. Affidavits of TCEQ personnel indicating a lack of agency records or policies relating to the declarations of historical groundwater use from the Edwards Aquifer.3

On October 30, 2003, the Applicant, too, filed a Motion for Summary Disposition, seeking a determination that its Application No. BEO0307 was “timely filed as a matter of law” and an order recommending that the Board grant that application, “subject only to the resolution of beneficial use and amount.”

The Applicant contended that the declaration of historic use filed by its predecessor in title on March 1, 1994, was in “substantial conformance” with the Act, as initially enacted in 1993, and with rules subsequently promulgated by the EAA. Because, as the Barshop Court held, the Act was effective from 1993 onward (except for its method of selecting Board members), the Applicant’s predecessor acted reasonably and in good faith when it sought to satisfy the Act’s original filing deadline of March 1, 1994, even though the EAA—the prescribed recipient of such filings—was not yet in operation at that time. In the absence of a functioning EAA, the Applicant concluded, its predecessor logically turned to the TNRCC, the state agency then holding general responsibility for regulating Texas water. According to the Applicant, the only relevant “enforceable regulations” in existence on the original filing date were those of agencies, like TNRCC; that had regulated the Edwards Aquifer under state constitutional provisions prior to the creation of the EAA. Since the Barshop decision confirmed, in Applicant’s view, the validity of such prior regulation up to the time that the EAA’s own rules formally took effect, the Applicant is entitled to rely on such prior law to support the effectiveness of its predecessor’s filing with TNRCC.

*3 The Applicant also noted that the Barshop Court found the statutory filing deadline of March 1, 1994, to be directory, not mandatory, and substituted a new deadline to comply with changed circumstances. In this context, the Applicant reasoned, its declaration and application filed in November of 1998 should be treated as a valid amendment to its predecessor’s 1994 declaration.
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In any case, asserted the Applicant, the EAA cannot bar a water-rights claim merely for failure to file it by a specific deadline. No explicit authorization to that effect is contained in the Act. Moreover, the Bar shop Court’s finding that the statutory deadline in this instance is merely directory precludes any implication that such a bar should apply.

Materials submitted with the Applicant’s motion (and with subsequent pleadings supplementing the motion) included those in Items Nos. 1 and 4 of the General Manager’s submissions, as noted above.

A SOAH ALJ may issue a proposal for decision without an evidentiary hearing “if the pleadings, affidavits, materials obtained by discovery, admissions, matters officially noticed, stipulations, or evidence of record shows there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law.” In keeping with standards for judicial summary judgment, all doubts about the existence of a genuine issue of material fact must be resolved against the movant, and all evidence favorable to the non-movant must be accepted as true.7

III. DISCUSSION

Elm Creek tends to blur together arguments about whether it must satisfy filing requirements prescribed by EAA rules with arguments about whether it actually did satisfy them. However, prior decisions by SOAH and the EAA’s Board unequivocally establish that an applicant must satisfy such requirements, while the uncontested facts and the applicable law in this particular case establish that Elm Creek did not do so.

In October of 2002, the Board adopted a SOAH Proposal for Decision (“PFD”) concluding that an application and declaration of historical use from Charles M. Brown must be denied for failure to comply with a mandatory rule provision, because it was filed one day after the deadline prescribed in the EAA’s rules (December 30, 1996). The Brown PFD noted that the current rule prescribing that deadline (§ 707.311) employs language with mandatory effect (as did the earlier version of the rule that was operative in 1996); specifically, the rule provides that an application “must have been filed with the Authority ... by December 30, 1996.” This use of the word “must,” along with a specific date, creates a clear, “bright-line” principle for assessing applications, thus precluding both the EAA and SOAH from acting contrary to such an express provision.8

*4 In a footnote, the Brown PFD also observed that the Texas Supreme Court’s opinion in Barshop likewise appeared to regard the Act’s provision for the filing of historical-use declarations to be mandatory, since the opinion characterized that provision as “requiring” such filings with the EAA within six months of the time that the EAA became operational. Thus, the PFD (and by extension the Board) interpreted Barshop as finding the Act’s original filing deadline of March 1, 1994, to be directory only to the extent that it ultimately proved to be inconsistent with the Legislature’s fundamental intent of giving the EAA a specific period of time to receive filings.9

The undersigned ALJ thus considers himself bound by existing authority to conclude that a filing in compliance with the EAA’s deadline rule is an absolute prerequisite to a valid application for a groundwater-use permit. The Board clearly has interpreted the rule as having mandatory effect. The express language of the rule certainly supports that interpretation—as indeed do the underlying statute and the Barshop decision, taken as a whole. In these circumstances, the EAA—and thus the ALJ—may not ignore a seemingly clear dictate of the agency’s own rules. To challenge the fundamental validity of the rule in question, the Applicant would have to bring suit in district court under TEX. WATER CODE § 36.251.

Elm Creek argues in the alternative, though, that it has substantially complied with the EAA’s filing requirements, through its predecessor’s filings with other entities in March of 1994. However, the ALJ concludes that Elm Creek’s position is unsupported, for reasons very similar to those establishing that the filing deadline in the EAA’s rules is mandatory. The rules, statute, and decisions governing the effectiveness of filings with the EAA obviously do not prescribe only the timing of such filings. They also prescribe the place and manner of such filings, in terms equally as mandatory as those for the applicable deadline. The presumed filings by Elm Creek’s predecessor clearly did not satisfy these other mandatory requirements and thus cannot validate Elm Creek’s own efforts to obtain a permit.10

In particular, § 1.16(b) of the Act not only states that a declaration of historical use “must” be filed by a specific deadline (which, of course, was later readjusted by the Barshop decision), it also provides that such an application “must” be made on a form prescribed by the Board and be accompanied by all application fees required by the Board. To implement these statutory provisions, both EAA’s original rules (adopted prior to EAA’s December 30, 1996, filing deadline) and its current
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rules (adopted, in pertinent part, on November 3, 2000) provide that an application for an initial regular permit “shall” or “must” be filed with the EAA itself (§ 701.19, original rules; §§ 711.98(a) and 707.302, current rules), be on a form prescribed by the EAA (§ 701.4, original rules; § 707.302, current rules), and be accompanied by the EAA-prescribed application fee (§§ 701.5 and 701.19, original rules; § 707.403, current rules). Obviously, and by Elm Creek's admission, none of the filings it relies upon satisfied these specific requirements.

*5 Although Elm Creek asserts that the TNRCC had some general authority to protect Texas groundwater in 1994, that agency certainly lacked the authority to quantify and regulate withdrawals of groundwater from the Edwards Aquifer. Nor does the record indicate that the Legislature has ever authorized TNRCC or any other agency to accept any sort of filings on behalf of the EAA. In purportedly relying upon TNRCC to compile or process such filings—or to transmit them to an as-yet non-existent EAA—Elm Creek or its predecessor apparently have expected a state agency to take responsibility exceeding its legislative mandate. This, of course, is not an expectation upon which a party can reasonably base a legal claim. As a practical matter, too, Elm Creek cannot seriously believe that submitting documents to an agency that has no authority for accepting them—and therefore no arrangements for systematically maintaining them—can serve any of the functions (whether public notice, monitoring, or administrative regulation) that were contemplated by the Legislature in imposing a filing requirement pertaining to a wholly separate agency.

Moreover, in seeking recognition that the filings at issue are in “substantial compliance” with the Act and implementing rules, Elm Creek invokes equitable relief, which (as the GM notes) is beyond the normal purview of either SOAH or EAA (doubly so in a summary-disposition proceeding, where determinations must be made “as a matter of law”).

IV. CONCLUSION

For reasons discussed above, the ALJ finds that the GM's Motion for Summary Disposition should be granted and Elm Creek's application denied as a matter of law. Elm Creek's competing Motion for Summary Disposition should also be denied. The EAA's rules establish mandatory requisites for a permit application, including a firm deadline for filing. Elm Creek clearly failed to satisfy a number of these basis requisites, including the filing deadline, either through documents submitted by itself or by a predecessor in interest. The Board and the ALJ must assume that the rules are valid and apply them as presently interpreted by the Board, which mandates the denial of application in question. The ALJ accordingly recommends that the Board adopt the Findings of Fact and Conclusions of Law presented below.

V. FINDINGS OF FACT

1. On November 16, 1998, Elm Creek Owners Association (“Applicant”) filed a sworn Application for Initial Regular Permit and Declaration of Historical Use (“application”) with the Edwards Aquifer Authority (“EAA”).

2. The application was designated BE00307 by the EAA.

3. The application pertains to a well used for landscaping and grounds maintenance in Bexar County, Texas.

4. After completing a review of the application, the EAA’s General Manager (“GM”) recommended that the application be denied because it was filed after the deadline of December 30, 1996, prescribed in the EAA’s rules

*6 5. The Applicant protested the GM’s recommendation and sought a contested case hearing on the proposed denial.

6. On March 11, 2003, the EAA’s Board of Directors (“Board”) issued an Interim Order that:
   a. Found Applicant entitled to a hearing;
   b. Found the issues raised to include whether the Applicant had filed a timely application and declaration of historical use;
   c. Admitted Applicant, the GM, Living Waters Artesian Springs, Ltd., and the San Antonio Water System (“SAWS”) as parties; and
   d. Ordered the Authority’s Docket Clerk to refer this case to the State Office of Administrative Hearings (“SOAH”) for hearing.
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7. On May 12, 2003, the Authority’s Docket Clerk referred this dispute to SOAH for a contested case hearing.

8. On July 17, 2003, a properly noticed preliminary hearing was held at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The Applicant, GM, and SAWS appeared, confirming their party status; however, SAWS then withdrew as a party during the preliminary hearing.

9. By Order No. 2, issued August 20, 2003, then-presiding Administrative Law Judge (“ALJ”) Tom Walston bifurcated the proceedings to allow the parties to address first the issue of whether Applicant had filed a timely application and declaration of historical use.

10. On October 22, 2003, the GM filed a motion for summary disposition, in compliance with SOAH Rule 1 TEX. ADMIN. CODE (“TAC”) § 155.57(a)(1), asking the ALJ to issue a proposal for decision recommending that the Board deny Applicant’s application “because it was untimely filed in contravention of the Edwards Aquifer Act and the ... Authority’s Rules.”

11. On October 30, 2003, the Applicant filed a motion for summary disposition, seeking a determination that its application was “timely filed as a matter of law” and an order recommending that the Board grant that application, “subject only to the resolution of beneficial use and amount.”

12. The Applicant and GM each filed a response to the other’s Motion for Summary Disposition.

13. A pre-hearing conference was convened by the undersigned ALJ on December 9, 2003, to allow the parties to present oral argument on their respective motions for summary disposition.

14. The record pertaining to the motions for summary disposition closed on December 17, 2003.

15. On March 1, 1994, H.O.K. Investment, Inc.—Applicant’s predecessor in title with respect to the well at issue in this proceeding—submitted a “Declaration of Historical Use of Water from Edwards Aquifer,” pertaining to that well, to the Texas Natural Resource Conservation Commission (“TNRCC”) and a Federal court.

16. The submission noted in Finding of Fact No. 15 was not made with the EAA (or with any related or predecessor entity), was not accompanied by any fee, and was not in a form prescribed by the EAA.

IV. CONCLUSIONS OF LAW


2. SOAH had the authority to conduct a contested case hearing on behalf of the EAA, pursuant to EAA Rule § 707.608(a).

3. If the board refers a contested case to SOAH for hearing, then SOAH’s rules of procedure, as supplemented by the Authority’s rules, govern the hearing. EAA Rule § 707.608(b).

4. At the time the Applicant filed its application, § 701.19 of the EAA’s rules required applications for initial regular permits to be filed by December 30, 1996 (almost two years prior to Applicant’s filing). The former § 701.19 has been replaced by current § 703.311, which retains the same filing deadline.

5. In EAA’s rules, as initially adopted, an application and declaration of historical use was required to be filed with the EAA itself (§ 701.19), to be on a form prescribed by the EAA (§ 701.4), and to be accompanied by the EAA-prescribed application fee (§§ 701.5). The EAA’s current rules retain these same requirements (in §§ 711.98(a), 707.302, and 707.403, respectively).

6. The Applicant did not file its application, as noted in Finding of Fact No. 1, by the deadline of December 30, 1996, as
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required by EAA's rules.

7. The submission noted in Findings of Fact Nos. 15 and 16 did not satisfy any of the filing requirements noted in Conclusion of Law No. 5.

8. The filing requirements noted in Conclusions of Law Nos. 4 and 5 are mandatory.


10. Summary disposition is appropriate in this case because, as a matter of law, the Applicant cannot show that it is entitled to an initial regular permit to withdraw groundwater. 1 TAC § 155.57(a).

11. A SOAH ALJ may issue a proposal for decision without an evidentiary hearing if the pleadings, affidavits, materials obtained by discovery, admissions, matters officially noticed, stipulations, or evidence of record shows there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law. 1 TAC § 155.57(a).

12. Based on the above Findings of Fact and Conclusions of Law, no genuine issues of material fact remain in controversy. As a matter of law, the GM's motion for summary disposition should be granted and the Applicant's motion for summary disposition should be denied.

13. Elm Creek Owners Association's Application for an Initial Regular Permit and Declaration of Historical Use should be denied.

Mike Rogan
Administrative Law Judge

Footnotes


2 923 S.W. 2d 618 (Tex. 1996), at 630.

3 For the purpose of ruling on the motions for summary disposition, the admission into evidence of all the exhibits appended to the parties' motions is hereby confirmed, to the extent that such exhibits were not individually addressed during the December 9, 2003, hearing upon the motions. In Order No. 7 in this action, issued December 10, 2003, the summary disposition evidence was categorized, designated as Exhibits S-1 through S-7, and formally confirmed as part of the evidentiary record.

4 1 TEX. ADMIN. CODE (TAC) § 155.57(a) (2003).


7 The PFD cites Southern Clay Products, Inc., v. Bullock, 753 S.W. 2d 781 (Tex. App. - Austin 1988, no writ) for the principle that a state agency is bound to follow its own rules and notes that SOAH, too, with its jurisdiction derived from referring agencies, is likewise bound.

8 Id., p. 5, note 10.
For purposes of considering the GM's Motion for Summary Disposition, the ALJ assumes that Elm Creek's predecessor did file a relevant declaration with the TNRCC in 1994, resolving any doubts about the establishment of this fact in favor of non-movant Elm Creek. However, in considering Elm Creek's own Motion for Summary Disposition, such an assumption is inappropriate, particularly since, in the ALJ's view, the record evidence on this point shows only that the predecessor's agent attempted to make the filing with TNRCC, not that it actually effected such a filing.


Texas Department of Insurance, Petitioner v. Reginald J...., 2004 WL 4171864...


State of Texas
Office of Administrative Hearings
Texas Department of Insurance, Petitioner
v.
Reginald J. Caillouet, Jr., Respondent

Docket No. 454-03-3452.C
June 14, 2004

PROPOSAL FOR DECISION

*1 Staff of the Texas Department of Insurance (Staff, TDI), represented by Chad V. Seely, Staff Attorney, brought this action against Reginald J. Caillouet, Jr. (Respondent) to revoke his nonresident General Life, Accident, Health, and HMO License. Finding no genuine issue of material fact to resolve in this matter, the Administrative Law Judge (ALJ) has determined Staff is entitled to summary disposition as a matter of law. Accordingly, this proposal for decision recommends that the Commissioner of Insurance issue an order revoking Respondent's license, requiring him to pay restitution for unpaid claims resulting from his sale of unauthorized insurance, and assessing an administrative penalty in the amount of $100,000, which would represent an amount in excess of Respondent's $64,964.76 in income from the sale of unauthorized insurance.

I. PROCEDURAL HISTORY

The Notice of Hearing in this matter was issued June 11, 2003. Respondent timely filed an answer with Staff on June 30, 2003. The original hearing on the merits was continued on August 28, 2003, to allow both parties additional time to conduct discovery and to allow Respondent time to retain counsel because his attorney had withdrawn. Staff served a request for admissions on Respondent on November 14, 2003, at which time Respondent was still pro se. Respondent failed to answer the Request for Admissions by the December 5, 2003 deadline. A telephone pre-hearing conference was held December 9, 2003, to discuss available dates for the hearing on the merits, deadlines for finishing discovery, and a deadline for Respondent to obtain counsel. The pre-hearing conference was attended by Staff, but Respondent failed to appear. On December 9, 2003, the ALJ issued an order setting the discovery deadline as February 9, 2004, and the date for the hearing on the merits as March 2, 2004.

On January 29, 2004, Staff filed a Motion for Summary Disposition on the basis that Respondent had failed to timely answer the Request for Admissions served on him on November 14, 2003, the admissions were deemed admitted, and the deemed admissions supported summary disposition for TDI. Staff’s Motion for Summary Disposition was taken up at a February 23, 2004 pre-hearing conference, at which both Staff, and Respondent’s newly-hired counsel, appeared. Respondent was given additional time to respond to the Motion for Summary Disposition, which he did on March 11, 2004, by filing a Motion to Strike Deemed Admissions and Response to TDI’s Motion for Summary Disposition. On March 18, 2004, Staff filed a Reply to Respondent’s Motion to Strike Deemed Admissions and Response to TDI’s Motion for Summary Disposition.

In the February 23, 2004 pre-hearing conference, the parties agreed that the Motion for Summary Disposition and any reply would be considered at a March 23, 2004 pre-hearing conference, at which Staff appeared, but neither Respondent nor his attorney appeared.

*2 Respondent’s Motion to Strike Deemed Admissions was granted on April 13, 2004. However, the ALJ has determined that Staff’s Motion for Summary Disposition should nonetheless be granted because responses filed with Respondent’s Motion to Strike Deemed Admissions, and evidence attached to Staff’s Motion for Summary Disposition.

II. APPLICABLE LAW
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A. Standard for Summary Disposition

Pursuant to TEX. ADMIN. CODE (TAC) § 155.57(b)(1), “[a] party may move with or without supporting affidavits for summary disposition upon all or any part of a contested case.” The rule requires a motion for summary disposition to include “a separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence.” 1 TAC § 155.57(b)(2).

Under 1 TAC § 157.57(a), in response to a party’s motion for summary disposition and subsequent responses, ... the judge may issue a proposal for decision, or where authorized by law a final order, resolving a contested case without evidentiary hearing if the pleadings, affidavits, materials obtained by discovery, admissions, matters officially noticed, stipulations, or evidence of record shows there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law.


B. Unauthorized Insurance

Unauthorized insurance is prohibited by law. “A person, including an insurer, may not directly or indirectly do an act that constitutes the business of insurance under this chapter except as authorized by statute.” TEX. INS. CODE ANN. § 101.102.

Chapter 101 of the Texas Insurance Code, entitled “Unauthorized Insurance,” also defines the conduct that constitutes the business of insurance. TEX. INS. CODE ANN. § 101.051 (including e.g. “taking or receiving an insurance application,” “receiving or collecting any consideration for insurance,” “issuing or delivering an insurance contract.”)

C. Insurance Agent

1. Defined

An insurance agent is defined in TEX. INS. CODE ANN. § 21.02(a) as “Any person who solicits insurance on behalf of an insurance company,” and includes a person who takes or transmits other than for himself any application for insurance or any policy of insurance to or from such company, or who advertises or otherwise gives notice that he will receive or deliver a policy of insurance of any such company ... or receive, or collect, or transmit any premium of insurance, ... or do or perform any other act or thing in the making or consummating of any contract of insurance for or with any such insurance company other than himself. ...

2. May not accept consideration from unauthorized insurers

*3 According to the section entitled “Prohibited Activities,” a licensed agent may not accept commissions or other consideration from entities or individuals who are not licensed. TEX. INS. CODE ANN. art. 21.01-2 § 2A(d)(2) and 21.07 § 1(a).

3. Liability to Insureds

Further, persons who perform acts of an agent on behalf of unauthorized entities and individuals are held liable to the insured:
The person who shall do any of the acts mentioned in this article for or on behalf of any insurance company without such company having first complied with the laws of this State, shall be personally liable to the holder of any policy of insurance in respect of which such act was done for any loss covered by the same. TEX. INS. CODE ANN. art. 21.02(a);
A person who in any manner assisted directly or indirectly in the procurement of the contract is liable to the insured for the full amount of a claim or loss under the terms of the contract if the unauthorized insurer fails to pay the claim or loss. TEX. INS. CODE ANN. § 101.201.

4. Sale of unauthorized insurance is strict liability offense

Neither TEX. INS. CODE ANN. ch. 101, nor TEX. INS. CODE ANN. art. 21.02, contains a knowledge requirement. The sale of unauthorized insurance is essentially a strict liability offense. It is the responsibility of the agent who sells the insurance and/or accepts the commission or consideration to perform due diligence and ascertain that the entity or product is what it purports to be and covers what it purports to cover.

III. STAFF’S ALLEGATIONS AGAINST RESPONDENT

The Notice of Public Hearing contains the following allegations against Respondent:

Unauthorized Insurance: Employers Mutual

1. On October 4, 2001, the Commissioner of Insurance entered Order No. 01-0960 against Employers Mutual, L.L.C. (EM), American Benefit Society (ABS), Sierra Administration, Inc. (Sierra), 16 purported trade or occupational associations (the Associations), William R. Kokott (Kokott), and Nicholas E. Angelos (Angelos). The Commissioner concluded that these entities and individuals did not hold certificates of authority or licenses in Texas, and therefore were unauthorized insurers. Further, the Commissioner ordered the entities and individuals to cease and desist from, among other things, engaging in the business of insurance in the State of Texas.

2. Since January 2001, EM, ABS, Sierra, the Associations, Kokott and Angelos conducted or engaged in the unauthorized business of insurance in Texas.

3. Since at least January 2001, Reginald J. Caillouet, Jr., (Respondent) marketed, sold and accepted commissions from the sale of EM’s health care plans.

4. Since at least January 2001, Respondent was the regional manager, director, supervisor and/or agent who provided instruction to several subagents regarding the marketing and sales of EM plans or products.

5. Respondent received overrides, commissions, “consultant fees” or compensation from the subagents under his direction who sold EM plans or products.

6. Respondent performed the acts of an agent, as defined in TEX. INS. CODE ANN. art. 21.02(a) and TEX. INS. CODE ANN. § 101.051, on behalf of the following unlicensed entities and individuals in the State of Texas:

   the 16 Associations

   ABS
   Sierra
   Kokott
   Angelos

7. Respondent disseminated, circulated and placed before the public false, deceptive and misleading solicitation materials, applications, and plan description summaries regarding EM’s healthcare plans.
Failure to Respond to TDI Inquiries

8. On February 21, 2002, TDI sent Respondent a letter by certified mail, return receipt requested, regarding the health plans he sold for EM. Pursuant to TEX. INS. CODE ANN. § 38.001, Respondent was required to respond no later than 10 days after receipt of the February 21, 2002 letter.

9. Respondent received the February 21, 2002 letter on February 28, 2002. However, Respondent failed to respond to TDI's letter within 10 days after receipt.

IV. STAFF'S CASE

A. Staff's Evidence

The following exhibits attached to Staff’s Motion for Summary Disposition are admitted into evidence:

Official Order No. 01-0960 of the Commissioner of Insurance of the State of Texas, dated October 4, 2001. (Exh. A)


Official Order No. 03-0224 of the Commissioner dated April 1, 2003: Consent Order and disciplinary action related to Jose Feliciano, Jr. (Exh. C)

Official Order No. 03-0284 of the Commissioner dated April 18, 2003: Consent order and disciplinary action related to John Feliciano. (Exh. D)

Request for Admissions served on Respondent on November 14, 2003. (Exh. E).*[FN1]**FN


Producer agreements between American Coalition of Consumers and Texas agents. (Exh. I).

Notarized Declaration Regarding Production of Business Records to TDI. (Exh. J).

Form 1099s for Respondent, Hector Elizondo, Jr., and Jose Feliciano. Jr. (Exh. K).

E-mail from Respondent regarding media release. (Exh. L).

B. Staff's Arguments

In its Motion for Summary Disposition, and its Reply to Respondent's Motion to Strike Deemed Admissions, Staff asserted that the following allegations are supported by Respondent's responses contained in his Motion to Strike Deemed Admissions, and by documents attached to its Motion for Summary Disposition, which the ALJ has since admitted into evidence.

1. EM was not an authorized insurer
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On October 4, 2001, TDI issued an Emergency Cease and Desist Order (Official Order 01-0960) finding that EM, among others, did not hold a certificate of authority or a license to engage in the business of insurance in Texas, and therefore was an unauthorized insurer, and ordered EM, its agents, employees and other representatives to immediately cease and desist from engaging in the business of insurance in Texas. (Exhibits A-D).

*5 The Texas Insurance Code gives the Commissioner of Insurance regulatory authority over individuals, corporations, associations, etc. that engage in the business of insurance. TEX. INS. CODE ANN. §§ 82.002 and 83.002; see also TEX. INS. CODE ANN. § 82.003 (stating that the Commissioner has the authority under TEX. INS. CODE ANN. ch. 82 “to enforce a sanction, penalty, fine, forfeiture, denial, suspension, or revocation otherwise authorized by law.”) Pursuant to TEX. INS. CODE ANN. § 83.051, the Commissioner has the authority to issue a cease and desist order for unauthorized insurance conduct. See also TEX. INS. CODE ANN. § 83.101 (giving the Commissioner enforcement authority concerning the order). The Commissioner has determined that EM and ABS are unauthorized insurers.

2. Respondent engaged in the unauthorized business of insurance in Texas

Staff argues that Respondent has engaged in the unauthorized business of insurance in Texas by recruiting Texas agents to sell an unauthorized insurance plan and by accepting consideration for the sale of these unauthorized insurance plans, and supports its argument with the following evidence:

a. Respondent entered into a written or oral contract with Associated Agents of America (AAA) to be a wholesaler of EM health care plans. [*FN2][FN2] (Exh. G).

b. Since at least February 2001, Respondent was the regional manager, director, supervisor and/or agent who provided instruction and/or advice to several Texas agents regarding the marketing and sale of EM health care plans or products in Texas. (Exh. B, Finding of Fact No. 4; Exh. C, Findings of Fact Nos. 4 and 7; Exh. D, Findings of Fact Nos. 4 and 7; Exh. F, page 1, paragraph 2; Exh. G, page 2, No. 5; Exh. I, and Exh. J).

c. Since at least February 2001, Respondent received and/or accepted commissions, overrides, “consultant fees” or compensation from Texas agents who sold the EM health care plans in Texas. (Exh. F, page 2, paragraph 4).

d. Since at least February 2001, Respondent received and/or accepted commissions, overrides, “consultant fees,” or compensation from agents outside Texas who sold the EM health care plans in their respective states. (Exh. F, page 2, paragraph 4).

e. Respondent had a commission sharing arrangement with AAA in which he would receive overrides or compensation from EM health care plans sold by Texas agents John Feliciano, Myrna Grigsby, Edward Sealy, Jimmy Toubin, and Hector Elizondo, Jr. (Exh. G, Nos. 12-22).


g. According to Respondent’s Form 1099-MISC from AAA, Respondent made at least $64,964.76 in compensation from AAA in 2001. (Exh. K).

h. Persons enrolled in EM by Respondent have unpaid claims or losses in the United States. (Exh. J).

*6 i. Persons enrolled in EM by non-Texas agents from whom Respondent earned compensation from AAA for their enrollment in the EM health care plans have unpaid claims or losses in the United States. (Exh. J).

j. Persons enrolled in EM by Texas agents from whom Respondent earned compensation from AAA for their enrollment in the EM health care plans have unpaid claims or losses in Texas. (Exh. J).

k. Respondent has not paid the claims or losses of any person he enrolled in the EM health care plans in the United States. (Exh. J).
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1. Respondent has not paid the claims or losses of any person enrolled in EM by non-Texas agents from whom Respondent earned compensation from AAA for their enrollment in the EM health care plans in the United States. (Exh. J).

m. Respondent has not paid the claims or losses of any person enrolled in EM by Texas agents from whom Respondent earned compensation from AAA for their enrollment in the EM health care plans in Texas. (Exh. J).

n. Respondent, or others acting on his behalf, has conducted or engaged in the unauthorized business of insurance in Texas. (See Exh. B, Conclusions of Law Nos. 4-6; Exh. C, Conclusions of Law Nos. 4-6; Exh. D, Conclusions of Law Nos. 4-6).

O. Respondent became aware of the Florida Department of Insurance’s immediate Final Order in the matter of EM, Case No. 42659-01-CO, on August 14, 2001, by an e-mail communication from John K. Arnold. (Exh. F, page 1, paragraph 2; Exh. G, No. 26; Exh. H, No. 16; Exh. L).

3. Staff’s recommendation

Staff seeks revocation of Respondent’s nonresident General Life, Accident, Health and HMO License. Because Respondent admitted that persons from whom he earned compensation from AAA have unpaid claims or losses and he has not yet paid those claims or losses, Staff requests that Respondent be ordered to pay restitution, as set out in TEX. INS. CODE ANN. art. 21.02(a) and TEX. INS. CODE ANN. § 101.201. Finally, while Staff considers restitution to be the most important part of this action, Staff seeks full disgorgement of Respondent’s profits from the sale of unauthorized insurance through the assessment of a $100,000 administrative penalty.\[FN3\]FN3

V. RESPONDENT’S CASE

A. Respondent’s March 11, 2004 Affidavit

Respondent’s March 11, 2004 affidavit\[FN4\]FN4 states in relevant part: “I did advise agents in Texas of the availability of Employers Mutual plans, however, I never directly sold any such plan in Texas. Before advising agents in Texas of the Employers Mutual plans, I performed due diligence with the Texas Department of Insurance to determine if there were any complaints or problems (administrative or otherwise) with Employers Mutual, their reinsurance carrier (United Wisconsin), their TPA (Sierra Administrators), etc. I was informed by the Texas Department of Insurance that Employers Mutual plans were ERISA plans and therefore outside the jurisdiction of the state. Further, the Texas Department of Insurance had no record of any filed complaints with Employer[s] Mutual. I made all other inquiries possible to determine if Employers Mutual was legitimate in Texas.”

*7 “I learned in August 2004\[FN5\]FN5 that Florida issued a cease and desist order in that state regarding Employers Mutual, and I immediately contacted all agents with whom I had discussed Employers Mutual plans, and told the agents to immediately stop marketing such plans.”

B. Respondent’s Admissions Contained in March 11, 2004 Motion to Strike Deemed Admissions

Respondent admits that as of October 4, 2001, EM constituted unauthorized insurance in Texas. Respondent admits that he received compensation or overrides from EM healthcare plans sold in Texas. Respondent admits that he had a commission-sharing arrangement with AAA to receive compensation or overrides from EM healthcare plans sold by agents in 19 states other than Texas. Respondent admits he received overrides or compensation from EM healthcare plans sold by agents in 19 states other than Texas. Respondent admits he has not paid the claims or losses of any person enrolled in EM by non-Texas or Texas agents from whom Respondent earned compensation from AAA for their enrollment in EM healthcare plans in Texas. Respondent admits he became aware of the Florida Department of Insurance’s immediate final order in the matter of EM on August 14, 2001.

C. Respondent’s June 27, 2003 Response to Notice of Public Hearing

In his June 27, 2003 written response to the Notice of Public Hearing (Exh. C), Respondent stated he did not personally sell any EM plans in Texas. He said that as soon as he found out about the August 2001 Florida order, he advised Texas agents to
stop selling the plans, stop advising other agents to sell the plans, and to replace the plans. He said he had an EM agent’s contract which had to be held by any agent who sold an EM plan, and was never a regional sales manager, director, or supervisor. He said he never provided instructions to any agents as to how to market or sell EM plans or products, except to provide them with forms and applications received from EM, and tell them where to submit the applications. He said he received two-to-five percent of the total payable commission on some of the EM plans. He said he sold two EM plans in Louisiana, and none in Texas or a Texas person or entity. He said that before he made any agents aware of EM plans, he submitted the EM sales material to TDI, asking if there was any reason why the plans could not be sold in Texas, and if TDI had any information about any problems with EM plans. He said TDI advised him there was no reason why the plans could not be offered in Texas. He said he suggested to Texas agents was for them to confer with TDI regarding EM plans. He said he was advised by EM that the plans were insured by A. M. Best’s A-rated companies, and that the applications EM provided were printed with the logos of the A-rated companies United Wisconsin and American Medical Society, among others. He said he never disseminated any information regarding EM plans that he knew to be false, misleading, or deceptive. Respondent averes that he exercised proper due diligence in advising Texas agents of the EM plans.

D. Respondent’s May 6, 2003 Affidavit

*8 In his May 6, 2003 affidavit, Respondent states he never sold an EM plan to any group in Texas, but that in November 2000, he began marketing the EM plans to general agents and agents for groups. He said he has no idea of the number of cases sold by general agents or agents in Texas and to his understanding, this information is entirely in the possession of EM, associated agents of America, and/or the Nevada Federal Court appointed fiduciary. He said he never enrolled any persons, groups, or employers in any EM plans in Texas, and that Claims information was never in his possession or control. He said his compensation overrides never indicated the locale of any groups, and he has not received a copy of any contract. He said he was contracted for a 10 percent commission [for the sale of EM plans] directly under Michael DeBello in Pennsylvania. He said his marketing instructions were received from Mr. DeBello and Jim Graf of EM. He said nobody received overrides, commissions, consultant fees or compensation as a result of his sales of EM plans in Texas, because he made no such sales.

He goes on to state that the general agents or agents with whom he communicated about EM plans in Texas, none of whom were under his direction and control, were as follows: Mike Dwyer, Wayne Morris, Tommy Toubin, and Harry Wilk were assigned to him as general agents at seven percent; Marc Pieroni as a general agent at six percent; and Hector Elizonado, John Feliciana, Myrna Grigsby, Edward Sealy, and Fred Shealy as agents at five percent. He said he has no records of any business they produced in Texas, or any agents they contracted in Texas.

He said he first learned there was a problem with EM plans in August 2001, when a Florida agent sent him a copy of an order of the Florida Commissioner of Insurance directing agents to cease and desist selling EM plans; that immediately upon receiving this information, he stopped marketing these plans, attempted to replace any plans he had sold with other coverage, and advised every agent with whom he had communicated about these plans in any state to do the same.

He said that before he made any Texas agents aware of the plan, he contacted TDI and was informed that there were no complaints filed for EM, and no problem with the plans; that he advised each general agent and agent with whom he communicated in any state, including Texas, to perform his own due diligence before presenting the EM plans; and that no Texas general agent or agent ever received or announced any negative reporting from TDI until long after all marketing, sales, presentations, etc. had ceased, as a result of him becoming aware of a cease and desist order from the Florida Insurance Commission issued in August 2001.

VI. ANALYSIS AND CONCLUSION

A. Analysis

Texas law imposes a strict burden of proof on a motion for summary disposition because granting the motion denies the non-moving party a hearing on the merits. Before an ALJ can grant a motion for summary disposition, the motion and supporting evidence must show there is no genuine issue as to a material fact and that the movant is entitled to a judgment as a matter of law. Lear Siegler, Inc. v. Perez, 819 S.W.2d 470, 471 (Tex. 1991). In deciding the motion, the ALJ must accept as true all evidence favoring the non-movant, and must indulge every reasonable inference and resolve all doubts in the non-movant’s favor. Park Place Hosp. v. Estate of Milo, 909 S.W.2d 508, 510 (Tex. 1995). Applying these standards, as well
as the fact that Staff’s Motion for Summary Disposition meets the requirements of 1 TAC § 155.57 and is supported by the admitted exhibits and Respondent’s admissions and affidavits, the ALJ concludes that Staff has established its position as a matter of law. Staff’s motion should be granted because no material fact issues remain that must be resolved through an evidentiary hearing on the merits.

Specifically, Respondent admits in Fact Statement Nos. 2 and 14 attached to his Motion to Strike Deemed Admissions filed March 11, 2004, that he received compensation and commissions from the sale of EM plans in Texas, which supports the legal fact and conclusion that he conducted the business of insurance in Texas pursuant to TEX. INS. CODE ANN. § 101.051(b)(4)(A-E).

Additionally, Respondent admitted that EM constituted unauthorized insurance in Texas. Since Respondent has admitted that he received compensation and commissions from the sale of EM plans in Texas and admitted that EM was unauthorized, then it is a legal fact and conclusion that he has conducted or engaged in the unauthorized business of insurance in Texas pursuant to TEX. INS. CODE ANN. § 101.102(a).

Further, the legal conclusion that Respondent engaged in the unauthorized business of insurance in Texas holds him liable under TEX. INS. CODE ANN. § 101.201 “to the insureds for the full amount of a claim or loss under the terms of the contract if the unauthorized insurer fails to pay the claim or loss.” Exhibit J, filed with Staff’s Motion for Summary Disposition, is a notarized declaration of unpaid claims from the Independent Fiduciary of EM plans. This document shows the liability that is attributable to Respondent, either directly by his own sales or indirectly from sub-agents across the United States, including Texas agents. Respondent admits in Fact Statements Nos. 21, 22, and 23 in his Motion to Strike Deemed Admissions that he has not paid the claims or losses of any person enrolled in EM, by him or his sub-agents, in the United States. As such, Respondent is liable for those unpaid claims according to the Texas Insurance Code.

Although Respondent did not sell any EM plans in Texas, and instructed Texas agents to stop selling the plans once he learned of the August 2001 Florida Department of Insurance Cease and Desist Order against EM, he is strictly liable under the Texas Insurance Code for the resulting harm to Texas insureds.

B. Conclusion

For the reasons set forth above, the ALJ has determined that Staff is entitled to summary disposition as a matter of law. Accordingly, the ALJ recommends that the Commissioner find summary disposition should be granted.

VII. FINDINGS OF FACT

1. Reginald Joseph Caillouet, Jr. (Respondent) holds a non-resident General Life, Accident, Health, and HMO License issued by the Texas Department of Insurance (TDI, Staff).

2. On October 4, 2001, the Commissioner of Insurance entered Order No. 01-0960 against Employers Mutual, L.L.C. (EM), American Benefit Society (ABS), Sierra Administration, Inc. (Sierra), 16 purported trade or occupational associations (the Associations), William R. Kokott, and Nicholas E. Angelos. The Commissioner concluded that these entities and individuals did not hold certificates of authority or licenses in Texas, and therefore were unauthorized insurers. Further, the Commissioner ordered the entities and individuals to cease and desist from, among other things, engaging in the business of insurance in the State of Texas.

3. Since January 2001, EM, ABS, Sierra, the Associations, Mr. Kokott and Mr. Angelos conducted or engaged in the unauthorized business of insurance in Texas.

4. Since at least January 2001, Respondent marketed, sold and accepted commissions from the sale of EM’s health care plans in Texas.

5. Since at least January 2001, Respondent was the regional manager, director, supervisor and/or agent who provided instruction to several subagents regarding the marketing and sales of EM plans or products in Texas.

6. Respondent received overrides, commissions, “consultant fees” or compensation from the subagents under his direction
Texas Department of Insurance, Petitioner v. Reginald J., 2004 WL 4171864...

who sold EM plans or products.

7. Respondent performed the acts of an agent on behalf of EM, an unauthorized insurer, in the State of Texas.

8. Respondent disseminated, circulated and placed before the public false, deceptive and misleading solicitation materials, applications, and plan description summaries regarding EM's healthcare plans.

9. On February 21, 2002, TDI sent Respondent a letter by certified mail, return receipt requested regarding the health plans he sold for EM.

10. Although Respondent received the February 21, 2002 letter on February 28, 2002, he failed to respond to TDI within 10 days of receipt.


12. The Notice of Public Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved, and a short, plain statement of the matters asserted.

13. On June 27, 2003, Respondent timely filed a written response to the allegations contained in the Notice of Hearing with TDI, within 20 days of the date the notice was received.


15. A pre-hearing on Staff's Motion for Summary Disposition was held March 23, 2004, as agreed upon by the parties. Staff appeared, but neither Respondent nor his attorney appeared or ever submitted any reason for their failure to appear prior to or subsequent to the pre-hearing.


VIII. CONCLUSIONS OF LAW

1. The Commissioner of the Texas Department of Insurance (Commissioner, TDI) has authority and jurisdiction over this matter pursuant to TEX. INS. CODE ANN. arts. 21.01 § 3, 21.01-2 § 3A, and 21.07-1 § 2; TEX. INS. CODE ANN. §§ 83.101-83.104, and 101.102(a); and TEX. GOV'T CODE ANN. §§ 2001.051-2001.178.

2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter, to summarily dispose of the matter without an evidentiary hearing, and to issue a Proposal for Decision containing findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 and 1 TEX. ADMIN. CODE § 155.57.

*11 3. Reginald Joseph Caillouet, Jr. (Respondent) holds a non-resident General Life, Accident, Health, and HMO License issued by TDI pursuant to TEX. INS. CODE ANN. art. 21.07-1 § 2.

4. Respondent performed the acts of an agent, as defined in TEX. INS. CODE ANN. art 21.02(a) and TEX. INS. CODE ANN. § 101.051, on behalf of unauthorized entities and individuals in the State of Texas.

5. Respondent violated TEX. INS. CODE § 101.102 by acting as an agent on behalf of entities and individuals who do not hold an insurance license or other authorization issued by TDI to directly and/or indirectly do acts which constitute the business of insurance.

6. Respondent paid to, directly or indirectly, and/or accepted commissions from unauthorized entities and individuals, for services as an insurance agent in violation of TEX. INS. CODE ANN. art. 21.01-2 § 2A(b).

7. Respondent solicited a contract of insurance or acted as an agent without having been appointed by an authorized insurance company, as contemplated by TEX. INS. CODE ANN. arts. 21.01-2 § 2A(d)(2) and 21.07 § 1(a).
8. Respondent assisted entities and individuals who do not hold an insurance license or other authorization issued by TDI to directly and/or indirectly do acts which constitute the business of insurance as the term is defined in TEX. INS. CODE ANN. § 101.051.

9. Respondent violated a provision of the insurance laws of this State, as contemplated in TEX. INS. CODE ANN. art. 21.01-2 § 3A(c)(1), by violating TEX. INS. CODE ANN. art. 21.21 §§ 1, 3, and 4, § 101.102, and 28 TEX. ADMIN. CODE §§ 19.902, 19.906, and 21.3 and 21.112.

10. Respondent engaged in a trade practice defined as unfair method of competition or an unfair or deceptive act or practice in the business of insurance, as contemplated by TEX. INS. CODE ANN. art. 21.21 § 3 and 28 TEX. ADMIN. CODE §§ 21.3 and 21.112 by engaging in those activities specified in TEX. INS. CODE ANN. art. 21.21 § 4(1), (2) and (11).

11. Respondent failed to respond to a TDI inquiry not later than 10 days after receiving said inquiry, in violation of TEX. INS. CODE ANN. § 38.001.

12. The Commissioner of Insurance is authorized to revoke Respondent’s non-resident General Life, Accident, Health and HMO License pursuant to TEX. INS. CODE ANN. arts. 21.01-2 § 3A(a) and (c) and 21.07-1 § 2.

13. The Commissioner is authorized under TEX. INS. CODE ANN. § 82.051 to impose sanctions provided by law pursuant to TEX. INS. CODE ANN. Chapters 82, 101, and/or TEX. INS. CODE ANN. art. 21-01-2 § 3A(a).

14. Based on the pleadings, affidavits, stipulations, and other evidence supporting Staff’s Motion For Summary Disposition, there is no genuine issue of material fact as to the allegations contained in the June 11, 2003 Notice of Public Hearing, and Staff is entitled to a summary decision in its favor as a matter of law, pursuant to 1 TAC § 153.57(a)-(d).

*12 15. Respondent should pay any unpaid EM claim or loss in accordance with the terms of the EM contract to any EM insured who held a policy under which Respondent accepted a commission and/or other valuable consideration.

16. Respondent should pay an administrative penalty of $100,000. He shall receive a dollar-for-dollar reduction in said administrative penalty, not to exceed $75,000, for any restitution paid to an EM insured on or before 180 days from the date of the Commissioner’s order, provided that Respondent furnishes the Department with a copy of a canceled check, money order or cashier’s check evidencing proof of restitution payment on or before 180 days from the date of the Commissioner’s order.

Sharon Cloninger
Administrative Law Judge

Footnotes

[FN1] The requests themselves are admitted, but no admissions are deemed admitted. Respondent’s Motion to Strike Deemed Admissions was granted on April 13, 2004.

[FN2] AAA is the company that Respondent recruited agents to sign-up with in order to sell the EM plans.

[FN3] Respondent has earned approximately $64,964.76 from the sale of unauthorized insurance, the EM Plans. According to Exh. L, the amount of unpaid claims that Respondent is liable for is approximately $5,632,026.23. TDI has been offering similarly situated agents “setoffs,” through Consent Orders whereby an administrative penalty may be offset by restitution paid. See Exhibits B-D, e.g.

[FN4] The affidavit is attached to Respondent’s Motion to Strike Deemed Admissions, as Exh. A.

[FN5] Evidence elsewhere in the record indicates the correct date to be August 2001.
Texas Department of Insurance, Petitioner v. Reginald J...., 2004 WL 4171864...

[FN6] The affidavit is attached to Respondent’s Response to Staff’s Motion for Summary Disposition at Exh. D.


End of Document

Attachment C: Complainant’s Replies to Exceptions
SOAH DOCKET NO. 608-14-4960LIC
MVD DOCKET NO. 14-0016.LIC

AUTOBAHN IMPORTS, L.P.
D/B/A LAND ROVER OF FORT WORTH,
Complainant

v.

JAGUAR LAND ROVER NORTH
AMERICA, L.L.C.
Respondent

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

AUTOBAHN’S REPLY TO JAGUAR LAND ROVER NORTH AMERICA, LLC’S
EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE’S PROPOSAL FOR DECISION

Submitted by:

HOWARD V. ROSE
State Bar No. 17257000
111 Congress Avenue, Suite 1400
Austin, Texas 78701
Telephone: (512) 479-9701
Facsimile: (512) 479-1101

RICHARD W. WISEMAN
State Bar No. 21816200
Brown, Dean, Wiseman,
Proctor Hart & Howell, L.L.P.
306 West 7th Street, Suite 200
Fort Worth, Texas 76102-4905
Telephone: (817) 332-1391
Facsimile: (817) 870-2427

ATTORNEYS FOR COMPLAINANT,
AUTOBAHN IMPORTS, L.P.
D/B/A LAND ROVER OF FORT WORTH
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MVD DOCKET NO. 14-0016.LIC

AUTOBAHN IMPORTS, L.P.
D/B/A LAND ROVER OF FORT WORTH,
Complainant

v.

JAGUAR LAND ROVER NORTH
AMERICA, L.L.C.
Respondent

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

AUTOBAHN’S REPLY TO JAGUAR LAND ROVER NORTH AMERICA, LLC’S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE’S PROPOSAL FOR DECISION

TO THE HONORABLE STEPHANIE FRAZEE, ADMINISTRATIVE LAW JUDGE:

Complainant, Autobahn Imports, L.P. d/b/a Land Rover of Fort Worth (“Autobahn”), files this Autobahn’s Reply to Jaguar Land Rover North America, LLC’s Exceptions to Administrative Law Judge’s Proposal for Decision, filed by Respondent, Jaguar Land Rover North America, LLC (“JLRNA”). JLRNA’s Exceptions to the Administrative Law Judge’s Proposal for Decision will be referenced “JLRNA’s Exceptions” and Autobahn’s Reply to JLRNA’s Exceptions will be referenced “Autobahn’s Reply”. The Proposal for Decision shall be referenced “PFD”. Texas Occupations Code, Section 2301 et seq. will be referenced “Code”.

I. Posture of this Case

1.1 This case involves the legal interpretation of two documents – a contract and a written export policy prepared by JLRNA and issued unilaterally to Autobahn and other Texas dealers. The case was pending at SOAH for 11 months. During this time three different
Administrative Law Judges called for three rounds of legal briefing on various points involved.

1.2 A Motion for Summary Disposition was granted that JLRNA’s charge-backs against Autobahn under the contract were invalid under the Code. A Motion for Summary Disposition was granted that the JLRNA’s export policy violates the Code. These Motions and the PFD incorporating them are based upon an exhaustive review of the contract and export policy documents, and are buttressed by citations to relevant Texas cases. Neither the contract nor the export policy are ambiguous, so no additional evidence is required.

1.3 The Board is being asked to ignore the work of SOAH in this case and substitute its legal opinion for SOAH based on basically the same JLRNA arguments that SOAH rejected. The decisions made by SOAH are based on the legal effect of the pertinent documents. There is no Code policy involved. The Board will not have the opportunity to either examine the pertinent documents or the cited legal authorities. There is no basis for the Board to determine that SOAH was wrong as a matter of law.

1.4 This case has been appropriately ruled upon by the legal opinions of SOAH and the Board should issue a final order in accordance with the PFD.

II. Charge-back Claims

2.1 The charge-backs were made against Autobahn under JLRNA’s Business Builder Program (“Program”). This Program paid dealers for each Land Rover sold if certain requirements were met. The requirements of the Program are set out in a Manual & Operations Bulletin prepared by JLRNA. Order No. 5.
2.2 The parties agreed and a SOAH judge held that the Manual & Operations Bulletin constitute a contract between JLRNA and Autobahn which provides for the payment of benefits under the Program. Order No. 6.

2.3 This contract between JLRNA and Autobahn was determined to be “definite”, “certain”, and “not ambiguous.” Accordingly, extraneous evidence was not required to determine its meaning and it was construed “as a matter of law.” (PFD, page 9)

2.4 After an audit, JLRNA charged-back over $300,000 to Autobahn on the grounds that the vehicles involved were not delivered to an end-user as required by the Program. All vehicles charged-back were sold to leasing companies. (PFD, page 4)

2.5 The PFD finds as a fact that a leasing company is considered to be an end-user under the Program documents in Finding of Fact No. 11. The PFD concludes that as a matter of law, the sales to leasing companies are qualified sales under the Program. Conclusion of Law No. 17.

2.6 Accordingly, the charge-backs are not authorized under the Program and are unreasonable under Code § 2301.467(a) and inequitable under Code § 2301.468.

III. Export Policy

3.1 The Export Policy and the New Export Policy were attacked by Autobahn as violations of Code § 2301.479. This aspect of the case involves a side-by-side comparison of the two Export Policies and the Code section. There is no need for discovery, as there is no fact or Code policy questions involved, simply a legal interpretation of the export policy documents.
3.2 Under the Code, adverse action may be taken against a dealer that sells a vehicle that is later exported only if the dealer knew or should have known that it would be exported. Also, the Code presumes a dealer has no knowledge of an exported vehicle if the vehicle is titled, registered and taxes paid. Also, the Code provides that except as permitted by this §2301.479, a franchise provision that allows adverse action against a dealer that sells a vehicle which is later exported, is void and unenforceable.

3.3 Both of the Export Policies require that a dealer perform due diligence to ensure that a vehicle will not be exported. The dealer must demonstrate due diligence, rather than being entitled to the Code’s presumption of no knowledge. Under the New Export Policy, all vehicles exported over a certain number will be charged back automatically to the dealer. Also, under both Export Policies, JLRNA does not have to show fraud, while the Code requires a finding of fraud before JLRNA can make an export chargeback. PFD, Conclusion of Law No. 5.

3.4 SOAH granted a Motion for Summary Disposition that both Export Policies conflict with the Code and are invalid under Code § 2301.479. Order No. 11. The PFD concludes as a matter of law that both Export Policies violate this Code section in Conclusion of Law No. 18.

IV. The Record is Closed for Further Arguments

4.1 1 TAC §155.505 Summary Disposition provides in paragraph (e)(2):

If summary disposition is granted on all contested issues in a case, the judge shall close the record and prepare a final decision or proposal for decision as appropriate. (Emphasis added).
4.2 Pursuant to this SOAH rule, the record was closed in this case by Order No. 12 issued July 24, 2015, because Your Honor had previously granted summary disposition in favor of Autobahn on the end-user issue and corresponding chargebacks in Order No. 10 and on the export policy claim in Order No. 11. Accordingly, neither JLRNA nor Autobahn can submit further arguments or evidence in the guise of JLRNA’s Exceptions or Autobahn’s Reply to the PFD, due to the closed record.

4.3 The purpose of paragraph (c) in 1 TAC §157.507 Proposal for Decision allowing parties to file exceptions and replies to exceptions to the PFD, is to clarify text or correct any clerical errors on the rulings already determined on the merits in the PFD’s granting of a party’s motion for summary disposition. The purpose of exceptions and replies is not to reargue the merits of the case, and ruled upon by the ALJs.

4.4 JLRNA’s Exceptions to the PFD are a regurgitation of previous arguments and even new arguments on the merits in the guise of exceptions. JLRNA’s Exceptions should not be considered in this proceeding, except for only those that truly attempt to clarify text or correct clerical errors in the PFD.

V. JLRNA Reargues the Merits on a Closed Record in the Guise of Exceptions

5.1 JLRNA’s Background/Procedural History. A procedural history is nothing more than a summary of the essential procedural filings recorded in this proceeding, which the PFD provides in Section I Jurisdiction, Notice and Procedural History (“Procedural History”). In light of the Procedural History in the PFD, there was no reason for JLRNA to file its Section II Background/Procedural History that begins on page 2 and continues through page 5 of JLRNA’s Exceptions. Further, JLRNA makes no exception to any specific text in the PFD’s Procedural History.
5.2 It is glaringly obvious that JLRNA’s only purpose in providing 4 pages of Background/Procedural History was to regurgitate arguments from its perspective that were previously made by the parties and already ruled upon in Autobahn’s favor by the ALJs in the now closed record. Therefore, JLRNA’s Section II cannot be considered, because the merits have been determined and the record closed for further argument.

5.3 JLRNA’s Exceptions that argue merits in this closed record, rather than stating an appropriate exception to clarify text or correct clerical errors in the PFD, will be referred to as “Merit Arguments”.

5.4 Exception No. 1. Exception No. 1 in JLRNA’s Exceptions covers 10 pages beginning on page 6 and continuing through page 15. Exception No. 1 cannot be considered, because it consists only of Merit Arguments ending in a request that “the PFD as to the Chargeback Claim should be withdrawn”. JLRNA’s repeated requests for discovery in Exception No. 1 are meritless. All 3 ALJs determined no discovery was required for ruling on Autobahn’s Motion for Summary Disposition, because all the material facts necessary for their summary disposition rulings were undisputed. See Section III Matters of Fact Which are Undisputed, which begins on page 3 of Autobahn’s Motion.

5.5 The only merit to JLRNA’s Exception No. 1 is in Section III. A., page 6, 1st unnumbered paragraph where it states the PFD does not mention the Code provisions that JLRNA violated by issuing the Charge-backs. Accordingly, Autobahn requests a clarification to Conclusion of Law No. 19 as shown below in Sections VI, Autobahn’s Requested Clarifications and Clerical Error Corrections (“Autobahn’s Requested Changes”), paragraph 6.1.
5.6 **Exception No. 2.** Exception No. 2 appears on pages 15 and 16 of JLRNA's Exceptions. Exception No. 2 cannot be considered, because it consists of Merit Arguments that end in a request to withdraw Conclusion of Law No. 5. JLRNA is attempting to reopen the closed record and reverse findings of fact and conclusions of law in the PFD, rather than clarifying and correcting Conclusion of Law No. 5.

5.7 **Exception No. 3.** Exception No. 3 appears on page 16 and 17 of JLRNA's Exceptions. Exception No. 3 cannot be considered, because it consists only of Merit Arguments – another attempt by JLRNA to reopen the closed record and reverse a finding of fact and conclusions of law, rather than clarifying or correcting the text of the PFD.

5.8 **Exception No. 4.** Exception No. 4 begins on page 17 and continues through page 19 of JLRNA's Exceptions. Exception No. 4 cannot be considered where it makes Merit Arguments, because it is simply another attempt by JLRNA to reopen the closed record and argue merits already determined on the export policy in Autobahn's favor.

5.9 However, there are two export policies that Autobahn plead as violating the Code – the Export Policy contained in the Original Complaint, paragraphs 3.6 to 3.8 and identified as "Export Policy"; and the "New Export Policy" contained in the Supplement to Original Complaint, paragraphs 3.6.1 to 3.6.3 and 3.8.1 to 3.8.3. The Findings of Fact in the Export Policy Issue on PFD pages 17 to 19 include references to both the Export Policy and the New Export Policy. Additionally, most of the Conclusions of Law apply to both Export Policies, but only list the Export Policy.

5.10 Accordingly, Autobahn requests corrections of clerical errors and clarifications of text in Conclusion of Law No. 18 as shown below in Autobahn's Requested Changes, paragraph 6.1, and in the numbered Findings of Fact in paragraph 6.2.
5.11 Exception No. 5. Exception No. 5 on page 19 of JLRNA’s Exceptions cannot be considered, because it consists of Merit Arguments. More importantly, JLRNA requests Conclusion of Law No. 4 be withdrawn, when it is a statement taken virtually verbatim from the Texas Administrative Code.

5.12 Exception No. 6. Exception No. 6 on page 20 of JLRNA’s Exceptions correctly points out a clerical error. However, instead of providing the text to correct the clerical error, JRLNA incorrectly requests that Procedural Finding No. 31 be withdrawn. Accordingly, Autobahn requests correction of a clerical error in Procedural Finding No. 31 as shown below in Autobahn’s Requested Changes, paragraph 6.3.

5.13 Exception No. 7. Exception No. 7 on page 20 of JLRNA’s Exceptions cannot be considered, because it is solely based on Merit Arguments on the closed record. Its request that Procedural Finding No. 28 should be withdrawn is inappropriate.

5.14 Exception No. 8. Exception No. 8 on page 21 of JLRNA’s Exceptions correctly points out a clerical error. Accordingly, Autobahn requests correction of the clerical error in Background Finding No. 31 as shown below in Autobahn’s Requested Changes, paragraph 6.4.

VI. Autobahn’s Requested Clarifications and Clerical Error Corrections

6.1 Autobahn’s Requested Changes to Conclusions of Law Nos. 18 & 19. Autobahn requests clarifications of text and/or corrections of clerical errors be made to Conclusions of Law Nos. 18 and No. 19 to read as follows:

19. Sales to leasing companies are qualified sales under Business Builder according to the Program documents. JLRNA's charge-backs to Autobahn for sales to leasing companies under Business Builder are invalid under Texas Occupations Code §2301.467(a)(1) for requiring adherence to unreasonable sales or service standards, and §2301.468 for treating Autobahn unfairly or inequitably in its sales of JLRNA's vehicles.

6.2 Autobahn's Requested Changes to Findings of Fact Nos. 14-23. Autobahn requests clarifications of text and/or corrections of clerical error be made in the following numbered Findings of Fact:

14. JLRNA issued effective November 24, 2014 a New Export Policy providing...

15. Under the New Export Policy, if ...

16. The New Export Policy provides ...

17. The Export Policy and New Export Policy require ...

18. The Export Policy's and New Export Policy's Retailer ...

19. The Export Policy's and New Export Policy's Indicators ...

20. Based on its 2014 sales under the New Export Policy, Autobahn's ...

21. The terms of the New Export Policy automatically ...

22. The terms of the Export Policy and the New Export Policy impose ...

23. The terms of the Export Policy and the New Export Policy provide ...

6.3 Autobahn's Requested Changes to Procedural Finding No. 31. Autobahn requests clarifications of text and/or corrections of clerical errors be made to Procedural Finding No. 31, to read as follows:
On June 22, 2015, the ALJ granted summary disposition to Autobahn on its claim regarding JLRNA’s Export Policy and New Export Policy. Summary disposition was denied on Autobahn’s incentive payment schedule claim because questions of fact remained on that issue.

6.4 Autobahn’s Requested Changes to Background Finding No. 3. Autobahn requests that Background Finding No. 3 be changed to correct a clerical error, by replacing “5%” with “6%”.

VII. Conclusion

7.1 This case involves the legal interpretation of two separate documents, a contract and a JLRNA written policy. SOAH considered the arguments of the parties carefully after calling for three separate briefings of issues. Two motions for summary disposition were entered determining the parties’ rights. These rulings were incorporated in a PFD that is now before the Board for a Final Order. The record at SOAH has been closed. There are no fact or policy issues involved for the Board’s decision. All that remains of this case is the PFD which the Board should make the subject of a final order.

7.2 For all the foregoing reasons, Autobahn requests that JLRNA’s Exceptions No. 1 through No. 8 be denied, because they are nothing more than rearguments of the merits on a closed record, in which rulings have been previously made as a matter of law against JLRNA and in favor of Autobahn.

7.3 Autobahn respectfully requests Your Honor to make the clarifications in text and corrections to clerical errors shown above in Autobahn’s Requested Changes, paragraphs 6.1 through 6.4.
Respectfully submitted,

HOWARD V. ROSE  
111 Congress Avenue, Suite 1400  
Austin, Texas  78701  
Telephone: (512) 479-9701  
Facsimile: (512) 479-1101

By: [Signature]  
Howard V. Rose  
State Bar No. 17257000

RICHARD W. WISEMAN  
State Bar No. 21816200  
Brown, Dean, Wiseman,  
Proctor Hart & Howell, L.L.P.  
306 West 7th Street, Suite 200  
Fort Worth, Texas  76102-4905  
Telephone: (817) 332-1391  
Facsimile: (817) 870-2427

ATTORNEYS FOR COMPLAINANT,  
AUTOBAHN IMPORTS, L.P.  
D/B/A LAND ROVER OF FORT WORTH
CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing has been forwarded to the parties listed below as shown on this day of September, 2015.

(via facsimile 512-465-3599)
MVD Docketing Clerk
Texas Department of Motor Vehicles
P. O. Box 26487
Austin, Texas 78755

(Via Email)
Richard W. Wiseman
Brown, Dean, Wiseman, Proctor Hart & Howell, L.L.P.
306 W. 7th Street, Suite 200
Fort Worth, Texas 76102

(Via Email)
Mr. Aaron R. Crane
Hogan Lovells U.S., LLP
700 Louisiana Street, Suite 4300
Houston, Texas 77002

(Via Email)
Mr. Colm Moran
Hogan Lovells U.S. LLP
1999 Avenue of the Stars, Ste. 1400
Los Angeles, California 90067-6047

Howard V. Rose
Attachment D: The ALJ’s Response to Exceptions
State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

September 30, 2015

Daniel Avitia, Director
Motor Vehicle Division
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, TX 78731

VIA FACSIMILE NO. 512/465-3666

RE: Docket No. 608-14-4960.LLC; Autobahn Imports, L.P., d/b/a Land Rover of Fort Worth v. Jaguar Land Rover North America, LLC

Dear Mr. Avitia:

On September 8, 2015, Jaguar Land Rover North America, LLC (JLRNA) filed exceptions to the Administrative Law Judge’s (ALJ’s) Proposal for Decision (PFD). On September 22, 2015, Autobahn Imports, L.P. (Autobahn) filed a reply to JLRNA’s exceptions.

The ALJ has reviewed JLRNA’s exceptions and does not recommend any substantive changes to the PFD. JLRNA presents arguments that have been previously briefed and thoroughly considered by the ALJ. JLRNA also presents new arguments that were not presented before the close of the record. Although filing of exceptions to a PFD is not the proper forum for presenting new arguments, the ALJ reviewed and considered all of the arguments presented in JLRNA’s exceptions and finds no basis for substantively amending the PFD.

Autobahn’s reply points out several typographical errors, and the ALJ recommends amending the PFD to correct those errors as follows:

- Finding of Fact No. 3 should be amended to replace “5%” with “6%”.

- Finding of Fact No. 14 should be amended to state: “JLRNA issued a New Export Policy, effective November 24, 2014, that provides that all vehicles exported within nine months of sale in excess of a quarterly threshold of 3% of sales volume during the previous quarter for dealers selling over 250 units per year will be subject to charge-back.”

- Finding of Fact No. 15 should be amended to state: “Under the New Export Policy . . .”

- Finding of Fact No. 16 should be amended to state: “The New Export Policy provides . . .”
• Finding of Fact No. 17 should be amended to state: “The Export Policy and the New Export Policy require . . .”

• Finding of Fact No. 18 should be amended to state: “The Export Policy’s and the New Export Policy’s Retailer . . .”

• Finding of Fact No. 19 should be amended to state: “The Export Policy’s and the New Export Policy’s Indicators . . .”

• Finding of Fact No. 20 should be amended to state: “Based on its 2014 sales under the New Export Policy, Autobahn’s . . .”

• Finding of Fact No. 21 should be amended to state: “The terms of the New Export Policy automatically . . .”

• Finding of Fact No. 22 should be amended to state: “The terms of the Export Policy and the New Export Policy impose . . .”

• Finding of Fact No. 23 should be amended to state: “The terms of the Export Policy and the New Export Policy provide . . .”

• Finding of Fact No. 31 should be amended to state: “. . . JLRNA’s Export Policy and New Export Policy. . . .”

• Conclusion of Law No. 18 should be amended to state: “The Export Policy and the New Export Policy violate Texas Occupations Code § 2301.479.”

• Conclusion of Law No. 19 should be amended to state: “Sales to leasing companies are qualified sales under Business Builder according to the Program documents. JLRNA’s charge-backs to Autobahn for sales to leasing companies under Business Builder are invalid under Texas Occupations Code § 2301.467(a)(1) for requiring adherence to unreasonable sales or service standards and § 2301.468 for treating Autobahn unfairly or inequitably in its sales of JLRNA’s vehicles.”
• Conclusion of Law No. 20 should be amended to state: "Autobahn is entitled to summary
disposition on its claims regarding charge-backs for sales to leasing companies and the terms
of the Export Policy and New Export Policy."

The ALJ recommends no further amendments to the PFD.

Sincerely,

Stephanie Frazee
Administrative Law Judge

SF/mm
cc: Per attached service list – VIA FACSIMILE
Alice Carmona, Docket Clerk, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas
78731 – VIA FACSIMILE NO. 512/465-3666
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<td>300 West 15th Street Suite 502</td>
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<tr>
<td>Austin, Texas 78701</td>
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<tr>
<td>Phone: (512) 475-4993</td>
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<td>D/B/A AUTOBAHN</td>
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<tr>
<td>111 CONGRESS AVENUE, SUITE 1400</td>
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<tr>
<td>AUSTIN, TX 78701-4043</td>
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| ADMINISTRATIVE LAW JUDGE                |
| ALJ STEPHANIE FRAZEE                    |

| PARTIES                                 |
| AUTOBAHN IMPORTS, L.P.                  |

| PARTIES                                 |
| COLM A. MORAN                           |
| HOGAN LOVELLS US LLP                    |
| 1999 AVENUE OF THE STARS, SUITE 1400    |
| LOS ANGELES, CA 90067                   |
| (310) 785-4661 (PH)                     |
| (310) 785-4601 (FAX)                    |

| PARTIES                                 |
| JAGUAR LAND ROVER NORTH AMERICA, LLC    |

| PARTIES                                 |
| RICHARD W. WISEMAN                      |
| BROWN, DEAN, WISEMAN, PROCTOR, HART & HOWELL, L.L.P. |
| 306 W. 7TH STREET, SUITE 200            |
| FORT WORTH, TX 76102                    |
| (817) 332-1391 (PH)                     |
| (817) 335-2909 (FAX)                    |

| PARTIES                                 |
| AUTOBAHN IMPORTS LP D/B/A AUTOBAHN MOTORCARS |
DOCKET CLERK  
TEXAS DEPARTMENT OF MOTOR VEHICLES  
MOTOR VEHICLE DIVISION  
4000 JACKSON AVENUE  
AUSTIN, TX 78731  
(512) 465-7354 (PH)  
(512) 465-3666 (FAX)

MOTOR VEHICLE DIVISION

AARON R. CRANE  
ATTORNEY AT LAW  
HOGAN LOVELLS US LLP  
700 LOUISIANA STREET, SUITE 4300  
HOUSTON, TX 77002  
(713) 632-1446 (PH)  
(713) 632-1401 (FAX)  
aaron.crane@hoganlovells.com

JAGUAR LAND ROVER NORTH AMERICA, LLC

DANIEL AVITIA  
DIRECTOR  
TEXAS DEPARTMENT OF MOTOR VEHICLES  
MOTOR VEHICLE DIVISION  
4000 JACKSON AVENUE  
AUSTIN, TX 78731  
(512) 465-3666 (FAX)

TEXAS DEPARTMENT OF MOTOR VEHICLES

To: Docket Clerk, State Office of Administrative Hearings  
Docket Clerk TDMV, Fax No. 512-465-3666
**Michael Martinez**

**From:** XMediusFAX@soah.state.tx.us  
**Sent:** Wednesday, September 30, 2015 9:53 AM  
**To:** Michael Martinez  
**Subject:** Broadcast Completed: EXC LETTER; 608-14-4960

**Time Submitted:** Wednesday, September 30, 2015 9:44:02 AM Central Daylight Time  
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BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

AUTOBahn IMPORTS, L.P. D/B/A LAND ROVER OF FORT WORTH, Complainant v. MVD CAUSE NO. 14-0016 LIC SOAH DOCKET NO. 608-14-4960.LIC

JAGUAR LAND ROVER NORTH AMERICA, LLC, Respondent

FINAL ORDER

The above referenced matter came before the Board of Texas Department of Motor Vehicles in the form of a Proposal for Decision (PFD) from the State Office of Administrative Hearings (SOAH).

In the PFD, Administrative Law Judge (ALJ) states that the Complainant filed a Motion for Summary Disposition (Motion) alleging that: (1) Respondent improperly charged back certain incentive payments for sales to leasing companies, (2) Respondent’s Export Policy is invalid under the Texas Occupations Code, and (3) Respondent’s payment schedule for incentive payments violates the schedule provided for by the Texas Occupations Code. Ultimately, the ALJ granted Summary Disposition to Complainant on the first two claims and upon Complainant’s request, the ALJ dismissed the third claim from the docket. As a result of the combination of the summary dispositions and the dismissal, there are no unresolved claims before SOAH or the Board.

As the final order authority for the agency, the Board may change a finding of fact or conclusion of law made by the ALJ, or may vacate or modify an order issued by the ALJ, only under the restrictions of Tex. Gov. Code §2001.058(e). The Board finds that Tex. Gov. Code §2001.058(e) factors are not present in this case. The ALJ did not fail to properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions. There is
not a prior administrative decision on which the ALJ relied that is incorrect or should be
changed, nor is there a technical error in a finding of fact that should be changed.

Therefore, the Board, after having considered the findings of fact, and conclusions of law
presented in the PFD, Respondent’s Exceptions, Complainant’s Replies, and the ALJ’s
September 30, 2015, Exceptions letter, enters this Final Order:

**IT IS ORDERED**

1. That the PFD and the ALJ’s September 30, 2015, Exceptions letter filed in this proceeding,
   including the findings of fact and conclusions of law, be, and hereby are, incorporated herein;

2. That Respondent improperly charged back against the Complainant certain incentive
   payments for sales to leasing companies and that those chargebacks are invalid and rescinded;

3. That Respondent’s Export Policy is invalid under the Texas Occupations Code; and

4. That, as to the claim that Respondent’s payment schedule for incentive payments violates
   the schedule provided for by the Texas Occupations Code, no further action shall be taken by the
   Department and the matter shall be, and hereby is, dismissed.

Date: __________________

_________________________________________________________

Board Chair
Texas Department of Motor Vehicles

ATTESTED:

_________________________________________________________
Daniel Avitia, Director
Motor Vehicle Division
Texas Department of Motor Vehicles
RECOMMENDATION

This rule package was previously published for comment on June 19, 2015, and withdrawn as a matter of law on January 15, 2016, as the time to submit for adoption expired. The package was published for comment again on February 26, 2016, and withdrawn effective August 15, 2016, as a quorum of the board could not convene to approve adoption prior to the expiration date. Chairman Palacios authorized submittal, by permission, of Chapter 215, Rule Review, Amendments and Repeals, and new §215.160 to the Texas Register for publication for comment. The rule package was submitted on August 26, 2016 and will be published in the September 9, 2016 issue.

PURPOSE AND EXECUTIVE SUMMARY

The purpose of this rule package is conducting the required rule review in compliance with Government Code, §2001.039.

FINANCIAL IMPACT

There are no significant fiscal implications related to the proposed amendments, new section, and repeals.

BACKGROUND AND DISCUSSION

As a result of the rule review of Chapter 215, in accordance with Government Code, §2001.039, the department has determined that the reasons for initially adopting Subchapters A-J continue to exist, but that certain amendments and repeals are necessary.

The proposed amendments:

• correct punctuation, grammar, and capitalization
• replace terminology with defined terms
• delete definitions already defined by statute
• revise existing terminology for consistency with other department rules
• correct referenced citations
• delete language that duplicates statute
• subdivide and restructure various rules to improve formatting and readability
• rename certain subchapter and section titles for consistency and accuracy
• simplify and clarify language by removing statutory repetition
• implement legislative changes

Additional amendments to Subchapter A, General Provisions, add and define the term "GDN"; repeal §215.3 because it duplicates statute; and repeal §§215.4-215.6, relating to opinions, because those sections contradict Government Code, §2001.003(6).
Additional amendments to Subchapter B, *Adjudicative Practice and Procedure*, clarify the purpose of the subchapter; add that prohibited communications will be reported to the general counsel; establish the last known address of a license holder for purposes of giving notice; clarify that the costs of transcribing and preparing a record in a contested case hearing will be assessed to the party requesting the record; authorize the director of the division to issue final orders in contested cases that are resolved by summary judgment or summary disposition; and repeal §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50-215.54, and 215.57 because they duplicate language contained in statute.

Additional amendments to Subchapter C, *Licenses, Generally*, replace "division" with "department"; incorporate, with amendments, the rule language under existing §215.86 with §215.83; and repeal §215.86 because it is no longer necessary.

Additional amendments to Subchapter D, *Franchised Dealers, Manufacturers, Distributors, and Converters*, clarify that the provisions of §215.105 apply only to purchases and transfers involving physical relocation, and that the provisions of §215.112 are limited only to motor home shows requiring department approval; replace "division" with "department"; and repeal §215.107 because it duplicates statute.

Additional amendments to Subchapter E, *General Distinguishing Numbers*, add and define the term "VIN"; specify that a dealer may not commence business at any location until the department issues a license authorizing that location; replace existing textual language with graphics; clarify that different requirements apply to retail dealers and wholesale motor vehicle dealers; clarify that license holders are not required to maintain copies of motor vehicle titles submitted electronically; rename §215.137 for consistency with statute; clarify use of metal dealer's license plates; add an additional sanctionable offense; and repeal §§215.136, 215.142, and 215.143 because they are adequately addressed by statute.

An additional amendment to Subchapter F, *Lessors and Lease Facilitators*, repeals §215.172 because the department proposes to delete all existing definitions under that section.

An additional amendment to Subchapter G, *Warranty Performance Obligations*, renames the title of §215.201 for consistency with other department rules.

Additional amendments to Subchapter H, *Advertising*, replace "Board" with "department" and "code" with "Occupations Code, Chapter 2301"; add and define the terms "limited rebate" and "savings claim or discount" and clarify definitions for "Monroney label" and "rebate or cash back"; include Internet and online advertisements; clarify MSRP; incorporate the provisions under existing §215.262 relating to savings claims and discount offers with §215.250; add clarifying language regarding allowable use of trade-in amounts in advertisements; and repeal §215.262 because it is no longer necessary.

Additional amendments to Subchapter I, *Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings*, replace "matter" with "contested case" and "Board" with "department"; establish a license holder's last known address for purposes of giving notice; authorize the director of the division to issue a cease and desist order without notice and opportunity for hearing; clarify that a motion for rehearing and a reply to a motion for rehearing of an order issued by the board delegate must be decided by the board delegate; and repeal §§215.309, 215.312, and 215.313 because they duplicate language contained in statute.

Additional amendments to Subchapter J, *Administrative Sanctions*, clarify that an administrative sanction may include denial of an application for a license; establish the last known address of a license holder for purposes of giving notice; and provide that the department will not refund a fee to a person that is subject to an unpaid civil penalty imposed by a final order.

The department also proposes new §215.160, Duty to Identify Motor Vehicles Offered for Sale as Rebuilt, which outlines the requirements for sale of a repaired, rebuilt or reconstructed vehicle.
PROPOSED PUBLICATION OF AMENDMENTS, NEW SECTION, AND REPEALS
43 TAC CHAPTER 215, MOTOR VEHICLE DISTRIBUTION

Description

Publication for comment of amendments, new section, and repeals in Chapter 215, Subchapters A-J, was submitted to the Texas Register and will be published in the September 9, 2016 issue.

Background

As a result of the rule review of Chapter 215, in accordance with Government Code, §2001.039, the department has determined that the reasons for initially adopting Subchapters A-J continue to exist, but that certain amendments and repeals are necessary.

The proposed amendments:

- correct punctuation, grammar, and capitalization
- replace terminology with defined terms
- delete definitions already defined by statute
- revise existing terminology for consistency with other department rules
- correct referenced citations
- delete language that duplicates statute
- subdivide and restructure various rules to improve formatting and readability
- rename certain subchapter and section titles for consistency and accuracy
- simplify and clarify language by removing statutory repetition
- implement legislative changes

Additional amendments to Subchapter A, General Provisions, add and define the term "GDN"; repeal §215.3 because it duplicates statute; and repeal §§215.4-215.6, relating to opinions, because those sections contradict Government Code, §2001.003(6).

Additional amendments to Subchapter B, Adjudicative Practice and Procedure, clarify the purpose of the subchapter; add that prohibited communications will be reported to the general counsel; establish the last known address of a license holder for purposes of giving notice; clarify that the costs of transcribing and preparing a record in a contested case hearing will be assessed to the party requesting the record; authorize the director of the division to issue final orders in contested cases that are resolved by summary judgment or summary disposition; and repeal §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50-215.54, and 215.57 because they duplicate language contained in statute.

Additional amendments to Subchapter C, Licenses, Generally, replace "division" with "department"; incorporate, with amendments, the rule language under existing §215.86 with §215.83; and repeal §215.86 because it is no longer necessary.

Additional amendments to Subchapter D, Franchised Dealers, Manufacturers, Distributors, and Converters, clarify that the provisions of §215.105 apply only to purchases and transfers involving physical relocation, and that the provisions of §215.112 are limited only to motor home shows requiring department approval; replace "division" with "department"; and repeal §215.107 because it duplicates statute.

Additional amendments to Subchapter E, General Distinguishing Numbers, add and define the term
"VIN"; specify that a dealer may not commence business at any location until the department issues a license authorizing that location; replace existing textual language with graphics; clarify that different requirements apply to retail dealers and wholesale motor vehicle dealers; clarify that license holders are not required to maintain copies of motor vehicle titles submitted electronically; rename §215.137 for consistency with statute; clarify use of metal dealer's license plates; add an additional sanctionable offense; and repeal §§215.136, 215.142, and 215.143 because they are adequately addressed by statute.

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Additional amendments to Subchapter I, Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings, replace "matter" with "contested case" and "Board" with "department"; establish a license holder's last known address for purposes of giving notice; authorize the director of the division to issue a cease and desist order without notice and opportunity for hearing; clarify that a motion for rehearing and a reply to a motion for rehearing of an order issued by the board delegate must be decided by the board delegate; and repeal §§215.309, 215.312, and 215.313 because they duplicate language contained in statute.

Additional amendments to Subchapter J, Administrative Sanctions, clarify that an administrative sanction may include denial of an application for a license; establish the last known address of a license holder for purposes of giving notice; and provide that the department will not refund a fee to a person that is subject to an unpaid civil penalty imposed by a final order.

The department also proposes new §215.160, Duty to Identify Motor Vehicles Offered for Sale as Rebuilt, which outlines the requirements for sale of a repaired, rebuilt or reconstructed vehicle.

**Other Comments**

There are no significant fiscal implications related to the proposed amendments, new section, and repeals.

The proposed amendments, new section, and repeals will be published in the Texas Register on September 9, 2016. Comments on the proposed amendments, new section, and repeals will be accepted until 5:00 p.m. on October 10, 2016.
Proposed Preamble

Additionally, the department proposes new §215.160, Duty to Identify Motor Vehicles Offered for Sale as Rebuilt, which outlines the requirements for sale of a repaired, rebuilt or reconstructed vehicle.

EXPLANATION OF PROPOSED AMENDMENTS, NEW SECTION, AND REPEALS
The department conducted a review of its rules under Chapter 215 in compliance with Government Code, §2001.039. Notice of the department's intention to review was published in the June 19, 2015, issue of the Texas Register (40 TexReg 4012).

As a result of the review, the department has determined that the reasons for initially adopting Subchapters A-J continue to exist but that certain amendments and repeals, as detailed in the following paragraphs, are necessary.

Amendments to Subchapter A, §215.1 and §215.2 are proposed to replace terminology with defined terms, delete definitions...
already defined by statute, revise existing terminology for consistency with other department rules, correct referenced citations, and to delete language that duplicates statute. The title of §215.1 is amended for consistency with other department rules. Additional amendments to §215.2 are proposed to delete definitions no longer needed and add and define the term "GDN."

The department has determined that the reasons for initially adopting §§215.3-215.6 no longer exist and that they should be repealed. Section 215.3 should be repealed because it duplicates language already in statute. Sections 215.4-215.6, relating to opinions, should be repealed because those sections are contrary to Government Code, §2001.003(6) which defines a rule as "a state agency statement of general applicability that (i) implements, interprets, or prescribes law or policy, or (ii) describes the procedure or practice requirements of a state agency."

department rules, and to delete language contained in statute.

An amendment to §215.22 is proposed to add that a violation of that section will be reported to the general counsel of the department in addition to the hearing officer. An additional amendment to §215.34 establishes the last known address of a license holder for purposes of giving notice as "mailing address provided to the department when the license holder applies or renews its license," or notifies the department of a change in address. The department further proposes to amend §215.37 to clarify that the costs of transcribing and preparing a record in a contested case hearing will be assessed to the party requesting the record. An additional amendment to §215.58 is proposed to authorize the director of the division to issue final orders in contested cases that are resolved by summary judgment or summary disposition. Additional amendments are proposed throughout Subchapter B to simplify and clarify language by removing any unnecessary statutory repetition. In addition, amendments are proposed to rename the titles of certain sections for consistency and accuracy. The department has further determined that §§215.25, 215.26, 215.28, 215.31, 215.33, 215.50-215.54 and 215.57 duplicate language already contained in statute and are no longer necessary. Therefore, the
department proposes to repeal those sections.

Amendments to Subchapter C, §§215.81-215.85 and 215.87-215.89 are proposed to replace terminology with defined terms, revise existing terminology for consistency with other department rules, correct referenced citations, and to delete language contained in statute. Additional amendments are proposed throughout Subchapter C to replace "division" with "department" for clarification and consistency with current department practice. An amendment is proposed to §215.83 to implement legislative changes regarding "active duty." In addition, the department proposes to amend §215.83 by including the procedures for processing license applications that are currently set out under existing §215.86 because those procedures are more appropriately located under §215.83. Additional amendments to §215.83 are proposed to subdivide the rule to improve formatting and readability. Because the department proposes to incorporate, with amendments, the rule language under §215.86 with §215.83, the department proposes to repeal §215.86. Additional amendments are proposed throughout Subchapter C to rename certain section titles for consistency and accuracy with the language contained in those rules.
Amendments to Subchapter D, §§215.101, 215.103-215.106 and 215.108-215.119 are proposed to delete language contained in statute, correct referenced citations, replace terminology with defined terms, revise existing terminology for consistency with other department rules and current department practice. An amendment to §215.105 clarifies that the provisions of that section apply only to purchases and transfers involving physical relocation. Amendments to §215.112 are proposed to clarify that the provisions of that section are limited only to motor home shows that require department approval. Additional amendments are proposed throughout Subchapter D to replace "division" with "department" for clarification and consistency with current department practice. The department also proposes amendments throughout Subchapter D to subdivide and restructure the rules for formatting and improved readability. The department has further determined that §215.107 duplicates language contained in statute and therefore, proposes to repeal that section.

Amendments to Subchapter E, §§215.131-215.133, 215.135, 215.137-215.141 and 215.144-215.159 are proposed to replace terminology with defined terms, delete definitions already defined by
statute or to add clarifying language to existing definitions,
revise existing terminology for consistency with other
department rules, correct referenced citations, and to delete
language contained in statute. An additional amendment to
§215.132 is proposed to add and define the terms "vehicle" and
"VIN." An additional amendment to §215.133 includes the
acceptance of concealed handgun license (license to carry a
handgun) for identification purposes. An amendment to §215.135
specifies that a dealer may not commence business at any
location until the department issues a license authorizing that
location. Amendments were made to §215.137 to change the title
to "Surety Bond" for consistency with statute and to clarify
requirements. Amendments were made to §215.138 to clarify use of
metal dealer's license plates. Additional amendments to §215.139
subdivide the rule for improved readability and replace existing
textual language with graphics under amended subsections (c),
(e) and (f)(1). Additional amendments are proposed throughout
§215.140 to clarify that different requirements apply to retail
dealers and wholesale motor vehicle dealers. Additional
amendments to §215.141 clarify sanctions and add an additional
sanctionable offense, effective January 1, 2017, for failure to
disclose repaired, rebuilt, or reconstructed motor vehicles. An
additional amendment to §215.144 is proposed to clarify that license holders are not required to maintain copies of motor vehicle titles submitted electronically. Additional amendments to §215.145 clarify the requirements for dealer status changes. An additional amendment was made to §215.147 to include acceptance of concealed handgun license (license to carry a handgun) for identification. Additional amendments are proposed to renumber the appendices under §215.153, consistent with the proposed amendments renumbering that section. The department further proposes to repeal §§215.136, 215.142 and 215.143 because those sections are adequately addressed by statute and therefore, are no longer necessary.

An amendment to Subchapter F is proposed to rename the title of that subchapter for consistency with statutorily defined terms. Additional amendments are proposed throughout §§215.171 and 215.173-215.181 to delete definitions already defined by statute or to add clarifying language to existing definitions, revise existing terminology for consistency with other department rules, correct referenced citations, and to delete language contained in statute. Additional amendments are proposed throughout Subchapter F to renumber and subdivide certain
sections for improved readability. Because the department proposes to delete the definitions under §215.172, the reasons for adopting that section no longer exist. Therefore, the department proposes to repeal §215.172.

Amendments to Subchapter G, §§215.201-215.210 are proposed to replace terminology with defined terms, revise existing terminology for consistency with other department rules, correct the referenced citations, and to delete language that is already contained in statute. In addition, the department proposes an amendment to §215.201 to rename the title of that section for consistency with other department rules.

Amendments to Subchapter H, §§215.241-215.261 and 215.263-215.271 are proposed to revise existing terminology for consistency with other department rules. Additional amendments are proposed to replace terminology with defined terms and to correct referenced citations. The department also proposes to amend §215.241 to replace "Board" with "department" for consistency with current department practice, and to replace "code" with "Occupations Code, Chapter 2301" for clarification. Amendments to §215.244 are proposed to add and define the terms
"limited rebate" and "savings claim or discount" and clarify definitions for "Monroney label" and "rebate or cash back."

Additional amendments to §215.246 clarify accuracy of Internet advertisements. Amendments are proposed to §215.248 to include Internet and online advertisements. An amendment to §215.249 provides clarification of Manufacturer's Suggested Retail Price (MSRP). Additional amendments to §215.250 are proposed to incorporate the provisions under existing §215.262 relating to savings claims and discount offers with §215.250 because those provisions are more appropriately located under that section.

The department further proposes to amend and add additional graphics under proposed subsections (h)-(m) of §215.250. Because the department determined that the savings claims and discount offer provisions under §215.262 are more appropriately located under §215.250, the department proposes to repeal §215.262. In addition, amendments to §215.253 are proposed to add additional clarifying language regarding allowable use of trade-in amounts in advertisements.

citations for consistency. Additional amendments are proposed throughout that subchapter to replace "matter" with "contested case" and "Board" with "department." An amendment to §215.307 is proposed to establish a license holder's last known address for purposes of giving notice as the "mailing address provided to the department when the license holder applies or renews its license," or notifies the department of a change in address. An additional amendment to §215.314 is proposed to authorize the director of the division to issue a cease and desist order prior to the commencement of a proceeding by the State Office of Administrative Hearings (SOAH). The cease and desist order may be issued without notice and opportunity for hearing if the provisions under Occupations Code, §2301.802(b) are met. An Administrative Law Judge shall hold a hearing to determine whether the interlocutory cease and desist order should remain in effect during the pendency of the proceeding. Additional amendments to §215.317 are proposed to clarify that a motion for rehearing and a reply to a motion for rehearing of an order issued by the board delegate must be decided by the board delegate. The department has also determined that §§215.309, 215.312 and 215.313 duplicate language contained in statute and that those sections should be repealed.
Amendments to Subchapter J, §§215.500-215.503 are proposed to replace terminology with statutorily defined terms and to correct referenced citations. Additional amendments to subdivide certain sections of that subchapter are proposed for improved formatting. An amendment to §215.500 is proposed to clarify that an administrative sanction may include denial of an application for a license. An additional amendment to that section establishes the last known address of a license holder for purposes of giving notice as the "mailing address provided to the department when the license holder applies or renews its license," or notifies the department of a change in address. An amendment to §215.503 provides that the department will not refund a fee to a person that is subject to an unpaid civil penalty imposed by a final order.

Additional nonsubstantive amendments are proposed throughout Chapter 215 to correct punctuation, grammar, and capitalization.

The department also proposes new §215.160, Duty to Identify Motor Vehicles Offered for Sale as Rebuilt, which outlines the requirements for sale of a repaired, rebuilt or reconstructed
FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments, new section, and repeals as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments and repeals.

David D. Duncan, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments, new section, and repeals.

PUBLIC BENEFIT AND COST

Mr. Duncan has also determined that for each year of the first five years the amendments, new section, and repeals are in effect, the public benefit anticipated as a result of enforcing or administering the amendments, new section, and repeals will be simplification, clarification and streamlining of the agency's rules. There are no anticipated economic costs for persons required to comply with the amendments, new section, and repeals.
repeals as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

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

SUBMITTAL OF COMMENTS
Written comments on the proposed amendments, new section, and repeals may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on October 10, 2016.

STATUTORY AUTHORITY
The amendments, new section, and repeals are proposed under Transportation Code, §1002.001, which provides the board of the
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Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Occupations Code, §2301.155, which requires the board of the Texas Department of Motor Vehicles to adopt rules necessary or convenient to administer Occupations Code, Chapter 2301; and more specifically, Occupations Code, §2301.266, which authorizes the board to adopt rules applicable to the issuance of duplicate licenses; and Occupations Code, §2301.602, which requires the board to adopt rules to enforce Chapter 2301, Subchapter M; Transportation Code, §503.002 which authorizes the board to adopt rules to administer Transportation Code, Chapter 503; and more specifically, Transportation Code, §503.009, which authorizes the board to adopt rules for procedures concerning contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626 and §503.0631, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases.

CROSS REFERENCE TO STATUTE

Government Code, §2001.039; Occupations Code, Chapter 2301; and
1 Transportation Code, Chapter 503.
SUBCHAPTER A. GENERAL PROVISIONS
§215.3. Duties and Powers of Board.
§215.4. Formal Opinions.
§215.5. Informal Opinions.

SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE
§215.25. Affidavits.
§215.31. Cease and Desist Orders.
§215.33. Expenses of Witness or Deponent.
§215.50. Submission.
§215.51. Findings and Recommendations of Hearing Officer.
§215.52. Filing of Exceptions.
§215.53. Form of Exceptions.
§215.54. Replies to Exceptions.
§215.57. Format for Documents Filed with the Board Subsequent to the Issuance of a Proposal for Decision.

SUBCHAPTER C. LICENSES, GENERALLY
§215.86. Processing of License Applications, Amendments, or Renewals.

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

SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS
§215.142. GDN Sanction and Qualification Hearing.
§215.143. Manufacturers License Plates.

SUBCHAPTER F. LESSORS AND LEASE FACILITATORS
SUBCHAPTER H. ADVERTISING

§215.262. Savings Claims; Discounts.

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

§215.309. Recording and Transcriptions of Hearing Cost.
§215.312. Discovery.
SUBCHAPTER A. GENERAL PROVISIONS

§215.1. Purpose and Scope. [Scope and Purpose.]

Occupations Code, Chapter 2301[7] and Transportation Code, Chapters 503 and 1000 - 1005 [1000 through 1005] require the Texas Department of Motor Vehicles to license and regulate motor vehicle dealers, manufacturers, distributors, converters, representatives, vehicle lessors and vehicle lease facilitators, in order to ensure a sound system of distributing and selling motor vehicles; [7] provide for compliance with manufacturers' warranties; and to [manufacturer's warranties] prevent fraud, unfair practices, discrimination, impositions, and other abuses of the people of this state in connection with the distribution and sale of motor vehicles. This [The sections under this] chapter prescribes[prescribe] the policies and procedures for the regulation of the motor vehicle industry. [regulating motor vehicle dealers, manufacturers, distributors, converters, representatives, lessors and lease facilitators, by regulating licensing, warranty performance obligations, advertising, enforcement, and providing for adjudicative proceedings.]

§215.2. Definitions; Conformity with Statutory Requirements.

(a) The definitions contained in Occupations Code, Chapter 2301[7] and Transportation Code, Chapters 503 and 1000 - 1005

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[1000 through 1005] govern this chapter. [All matters of practice and procedure set forth in the Codes shall govern and these rules shall be construed to conform with the Codes in every relevant particular, it being the intent of these rules only to supplement the Codes and to provide procedures to be followed in instances not specifically governed by the Codes.] In the event of a conflict, the definition or procedure referenced in Occupations Code, Chapter 2301 controls. [shall control.]

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

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

[(2) Appropriate department office--The office of the department that is designated by notice or publication for receipt of a specific filing.]

[(3) Board--The Board of the Texas Department of Motor Vehicles, including any personnel to whom the board delegates any duty assigned.

[(4) Chapter 503--Transportation Code, Chapter 503.] [(5) Chapter 1000 through 1005--Transportation Code, Chapter 1000 through 1005.]
[(6) Code--Occupations Code, Chapter 2301.]  
[(7) Codes--Occupations Code, Chapter 2301, and Transportation Code, Chapters 503 and 1000 through 1005.]  
[(8) Department--The Texas Department of Motor Vehicles.]  
[(3) Director--The director of the department that regulates the distribution and sale of motor vehicles, including any personnel to whom the director delegates any duty assigned under this chapter.]  
[(10) Division--The division that regulates the distribution and sale of motor vehicles.]  
[(4) Executive director--The executive director of the Texas Department of Motor Vehicles.]  
[(5) Final order authority--The person(s) with authority under Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 - 1005; or board rules to issue a final order.]  
[(6) GDN--General distinguishing number.]  
[(7) Governmental agency--All other state and local governmental agencies and all agencies of the United States government, whether executive, legislative, or judicial.]  
[(14) Hearings examiner--A person employed by the]
department to preside over hearings under Occupations Code,

Chapter 2301.

Hearing officer--An ALJ, or a hearings examiner under this chapter, or any other person designated, employed, or appointed by the department, or employed or appointed, to hold hearings, administer oaths, receive pleadings and evidence, issue subpoenas to compel the attendance of witnesses, compel the production of papers and documents, issue interlocutory orders and temporary injunctions, make findings of fact and conclusions of law, issue proposals for decision, and recommend or issue final orders.

License purveyor--Any person who for a fee, commission, or other valuable consideration, other than a certified public accountant or a duly licensed attorney at law, assists an applicant in the preparation of a license application or represents an applicant during the review of the license application.

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

Party in interest--A party against whom a binding determination cannot be had in a proceeding before the
department without having been afforded notice and opportunity
for hearing.

(10)[(19)] SOAH--The State Office of Administrative
Hearings.
SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

§215.21. Purpose and Scope.[Objective.]

(a) The purpose[objective] of this subchapter [these rules] is to ensure [fair, just, and impartial] adjudication of the rights of parties in [all] matters within the jurisdiction of Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1000 - 1005; and to ensure effective administration of Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1000 - 1005 by the department, in accordance with Government Code, Chapter 2001 and Occupations Code, §2301.001 and §2301.152. [the Codes, and to ensure fair, just, and effective administration of the Codes in accordance with the intent of the legislature as declared in Occupations Code, §2301.001, and Occupations Code, §2301.152.]

(b) Practice and procedure in contested cases [filed on or after September 1, 2007, and] heard by SOAH are addressed in:

(1) 1 TAC Chapter 155;

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

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

(c) This subchapter applies to contested cases filed under Occupations Code, Chapter 2301 or Transportation Code, Chapter...

(a) No party [in interest], attorney of record, or authorized representative in any contested case[proceeding] shall make,[submit,] directly or indirectly, any ex parte communication, in violation of Government Code, §2001.061, concerning the merits of the contested case[such proceeding] to the board or hearing officer[Board, or any department employee who is] assigned to render a decision or make findings of fact and conclusions of law in a contested case.

(b) Violations of this section shall be promptly reported to the hearing officer and the general counsel of the department. The general counsel shall ensure that a copy or summary of the ex parte communication is included with the record of the contested case and that a copy is forwarded to all parties or their authorized representatives. The general counsel may take any other appropriate action otherwise provided by law. [and a copy or summary thereof shall be filed with the record of]
such proceeding and a copy forwarded to all parties of record,
and/or any other appropriate action otherwise provided by law.]}

§215.23. Appearances.

(a) General. Any party to a contested case may appear in
person or by an authorized representative. An authorized
representative may be required to show authority to represent a
party. [proceeding before the Board may appear to represent,
prosecute, or defend any rights or interests, either in person,
by an attorney, or by any other authorized representative. Any
individual may appear pro se; and any member of a partnership
which is a party to a proceeding or any bona fide officer of a
corporation or association may appear for the partnership,
corporation, or association. An authorized full time employee
may enter an appearance for his employer.]

[(b) Agreements of representation. The Board may require
agreements between a party in interest and an attorney or other
authorized representative concerning any pending proceeding to
be in writing, signed by the party in interest, and filed as a
part of the record of the proceeding.]

[(c) Lead counsel. The attorney or other authorized
representative of a party in interest shall be considered that
party's lead counsel in any proceeding and, if present, shall
have control in the management of the cause pending before the
(b) Intervention. Any public official or other person having an interest in a contested case [proceeding] may, upon request to the hearing officer, [Board] be permitted to intervene [and present any relevant and proper evidence, data, or argument bearing upon the issues involved in the particular proceeding]. Any person desiring to intervene in a contested case [proceeding] may be required to disclose that person's [his] interest in the contested case [proceeding] before permission to appear will be granted.

(e) Limitation on appearances. The Board may limit or exclude entirely an attempt by persons to appear in a proceeding when such appearance would be irrelevant or would unduly broaden the scope of the proceeding.


(a) Petitions [for relief under the Codes or complaints filed alleging violations of the Codes other than those specifically provided for in these rules] shall be in writing and shall:

1. state [clearly and concisely] the petitioner's [grounds of] interest in the subject matter, the facts relied upon, and the relief sought; and

2. cite the specific code provision(s) or other
appropriate law.[by appropriate reference the article of the
Codes or other law relied upon for relief and, where applicable,
the proceeding to which the petition refers.]

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

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

§215.27. Complaints.

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

(b) A complaint shall contain the name and address of the
complainant, the name and address of the party against whom the

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complaint is made, and a brief statement of the facts forming
the basis of the complaint.

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


Any period of time prescribed or allowed by
this chapter, by order of the board or by any
applicable statute shall be computed in accordance with
Government Code, §311.014. The date of the act or event after
which the designated period of time begins to run is not to be
included; but the last day of the period so computed is to be
included unless it be a Saturday, Sunday, or legal holiday in
which event the period runs until the end of the next day which
is not a Saturday, Sunday, or legal holiday.


(a) Each document required or permitted to be filed
with the department this chapter shall be

delivered:

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(1) [filed] in person;

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

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

[(b) Except as provided in subsection (c) of this section, delivery by mail shall be complete upon deposit of the document, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.]

[(b) Except as provided in subsection (c) of this section, delivery by mail as specified in subsection (b) of this section shall be timely if the document is deposited on or before the specified date and received by the appropriate department office not later than the fifth business day after the date of deposit.] Delivery by electronic document transfer is considered timely if the document is received by 5:00 p.m. Central Standard Time (CST). Delivery by electronic document transfer after 5:00 p.m. CST shall be deemed received on the following day.

[(c) Such document may be delivered by a party to a matter, an attorney of record, or by any other person competent]
to testify,] A certificate by the party or party's authorized
representative[an attorney of record or the affidavit of any
person competent to testify,] showing timely delivery of a
document in a manner described in this section shall be prima
facie evidence [of the fact] of timely delivery. Nothing[,
although nothing] herein shall preclude the department or any
party from offering proof that the [subject] document was not
timely delivered.

(d)[(e)] To be timely filed, a[the] document must be
received by the department within[in the appropriate department
office by] the time specified by statute, rule, or department
order. A document[filing] received after the specified time,
notwithstanding the date of mailing or other means of delivery,
shall be deemed untimely.[not timely filed.]


(a) Except as provided by subsection (b) of this section,

when[When by these rules or by a notice given thereunder or by
order of the Board or the hearing officer having jurisdiction,
as the case may be,] an act is required or allowed to be done at
or within a specified time in accordance with this chapter, the
board[, except as provided in subsection (b) of this section,
the Board] or the hearing officer, with good cause shown, may:

[for cause shown may, at any time in the Board's or the hearing—
(1) [with or without motion or notice,] order the
specific period extended if the extension is requested [period—
enlarged if application therefore is made] before the expiration
of the period previously specified; [originally prescribed or as
extended by a previous order;] or

(2) [upon motion] permit the act to be done after the
expiration of the specified period, provided [where] good cause
is shown for the failure to act.

(b) Notwithstanding [anything contained in] subsection (a)
of this section, the board or [neither the Board nor a] hearing
officer may not extend [enlarge] the time for filing a document
when a [where, by] statute or rule specifies the time period by
which a document [, the document, to be timely filed,] must be
received by the department. [in the appropriate department office—
by a specified time. The requirements of such statute or rule—
shall govern the filing of that document. Any such document—
received after the specified time, notwithstanding the date of—
mailing or other means of delivery, shall be deemed not timely—
filed—]

§215.34. Notice of Hearing in Contested Cases. [Adjudicative—
Proceedings—]

(a) In a contested case, each party is entitled to a
[(a) In any adjudicative proceeding under the Codes, the notice of hearing shall state:]

[(1) the name of the party or parties in interest;]

[(2) the time and place of the hearing;]

[(3) the docket number assigned to the hearing;]

[(4) any special rules deemed appropriate for such hearing; and]

[(5) a clear and concise factual statement sufficient to identify with reasonable definiteness the matters at issue.

This can be satisfied by attaching and incorporating by reference the complaint or amended complaint.]

(b) A notice of hearing in a contested case shall comply with the requirements of Government Code, §2001.052(a) and [Notice of hearing] shall be served upon the parties [in interest either] in person or by certified mail, return receipt requested to the last known address of the parties or their authorized representatives, in accordance with Occupations Code, §2301.705.[, addressed to the parties in interest or their agents for service of process.]

(c) The last known address of a license applicant, license holder, or other person is the last mailing address provided to the department when the license applicant applies for its license, when a license holder renews its license, or when the

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license holder notifies the department of a change in the
license holder's mailing address.

[(c) Notice of hearing shall be presumed to have been
received by a person if notice of the hearing was mailed by
certified mail, return receipt requested, to the last known
address of any person known to have legal rights, duties, or
privileges that could be determined at the hearing.]

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

[(d) Notice of hearing may be amended at the hearing or at
any time prior thereto.]

§215.35. Reply.

(a) Within 20 days after service of a notice of hearing in
a contested case[;] or within 10 days after service of an
amended notice of hearing, a [responding] party may file a reply
[in which the matters at issue are specifically admitted,
denied, or otherwise explained].

(b)[{1}] A reply shall include[Form and filing of replies.
All replies shall include a reference to] the docket number of
the contested case[hearing] and shall be filed[sworn to] by the
party or party's authorized representative. The original
[responding party or the attorney of record. The original of
the] reply shall be filed with the department and a[appropriate}
department office, and one copy shall be served on any upon other parties to the contested case. [proceeding, if any.]

(c) A party may file an amended reply prior to the contested case hearing. In any contested case when amend his reply at any time prior to the hearing, and in any case where the notice of hearing has been amended at the contested case hearing, a party, at the discretion of the hearing officer, shall have an opportunity to file an amended reply.

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

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

§215.36. Hearings To Be Public.

Hearings in contested cases shall be open to the public.

§215.37. Recording and Transcriptions of Hearing Cost.

(a) Except as provided in Subchapter G of this chapter
(relating to Warranty Performance Obligations), hearings in contested cases will be transcribed by a court reporter or recorded by the hearing officer. [at the discretion of the hearing officer. Any request regarding recording or transcription must be made to the hearing officer at least two days prior to the hearing.]

(b) In a contested case [those contested cases] in which the hearing is transcribed by a court reporter, the costs of transcribing the hearing and for the preparation of an original transcript of the record for the department shall be assessed to the requesting party in the contested case, [equally among all parties to the proceeding,] unless otherwise directed.

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

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

§215.38. Consolidation of Proceedings.[Joint Record.]
No contested case proceedings including [no adjudicative proceedings embracing] two or more complaints or petitions shall be jointly heard [on a joint record] without the consent of all parties [in interest] unless the hearing officer finds [shall find, prior to the consolidation of the proceedings,] that justice and efficiency are better served by the consolidation.


After [subsequent to] the issuance of a notice of hearing in a contested case, and in accordance with the deadlines prescribed by [as provided in] §215.35 of this title [subchapter] (relating to Reply), a party may waive a [responding party may waive such] hearing and consent to the entry of an agreed order. Agreed orders proposed by the parties remain subject to the approval of the final order authority.


After a contested case has been called on the date assigned for hearing [in a proceeding] pursuant to notice, a continuance of the contested case hearing [postponement of the case] will be granted only upon a showing of good cause. A motion for continuance of a contested case [in exceptional circumstances] shall be filed and served on all parties at least five days before the hearing.
§215.41. Presiding Officials.

(a) Hearing officer. [A hearing officer of a contested case shall be assigned in accordance with applicable law, including Occupations Code, §2301.704.] The term "hearing officer" as used in this section includes the board[Board] when presiding over a hearing.

(b) [1] Powers and duties. A hearing officer shall conduct fair hearings and shall[1] Hearing officers shall have the duty to conduct fair and impartial hearings, and the power to take all necessary action to administer[2] avoid delay in the disposition of contested cases. A hearing officer's powers include, but are not limited to the authority to: [proceedings and to maintain order. Hearing officers shall have all powers necessary to these ends, including the authority to]

(1) administer oaths; [t]

(2) examine witnesses; [t]

(3) rule upon the admissibility of evidence; [t]

(4) rule upon motions; and [t]

(5) regulate the course of the contested case hearing

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and the conduct of the parties and their authorized representatives.

(c) Recusal.

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

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

(3) If the hearing officer contests the alleged grounds for disqualification, the chief hearing officer shall promptly determine the validity of the grounds alleged and render a decision, such decision being determinative of the issue.

(d) Substitution of hearing officer. If the hearing officer...
officer is disqualified, dies, becomes disabled, or withdraws during any contested case proceeding, the chief hearing officer may appoint another hearing officer to preside over the remainder of the contested case proceeding, who may perform any function remaining to be performed without the necessity of repeating any proceedings in the case.

§215.42. Conduct of Hearing.

Each party in a contested case shall have the right to notice, cross examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair contested case hearing. Except as provided by this chapter or in the notice of hearing, and in accordance with the Texas Rules of Civil Procedure, as applied to non-jury civil cases, shall be applicable to hearings in contested cases, as far as reasonably practical.

§215.43. Conduct and Decorum.

(a) All parties, witnesses, counsel, and authorized representatives shall conduct themselves in all contested case
hearings with proper dignity, courtesy, and respect for the
board, the hearing officer, and other parties. [Every party,
witness, attorney, or other representative shall comport himself
in all proceedings with proper dignity, courtesy, and respect
for the Board, the hearing officer, and all other parties.
Disorderly conduct will not be tolerated. Attorneys and other
representatives of parties shall observe and practice the
standards of ethical behavior prescribed for attorneys at law by
the Texas Disciplinary Rules of Professional Conduct and the
Texas Lawyer's Creed. No party to a pending case, and no
representative or witness of such a party, shall discuss the
merits of such case with the hearing officer outside of the
presence of all other parties, or their representatives.]

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

(1) excluded from the contested case[any] hearing for
such period and upon such conditions as are just; or [may be]

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

§215.44. Evidence.

(a) General. The Texas Rules of Evidence shall apply in all
contested cases, in accordance with Government Code, Chapter
2001.[be applied in all adjudicative hearings to the end that
needful and proper evidence shall be conveniently,
inexpensively, and speedily adduced while preserving the rights
of the parties to the proceeding.]

[(b) Admissibility. All relevant, material, and reliable
evidence shall be admitted. Irrelevant, immaterial, unreliable,
and unduly repetitious or cumulative evidence shall be excluded.
Immaterial or irrelevant parts of an otherwise admissible
document shall be segregated and excluded so far as practicable.]

[(c) Official records. An official document or record, or
an entry therein, when admissible for any purpose, may be
evidenced by an official publication thereof or by a copy
attested by the officer having legal custody of the record, or
by the officer's deputy, and accompanied by a certificate to
such effect. This section does not prevent and is not intended
to prevent proof of any official record, the absence thereof or
official notice thereof by any method authorized by any
applicable statute or any rules of evidence in district and
county courts.]

[(d) Entries in the regular course of business. Any writing
or record, whether in the form of an entry in a book or
otherwise, made as a memorandum or record of any act,
transaction, occurrence, or event, will be admissible as

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evidence thereof if it appears that it was made in the regular
course of business. This section does not prevent and is not
intended to prevent proof of any business writing or record by
any method authorized by any applicable statute or any rules of
evidence in district and county courts.]

(b)[(e)] Documents in department files. The hearing officer
may take judicial notice of documents[Documents] or information
in the department’s files, in accordance with[licensing files-
may be officially noticed and may be admitted and considered by
the hearing officer, as described in] Government Code, Chapter

[(f) Abstracts of documents. When documents are numerous,
the hearing officer may refuse to receive in evidence more than
a limited number of said documents which are typical and
representative, but may require the abstraction of the relevant
information from the documents and the presentation of the
abstract in the form of an exhibit; provided, however, that
before admitting such abstract the hearing officer shall afford
all parties in interest the right to examine the documents from
which the abstract was made.]

(c)[(g)] Exhibits. Exhibits shall be limited to facts with
respect to the relevant and material issues involved in a
particular contested case. Documentary exhibits[proceeding,
Exhibits of documentary character] shall not unduly encumber the
record. Where practical, [of the proceeding. Where practicable,]

the sheets of each exhibit shall not be more than 8-1/2\[8 1/2\]

inches by 11 inches in size, and shall be numbered and labeled.

The original and one copy of each exhibit offered shall be tendered to the reporter or hearing officer for identification, and a copy shall be furnished to each party [in interest]. In the event an offered exhibit has been excluded after objection [identified, objected to, and excluded, the hearing officer shall determine whether] the party offering the exhibit withdraws the offer, the hearing officer shall [and if so,] return the exhibit. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification and be included in the record only for the purpose of preserving the exception together with the hearing officer's ruling.

$215.45. Stipulation of Evidence.

Evidence may be stipulated by agreement of all parties [in interest].

$215.46. Objections and Exceptions.

Formal exceptions [exception] to the ruling of the hearing officer is not necessary. [It is sufficient that the party in interest at the time the ruling is made, or sought, make known to the hearing officer the action desired.]
§215.47. Motions.

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

(1) the relief sought; and

(2) the specific reasons and grounds.

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

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


The hearing officer may direct that the parties file briefs in any pending contested case. [adjudicative proceeding at such time as may be specified by the hearing officer.]

§215.49. Service of Pleading, Petitions, Briefs, and Other Documents. [the Like.]

(a) A copy of each document filed in any contested case [adjudicative proceeding, after appearances have been...
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entered, shall be served upon all parties or their authorized representatives[other parties in interest or their lead counsel,] and upon the [appropriate] department [office] by sending a copy properly addressed to each party by: [first-class United States mail, postage prepaid, by actual delivery, or by electronic document transfer to a facsimile number, e-mail address, or website designated for the receipt of those filings. A certificate of such fact shall accompany the document.]

(1) first-class mail;
(2) hand delivery;
(3) facsimile; or
(4) email.

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

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


(a) The board[Board] has final order authority in a contested case initiated by a complaint filed before January 1, 2014, under Occupations Code, §§2301.204 or §§2301.601 - 2301.613 [initiated by a complaint filed before January 1, 2014].

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

(c) Except as provided by subsections (a) and (b) of this section, the board has final order authority in a contested case filed under Occupations Code, Chapter 2301 or under Transportation Code, Chapter 503.

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

§215.56. Submission of Amicus Briefs.

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

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

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

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

(1) by settlement;

(2) by agreed order;

(3) by withdrawal of the complaint;

(4) by withdrawal of a protest;

(5) by dismissal for want of prosecution;

(6) by dismissal for want of jurisdiction;

(7) by summary judgment or summary disposition;

(8) by default judgment; or

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

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

(c) In a contested case in which the board has delegated final order authority under subsections (a) or (b) of this section, a motion for rehearing shall be filed with and decided by the final order authority delegate.
SUBCHAPTER C. LICENSES, GENERALLY

§215.81. Purpose and Scope[Objective].
This subchapter implements [The objective of this subchapter is to implement the intent of the legislature as declared in] Occupations Code, Chapter 2301[7] and Transportation Code, Chapter 503, regarding licenses required [by prescribing rules to regulate businesses requiring licenses] under those chapters.

§215.82. Duplicate Licenses and Plates.[Administration of Licensing Fees.]

(a) A request for a duplicate license must:

(1) be made on a department-approved form; [division-approved form,]

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

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

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

(1) did not receive the original license; and

(2) makes the request within 45 days of the date the license was mailed to the license holder. [licensee.]
[(b) A licensee that fails to renew the license in a timely manner because the person was on active duty in the United States armed forces and serving outside Texas shall be exempt from any increased fee or penalty imposed by the department for failing to renew the license in a timely manner.]

(c) A license holder may receive a replacement metal dealer's license plate, if applicable, at no charge if the license holder:

(1) did not receive the metal dealer's license plate; and

(2) makes the request within 45 days of the date the metal dealer's license plate was mailed to the license holder and on a department approved form.

§215.83. License Applications, Amendments, or Renewals.

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

(1) on a form approved by the department;

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

(3) accompanied by the required fee, paid by check,

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credit card, or by electronic funds transfer, drawn from an account held by the applicant or license holder, or drawn from a trust account of the applicant's attorney or certified public accountant; and

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

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

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

(d) Prior to the expiration of a [its existing] license, a license holder or authorized representative [licensee] must file with the department a sufficient license renewal application [on a form approved by the department].

Failure to receive notice of license expiration from the department does not relieve the license holder [licensee] from the responsibility to timely file a sufficient license renewal application. A license renewal application is timely filed if:

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[renewal]

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

or

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

(e) An application for a new license or license amendment filed with the department must be sufficient. An application is sufficient if the application:

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

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

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

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

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

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

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

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

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(i) The department will process an application for a new
license, license amendment, or license renewal filed by a
military service member, military spouse, or military veteran in
accordance with Occupations Code, Chapter 55. A license holder
who fails to timely file a sufficient application for a license
renewal because that license holder was on active duty is exempt
from any increased fee or penalty imposed by the department for
failing to renew the license in a timely manner.

[(c) A license renewal application is timely filed if:

(1) the sufficient license renewal application is
received by the department on or before the license expiration
date; or]

(2) a legible postmark on the envelope transmitting
the license renewal application clearly indicates that the
renewal application was mailed on or before the license
expiration date.]

(d) A timely and sufficient application shall be accepted
for processing. The department will review the application and
make a final determination whether to approve or deny the
application.

(j)[(e)] A license holder who timely files a sufficient
license renewal application in accordance with subsection (d) of
this section [A licensee that submits a timely and sufficient
license renewal application] may continue to operate under the expired license until the license renewal application is [finally] determined.

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

(g) License plates issued pursuant to Transportation Code, Chapter 503, Subchapter C expire upon the date the associated license expires or when a timely and sufficient license renewal application is finally determined, whichever is later.]

(h) A licensee may rebut a determination that a renewal application was not timely or sufficient by submitting evidence to the department demonstrating the renewal application was
timely and sufficient. Such evidence must be received by the
department within ten (10) calendar days of the date the
department issues notice that a timely or sufficient license
renewal application was not received by the department.]

(l)[(i)] The department shall accept a [A] late license
renewal application [may be filed] up to 90 days after the date
the license expires. In accordance with subsection (k) of this
section, the license holder [license expiration date; however,
the applicant] is not authorized to continue licensed activities
after the date the license expires [license expiration date]
until the department approves the late license renewal
application. If the department grants a license renewal under
this section [renewal license is granted under this subsection],
the licensing period begins on the date the department issues
the renewed license. The license holder [license is issued and
the licensee] may resume licensed activities upon receipt of the
department's written verification or upon receipt of the renewed
license. [the license.]

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

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activities requiring a license.

(n) A metal dealer’s license plate issued in accordance with Transportation Code, Chapter 503, Subchapter C expires on the date the associated license expires or when a license renewal application is determined, whichever is later.

§215.84. Brokering, New Motor Vehicles.

(a) For purposes of this subchapter, the phrase "arranges or offers to arrange a transaction," as used in Occupations Code, §2301.002, includes the practice of arranging or offering to arrange a transaction involving the sale of a new motor vehicle for a fee, commission, or other valuable consideration. Advertising is not brokering, provided [Under Occupations Code, §§2301.002, 2301.006, 2301.251 and 2301.252, the definition of "arranges or offers to arrange a transaction" is construed as soliciting or referring buyers for new motor vehicles for a fee, commission, or other valuable consideration. Advertising would not be included in this definition as long as] the person’s business primarily includes the business of broadcasting, printing, publishing, or advertising for others in their own names.

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

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

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

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

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

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

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

(c) Subsections of this section do not apply to any person or entity exempt from the broker definition in Occupations Code, §2301.002.

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


(a) Transportation Code, §503.021 prohibits a person from engaging in the business as a dealer, directly or indirectly, including by consignment without a GDN. The phrase "directly or indirectly" includes the practice of arranging or offering to arrange a transaction involving the sale of a used motor vehicle for a fee, commission or other

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valuable consideration. A person who is a bona fide employee of a dealer holding a GDN and acts for the dealer is not a broker for the purposes of this section.

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

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

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

(3) All participants pay the same fee for participation in the program. The program fee shall be a weekly, monthly, or annual fee, regardless of the size, location, or line-makes sold by the dealer.
(4) A person is not to be charged a fee on a per referral fee basis or any other basis that could be considered a transaction-related fee.

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

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

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

§215.87. License and Metal Dealer's License Plate Terms and Fees.

(a) Except as provided by other law, the term of a license or metal dealer's license plate issued by the department [division] under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 is two years.

(b) A metal dealer's license plate [Metal plates] issued by the department expires on the date the associated license expires. [division in connection with a license expire on the

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same date as the license.

(c) The fee for a license or metal dealer's license plate is computed by multiplying the applicable annual fee by the number of years of the license term. The entire amount of the fee is due at the time of application for the license or license renewal.

§215.88. Criminal Offense and Action on License.

(a) This section describes board or department action on a license application or an existing license issued by the department under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, including denial, revocation, and suspension, and identifies the types of criminal offenses that directly relate to the duties and responsibilities of the occupations licensed under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301.

(b) Except as provided by subsection (e) of this section, the board or department will consider denial of an application for a license or revocation or suspension of a license in accordance with the requirements of:

(1) Occupations Code, Chapter 53;

(2) Occupations Code, Chapter 2301, Subchapter N;

(3) Government Code, Chapter 2001 [Administrative

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(c) The terms "applicant" or "person" as used in this section includes:

1. an applicant for a license or other authorization issued by the department;
2. the holder of a license or other authorization issued by the department;
3. a person's spouse with a community property interest in the entity licensed or to be licensed by the department;
4. a controlling shareholder of a business entity licensed by the department;
5. a person holding 50% or more ownership interest in a business entity licensed by the department;
6. a person acting in a representative capacity for the applicant or license holder, including an owner, president, vice-president, member of the board of directors, chief executive officer, chief financial officer, chief information officer, chief managing officer, treasurer, controller, director, principal, manager of business affairs, or similar position of a business entity; or
7. any person who becomes a person described in this
subsection.

(d) An action taken by the board [Board] or department under this section may be based on an act or omission by an officer, director, partner, trustee, or other person acting in a representative capacity for the applicant or license holder.

(e) Upon receipt of an order or notice regarding an applicant or license holder issued under Family Code, Chapter 232, the board [Board] or department will deny [refuse to approve] an application for issuance of a license, will not renew an existing license, or will suspend a license or other authorization issued by the department. The board's [Board] or department's action, based upon receipt of an order or notice issued under Family Code, Chapter 232, on the application for a license or existing license is not subject to the provisions of Government Code, Chapter 2001, including notice, hearing, or opportunity for hearing. Upon [On] receipt of an order vacating or staying an order suspending a license issued under Family Code, Chapter 232, the board [Board] or department will issue the affected license to the applicant or license holder if the applicant or license holder is otherwise qualified for the license.

(f) No person currently imprisoned for conviction of a
felony under any state or federal law is eligible for or may retain a license or authorization issued by the department.

(g) The board [Board] or department will revoke a license issued by the department upon the license holder's [licensee's] imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(h) The board [Board] or department may revoke a license issued by the department upon the license holder's imprisonment for a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, of a person defined by [in] subsection (c) of this section or identified in subsection (d) of this section.

(i) The board [Board] or department may suspend a license, revoke a license, or disqualify a person from receiving a license issued by the department if:

(1) a person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. Any such action shall be made after consideration of the factors listed in Occupations Code, §53.022 and.§53.023, and the guidelines issued by the department pursuant to Occupations Code, §53.025;

(2) a person has been convicted of an offense that
does not directly relate to the duties and responsibilities of
the licensed occupation and that was committed less than five
years before the date the person applies for the license;

(3) a person has been convicted of an offense listed
in Code of Criminal Procedure, Article 42.12, Section 3g;
[Section 3g, Article 42.12, Code of Criminal Procedure.] or

(4) a person has been convicted of a sexually violent
offense, as defined by Code of Criminal Procedure, Article
62.001. [Article 62.001, Code of Criminal Procedure.]

(j) For purposes of Occupations Code, §53.021, the
following criminal offenses directly relate to the duties and
responsibilities of the occupations licensed by the department:

(1) Penal Code, Chapter 15, Preparatory Offenses;
(2) Penal Code, Chapter 16, Criminal Instruments,
Interception of Wire or Oral Communication, and Installation of
Tracking Device;
(3) Penal Code, Chapter 19, Criminal Homicide;
(4) Penal Code, Chapter 20, Kidnapping, Unlawful
Restraint, and Smuggling of Persons;
(5) Penal Code, Chapter 20A, Trafficking of Persons;
(6) Penal Code, Chapter 21, Sexual Offenses;
(7) Penal Code, Chapter 22, Assaultive Offenses;
(8) Penal Code, Chapter 25, Offenses Against [against]
the Family;

(9) Penal Code, Chapter 28, Arson, Criminal Mischief, and Other Property Damage or Destruction;

(10) Penal Code, Chapter 29, Robbery;

(11) Penal Code, Chapter 30, Burglary and Criminal Trespass;

(12) Penal Code, Chapter 31, Theft;

(13) Penal Code, Chapter 32, Fraud;

(14) Penal Code, Chapter 33, Computer Crimes;

(15) Penal Code, Chapter 33A, Telecommunications Crimes;

(16) Penal Code, Chapter 34, Money Laundering;

(17) Penal Code, Chapter 35, Insurance Fraud;

(18) Penal Code, Chapter 36, Bribery and Corrupt Influence;

(19) Penal Code, Chapter 37, Perjury and Other Falsification;

(20) Penal Code, Chapter 38, Obstructing Governmental Operation;

(21) Penal Code, Chapter 71, Organized Crime;

(22) Code of Criminal Procedure, Chapter 62, Sex Offender Registration Program, involving an offense for which the person has been required to register as a sex offender;
(23) Transportation Code, Chapter 501, Certificate of Title Act;
(24) Transportation Code, Chapter 502, Registration of Vehicles;
(25) Transportation Code, Chapter 503, Dealer's and Manufacturer's Vehicle License Plates;
(26) Transportation Code, Chapter 504, License Plates;
(27) Transportation Code, Chapter 520, Miscellaneous Provisions;
(28) Transportation Code, Chapter 547, Vehicle Equipment;
(29) Transportation Code, Chapter 548, Compulsory Inspection of Vehicles;
(30) Transportation Code, Chapter 727, Modification of, Tampering with, and Equipment of Motor Vehicles;
(31) Transportation Code, Chapter 728, Subchapter B, Sale of Master Key for Motor Vehicle Ignitions;
(32) Occupations Code, Chapter 2301, Subchapter R, Regulation of Certain Commercial Uses of Motor Vehicles;
(33) Tax Code, Chapter 23, Appraisal Methods and Procedures;
(34) Tax Code, Chapter 152, Taxes on Sale, Rental, and Use of Motor Vehicles;

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(35) Business and Commerce Code, Chapter 17, Deceptive Trade Practices;

(36) Health and Safety Code, Chapter 365, Litter;

(37) Health and Safety Code, Chapter 481, Texas Controlled Substances Act;

(38) Health and Safety Code, Chapter 482, Simulated Controlled Substances;

(39) Health and Safety Code, Chapter 483, Dangerous Drugs;

(40) Water Code, Chapter 7, Enforcement;


(42) United States Code, Title 18, Chapter 63, Mail Fraud and Other Fraud Offenses;

(43) United States Code, Title 49, Chapter 301, Motor Vehicle Safety, especially 49 U.S.C. §30170, Criminal Penalties; or


§215.89. Fitness.

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

   (1) the requirements of Occupations Code, Chapter 53;
   (2) the provisions of Occupations Code, §2301.651;
   (3) any specific statutory licensing criteria or requirements;
   (4) mitigating factors; and
   (5) other evidence of a person's fitness, as allowed by law, including the standards identified in subsection (b) of this section.

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

   (1) fails to meet or maintain the qualifications and requirements of licensure;
   (2) is convicted by any local, state, or federal authority of an offense listed in §215.88(j) of this title (relating to Criminal Offense and Action on License) or is convicted in any jurisdiction of an offense containing elements
that are substantially similar to the elements in the offenses in §215.88(j) [of this title];

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

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

(5) is insolvent or fails to obtain or maintain financial resources sufficient to meet the financial obligations of the licensee;

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

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

(8) was or is a person defined by §215.88(c) [in §215.88(c) of this title] or identified in §215.88(d) [of this title], or a manager or affiliate of a sole proprietorship, partnership, corporation, association, trust, estate, or other legal entity whose actions or omissions could be considered unfit, who is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment;

(9) has an ownership interest with a person whose actions or omissions could be considered unfit, who is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action, including suspension, revocation, denial, corrective
action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment, by the board [Board], department, or any local, state, or federal regulatory authority;

(10) is a business entity that is operated, managed, or otherwise controlled by a relative or family member and that person could be considered unfit, is ineligible for licensure, or whose current or previous license, permit, or other authorization issued by any local, state, or federal regulatory authority has been subject to disciplinary action, including suspension, revocation, denial, corrective action, cease and desist order, or assessment of a civil penalty, administrative fine, fee, or similar assessment; or

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

This subchapter implements the intent of the legislature as declared in the Occupations Code, Chapter 2301[7] and Transportation Code, Chapters 503 and 1000 - 1005. [1000 through 1005, by prescribing rules to regulate businesses requiring licenses under the Code.]

$215.103. Service-only Facility.

(a) A service-only facility is a location occupied and operated by a franchised dealer that is a completely separate, noncontiguous site, from the franchised dealer's new motor vehicle sales and service or sales only location, where the franchised dealer will only perform warranty and nonwarranty repair services. Except as allowed in subsection (d) of this section, warranty repair services may only be performed at either a licensed dealership or a licensed service-only facility.

(b) A franchised dealer must obtain a license to operate a service-only facility. A dealer may not obtain a service-only facility license to service a particular line of new motor

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vehicles, unless the dealer is franchised and licensed to sell that line.

(c) A service-only facility is considered a dealership [under Occupations Code, §2301.002(8), and is therefore] subject to protest under Occupations Code, Chapter 2301. [§2301.652.]

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

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

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§215.104. Changes to Franchised Dealer's [Dealer] License.

(a) In accordance with Occupations Code, §2301.356, a franchised dealer must file an application to amend the franchised dealer's license in order to request inclusion of an additional line-make at the dealer's currently licensed showroom.

  (1) In accordance with §215.110 of this title (relating to Evidence of Franchise), the franchised dealer must attach to the amendment application a copy of:

    (A) the executed franchise agreement;

    (B) the required excerpt from the executed franchise agreement; or

    (C) an evidence of franchise form completed by the manufacturer, distributor, or representative.

  (2) The amendment application for an additional franchise at the showroom is considered an original application and is subject to protest, in accordance with Occupations Code, Chapter 2301.

(a) To effectuate Occupations Code, §2301.356, every licensed dealer who proposes to conduct business at a currently licensed showroom under a franchise that is additional to or that differs from the franchise or franchises on which the
license is then based shall file an application to amend the
license on the form prescribed by the division, attaching a copy
of the franchise agreement. The amended application will be
considered as if it were an original application to operate
under the additional franchise as to all matters except those
reflected by the license as issued.]

(b) A franchised dealer may propose to sell or [licensed
dealer who proposes to sell and/or] assign to another any
interest in the licensed entity, whether a corporation or
otherwise, provided [so long as] the physical location of the
licensed entity remains the same.]

(1) The franchised dealer shall notify the department
[division] in writing within 10 [ten] days of the sale or
assignment of interest [change] by filing an application to
amend the franchised dealer's license.

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

(3) A publicly-held corporation needs only to
[Publicly-held corporations need only] inform the department
[division] of a change in ownership if one person or entity
acquires 10% or greater interest in the licensed entity.

(c) A franchised dealer is required to file an amendment
application within 10 days of a license change, including:

(1) deletion of a line-make from the dealer's license;
(2) a change of assumed name on file with the Office
of the Secretary of State or county clerk;
(3) a change of mailing address;
(4) a change of telephone number;
(5) a change of facsimile number; or
(6) a change of email address.

(d) A franchised dealer is required to file a business
entity amendment application within 10 days of an entity change,
including:

(1) a change in management, dealer principal, or
change of other person who is in charge of a franchised dealer's
business activities, including a managing partner, officer,
director of a corporation, or similar person; or
(2) a change of legal entity name on file with the
Office of the Secretary of State.

[(c) In the event of a change in management reflected by a]
change of the general manager, dealer principal, or other person who is in charge of a licensee's business activities, whether a managing partner, officer, or director of a corporation, or otherwise, the division shall be advised by means of an application for an amended license.)

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

(f) [e] If a dealer adopts a plan of conversion under a state or federal law that allows one legal entity to be converted into another legal entity, only an application to amend the license is necessary to be filed with the department [division]. The franchise agreement on file with the department [division] continues to apply to the converted entity. If a license holder becomes another legal entity [the entity change
§215.105. Notification of License Application; Protest Requirements.

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

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

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

d) [c] A person holding a franchised dealer's license [Any dealer licensee holding a franchise] for the sale of the same line-make of a new motor vehicle as proposed for sale in the subject application and that has [with] standing to protest the application may file with the department [division] a notice of protest opposing [in opposition to the application and] the granting of a license.

(e) [d] A franchised [The] dealer that wishes to protest the application shall give notice in accordance with Occupations Code, Chapter 2301. [its notice of protest in the following manner.]

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

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

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

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

[(e) The provisions of this section shall not be applicable
to any application filed with the division for a dealer license
as a result of the purchase or transfer of an existing entity
holding a current franchise license which does not involve any
physical relocation of the purchased or transferred line-makes.]

§215.106. Time for Filing Protest.

(a) A notice of protest must be:

(1) received by the department [in the division
offices in Austin] not later than 5:00 p.m. Central Standard
1 Time (CST) on the date 15 days from the date of mailing of the department's notification to the license holder of the filing of the application;

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

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

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

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

(2) the required filing fee is not remitted within 20 days from the date of mailing of the department's notification.
to the license holder of the filing of the application.

[(b) Failure to file a formal notice of protest within the specified time period shall result in the disallowance of the protest.]

[(c) Failure to remit the statutorily required protest filing fee within the specified time period shall result in the disallowance of the protest.]

§215.108. Addition or Relocation of Line-make.

An application to amend an existing new motor vehicle dealer's license for the addition of another line-make at the existing dealership or for the relocation of a line-make to the existing dealership shall be deemed an "application to establish a dealership" insofar as the line-make to be added is concerned, and shall be subject to the provisions of §215.105 of this title (relating to Notification of License Application; Protest Requirements) and §215.106 of this title (relating to Time for Filing Protest). [§§215.105-215.107 of this subchapter (relating to Notification of License Application; Protest Requirements; Time for Filing Protest; and Hearing)].

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

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

(2) the manufacturer or distributor of the line-make gives notice to the department and to other dealers franchised for the same line-make that meet the provisions of [division and to its other like-line dealers pursuant to] Occupations Code, §2301.652(b) [within 60 days following the closing of the prior dealership];

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

(4) the application is filed with the department

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§215.110. Evidence of Franchise.

(a) Upon application for a new motor vehicle dealer's license or an amendment of an existing new motor vehicle dealer's license to add a line-make, the applicant must submit a photocopy of the pages of the franchise agreement(s) that reflect the parties to the agreement(s), and each line-make listed in the application. To meet this requirement temporarily for the purpose of application processing, a form prescribed by the department and completed by the manufacturer or distributor may be submitted with the application in lieu of the information described in this subsection.
temporarily, for purposes of application processing]. The applicant must submit the required photocopies of the franchise agreement(s) described in this subsection immediately upon the applicant's receipt of the franchise agreement(s).

(b) Upon application to relocate a new motor vehicle dealership, [in addition to other attachments required to be submitted with the application,] the applicant must submit a form prescribed by the department and completed by the manufacturer or distributor that identifies the license holder and the new location.

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

A notice of termination or discontinuance [noncontinuance] of a dealer's franchise shall be given by a manufacturer or distributor in accordance with the requirements of Occupations Code, §2301.453, not less than 60 days prior to the effective date of the franchise termination or discontinuance [thereof]. A notice of protest of the franchise termination or discontinuance [noncontinuance] by a dealer pursuant to Occupations Code, §2301.453, shall be in writing and shall be filed with the

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

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

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

(1) does not exceed six consecutive days;

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

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

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

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

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

(2) be accompanied by all required attachments;

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

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

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

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

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

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

(g) Dealer participation requirements. A dealer of new motor homes requesting approval to participate in a show must submit a sufficient application to the department. To be sufficient, the application must be on a form prescribed by the department and accompanied by all required attachments.

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

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

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

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

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

(1) may quote a price;

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

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

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

[(a) A dealer licensed by the division who is authorized to sell new motor homes may attend and sell at any motor home show that has been approved by the division.]

[(b) The scope of this rule is expressly limited to new motor home shows and exhibitions. It does not apply to other types of motor vehicle distribution activities, static displays, or any other provision of Occupations Code, Chapter 2301 other than §2301.355 and §2301.358. Other motor vehicle shows, exhibitions, or static displays will be reviewed by division staff on a case by case basis.]

[(c) Approval must be sought by the show promoter or coordinator no less than 30 days and no more than 90 days prior to the proposed show date. All applications for motor home shows must be submitted on the forms and in the manner prescribed by the division, and must be accompanied by all required attachments. If the promoter or coordinator is not a licensee, an association of licensees, or organization of licensees, the application must be accompanied by a $25,000 surety bond to assure compliance with Occupations Code, Chapter 2301 and department rules, as well as other regulations pertaining to the

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There must be at least three dealers participating in the show, representing at least three different line-makes at the show, for the show to qualify for approval. Each participating new motor vehicle dealer must have a current, valid, Texas new motor vehicle dealer's license to sell the particular line of motor home to be shown.

The duration of any motor home show shall not exceed six consecutive days. If a show is conducted over a consecutive Saturday and a Sunday, sales will be suspended by all motor vehicle dealers on the same Saturday or Sunday to achieve uniform compliance with the Blue Law under Transportation Code, Chapter 728, Subchapter A. On the day sales are suspended, a motor home dealer:

1. may quote a price and discuss finance options;
2. may not sell, offer to sell, negotiate a price, or enter into a contract or letter of intention to contract for the sale of the product;
3. may open and attend to the motor home product;
4. is not required to remove or cover the suggested retail price the manufacturer may have affixed to the motor home.
[(f) No motor home show shall occur in a county within 90 days of a previous motor home show within that county. Upon a showing of good cause, the division may authorize additional motor home shows in any county. Any motor home dealer may attend a motor home show so long as no like line dealership is located within 70 miles of the show site, unless a written waiver is obtained from the like line dealer or dealers located within 70 miles of the show site. Any like line dealer within 70 miles of the show site has a superior and exclusive right to represent that line at the proposed show. If there are two or more like line dealers located within 70 miles of the show site, each has equal right to participate in the proposed show.]

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

(a) In the absence of a showing of good cause, an [An] application for a new motor vehicle dealer's license of [in] which a manufacturer or distributor[, as those terms are defined in Occupations Code, Chapter 2301,] owns any interest in or has control of the dealership entity must be submitted to the department [division] no later than 30 days before:

(1) the opening of the dealership;[7]

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(2) close of the buy-sell agreement;

(3) the expiration of the current license, whichever is the case).

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

(c) A request for an extension of the initial 12 month period for manufacturer or distributor ownership or control of a new motor vehicle dealership in accordance with Occupations Code, §2301.476(e), must be submitted to the department in accordance with subsection (a) of this section along with a sufficient application to renew the new motor vehicle
dealer's license. The request must contain a detailed explanation, including appropriate documentary support, to show the manufacturer's or distributor's good cause for failure to sell the dealership within the initial 12 month period. The director will evaluate the request and determine whether the license should be renewed for a period not to exceed 12 months or deny the renewal application. If the renewal application is denied, the manufacturer or distributor may request a hearing on the denial in accordance with Occupations Code, §§2301.701 - 2301.713.

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

(e) The department will give notice of the hearing described in subsection (d) of this section to all other
franchised dealers [dealer licensees] holding franchises for the
sale and service or service only of the same line-make of new
motor vehicles that [who] are located in the same county in
which the dealership owned or controlled by the manufacturer or
distributor is located or in an area within 15 miles of the
dealership owned or controlled by the manufacturer or
distributor. Such dealers, if any, will be allowed to intervene
and protest the granting of the subsequent extension. Notices of
intervention by dealers afforded a right to protest under
Occupations Code, §2301.476(e)[,] must be filed with the
department [division's Docket Clerk] within 15 days of the date
of mailing of the notice of hearing, and a copy must be [with a
copy] provided to the manufacturer or distributor. The
department will reject a notice of intervention if the notice is
not filed at least 30 days before: [Failure to file a formal
notice of intervention within the specified time period will
result in the disallowance of the intervention.]

(1) the opening of the dealership;
(2) close of the buy-sell agreement; or
(3) the expiration of the current license.

(f) A hearing under subsection (d) [subsections (d) and
two] of this section will be conducted as expeditiously as
possible, but not later than 120 days after receipt of the
subsequent request for extension from the manufacturer or
distributor. An [A SOAH] ALJ will prepare a written decision and
proposed findings of fact and conclusions of law as soon as
possible, but not later than 60 calendar days after the hearing
is closed. The new motor vehicle dealer's license that is the
subject of the hearing will continue in effect until a final
decision on the request for a subsequent extension is rendered
by the board. [Board on the request for a subsequent extension.]

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

(h) An application for a new motor vehicle dealer's license
of [in] which a manufacturer or distributor owns any interest in
the dealership entity in accordance with [under the terms of]
Occupations Code, §2301.476(g)[7] must contain sufficient
documentation to show that the applicant meets the requirements
of Occupations Code, §2301.476(g). [the following:]

[(1) that the dealer development candidate is part of
a group of persons who have historically been underrepresented
in the manufacturer's or distributor's dealer body or is an

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otherwise qualified person who lacks the resources to purchase a dealership outright.]

[(2) that the manufacturer or distributor is in a bona fide relationship with the dealer development candidate;]

[(3) that the dealer development candidate has made a significant investment in the dealership, subject to loss;]

[(4) that the dealer development candidate has an ownership interest in the dealership; and]

[(5) that the dealer development candidate operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions.;]


A manufacturer or distributor [who is] licensed under Occupations Code, Chapter 2301[.] or a wholly owned [wholly-owned] subsidiary of a manufacturer or distributor, may sell motor vehicles it owns to dealers through a licensed Texas wholesale motor vehicle auction. A GDN issued to a licensed manufacturer, distributor, or wholly owned subsidiary of a

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manufacturer or distributor shall be canceled, unless otherwise
allowed under Occupations Code, Chapter 2301. [General
distinguishing numbers currently issued to licensed
manufacturers, distributors, or their wholly-owned subsidiaries
shall be cancelled on the date this rule becomes effective,
except where otherwise allowed under the Code.]

§215.115. Manufacturer, Distributor, and Converter Records.

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

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

[(a) Manufacturers and distributors must keep records of
all vehicles they sell to any person in this state for a minimum
period of 48 months. These records shall be made available for
inspection and copying by a representative of the department]

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(b) Converters must keep records of all vehicles converted and distributed to Texas franchised dealers for a minimum period of 48 months. These records shall be made available for inspection and copying by a representative of the department during business hours.

(c) A manufacturer, distributor, or converter is required to maintain at its licensed location a record reflecting each purchase, sale, or conversion for a minimum period of 24 months.

[Records reflecting purchases, sales, or conversions for at least the preceding 24 months must be maintained at the licensed location.] Records for prior time periods may be kept off-site.

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

(e) Records required to be maintained [kept] and made available to the department must include the following: [shall contain the following information:]

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

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(2) the VIN [vehicle identification number];
(3) the name and address of the purchasing dealer or converter;
(4) a copy of or a record [copies of or records] with the information contained in the manufacturer's certificate of origin [Manufacturer's Certificate of Origin] or title;
(5) information regarding the prior status of the motor vehicle such as the Reacquired Vehicle Disclosure Statement;
(6) the repair history of any motor vehicle subject to a warranty complaint;
(7) technical service bulletin [bulletins] or equivalent advisory; and [advisories; and,]
(8) any audit of a dealership. [audits of dealerships.]

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

§215.116. Lease or Sublease Listing.

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

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

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


(a) A market value property appraisal assessment made in accordance with Occupations Code, §2301.482(c) requires three general certified real estate appraisers certified by the State of Texas.

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

(c) To determine market value of property in accordance with Occupations Code, §2301.482(c), an average of the market value property appraisals will be calculated from the independent market value property assessment determinations of
§215.118. Determination of Affected County for Dealership Relocation.

The most recent population data reported by the federal decennial census is used to identify an affected county defined by Occupations Code, §2301.6521.

§215.119. Standing to Protest.

(a) A protesting dealer has the burden to demonstrate standing to protest.

(b) Standing requirements are established by the type of application.

(1) Protest of an application to establish a dealership or to add a new line-make to an existing dealership requires the protesting dealer to meet standing requirements under Occupations Code, §2301.652;

(2) Protest of an application to relocate a dealership requires the protesting dealer to meet standing requirements under Occupations Code, §2301.652;

(3) Protest of an application to relocate a dealership within an affected county or from an affected county to an
adjacent affected county requires the protesting dealer to meet standing requirements under Occupations Code, §2301.6521;

(4) Protest of an application to relocate an economically impaired dealership requires the protesting dealer to meet standing requirements under Occupations Code, §2301.6522; and

(5) Protest of an application filed by a manufacturer, distributor, or representative for an extension of time for ownership or control of a dealership requires the protesting dealer to meet standing requirements under Occupations Code, §2301.476.

(c) A person has standing to protest an application to establish a dealership or to add a franchised line-make at an existing dealership if:

(1) the person is a franchised dealer of the same line-make; and

(2) the person's dealership is located either in the same county as, or within 15 miles of, the dealership for which the application was filed.

(d) Except as provided in subsections (e) and (f) of this section, a person has standing to protest an application to
relocate a dealership or to relocate a franchised line-make of an existing dealership if:

(1) the person is a franchised dealer of the same line-make;

(2) the person's dealership is located either in the same county as, or within 15 miles of, the dealership for which the application for relocation is filed;

(3) the proposed relocation site is more than two miles from the location where the dealership is currently licensed; and

(4) the proposed relocation site is nearer to the protesting franchised dealer than the location from which the relocating dealership is currently licensed.

(e) An application may be filed under Occupations Code, §2301.6521 to relocate a dealership from a location in an affected county to a location that is either within the same affected county or in an adjacent affected county.

(1) No dealer has standing to protest an application filed in accordance with this subsection if the proposed relocation site is two miles or less from the relocating dealer's existing licensed location.

(2) No dealer has standing to protest an application
filed in accordance with this subsection if the proposed
relocation site is farther from the protesting dealer's licensed
location than the relocating dealer's existing licensed
location.

(3) If a dealership of the same line-make as the
relocating dealership is located within 15 miles of the proposed
relocation site, then a person has standing to protest an
application to relocate[7] filed in accordance with this
subsection, if:

(A) the person is a franchised dealer of the same
line-make;

(B) the person's dealership is located within 15
miles of the proposed relocation site;

(C) the proposed relocation site is more than two
miles from the location where the dealership is currently
licensed; and

(D) the proposed relocation site is nearer to the
protesting franchised dealer than the location from which the
relocating dealership is currently licensed.

(4) If no dealership of the same line-make as the
relocating dealership is located within 15 miles of the proposed
relocation site, then a person has standing to protest an
application to relocate filed in accordance with this subsection, if:

(A) the person is a franchised dealer of the same line-make;

(B) no other dealership of the same line-make is located nearer to the proposed relocation site;

(C) the person's dealership is located in the same affected county as the relocating dealership is proposed to be located;

(D) the proposed relocation site is more than two miles from the location where the relocating dealership is currently licensed; and

(E) the proposed relocation site is nearer to the protesting franchised dealer than the location from which the relocating dealership is currently licensed.

(f) If an economically impaired dealer files an application under Occupations Code, §2301.6522 to relocate its dealership, then a dealer may have standing to protest the application if:

(1) the dealer is franchised for a line-make that is the same as a line-make proposed to be relocated;

(2) the proposed relocation site is more than two miles from the location where the relocating dealership is currently licensed.
miles closer to the protesting dealer's dealership than the site
of the economically impaired dealer's existing licensed
location; and

(3) there is no other dealer located nearer to the
proposed relocation site that is franchised for a line-make that
is proposed to be relocated.

(g) A dealer has standing to protest an application for an
extension of time that was filed by a manufacturer, distributor,
or representative under Occupations Code, §2301.476[.] if:

(1) the protesting dealer is franchised for a line-
make being sold or serviced from the dealership owned or
controlled by a manufacturer, distributor, or representative;

and

(2) the protesting dealer is located either in the
same county as, or within 15 miles of, the dealership owned or
controlled by the manufacturer, distributor, or representative.
SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

§215.131. Purpose and Scope. [Objective.]

This subchapter implements [The objective of this subchapter is to implement the intent of the legislature as declared in] Transportation Code, Chapter 503[1] and Occupations Code, Chapter 2301[, by prescribing rules to regulate businesses requiring general distinguishing numbers].

§215.132. Definitions.

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

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

(2) Charitable organization--Has the meaning assigned by Transportation Code, §503.062(e). [An organization that is established and exists for the purpose of relieving poverty, the advancement of education, religion, or science, the promotion of health, governmental, or municipal purposes, or other purposes beneficial to the community without financial gain.]

(3) Consignment sale--The owner-authorized sale of a motor vehicle by a person other than the owner[, under the terms of a written authorization from the owner].

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1. [(4) Dealer—Any person who is regularly and actively
2. engaged in the business of buying, selling, or exchanging new or
3. used motor vehicles, motorcycles, motor homes, mobility motor
4. vehicles, house trailers, or trailers or semitrailers as defined
5. in Transportation Code, §§501.001 et seq., or Transportation
6. Code, §§502.001 et seq., at either wholesale or retail, either
7. directly, indirectly, or by consignment.]
8. [(5) Independent mobility motor vehicle dealer—A
9. nonfranchised dealer who]
10. [(A) holds a general distinguishing number issued
11. by the department under Transportation Code, Chapter 503;]
12. [(B) holds a converter's license issued under
13. Occupations Code, Chapter 2301;]
14. [(C) is engaged in the business of buying, selling, or exchanging mobility motor vehicles and servicing or
15. repairing the devices installed on mobility motor vehicles at an
16. established and permanent place of business in this state, and]
17. [(D) is certified by the manufacturer of each
18. mobility device that the dealer installs, if the manufacturer
19. offers that certification.]
20. (4)[(6)] House trailer—A nonmotorized vehicle
21. designed for human habitation and for carrying persons and
22. property on [upon] its own structure and for being drawn by a
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motor vehicle. A house trailer [The term] does not include manufactured housing. A towable recreational vehicle, [Towable recreational vehicles] as defined by [in] Occupations Code, §2301.002, is [are] included in the terms "house trailer" or "travel trailer."

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

((8) Mobility motor vehicle--A motor vehicle that is designed and equipped to transport a person with a disability and that+

[(A) has a chassis that contains:]

[(i) a permanently lowered floor or lowered frame; or]

[(ii) a permanently raised roof and raised door;]

[(B) contains at least one of the following:]

[(i) an electronic or mechanical wheelchair, scooter, or platform lift that enables a person to enter or exit the vehicle while occupying a wheelchair or scooter;]

[(ii) an electronic or mechanical wheelchair ramp; or]

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[(iii) a system to secure a wheelchair or
scooter to allow for a person to be safely transported while
occupying the wheelchair or scooter; and]

[(C) is installed as an integral part of
permanent attachment to the motor vehicle's chassis.]

(6) [§ 9] Person--Has the meaning assigned by
Occupations Code, §2301.002. [Any individual, firm, partnership,
corporation, or other legal entity.]

(7) [§ 10] Sale--With regard to a specific vehicle, the
transfer of possession of that vehicle to a purchaser for
consideration.

(8) [§ 11] Temporary tag--A buyer's temporary tag,
converter's temporary tag, or dealer's temporary tag as
described under Transportation Code, Chapter 503. [A buyer tag,
converter tag, or dealer tag.]

(9) [§ 12] Towable recreational vehicle--Has the same
meaning as "house trailer" defined by this section. [See
definition for House Trailer in this section.]

(10) [§ 13] Travel Trailer--Has the same meaning as
"house trailer" defined by this section. [See definition for
House Trailer in this section.]

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

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(12) VIN--Vehicle identification number.

[(14) Wholesale dealer--A licensed dealer who only

sells or exchanges vehicles with other licensed dealers.]

§215.133. General Distinguishing Number.

(a) No person may engage in business as a dealer unless

that person has a currently valid general distinguishing number

assigned by the department [division] for each location from

which the person engages in business. If a dealer consigns more

than five vehicles in a calendar year for sale from a location

other than the location for which the dealer holds a general

distinguishing number, the dealer must also hold a general

distinguishing number for the consignment location.

(b) The provisions of subsection (a) of this section do not

apply to:

(1) a person who sells or offers for sale fewer than

five vehicles of the same type as herein described in a calendar

year and such vehicles are owned by him and registered and

titled in his name;

(2) a person who sells or offers to sell a vehicle

acquired for personal or business use if the person does not

sell or offer to sell to a retail buyer and the transaction is

not held for the purpose of avoiding the provisions of

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Transportation Code, §503.001 et seq., and this subchapter;

(3) an agency of the United States, this state, or local government;

(4) a financial institution or other secured party selling a vehicle in which it holds a security interest, in the manner provided by law for the forced sale of that vehicle;

(5) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;

(6) an insurance company selling a vehicle acquired from the owner as the result of paying an insurance claim;

(7) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in Transportation Code, §683.077, if the special interest vehicle is at least 12 years old;

(8) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction if neither legal nor equitable title passes to the auctioneer and if the auction is not held for the purpose of avoiding another provision of Transportation Code, §503.001 et seq., and this subchapter; and provided that if an auction is conducted of vehicles owned, legally or equitably, by a person...
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1 who holds a general distinguishing number, the auction may be
2 conducted only at a location for which a general distinguishing
3 number has been issued to that person or at a location approved
4 by the department [division] as provided in §215.135 of this
5 subchapter (relating to More than One Location); and
6
7 (9) a person who is a domiciliary of another state and
8 who holds a valid dealer license and bond, if applicable, issued
9 by an agency of that state, when the person buys a vehicle from,
10 sells a vehicle to, or exchanges vehicles with a person who:
11
12 (A) holds a current valid general distinguishing
13 number issued by the department, [division] if the transaction
14 is not intended to avoid the terms of Transportation Code,
15 §503.001 et seq.; or
16
17 (B) is a domiciliary of another state if the
18 person holds a valid dealer license and bond, if applicable,
19 issued by that state, and if the transaction is not intended to
20 avoid the terms of Transportation Code, §503.001 et seq.
21
22 (c) Application for a general distinguishing number shall
23 be on a form prescribed by the department [division] properly
24 completed by the applicant showing all information requested
25 thereon and shall be submitted to the department [division]
26 accompanied by the following:
27
28 (1) proof of a $25,000 surety bond as provided in
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$215.137 of this title (relating to Surety Bond); [Security
Requirements];

(2) the fee for the general distinguishing number as
prescribed by law for each type of license requested;

(3) the fee as prescribed by law for each metal dealer
plate requested as prescribed by law;

(4) a copy of each assumed name certificate on file
with the Office of the Secretary of State or county clerk; and

(5) a photocopy of at least one of the following
documents for the owner, president, or managing partner of the
dealership:

    (A) current driver's license;

    (B) current Department of Public Safety
identification;

    (C) current concealed handgun license or license
to carry a handgun issued by the Texas Department of Public
Safety under Government Code, Chapter 411, Subchapter H;

    (D) [D+] current passport; or

    (E) [E+] current United States armed forces
identification.

(d) A person who applies for a general distinguishing
number and will operate as a dealer under a name other than the
name of that person shall use the name under which that person
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is authorized to do business, as filed with the Office of the
Secretary of State or county clerk, and the assumed name of such
legal entity shall be recorded on the application using the
letters "DBA."

(e) If the general distinguishing number is issued to a
corporation, the dealer's name and assumed name used by the
dealer, as on file with the Office of the Secretary of State,
shall be recorded on the application.

(f) A wholesale dealer licensee may buy, sell, or exchange
vehicles with licensed dealers. A wholesale dealer licensee
holder may not sell or exchange vehicles at retail.

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

(h) An application for a general distinguishing number may
be denied if an applicant for such license has committed any act
that could result in license cancellation or revocation under
Transportation Code, §503.001 et seq.; Occupations Code,
§2301.001 et seq.; or any rule or regulation of the department.

(i) Upon request by the department, the applicant shall
submit documents demonstrating that the applicant owns the real
property on which the business is situated or has a written
lease for the property that has a term of not less than the term
of the license.

§215.135. More than One Location.

(a) A dealer that holds a GDN [holding a general
distinguishing number] for a particular type of vehicle may
operate from more than one location within the limits of a city,
provided each [such] location is operated by the same legal
entity and meets the requirements of §215.140 of this title
[subchapter] (relating to Established and Permanent Place of
Business).

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

(1) obtain a new GDN; and [separate license and
security]

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

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

(1) obtain a new GDN; and

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

[(e) Dealerships that are relocated from a point outside the limits of a city, or relocated to a point not within the limits of the same city of the initial location are required to obtain a new license and provide new security reflecting the new address unless the location is exempt from the security requirement by statute.]

(d) A dealer shall notify the department (division) in writing within 10 days of [the] opening, closing, or relocating any licensed [relocation of any dealership] location. Each [new] location must meet and maintain the requirements of §215.140 [of this subchapter].

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

$215.137. Surety Bond. [Security Requirements.]

[(a) Unless exempt pursuant to subsection (d) of this section, a dealer shall maintain a $25,000 bond conditioned on the dealer's payment of all valid bank drafts drawn by the ]

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dealer for the purchase of motor vehicles and the dealer's transfer of good title to each motor vehicle the dealer offers for sale. The bond must be valid for the same period of time as the dealer's license and is subject to the following:]

[(1) The bond shall be on a form which is prescribed by the division and approved by the attorney general and issued by a company duly authorized to do business in the state of Texas.]

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

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

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

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

(2) unknown.

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

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

(b) Recovery against the bond may be made by any person who obtains a court judgment assessing damages and/or attorneys fees for an act or omission on which the bond is conditioned. If the person seeking to obtain such a court judgment is a dealer, that dealer shall notify the division of the claim immediately upon filing suit on the bond.

(c) Payment of any judgment by the bonding company shall be immediately reported to the division in writing.

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

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

(2) franchised motorcycle dealer licensed by the department; division

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

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

2


(a) A metal dealer's license plate [Metal dealer license plates] shall be attached to the rear license plate holder of a vehicle in accordance with [vehicles on which such plates may be displayed pursuant to] Transportation Code, §503.061.

(b) A [Although not a requirement, a] copy of the receipt for the metal dealer's license plate issued by the department [division] should be carried in the vehicle so that the receipt [it] can be presented to law enforcement personnel upon request.

(c) [°b+] A metal dealer's license plate [Metal dealer license plates] may not be displayed on:

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

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

[(1) Examples of vehicles considered as service or work vehicles for purposes of this subsection are:]

[(A) a vehicle used for towing or transporting other vehicles];

[(B) a vehicle, including a light truck, used in

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connection with the operation of the dealer's shops or parts department;]

[(C) a courtesy car on which a courtesy car sign is displayed;]

[(D) a rental or lease vehicle; and]

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

[(2) A light truck is not considered to be a laden commercial vehicle when it is:]

[(A) mounted with a camper unit; or]

[(B) towing a trailer for recreational purposes.]

[(3) As used in this subsection, "light truck" has the meaning assigned by Transportation Code, §541.201.]

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

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

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

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

(4) a rental or lease vehicle; and

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

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

(f) For purposes of this section, a light truck is not considered a laden commercial vehicle when it is:

(1) mounted with a camper unit; or

(2) towing a trailer for recreational purposes.

(g) A metal dealer's license plate may be displayed only on the type of vehicle for which the GDN [general distinguishing number] is issued and for which a dealer is licensed to sell. A nonfranchised dealer may not display a metal dealer's license plate on a new motor vehicle. [Non-franchised dealers may not display metal dealer plates on new motor vehicles.]

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

(i) A dealer shall maintain a record of each metal dealer's license plate issued to that dealer. The record must contain:

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

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

(3) the VIN [vehicle identification number (VIN)] of the vehicle; and

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

(j) If a dealer cannot account for a metal dealer's license plate that the department issued to that dealer, the dealer must:

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

(2) within three days of discovering that the metal dealer's license plate is missing, report to the department in writing that the metal dealer's license plate is lost or stolen;

and

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

(k) A metal dealer's license plate is no longer valid for use after the dealer reports to the department that the metal dealer's license plate is missing.

[(e) Dealer metal plates that cannot be accounted for shall be voided in the dealer's record and reported as missing to the department within three days of the date that the discovery is made. After a plate is reported as missing, it is no longer valid for use.]

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[(f) The dealer's record required under subsections (d) and (e) of this section shall be available at the dealer's location during normal working hours for review by a representative of the department.]

§215.139. Metal Dealer's License [Dealer] Plate Allocation.

(a) The number of metal dealer's license [dealer] plates a dealer may order for business use is [allocated] based on the type of license for which the dealer applied [for] and the number of vehicles the dealer sold during the previous year. [New license applicants are allotted a predetermined number of metal dealer plates during the first license term.]

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

[(b) The maximum number of metal dealer plates issued to a new license applicant during the first license term is, unless otherwise qualified to receive more.]

[(1) Franchised motor vehicle dealer—5.] [(2) Franchised motorcycle dealer—5.] [(3) Independent motor vehicle dealer—2.] [(4) Independent motorcycle dealer—2.] [(5) Franchised or independent travel trailer dealer—]
[(6) Utility trailer or semi-trailer dealer — 2r]

[(7) Independent mobility vehicle dealer — 2r and]

[(8) Wholesale dealer — 1.]

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

Figure 43 TAC §215.139(c)

[(c) A newly licensed dealership with a previous license status is not subject to the initial allotment limits described in subsection (b) of this section, and may rely on that previous license status to obtain dealer plates, if it is;

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

(1) a franchised dealership [that has been] subject to a buy-sell agreement, regardless of a change in the entity or ownership; [ex]

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

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

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

Figure 43 TAC §215.139(e)

(c) The maximum number of dealer plates issued to a motor vehicle dealer per license term is:

(1) Franchised motor vehicle dealer — 30

(2) Franchised motorcycle dealer — 10

(3) Independent motor vehicle dealer — 3

(4) Independent motorcycle dealer — 3

(5) Franchised or independent travel trailer dealer — 3

(6) Utility trailer or semi-trailer dealer — 3

(7) Independent mobility vehicle dealer — 3 and

(8) Wholesale dealer — 1.

(f) A dealer may obtain more than the maximum number of metal dealer's license plates provided by [plates set out in subsections (b) or (d) of] this section[7] by submitting to the department proof of sales for the previous 12-month period that justifies additional allocation.

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

Figure 43 TAC §215.139(f)(1)

(1) The dealer may receive the following additional plates:

(A) Wholesale dealers—1

(B) Dealers selling fewer than 50 vehicles—1

(C) Dealers selling 50 to 99 vehicles—2

(D) Dealers selling 100 to 200 vehicles—5 or

(E) Dealers selling more than 200 vehicles may receive any number of dealer plates at the dealer's discretion.

(2) For purposes of this subsection and subsection (f) of this section, proof of sales for the previous 12-month period may consist of a copy of the most recent vehicle inventory tax declaration [recently filed Vehicle Inventory Tax Declaration] or monthly statements [duly] filed with the proper taxing authority in the county of the dealer's licensed dealership's location. Each copy must be stamped as received by the taxing [tax] authority. A [Any] franchised dealer's renewal license renewal application that indicates sales of more than 200 units is considered to be proof of sales of more than 200 units and no additional proof is required.

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

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

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

(g)[(f)] The director may waive the metal dealer's license plate issuance restrictions [in accordance with this subsection] if the waiver is essential for the continuation of the business. The director will determine [base the determination of] the number of metal dealer's license plates the department will issue [based on dealer will receive] on the dealer's past sales, dealer's inventory, and any other factor [factors that] the director determines pertinent.

(1) A request for a waiver must be submitted to the director in writing and specifically state why the additional plate is [plates are] necessary for the continuation of the
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1 applicant's business.
2
3 (2) A request for a waiver must be accompanied by
4 proof of the dealer's sales for the previous 12-month period,
5 [year] if applicable.
6 (3) A wholesale motor vehicle dealer may not apply for
7 a waiver of the metal dealer's license [dealer] plate issuance
8 restrictions.
9 (4) A waiver granted by the director under this
10 section [subsection] for a specific number of metal dealer's
11 license plates is valid for four years.
12
13 (h) This section does not apply to a personalized prestige
14 dealer's license plate issued in accordance with Transportation
15 Code, §503.0615.
16
17 §215.140. Established and Permanent Place of Business.
18 A dealer must meet the following requirements at each licensed
19 location and [must] maintain the [following] requirements during
20 the [entire] term of the license.
21 (1) Business hours for retail dealers.
22
23 (A) A retail dealer's office [facility] shall be
24 open at least four days per week for at least four consecutive
25 hours per day.
26 (B) The retail dealer's business hours for each
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day of the week must be posted at the main entrance of the retail dealer's office that is accessible to the public. The owner or a bona fide employee of the retail dealer shall be at the retail dealer's licensed location during the posted business hours for the purposes of buying, selling, exchanging, or leasing vehicles. If the owner or a bona fide employee is not available to conduct business during the retail dealer's posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time the retail dealer will resume operations. Regardless of the retail dealer's business hours, the retail dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, answering service, or answering machine.

(2) Business hours for wholesale motor vehicle dealers. A dealer that holds only a wholesale motor vehicle dealer's license must post its business hours at the main entrance of the wholesale motor vehicle dealer's office. A wholesale motor vehicle dealer shall be at the wholesale motor vehicle dealer's licensed location for at least two weeks per week for at least two consecutive hours per day. Regardless of the wholesale motor vehicle dealer's business hours, the wholesale motor vehicle dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee,
(3) Business sign requirements for retail dealers. A retail dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the retail dealer's business name or assumed name substantially similar to the name reflected on the retail dealer's license under which the retail dealer conducts business. The sign must be permanently mounted at the address listed on the application for the retail dealer's [dealer] license. A retail dealer may use a temporary sign or banner if that retail [the] dealer can show proof that a sign [is on order] that meets the requirements of [set out in] this paragraph has been ordered.

(4) Business sign requirements for wholesale motor vehicle dealers. A wholesale motor vehicle dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the wholesale motor vehicle dealer's business name or assumed name substantially similar to the name reflected on the wholesale motor vehicle dealer's license under which the wholesale motor vehicle dealer conducts business. The sign must be permanently mounted on the business property and shall be on the main door to the wholesale motor vehicle dealer's office or on the outside of the building that houses [housing] the wholesale motor vehicle dealer's office. If the wholesale
motor vehicle dealer's office [dealership] is located in an
office building with one or more other businesses and an outside
sign is not permitted by the landlord, a business sign
permanently mounted on or beside the main door to the wholesale
motor vehicle dealer's office with letters at least two inches
in height is acceptable. A wholesale motor vehicle dealer may
use a temporary sign or banner if the wholesale motor vehicle
dealer can show proof that a sign [is on order] that meets the
requirements of [set out in] this paragraph has been ordered.

(5) Office structure for a retail dealer and a
wholesale motor vehicle dealer. [retail and wholesale dealers.]

(A) A dealer's office [The office of a retail or
wholesale dealer] must be located in a building[7] with
connecting exterior walls on all sides.

(B) A dealer's office must comply with all
applicable local zoning ordinances and deed restrictions.

(C) A dealer's office may not be located within a
residence, apartment [house], hotel, motel, or rooming house.

(D) The physical address of the dealer's office
must be recognized by the U.S. Postal Service or capable of
receiving U.S. mail. The department will not mail a license or a
metal dealer's license plate to an out of state address.

[Licensees and metal dealer plates will not be mailed to any out-
(E) A portable-type office structure may qualify as an office only if the structure meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(6) Required office equipment for a retail dealer and a wholesale motor vehicle dealer [dealers]. At a minimum, a dealer's [the] office must be equipped with:

(A) a desk;

(B) two chairs;

(C) Internet access; and

(D) a working telephone number listed in the business name or assumed name under which the dealer conducts [deeds] business.

(7) Number of retail dealers in one office. Not more than four retail dealers may be located in the same business structure.

(8) Number of wholesale motor vehicle dealers in one office. Not more than eight wholesale motor vehicle dealers may be located in the same business structure.

(9) Office sharing prohibition for retail dealers and wholesale motor vehicle dealers. [Wholesale and retail dealers office-sharing prohibition.] Unless otherwise authorized by the 09/01/2016 Amendments/New Section
Transportation Code, a retail [motor vehicle] dealer and a
wholesale motor vehicle dealer[, either of which is] licensed
after September 1, 1999, may not be located in the same business
structure.

(10) Dealer housed with other business.

(A) If a person conducts business as a dealer in
conjunction with another business owned by the same person and
under the same name as the other business, the same telephone
number may be used for both businesses. If the name of the
dealer differs from the name [that] of the other business, a
separate telephone listing and a separate sign for each business
is required.

(B) A person may conduct business as a dealer in
conjunction with another business not owned by that person only
if the dealer owns the property on which business is conducted
or has a separate lease agreement from the owner of that
property that meets [meeting] the requirements of [paragraph
(13) of] this section. The same telephone number may not be used
by both businesses. The dealer must have separate business
signs, telephone listings, and office equipment required under
this section.

(11) Display area requirements.

(A) A wholesale motor vehicle dealer is not
required to have display space at the wholesale motor vehicle
dealer's business premises.

(B) A retail dealer must have an area designated
as display space for the retail dealer's inventory. A retail
dealer's designated display area must comply with the following
requirements. [in accordance with this subsection.]

(i) [(A)] The display area must be located at
the retail dealer's business address or contiguous with the
retail dealer's address. A noncontiguous [non-contiguous]
storage lot is permissible only if there is no public access and
no sales activity occurs at the storage lot. A sign stating the
retail dealer's name, telephone number, and the fact the
property is a storage lot is permissible.

(ii) [(B)] The [A-dealer's] display area must
be of sufficient size to display at least five vehicles of the
type for which the GDN [general distinguishing number] is
issued. Those spaces must be reserved exclusively for the retail
dealer's inventory and may not be shared or intermingled with
another business or a public parking area, a driveway to the
office, or another dealer's display area.

(iii) [(C)] The display area may not be on a
public easement, right-of-way, or driveway unless the governing
body having jurisdiction of the easement, right-of-way, or
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driveway expressly consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part of the state highway system, use as a display area may only be authorized by a lease agreement.

(iv) If the retail dealer shares a display or parking area with another business, including another dealer, the dealer's vehicle inventory [If the display area is in conjunction with another dealership or another business that is not related to the sale or operation of motor vehicles, the display area for the dealer's inventory] must be separated from the other business's display or [any other business's or dealer's] parking area by a material object or barrier [barriercade] that cannot be readily removed. [moved by an individual-

(v) The display area must be adequately illuminated if the retail dealer is open at night [after sundown] so that a vehicle [vehicles] for sale can be properly inspected by a potential buyer. [any prospective customer-]

(vi) The display area may be located inside a building.

(12) Dealers holding a license issued under Occupations Code, Chapter 2302. [Dealer with salvage dealer license-] If a dealer also holds a license issued under

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1. Occupations Code, Chapter 2302, each salvage motor [salvage
dealer license, each salvage] vehicle that is offered for sale
on the premises of the dealer's display area must be clearly and
conspicuously marked with a sign informing a potential buyer
[that informs the potential buyers] that the vehicle is a
salvage motor vehicle. This requirement does not apply to a
licensed salvage pool operator.

(13) Lease requirements. If the premises from which a
dealer conducts business, including any display area, is not
owned by the dealer, the dealer must maintain a lease that is
continuous during the period of time [with the period] for which
the dealer's license will be issued. The [That] lease agreement
must be on a properly executed form containing at a minimum:

(A) the name of the landlord as the lessor of the
premises and the name of the dealer as the tenant or lessee of
the premises; [names of the lessor and lessee;]

(B) the period of time for which the lease is
valid; [and]

(C) the street address or legal description of
the property, provided that if only a legal description of the
property is included, [provided,] the applicant must attach a
statement that the property description in the lease agreement
is the street address identified on the application; and[\]

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(D) the signature of the landlord as the lessor
and the signature of the dealer as the tenant or lessee.

(14) Dealer must display license. A dealer must
display the dealer's [dealer] license issued by the department
at all times in a manner that makes the license easily readable
by the public and in a conspicuous place at each place of
business for which the dealer's license [it] is issued. If the
dealer's license applies to more than one location, a copy of
the original license may be displayed in each supplemental
location.


(a) The board or department may:

(1) deny an application;

(2) revoke a license;

(3) suspend a license; and

(4) assess a civil penalty or other action against a
license applicant, a license holder, or a person engaged in
business for which a license is required.

[(a) Repeal. The board may deny, revoke, or
suspend a dealer's license (general distinguishing number) or
assess civil penalties against any person if that person]

(b) The board or department may take action described in
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subsection (a) of this section if a license applicant, a license
holder, or a person engaged in business for which a license is
required:
(1) fails to maintain a good and sufficient bond in
the amount of $25,000 if required;
(2) fails to maintain records required under this
chapter; [an established and permanent place of business
conforming to the regulations pertaining to office, sign, and
display space requirements;]
(3) refuses [to permit] or fails to comply with a
request by a representative of the department to examine and
copy during the license holder's business hours at the licensed
location: [the]
(A) sales records required to be maintained by
[kept under] §215.144 of this title (relating to Records);
[subchapter (relating to Record of Sales and Inventory) and]
(B) ownership papers for a vehicle [vehicles]
owned by that dealer or under that dealer's control[s] and
(C) evidence of ownership or a current lease
agreement for the property on which the business is located;
[lease rights on the property upon which the dealer's business
is located, during posted working hours or through a request
made by the department pursuant to these rules;]
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(4) refuses or fails to timely comply with a request for records made by a representative of the department;

(5)[(4)] holds a wholesale motor vehicle dealer's license and: [dealer license and, without notifying the division and meeting the vehicle display space requirements of §215.140 of this subchapter, is found to be selling or offering to sell a vehicle to someone other than a licensed dealer, unless authorized by statute;]

(A) fails to meet the requirements of §215.140 of this title (relating to Established and Permanent Place of Business); or

(B) sells or offers to sell a motor vehicle to a person other than a licensed dealer;

(6)[(5)] sells or offers to sell a type of vehicle that the person is not licensed to sell;

(7)[(6)] fails to notify the department [division] of a change of the license holder's physical address, [physical or mailing address, [and/or] telephone number, or email address within 10 days of the [after such] change;

(8)[(7)] fails to notify the department [division] of a license holder's [dealer's] name change or ownership change within 10 days of the [after such] change;

(9)[(8)] except as provided by law, issues more than
one buyer's temporary tag for the purpose of extending the
purchaser's operating privileges for more than 60 days;

(10) fails to remove a license plate or
registration insignia [license plates as required by law] from a
vehicle that is displayed for sale;

(11) misuses a metal dealer's license plate or a temporary tag;

(12) fails to display a metal dealer's license plate or temporary tag, as required by law; [plates or
tags in a manner conforming to the regulations pertaining to the
display of such plates and tags;]

[(12) fails to satisfy the notification requirements
of §215.144 of this subchapter,]

(13) holds open a title or fails to take
assignment of a certificate [all certificates] of title,
manufacturer's certificate, [certificates] or other basic
evidence of ownership for a vehicle acquired by the
dealer, or fails to assign the certificate of title,
manufacturer's certificate, or other basic evidence of ownership
for a vehicle sold; [vehicles sold (All certificates of title,
manufacturer's certificates, or other basic evidence of
ownership for vehicles owned by a dealer must be properly
executed showing transfer of ownership into the name of the
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(14) fails to remain regularly and actively engaged in the business of buying, selling, or exchanging vehicles of the type for which the GDN [general distinguishing number] is issued by the department;

(15) violates a provision of Occupations Code, Chapter 2301; Transportation Code Chapters 503 and 1000 - 1005; a board order or rule; or a [any of the provisions the Codes, or any rule or] regulation of the department relating to the sale, lease, distribution, financing, or insuring of vehicles, including advertising rules under [set out in] Subchapter H of this chapter (relating to Advertising);

(16) is convicted of an offense that directly relates to the duties or responsibilities of the occupation;

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

(18)[(16)] has not assigned at least five vehicles in the prior 12 months, provided the dealer has been licensed more than 12 months;

(19)[(17) files a false or forged; [title or]

(A) title document, including an affidavit making application for a certified copy of a title; or

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(B) tax document, including a sales tax statement or affidavit; [application for certified copy of a title,]

(20) uses or allows use of that dealer's license or location for the purpose of avoiding a provision of Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 - 1005; [the provisions of the dealer law] or other laws;

(21) omits information or makes a material misrepresentation in any application or other documentation [information] filed with the department; [division,]

(22) fails to remit payment as ordered for a civil penalty assessed by the board or department; [for civil penalties assessed by the Board,]

(23) sells a new motor vehicle [vehicles] without a franchised dealer's license issued by the department; [division,]

(24) utilizes a temporary tag that fails to meet the requirements of [specifications as cited in] §215.153 of this title [subchapter] (relating to Specifications for All Temporary Tags); [or]

(25) violates any state or federal law or regulation relating to the sale of a motor vehicle; or

(26) effective January 1, 2017, knowingly fails to 09/01/2016 Amendments/New Section
disclose that a motor vehicle has been repaired, rebuilt, or
reconstructed and issued a title under Transportation Code,
§501.100.

[(b) Civil penalties. The Board may assess a civil penalty
of not less than $50 nor more than $1,000 against a person that
is found to have engaged in conduct described in subsection (a)
of this section, and in determining the amount of any such
penalty may consider the relevant circumstances, including but
not limited to the factors enumerated in Occupations Code,
§2301.801(b).]

[(c) Warning letter. In lieu of imposing sanctions under
subsection (a) or (b) of this section, the division may issue a
warning letter to a person notifying that person of the nature
of the violation, and specifying the date by which corrective
action is to be completed and full compliance is to be met;
provided, however, that the Board may not issue a warning letter
in more than three subsequent violations of the same or similar
nature by that person in the same calendar year.]

§215.144. Records. [Record of Sales and Inventory.]

(a) Purchases [Purchase] and sales records. A dealer must
maintain [keep] a complete record of all vehicle purchases and
sales for a minimum period of 48 months and make the record
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(b) Independent mobility motor vehicle dealers. An independent mobility motor vehicle dealer must keep a complete written record of each vehicle purchase, vehicle sale, or sale and any adaptive work performed on each vehicle for a minimum period of 36 months after the date the adaptive work is performed on the vehicle.

(c) Location of records. A dealer's record reflecting purchases and sales for at least the preceding 13 months must be maintained at the dealer's licensed location. Original titles are not required to be kept at the licensed location, but must be made available to the agency upon reasonable request. A dealer's record for prior time periods may be kept off-site at a location within the same county.

(d) Request for records. Within 15 days of receipt of a request sent by mail or electronic document transfer from a representative of the department, a dealer must deliver a copy of the specified records to the address listed in the request within 15 days. If a dealer has a concern about the origin of a records request, the dealer may verify that request with the division prior to submitting.
its records.

(e) Content of records. A dealer's complete record for each vehicle purchase or vehicle sale must contain: [As used in this subsection, a complete record of vehicle purchases and sales shall contain the following information or documents:]

(1) the date of the purchase;

(2) the date of the sale;

(3) the VIN; [vehicle identification number;]

(4) the name and address of the person selling the vehicle to the dealer;

(5) the name and address of the person purchasing the vehicle from the dealer;

(6) the name and address of the consignor [selling dealer] if the vehicle is offered for sale by consignment;

(7) except for [in] a purchase or sale where the Tax Code does not require payment of motor vehicle sales tax, a [by a wholesale dealer,] copy of the receipt, titled "Tax [Tax] Collector's Receipt for Texas Title Application/Registration/Motor Vehicle Tax" [Tax, Form 31];

(8) a copy of [copies of any and] all documents, forms, and agreements applicable to a particular sale, including a copy of: [including, but not limited to title applications, work-up sheets, Manufacturer's Certificates of Origin, titles or 09/01/2016 Amendments/New Section
photocopies of the front and back of titles, factory invoices,
sales contracts, retail installment agreements, buyer's orders,
bills of sale, waivers, or other agreements between the seller
and purchaser,]

(A) the title application;
(B) the work-up sheet;
(C) the front and back of manufacturer's
certificate of origin or manufacturer's statement of origin,
unless the title is obtained through the electronic title
system;
(D) the front and back of the title, unless the
title is obtained through the electronic title system;
(E) the factory invoice;
(F) the sales contract;
(G) the retail installment agreement;
(H) the buyer's order;
(I) the bill of sale;
(J) any waiver;
(K) any other agreement between the seller and
purchaser; and
(L) Form VTR-136, relating to County of Title
Issuance, completed and signed by the buyer;
(9) the original manufacturer's certificate of origin,
original manufacturer's statement of origin, or original title for motor vehicles offered for sale by a dealer, and a properly stamped original manufacturer's certificate of origin, original manufacturer's statement of origin, or original title for motor vehicles sold by a dealer if the title transaction is entered into the electronic system by the dealer;

(f) Title assignments. [All certificates of title, manufacturer's certificates, or other evidence of ownership for vehicles offered for sale or which have been acquired by a dealer must be properly assigned into the dealer's name.]

(1) For each vehicle a dealer acquires or offers for sale, the dealer must properly take assignment in the dealer's name of any:

(A) title;

(B) manufacturer's statement of origin;
(C) manufacturer's certificate of origin; or

(D) other evidence of ownership.

(2) A dealer must apply in the name of the purchaser of a [motor] vehicle for the registration of the [motor] vehicle with the appropriate county tax assessor-collector as selected by the purchaser.

(3) To comply [To be in compliance] with Transportation Code, §501.0234(f), a registration is [and] considered filed within a reasonable time if the registration is filed within:[,] a registration filed in Texas must be filed within]

(A) 20 working days of the date of sale of the vehicle for a vehicle registered in Texas; or[—For a transaction that is dealer-financed, a registration filed in Texas within] (B) 45 days of the date of sale of the vehicle for a dealer-financed transaction involving a vehicle that is registered in Texas. [will be considered filed within a reasonable time—]

(4) The dealer is required to [shall] provide to the purchaser the receipt for the registration application.

(5) The dealer is required to [and] maintain a copy of the receipt for the registration application in the dealer's
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1 sales file.
2 (g) Out of state sales. For a sales transaction involving a vehicle to be transferred out of state, the dealer must:
3 (1) within 20 working days of the date of sale, either file the application for certificate of title on behalf of the purchaser or deliver the properly assigned evidence of ownership to the purchaser; and
4 (2) maintain in the dealer's record at the dealer's licensed location a photocopy of the completed sales tax exemption form for out of state sales approved by the Texas Comptroller of Public Accounts shall be maintained on file at the dealer's business location.

(h) Consignment sales. A dealer offering a vehicle for sale by consignment shall have a written consignment agreement for the vehicle or a power of attorney for the vehicle, and shall, after the sale of the vehicle, take assignment of the vehicle in the dealer's name and, pursuant to subsection (f), apply in the name of the purchaser for transfer of title and registration, if the vehicle is to be registered, with the appropriate county tax assessor-collector as selected by the purchaser. The dealer must, for a minimum of 48 months, [and

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shall] maintain a record of each [such] vehicle offered for sale
by consignment, including the VIN and the name of the owner of
the vehicle offered for sale by consignment. [by vehicle
identification number and owner of each such vehicle handled on
consignment for a minimum of 48 months.]}

(i) Public motor vehicle auctions.

(1) A GDN holder that [general distinguishing number
holder who] acts as a public motor vehicle auction must comply
with [the requirements relating to consignment sales as set out
in] subsection (h) of this section.

(2) A public motor vehicle auction:

(A) is not required to take assignment of title
of a vehicle [vehicles] it offers for sale;[but]

(B) must take assignment of title of a vehicle
from a consignor prior to making application for title on behalf
of the buyer; and[

(C)[(3) A public motor vehicle auction] must make
application for title on behalf of the purchaser and remit motor
vehicle sales tax within 20 working days of the sale of the
motor] vehicle.

(3) A GDN holder may not sell another GDN holder's
vehicle at a public motor vehicle auction.

(j) Wholesale motor vehicle auction records. A wholesale
motor vehicle auction license holder must maintain, for a minimum of 48 months, a complete record of each vehicle purchase and sale occurring through the wholesale motor vehicle auction. The wholesale motor vehicle auction license holder shall make the record available for inspection and copying by a representative of the department during business hours.

(1) A wholesale motor vehicle auction license holder must maintain at the licensed location a record reflecting each purchase and sale for at least the preceding 24 months. Records for prior time periods may be kept off-site at a location within the same county.

(2) Within 15 days of receipt of a request sent by mail or by electronic document transfer from a representative of the department, a wholesale motor vehicle auction license holder must deliver a copy of the specified records to the address listed in the request within 15 days.

(3) A wholesale motor vehicle auction license holder's complete record of each vehicle purchase and sale shall, at a minimum, contain: The records required to be kept by a
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wholesale auction shall at a minimum provide the following information:

(A) the date of sale;

(B) the VIN; [vehicle identification number;]

(C) the name and address of the person selling the vehicle;

(D) the name and address of the person purchasing the vehicle;

(E) the dealer license number of both the selling dealer and the purchasing dealer, [seller and buyer] unless either is exempt from holding a license;

(F) all information necessary to comply with the Truth in Mileage Act;

(G) auction access documents, including the written authorization and revocation [cancellation] of authorization for an agent or employee, in accordance with [agents, employees, or representatives required by] §215.148 of this title [subchapter] (relating to Dealer Agents);

(H) invoices, bills of sale, checks, drafts, or other documents that identify the vehicle, the parties, or the purchase price;

(I) any information regarding the prior status of the vehicle such as the Reacquired Vehicle Disclosure Statement.
or other lemon law disclosures; and

(J) a copy [copies] of any written authorization [authorizations] allowing an agent of a dealer to enter the auction.

(k) Electronic records. A license holder may maintain a record in an electronic format if the license holder can print the record at the licensed location upon request by a representative of the department. A license holder does not have to maintain a copy of a vehicle title if the title is submitted through the electronic title system. [Any records required to be kept by a licensee may be kept in an electronic format, if the electronic records can be printed at the licensed location upon request by a representative of the department. Original hard copy titles or photocopies of the front and back of titles of vehicles in a dealer's inventory shall be kept in a secure location at the licensed location or within the same county as the licensed location.]


(a) A dealer's name change requires [shall require] a new bond or a rider to the existing bond reflecting the new dealer name, unless the dealer is not otherwise required to purchase a bond. [The dealer may retain the same general distinguishing 09/01/2016 Amendments/New Section
(b) A dealer shall notify the department [division] in writing within 10 days of a [if there is any] change of ownership. A licensed dealer that [who] proposes to sell or [and/or] assign to another any interest in the licensed entity, whether a corporation or otherwise, and provided [so long as] the physical location of the licensed entity remains the same, shall notify the department [division] in writing within 10 [ten] days of the change by filing an application to amend the license. If the sale or assignment of any portion of the business results in a change of entity, then the new entity must apply for and obtain a new license. A publicly held corporation [Publicly-held corporations need] only needs to inform the department [division] of a change in ownership if one person or entity acquires a 10% [10 percent] or greater interest in the licensed entity. [Licensee—]

(c) Upon the death of a dealer of a dealership [If a dealership is] operated as a sole proprietorship [and the sole proprietor dies], either the surviving spouse of the deceased dealer[.] or other individual deemed qualified by the department [division] shall submit to the department [division] a bond rider adding the name of the surviving spouse or other qualifying person [his or her name] to the bond for the 09/01/2016 Amendments/New Section
remainder of the bond and license term. The surviving spouse or
other qualifying person [That person] may continue dealership
operations under the current dealer license until the end of the
license term. [its expiration. In the event the qualifying
individual is a surviving spouse, he or she may change the
ownership of the dealership upon renewal of the license without
applying for a new general distinguishing number by submitting
additional information regarding ownership, business background,
and financial responsibility as required for a new application.]}

(d) For purposes of subsection (c) of this section, if the
qualifying person is the sole proprietor's surviving spouse,
then the surviving spouse may change the ownership of the
dealership at the time the license is renewed without applying
for a new GDN. At the time the renewal application is filed, the
sole proprietor's surviving spouse is required to submit to the
department:

(1) an application to amend the business entity;

(2) a copy of the sole proprietor's certificate of
death, naming the surviving spouse;

(3) the required ownership information; and

(4) a bond in the name of the surviving spouse.

(e) For purposes of subsection (c) of this section, if the
qualifying person is not the surviving spouse, then the
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1 qualifying person may operate the sole proprietorship business
during the term of the license. The qualifying person must file
with the department:

(1) an application to amend the business entity,

identifying the qualifying person as the manager;

(2) an ownership information form, indicating that the
qualifying person has no ownership interest in the business; and

(3) a bond rider adding the individual's name to the
existing bond.

(f) For purposes of subsection (c) of this section, if the
qualifying person is not the surviving spouse, then at the time
the license is due to be renewed, the qualifying person must
file with the department an application for a new GDN.

(g) A determination made under this section does not impact
a decision made by the board under Occupations Code, §2301.462,
Succession Following Death of Dealer.

§215.146. Metal Converter's License Plates.

(a) A metal [Metal] converter's license plate [plates]
shall be attached to the rear license plate holder of a vehicle
in accordance with [vehicles on which the plates may be
displayed pursuant to] Transportation Code, §503.0618.

(b) Metal converter's license plates tags may be displayed

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only on the type of vehicle that the converter is engaged in the
business of assembling or modifying.]

[(c) When an unregistered new motor vehicle is sold to a
converter, the selling dealer shall remove the dealer's
temporary tag. The selling dealer may attach a buyer's temporary
tag to that vehicle or the purchasing converter may display a
converter's temporary tag or metal converter plate on that
vehicle.]

(b) [(d)] A converter shall maintain a record of each metal
converter's license plate [converter metal plate] issued to that
converter. The record of each metal converter's license plate
issued must contain: [that contains:]

(1) the assigned metal converter's license plate
number;

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

(3) the VIN [vehicle identification number] of the
vehicle [(VIN)]; and

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

(c) If a converter cannot account for a metal converter's
license plate that the department issued to the converter, the
converter must:

(1) document the metal converter's license plate as

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(2) within three days of discovering that the plate is missing, report to the department in writing that the metal converter's license plate is lost or stolen; and
(3) if found, cease use of the metal converter's license plate.
(d) A metal converter's license plate is no longer valid for use after the converter reports to the department that the plate is missing.
(e) A metal converter's license plate record shall be made available for inspection and copying by the department at the converter's licensed location during the converter's posted business hours.
((e) Converter metal plates that cannot be accounted for shall be voided in the converter's dealer's record and reported as missing to the department within three days of the date that the discovery is made. After a plate is reported as missing it is no longer valid.)
((f) The converter's record, required under subsections (d) and (e) of this section, shall be available at the converter's location during normal working hours for review by a representative of the department.)
$215.147. Export Sales.

(a) Before selling a motor vehicle for export from the United States to another country, a dealer must obtain a legible photocopy of the buyer's government-issued photo identification document. The photo identification document must be issued by the jurisdiction where the buyer resides and be:

(1) a passport;

(2) a driver's license;

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

[(3) a consular identity document;]

(4) a national identification certificate or identity document; or

(5) other identification document containing the:

[issued by the jurisdiction where the buyer resides that is able to be verified by law enforcement and includes the]

(A) name of the issuing jurisdiction;

(B) buyer's full name;

(C) buyer's foreign address;

(D) buyer's date of birth; and

(E) buyer's photograph and

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(F) buyer's signature.

(b) A dealer that sells a vehicle for export from the United States shall place a stamp on the title that includes the words "For Export Only" and includes the license holder's GDN. The stamp must be legible, in black ink, at least two inches wide, and placed on the:

(1) back of the title in all unused dealer reassignment spaces; and

(2) front of the title in a manner that does not obscure any names, dates, mileage statements, or other information printed on the title.

[(b) All licensees that sell a vehicle for export from the United States shall stamp in black ink on the back of the title in all unused dealer reassignment spaces the words "For Export Only" and their General Distinguishing Number. The licensee shall also place the stamp on the front of the title in a manner that does not obscure any names, dates, mileage statements or other information printed on the title. The stamp must be at least two inches wide, and all text and the license number must be clearly legible.]

(c) In addition to the records required to be maintained by §215.144 of this title (relating to Records), a dealer shall maintain, for each motor vehicle sold for export, a sales file
record. The sales file record shall be made available for
inspection and copying upon request by the department. The sales
file record of each vehicle sold for export shall contain:

(1) a [A] completed copy of the Texas Motor Vehicle
Sales Tax Exemption Certificate for Vehicles Taken Out of State
[for each vehicle sold], indicating that the vehicle has been
purchased for export to a foreign country;

(2) a [A] copy of the front and back of the title of
[to] the vehicle, showing the "For Export Only" stamp and the
GDN of the dealer; and [General Distinguishing Number of the
auction or dealer;]

(3) A legible copy of each buyer's photo
identification document; and]

(3) [4] if [If] applicable, an Export-only Sales
Record Form, listing each motor vehicle sold for export only.
(d) A dealer, at the time of sale of a vehicle for export,
shall:

(1) enter the information required by Transportation
Code, §503.061 in the temporary tag database;

(2) designate the sale as "For Export Only"; and

(3) issue a buyer's temporary tag, in accordance with Transportation Code, §503.063. [temporary buyer's tag as required by Transportation Code, §503.063 after entering the information in the database as required by Transportation Code, §503.061, and report the sale as for export.]


(a) A dealer must provide written authorization to each person with whom the dealer's agent or employee will conduct business on behalf of the dealer, including to a person that:

(1) buys and sells motor vehicles for resale; or

(2) operates a licensed auction.

(b) If a dealer's agent or employee that conducts business on behalf of the dealer commits an act or omission that would be cause for denial, revocation, or suspension of a license in accordance with Occupations Code, Chapter 2301, the board may:

(1) deny an application for a license; or

(2) revoke or suspend a license.

(c) The board may take action described in subsection (b) of this section after notice and an opportunity for hearing, in accordance with Occupations Code, Chapter 2301.

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(d) A dealer's authorization to an agent or employee shall:

(1) be in writing;

(2) be signed by the dealer principal or person in charge of daily activities of the dealership;

(3) include the agent's or employee's name, current mailing address, and telephone number;

(4) include the dealer's business name, address, and dealer license number or numbers;

(5) expressly authorize buying or selling by the specified agent or employee;

(6) state that the dealer is liable for any act or omission regarding a duty or obligation of the dealer that is caused by that agent or employee, including any financial considerations to be paid for the vehicle;

(7) state that the dealer's authorization remains in effect until the recipient of the written authorization is notified in writing of the revocation of the authority; and

(8) be maintained as a required dealer's record and made available upon request by a representative of the department, in accordance with the requirements of §215.144 of this title (relating to Records).

[(a) In regard to the duties and obligations of a dealer, a dealer is responsible for the acts and omissions of any agent,
representative, or employee if that dealer has given authority
to any person for that agent, representative, or employee to act
on the behalf of the dealer. This section is not to be construed
in any manner to allow retail sales by any dealer agent or
representative. The term "employee" used in this section
includes only those persons paid by the licensee and reported on
the federal form W-2, Wage and Tax Statement.]

[(b) A dealer must provide written authorization to any
person buying or selling motor vehicles for resale or operating
a licensed auction for the sale of motor vehicles for resale
with which an agent, representative, or employee will be
conducting business or acting on the dealer's behalf.]

[(1) Once a dealer has given written authorization for
an agent, representative, or employee to buy and sell motor
vehicles for resale for that dealer, the dealer shall be liable
for any acts or omissions regarding duties and obligations of
dealers caused by that agent, representative, or employee unless
and until either the earlier of written notification of
revocation of the agent's, representative's or employee's
authority or revocation of the dealer's license.]

[(2) Written authorization shall be a letter on the
dealership letterhead of the dealer authorizing buying or
selling, or on a form approved by the director, and stating that
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the dealer is liable for any acts or omissions regarding duties
and obligations of dealers, caused by that agent,
representative, or employee including any financial
considerations to be paid for the vehicle unless and until the
recipient is notified in writing of the revocation of the
authority. The letter or form shall be signed by the dealer
principal or person in charge of daily activities of the
dealership.]

[43] The written authorization shall include the
employee, agent or representative's name, current mailing
address, phone number, the business name, address, and license
number of the dealer with whom the employee or agent is
associated. The written authorization is a record that must be
kept as all other records set out in §215.144 of this subchapter
(relating to Record of Sales and Inventory) and shall be made
available to a division representative upon request.]

[e][4(e)] A license holder, including a wholesale motor
vehicle auction license holder that [Any licensee, including
wholesale auctions who act on behalf of others, who] buys and
sells vehicles on a wholesale basis, including by sealed bid, is
required to verify the authority of any person claiming to be an
agent or employee of a licensed dealer who purports to be buying
or selling a motor vehicle: [either an employee, agent or
representative who represents they are buying or selling motor
vehicles]

(1) on behalf of a licensed dealer; or[

(2) under the written authority of a licensed dealer.

(f)[(f)] A title to a vehicle bought by an agent or
employee [Titles to vehicles bought by an employee, agent or
representative] of a dealer shall be:

(1) reassigned to the dealer by the seller or by the
auction; and [auction and]

(2) shall not be delivered to the agent or employee,
[agent or representative] but delivered only to the dealer [the
dealer's employee,] or the dealer's financial institution.

(g) Notwithstanding the prohibitions in this section, an
authorized agent[representative] or employee may sign a [any]
required odometer statement. [statements.]

(h)[(e)] In a wholesale transaction for the purchase of a
motor vehicle, the seller may accept as consideration only:

(1) a check or a draft drawn [Only checks or drafts
drawn] on the purchasing dealer's account; or

(2) a cashier's check [cashier's checks] in the name of
the purchasing dealer; or

(3) a wire transfer [wire transfers] from the
purchasing dealer's bank account [shall be accepted for motor
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vehicles purchased in a wholesale transaction].

$215.149. Independent Mobility Motor Vehicle Dealers.

In accordance with Occupations Code, §2301.361, §2301.362, a transaction occurs through or by a franchised dealer of the motor vehicle's chassis line-make [line-make] if the franchised dealer applies for title and registration of the mobility motor vehicle in the name of the purchaser. An independent mobility motor vehicle dealer may prepare the documentation necessary for a franchised dealer to comply with the requirements of Transportation Code, §501.0234 in connection with the sale of a mobility motor vehicle.

$215.150. Authorization to Issue Temporary Tags.

(a) A dealer that holds a GDN may issue a dealer's temporary tag, buyer's temporary tag, or a preprinted Internet-down temporary tag [Dealers who hold a General Distinguishing Number license may issue dealer temporary tags, buyer's temporary tags, and Internet-down temporary tags] for each type of vehicle the dealer is licensed to sell. A converter that [who] holds a converter's license under Occupations Code, Chapter 2301 may issue a converter's temporary tag. [Converter temporary tags.]

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(b) A license holder [licensee] may issue an applicable dealer's temporary tag, buyer's temporary tag, or converter's temporary tag [temporary dealer, buyer's, or converter tags] until the [a] license is canceled [cancelled], revoked, or suspended [in accordance with law].

[(c)] A dealer's authorization to obtain numbers in advance for use on Internet-down tags may be modified, suspended, or revoked after opportunity for hearing in accordance with Occupations Code, Chapter 2301 and Government Code, Chapter 2001, if the dealer has misused the tags or failed to comply with the requirements for issuance and recordkeeping in Transportation Code, §503.067 or this subchapter.]


(a) A dealer shall secure a temporary tag to a vehicle in the license plate display area located at the rear of the vehicle, so that the entire temporary tag is visible and legible at all times, including when the vehicle is being operated.

[(a) All temporary tags shall be displayed in the rear license plate display area of the vehicle. The tag must be secured to the vehicle so that the entire tag is visible and legible.]
(b) All printed information on a temporary tag must be visible and may not be covered or obstructed by any plate holder or other device or material.  

[(c) Homemade tags or tags that have buyer's tag information printed on one side and dealer's tag information printed on the other side are not permitted.]  

[(c) (d)] A [Each] motor vehicle that is being transported using the full mount method, the saddle mount method, the tow bar method, or any combination of those methods in accordance with Transportation Code, §503.068(d), must have a dealer's temporary tag, a [or] converter's temporary tag, or a buyer's temporary tag, whichever is applicable, affixed to the motor vehicle being transported. [that vehicle.]  

§215.152. Obtaining Numbers for Issuance of Temporary Tags.  

(a) A dealer or a converter is required to [Dealers and converters must] have Internet access to connect to the temporary tag databases maintained by the department.  

(b) Except as provided by §215.157 of this title [subchapter] (relating to Advance Numbers, Preprinted Internet-down [Buyer's] Temporary Tags), before a temporary tag may be issued and displayed on a vehicle, a [the] dealer or converter must:  

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(1) enter in the temporary tag [into the] database information about the vehicle, dealer, converter, or buyer, as appropriate;[7] and
(2) obtain a specific number for the temporary tag. [tag before a temporary tag may be issued and displayed on a vehicle.]

§215.153. Specifications for All Temporary Tags.
(a) Information printed or completed on a temporary tag [all temporary tags] must be in black ink on a white background. Other than for a motorcycle [For vehicles, other than motorcycles], a completed buyer's, dealer's, converter's, or preprinted [buyer, dealer, converter, and] Internet-down temporary tag shall be six [6] inches high and at least [by a minimum of] 11 inches wide. For a motorcycle [motorcycles], the completed buyer's, dealer's, converter's, or preprinted [buyer, dealer, converter, and] Internet-down temporary tag shall be four [4] inches high and at least seven [by 7] inches wide.

(b) A temporary tag [All temporary tags] must be:
(1) composed of plastic or other durable, weather-resistant material; or [7] or must be
(2) sealed in a two [2] mil clear poly bag that encloses the entire temporary tag.
(c) A dealer or converter may manually copy the information [provided] from the temporary tag database to a preprinted [preprinted] temporary tag template. A temporary tag completed in this manner must: [in accordance with the specifications of the appropriate appendix listed in subsection (c) of this section. Temporary tags completed by hand must have]

(1) display the information drawn in letters and numerals with a permanent, thick, black marking pen; and[

(2) comply with the specifications of the applicable temporary tag identified by the following appendices:

[(c) If a dealer uses the option provided by subsection (b) of this section, the dealer or converter shall use the design of the respective temporary tag from the applicable following Appendices:]

(A) Appendix A-1 - Dealer's Temporary Tag

[Dealer] - Assigned to Specific Vehicle;

Figure: 43 TAC §215.153(c)(2)(A) [§215.153(c)(1)]

(B) Appendix A-2 - Dealer's Temporary Tag

[Dealer] - Assigned to Agent;

Figure: 43 TAC §215.153(c)(2)(B) [§215.153(c)(2)]

(C) Appendix B-1 - Buyer's Temporary Tag

[Buyer];

Figure: 43 TAC §215.153(c)(2)(C) [§215.153(c)(3)]

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(D) Appendix B-2 - Preprinted Internet-down
Temporary Tag; and

Figure: 43 TAC §215.153(c)(2)(D) [§215.153(e)(4)]
(E) Appendix C-1 - Converter's Temporary Tag

Converter].

Figure: 43 TAC §215.153(c)(2)(E) [§215.153(e)(5)]

§215.154. Dealer's Temporary Tags.
(a) A dealer's temporary tag [Dealer temporary tags] may be
displayed only on the type of vehicle for which the GDN [general
distinguishing number] is issued and for which the [a] dealer is
licensed by the department to sell.

(b) Dealer temporary tags may be used by the dealer only

to:

(1) demonstrate the vehicle or cause the vehicle to
be demonstrated to a prospective buyer for sale purposes only;
(2) convey or cause the vehicle to be conveyed;

(A) from one of the dealer's places of business
in this state to another of the dealer's places of business in
this state;
(B) from the dealer's place of business to a
place where the vehicle is to be repaired, reconditioned, or
serviced;

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[(C) from the state line or a location in this
state where the vehicle is unloaded to the dealer's place of
business;]

[(D) from the dealer's place of business to a
place of business of another dealer;]

[(E) from the point of purchase by the dealer to
the dealer's place of business;]

[(F) to read test the vehicle;]

[(G) use the vehicle for or allow its use by a
charitable organization or use the vehicle or allow its use in
parades; or]

[(4) permit a customer to temporarily operate a
vehicle while the customer's vehicle is being repaired. A
vehicle-specific type dealer temporary tag shall be used for
this purpose.]

[(e) A vehicle being conveyed under this section is exempt
from the inspection requirements of Transportation Code, Chapter
548.]

(b) [(d)] A wholesale motor vehicle auction license holder
that also holds a dealer GDN [A dealer who holds a wholesale
motor vehicle auction general distinguishing number] may display
a dealer's temporary tag on a vehicle that is being [its dealer
temporary tags on any vehicles that are] transported to or from
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the licensed auction location [by a bona fide employee or agent of the auction].

(c) When an unregistered vehicle is sold to another dealer, the selling dealer shall remove the selling dealer's [its dealer] temporary tag. The purchasing dealer may display its dealer temporary tag or its metal dealer's license [dealer] plate on the vehicle. [If a vehicle is consigned from one dealer to another, the vehicle must display the temporary tag of the dealer to which that vehicle was consigned.]

(d) A dealer's temporary tag [Dealer temporary tags] may not be displayed on:

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

(2) on the dealer's service or work vehicles.

(e) For purposes of this section, a dealer's service or work vehicle includes: [Examples of vehicles considered as service or work vehicles for purposes of this subsection are:]

(1) a vehicle used for towing or transporting other vehicles;

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

(3) a courtesy car [on which a courtesy car sign

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1 is displayed];

2 (4) a rental or lease vehicle; and

3 (5) any boat trailer owned by a dealer or

4 manufacturer that is used to transport more than one boat.

5 (2) A light truck is not considered to be a laden

6 commercial vehicle when it is:

7 [(A) mounted with a camper unit; or]

8 [(B) towing a trailer for recreational purposes.]

9 (f) For purposes of subsection (d) of this section, a
10 [A] vehicle bearing a dealer's temporary tag is not considered
11 [to be] a laden commercial vehicle when the vehicle [(4)] is:
12 (1) towing another vehicle bearing the same
13 dealer's temporary tags; and
14 (2) both vehicles are being conveyed from the
15 dealer's place of business to a licensed wholesale motor vehicle
16 [a] auction or from a licensed wholesale motor vehicle [a]
17 auction to the dealer's place of business.

18 (g) As used in this section, "light truck" has the
19 [same] meaning assigned by Transportation Code, §541.201.

20 (h) A dealer's [dealer] temporary tag may not be used
21 to operate a vehicle for the personal use of a dealer or a
22 dealer's employee.

23 (i) A dealer's [dealer] temporary tag must show its

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expiration date, which must [which may] not exceed 60 days after
the date the temporary tag was issued. [its date of issuance.]

(j) [(i)] A dealer's [dealer] temporary tag may be issued by
a dealer to a specific motor vehicle in the dealer's inventory
or to a dealer's agent who is authorized to operate a motor
vehicle owned by the dealer.

(k) [(j)] A dealer that [who] issues a dealer's [dealer]
temporary tag to a specific vehicle must ensure that the
following information is placed on the temporary tag:

(1) the vehicle-specific number from the temporary tag
database;

(2) the year and make of the vehicle;

(3) the VIN [vehicle identification number (VIN)] of
the vehicle; [and]

(4) the month, day, and year of the temporary tag's
expiration; and[—]

(5) the name of the dealer.

(l) [(k)] A dealer that [who] issues a dealer's [dealer]
temporary tag to an agent must ensure that the following
information is placed on the temporary tag:

(1) the specific [agent-specific] number from the
temporary tag database; [and]

(2) the month, day, and year of the temporary tag's
expiration; and[

(3) the name of the dealer.

§215.155. Buyer's Temporary Tags.

(a) A buyer's temporary [buyer's] tag may be displayed only on a vehicle that can be legally operated on [may be operated upon] the public streets and highways and for which a sale has been consummated.

(b) A buyer's temporary tag may be displayed only a vehicle that has a valid inspection in accordance with Transportation Code, Chapter 548.

(c) For a wholesale transaction, the purchasing dealer places on the motor vehicle its own:

(1) dealer's temporary tag; or

(2) metal dealer's license plate.

[(b) A dealer must place a temporary buyer's tag on any new or used vehicle sold by the dealer, except for a vehicle sold in a wholesale transaction in which the purchasing dealer places its own dealer temporary tag or the purchasing dealer's metal dealer plate on the vehicle.]

(d)[(c)] A buyer's temporary tag is [Temporary buyer's tags are] valid until the earlier of:

(1) the date on which the vehicle is registered; or

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(2) the 60th day after the date of purchase.

(e) The dealer must ensure that the following information is placed on a buyer's temporary tag that the dealer issues:

1. the vehicle-specific number obtained from the temporary tag database;
2. the year and make of the vehicle;
3. the VIN (vehicle identification number (VIN)) of the vehicle;
4. the month, day, and year of the expiration of the buyer's temporary tag; and
5. the name of the dealer.

§215.156. Buyer's Temporary Tag Receipt.

A dealer must provide a buyer's temporary tag receipt to the buyer of each vehicle for which a buyer's temporary tag is issued, regardless of whether the buyer's temporary tag is issued using the temporary tag database or if the tag is a preprinted [in the ordinary course of business or is an] Internet-down temporary tag. The dealer may print the image of the buyer's temporary tag receipt issued from the temporary tag database or create the form using the same information. The dealer shall instruct the buyer to keep a copy of the receipt.
of the buyer's temporary tag receipt in the vehicle until the
vehicle is registered in the buyer's name and until metal plates
are affixed to the vehicle. The buyer's temporary tag receipt
must include the following information:[-]

(1) the issue date of the buyer's temporary tag;

(2) the year, make, model, body style, color, and VIN
[vehicle identification number (VIN)] of the vehicle sold;

(3) the vehicle-specific temporary tag number;

(4) the expiration date of the temporary tag;

(5) the date of the sale;

(6) the name of the issuing dealer and the dealer's
license number; and

(7) the buyer's name and mailing address.

§215.157. Advance Numbers, Preprinted Internet-down [Buyer's]
Temporary Tags.

(a) In accordance with Transportation Code, §503.0631(d), a
dealer may obtain an advance supply of preprinted Internet-down
temporary tags with specific numbers and buyer's temporary tag
receipts to issue in lieu of buyer's temporary tags if the
dealer is unable to access the Internet.

(b) If a dealer is unable to access the Internet at the
time of a sale, the dealer must complete the preprinted
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Internet-down temporary buyer's tag and buyer's temporary tag receipt by providing details of the sale, signing the buyer's temporary tag receipt, and retaining a copy. The dealer must [and sign the buyer's receipt, retain a copy of the signed buyer's receipt, and] enter the required information regarding [on] the sale in the temporary tag database not later than the close of the next business day that the dealer has access to the Internet. The buyer's temporary tag receipt must include [have] a statement that the dealer has Internet access[τ] but, at the time of the sale, the dealer was unable to access the Internet or the temporary tag database.

§215.158. General Requirements and Allocation of Preprinted Internet-down Temporary Tag Numbers.
(a) [Preprinted tags with Internet-down numbers shall be kept in a secure place.] The dealer is responsible for the safekeeping of preprinted Internet-down temporary tags and shall store them in a secure place. The dealer [these tags and] shall report any loss, theft, or destruction of preprinted Internet-down temporary [these] tags to the department within 24 hours of discovering [the time of] the loss, theft, or destruction.
(b) A dealer may use a preprinted Internet-down temporary tag [Tags with Internet-down numbers may be used] up to 12 09/01/2016 Amendments/New Section
months after the date the preprinted Internet-down temporary tag is created. [of issuance of the tag from the database.] A dealer may create replacement preprinted Internet-down temporary tags [tags with Internet-down numbers] up to the maximum allowed, when:

(1) a dealer uses one or more preprinted Internet-down temporary tags and then enters the required information in the temporary tag database [tags with Internet-down numbers and then enters the data into the system] after access to the temporary tag database [system] is again available; or

(2) a preprinted Internet-down temporary tag expires. [tag with an Internet-down number expires.]

(c) The number of preprinted Internet-down temporary tags that [tag with Internet-down numbers] a dealer may create is equal to the greater [greatest] of:

(1) the number of preprinted Internet-down temporary tags previously allotted by the department to the dealer;

(2) 30 [thirty]; or

(3) 1/52 of the dealer's total annual sales.

(d) For good cause shown, a dealer may obtain more than the number of preprinted Internet-down temporary tags described in subsection (c) of this section. The director of the Vehicle Titles and Registration Division of the department[τ] or that 09/01/2016 Amendments/New Section
director's delegate may approve an additional allotment of preprinted Internet-down temporary tags for a dealer if the additional allotment is essential for the continuation of the dealer's business. The director of the Vehicle Titles and Registration Division of the department or that director's delegate will base the determination of the additional allotment of preprinted Internet-down temporary tags on the dealer's past sales, inventory, and any other factors that the director of the Vehicle Titles and Registration Division of the department or that director's delegate determines pertinent, such as an emergency. A request for additional preprinted Internet-down temporary tags must specifically state why the additional preprinted Internet-down temporary tags are necessary for the continuation of the applicant's business.

$215.159. Converter's Temporary Tags.

(a) Converter's temporary tags may be used only by the converter or the converter's employees on unregistered vehicles to demonstrate the vehicle, or cause the vehicle to be demonstrated, to a prospective buyer who is a franchised
motor vehicle dealer or an employee of a franchised motor
vehicle dealer; or]

[(2) convey the vehicle or cause the vehicle to be
conveyed;]

[(A) from one of the converter's places of
business in this state to another of the converter's places of
business in this state;]

[(B) from the converter's place of business to a
place where the vehicle is to be assembled, repaired,
reconditioned, modified, or serviced;]

[(C) from the state line or a location in this
state where the vehicle is unloaded to the converter's place of
business;]

[(D) from the converter's place of business to a
place of business of a franchised motor vehicle dealer; or]

[(E) to road test the vehicle.]

[(b) Prospective buyers who are employees of a franchised
dealer or a converter may operate a vehicle displaying
converter's temporary tags during a demonstration.]

[(c) A vehicle being conveyed while displaying a
converter's temporary tag is exempt from the inspection
requirements of Transportation Code, Chapter 548.]

[(d) Converter's temporary tags may not be used to operate
a vehicle for the converter's or a converter's employee's personal use.]

(a) [**{e}**] A converter's temporary tag [Converter's temporary tags] may be displayed only on the type of vehicle that the converter is engaged in the business of assembling or modifying.

(f) When an unregistered new motor vehicle is sold to a converter, the selling dealer shall remove a dealer's temporary tag. The selling dealer may attach a buyer's temporary tag to the vehicle or the purchasing converter may display a converter's temporary tag or metal converter plate on the vehicle.)

(b) [**{g}**] A converter's [A converter] temporary tag must show its expiration date, which may not be more than 60 days after the date of its issuance.

(h) A converter temporary tag may be issued by a converter to a specific vehicle or to a converter's agent who is authorized to operate a motor vehicle owned by the converter.)

(c) [**{i}**] A converter that [who] issues a converter's temporary [converter's] tag to a specific vehicle shall ensure that the following information is placed on the converter's temporary tag:

(1) the vehicle-specific [vehicle-specific] number from the temporary tag database;

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Chapter 215, Motor Vehicle Distribution

(2) the year and make of the vehicle;

(3) the VIN [vehicle identification number (VIN)] of the vehicle; [and]

(4) the month, day, and year of [the tag's] expiration of the converter's temporary tag; and[—]

(5) the name of the converter.

[(j) A converter who issues a temporary converter's tag to an agent shall ensure that the following information is placed on the tag:]

[(1) the agent-specific number from the database; and]

[(2) the month, day, and year of the tag's expiration.—]


(a) For each motor vehicle a dealer displays or offers for retail sale and which has been a salvage motor vehicle as defined by Transportation Code, §501.091(15) and a regular title subsequently issued under Transportation Code, §501.100, a dealer shall disclose in writing that the motor vehicle has been repaired, rebuilt, or reconstructed and issued a title under Transportation Code, §501.100. The written disclosure must:

(1) be visible from outside of the motor vehicle; and
(2) contain lettering that is reasonable in size, stating as follows: "This motor vehicle has been repaired, rebuilt or, reconstructed after formerly being titled as a salvage motor vehicle."

(b) Upon the sale of a motor vehicle which has been a salvage motor vehicle as defined by Transportation Code, §501.091(15) and a regular title subsequently issued under Transportation Code, §501.100, a dealer shall obtain the purchaser's signature on the vehicle disclosure form or on an acknowledgement written in eleven point or larger font that states as follows: "I, (name of purchaser), acknowledge that at the time of purchase, I am aware that this vehicle has been repaired, rebuilt, or reconstructed and was formerly titled as a salvage motor vehicle."

(c) The purchaser's acknowledgement as required in subsection (b) of this section may be incorporated in a Buyer's Order, a Purchase Order, or other disclosure document. This disclosure does not require a separate signature.

(d) An original signed acknowledgement required by subsection (b) of this section or a signed vehicle disclosure form shall be given to the purchaser and a copy of the signed acknowledgement or vehicle disclosure form shall be retained by the dealer in the records of motor vehicles sales required by 09/01/2016 Amendments/New Section
$215.144 of this title (relating to Records). If the
acknowledgement is incorporated in a Buyer's Order, a Purchase
Order, or other disclosure document, a copy of that document
must be given to the purchaser and a copy retained in the
dealer's records in accordance with $215.144.
(e) This section does not apply to a wholesale motor
vehicle auction.
Figure: 43 TAC §215.139(c)

<table>
<thead>
<tr>
<th>If a new license applicant is:</th>
<th>Maximum number of dealer's license plates issued during the first license term is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. a franchised motor vehicle dealer</td>
<td>5</td>
</tr>
<tr>
<td>2. a franchised motorcycle dealer</td>
<td>5</td>
</tr>
<tr>
<td>3. an independent motor vehicle dealer</td>
<td>2</td>
</tr>
<tr>
<td>4. an independent motorcycle dealer</td>
<td>2</td>
</tr>
<tr>
<td>5. a franchised or independent travel trailer dealer</td>
<td>2</td>
</tr>
<tr>
<td>6. a trailer or semi-trailer dealer</td>
<td>2</td>
</tr>
<tr>
<td>7. an independent mobility motor vehicle dealer</td>
<td>2</td>
</tr>
<tr>
<td>8. a wholesale motor vehicle dealer</td>
<td>1</td>
</tr>
</tbody>
</table>
Figure: 43 TAC §215.139(e)

<table>
<thead>
<tr>
<th>If a vehicle dealer is:</th>
<th>Maximum number of metal dealer's license plates issued per license term is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. a franchised motor vehicle dealer</td>
<td>30</td>
</tr>
<tr>
<td>2. a franchised motorcycle dealer</td>
<td>10</td>
</tr>
<tr>
<td>3. an independent motor vehicle dealer</td>
<td>3</td>
</tr>
<tr>
<td>4. an independent motorcycle dealer</td>
<td>3</td>
</tr>
<tr>
<td>5. a franchised or independent travel trailer dealer</td>
<td>3</td>
</tr>
<tr>
<td>6. a trailer or semi-trailer dealer</td>
<td>3</td>
</tr>
<tr>
<td>7. an independent mobility motor vehicle dealer</td>
<td>3</td>
</tr>
<tr>
<td>8. a wholesale motor vehicle dealer</td>
<td>1</td>
</tr>
</tbody>
</table>
Figure: 43 TAC §215.139(f)(1)

<table>
<thead>
<tr>
<th>If a vehicle dealer is:</th>
<th>Number of additional metal dealer's license plates issued to a dealer that demonstrates a need through proof of sales is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. a wholesale motor vehicle dealer</td>
<td>1</td>
</tr>
<tr>
<td>2. a dealer selling fewer than 50 vehicles during the previous 12-month period</td>
<td>1</td>
</tr>
<tr>
<td>3. a dealer selling 50 to 99 vehicles during the previous 12-month period</td>
<td>5</td>
</tr>
<tr>
<td>4. a dealer selling more than 200 vehicles during the previous 12-month period</td>
<td>any number of metal dealer's license plates the dealer requests,</td>
</tr>
</tbody>
</table>
Figure: 43 TAC §215.153(c)(2)(A) [§215.153(e)(1)]

APPENDIX A-1

TEXAS DEALER
VEHICLE OWNED BY JOHN DOE AUTO SALES

THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #

EXPIRES

VIN

FOR INTRANSIT, ROAD TESTING, DEMONSTRATION AND USE
BY CHARITABLE ORGANIZATIONS

DEALER'S TEMPORARY [DEALER] TAG – ASSIGNED TO SPECIFIC VEHICLE
Figure: 43 TAC §215.153(e)(2)(B) [§215.153(e)(2)]

APPENDIX A-2

TEXAS DEALER

VEHICLE OWNED BY JOHN DOE AUTO SALES

THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #

EXPIRES [ ]-[-][ ]

Authorized Agent Tag

FOR INTRANSIT, ROAD TESTING, DEMONSTRATION AND USE

BY CHARITABLE ORGANIZATIONS

DEALER'S TEMPORARY [DEALER] TAG – ASSIGNED TO AGENT
APPENDIX B-1

<table>
<thead>
<tr>
<th>TEXAS BUYER</th>
</tr>
</thead>
<tbody>
<tr>
<td>THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG #</td>
</tr>
<tr>
<td>EXPRESSES</td>
</tr>
<tr>
<td>VIN ____________</td>
</tr>
</tbody>
</table>

BUYER'S TEMPORARY TAG
Figure: 43 TAC §215.153(e)(2)(D) [§215.153(e)(4)]

APPENDIX B-2

TEXAS BUYER – INTERNET

THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER TAG 

4587650

EXPIRES

VIN

SELLER: ABC FANTASTIC FABULOUS AUTO SALES

PREPRINTED INTERNET-DOWN TEMPORARY [INTERNET-DOWN BUYER’S] TAG
Figure: 43 TAC §215.153(c)(2)(E) [§215.153(e)(5)]

APPENDIX C-1

TEXAS CONVERTER
VEHICLE OWNED BY JOHN DOE CONVERSIONS
THIS VEHICLE TEMPORARILY REGISTERED WITH STATE UNDER PERMIT #

EXPIRES

FOR INTRANSIT, ROAD TESTING, DEMONSTRATION

CONVERTER'S TEMPORARY [CONVERTER] TAG
SUBCHAPTER F. VEHICLE LESSORS AND VEHICLE LEASE FACILITATORS

§215.171. Purpose and Scope. [Objective.]
This subchapter implements [The objective of this subchapter is
to implement the intent of the legislature as declared in] Occupations Code, Chapter 2301 and more specifically[, and in particular], §§2301.251, 2301.253, 2301.254, 2301.261, 2301.262, 2301.357, and 2301.551 - 2301.556[, by prescribing rules to regulate the business of leasing motor vehicles in this state].

§215.173. License.
(a) No person may engage in business as a vehicle lessor or a vehicle lease facilitator unless that person holds a valid license issued by the department [has a currently valid license assigned by the division], or is otherwise exempt by law from obtaining such a license.

(b) Any person who facilitates vehicle leases on behalf of a vehicle lease facilitator must:
(1) be on the vehicle lease facilitator's payroll and receive compensation from which social security, federal unemployment tax, [in which Social Security, Federal Unemployment Tax,] and all other appropriate taxes are withheld from the representative's paycheck and [said taxes are] paid to the proper taxing authority; and
(2) have work details such as when, where, and how the final results are achieved, directed, and controlled by the vehicle lease facilitator.


(a) An applicant [Application] for a vehicle lessor's or vehicle lease facilitator's license must submit a sufficient application to the department. To be sufficient, the application must [shall] be on a form prescribed by the department and accompanied by all required supporting documentation. [division, properly completed by the applicant, and shall be submitted with supporting documentation showing all information requested.]

(b) The supporting documentation for a vehicle lessor's license application shall include:

[(1) a letter of appointment for each lease facilitator or acceptable substitute as designated by the division;]

[(2)] [(a)] verification of the criminal background of each owner and officer of the applicant, if applicable;

[(2)] [(3)] the fee required [for the license as prescribed] by law for each type of license required;

[(3)] [(4)] a copy of each assumed name certificate on file with the appropriate recording entity, such as the Office
of the Secretary of State or the county clerk; [and]

(4) a sample copy of the vehicle lease agreement between the vehicle lessor and a lessee;

(5) a sample copy of the required fee disclosure statement regarding fees paid by the vehicle lessor to a vehicle lease facilitator for the facilitation of a vehicle lease or a statement that no such fees were or will be paid;

(6) a list including the business name(s), DBA(s), and addresses of lease facilitators with whom the applicant conducts or intends to conduct business; and

(7) a list of other satellite offices that conduct business in the State of Texas that includes the address, phone number, and name of the contact person for each location.

(c) The supporting documentation for a vehicle lease facilitator's license application shall include:

(1) a letter of appointment from each lessor or acceptable substitute as designated by the division;

(1) a verification of the criminal background of each owner and officer of the applicant, if applicable;

(2) the fee required for the license as prescribed by law for each type of license required;

(3) a copy of each assumed name certificate on file with the appropriate recording entity, such as the Office
of the Secretary of State or the county clerk;

(4) a sample copy of the vehicle lease agreement between each of the lessors the lease facilitator represents, and the lessee; [and]

(5) a sample copy of the required fee disclosure statement regarding fees paid by a vehicle lessor to the vehicle lease facilitator for the facilitation of a vehicle lease or a statement that no such fees were or will be paid;

(6) a list of all vehicle lessors, including names and addresses, for whom any vehicle lease facilitator solicits or procures a lessee. The vehicle lease facilitator shall update the list upon renewal of a license and within 10 days of the addition of any vehicle lessor to this list; and

(7) a copy of the representation agreement between the vehicle lease facilitators and each lessor.

§215.175. Sanctions.

(a) The board or department may:

(1) deny a vehicle lessor or vehicle lease facilitator application;

(2) revoke or suspend a vehicle lessor or vehicle

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lease facilitator license; or

(3) assess a civil penalty or take other action on a vehicle lessor or vehicle lease facilitator applicant or license holder, or a person engaged in business for which a vehicle lessor or vehicle lease facilitator license is required.

[(a) Revocation/Denial. The Board may revoke, deny or suspend a lessor or lease facilitator's license, or assess civil penalties, if that lessor or lease facilitator:

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

(1) fails to maintain an established and permanent place of business required by §215.177 of this title (relating to Established and Permanent Place of Business);

(2) fails to maintain records required under this subchapter;

(3) refuses to permit or fails to comply with a request by a representative of the department to examine during the vehicle lessor's or vehicle lease facilitator's posted business hours at the vehicle lessor's or

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vehicle lease facilitator's licensed location: [the current and
previous year's leasing records required to be kept under
§215.178 of this subchapter (relating to Records of Leasing) and
ownership papers for vehicles owned, leased, or under that
lessor or lease facilitator's control, and evidence of ownership
or lease agreement for the property upon which the business is
located:]

(A) a vehicle leasing record required to be
maintained by §215.178 of this title (relating to Records
Required for Vehicle Lessors and Vehicle Lease Facilitators);
(B) ownership papers for a vehicle owned, leased,
or under that vehicle lessor's or vehicle lease facilitator's
control; or

(C) evidence of ownership or a current premises
lease agreement for the property upon which the business is
located;

[(A) during normal working hours at the lessor's
or lease facilitator's permanent place of business, or]
[(B) through a request made by the division
pursuant to these rules;]
(4) refuses or fails to timely comply with a request
for records made by a representative of the department;
(5)[(3)] fails to notify the department in writing
within 10 days of a change of the vehicle lessor or vehicle lease facilitator license holder's mailing address; physical address; telephone number; or email address;
(6) fails to notify the department in writing within 10 days of a change of the vehicle lessor or vehicle lease facilitator license holder's name or ownership; (lessor/lease facilitator's name or ownership within ten days after such a change;)
(7) fails to comply with the fee restrictions or other requirements under Occupations Code, §2301.357 or §§2301.551 - 2301.556;
(8) fails to maintain leasing and/or advertisement records or otherwise fails to comply with the advertising requirements of: (as described in these rules;)
(A) §215.178; or
(B) Subchapter H of this chapter (relating to Advertising);
(7) fails to remain regularly and actively engaged in the business of leasing vehicles or facilitating the leasing of
vehicles for which the license is issued;

(9) violates any law relating to the sale, lease, distribution, financing, or insuring of motor vehicles;

(10) is convicted of an offense that, in accordance with Occupations Code, Chapter 53 and with §215.88 of this title (relating to Criminal Offense and Action on License), directly relates to the duties or responsibilities of the licensed occupation;

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

(12) uses or allows use of a vehicle lessor or vehicle lease facilitator license in violation of any law or for the purpose of avoiding any provision of Occupations Code, Chapter 2301; or

(13) wilfully omits material information or makes a material misrepresentation in any application or other documentation filed with the department.

(11) fails to update in writing the list of lessors, including names and addresses, with which any lease facilitator executes leases within ten days of any changes to this list and
upon renewal of the license;

[(12) violates any state or federal law relating to
the leasing of new motor vehicles.]

(c) The board or department may take action on a vehicle
lessor's license or assess civil penalties for the vehicle
lessor's failure to notify the department in writing within 10
days of any change, addition, or deletion to the list of vehicle
lease facilitators with whom the vehicle lessor conducts
business, including any change to a vehicle lease facilitator's
mailing address, physical address, telephone number, or email
address.

(d) The board or department may take action on a vehicle
lease facilitator's license or assess civil penalties for the
vehicle lease facilitator's failure to notify the department in
writing within 10 days of any change, addition, or deletion to
the list of vehicle lessors for whom the vehicle lease
facilitator conducts business, including any change to a vehicle
lessor's mailing address, physical address, telephone number, or
email address.

(e) The board or department may take action on a vehicle
lessor's or vehicle lease facilitator's license if the vehicle
lessor or vehicle lease facilitator accepts a fee from a dealer,
directly or indirectly, for referring a customer who purchases

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or considers purchasing a motor vehicle.

[(b) Referral fees prohibited. A lessor or lease facilitator may not, directly or indirectly, accept a fee from a dealer for referring customers who purchase or consider purchasing vehicles.]

§215.176. More Than One Location.

(a) A vehicle lease facilitator must be licensed separately for each business location.

(b) A vehicle lessor or vehicle lease facilitator that relocates from a point outside the limits of a city to a point not within the limits of the same city of the initial location is required to obtain a new license.

(c) A vehicle lessor is required to obtain a license for the vehicle lessor's primary location. A vehicle lessor must provide the address, telephone number, and the name of a contact person for all other satellite offices that conduct business in the state of Texas.

§215.177. Established and Permanent Place of Business.

(a) A vehicle lessor or vehicle lease facilitator operating
within the State of Texas must meet the following requirements at each location where vehicles are leased or offered for lease.

(1) Physical location requirements.

(A) A vehicle lessor or vehicle lease facilitator operating within the State of Texas must be open to the public. The vehicle lessor's or vehicle lease facilitator's business hours for each day of the week must be posted at the main entrance of the office. The owner or an employee of the vehicle lessor or vehicle lease facilitator must be at the location during the posted business hours for the purpose of leasing vehicles. In the event the owner or an employee is not available to conduct business during the posted business hours, a separate sign must be posted indicating the date and time such owner or employee will resume vehicle leasing operations.

(B) A vehicle lessor's or vehicle leasing facilitator's office structure must be of sufficient size to accommodate the following required equipment: and must be equipped with

(i) a desk and chairs from which the vehicle lessor or vehicle lease facilitator transacts his business; and

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(ii) a working telephone number listed in the business name or assumed name under which the vehicle lessor or vehicle lease facilitator conducts business.

(C) A vehicle lessor or vehicle lease facilitator that files an application for a new license or a vehicle lessor that files an application for a satellite location must comply with the following requirements:

(i) The office must be located in a building with connecting exterior walls on all sides.

(ii) The office must comply with all applicable local zoning ordinances and deed restrictions.

(iii) The office may not be located within a residence, apartment, hotel, motel, or rooming house.

(iv) The physical address of the office must be recognized by the U.S. Postal Service and capable of receiving U.S. mail.

(D) A portable-type office structure may qualify as an office only if the structure meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(E) One or more licensed vehicle lessors or...
vehicle lease facilitators, or a combination of one or more licensed vehicle lessors and vehicle lease facilitators may occupy the same business structure and conduct vehicle leasing operations in accordance with the license held by the vehicle lessor or licensed vehicle lease facilitator. Each person engaged in business as a vehicle lessor or vehicle lease facilitator must have:

[(D) In those instances when two or more lessors or lease facilitators occupy the same business locations and conduct their respective leasing operations under different names, one office structure for all lessors or lease facilitators operating from such location will be acceptable; provided, however, each lessor or lease facilitator must have:]

(i) a separate desk from which that vehicle lessor or vehicle lease facilitator transacts business;

(ii) a separate working telephone number listed [instrument, number, and listing] in the vehicle lessor or vehicle lease facilitator's business name or assumed name;

(iii) a separate right of occupancy that meets [meeting] the requirements of this section; and[
(iv) a vehicle lessor or vehicle lease facilitator license issued by the department in the name of the vehicle lessor or vehicle lease facilitator.
A vehicle lease facilitator's established and permanent place of business, as prescribed in this rule, must be physically located within the State of Texas.

(2) Sign requirements. A vehicle lessor or vehicle lease facilitator shall display a conspicuous and permanent sign at the licensed location showing the name under which the vehicle lessor or vehicle lease facilitator conducts business. Outdoor signs must contain letters that are at least six inches in height.

(3) Premises lease requirements. If the premises from which a licensed vehicle lessor or vehicle lease facilitator conducts business are not owned by the license holder, the license holder must maintain for the licensed location a valid premises lease that is continuous during the period of time for which the vehicle licensee, such licensee shall maintain a lease continuous for the same period of time as the lessor's or vehicle lease facilitator's license will be issued. The premises lease agreement must be on a properly executed form containing a minimum of the following information:

(A) the name of the landlord of the premises and

the name of the vehicle lease facilitator as the tenant of the
premises; [names of the lessor and lessee;]

(B) the street address or legal description of the property, provided that if only a legal description of the property is included, the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application; [or street address;] and

(C) the period of time for which the premises lease is valid.

(b) A vehicle lessor that does not deal directly with the public to execute vehicle leases and whose licensed location is in another state [and who does not deal directly with the public to execute leases] must meet the following requirements at each location.

(1) Physical location requirements.

(A) The vehicle lessor's office structure must be of sufficient size to accommodate the following required equipment: [and must be equipped with]

   (i) a desk and chairs from which the vehicle lessor transacts [his] business; and [The office also must be equipped with]

   (ii) a working telephone number [instrument] listed in the business name or assumed name under which the vehicle lessor conducts [lessor or lease facilitator does]
(B) A vehicle lessor that files an application for a new license or a satellite location with a primary [supplemental location whose] licensed location [is] in another state must conform to the following requirements. [+]

(i) The office must be located in a building[7] with connecting exterior walls on all sides.
(ii) The office must comply with all applicable local zoning ordinances and deed restrictions.
(iii) The office may not be located within a residence, apartment, hotel, motel, or rooming house.
(iv) The physical address of the office must be recognized by the U.S. Postal Service and [or] capable of receiving U.S. mail.

(C) A portable-type office structure may qualify as an office only if the structure meets the[7, provided it meets the minimum] requirements of this section and is not a readily moveable trailer or other [such] vehicle.

(D) More than one licensed vehicle lessor may occupy the same business structure and conduct vehicle leasing operations under different names in accordance with the license held by each vehicle lessor. Each person engaged in business as a vehicle lessor must have:

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[(D) In those instances when two or more lessors occupy the same business locations and conduct their respective leasing operations under different names, one office structure for all lessors operating from such location will be acceptable; provided, however, each lessor must have:]

(i) a separate desk from which that vehicle lessor transacts business;

(ii) a separate working telephone number listed in the vehicle lessor's business name or assumed name;

(iii) a separate right of occupancy that meets the requirements of this section; and

(iv) a vehicle lessor license issued by the department in the name of the vehicle lessor.

(2) Sign requirements. An out of state vehicle lessor shall display a conspicuous and permanent sign at the licensed location showing the name under which the vehicle lessor conducts business. Outdoor signs must contain letters at least six inches in height.

(3) Premises lease requirements. If the out of state premises from which a licensed vehicle lessor conducts business are not owned by the license holder, the license holder must maintain a valid premises lease for the location.
entity, that person or entity shall maintain a lease on] the
property of the licensed location. The premises lease must be
continuous during the period of time for which the license will
be issued. The premises lease agreement must [continuous for the
same period of time as the license, and such agreement shall] be
on a properly executed form containing at a minimum:[, but not
limited to the following information:]

(A) the name [names] of the landlord of the
premises and the name of the licensed lessor identified as the
tenant of the premises; [lessor and lessee;]

(B) the street address or legal description of
the property, provided that if only a legal description of the
property is included, the applicant must attach a statement that
the property description in the lease agreement is the street
address identified on the application; [or street address;] and

(C) the period of time for which the premises
lease is valid.

(c) [Independence.] A vehicle lessee or vehicle lease
facilitator shall be independent of financial institutions and
dealerships in location and in business activities, unless that
vehicle lessee or vehicle lease facilitator is an:

(1) employee or [of, a] legal subsidiary of the
financial institution or dealership; or[; or an]
(2) entity wholly owned by the financial institution or dealership.

(d) For the purposes of this section, an employee is a person who meets the requirements of §215.173(b) of this title (chapter) (relating to License).

§215.178. Records Required for Vehicle Lessors and Vehicle Lease Facilitators [of Leasing].

(a) Purchase and leasing records. A vehicle lessor or vehicle lease facilitator must maintain a complete record of all vehicle purchases and sales for at least one year after the expiration of the vehicle lease.

(1) Records reflecting vehicle lease transactions that have occurred within the preceding 24 months must be maintained at the licensed location. Records for prior time periods may be kept off-site at a location within the same county or within 25 miles of the licensed location.

(2) Within 15 days of receipt of a request sent by mail or by electronic document transfer from a representative of the department, a vehicle lessor or vehicle lease facilitator must deliver a copy of the specified records to the address listed in the request within 15 days.

(b) Content of records. A complete record for a vehicle
lease transaction must contain: [As used in this subsection, a complete lease file shall contain the following information or documents:]

(1) the name, address [names, addresses], and telephone number [numbers] of the lessor of the vehicle subject to [in] the transaction;

(2) the name, mailing address, physical address, [names, addresses] and telephone number of each [numbers of the] lessee of the vehicle subject to [in] the transaction;

(3) the name, address, [names, addresses] telephone number, [numbers] and license number [numbers] of the lease facilitator of the vehicle subject to [in] the transaction;

(4) the name, home address, and telephone number of each employee of the vehicle lease facilitator that [who] handled the transaction;

(5) a complete description of the vehicle involved in the transaction, including the VIN; [its vehicle identification number (VIN)];

(6) the name, address, telephone number, and GDN [general distinguishing number] of the dealer selling the vehicle, as well as the franchise license number of the dealer if the vehicle involved in the transaction is a new motor vehicle;
(7) the amount of fee received by or paid to the vehicle lease facilitator or a statement that no fee was paid;

(8) a copy [copies] of the buyer's [buyers] order and sales contract for the vehicle;

(9) a copy of the vehicle lease contract;

(10) a copy [copies] of all other contracts, agreements, or disclosures between the vehicle lease facilitator and the consumer lessee; and

(11) a copy [copies] of the front and back of the manufacturer's statement of origin, manufacturer's certificate of origin, [Manufacturer's Statement/Certificate of Origin] or the title of the vehicle if the vehicle involved in the transaction is a new motor vehicle.

(c) Records of advertising. A vehicle lessor or vehicle lease facilitator must maintain a copy [copies] of all advertisements, brochures, scripts, or an [or] electronically reproduced copy [copies] in whatever medium appropriate, of promotional materials for a period of at least 18 months. Each copy is[ir] subject to inspection upon request by a representative of the department [Board] at the business of the license holder during posted [licensee during regular] business hours.

(1) Vehicle Lessors and vehicle lease facilitators
must comply with all federal and state advertising laws and regulations, including [All advertisements by lessors or lease facilitators must be in accordance with] Subchapter H of this chapter (relating to Advertising).

(2) A vehicle lessor or vehicle lease facilitator [Lessors and lease facilitators] may not state or infer in any advertisement, either directly or indirectly, that the [in any manner such as advertisements, stationery or business cards that their] business involves the sale of new motor vehicles.

(d) Title assignments. Each certificate [All certificates] of title, manufacturer's certificate [certificates] of origin, or other evidence of ownership for a vehicle that has [vehicles which have] been acquired by a vehicle lessor for lease must be properly assigned [properly] from the seller in the vehicle [into the] lessor's name.

(e) Letters of appointment. A letter [All letters] of appointment between a vehicle lessor and a vehicle [each lessor or] lease facilitator with whom the vehicle lessor conducts [the licensee does] business must be executed by both parties.

(f) Electronic records. Any record [records] required to be maintained [kept] by a vehicle lessor or vehicle lease facilitator may be maintained [kept] in an electronic format, provided [if] the electronic record [records] can be printed at 09/01/2016 Amendments
the licensed location upon request for the record by a representative of the department.

§215.179. Change of Vehicle Lessor or Vehicle Lease Facilitator Status.

(a) Change of ownership. A vehicle lessor or vehicle lease facilitator that [who] proposes to sell or [and/or] assign to another any interest in the licensed entity, whether a corporation or otherwise, provided [so long as] the physical location of the licensed entity remains the same, shall notify the [department] in writing within [ten] days by filing an application to amend the license. If the sale or assignment of any portion of the business results in a change of entity, then the [purchasing] assignee entity must apply for and obtain a new license. A publicly held corporation licensed as a vehicle lessor or vehicle lease facilitator needs only inform the department [Publicly held corporations licensed as lessors or lease facilitators need only inform the division] of a change in ownership if one person or entity acquires 10% or greater interest in the licensed entity, [licensee].

(b) Change of operating status of business location. A [licensee] shall obtain [department]
approval prior to opening a satellite location or relocating an existing location, in accordance with §215.176 of this title (relating to More than One Location). A license holder [Also, a licensee] must notify the department when closing an existing location or a satellite location.

§215.180. Required Notices to Lessees. Vehicle lessors and vehicle lease facilitators shall provide notice of the complaint procedures provided by Occupations Code, §§2301.204 and 2301.601 - 2301.613 to each lessee of a new motor vehicle with whom they enter into a vehicle lease.

§215.181. General Distinguishing Number Exception. A licensed vehicle lessor is not required to hold a GDN in order to sell a motor vehicle that the vehicle lessor owns to the lessee or to a duly licensed dealer, either directly or through a licensed wholesale motor vehicle auction. A licensed vehicle lessor may not purchase a motor vehicle at a wholesale motor vehicle auction. Any
existing GDN held by a \underline{vehicle lessor that} [lessee who] does not otherwise qualify for a GDN shall be \underline{canceled}. A vehicle [canceled. A] lessor whose GDN has been \underline{canceled} [canceled] under this section may reapply for a GDN once all the qualifications for a GDN are met.
SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS

§215.201. Purpose and Scope. [Objective and Definitions.]

(a) This subchapter implements Occupations Code, §2301.204 and §§2301.601-2301.613.

[(a) It is the objective of this subchapter to implement the intent of the legislature as declared in Occupations Code, Chapter 2301, Subchapter M (§§2301.601-2301.613) and Occupations Code, §2301.204. These rules provide a simplified and fair procedure for the enforcement of these provisions of the Code, including the processing of complaints, the conduct of hearings, and the formal or informal disposition of complaints filed by owners seeking relief under these provisions of the Code.]

(b) Practice and procedure in contested cases heard by the department’s [State] Office of Administrative Hearings (OAH) are addressed in Subchapter B of this chapter (relating to Adjudicative Practice and Procedure) [(SOAH) are provided for in Subchapter I of this chapter (relating to Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings)] and the provisions of this subchapter to the extent that the provisions do not conflict with state law, rule, or court order. [SOAH rules.]

(c)[(b)] The following words and terms, when used in this subchapter, shall have the following meanings, unless the

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context clearly indicates otherwise.

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


(3) Owner--A person as defined by Occupations Code, §2301.601(2).

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


(a) Lemon law complaints.

(1) Complaints seeking relief under the lemon law must be in writing and filed with the department. A complaint filed with the department shall be delivered:

(A) in person to the department; [by hand delivery to the department's headquarters building in Austin,]

(B) by mail to the address of the department; [by]

(C) by email [by e-mail or facsimile]
transmission] to a department-designated email address; or [e-mail address or]

(D) by facsimile transmission to a department-designated facsimile number.

(2) Complaints may be submitted in letter or other written format, or on complaint forms provided by the department.

(3) Complaints shall [should] state sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances forming [which form] the basis of the claim for relief under the lemon law.

(4) Complaints shall, at a minimum, [should] provide the following information:

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

(B) the identification of the motor vehicle, including the make, model, year, and manufacturer's VIN;

(C) the type of warranty coverage;

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

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applicable;

(E) the date of delivery of the motor vehicle to the original owner[\textsuperscript{*}] and in the case of a demonstrator, the date the motor vehicle was placed into demonstrator service;

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

(i) the motor vehicle was purchased or leased[\textsuperscript{*}, mileage when]

(ii) problems with the motor vehicle were first reported; and[\textsuperscript{*}]

(iii) the complaint was filed;

(G) the name of the dealer or the name of the manufacturer's, converter's, or distributor's agent to whom the problems were first reported[\textsuperscript{*}, and current mileage];

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

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

(ii) a copy of each repair order[\textsuperscript{*}, with copies of repair orders] where possible;

(I)[H] the date the motor [date on which written notification of complaint was given to the] vehicle manufacturer, converter, or distributor received written

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notification of the complaint; and

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

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

(5) The department's staff will provide information concerning the complaint procedure and complaint forms to any person requesting assistance.

(6) The filing fee required under the lemon law should be remitted with the complaint by any form of payment accepted by the department. The filing fee is nonrefundable, but a complainant prevails in a case is entitled to reimbursement of the filing fee from the nonprevailing party. Failure to remit the filing fee with the complaint will delay commencement of the 150-day period referenced in paragraph of this subsection and may result in dismissal of the complaint.

(7) The commencement of a lemon law proceeding occurs on the date the filing fee is received by the department or its authorized agent.

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

(b) Warranty performance complaints (repair-only relief).

(1) Complaints for warranty performance relief filed with the department must comply with the requirements of subsection (a)(1) - (4) of this section.

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

(3) A complaint may be filed with the department if the defect in the motor vehicle subject to the warranty performance complaint was reported to the manufacturer, converter, distributor, or to an authorized agent prior to the expiration of the warranty.
period[, a complaint may be filed with the department in accordance with this section].

(4) If the defect is not [cannot be] resolved pursuant to §215.205 of this title [subchapter] (relating to Mediation; Settlement), a hearing will be scheduled and conducted in accordance with Government Code, Chapter 2001, subject to [this subchapter and] Occupations Code, Chapter 2301, Subchapter O and this subchapter.

(5) The final order authority will issue an order on the warranty performance complaint. A party who disagrees with the order may oppose the order in accordance with [using the procedures described in] §215.207 of this title [subchapter] (relating to Contested Cases: Final Orders).

(6) Department staff will provide information concerning the complaint procedure and complaint forms to any person requesting [information or] assistance.


Department staff will promptly review a complaint [All complaints will be reviewed promptly by department staff] to determine if the complaint meets [whether they satisfy] the minimum requirements of a lemon law or a warranty performance complaint.
(1) If department staff cannot determine [it cannot be
determined] whether a complaint meets [satisfies] the minimum
lemon law or warranty performance requirements, the complainant
will be contacted for additional information.

(2) If department staff determines [it is determined]
that the complaint meets [does meet] the minimum lemon law or
warranty performance requirements, the complaint will be
processed in accordance with [the procedures set forth in] this
subchapter.

§215.204. Notification to Manufacturer, Converter, or
Distributor.

(a) Upon receipt of a complaint for lemon law or warranty
performance relief, the department will:

(1) provide notification of the complaint to, and
request a response from, the appropriate manufacturer,
converter, or distributor; and[, and a response to the complaint
will be requested. The department will also]

(2) provide a copy of the complaint to, and may
request a response from, the selling dealer and any other dealer
[dealers that have been] involved with the complaint[, and a
response may be requested].

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

§215.205. Mediation; Settlement.

(a) Department [Before a complaint filed under Occupations
Code, §§2301.204 or §2301.601 - 2301.613 is scheduled for a
hearing, department] staff will attempt to settle or resolve a
lemon law or warranty performance complaint through nonbinding
mediation before a hearing on the complaint is scheduled.
[Effect a settlement or resolution of the complaint through
mediation.]

(b) The parties are required [While the mediation is not
binding, all parties are required] to participate in the
nonbinding mediation process in good faith.

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

Lemon law or warranty performance complaints that satisfy the
jurisdictional requirements of the Occupations Code will be set
for hearing. Notification[; and notification] of the date, time,
and place of the hearing will be given to all parties by certified mail. Additional information contained in the notice of hearing shall be consistent with §215.34 of this title (relating to Notice of Hearing in Contested Cases).

(1) When [where] possible, hearings will be held in the city in which [where] the complainant resides [or at a location reasonably convenient to the complainant].

(2) Hearings will be scheduled at the earliest date possible, provided that a 10-day notice or other notice [or such other notice as is] required by law[.] is given to all parties.

(3) Hearings will be conducted expeditiously by a hearings examiner in accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O[.] Occupations Code, §2301.704]; and with the provisions of Subchapter B of this chapter (relating to Adjudicative Practice and Procedure) and this subchapter.

(4) Hearings will be conducted informally [informal]. The parties have the right to be represented by attorneys at a hearing, although attorneys are not required. Any party who intends to be represented at a hearing by an attorney or an authorized representative [at a hearing] must notify the hearings examiner, the department, and any [the] other party in 09/01/2016 Amendments
writing at least five business days prior to the hearing. Failure to provide [such] notice will result in postponement of the hearing if [postponement is] requested by any [the] other party.

(5) Subject to a hearings examiner ruling, a party may present that party's case [hearings examiner rulings, parties may present their cases] in full, including testimony from witnesses[τ] and documentary evidence such as repair orders, warranty documents, and the motor vehicle sales contract.

(6) By agreement of the parties and with the written approval of the hearings examiner, the hearing may be conducted by written submission [submissions] only or by telephone.

(7) Except for a hearing [hearings] conducted by written submission [only], each party may be questioned by the other party[τ] at the discretion of the hearings examiner.

(8) Except for a hearing [hearings] conducted by written submission [only] or by telephone, the complainant must bring the motor vehicle in question to the hearing so that the motor vehicle may be inspected and test driven, unless otherwise ordered by the hearings examiner upon a showing of good cause by the complainant.

(9) The department may have the motor vehicle in question inspected by an expert prior to the hearing, if the
department determines that an expert opinion may assist in arriving at a decision. An inspection under this section shall be made upon prior notice to all parties, who shall have the right to be present at such inspection. A copy of any findings or report from such inspection will be provided to all parties before, or at, the hearing.

(10) Except for hearings conducted by written submission, all hearings will be recorded by the hearings examiner. A copy of the recording will be provided to any party upon request and upon payment for the cost of the copy, as provided by law or board rules.


(a) A motion for rehearing of a final order issued by the board for a complaint filed under Occupations Code, Chapter 2301, Subchapters E or M shall proceed in accordance with Occupations Code, §2301.713. [Subchapter E or M, shall follow the procedures in Subchapter I of this chapter (relating to Practice and Procedure for Hearings Conducted by the State Office of Administrative Hearings).]
hearings examiner shall follow the procedures in this subsection.

(b) [1] The hearings examiner shall prepare a final order as soon as possible, but not later than 60 days after the hearing is closed, or as otherwise provided by law. The final order shall include the hearings examiner's findings of fact and conclusions of law. The final order shall be sent by the department to all parties by certified mail.

(c) [2] A party who disagrees with the final order may file a motion for rehearing in accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O. A motion for rehearing of a final order issued by a hearings examiner must:

(1) be filed with and decided by the chief hearings examiner;

(2) include the specific reasons, exceptions, or grounds asserted by a party as the basis of the request for a rehearing.
(3) recite, if applicable, the specific findings of fact, conclusions of law, or any other portions of the final order to which the party objects.

(d)[(5)] Replies to a motion for rehearing must be filed with the chief hearings examiner in accordance with Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter O. [motion for rehearing authority under Occupations Code, §2301.713 within 30 days after the date of the notification of the final order.]

[(6) The motion for rehearing authority must act on the motion within 45 days after the date of notification of the final order, or as otherwise provided by law, or the motion is overruled by operation of law. The motion for rehearing authority may, by written order, extend the period for filing, replying to, and taking action on a motion for rehearing, not to exceed 90 days after the date of notification of the final order. In the event of an extension of time, the motion for rehearing is overruled by operation of law on the date fixed by the written order of extension, or in the absence of a fixed date, 90 days after the date of notification of the final order.]

(e)[(7)] If the chief hearings examiner [motion for rehearing authority] grants a motion for rehearing, the parties

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will be notified by mail and a [—–A] rehearing will be scheduled promptly [as promptly as possible]. After rehearing, a final order shall be issued with any additional findings of fact or conclusions of law, if necessary to support the final order. The chief hearings examiner [motion for rehearing authority also] may issue an order granting the relief requested in a motion for rehearing or requested in a reply to a motion for rehearing [replies thereto] without the need for a rehearing. If a motion for rehearing and the relief requested is denied, an order [so stating] will be issued.

(f) [—–F] A party who has exhausted all administrative remedies [—–r] and who is aggrieved by a final order in a contested case from which appeal may be taken is entitled to judicial review pursuant to Government Code, Chapter 2001, subject to Occupations Code, Chapter 2301, Subchapter P [§§2301.751—2301.756], under the substantial evidence rule. A petition for judicial review [The petition] shall be filed in a district court of Travis County [or in the Court of Appeals for the Third Court of Appeals District] within 30 days after the order is final and appealable. A copy of the petition must be served on the final order authority and any other parties of record. After service of the petition and within the time permitted for filing an answer, the final order authority shall transmit to the
reviewing court the original or a certified copy of the entire 
record of the proceeding. If the court orders that new evidence 
[to be presented to the final order authority, the final order 
authority] may modify the findings and decision or order by reason of the new evidence, and shall 
transmit the additional record to the court.


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

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

(A) replace the motor vehicle with a comparable
motor vehicle, less a reasonable allowance for the owner's use of the vehicle; or

(B) accept the return of the motor vehicle from the owner and refund to the owner the full purchase price of the motor vehicle to the owner, less a reasonable allowance for the owner's use of the motor vehicle.

(2) In any decision in favor of the complainant, the final order authority will, to the extent possible, accommodate the complainant's request with respect to replacement or repurchase of the motor vehicle, to the extent possible.

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

(1) When a refund of the purchase price of a motor vehicle is ordered, the purchase price shall be the total purchase price of the motor vehicle, excluding the amount of any interest, finance charge, or insurance premiums. The award to the motor vehicle owner shall include reimbursement of the amount of the lemon law complaint filing fee paid by, or on behalf of, the motor vehicle owner. The refund shall be made payable to the motor vehicle owner and to any lienholder, respective to their ownership interest. [the lienholder, if any, as their interests require.]

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

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

(B) 50% [50 percent] of the product obtained by multiplying the purchase price by a fraction having as its denominator 120,000 and having as its numerator the number of miles that the motor vehicle traveled after the first report of the defect or condition forming the basis of the repurchase order. The number of miles during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order.
order through the date of the hearing.

(3) There is a rebuttable presumption that the useful life of a towable recreational vehicle is 3,650 days or 10 years. Except in cases where a preponderance of the evidence shows that the vehicle has a longer or shorter expected useful life than 3,650 days or 10 years, the reasonable allowance for the owner's use of the towable recreational vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this paragraph.

(A) The product obtained by multiplying the purchase price, as defined in paragraph (1) of this subsection, of the towable recreational vehicle, as defined in paragraph (1) of this subsection, by a fraction having as its denominator 3,650 days or 10 years, except the denominator shall be 1,825 days or five years if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of days from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order.

(B) 50% of the product obtained by multiplying the purchase price by a fraction having as its denominator 3,650 days or 10 years, except the denominator shall be 1,825 days or five years if
the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of days of ownership after the first report of the defect or condition forming the basis of the repurchase order. The number of days during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.

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

(c) This subsection applies only to leased motor vehicle relief.

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

(A) The lessee shall receive the total of:

(i) all lease payments previously paid by
the lessee to the vehicle [him to the] lessor under the terms of
the lease; and

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

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

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

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

(C)[(iii)] A credit [provided, however, that a
credit,] reflecting all of the payments made by the lessee[6]
shall be deducted from the actual purchase price that the manufacturer, converter, or distributor is required to pay
the vehicle lessor, as specified in subparagraph (B)(i) and (ii)

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of this paragraph. [clauses (i) and (ii) of this subparagraph.]

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

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

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

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(1) Upon issuance of an order from the final order authority to a manufacturer, converter, or distributor to replace a motor vehicle, the manufacturer, converter, or distributor shall:

(A) promptly [Promptly] authorize the exchange of the complainant's motor vehicle with the complainant's choice of any comparable motor vehicle; and

(B) instruct [Instruct] the dealer to contract the sale of the selected comparable motor vehicle with the complainant under the following terms:

(i) The sales price of the comparable motor vehicle shall be the vehicle's Manufacturer's Suggested Retail Price (MSRP);

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

(iii) The use allowance for replacement relief shall be calculated in accordance with using the formulas outlined in subsection (b)(2) and (3) of this section.

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

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

(B) If the comparable motor vehicle has a lower
MSRP than the complainant's vehicle, the complainant will be
credited the difference in the MSRP between the two motor
vehicles. The difference credited shall not exceed the amount of
the calculated usage allowance for the complainant's vehicle.

(3) The complainant is responsible for obtaining [to
obtain] financing, if necessary, to complete the transaction.

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

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by the final order authority.

(e) If the final order authority finds that a complainant's motor vehicle does not qualify for replacement or repurchase, an order may be entered in any proceeding, where appropriate, requiring repair work to be performed or other action taken to obtain compliance with the manufacturer's, converter's, or distributor's warranty obligations.

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

(g) In any award in favor of a complainant, the final order authority may require the dealer involved to reimburse the complainant, manufacturer, converter, or distributor for the cost of any items or options added to the motor vehicle if one or more of those [such] items or options contributed to the defect that is the basis for the order, repurchase, or replacement. This subsection shall not be interpreted to require a manufacturer, converter, or distributor to repurchase a motor vehicle due to a defect or condition that was solely caused by a

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§215.209. Incidental Expenses.

(a) When a refund of the purchase price or replacement of a motor vehicle is ordered, the complainant shall be reimbursed for certain incidental expenses incurred by the complainant from loss of use of the motor vehicle because of the defect or nonconformity which is the basis of the complaint. The expenses must be reasonable and verifiable. [verified through receipts or similar written documents.] Reimbursable incidental expenses include, but are not limited to the following costs:

(1) alternate transportation;

(2) towing;

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

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

(5) loss or damage to personal property;

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

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

(b) Incidental expenses shall be included in the final repurchase price required to be paid by a manufacturer, converter, or distributor to a prevailing complainant or in the case of a motor vehicle replacement, shall be tendered to the complainant at the time of replacement.

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


(a) Compliance with an order issued by the final order authority will be monitored by the department.

(b) A complainant is not bound by a final decision and order [and may either accept or reject the decision].

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

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

(e) If a manufacturer, converter, or distributor replaces or repurchases a motor vehicle pursuant to an order issued by the final order authority, reacquires a vehicle to settle a complaint filed under Occupations Code, §2301.204 or §§2301.601 - 2301.613, [Chapter 2301, Subchapter M or Occupations Code, §2301.204,] or brings a motor vehicle into the State of Texas that has been reacquired to resolve a warranty claim in another jurisdiction, then the manufacturer, converter, or distributor shall, prior to the resale of such motor vehicle, retitle the vehicle in Texas and shall:

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

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

(f) The disclosure statement and disclosure label required under subsection (e) of this section

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shall accompany the motor vehicle through the first retail purchase. No person or entity holding a license or GDN [general distinguishing number] issued by the department under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 shall remove or cause the removal of the disclosure label until delivery of the motor vehicle to the first retail purchaser.

(g) A manufacturer, converter, or distributor shall provide to the department [in writing] the name, address, and telephone number of the transferee [any transferee, regardless of residence] to whom the manufacturer, distributor, or converter[, as the case may be,] transfers the motor vehicle on the disclosure statement [vehicle] within 60 days of each transfer. The selling dealer shall return the completed disclosure statement to the department within 60 days of the retail sale of a reacquired motor vehicle.

(h) The [Any manufacturer, converter, or distributor or holder of a general distinguishing number who violates this section is liable for a civil penalty or other sanctions prescribed by the Occupations Code. In addition, the] manufacturer, converter, or distributor must repair the defect or condition in the motor vehicle that resulted in the vehicle being reacquired and issue[, at a minimum,] a basic warranty

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excluding non-OEM items or accessories, for a minimum of 12 months or 12,000 miles, whichever comes first. The [for (12 months/12,000 mile, whichever comes first), except for non-
original equipment manufacturer items or accessories, which] warranty shall be provided to the first retail purchaser of the motor vehicle.

(i) [5] In the event this section conflicts with [of any conflict between this section and] the terms contained in a cease and desist order, the terms of the cease and desist order shall prevail.

(j) [6] The failure of any manufacturer, converter, distributor, or dealer to comply with a final order issued by the final order authority within the time period prescribed in the order may subject the manufacturer, converter, [or]
distributor, or dealer to formal action by the department, including the assessment of civil penalties or other sanctions prescribed by Occupations Code, Chapter 2301, for the failure to comply with an order issued by the final order authority.
SUBCHAPTER H. ADVERTISING

§215.241. Purpose and Scope. [Objective]

This subchapter implements [The objective of this subchapter is to implement the intent of the legislature as declared in]

Occupations Code, Chapter 2301[7] by regulating the advertising of persons under the jurisdiction of the department [Board] by requiring truthful and accurate advertising practices for the benefit of the citizens of this state.


A person advertising motor vehicles shall not use false, deceptive, unfair, or misleading advertising. In addition to a violation of a specific advertising rule, any other advertising or advertising practices found by the department [Board] to be false, deceptive, or misleading, whether herein described, [or not enumerated herein] shall be deemed a violation of Occupations Code, Chapter 2301 [violations of the Code] and shall also be considered a violation [violations] of this rule. [the general prohibition.]


The violation of an advertising rule shall be considered by the department [Board] as a prima facie violation of Occupations

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Code, Chapter 2301.

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

(1) Advertisement--

(A) An oral, written, graphic, or pictorial statement or representation made in the course of soliciting business, including, but not limited to [without limitation] a statement or representation:

(i) made in a newspaper, magazine, or other publication;

(ii) contained in a notice, sign, poster, display, circular, pamphlet, or letter;

(iii) aired on the radio; [on--radio--]

(iv) broadcast on the Internet or television; [or--]

(v) streamed via an online service. [via an online service, or on television--]

(B) Advertisement [The term] does not include direct communication between a person or person's [dealer or dealer's] representative and a prospective purchaser.

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(2) Advertising provision--

(A) A provision of Occupations Code, Chapter 2301, [the Code] relating to the regulation of advertising; or

(B) A rule relating to the regulation of advertising, adopted pursuant to the authority of Occupations Code, Chapter 2301. [the Code.]

(3) Bait advertisement--An alluring but insincere offer to sell or lease a product of which the primary purpose is to obtain a lead to a person interested in buying or leasing merchandise of the type advertised and to switch a consumer from buying or leasing the advertised product in order to sell or lease some other product at a higher price or on a basis more advantageous to the dealer. [advertiser.]

(4) Balloon payment--Any scheduled payment made as required by a consumer credit transaction that is more than twice as large as the average of all prior scheduled payments except the down payment.

(5) Buyer's guide--A form as required by the Federal Trade Commission under 16 Code of Federal Regulations, Part 455. This form is to be completed and displayed on the side window of a vehicle that has been driven more than the limited use necessary in moving or road testing a new vehicle prior to
delivery to a consumer.]

(5)[(6)] Clear and conspicuous--The statement, representation, or term being disclosed is of such size, color, contrast, and audibility and is presented so as to be readily noticed and understood. All language and terms, including abbreviations, shall be used in accordance with their common or ordinary usage and meaning.

(6)[(7)] Dealership addendum--A form that is [which is to be] displayed on a window of a motor vehicle when the dealership installs special features, equipment, parts, or accessories, or charges for services not already compensated by the manufacturer or distributor for work required to prepare a motor vehicle for delivery to a buyer.

(A) The purpose of the addendum is to disclose:

(i)[(A)] that it is supplemental;

(ii)[(B)] any added feature, service, equipment, part, or accessory, including the retail price, charged and added by the dealership [and the retail price therefor];

(iii)[(C)] any additional charge to the selling price such as additional dealership markup; and

(iv)[(D)] the total dealer selling price.

(B) The dealership addendum form shall not be
deceptively similar in appearance to the Monroney label, as defined by paragraph (12) of this section. [manufacturer's label, which is required to be affixed by every manufacturer to the windshield or side window of each new motor vehicle under the Automobile Information Disclosure Act.]

(7) Demonstrator--A new motor vehicle that is currently in the inventory of the automobile dealership and used [or has been used] primarily for test drives by customers and for other purposes [other dealership purposes and so] designated by the dealership.

(8)Disclosure--Required information that is clear, conspicuous, and accurate.

(9)Factory executive/official motor vehicle--A new motor vehicle that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor, or their subsidiaries.

(10)Licensee--Any person required to obtain a license from the department.

(11)Limited rebate--A rebate that is not available to every consumer purchasing or leasing a motor vehicle because qualification for receipt of the rebate is conditioned or restricted in some manner. A rebate conditioned or restricted to purchasers who are residents of the contiguous United States is
(12) Monroney[Manufacturer's] label--The label required by the Automobile Information Disclosure Act, 15 U.S.C. §§1231 - 1233, to be affixed [by the manufacturer] to the windshield or side window of certain [each] new motor vehicles [automobile] delivered to the dealer and that contains information about the motor vehicle, including, but not limited to: [-]

(A) the retail price of the motor vehicle suggested by the manufacturer;

(B) the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment, physically attached to the motor vehicle at the time of its delivery to a dealer, which is not included within the price of the motor vehicle as stated in subparagraph (A) of this paragraph;

(C) the amount charged, if any, to a dealer for the transportation of the motor vehicle to the location at which it is delivered to the dealer; and

(D) the total of the amounts specified pursuant to subparagraphs (A), (B), and (C) of this paragraph.

(13) Online [On-line] service--A network that connects computer users.
(14) Rebate or cash back--A sum of money applied to
the purchase or lease of a motor vehicle or refunded after full
payment has been rendered for the benefit of the purchaser.
(refunded to a purchaser or for the benefit of the purchaser
after full payment has been rendered. The purchaser may choose
to reduce the amount of the purchase price by the sum of money
or the purchaser may opt for the money to be returned to himself
or for his benefit subsequent to payment in full.)
(15) Savings claim or discount--An offer to sell or
lease a motor vehicle at a reduced price, including a
manufacturer's or distributor's customer rebate, a dealer
discount, or a limited rebate.

(16) [§15+] Subsequent violation--Conduct that is the
same or substantially the same as conduct the department [Board]
has previously alleged in an earlier communication to be a
violation of an advertising provision.

§215.245. Availability of Motor Vehicles.
(a) A dealer [licensee] may advertise a specific new motor
vehicle or line-make of vehicles for sale if the specific motor
vehicle or line-make is in the possession of the dealer
[licensee] at the time the advertisement is placed.[, or if]
(b) If the specific motor vehicle or line-make is not in

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the possession of the dealer [licensee] at the time the
advertisement is placed, the dealer must [licensee] clearly and
conspicuously disclose [discloses] that fact in the
advertisement and state [states] that the motor vehicle may be
obtained from the manufacturer, distributor, or some other
source. The advertisement must set[and]

[1] [the advertisement sets] forth the number of
motor vehicles available at the advertised price, if a price is
advertised, at the time the advertisement is placed[and] or

[2] the [a] dealer can show that it has the number
of motor vehicles available to meet the [he has available a]
reasonable expectable public demand based on prior experience.

[c][e] If an advertised price pertains to only one
specific motor vehicle, then the advertisement must also
disclose the motor vehicle's stock number or VIN. [vehicle
identification number.]

[d][e] This section does not prohibit general advertising
of motor vehicles by a manufacturer, dealer advertising
association, or distributor, nor does it prohibit [and] the
inclusion of the names and addresses of the dealers selling such
motor vehicles in the particular area.

[e][d] A motor vehicle dealer may advertise a specific
used motor vehicle for sale if:
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(1) the specific used motor vehicle is in the
possession of the dealer at the time the advertisement is
placed; and

(2) the title certificate to the used motor vehicle
has been assigned to the dealer.

§215.246. Accuracy.
Advertisements [All advertisements] shall be accurate, clear,
and conspicuous. Advertisements [and] shall not be false,
deceitful, or misleading. For an Internet advertisement, a
disclosure may be considered accurate, clear, and conspicuous
if:

(1) the viewer highlights, hovers a mouse or cursor
over, or otherwise selects certain text or images on a screen
that results in an immediate and legible visible disclosure; or

(2) only one click on select text or image(s) is
required to view the disclosure; and

(3) the internet advertisement clearly and
conspicuously indicates where to hover or click for the
disclosure and is in close proximity to the information being
disclosed.

The following statements are prohibited.

(1) Statements such as "write your own deal," "name your own price," "name your own monthly payments," or statements with similar meaning.

(2) Statements such as "everybody financed," "no credit rejected," "we finance anyone," and other similar statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit.

(3) Statements representing that no other dealer grants greater allowances for trade-ins, however stated, unless the dealer can show such is the case.

(4) Statements representing that because of its large sales volume, a dealer is able to purchase motor vehicles for less than another dealer selling the same make of motor vehicles, unless the dealer can show such is the case.

The layout, headlines, illustrations, or type size of a printed advertisement, an internet advertisement or an advertisement streamed via an online service, and the broadcast words or pictures of radio and television [radio/TV] advertisements shall not convey or permit an erroneous or misleading impression as to

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which motor vehicle or vehicles are offered for sale or lease at featured prices. No advertised offer, expression, or display of price, terms, down payment, trade-in allowance, cash difference, savings, or other such material terms shall be misleading. Any [and any] necessary qualifications shall be clearly, conspicuously, and accurately set forth to prevent misunderstanding.

§215.249. Manufacturer's Suggested Retail Price.

(a) Except as provided by subsection (b) of this section, the suggested retail price [The suggested retail price] of a new motor vehicle [when] advertised by a manufacturer or distributor shall include all costs and charges for the motor vehicle advertised. [not excepted that]

(b) The following costs and charges may be excluded if an advertisement described in subsection (a) of this section clearly and conspicuously states the costs and charges are excluded:

(1) destination and dealer preparation charges; [and any]

(2) registration, certificate of title, license fees, or an additional registration fee, if any; [charged by a full service deputy as provided by Transportation Code, §502.114.]

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(3) taxes; and [any]

(4) other fees or charges that are allowed or
prescribed by law [may be excluded from such price, provided
that the advertisement clearly and conspicuously states that
such costs and charges are excluded].

(c) Except as provided by this subsection, if the price of
a motor vehicle is stated in an advertisement [However, with
respect to advertisements] placed with local media in the State
of Texas by a manufacturer or distributor and [which include]
the names of the local dealers for the motor vehicles advertised
are included in that advertisement, then the [if the price of
a vehicle is stated in the advertisement, such] price must
include all costs and charges for the motor vehicle advertised,
including destination and dealer preparation charges. The only
costs and charges that may be excluded from the price are: [and
may exclude only any]

(1) registration, certificate of title, license fees,
or an additional registration fee, if any; [charged by a full
service deputy as provided by Transportation Code, §502.114;
any]

(2) taxes; and [any]

(3) other fees or charges that are allowed or
prescribed by law.

$215.250. [Dealer] Price Advertising; Savings Claims; Discounts. [Internet or E-Pricing.]

(a) When featuring a sales [an advertised sale] price of a new or used motor vehicle in an advertisement, the dealer must be willing to sell the motor vehicle for that featured sales [such advertised] price to any retail buyer. The featured sales [advertised sale] price shall be the price before the addition or subtraction of any other negotiated items. Destination and dealer preparation charges must be included in the featured sales price. [The only charges that may be excluded from the advertised price are:]

[(1) any registration, certificate of title, or license fees;]

[(2) any taxes; and]

[(3) any other fees or charges that are allowed or prescribed by law.]

(b) The only costs and charges that may be excluded from the featured sales price are:

(1) registration, certificate of title, or license fees;

(2) taxes; and
other fees or charges that are allowed or
prescribed by law.

(c) A qualification may not be used when advertising the price of a
sales price for a motor vehicle such as "with trade," "with acceptable trade," "with dealer-
arranged financing," "rebate assigned to dealer," or "with down
payment."

(d) Advertising an "Internet price," "e-price," or using
similar terms that indicate or create the impression that there
is a different or unique sales price for an online or Internet
consumer or transaction is prohibited.

(e) A savings claim or discount offer is prohibited except
to advertise a new motor vehicle. No person may advertise a
savings claim or discount offer on a used motor vehicle.

(f) Statements such as "up to," "as much as," and "from"
shall not be used in connection with savings claims or discount
offers.

(g) The savings claim or discount offer for a new motor
vehicle, when advertised, must be the savings claim or discount
available to any and all members of the buying public.

(h) If an advertisement includes a savings claim or
discount offer, the amount and type of each incentive that makes
up the total amount of the savings claim or discount offer must
(e) If a price advertisement discloses a rebate, cash back, or discount savings claim, the price of the vehicle must be disclosed as well as the price of the vehicle after deducting the incentive.

(1) If a savings claim or discount offer includes only a dealer discount, that [an advertisement discloses a discount savings claim, this] incentive must be disclosed as a deduction from the manufacturer's suggested retail price (MSRP). The following are acceptable formats [is an acceptable format] for advertising a dealer discount with and without a sales price. [price with a discount savings claim.]

Figure: 43 TAC §215.250(h)(1) [Figure: 43 TAC §215.250(e)(1)]

(2) If a savings claim or discount offer includes only a customer rebate, that [an advertisement discloses a rebate, this] incentive must be disclosed as a deduction from the MSRP. [advertised price.] The following are acceptable formats [is an acceptable format] for advertising a customer rebate with and without a sales price. [price with a rebate.]

Figure: 43 TAC §215.250(h)(2) [Figure: 43 TAC §215.250(e)(2)]

(3) If a savings claim or discount offer includes both a customer rebate and a dealer discount, [an advertisement discloses both a rebate and a discount savings claim.] the
incentives must be disclosed as deductions [a deduction] from
the MSRP. The following are acceptable formats for advertising
both a customer rebate and a dealer discount with and without a
sales price. [is an acceptable format for advertising a price
with a rebate and a discount savings claim.]

Figure: 43 TAC §215.250(h)(3) [Figure: 43 TAC §215.250(e)(3)]

(i)(d) If a savings claim or discount offer includes an
option package discount, [In the event that the manufacturer
offers a discount on a package of options, then] that discount
should be disclosed above, or prior to, the MSRP with a total
sales price of the motor vehicle before option discounts. Any
additional savings or discounts should then be disclosed below
the MSRP. The following are acceptable formats for advertising
an option package discount with and without a sales price. [The
following is an acceptable format.]

Figure: 43 TAC §215.250(i) [Figure: 43 TAC §215.250(d)]

(j) Except as provided herein, the calculation of the
featured sales price or featured savings claim or discount may
not include a limited rebate. A limited rebate may be advertised
by providing the amount of the limited rebate and explaining the
conditions or restrictions on qualification for the limited
rebate in a statement below the featured sales price or featured
savings claim or discount.
Figure: 43 TAC §215.250(j)

(k) In an internet advertisement with multiple limited rebates available on an advertised new motor vehicle, a dealer may display each limited rebate separately allowing a potential buyer to "click" on the limited rebate to view the sales price after deducting the applicable limited rebate or applicable multiple rebates.

Figure 43 TAC §215.250(k)

(l) If a dealer has added an option that was not obtained from the manufacturer or distributor of the motor vehicle, a savings claim may not be advertised for that vehicle. If a dealer has added an option obtained from the manufacturer or distributor and disclosed that option and its suggested retail price on a dealership addendum, the dealer may advertise a savings claim for that motor vehicle if the option is listed, and the difference is shown between the dealer's sales price and the MSRP of the vehicle including the option obtained from the manufacturer or distributor.

Figure: 43 TAC §215.250(l)

(m) If a distributor physically installs a factory available option on a new motor vehicle, a savings claim may be advertised for that vehicle if the option is disclosed on a vehicle label along with the suggested retail price for the
option. A dealer may advertise a savings claim for that motor vehicle if the dealer discloses the total MSRP and the total of the distributor installed options and the difference is shown between the dealer's sales price and the total of the MSRP and distributor installed options for that vehicle.

Figure: 43 TAC §215.250(m)

[(e)] If a rebate is only available to a selected portion of the public and not the public as a whole, the price should be disclosed as in subsection (e) of this section first and then the nature of the limitation and the amount of the limited rebate may be disclosed. The following is an acceptable format:]

[Figure 43 TAC §215.250(e)]

[(f) Advertising an "Internet price," "e-price," or using similar terms that indicate or create the impression that there is a different or unique sales price for an on-line or Internet consumer or transaction is prohibited.]

$215.251. Identification.

(a) When the sales price of a motor vehicle is advertised, the following must be disclosed:

(1) model year;

(2) make;

(3) model line and style or model designation; and
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(4) if applicable, whether the motor vehicle is [a] used, a demonstrator, or a factory executive/official vehicle.
(b) Expressions such as "fully equipped," "factory equipped," "loaded," and other such terms shall not be used in any advertisement that contains the sales price of a motor vehicle unless the optional equipment of the motor vehicle is listed in the advertisement.
(c) A photograph or other representation [An illustration] of a motor vehicle used in an advertisement must be of the motor vehicle being advertised or substantially the same as that of the motor vehicle advertised.

§215.252. Advertising at Cost or Invoice.
(a) The term "dealer's cost" or other reference to the cost of the motor vehicle shall not be used.
(b) The terms [use of the term] "invoice" or "invoice price" in advertising shall not be used.

No guaranteed trade-in amount or range of amounts shall be used in advertising. Additionally, an advertisement shall not state an amount or range of amounts for trade-in assistance or advertise that an offer is any specific amount or range of

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amounts over blue book value, black book value, or use any other
similar language indicating there is an established retail value
or starting price point for a used motor vehicle.

A used motor vehicle shall not be advertised in any manner that
creates the impression that it is new. A used motor vehicle
shall be identified as [either] "used" or "pre-owned." Terms
such as "program car," "special purchase," "factory repurchase,"
or other similar terms shall not be used to identify a motor
vehicle as used. [are not sufficient to designate a vehicle as
used, and these vehicles must be identified as "used" or "pre-
owned."]

§215.255. Demonstrators and Factory Executive/Official Motor
Vehicles. [Factory, Executives/Official Vehicles.]
If a demonstrator or factory executive/official motor vehicle is
advertised, the advertisement must clearly and conspicuously
identify the motor vehicle as a demonstrator or factory
executive/official motor vehicle. A demonstrator or factory
executive/official motor [official] vehicle may not be
advertised or sold except by a dealer franchised and licensed to
sell that line-make [line-make] of new motor vehicle.
SECTION 215.256. Free Offers.
  (a) No merchandise or enticement may be described as "free" if the:
     (1) motor vehicle can be purchased or leased for a lesser sales price without the merchandise or enticement; or (if the)
     (2) sales price of the motor vehicle has been increased to cover the cost or any part of the cost of the merchandise or enticement.

  (b) The advertisement shall clearly and conspicuously disclose the conditions under which the "free" merchandise or enticement being offered may be obtained.

SECTION 215.257. Authorized Dealer.

The term "authorized dealer" or a similar term shall not be used unless the advertising dealer holds both a franchise and a dealer license to sell the motor vehicles the dealer identifies itself as holding itself out as "authorized" to sell.

SECTION 215.258. Manufacturer and Distributor Rebates.

It is unlawful for a manufacturer or distributor to advertise
any offer of a rebate, interest or finance charge reduction, or other financial inducement or incentive for the benefit of the purchaser of a motor vehicle if the selling dealer contributes in any manner to that incentive program, unless the advertisement discloses that the dealer's contribution may affect the final negotiated sales price of the motor vehicle.

§215.259. Rebate and Financing Rate Advertising by Dealers.

(a) It is unlawful for a dealer to advertise an offer of a manufacturer's or distributor's rebate, interest or finance charge reduction, or other financial inducement or incentive if the dealer contributes to the incentive program, unless such advertising discloses that the dealer's contribution may affect the final negotiated price of the motor vehicle.

(b) An advertisement containing an offer of an interest or finance charge incentive that is paid for or financed by the dealer rather than the manufacturer or distributor shall disclose:

(1) that the dealer pays for or finances the interest or finance charge rate reduction;

(2) the amount of the dealer's contribution in either a dollar or percentage amount and

(3) that such arrangement may affect the final
negotiated price of the motor vehicle.

(c) An offer or promise to pay or to tender cash to a buyer of a motor vehicle as in a rebate or cash back program may not be advertised unless the rebate or cash back program is offered and paid in part by the motor vehicle manufacturer or distributor directly to the retail purchaser or to the assignee of the retail purchaser and unless the advertisement sets forth the contribution disclosures required by this rule.


A vehicle lease advertisement shall clearly and conspicuously disclose that the advertisement is for the lease of a motor vehicle. Statements such as "alternative financing plan," "drive away for $ per month," or other terms or phrases that do not use the term "lease" do not constitute adequate disclosure of a lease. A vehicle lease advertisement shall not contain the phrase "no down payment" or similar words or phrases if any payment is required to be paid by the customer to lease the motor vehicle. Vehicle lease terms that are not available to the general public shall not be included in advertisements

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directed at the general public, or all limitations and
qualifications applicable to the vehicle lease terms advertised
shall be clearly and conspicuously disclosed.

$215.261. Manufacturer Sales and Wholesale Prices.
A motor vehicle shall not be advertised for sale in any manner
that creates the impression that it is being offered for sale by
the manufacturer or distributor of the motor vehicle. An
advertisement shall not:

(1) contain terms such as "factory sale," "fleet
prices," "wholesale prices," "factory approved," "factory
sponsored," or "manufacturer sale"; ["manufacturer sale,"]

(2) use a manufacturer's name or abbreviation in any
manner calculated or likely to create an impression that the
motor vehicle is being offered for sale by the manufacturer or
distributor;[r] or

(3) use any other similar terms which indicate sales
other than retail sales from the dealer.

$215.263. Sales Payment Disclosures.
An advertisement that contains the amount of any payment,
including a down payment[r] in either a percentage or dollar
amount, or an advertisement that contains[† the amount of any
payment, in either a percentage or dollar amount[1] the number of
payments[2] the period of repayment[3] or the amount of any
finance charge[7] must include the following:

(1) the amount or percentage of the down payment;

(2) the terms of repayment, from which the number of
months to make repayment and the amount per month can be
determined, [(from which the number of months to make repayment
and the amount per month can be determined)] including any
balloon payment;

(3) the annual percentage rate (APR) [or APR]; and

(4) the amount of the APR [annual percentage rate], if
increased, after consummation of the credit transaction.


(a) An advertisement that promotes a consumer lease and
contains the amount of any payment or that contains either[1] a statement of any capitalized cost reduction or other payment
or a statement [or] that no payment is required [prior to or] at
consummation or prior to consummation or [by] delivery, if
delivery occurs after consummation, must clearly and
conspicuously include the following:

(1) that the transaction advertised is a vehicle
lease;
(2) the total amount due [prior to or] at consummation 
or prior to consummation or [by] delivery, if delivery occurs 
after consummation;

(3) the number, amount, and due date or period 
[amounts, and due dates or periods] of scheduled payments under 
the vehicle lease;

(4) a statement of whether [or not] a security deposit 
is required; and

(5) a statement that an extra charge may be imposed at 
the end of the vehicle lease term where the lessee's liability, 
if any, is based on the difference between the residual value of 
the leased property and its realized value at the end of the 
vehicle lease term.

(b) Except for a periodic payment, a reference to a charge 
[as] described in subsection (a)(2) of this section[, i.e., to 
components of the total due at lease signing or delivery,] 
cannot be more prominently advertised than the disclosure of the 
total amount due at vehicle lease signing or delivery.

(c) Except for disclosures of limitations on rate 
information, if [if] a percentage rate is advertised, that rate 
shall not be more prominently advertised [prominent] than any of 
the following disclosures [stated] in the advertisement[, with 
the exception of paragraph (19) of this subsection, the notice 

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required to accompany the rate.

(1) Description of payments.
(2) Amount due at vehicle lease signing or delivery.
(3) Payment schedule and total amount of periodic payments.
(4) Other itemized charges that are not included in the periodic payment. These charges include the amount of any liability that the vehicle lease imposes upon the lessee at the end of the vehicle lease term.
(5) Total number of payments.
(6) Payment calculation, including:
   (A) gross [Greece] capitalized cost
   (B) capitalized [Capitalized] cost reduction
   (C) adjusted [Adjusted] capitalized cost
   (D) residual value [Residual value]
   (E) depreciation [Depreciation] and any amortized amounts
   (F) rent charge [Rent charge]
   (G) total [Total] of base periodic payments
   (H) vehicle lease term [Lease term]
   (I) base [Base] periodic payment
   (J) itemization [Itemization] of other charges

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Exhibit B
(K) total [Total] periodic payment.

(7) Early termination conditions and disclosure of charges.

(8) Maintenance responsibilities.

(9) Purchase option.

(10) Statement referencing nonsegregated disclosures.

(11) Liability between residual and realized values.

(12) Right of appraisal.

(13) Liability at the end of the vehicle lease term based on residual value.

(14) Fees and taxes.

(15) Insurance.

(16) Warranties or guarantees.

(17) Penalties and other charges for delinquency.

(18) Security interest.

[(19) Limitations on rate information.]

(d) If a vehicle lessor provides a percentage rate in an advertisement, a notice stating [that] "this percentage may not measure the overall cost of financing this lease" shall accompany the rate disclosure. The vehicle lessor shall not use the terms [term] "annual percentage rate," "annual lease rate," or any equivalent terms in any advertisement containing a percentage rate. [term-]
(e) A multi-page advertisement that provides a table or schedule of the required disclosures is considered a single advertisement, provided that for vehicle lease terms appearing [if, for lease terms that appear] without all of the required disclosures, the advertisement refers to the page or pages on which the table or schedule appears.

(f) A merchandise tag stating any item listed in subsection (a) of this section must comply with subsection (a)(1) - (5) [the disclosures in subsection (a)] of this section by referring to a sign or to a display prominently posted in the vehicle lessor's place of business. The sign or display must contain [that contains] a table or schedule of the required disclosures under subsection (a)(1) - (5).

(g) An advertisement made through television or radio stating any item listed in subsection (a) of this section, must include the following statements: [state in the advertisement:]

(1) that the transaction advertised is a vehicle lease;

(2) the total amount due [prior to or] at consummation or due prior to consummation or [by] delivery, if delivery occurs after consummation; and

(3) the number, amount, and due date or period [amounts, and due dates or periods] of scheduled payments under
the vehicle lease. [lease—in]

(h) In addition to the requirements of subsection (g)(1) of this section, an advertisement made through television or radio stating any item listed in subsection (a) of this section, must:

[(4) Either—]

(1) [A] provide a toll-free telephone number along with a statement that the telephone [reference that such] number may be used by consumers to obtain the information in subsection (a) of this section [The toll-free telephone number shall be available for no fewer than ten days, beginning on the date of the broadcast and the lesser shall provide the information in subsection (a) of this section orally or in writing upon request]; or

(2) [B] direct the consumer to a written advertisement in a publication of general circulation in the community served by the media station, including the name and the date of the publication, with a statement that the required disclosures in subsection (a) of this section are included in the advertisement. [The written advertisement shall be published beginning at least three days before and ending at least 10 days after the broadcast.]

(i) The toll-free telephone number required by subsection
(h)(1) of this section shall be available for at least 10 days, beginning on the date of the broadcast. Upon request, the vehicle lessor shall provide the information in subsection (a) of this section orally or in writing.

(j) The written advertisement required by subsection (h)(2) of this section shall be published beginning at least three days before the broadcast and ending at least 10 days after the broadcast.


Bait advertisements ["Bait" advertisement] shall not be used by any person.

§215.266. Lowest Price Claims.

(a) Claims that represent a lowest price, best price, best deal, [Representing a lowest price claim, best price claim, best deal claim] or other similar superlative claims shall not be used in advertising.

(b) If a [dealer advertises a] "meet or beat" guarantee is advertised, then the advertisement must clearly and conspicuously disclose the conditions and requirements necessary in order for a person to receive the offer or guarantee. [any advertised cash amount.]
§215.267. Fleet Prices.

Terms such as "fleet prices," "fleet sales," ["fleet prices" or "fleet sales"] or other terms or phrases implying that individual retail [implying that retail individual] customers will be afforded the same price or [and/or] discount as multi purchase commercial businesses shall not be used [in advertising].


[Bankruptcy/Liquidation Sale.]

[No licensee may willingly misrepresent the ownership of a business for the purpose of holding a liquidation sale, auction sale, or other sale which represents that the business is going out of business.] A person who advertises a liquidation sale, auction sale, or going out of business sale shall state the correct name and permanent address of the owner of the business in the advertisement. The phrases [A person may not conduct a sale advertised with the phrase] "going out of business," "closing out," "shutting doors forever," [or] "bankruptcy sale," "foreclosure," [or] "bankruptcy," or similar phrases or words indicating that an enterprise is ceasing business shall not be used unless the business is closing its operations and follows...
the procedures required by [the] Business and Commerce Code,
Chapter 17, Subchapter F.

§215.269. Finding of Violation.
A person shall not [No person shall] be held in violation of the rules, including the general prohibition, except upon a finding of a violation [thereof] made by the department [Board] after the filing of a Notice of Department Decision and [complaint and notice and] an opportunity to request a [for] hearing as provided in Occupations Code, Chapter 2301. [the Code]

§215.270. Enforcement.
(a) The department [Board] may file a Notice of Department Decision [complaint] against a licensee alleging a violation of an advertising provision pursuant to Occupations Code, §2301.203, provided the department [only if the Board] can show:

(1) that the licensee who allegedly violated an advertising provision has received from the department [Board] a notice of an opportunity to cure the violation by certified mail, return receipt requested, in compliance with subsection (b) of this section [relating to effectiveness of notice]; and

(2) that the licensee committed a subsequent violation of the same advertising provision.
(b) An effective notice issued under subsection (a)(1) of this section must:

(1) state that the department [Board] has reason to believe that the licensee violated an advertising provision and must identify the provision;

(2) set forth the facts upon which the department [Board] bases its allegation of a violation; and

(3) state that if the licensee commits a subsequent violation of the same advertising provision, the department [Board] will formally file a Notice of Department Decision.

(c) As a part of the cure procedure, the department [Board] may require a licensee[\text{\textsuperscript{\textregistered}}] who allegedly violated an advertising provision[\text{\textsuperscript{\textregistered}}] to publish a retraction notice to effect an adequate cure of the alleged violation. A [An adequate retraction notice must:

(1) appear in a newspaper of general circulation in the area in which the alleged violation occurred;

(2) appear in the [that] portion of the newspaper[\text{\textsuperscript{\textregistered}}, if any\text{\textsuperscript{\textregistered}}] devoted to motor vehicle advertising, if any;

(3) identify the date and the medium of publication, print, electronic, or other, in which the advertising alleged to be a violation appeared; and

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(4) identify the alleged violation of the advertising
provision and contain a statement of correction.

(d) A [Performance of a] cure is made solely for the
purpose of settling an allegation and is not an admission of a
violation of these rules; Occupations Code, Chapter 2301; [the
Code] or other law.


Terms such as "auction," "auction special," or other terms with
similar meaning ["auction" or "auction special" and other terms
of similar import] shall be used only in connection with a motor
vehicle offered or sold at a bona fide auction.

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Exhibit B
Figure: 43 TAC §215.250(h)(1) [§215.250(e)(1)]

**Dealer Discount with Sales Price:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>MSRP</td>
<td>$20,000</td>
</tr>
<tr>
<td>Less Dealer Discount</td>
<td>1,000</td>
</tr>
<tr>
<td>Sales [Sale] Price</td>
<td>$19,000</td>
</tr>
</tbody>
</table>

**Dealer Discount without Sales Price:**

"$1,000 Discount Off MSRP"
Figure: 43 TAC §215.250(h)(2) [§215.250(e)(2)]

**Customer Rebate with Sales Price:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>MSRP [Advertised Price]</td>
<td>$18,000</td>
</tr>
<tr>
<td>Less Rebate</td>
<td>$500</td>
</tr>
<tr>
<td>Sales [Sale] Price</td>
<td>$17,500</td>
</tr>
</tbody>
</table>

**Customer Rebate without Sales Price:**

"$500 Rebate Off MSRP"
Figure: 43 TAC §215.250(h)(3) [§215.250(e)(3)]

**Customer Rebate and Dealer Discount with Sales Price:**

- **MSRP**
  - $20,000
- **Less Rebate**
  - 500
- **Less Dealer Discount**
  - 500
- **Sales [Sale] Price**
  - $19,000

**Customer Rebate and Dealer Discount without Sales Price:**

"1,000 Savings Off MSRP ($500 Rebate and $500 Dealer Discount)"
Figure: 43 TAC §215.250(i) [§215.250(d)]

Option Package Discount with Sales Price:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total [Meter] Vehicle Plus Options</td>
<td>$10,995</td>
</tr>
<tr>
<td>Option Package Discount</td>
<td>1,000</td>
</tr>
<tr>
<td>MSRP</td>
<td>9,995</td>
</tr>
<tr>
<td>Less Rebate</td>
<td>500</td>
</tr>
<tr>
<td>Less Dealer Discount</td>
<td>500</td>
</tr>
<tr>
<td>Sales [Sale] Price</td>
<td>$8,995</td>
</tr>
</tbody>
</table>

Option Package Discount without Sales Price:
"Total Savings $2,000 ($1,000 Option Package Discount; $500 rebate, and $500 dealer discount off MSRP)"
Figure: 43 TAC §215.250(j) [§215.250(e)]

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>MSRP</td>
<td>$20,000</td>
</tr>
<tr>
<td>Less Rebate</td>
<td>$1,000</td>
</tr>
<tr>
<td>Less Dealer Discount</td>
<td>$1,000</td>
</tr>
<tr>
<td>Sales [Sale] Price</td>
<td>$18,000</td>
</tr>
</tbody>
</table>

FIRST TIME BUYERS RECEIVE ADDITIONAL $500 OFF
Figure 43 TAC §215.250(k)

Additional Available Limited Rebates (Click the applicable box or boxes for Sales Price)
See Dealer for Eligibility Terms

☐ HISD Teachers Receive Additional $500 Discount
☐ Active Duty Military Receive Additional $500 Discount
☐ Dallas Metro Residents Receive Additional $500 Discount
☐ Loyalty Owner Receive Additional $500 Discount
☐ “X” Financing Receive Additional $500 Discount
Sales Price with Selected Discounts $
Figure: 43 TAC 215.250(l)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>MSRP</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>Total Dealer Installed Factory Options</td>
<td>$1,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$21,000.00</strong></td>
</tr>
<tr>
<td>Less Dealer Discount</td>
<td>$500.00</td>
</tr>
<tr>
<td><strong>Sales Price</strong></td>
<td><strong>$20,500.00</strong></td>
</tr>
</tbody>
</table>
Figure: 43 TAC 215.250(m)

<table>
<thead>
<tr>
<th>Description</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>MSRP</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>Total Distributor Installed Options</td>
<td>$1,000.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$21,000.00</strong></td>
</tr>
<tr>
<td>Less Manufacturer Discount</td>
<td>$500.00</td>
</tr>
<tr>
<td>Less Dealer Discount</td>
<td>$100.00</td>
</tr>
<tr>
<td><strong>Sales Price</strong></td>
<td><strong>$20,400.00</strong></td>
</tr>
</tbody>
</table>
SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

§215.301. Purpose and Scope. [Scope and Purpose.]
(a) This subchapter implements the practice and procedure for contested cases under the jurisdiction of the department that are conducted by an ALJ under Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1000 - 1005. [a SOAH ALJ under the Codes.]

(b) A contested case hearing held by an ALJ shall be conducted in accordance with Government Code, Chapter 2001; applicable SOAH rules; and board rules.

(c) Unless otherwise provided by statute or by this chapter, this subchapter governs practice and procedure relating to contested cases filed with the department on or after September 1, 2007.

(d) Practice and procedure in contested cases filed on or after January 1, 2014, under Occupations Code, Chapter 2301, Subchapters E or M [Subchapter E or M] are addressed in Subchapter B of this chapter (relating to Adjudicative Practice and Procedure).


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In the event of a conflict between Occupations Code, Chapter 2301 and Transportation Code, Chapter 503, the definition or procedure referenced in Occupations Code, Chapter 2301 controls.

§215.303. Application of Board and SOAH Rules.

[(a)] Upon referral by the department [Board] of a contested case [matter] to SOAH, the rules contained in 1 TAC Chapter 155 [(relating to Rules of Procedure)] and the provisions of this subchapter, to the extent they are not in conflict with 1 TAC Chapter 155, govern the processing of the contested case [matter] until the ALJ disposes of the contested case. [matter.]

[(b) The ALJ shall consider the rules and policies applicable to the Board in the hearing and preparation of the proposal for decision.]

§215.305. Filing of Complaints, Protests, and Petitions; Mediation.

(a) All complaints, protests, and petitions required or allowed to be filed under Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1000 - 1005; [the Codes] or this chapter must be delivered to the department:

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(1) in person;

(2) by first-class mail; or filed with the appropriate department office in person, by mail, or]

(3) by electronic document transfer at a destination designated by the department. [for receipt of those documents.]

(b) Except as provided by subsections (d), (n), and (o) of this section, parties to a contested case filed under Occupations Code, Chapter 2301 or Transportation Code, Chapters 503 and 1000 - 1005 [case under the Codes] are required to participate in mediation in accordance with this section, before the case is referred for hearing.

(c) The term "mediation" as used in this section has the meaning assigned by Occupations Code, §2301.521. [means a nonbinding forum in which an impartial mediator facilitates communication between parties to promote reconciliation, settlement, or resolution among the parties.]

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

(e) The department shall provide mediation services.

(f) The mediator shall qualify for appointment as an impartial third party in accordance with Civil Practice and Remedies Code, Chapter 154.

(g) The mediation process will conclude within 60 days of
the date a contested case [matter] is assigned to a mediator
unless, at the department's discretion, the mediation deadline
is extended.

(h) The department will assign [appoint] a different
mediator if:

(1) either [Either] party promptly and with good cause
objects to an assigned mediator; or

(2) an [An] assigned mediator is recused.

(i) At any time before a contested case is referred for
hearing, the parties may file a joint notice of intent to retain
an outside [a private] mediator. The notice must include:

(1) the name, address, email address, [e-mail,]
facsimile number, and telephone number of the outside [private]
mediator selected;

(2) a statement that the parties have entered into an
agreement with the outside [private] mediator regarding the
mediator's rate and method of compensation;

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

(4) a statement that the mediation will conclude
within 60 days of the date of the joint notice of retention
unless, at the department's discretion, the mediation deadline

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is extended.

(j) All communications in a mediation are confidential and subject to the provisions of the Governmental Dispute Resolution Act, Government Code, §2009.054.

(k) Agreements reached by the parties in mediation shall be reduced to writing by the mediator and signed by the parties before the mediation concludes or as soon as [practicable] [practicable].

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

   (1) whether the parties attended the mediation;
   (2) whether the matter settled in part or in whole;
   (3) any unresolved issues; and
   (4) any other stipulations or matters the parties agree to report.

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

   (1) enter an order [identifying and] disposing of resolved issues; and
   (2) refer unresolved issues for hearing.

(n) Parties to a contested case filed as an enforcement action brought by the department are not required to participate
in mediation.

(o) Parties to a contested case filed under Occupations Code, §2301.204 or §§2301.601 - 2301.613, must participate in mediation in accordance with §215.205 of this title (chapter) (relating to Mediation; Settlement).

§215.306. Referral to SOAH.

Contested cases (matters) shall be referred to SOAH upon determination that a hearing is appropriate under Occupations Code, Chapter 2301, Subchapter O; Transportation Code, Chapter 503; or this chapter, including contested cases (matters) 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 (chapter) (relating to Time for Filing Protest);

(3) a complaint under Occupations Code, §2301.204 or §§2301.601-2301.613, that satisfies the jurisdictional requirements of the applicable provisions filed on and after September 1, 2007, and before January 1, 2014;

(4) a protest filed under Occupations Code, §2301.360 or a complaint or protest filed under Occupations

(a) The requirements for a notice of hearing in a contested case are provided by Government Code, §2001.052; [are set out in] Occupations Code, §2301.705; [Government Code, §2001.052,] and 1 TAC §155.401 [relating to Notice of Hearing], as applicable.

(b) For service of parties outside of the United States, in addition to service under Occupations Code, §2301.265, the department may serve a notice of hearing by any method allowed under [by] Texas Rules of Civil Procedure, Rule 108a(1) or that provides for confirmation of delivery to the party.

(c) The last known address of a license applicant, license holder, or other person is the last mailing address provided to the department when the license applicant applies for its

(a) On or before the 20th day after a notice of hearing has been served on a party in a contested case [matter] referred by the department to SOAH, the party may file a written reply or pleading responding to all allegations. The written reply or responsive pleading must be filed with SOAH in accordance with 1 TAC §155.101 [(relating to Filing Documents)] and must identify the SOAH and department docket numbers [docket number] as reflected on the notice of hearing.

(b) Any party filing a reply or responsive pleading shall serve a copy of the reply or responsive pleading on each party or party's representative [provide service of copies of the reply or pleadings to other parties] in compliance with 1 TAC §155.103 [(relating to Service of Documents on Parties)]. Any party filing a reply or responsive pleading shall also provide a copy to the department. The presumed time of receipt of served documents is subject to 1 TAC §155.103.

(c) A party may file an amended or supplemental [amend or supplement its] reply or responsive pleading [pleadings] in
accordance with 1 TAC §155.301 [(relating to Required Form of Pleadings)].

(d) If a party properly noticed under this chapter does not appear at the hearing, a [another] party may request that the ALJ dismiss the contested case from the SOAH docket. If the contested case is dismissed from the SOAH docket, the case may [matter and if dismissed the case can] be presented to the board [Board] for disposition based on the default pursuant to 1 TAC §155.501. The board [(relating to Default Proceedings). The Board] may enter a final order finding [with findings] that the allegations in the petition are deemed admitted and granting relief in accordance with applicable law. No later than 10 days after the hearing date, if a final order has not been issued, a party may file a motion with the board [Board] to set aside the [a] default and reopen the record. The board [Board], for good cause shown, may grant the motion, set aside the default, and refer the case back to SOAH for further proceedings.


(a) All [recommendations or] proposals for decision prepared by the ALJ shall [will] be submitted to the board [Board] and copies furnished to the parties.
(b) All decisions and orders issued by the board shall be furnished to the parties and to the ALJ.

§215.311. Amicus Briefs.

(a) Any interested person may submit an amicus brief for consideration by the board in a contested case by the deadline for exceptions under 1 TAC §155.301 [(relating to Required Form of Pleadings)]. A party may submit one written response to the amicus brief no later than the deadline for replies to exceptions under 1 TAC §155.301.

(b) Amicus briefs and responses to amicus briefs must be submitted to the board and the ALJ, and copies must be served on all parties. [must be filed with the Board and with SOAH within the period prescribed by] this section will not be considered by the board, unless good cause is shown why the deadline should be waived or extended.

(c) Any amicus brief, or response to that brief, not submitted to the board and the ALJ within the deadlines prescribed by subsection (a) of [filed with the Board and with SOAH within the period prescribed by] this section will not be considered by the board, unless good cause is shown why the deadline should be waived or extended.

(d) The ALJ may amend the proposal for decision in response to any amicus brief or response to an amicus brief.

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§215.314. Cease and Desist Orders.

(a) Whenever it appears [to the ALJ] that a person is violating any provision of Occupations Code, Chapter 2301; Transportation Code, Chapter 503; or a board rule or order, [or a Board rule or order, the ALJ may enter] an order requiring the person to cease and desist from the violation may be entered.

(b) If it appears from specific facts shown by affidavit or by verified complaint that one or more of the conditions [enumerated] in Occupations Code, §2301.802(b) will occur before notice can be served and a hearing held, the order may be issued without notice; otherwise, the order must be issued after a hearing has been held to determine the validity of the order and to allow the person who requested the order to show good cause why the order should remain in effect during the pendency of the contested case.[, otherwise it must be issued subject to a notice of hearing to determine the validity of the order.]

(c) Each [a] cease and desist order issued without notice must include:

(1) the date and hour of issuance;

(2) a statement of which of the conditions [enumerated] in Occupations Code, §2301.802(b) will occur before notice can be served and a hearing held; and
(3) a notice of hearing for the earliest date possible
to determine the validity of the order and to allow the person
who requested the order to show good cause why the order should
remain in effect during the pendency of the contested case.

(d) Each cease and desist order shall:

(1) state the reasons for its issuance; and

(2) describe in reasonable detail, and not by
reference to the complaint or other document, the act or acts
sought to be restrained.

(e) A cease and desist order shall not be issued unless the
person requesting the order presents a petition or complaint,
verified by affidavit, containing a plain statement of the grounds for seeking the cease and desist order.

(f) A cease and desist order issued without notice expires
as provided in the order, but shall not exceed 20 days.

(g) A cease and desist order may be extended for a period
of time equal to the period of time granted in the original
order if prior to the expiration of the previous order,
good cause is shown for the extension or the party against whom
the order is directed consents to the extension. [No more than
one extension may be granted unless subsequent extensions are unopposed.

(h) The person against whom a cease and desist order was issued without notice may request that the scheduled hearing be held earlier than the date set in the order.

(i) After the hearing, the ALJ shall prepare a written order, including a reasoned justification explaining why the cease and desist order should remain in place during the pendency of the contested case.

(j) A party may appeal to the board an order granting or denying a motion for a cease and desist order.

(k) An appeal of an order granting or denying a motion for a cease and desist order [the interlocutory decision] must be made to the board before a person may seek judicial review of an order issued under this section. [An interlocutory decision is sufficient for a complaining party to seek judicial review of the matter.]

(l) Upon appeal to a district court of an order issued under this section [to the district court, as provided in the Codes], the order may be stayed by the board upon a showing of good cause by a party [of interest].

(m) Prior to the commencement of a proceeding by SOAH, the director is authorized to issue a cease and desist order under
this section. An ALJ shall hold a hearing to determine whether
an interlocutory cease and desist order should remain in effect
during the pendency of the proceeding.

   (a) A [In accordance with Occupations Code, §2301.803(c),
a] person affected by a statutory stay imposed by Occupations
Code, Chapter 2301 may request a hearing before an ALJ to
modify, vacate, or clarify the extent and application of the
statutory stay.
   (b) After a hearing on a motion to modify, vacate, or
clarify a statutory stay, the ALJ shall expeditiously prepare a
written order, including a [reasoned] 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[τ] may initiate a proceeding
before the board to modify, vacate, or clarify the extent and
application of the statutory stay.

§215.316. Informal Disposition.
   (a) Notwithstanding any other provision in this subchapter,
at any time during the contested case, the board [adjudication
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process, the Board may informally dispose of a contested case by stipulation, agreed settlement, dismissal, or consent order.

(b) If the parties have settled or otherwise determined that a contested case proceeding is not required, the party who brought the protest, complaint, or petition shall file a motion to dismiss the contested case proceedings from SOAH's docket and present a proposed agreed order or dismissal order to the board. [Board for consideration.]

(c) Agreed orders must contain proposed findings of fact and conclusions of law that are signed by all [the] parties or their authorized [designated] representatives.

(d) Upon receipt of the agreed order, the board [Board] may:

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

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

(3) take other action that the board [Board] finds just.

§215.317. Motion for Rehearing.

(a) A motion for rehearing and any reply to a motion for

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rehearing will be processed in accordance with Government Code, Chapter 2001.

(b) For an order issued by the board, a motion for rehearing and reply to a motion for rehearing must be filed with the department and decided by the board unless the board specifically delegates motion for rehearing authority.

(c) For an order issued by a board delegate, a motion for rehearing and reply to a motion for rehearing must be filed with the department and decided by the board who issued the order.

(d) The requirements for a motion for rehearing regarding a complaint filed on or after January 1, 2014, under Occupations Code, §2301.204 or §§2301.601 - 2301.613 are governed by §215.207 of this title (relating to Contested Cases: Final Orders).

[(e) This section in no way precludes delegation by the Board or executive director under the Codes.]
SUBCHAPTER J. ADMINISTRATIVE SANCTIONS


(a) An administrative sanction may include:

(1) denial of an application for a license;

(2) suspension of a license;

(3) revocation of a license; or

(4) the imposition of civil penalties.

(b) The department shall issue and mail a Notice of

Department Decision to a license applicant, license holder, or other person by certified mail, return receipt requested, to the last known address upon a determination under Occupations Code, Chapters 2301 and 2302 or Transportation Code, Chapter 503 that:

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

(2) administrative sanctions should be imposed.

(c) The last known address of a license applicant, license holder, or other person is the last mailing address provided to the department when the license applicant applies for its license, when a license holder renews its license, or when the license holder notifies the department of a change in the

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license holder's mailing address.

(d) [c] The Notice of Department Decision shall include:

(1) a statement describing the department decision and the [its] effective date;

(2) a description of each alleged violation[, if applicable];

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

(4) a statement regarding [as to] the legal basis for each administrative sanction;

(5) a statement regarding [as to the right of] the license applicant, license holder, or other person's right to request a hearing; [or the licensee to request an administrative hearing;]

(6) the procedure to request a [a statement as to the procedure for requesting an administrative] hearing, including the deadline for filing; [period during which a request must be received by the department;] and

(7) notice to the license applicant, license holder, or other person [a statement] that the proposed decision and administrative sanctions [specified] in the Notice of Department Decision will become final on the date specified if the license applicant, license holder, or other person [or the licensee]
fails to timely request a hearing.

(e)[(d)] The license applicant, license holder, or other person must submit, in writing, a request for an administrative hearing under this section. The department must receive a request for a hearing within 26 days of the date of the Notice of Department Decision. If the department receives a timely request for a hearing, the department will set a hearing date and give notice to the license applicant, license holder, or other person of the date, time, and location of the hearing, where it will be held. The hearing shall be conducted under the provisions set forth in this chapter by an administrative law judge of the State Office of Administrative Hearings.

(f)[(e)] If the license applicant, license holder, or other person does not make a timely request for an administrative hearing or enter into a settlement agreement within 27 days of the date of the Notice of Department Decision, the department decision becomes final.

(a) If a department decision becomes final under a Notice of Department Decision issued under §215.500 of this title (relating to Administrative Sanctions and Procedures), the matter will be forwarded to the [department or] final order authority for issuance of [shall issue] a final order incorporating the decisions, findings, and administrative sanctions imposed by the Notice of Department Decision. The department will send a copy of the final order to the parties.

(b) The provisions of Government Code, Chapter 2001, Subchapter F govern: [(Administrative Procedure Act), Subchapter F (Contested Cases: Final Decisions and Orders; Motions for Rehearing) govern]

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

(2) motions for rehearing filed in response to a final order. [therefore]


The provisions of Government Code, Chapter 2001, Subchapter G [(Administrative Procedure Act), Subchapter G (Contested Cases: Judicial Review)] govern the appeal of a final order issued under this subchapter.
§215.503. Refund of Fees.

In the absence of director approval, the department will not refund a fee paid by a license applicant, license holder, or other person if:

(1) the application or license is:

   (A) denied;

   (B) suspended; or

   (C) revoked; or under this subchapter.

(2) the license applicant, license holder, or other person is subject to an unpaid civil penalty imposed against the license applicant, license holder, or other person by a final order.
To:        Board of the Texas Department of Motor Vehicles (TxDMV)  
From:     Jeremiah Kuntz, Director, Vehicle Titles and Registration Division  
Agenda Item:  2.E.2.a  
Subject:  Proposal of Rules under Title43, Texas Administrative Code, Chapter 217, Vehicle Titles and Registration, Amendment §217.9, Bonded Titles

RECOMMENDATION

Approval to publish the proposed rules in the Texas Register for public comment.

PURPOSE AND EXECUTIVE SUMMARY

A person who has an interest in a motor vehicle in which the department has refused to issue a title or has suspended or revoked a title under Transportation Code, §501.051, may, under certain conditions, obtain a title to the motor vehicle by filing a bond with the department.

The purpose of this amendment will be accuracy, clarity, and consistency in the department’s rules.

FINANCIAL IMPACT

There will be no fiscal implications related to the proposed amendment.

BACKGROUND AND DISCUSSION

The proposed amendment is to clarify the following:

- The value of the bond will be at an established value of $4,000 if the motor vehicle is 25 years or older and the appraised value is less than $4,000.
- The vehicle identification number inspection can only be verified by a Texas licensed Safety Inspection Station or, a member of the National Insurance Crime Bureau, the Federal Bureau of Investigation, or law enforcement auto theft unit.
- The documentation required to apply for a bonded title must be on a form specified by the department and include proof of the vehicle identification number inspection.

If the proposed amendment is approved by the board, staff anticipates publication of the proposed amendment in the Texas Register on or about September 23, 2016. Comments on the proposed amendment will be accepted until 5:00 p.m. on October 24, 2016.
PROPOSED PUBLICATION TO AMEND
43 TAC SECTION 217.9, BONDED TITLES

Description

This order proposes publication for comment of amendments to §217.9, Bonded Titles.

Background

A person who has an interest in a motor vehicle in which the department has refused to issue a title or has suspended or revoked a title under Transportation Code, §501.051, may, under certain conditions, obtain a title to the motor vehicle by filing a bond with the department.

The proposed amendment is to clarify the following:

- The value of the bond will be at an established value of $4,000 if the motor vehicle is 25 years or older and the appraised value is less than $4,000.
- The vehicle identification number inspection can only be verified by a Texas licensed Safety Inspection Station or, a member of the National Insurance Crime Bureau, the Federal Bureau of Investigation, or law enforcement auto theft unit.
- The documentation required to apply for a bonded title must be on a form specified by the department and include proof of the vehicle identification number inspection.

Other Comments

There are no fiscal implications related to the proposed amendment.

If the proposed amendment is approved by the board, staff anticipates publication of the proposed amendment in the Texas Register on or about September 23, 2016. Comments on the proposed amendment will be accepted until 5:00 p.m. on October 24, 2016.
BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING PUBLICATION OF PROPOSED AMENDMENT
43 TAC CHAPTER 217, SECTION 217.9, BONDED TITLES

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to amend Chapter 217, Vehicle Titles and Registration, Subchapter A, §217.9, Bonded Titles.

The preamble and the proposed amendment are attached to this resolution as Exhibits A-B, and are incorporated by reference as though set forth verbatim in this resolution, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the Texas Register.

IT IS THEREFORE ORDERED by the board that the attached rule is authorized for publication in the Texas Register for the purpose of receiving public comment.

The department is directed to take the necessary steps to implement the actions authorized in this order pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

________________________________________
Raymond Palacios, Jr., Chairman
Board of the Texas Department of Motor Vehicles

Recommended by:

________________________________________
Jeremiah Kuntz, Director
Vehicle Titles and Registration Division

Order Number: ___________________________ Date Passed: September 1, 2016
The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 217, Subchapter A, §217.9, Bonded Titles.

EXPLANATION OF PROPOSED AMENDMENTS

A person who has an interest in a motor vehicle in which the department has refused to issue a title or has suspended or revoked a title under Transportation Code, §501.051, may, under certain conditions, obtain a title to the motor vehicle by filing a bond with the department.

Proposed amendment to §217.9(c)(3) is to clarify the value of the bond. If the motor vehicle is 25 years or older and the appraised value is less than $4000, then the bond amount will be established from a value of $4000.

Proposed amendment to §217.9(d) is to clarify that the vehicle identification number inspection can be verified by a Texas licensed Safety Inspection Station or, a member of the National Insurance Crime Bureau, the Federal Bureau of Investigation, or law enforcement auto theft unit.

Proposed amendment to §217.9(e)(1) is to clarify the
documentation required to apply for a bonded title. The verification of the vehicle identification number must be on a form specified by the department as well as proof of the vehicle identification number inspection as proposed in §217.9(d).

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

Jeremiah Kuntz, Director of Vehicle Titles and Registration, has certified that there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be accuracy, clarity, and consistency in the department’s rules. Mr. Kuntz has also determined there are no
anticipated economic costs for persons required to comply with
the amendments as proposed. There will be no adverse economic
effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT
The department has determined that this proposal affects no
private real property interests and that this proposal does not
restrict or limit an owner's right to property that would
otherwise exist in the absence of government action, and so does
not constitute a taking or require a takings impact assessment

SUBMITTAL OF COMMENTS
Written comments on the proposed amendments may be submitted to
David D. Duncan, General Counsel, Texas Department of Motor
Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email
to rules@txdmv.gov. The deadline for receipt of comments is
5:00 p.m. on October 24, 2016.

STATUTORY AUTHORITY
The amendments are proposed under Transportation Code,
$1002.001, which provides the board of the Texas Department of
Motor Vehicles with the authority to adopt rules that are
necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title.

CROSS REFERENCE TO STATUTE

SUBCHAPTER A. MOTOR VEHICLE TITLES


(a) Who may file. A person who has an interest in a motor vehicle to which the department has refused to issue a title or has suspended or revoked a title may request issuance of a title from the department on a prescribed form if the vehicle is in the possession of the applicant; and

(1) there is a record that indicates a lien that is less than ten years old and the surety bonding company ensures lien satisfaction or release of lien;

(2) there is a record that indicates there is not a lien or the lien is ten or more years old; or

(3) the department has no previous motor vehicle record.

(b) Administrative fee. The applicant must pay the department a $15 administrative fee in addition to any other required fees.

(c) Value. The amount of the bond must be equal to one and one-half times the value of the vehicle as determined using the Standard Presumptive Value (SPV) from the department's Internet website. If the SPV is not available, then a national reference guide will be used. If the value cannot be determined by either source, then the person may obtain an appraisal.
(1) The appraisal must be on a form specified by the department from a Texas licensed motor vehicle dealer for the categories of motor vehicles that the dealer is licensed to sell or a Texas licensed insurance adjuster who may appraise any type of motor vehicle.

(2) The appraisal must be dated and be submitted to the department within 30 days of the appraisal.

(3) If the motor vehicle is 25 years or older and [the appraised value of the vehicle is [cannot be] less than $4,000, then the bond amount will be established from a value of $4,000.]

(d) Vehicle identification number [Out-of-state vehicle] inspection. If the department has no motor vehicle record for the vehicle, [the applicant is a Texas resident, but the evidence indicates that the vehicle is an out-of-state vehicle,] the vehicle identification number must be verified by a Texas licensed Safety Inspection Station or, a member of the National Insurance Crime Bureau, Federal Bureau of Investigation, or law enforcement auto theft unit. The inspection must be documented on a form specified by the department [a law enforcement officer who holds an auto theft certification].

(e) Required documentation. An applicant may apply for a
bonded title if the applicant submits:

(1) Verification of the vehicle identification number on a form specified by the department [a pencil tracing or photo of the vehicle identification number, or if unable then a Statement of Physical Inspection, Form VTR-270];

(2) any evidence of ownership;

(3) the original bond within 30 days of issuance;

(4) the rejection letter within one year of issuance and the receipt for $15 paid to the department;

(5) the documentation determining the value of the vehicle;

(6) proof of the [an out-of-state] vehicle identification number inspection [certificate], as described in subsection (d) of this section, if the department has no motor vehicle record for the vehicle [there is no Texas record];

(7) a weight certificate if there is no title or the vehicle is an out of state commercial vehicle;

(8) a certification of lien satisfaction by the surety bonding company or a release of lien if the rejection letter states that there may be a lien less than ten years old; and

(9) any other required documentation and fees.

(f) Report of Judgment. The bond must require that the surety report payment of any judgment to the department within
30 days.
To: Board of the Texas Department of Motor Vehicles (TxDMV)
From: Jeremiah Kuntz, Director, Vehicle Titles and Registration Division
Agenda Item: 2.E.2.b
Subject: Proposal of rules under Title 43, Texas Administrative Code, Chapter 217, Vehicle Titles and Registration

New §217.57, Alternatively Fueled Vehicles

RECOMMENDATION

Approval to publish the proposed rules in the Texas Register for public comment.

PURPOSE AND EXECUTIVE SUMMARY

New §217.57 is proposed to implement House Bill 735, 84th Legislature, Regular Session.

FINANCIAL IMPACT

There will be no fiscal implications related to the proposed new section.

BACKGROUND AND DISCUSSION

House Bill 735 added Transportation Code, §502.004, which requires the department to:

- establish by rule a program to collect information about the number of alternatively fueled vehicles in this state,
- and
- submit an annual report to the legislature that includes the information collected.

If the proposed amendment is approved by the board, staff anticipates publication of the proposed amendment in the Texas Register on or about September 23, 2016. Comments on the proposed amendment will be accepted until 5:00 p.m. on October 24, 2016.
PROPOSED PUBLICATION OF NEW 43 TAC SECTION 217.57, ALTERNATIVELY FUELED VEHICLES

Description

This order proposes publication for comment of Chapter 217, Vehicle Titles and Registration, new §217.57, Alternatively Fueled Vehicles.

Background

New §217.57 is proposed to implement House Bill 735, 84th Legislature, Regular Session.

House Bill 735 added Transportation Code, §502.004, which requires the department to:

• establish by rule a program to collect information about the number of alternatively fueled vehicles in this state, and
• submit an annual report to the legislature that includes the information collected.

Other Comments

There are no fiscal implications related to the proposed new section.

If the proposed new section is approved by the board, staff anticipates publication of the proposed amendment in the Texas Register on or about September 23, 2016. Comments on the proposed amendment will be accepted until 5:00 p.m. on October 24, 2016.
BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING PUBLICATION OF PROPOSED NEW 43 TAC SECTION 217.57, ALTERNATIVELY FUELED VEHICLES

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to propose Chapter 217, Vehicle Titles and Registration, new §217.57, Alternatively Fueled Vehicles.

The preamble and the proposed new section are attached to this resolution as Exhibits A-B, and are incorporated by reference as though set forth verbatim in this resolution, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the Texas Register.

IT IS THEREFORE ORDERED by the board that the attached rule is authorized for publication in the Texas Register for the purpose of receiving public comment.

The department is directed to take the necessary steps to implement the actions authorized in this order pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

_________________________________________
Raymond Palacios, Jr. Chairman
Board of the Texas Department of Motor Vehicles

Recommended by:

_____________________________________
Jeremiah Kuntz, Director
Vehicle Titles and Registration Division

Order Number: __________________________ Date Passed: September 1, 2016
The Texas Department of Motor Vehicles (department) proposes new §217.57, Alternatively Fueled Vehicles.

EXPLANATION OF PROPOSED NEW SECTION

New §217.57 is proposed to implement House Bill 735, 84th Legislature, Regular Session, 2015, regarding the collection of information on the number of alternatively fueled vehicles registered in this state. House Bill 735 added Transportation Code, §502.004, Information on Alternatively Fueled Vehicles, which requires the department, by rule, to establish a program to collect information about the number of alternatively fueled vehicles in this state. Section 502.004 also requires the department to submit an annual report to the legislature that includes the information collected, including, at a minimum, the number of vehicles that use electric plug-in drives, hybrid electric drives, compressed natural gas drives, and liquefied natural gas drives.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the new section as proposed is in effect, there will be no fiscal implications for state or
local governments as a result of enforcing or administering the proposed new section.

Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has certified that there will be no impact on local economies or overall employment as a result of enforcing or administering the proposed new section.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing or administering the new section will be the ability to more adequately plan and estimate funding levels for long-term infrastructure needs involving building and maintaining Texas roadways. The accuracy of fuel tax revenue forecasts will increase. There are no anticipated economic costs for persons required to comply with the new section as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not
restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed new section may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on October 24, 2016.

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §502.004, which requires the department to establish a program, by rule, about the number of alternatively fueled vehicles registered in this state.

CROSS REFERENCE TO STATUTE
SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

§217.57. Alternatively Fueled Vehicles.

The department shall collect vehicle fuel type information for motor vehicles registered in this state, including alternatively fueled vehicles, as defined by Transportation Code, §502.004, and submit an annual report to the legislature that includes the information collected under this section.
To: Board of the Texas Department of Motor Vehicles (TxDMV)  
From: Jeremiah Kuntz, Director, Vehicle Titles and Registration  
Agenda Item: 2.E.2.c  
Subject: Proposal of Rules under Title 43 Texas Administrative Code, Chapter 217, Vehicle Titles and Registration, Amendments §§217.3; 217.28, 217.40, 217.42, 217.45, 217.47, 217.52, 217.54, 217.56, 217.82, 217.84, 217.86, 217.103, and 217.163

RECOMMENDATION

Approval to publish the proposed rules in the Texas Register for public comment.

PURPOSE AND EXECUTIVE SUMMARY

The proposed non-substantive amendments correct statutory and rule citations, errors, and updates rule language, capitalizations, and style for consistency throughout.

The purpose of this amendment will be accuracy, clarity, and consistency in the department’s rules.

FINANCIAL IMPACT

There will be no fiscal implications related to the proposed amendments.

BACKGROUND AND DISCUSSION

Proposed amendments to:

• §217.3(4)(C), changed the word “forty” to the numeral “40.”
• §217.3(4)(C)(i), the word “body” is deleted for consistency with the language in §217.3(4)(C)(ii).
• §217.28(e)(2), changed the word “percent” to the symbol “%.”
• §217.28(e)(3), changed the word “twelve” to the numeral “12.”
• §217.40(b)(1)(C), changed the word “percent” to the symbol “%” in three instances. Also changed the word “semi-trailers” to “semitrailers.”
• §217.42, changed “$5.00” to “$5.”
• §217.45, changed “Board” to “board” multiple times.
• §217.47, corrected an incorrect statutory citation in the Health & Safety Code.
• §217.52, changed “Board” to “board” multiple times.
• §217.54, changed the word “semi-trailers” to “semitrailers” and changed the word “twenty five” to the numeral “25.”
• §217.56, changed the word “semi-trailer” to “semitrailer” in three instances.
• §217.82, corrected the citation for the definition of “motor vehicle” in Transportation Code, Chapter 501.
• §217.84, updated incorrect statutory citations to the Transportation Code.
• §217.86, updated an incorrect rule citation.
• §217.103(e), changed “$5.00” to “$5.”
• §217.163(a), updated an incorrect reference to subsection (j) due to the addition of a subsection during adoption that resulted in renumbering of the subsections. Also updated the reference to an agreement to an addendum to reflect the rule language as adopted.

If the proposed amendment is approved by the board, staff anticipates publication of the proposed amendment in the Texas Register on or about September 23, 2016. Comments on the proposed amendment will be accepted until 5:00 p.m. on October 24, 2016.
PROPOSED PUBLICATION TO AMEND
43 TAC SECTIONS 217.3; 217.28, 217.40, 217.42, 217.45, 217.47, 217.52, 217.54, 217.56, 217.82, 217.84, 217.86, 217.103, and 217.163,
RELATING TO VEHICLE TITLES AND REGISTRATION

Description

This order proposes publication for comment of amendments to §§217.3; 217.28, 217.40, 217.42, 217.45, 217.47, 217.52, 217.54, 217.56, 217.82, 217.84, 217.86, 217.103, and 217.163.

Background

The proposed non-substantive amendments correct statutory and rule citations, correct one error, and update rule language, capitalizations, and style for consistency throughout.

- In §217.3(4)(C), changed the word “forty” to the numeral “40.”
- In §217.3(4)(C)(i), the word “body” is deleted for consistency with the language in §217.3(4)(C)(ii).
- In §217.28(e)(2), changed the word “percent” to the symbol “%.”
- In §217.28(e)(3), changed the word “twelve” to the numeral “12.”
- In §217.40(b)(1)(C), changed the word “percent” to the symbol “%” in three instances. Also changed the word “semi-trailers” to “semitrailers.”.
- In §217.42, changed "$5.00" to "$5.
- In §217.45, changed “Board” to “board” multiple times.
- In §217.47, corrected an incorrect statutory citation in the Health & Safety Code.
- In §217.52, changed “Board” to “board” multiple times.
- In §217.54, changed the word “semi-trailers” to “semitrailers” and changed the word “twenty five” to the numeral “25.”
- In §217.56, changed the word “semi-trailer” to “semitrailer” in three instances and changed “Board” to “board” throughout.
- In §217.82, corrected the citation for the definition of “motor vehicle” in Transportation Code, Chapter 501.
- In §217.84, updated incorrect statutory citations to the Transportation Code.
- In §217.86, updated an incorrect rule citation.
- In §217.103(e), changed “$5.00” to “$5.”
- In §217.163, updated an incorrect reference to subsection (j) due to the addition of a subsection during adoption that resulted in renumbering of the subsections.
- In §217.163(a), updated the reference to an agreement to an addendum to reflect the rule language as adopted.

Other Comments

There will be no fiscal implications related to the proposed amendments.

If the proposed amendments are approved by the board, staff anticipates publication of the proposed amendments in the Texas Register on or about September 23, 2016. Comments on the proposed amendments will be accepted until 5:00 p.m. on October 24, 2016.
BOARD OF THE TEXAS DEPARTMENT OF MOTOR VEHICLES

RESOLUTION APPROVING PUBLICATION OF PROPOSED AMENDMENTS
43 TAC SUBCHAPTERS A, B, D, E, AND H
RELATING TO VEHICLE TITLES AND REGISTRATION

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to amend Subchapter A, §217.3, Motor Vehicle Titles; Subchapter B, §217.28, Vehicle Registration Renewal; §217.40, Special Registrations; §217.42, Construction Machinery Criteria; §217.45, Specialty License Plates, Symbols, Tabs, and Other Devices; §217.47, Vehicle Emissions Enforcement System; §217.52, Marketing of Specialty License Plates Through A Private Vendor; §217.54, Registration of Fleet Vehicles; §217.56, Registration Reciprocity Agreements; Subchapter D, §217.82, Definitions (relating to Non-repairable and Salvage Motor Vehicles); §217.84, Application for Non-repairable or Salvage Vehicle Title; §217.86, Dismantling, Scrapping, or Destruction of Motor Vehicles; Subchapter E, §217.103, Restitution Liens; and Subchapter H, §217.163, Full Service Deputies.

The preamble and the proposed amendments are attached to this resolution as Exhibits A-F, and are incorporated by reference as though set forth verbatim in this resolution, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the Texas Register.

IT IS THEREFORE ORDERED by the board that the attached rules are authorized for publication in the Texas Register for the purpose of receiving public comment.

The department is directed to take the necessary steps to implement the actions authorized in this order pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

________________________________________
Raymond Palacios, Jr., Chairman
Board of Texas Department of Motor Vehicles

Recommended by:

_______________________________________
Jeremiah Kuntz, Director
Vehicle Titles and Registration Division

Order Number: ___________________________  Date Passed: 09/01/2016
The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 217, Subchapter A, §217.3, Motor Vehicle Titles; Subchapter B, §217.28, Vehicle Registration Renewal; §217.40, Special Registrations; §217.42, Construction Machinery Criteria; §217.45, Specialty License Plates, Symbols, Tabs, and Other Devices; §217.47, Vehicle Emissions Enforcement System; §217.52, Marketing of Specialty License Plates Through A Private Vendor; §217.54, Registration of Fleet Vehicles; §217.56, Registration Reciprocity Agreements; Subchapter D, §217.82, Definitions (relating to Non-repairable and Salvage Motor Vehicles); §217.84, Application for Non-repairable or Salvage Vehicle Title; §217.86, Dismantling, Scrapping, or Destruction of Motor Vehicles; Subchapter E, §217.103, Restitution Liens; and Subchapter H, §217.163, Full Service Deputies.

EXPLANATION OF PROPOSED AMENDMENTS

In general, these non-substantive amendments are proposed throughout Chapter 217, Subchapters A, B, D, E, and H to correct statutory and rule citations, correct one error, and update rule language, capitalization, and style, for consistency throughout Chapter 217.
SECTION BY SECTION ANALYSIS

The proposed amendment to §217.3(4)(C) changes the word “forty” to the numeral “40.” The proposed amendment also deletes the word “body” from §217.3(4)(C)(i) for consistency with the language in §217.3(4)(C)(ii).

The proposed amendment to §217.28(e)(2) changes the word “percent” to the symbol “%” for consistency with other sections within the chapter. The proposed amendment to §217.28(e)(3) changes the word “twelve” to the numeral “12.”

The proposed amendments to §217.40(b)(1)(C) change the word “percent” to the symbol “%” in three instances. The proposed amendments also change the word “semi-trailers” to “semitrailers” for consistency with statute.

The proposed amendment to §217.42 change “$5.00” to “$5.”

The proposed amendments to §217.45 change “Board” to “board” multiple times for consistency.

The proposed amendment to section 217.47 updates an incorrect statutory citation to the Health & Safety Code.
The proposed amendments to §217.52 change “Board” to “board” multiple times.

The proposed amendment to §217.54 change “semi-trailers” to “semitrailers” for consistency with statute and change the word “twenty five” to the numeral “25.”

The proposed amendments to §217.56 change the word “semi-trailer” to “semitrailer” in three instances and change “Board” to “board” throughout.

The proposed amendment to §217.82 corrects the citation for the definition of “motor vehicle” in Transportation Code, Chapter 501.

The proposed amendments in §217.84 update incorrect statutory citations to the Transportation Code.

The proposed amendment to §217.86 update an incorrect rule citation.

The proposed amendment to §217.103(e) changes “$5.00” to “$5”
The proposed amendments to §217.163 update an incorrect reference to subsection (j) due to the addition of a subsection during adoption of the rule that resulted in a renumbering of the subsections. The proposed amendment §217.163(a) also updates the reference to an agreement to an addendum to reflect the rule language as adopted.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Jeremiah Kuntz, Director, Vehicle Titles and Registration Division has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments as proposed.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first
Texas Department of Motor Vehicles
Chapter 217, Vehicle Titles and Registration

five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be accuracy and clarity of the department's rules. There are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on September 26, 2016.

09/01/16 Preamble
STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and Transportation Code, §520.0071, which provides the board by rule shall prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

CROSS REFERENCE TO STATUTE

SUBCHAPTER A.  MOTOR VEHICLE TITLES

§217.3 Motor Vehicle Titles.

Unless otherwise exempted by law or this chapter, the owner of any motor vehicle that is required to be registered in accordance with Transportation Code, Chapter 502, shall apply for a Texas title in accordance with Transportation Code, Chapter 501.

(1) Motorcycles, motor-driven cycles, autocycles, and mopeds.

   (A) The title requirements of a motorcycle, motor-driven cycle, autocycle, and moped are the same requirements prescribed for any motor vehicle.

   (B) A vehicle that meets the criteria for a moped and has been certified as a moped by the Department of Public Safety will be registered and titled as a moped. If the vehicle does not appear on the list of certified mopeds published by that agency, the vehicle will be treated as a motorcycle for title and registration purposes.

(2) Farm vehicles.

   (A) The term motor vehicle does not apply to implements of husbandry, which may not be titled.

   (B) Farm tractors owned by agencies exempt from registration fees in accordance with Transportation Code,
§502.453, are required to be titled and registered with "Exempt" license plates issued in accordance with Transportation Code, §502.451.

(C) Farm tractors used as road tractors to mow rights of way or used to move commodities over the highway for hire are required to be registered and titled.

(D) Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §502.146, may be issued a Texas title.

(3) Neighborhood electric vehicles. The title requirements of a neighborhood electric vehicle (NEV) are the same requirements prescribed for any motor vehicle.

(4) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers shall apply for and receive a Texas title for any stand alone (full) trailer, including homemade or shopmade full trailers, or any semitrailer having a gross weight in excess of 4,000 pounds. Owners of trailers having a gross weight of 4,000 pounds or less may apply for and receive a Texas title. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph to be titled.

(A) The rated carrying capacity will not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field
laboratories, and mobile oil field bunkhouses are not designed as dwellings, but are classified as commercial semitrailers and must be registered and titled as commercial semitrailers if operated on the public streets and highways.

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle designed for living quarters and that is eight body feet or more in width and 40 feet or more in length (not including the hitch), is classified as a manufactured home or mobile home and is not eligible for a Texas title under Transportation Code, Chapter 501.

(ii) A house trailer-type vehicle that is less than eight feet in width or less than 40 feet in length is classified as a travel trailer and shall be registered and titled.

(iii) A camper trailer shall be titled as a house trailer and shall be registered with travel trailer license plates.

(iv) A recreational park model type trailer that is primarily designed as temporary living quarters for recreational, camping or seasonal use, is built on a single chassis, and is 400 square feet or less when measured at the
largest horizontal projection when in the setup mode shall be
titled as a house trailer and may be issued travel trailer
license plates.

(5) Assembled vehicles.

(A) An assembled vehicle is a vehicle assembled from
the three basic component parts (motor, frame, and body), except
that a motorcycle must have a frame and motor, and a trailer or
travel trailer will have no motor, and that is:

(i) assembled from new or used materials and parts by
someone not regulated as a motor vehicle manufacturer;

(ii) altered or modified to the extent that it no
longer reflects the original manufacturer's configuration; or

(iii) assembled from a kit even if a Manufacturer's
Certificate of Origin or Manufacturer's Statement of Origin is
provided.

(B) A newly assembled vehicle, for which a title has
never been issued in this jurisdiction or any other, may be
titled if:

(i) it is assembled and completed with a body, motor,
and frame, except that a motorcycle must have a frame and motor,
and a trailer or travel trailer will have no motor;

(ii) it is not created from different vehicle
classes, (as established by the Federal Highway Administration,
Texas Department of Motor Vehicles

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except as provided by subparagraph (C) of this paragraph), that
were never engineered or manufactured to be combined with one
another;

(iii) it has all safety components required by
federal law during the year of assembly, unless the vehicle
qualifies and is registered as a custom vehicle or street rod in
accordance with Transportation Code, §504.501;

(iv) it is not a vehicle described by paragraph (6)
of this section;

(v) for a vehicle assembled with a body, motor, and
frame, the applicant provides proof, on a form prescribed by the
department, of a safety inspection performed by an Automotive
Service Excellence (ASE) technician with valid certification as
a Certified Master Automobile and Light Truck Technician,
certifying that the vehicle:

(I) is structurally stable;

(II) meets the necessary conditions to be operated
safely on the roadway; and

(III) is equipped and operational with all
equipment required by statute or rule as a condition of sale
during the year the vehicle was assembled unless it is being
inspected pursuant to Subchapter G of this chapter;

(vi) for a vehicle assembled with a body, motor, and
frame, the applicant submits a copy of the Certified Master
Automobile and Light Truck Technician's ASE certification;
(vii) the applicant submits a Rebuilt Vehicle
Statement; and
(viii) the applicant submits the following to
establish the vehicle's vehicle identification number:
(I) an Application for Assigned or Reassigned
Number, and Notice of Assigned Number or Installation of
Reassigned Vehicle Identification Number, on forms prescribed by
the department; or
(II) acceptable proof, as established by the
department, of a vehicle identification number assigned by the
manufacturer of the component part by which the vehicle will be
identified.
(C) Component parts from the following vehicle classes
may be interchanged with one another or used in the creation of
an assembled vehicle:
(i) 2-axle, 4-tire passenger cars;
(ii) 2-axle, 4 tire pickups, panels and vans;
(iii) 6-tire dually pickups, of which the rear tires
are dual tires.
(D) The ASE inspection for a newly assembled vehicle
required under subparagraph (B) of this paragraph is in addition
to the inspection required by Transportation Code, Chapter 548, except a vehicle that qualifies and is registered as a custom vehicle or street rod in accordance with Transportation Code, §504.501, is exempt from the inspection required under Transportation Code, Chapter 548, for the duration the vehicle is registered as such.

(E) An assembled vehicle which has previously been titled and/or registered in this or any other jurisdiction is subject to subparagraph (B)(i) - (iv) of this paragraph, but is not subject to subparagraph (B)(v) - (viii); however, it is subject to the inspection required by Transportation Code, Chapter 548, except a vehicle that qualifies and is registered as a custom vehicle or street rod in accordance with Transportation Code, §504.501.

(F) An assembled vehicle will be titled using the year it was assembled as the model year and "ASSEMBLED" or "ASVE" as the make of the vehicle unless the body of the vehicle is established to the department's satisfaction to be an original body from a particular year and make. An assembled vehicle utilizing an original body may be titled by the year and the make of the original body but must reflect a "RECONSTRUCTED" remark. An assembled vehicle not utilizing an original body may obtain a title with a "REPLICA" remark featuring the year and
make of the replica if the vehicle resembles a prior model year vehicle. This subparagraph applies regardless of how the vehicle's model year or make was previously identified in this or any other jurisdiction.

(6) Not Eligible for Title. The following are not eligible for a Texas title regardless of the vehicle's previous title and/or registration in this or any other jurisdiction:

(A) vehicles that are missing or are stripped of their motor, frame, or body, to the extent that it materially alters the manufacturer's original design or makes the vehicle unsafe for on-road operation as determined by the department;

(B) vehicles designed or determined by the department to be a dune buggy;

(C) vehicles designed or determined by the department to be for on-track racing, unless such vehicles meet Federal Motor Vehicle Safety Standards (FMVSS) for on-road use and are reported to the National Highway Traffic Safety Administration;

(D) vehicles designed or determined by the department to be for off-road use only, unless specifically defined as a "motor vehicle" in Transportation Code, Chapter 501; or

(E) vehicles assembled, built, constructed, rebuilt, or reconstructed in any manner with:

(i) a body or frame from a vehicle which is a
"nonrepairable motor vehicle" as that term is defined in Transportation Code, §501.091(9); or (ii) a motor or engine from a vehicle which is flood damaged, water damaged, or any other term which may reasonably establish the vehicle from which the motor or engine was obtained is a loss due to a water related event.
SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

§217.28 Vehicle Registration Renewal.

(a) To renew vehicle registration, a vehicle owner must apply, prior to the expiration of the vehicle's registration, to the tax assessor-collector of the county in which the owner resides.

(b) The department will send a license plate renewal notice, indicating the proper registration fee and the month and year the registration expires, to each vehicle owner prior to the expiration of the vehicle's registration.

(c) The license plate renewal notice should be returned by the vehicle owner to the appropriate county tax assessor-collector or to the tax assessor-collector's deputy, either in person or by mail, unless the vehicle owner renews via the Internet. The renewal notice must be accompanied by the following documents and fees:

(1) registration renewal fees prescribed by law;

(2) any local fees or other fees prescribed by law and collected in conjunction with registration renewal; and

(3) evidence of financial responsibility required by Transportation Code, §502.046, unless otherwise exempted by law.

(d) If a renewal notice is lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner
presents personal identification acceptable to the county tax assessor-collector. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Renewal of expired vehicle registrations.

(1) In accordance with Transportation Code, §502.407, a vehicle with an expired registration may not be operated on the highways of the state after the fifth working day after the date a vehicle registration expires.

(2) If the owner has been arrested or cited for operating the vehicle without valid registration then a 20% delinquency penalty is due when registration is renewed, the full annual fee will be collected, and the vehicle registration expiration month will remain the same.

(3) If the county tax assessor-collector or the department determines that a registrant has a valid reason for being delinquent in registration, the vehicle owner will be required to pay for 12 twelve months' registration. Renewal will establish a new registration expiration month that will end on the last day of the eleventh month following the month of registration renewal.

(4) If the county tax assessor-collector or the department determines that a registrant does not have a valid
reason for being delinquent in registration, the full annual fee will be collected and the vehicle registration expiration month will remain the same.

(5) If a vehicle is registered in accordance with Transportation Code, §§502.255, 502.431, 502.435, 502.454, 504.315, 504.401, 504.405, 504.505, or 504.515 and if the vehicle's registration is renewed more than one month after expiration of the previous registration, the registration fee will be prorated.

(6) Evidence of a valid reason may include receipts, passport dates, and military orders. Valid reasons may include:

(A) extensive repairs on the vehicle;

(B) the person was out of the country;

(C) the vehicle is used only for seasonal use;

(D) military orders;

(E) storage of the vehicle;

(F) a medical condition such as an extended hospital stay; and

(G) any other reason submitted with evidence that the county tax assessor-collector or the department determines is valid.

§217.40 Special Registrations.
(a) Purpose and scope. Transportation Code, Chapter 502, Subchapters C and I, charge the department with the responsibility of issuing special registration permits which shall be recognized as legal registration for the movement of motor vehicles not authorized to travel on Texas public highways for lack of registration or for lack of reciprocity with the state or country in which the vehicles are registered. For the department to efficiently and effectively perform these duties, this section prescribes the policies and procedures for the application and the issuance of temporary registration permits.

(b) Permit categories. The department will issue the following categories of special registration permits.

(1) Additional weight permits. The owner of a truck, truck tractor, trailer, or semitrailer may purchase temporary additional weight permits for the purpose of transporting the owner's own seasonal agricultural products to market or other points for sale or processing in accordance with Transportation Code, §502.434. In addition, such vehicles may be used for the transportation without charge of seasonal laborers from their place of residence, and materials, tools, equipment, and supplies from the place of purchase or storage, to a farm or ranch exclusively for use on such farm or ranch.

(A) Additional weight permits are valid for a limited
period of less than one year.

(B) An additional weight permit will not be issued for a period of less than one month or extended beyond the expiration of a license plate issued under Transportation Code, Chapter 502.

(C) The statutory fee for an additional weight permit is based on a percentage of the difference between the owner's annual registration fee and the annual fee for the desired gross vehicle weight computed as follows:

(i) one-month (or 30 consecutive days) -- 10\% percent;

(ii) one-quarter (three consecutive months) -- 30\% percent;

(iii) two-quarters (six consecutive months) -- 60\% percent; or

(iv) three-quarters (nine consecutive months) -- 90\% percent.

(D) Additional weight permits are issued for calendar quarters with the first quarter to begin on April 1st of each year.

(E) A permit will not be issued unless the registration fee for hauling the additional weight has been paid prior to the actual hauling.

(F) An applicant must provide proof of the applicant's
Texas Agriculture or Timber Exemption Registration Number issued by the Texas Comptroller of Public Accounts. Proof of the registration number must be:

(i) legible;
(ii) current;
(iii) in the name of the person or dba in which the vehicle is or will be registered; and
(iv) verifiable through the online system established by the Comptroller.

(2) Annual permits.

(A) Transportation Code, §502.093 authorizes the department to issue annual permits to provide for the movement of foreign commercial vehicles that are not authorized to travel on Texas highways for lack of registration or for lack of reciprocity with the state or country in which the vehicles are registered. The department will issue annual permits:

(i) for a 12-month period designated by the department which begins on the first day of a calendar month and expires on the last day of the last calendar month in that annual registration period; and
(ii) to each vehicle or combination of vehicles for the registration fee prescribed by weight classification in Transportation Code, §502.253 and §502.255.
(B) The department will not issue annual permits for the importation of citrus fruit into Texas from a foreign country except for foreign export or processing for foreign export.

(C) The following exemptions apply to vehicles displaying annual permits.

(i) Currently registered foreign semitrailers having a gross weight in excess of 6,000 pounds used or to be used in combination with commercial motor vehicles or truck tractors having a gross vehicle weight in excess of 10,000 pounds are exempted from the requirements to pay the token fee and display the associated distinguishing license plate provided for in Transportation Code, §502.255. An annual permit is required for the power unit only. For vehicles registered in combination, the combined gross weight may not be less than 18,000 pounds.

(ii) Vehicles registered with annual permits are not subject to the optional county registration fee under Transportation Code, §502.401; the optional county fee for transportation projects under Transportation Code, §502.402; or the optional registration fee for child safety under Transportation Code, §502.403.

(3) 72-hour permits and 144-hour permits.

(A) In accordance with Transportation Code, §502.094, the department will issue a permit valid for 72 hours or 144
hours for the movement of commercial motor vehicles, trailers, semitrailers, and motor buses owned by residents of the United States, Mexico, or Canada.

(B) A 72-hour permit or a 144-hour permit is valid for the period of time stated on the permit beginning with the effective day and time as shown on the permit registration receipt.

(C) Vehicles displaying 72-hour permits or 144-hour permits are subject to vehicle safety inspection in accordance with Transportation Code, §548.051, except for:

(i) vehicles currently registered in another state of the United States, Mexico, or Canada; and

(ii) mobile drilling and servicing equipment used in the production of gas, crude petroleum, or oil, including, but not limited to, mobile cranes and hoisting equipment, mobile lift equipment, forklifts, and tugs.

(D) The department will not issue a 72-hour permit or a 144-hour permit to a commercial motor vehicle, trailer, semitrailer, or motor bus apprehended for violation of Texas registration laws. Apprehended vehicles must be registered under Transportation Code, Chapter 502.

(4) Temporary agricultural permits.

(A) Transportation Code, §502.092 authorizes the
department to issue a 30-day temporary nonresident registration permit to a nonresident for any truck, truck tractor, trailer, or semitrailer to be used in the movement of all agriculture products produced in Texas:

(i) from the place of production to market, storage, or railhead not more than 75 miles from the place of production; or
(ii) to be used in the movement of machinery used to harvest Texas-produced agricultural products.

(B) The department will issue a 30-day temporary nonresident registration permit to a nonresident for any truck, truck tractor, trailer, or semitrailer used to move or harvest farm products, produced outside of Texas, but:

(i) marketed or processed in Texas; or
(ii) moved to points in Texas for shipment from the point of entry into Texas to market, storage, processing plant, railhead or seaport not more than 80 miles from such point of entry into Texas.

(C) The statutory fee for temporary agricultural permits is one-twelfth of the annual Texas registration fee prescribed for the vehicle for which the permit is issued.

(D) The department will issue a temporary agricultural permit only when the vehicle is legally registered in the nonresident's home state or country for the current registration year.
(E) The number of temporary agricultural permits is limited to three permits per nonresident owner during any one vehicle registration year.

(F) Temporary agricultural permits may not be issued to farm licensed trailers or semitrailers.

(5) One-trip permits. Transportation Code, §502.095 authorizes the department to temporarily register any unladen vehicle upon application to provide for the movement of the vehicle for one trip, when the vehicle is subject to Texas registration and not authorized to travel on the public roadways for lack of registration or lack of registration reciprocity.

(A) Upon receipt of the $5 fee, registration will be valid for one trip only between the points of origin and destination and intermediate points as may be set forth in the application and registration receipt.

(B) The department will issue a one-trip permit to a bus which is not covered by a reciprocity agreement with the state or country in which it is registered to allow for the transit of the vehicle only. The vehicle should not be used for the transportation of any passenger or property, for compensation or otherwise, unless such bus is operating under charter from another state or country.

(C) A one-trip permit is valid for a period up to 15 days from
the effective date of registration.

(D) A one-trip permit may not be issued for a trip which both originates and terminates outside Texas.

(E) A laden motor vehicle or a laden commercial vehicle cannot display a one-trip permit. If the vehicle is unregistered, it must operate with a 72-hour or 144-hour permit.

(6) 30-day temporary registration permits. Transportation Code, §502.095 authorizes the department to issue a temporary registration permit valid for 30 days for a $25 fee. A vehicle operated on a 30-day temporary permit is not restricted to a specific route. The permit is available for:

(A) passenger vehicles;

(B) motorcycles;

(C) private buses;

(D) trailers and semitrailers with a gross weight not exceeding 10,000 pounds;

(E) light commercial vehicles not exceeding a gross weight of 10,000 pounds; and

(F) a commercial vehicle exceeding 10,000 pounds, provided the vehicle is operated unladen.

(c) Application process.

(1) Procedure. An owner who wishes to apply for a temporary registration permit for a vehicle which is otherwise required to
be registered in accordance with this subchapter, must do so on a form prescribed by the department.

(2) Form requirements. The application form will at a minimum require:

(A) the signature of the owner;

(B) the name and complete address of the applicant; and

(C) the vehicle description.

(3) Fees and documentation. The application must be accompanied by:

(A) statutorily prescribed fees;

(B) evidence of financial responsibility:

(i) as required by Transportation Code, Chapter 502, Subchapter B, provided that all policies written for the operation of motor vehicles must be issued by an insurance company or surety company authorized to write motor vehicle liability insurance in Texas; or

(ii) if the applicant is a motor carrier as defined by §218.2 of this title (relating to Definitions), indicating that the vehicle is registered in compliance with Chapter 218, Subchapter B of this title (relating to Motor Carrier Registration); and

(C) any other documents or fees required by law.

(4) Place of application.

(A) All applications for annual permits must be submitted
directly to the department for processing and issuance.

(B) Additional weight permits and temporary agricultural permits may be obtained by making application with the department through the county tax assessor-collectors' offices.

(C) 72-hour and 144-hour permits, one-trip permits, and 30-day temporary registration permits may be obtained by making application either with the department or the county tax assessor-collectors' offices.

(d) Receipt for permit in lieu of registration. A receipt will be issued for each permit in lieu of registration to be carried in the vehicle during the time the permit is valid. A one-trip or 30-day trip permit must be displayed as required by Transportation Code, §502.095(f). If the receipt is lost or destroyed, the owner must obtain a duplicate from the department or from the county office. The fee for the duplicate receipt is the same as the fee required by Transportation Code, §502.058.

(e) Transfer of temporary permits.

(1) Temporary permits are non-transferable between vehicles and/or owners.

(2) If the owner of a vehicle displaying a temporary permit disposes of the vehicle during the time the permit is valid, the permit must be returned to the county tax assessor-collector office or department immediately.
(f) Replacement permits. Vehicle owners displaying annual permits may obtain replacement permits if an annual permit is lost, stolen, or mutilated.

(1) The fee for a replacement annual permit is the same as for a replacement number plate, symbol, tab, or other device as provided by Transportation Code, §502.060.

(2) The owner shall apply directly to the department in writing for the issuance of a replacement annual permit. Such request should include a copy of the registration receipt and replacement fee.

(g) Agreements with other jurisdictions. In accordance with Transportation Code, §502.091, and Chapter 648, the executive director of the department may enter into a written agreement with an authorized officer of a state, province, territory, or possession of a foreign country to provide for the exemption from payment of registration fees by nonresidents, if residents of this state are granted reciprocal exemptions. The executive director may enter into such agreement only upon:

(1) the approval of the governor; and

(2) making a determination that the economic benefits to the state outweigh all other factors considered.

(h) Border commercial zones.

(1) Texas registration required. A vehicle located in a border
commercial zone must display a valid Texas registration if the vehicle is owned by a person who:

(A) owns a leasing facility or a leasing terminal located in Texas; and

(B) leases the vehicle to a foreign motor carrier.

(2) Exemption for trips of short duration. Except as provided by paragraph (1) of this subsection, a foreign commercial vehicle operating in accordance with Transportation Code, Chapter 648 is exempt from the display of a temporary registration permit if:

(A) the vehicle is engaged solely in the transportation of cargo across the border into or from a border commercial zone;

(B) for each load of cargo transported the vehicle remains in this state for:

(i) not more than 24 hours; or

(ii) not more than 48 hours, if:

(I) the vehicle is unable to leave this state within 24 hours because of circumstances beyond the control of the motor carrier operating the vehicle; and

(II) all financial responsibility requirements applying to this vehicle are satisfied;

(C) the vehicle is registered and licensed as required by the country in which the person that owns the vehicle is domiciled or is a citizen as evidenced by a valid metal license plate.
attached to the front or rear exterior of the vehicle; and

(D) the country in which the person who owns the vehicle is domiciled or is a citizen provides a reciprocal exemption for commercial motor vehicles owned by residents of Texas.

(3) Exemption due to reciprocity agreement. Except as provided by paragraph (1) of this subsection, a foreign commercial motor vehicle in a border commercial zone in this state is exempt from the requirement of obtaining a Texas registration if the vehicle is currently registered in another state of the United States or a province of Canada with which this state has a reciprocity agreement that exempts a vehicle that is owned by a resident of this state and that is currently registered in this state from registration in the other state or province.

§217.42 Construction Machinery Criteria.

Construction machinery must meet the following criteria in order to qualify for the $5.00 machinery license plate: it must be an unconventional machine, such as those built from the ground up, designed and fabricated to perform a job relating to that type of construction. It is a vehicle that is not designed or used to tow or transport property or persons, other than those persons who may be required to operate such machinery in the function of its design and purpose. Machinery vehicles are vehicles which
are actually designed for special construction purposes.

§217.45 Specialty License Plates, Symbols, Tabs, and Other Devices.

(a) Purpose and Scope. Transportation Code, Chapters 504 and 551 charge the department with providing specialty license plates, symbols, tabs, and other devices. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of specialty license plates, symbols, tabs, and other devices, through the county tax assessor-collectors, and establishes application fees, expiration dates, and registration periods for certain specialty license plates. This section does not apply to military license plates except as provided by §217.43 of this title (relating to Military Specialty License Plates).

(b) Initial application for specialty license plates, symbols, tabs, or other devices.

(A) Application Process. An owner of a vehicle registered as specified in this subchapter who wishes to apply for a specialty license plate, symbol, tab, or other device must do so on a form prescribed by the director.
(B) Form requirements. The application form shall at a minimum require the name and complete address of the applicant.

(2) Fees and Documentation.

(A) The application must be accompanied by the prescribed registration fee, unless exempted by statute.

(B) The application must be accompanied by the statutorily prescribed specialty license plate fee. If a registration period is greater than 12 months, the expiration date of a specialty license plate, symbol, tab, or other device will be aligned with the registration period and the specialty plate fee will be adjusted to yield the appropriate fee. If the statutory annual fee for a specialty license plate is $5 or less, it will not be prorated.

(C) Specialty license plate fees will not be refunded after an application is submitted and the department has approved issuance of the license plate.

(D) The application must be accompanied by prescribed local fees or other fees that are collected in conjunction with registering a vehicle, with the exception of vehicles bearing license plates that are exempt by statute from these fees.

(E) The application must include evidence of eligibility for any specialty license plates. The evidence of eligibility may include, but is not limited to:
(i) an official document issued by a governmental entity; or
(ii) a letter issued by a governmental entity on that agency's letterhead.

(F) Initial applications for license plates for display on Exhibition Vehicles must include a photograph of the completed vehicle.

(3) Place of application. Applications for specialty license plates may be made directly to the county tax assessor-collector, except that applications for the following license plates must be made directly to the department:

(A) County Judge;
(B) Federal Administrative Law Judge;
(C) State Judge;
(D) State Official;
(E) U.S. Congress--House;
(F) U.S. Congress--Senate; and
(G) U.S. Judge.

(4) Gift plates.

(A) A person may purchase general distribution specialty license plates as a gift for another person if the purchaser submits an application for the specialty license plates that provides:

(i) the name and address of the person who will receive the plates; and
(ii) the vehicle identification number of the vehicle on which the plates will be displayed.

(B) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502 and this subchapter.

(c) Initial issuance of specialty license plates, symbols, tabs, or other devices.

(1) Issuance. On receipt of a completed initial application for registration, accompanied by the prescribed documentation and fees, the department will issue specialty license plates, symbols, tabs, or other devices to be displayed on the vehicle for which the license plates, symbols, tabs, or other devices were issued for the current registration period. If the vehicle for which the specialty license plates, symbols, tabs, or other devices are issued is currently registered, the owner must surrender the license plates currently displayed on the vehicle, along with the corresponding license receipt, before the specialty license plates may be issued.

(2) Classic Motor Vehicles, Classic Travel Trailers, Custom Vehicles, Street Rods, and Exhibition Vehicles.

(A) License plates. Texas license plates that were issued the
same year as the model year of a Classic Motor Vehicle, Travel Trailer, Street Rod, or Exhibition Vehicle may be displayed on that vehicle under Transportation Code, §504.501 and §504.502, unless:

(i) the license plate's original use was restricted by statute to another vehicle type;

(ii) the license plate is a qualifying plate type that originally required the owner to meet one or more eligibility requirements; or

(iii) the alpha numeric pattern is already in use on another vehicle.

(B) Validation stickers and tabs. The department will issue validation stickers and tabs for display on license plates that are displayed as provided by subparagraph (A) of this paragraph.

(3) Number of plates issued.

(A) Two plates. Unless otherwise listed in subparagraph (B) of this paragraph, two specialty license plates, each bearing the same license plate number, will be issued per vehicle.

(B) One plate. One license plate will be issued per vehicle for all motorcycles and for the following specialty license plates:

(i) Antique Vehicle (includes Antique Auto, Antique Truck, Antique Motorcycle, and Antique Bus);

(ii) Classic Travel Trailer;
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(iii) Rental Trailer;

(iv) Travel Trailer;

(v) Cotton Vehicle;

(vi) Disaster Relief;

(vii) Forestry Vehicle;

(viii) Golf Cart;

(ix) Log Loader; and

(x) Military Vehicle.

(C) Registration number. The identification number assigned by the military may be approved as the registration number instead of displaying Military Vehicle license plates on a former military vehicle.

(4) Assignment of plates.

(A) Title holder. Unless otherwise exempted by law or this section, the vehicle on which specialty license plates, symbols, tabs, or other devices is to be displayed shall be titled in the name of the person to whom the specialty license plates, symbols, tabs, or other devices is assigned, or a title application shall be filed in that person's name at the time the specialty license plates, symbols, tabs, or other devices are issued.

(B) Non-owner vehicle. If the vehicle is titled in a name other than that of the applicant, the applicant must provide evidence...
of having the legal right of possession and control of the
vehicle.

(C) Leased vehicle. In the case of a leased vehicle, the
applicant must provide a copy of the lease agreement verifying
that the applicant currently leases the vehicle.

(5) Classification of neighborhood electric vehicles. The
registration classification of a neighborhood electric vehicle,
as defined by §217.3(3) of this title (relating to Motor Vehicle
Titles) will be determined by whether it is designed as a 4-
wheeled truck or a 4-wheeled passenger vehicle.

(6) Number of vehicles. An owner may obtain specialty license
plates, symbols, tabs, or other devices for an unlimited number
of vehicles, unless the statute limits the number of vehicles
for which the specialty license plate may be issued.

(7) Personalized plate numbers.

(A) Issuance. The department will issue a personalized license
plate number subject to the exceptions set forth in this
paragraph.

(B) Character limit. A personalized license plate number may
contain no more than six alpha or numeric characters or a
combination of characters. Depending upon the specialty license
plate design and vehicle class, the number of characters may
vary. Spaces, hyphens, periods, hearts, stars, the International
Symbol of Access, or silhouettes of the state of Texas may be used in conjunction with the license plate number.

(C) Personalized plates not approved. A personalized license plate number will not be approved by the executive director if the alpha-numeric pattern:

(i) conflicts with the department's current or proposed regular license plate numbering system;

(ii) would violate §217.27 of this title (relating to Vehicle Registration Insignia), as determined by the executive director;

or

(iii) is currently issued to another owner.

(D) Classifications of vehicles eligible for personalized plates. Unless otherwise listed in subparagraph (E) of this paragraph, personalized plates are available for all classifications of vehicles.

(E) Categories of plates for which personalized plates are not available. Personalized license plate numbers are not available for display on the following specialty license plates:

(i) Amateur Radio (other than the official call letters of the vehicle owner);

(ii) Antique Motorcycle;

(iii) Antique Vehicle (includes Antique Auto, Antique Truck, and Antique Bus);
(iv) Apportioned;
(v) Cotton Vehicle;
(vi) Disaster Relief;
(vii) Farm Trailer (except Go Texan II);
(viii) Farm Truck (except Go Texan II);
(ix) Farm Truck Tractor (except Go Texan II);
(x) Fertilizer;
(xi) Forestry Vehicle;
(xii) Log Loader;
(xiii) Machinery;
(xiv) Permit;
(xv) Rental Trailer;
(xvi) Soil Conservation; and
(xvii) Texas Guard.

(F) Fee. Unless specified by statute, a personalized license plate fee of $40 will be charged in addition to any prescribed specialty license plate fee.

(G) Priority. Once a personalized license plate number has been assigned to an applicant, the owner shall have priority to that number for succeeding years if a timely renewal application is submitted to the county tax assessor-collector each year in accordance with subsection (d) of this section.

(d) Specialty license plate renewal.
(1) Renewal deadline. If a personalized license plate is not renewed within 60 days after its expiration date, a subsequent renewal application will be treated as an application for new personalized license plates.

(2) Length of validation. With the following exceptions, all specialty license plates, symbols, tabs, or other devices shall be valid for 12 months from the month of issuance or for a prorated period of at least 12 months coinciding with the expiration of registration.

(A) Five-year period. Antique Vehicle (includes Antique Auto, Antique Truck, and Antique Bus) and Antique Motorcycle license plates, Antique tabs, and registration numbers are issued for a five-year period.

(B) Seven-year period. Foreign Organization license plates and registration numbers are issued for a seven-year period.

(C) March expiration dates. The registration for Cotton Vehicle and Disaster Relief license plates expires each March 31.

(D) June expiration dates. The registration for the Honorary Consul license plate expires each June 30.

(E) September expiration dates. The registration for the Log Loader license plate expires each September 30.

(F) December expiration dates. The registration for the following license plates expires each December 31:
(i) County Judge;
(ii) Federal Administrative Law Judge;
(iii) State Judge;
(iv) State Official;
(v) U.S. Congress--House;
(vi) U.S. Congress--Senate; and
(vii) U.S. Judge.

(G) Except as otherwise provided in this paragraph, if a vehicle's registration period is other than 12 months, the expiration date of the specialty license plate, symbol, tab, or other device will be set to align it with the expiration of registration.

(3) Renewal.

(A) Renewal notice. Approximately 60 days before the expiration date of a specialty license plate, symbol, tab, or other device, the department will send each owner a renewal notice that includes the amount of the specialty plate fee and the registration fee.

(B) Return of notice. The owner must return the fee and any prescribed documentation to the tax assessor-collector of the county in which the owner resides, except that the owner of a vehicle with one of the following license plates must return the documentation and specialty license plate fee, if applicable,
directly to the department and submit the registration fee to
the county tax assessor-collector:

(i) County Judge;
(ii) Federal Administrative Law Judge;
(iii) State Judge;
(iv) State Official;
(v) U.S. Congress--House;
(vi) U.S. Congress--Senate; and
(vii) U.S. Judge.

(C) Expired plate numbers. The department will retain a
specialty license plate number for 60 days after the expiration
date of the plates if the plates are not renewed on or before
their expiration date. After 60 days the number may be reissued
to a new applicant. All specialty license plate renewals
received after the expiration of the 60 days will be treated as
new applications.

(D) Issuance of validation insignia. On receipt of a completed
license plate renewal application and prescribed documentation,
the department will issue registration validation insignia as
specified in §217.27 unless this section or other law requires
the issuance of new license plates to the owner.

(E) Lost or destroyed renewal notices. If a renewal notice is
lost, destroyed, or not received by the vehicle owner, the
specialty license plates, symbol, tab, or other device may be renewed if the owner provides acceptable personal identification along with the appropriate fees and documentation. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of specialty license plates.

(1) Transfer between vehicles.

(A) Transferable between vehicles. The owner of a vehicle with specialty license plates, symbols, tabs, or other devices may transfer the specialty plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(i) is titled or leased in the owner's name; and

(ii) meets the vehicle classification requirements for that particular specialty license plate, symbol, tab, or other device.

(B) Non-transferable between vehicles. The following specialty license plates, symbols, tabs, or other devices are non-transferable between vehicles:

(i) Antique Vehicle license plates (includes Antique Auto, Antique Truck, and Antique Bus), Antique Motorcycle license plates, and Antique tabs;

(ii) Classic Auto, Classic Truck, Classic Motorcycle, Classic
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Travel Trailer, Street Rod, and Custom Vehicle license plates;

(iii) Forestry Vehicle license plates; and

(iv) Log Loader license plates.

(C) New specialty license plates. If the department creates a
new specialty license plate under Transportation Code, §504.801,
the department will specify at the time of creation whether the
license plate may be transferred between vehicles.

(2) Transfer between owners.

(A) Non-transferable between owners. Specialty license plates,
symbols, tabs, or other devices issued under Transportation
Code, Chapter 504, Subchapters C, E, and F are not transferable
from one person to another except as specifically permitted by
statute.

(B) New specialty license plates. If the department creates a
new specialty license plate under Transportation Code, §504.801,
the department will specify at the time of creation whether the
license plate may be transferred between owners.

(3) Simultaneous transfer between owners and vehicles. Specialty
license plates, symbols, tabs, or other devices are transferable
between owners and vehicles simultaneously only if the owners
and vehicles meet all the requirements in both paragraphs (1)
and (2) of this subsection.

(f) Replacement.

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Exhibit C
(1) Application. When specialty license plates, symbols, tabs, or other devices are lost, stolen, or mutilated, the owner shall apply directly to the county tax assessor-collector for the issuance of replacements, except that Log Loader license plates must be reapplied for and accompanied by the prescribed fees and documentation.

(2) Temporary registration insignia. If the specialty license plate, symbol, tab, or other device is lost, destroyed, or mutilated to such an extent that it is unusable, and if issuance of a replacement license plate would require that it be remanufactured, the owner must pay the statutory replacement fee, and the department will issue a temporary tag for interim use. The owner's new specialty license plate number will be shown on the temporary tag unless it is a personalized license plate, in which case the same personalized license plate number will be shown.

(3) Stolen specialty license plates.

(A) The department or county tax assessor-collector will not approve the issuance of replacement license plates with the same personalized license plate number if the department's records indicate either the vehicle displaying the personalized license plates or the license plates are reported as stolen to law enforcement. The owner will be directed to contact the
department for another personalized plate choice.

(B) The owner may select a different personalized number to be issued at no charge with the same expiration as the stolen specialty plate. On recovery of the stolen vehicle or license plates, the department will issue, at the owner's or applicant's request, replacement license plates, bearing the same personalized number as those that were stolen.

(g) License plates created after January 1, 1999. In accordance with Transportation Code, §504.702, the department will begin to issue specialty license plates authorized by a law enacted after January 1, 1999, only if the sponsoring entity for that license plate submits the following items before the fifth anniversary of the effective date of the law.

(1) The sponsoring entity must submit a written application. The application must be on a form approved by the director and include, at a minimum:

(A) the name of the license plate;

(B) the name and address of the sponsoring entity;

(C) the name and telephone number of a person authorized to act for the sponsoring entity; and

(D) the deposit.

(2) A sponsoring entity is not an agent of the department and does not act for the department in any matter, and the
department does not assume any responsibility for fees or
applications collected by a sponsoring entity.

(h) Assignment procedures for state, federal, and county
officials.

(1) State Officials. State Official license plates contain the
distinguishing prefix "SO." Members of the state legislature may
be issued up to three sets of State Official specialty license
plates with the distinguishing prefix "SO," or up to three sets
of State Official specialty license plates that depict the state
capitol, and do not display the distinguishing prefix "SO." An
application by a member of the state legislature, for a State
Official specialty license plate, must specify the same
specialty license plate design for each applicable vehicle.
State Official license plates are assigned in the following
order:

(A) Governor;

(B) Lieutenant Governor;

(C) Speaker of the House;

(D) Attorney General;

(E) Comptroller;

(F) Land Commissioner;

(G) Agriculture Commissioner;

(H) Secretary of State;
(I) Railroad Commission Presiding Officer followed by the remaining members based on their seniority;

(J) Supreme Court Chief Justice followed by the remaining justices based on their seniority;

(K) Criminal Court of Appeals Presiding Judge followed by the remaining judges based on their seniority;

(L) Members of the State Legislature, with Senators assigned in order of district number followed by Representatives assigned in order of district number, except that in the event of redistricting, license plates will be reassigned; and

(M) Board of Education Presiding Officer followed by the remaining members assigned in district number order, except that in the event of redistricting, license plates will be reassigned.

(2) Members of the U.S. Congress.

(A) U.S. Senate license plates contain the prefix "Senate" and are assigned by seniority; and

(B) U.S. House license plates contain the prefix "House" and are assigned in order of district number, except that in the event of redistricting, license plates will be reassigned.

(3) Federal Judge.

(A) Federal Judge license plates contain the prefix "USA" and are assigned on a seniority basis within each court in the
following order:

(i) Judges of the Fifth Circuit Court of Appeals;
(ii) Judges of the United States District Courts;
(iii) United States Bankruptcy Judges; and
(iv) United States Magistrates.

(B) Federal Administrative Law Judge plates contain the prefix "US" and are assigned in the order in which applications are received.

(C) A federal judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive federal judge plates. A federal judge who retired after August 31, 2003, is not eligible for U.S. Judge license plates.

(4) State Judge.

(A) State Judge license plates contain the prefix "TX" and are assigned sequentially in the following order:
(i) Appellate District Courts;
(ii) Presiding Judges of Administrative Regions;
(iii) Judicial District Courts;
(iv) Criminal District Courts; and
(v) Family District Courts and County Statutory Courts.

(B) A particular alpha-numeric combination will always be assigned to a judge of the same court to which it was originally
(C) A state judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive state judge plates. A state judge who retired after August 31, 2003, is not eligible for State Judge license plates.

(5) County Judge license plates contain the prefix "CJ" and are assigned by county number.

(6) In the event of redistricting or other plate reallocation, the department may allow a state official to retain that official's plate number if the official has had the number for five or more consecutive years.

(i) Development of new specialty license plates.

(1) Procedure. The following procedure governs the process of authorizing new specialty license plates under Transportation Code, §504.801, whether the new license plate originated as a result of an application or as a department initiative.

(2) Applications for the creation of new specialty license plates. An applicant for the creation of a new specialty license plate, other than a vendor specialty plate under §217.52 of this title (relating to Marketing of Specialty License Plates through a Private Vendor), must submit a written application on a form approved by the executive director. The application must include:
(A) the applicant's name, address, telephone number, and other identifying information as directed on the form;

(B) certification on Internal Revenue Service letterhead stating that the applicant is a not-for-profit entity;

(C) a draft design of the specialty license plate;

(D) projected sales of the plate, including an explanation of how the projected figure was established;

(E) a marketing plan for the plate, including a description of the target market;

(F) a licensing agreement from the appropriate third party for any intellectual property design or design element;

(G) a letter from the executive director of the sponsoring state agency stating that the agency agrees to receive and distribute revenue from the sale of the specialty license plate and that the use of the funds will not violate a statute or constitutional provision; and

(H) other information necessary for the board to reach a decision regarding approval of the requested specialty plate.

(3) Review process. The board:

(A) will not consider incomplete applications;

(B) may request additional information from an applicant if necessary for a decision; and

(C) will consider specialty license plate applications that are
restricted by law to certain individuals or groups of individuals (qualifying plates) using the same procedures as applications submitted for plates that are available to everyone (non-qualifying plates).

(4) Request for additional information. If the board determines that additional information is needed, the applicant must return the requested information not later than the requested due date. If the additional information is not received by that date, the board will return the application as incomplete unless the board:

(A) determines that the additional requested information is not critical for consideration and approval of the application; and
(B) approves the application, pending receipt of the additional information by a specified due date.

(5) Board decision. The board’s decision will be based on:

(A) compliance with Transportation Code, §504.801;
(B) the proposed license plate design, including:
   (i) whether the design appears to meet the legibility and reflectivity standards established by the department;
   (ii) whether the design meets the standards established by the department for uniqueness;
   (iii) other information provided during the application process;
(iv) the criteria designated in §217.27 as applied to the design; and

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(C) the applicant's ability to comply with Transportation Code, §504.702 relating to the required deposit or application that must be provided before the manufacture of a new specialty license plate.

(6) Public comment on proposed design. All proposed plate designs will be considered by the board as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet website to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all other specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet website for submission of comments. Written comments are welcome.
and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the board’s Board's meeting.

(7) Final approval.

(A) Approval. The board Board will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter at an open meeting.

(B) Application not approved. If the application is not approved under subparagraph (A) of this paragraph, the applicant may submit a new application and supporting documentation for the design to be considered again by the board Board if:

(i) the applicant has additional, required documentation; or

(ii) the design has been altered to an acceptable degree.

(8) Issuance of specialty plates.

(A) If the specialty license plate is approved, the applicant must comply with Transportation Code, §504.702 before any further processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The board Board has final approval authority of all specialty license plate designs and may adjust or reconfigure the submitted draft design to comply with the format or license plate specifications.
(C) If the board, in consultation with the applicant, adjusts or reconfigures the design, the adjusted or reconfigured design will not be posted on the department's website for additional comments.

(9) Redesign of specialty license plate.

(A) Upon receipt of a written request from the applicant, the department will allow redesign of a specialty license plate.

(B) A request for a redesign must meet all application requirements and proceed through the approval process of a new specialty plate as required by this subsection.

(C) An approved license plate redesign does not require the deposit required by Transportation Code, §504.702, but the applicant must pay a redesign cost to cover administrative expenses.

(j) Golf carts.

(1) A county tax assessor-collector may issue golf cart license plates as long as the requirements under Transportation Code, §551.403 or §551.404 are met.

(2) A county tax assessor-collector may only issue golf cart license plates to residents or property owners of the issuing county.

(3) A golf cart license plate may not be used as a registration insignia, and a golf cart may not be registered for operation on...
a public highway.

(4) The license plate fee for a golf cart license plate is $10.

§217.47 Vehicle Emissions Enforcement System.

(a) Purpose. Transportation Code, §502.047 requires the department to implement a system requiring verification that a vehicle complies with vehicle emissions inspection and maintenance programs as required by the Health and Safety Code, §382.202 and §382.203, and Transportation Code, Chapter 548, Subchapter F. Transportation Code, §501.0276 and §502.047 requires a vehicle subject to Transportation Code, §548.3011 to pass an emissions test on resale in an affected or early action compact county before it is titled or registered. This section prescribes the department's policies and procedures if a vehicle does not comply with the emissions standards set by federal and state laws and the provisions of the Texas air quality State Implementation Plan.

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

(1) Affected County--A county with a motor vehicle emissions inspection and maintenance program established under Transportation Code, §548.301.
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(2) Department--The Texas Department of Motor Vehicles.

(3) DPS--The Texas Department of Public Safety.

(4) Early action compact county--A participating county under Health and Safety Code, Chapter 382, Subchapter H.

(5) TCEQ--The Texas Commission on Environmental Quality.

(6) Vehicle--A self-propelled vehicle required to be registered in the state, except those vehicles exempted by TCEQ.

(7) Vehicle inspection report--A vehicle inspection form prescribed by DPS that is printed by the vehicle exhaust gas analyzer immediately following an emissions test.

(8) Vehicle emissions I/M program--A vehicle emissions inspection and maintenance program meeting all the requirements of the Environmental Protection Agency.

(9) Waiver--A form and certificate that allows a vehicle to be considered in compliance with the vehicle emissions I/M program for a specified period of time after a vehicle fails an emissions test.

(c) Notice from DPS or TCEQ.

(1) DPS, after notice to the vehicle owner, will notify the department if a motor vehicle owner fails to comply with the requirements of Transportation Code, Chapter 548, Subchapter F.

(2) TCEQ, after notice to the vehicle owner, will notify the department if a motor vehicle fails to comply with the
requirements of Health and Safety Code, §382.202 and §382.203
§382.037 and §382.0372, and Transportation Code, Chapter 548,
Subchapter F.

(3) The notice will include the vehicle identification number
and the license plate number of the affected vehicle.

(4) If the department receives a notice of emissions
noncompliance from DPS or TCEQ, the department will place a
notation on the motor vehicle record that the motor vehicle has
failed to comply with the vehicle emissions I/M program.

(5) If the department receives a notice of emissions compliance
from DPS or TCEQ, the department will remove the non-compliance
notation from the motor vehicle record.

(6) If a vehicle record contains a notation of failure to comply
with the vehicle emissions I/M program, the tax assessor-
collector will deny registration unless provided with:

(A) proof of compliance with the vehicle emissions I/M program
with a "passing" vehicle inspection report; or

(B) proof of a waiver issued by DPS that includes the vehicle
identification number and the license plate number.

(7) DPS and TCEQ will provide the department with the
notifications in a format approved by the department.

(8) DPS and TCEQ will enter into an agreement with the
department regarding the remittance to the department for costs
associated with implementation of the emissions program.

(d) Vehicles moved into affected or early action compact counties. If a vehicle was last titled in an unaffected county and is to be titled or registered in an affected or early action compact county, it is not eligible for a title receipt, a title, or registration after a retail sale unless proof is presented to the county tax assessor-collector that the vehicle has passed the emissions test. This subsection does not apply to a vehicle that will be used in the affected or early action compact county for fewer than 60 days during the registration period for which registration is sought or to a vehicle that is a 1996 or newer model and has less than 50,000 miles.

§217.52 Marketing of Specialty License Plates through a Private Vendor.

(a) Purpose and scope. The department will enter into a contract with a private vendor to market department-approved specialty license plates in accordance with Transportation Code, Chapter 504, Subchapter J. This section sets out the procedure for approval of the design, purchase, and replacement of vendor specialty license plates. In this section, the license plates marketed by the vendor are referred to as vendor specialty license plates.
(b) Application for approval of vendor specialty license plate designs.

(1) Approval required. The vendor shall obtain the approval of the board for each license plate design the vendor proposes to market in accordance with this section and the contract entered into between the vendor and the department.

(2) Application. The vendor must submit a written application on a form approved by the executive director to the department for approval of each license plate design the vendor proposes to market. The application must include:

(A) a draft design of the specialty license plate;

(B) projected sales of the plate, including an explanation of how the projected figure was determined;

(C) a marketing plan for the plate including a description of the target market;

(D) a licensing agreement from the appropriate third party for any design or design element that is intellectual property; and

(E) other information necessary for the board to reach a decision regarding approval of the requested vendor specialty plate.

(c) Review and approval process. The board will review vendor specialty license plate applications. The board:

(1) will not consider incomplete applications; and
(2) may request additional information from the vendor to reach a decision.

(d) Board decision.

(1) Decision. The decision of the board will be based on:

(A) compliance with Transportation Code, Chapter 504, Subchapter J;

(B) the proposed license plate design, including:

(i) whether the design meets the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness to ensure that the proposed plate complies with Transportation Code, §504.852(c);

(iii) whether the license plate design can accommodate the International Symbol of Access (ISA) as required by Transportation Code, §504.201(f);

(iv) the criteria designated in §217.27 of this title (relating to Vehicle Registration Insignia) as applied to the design;

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(vi) other information provided during the application process.

(2) Public comment on proposed design. All proposed plate designs will be considered by the board as an agenda item at a regularly or specially called open meeting. Notice of
consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet web site to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet web site for submission of comments. Written comments are welcome and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the board's meeting.

(e) Final approval and specialty license plate issuance.

(1) Approval. The board will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter in an open meeting.

(2) Application not approved. If the application is not approved, the applicant may submit a new application and supporting documentation for the design to be considered again.
by the board if:

(A) the applicant has additional, required documentation; or

(B) the design has been altered to an acceptable degree.

(3) Issuance of approved specialty plates.

(A) If the vendor's specialty license plate is approved, the vendor must submit the non-refundable start-up fee before any further design and processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The board has final approval of all specialty license plate designs and will provide guidance on the submitted draft design to ensure compliance with the format and license plate specifications.

(f) Redesign of vendor specialty license plates.

(1) On receipt of a written request from the vendor, the department will allow a redesign of a vendor specialty license plate.

(2) The vendor must pay the redesign administrative costs as provided in the contract between the vendor and the department.

(g) Multi-year vendor specialty license plates. Purchasers will have the option of purchasing vendor specialty license plates for a one-year, a three-year, or a five-year period.

(h) License plate categories and associated fees. The categories and the associated fees for vendor specialty plates are set out
(1) Custom license plates. Custom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with either three alpha and two or three numeric characters or two or three numeric and three alpha characters. Generic license plates on standard white sheeting with the word "Texas" that may be personalized with up to six alphanumeric characters are considered custom license plates before December 2, 2010. The fees for issuance of Custom and Generic license plates are $150 for one year, $400 for three years, and $450 for five years.

(2) T-Plates (Premium) license plates. T-Plates (Premium) license plates may be personalized with up to seven alphanumeric characters, including the "T," on colored backgrounds or designs approved by the department. The fees for issuance of T-Plates (Premium) license plates are $150 for one year, $400 for three years, and $450 for five years.

(3) Luxury license plates. Luxury license plates may be personalized with up to six alphanumeric characters on colored backgrounds or designs approved by the department. The fees for issuance of luxury license plates are $150 for one year, $400 for three years, and $450 for five years.

(4) Freedom license plates. Freedom license plates include
license plates with a variety of pre-approved background and
color combinations that may be personalized with up to seven alphanumeric characters. The fees for issuance of freedom
license plates are $195 for one year, $445 for three years, and
$495 for five years.

(5) Background only license plates. Background only license
plates include non-personalized license plates with a variety of
pre-approved background and character color combinations. The
fees for issuance of background only license plates are $50 for
one year, $130 for three years, and $175 for five years.

(6) Vendor souvenir license plates. Vendor souvenir license
plates are replicas of vendor specialty license plate designs
that may be personalized with up to twenty-four alphanumeric
colors. Vendor souvenir license plates are not street legal
or legitimate insignias of vehicle registration. The fee for
issuance of souvenir license plates is $40.

(7) Auction of alphanumeric patterns. The vendor may auction
alphanumeric patterns for one, three, or five year terms with
options to renew indefinitely at the current price established
for a one, three, or five year luxury category license plate.
The purchaser of the auction pattern may select from the vendor
background designs at no additional charge at the time of
initial issuance. The auction pattern may be moved from one
vendor design plate to another vendor design plate as provided in subsection (n)(1) of this section. The auction pattern may be transferred from owner to owner as provided in subsection (l)(2) of this section.

(8) Personalization and specialty plate fees.

(A) The fee for the personalization of license plates applied for prior to November 19, 2009 is $40 if the plates are renewed annually.

(B) The personalization fee for plates applied for after November 19, 2009 is $40 if the plates are issued pursuant to Transportation Code, Chapter 504, Subchapters G and I.

(C) If the plates are renewed annually, the personalization and specialty plate fees remain the same fee as at the time of issuance if a sponsor of a specialty license plate authorized under Transportation Code, Chapter 504, Subchapters G and I signs a contract with the vendor in accordance with Transportation Code, Chapter 504, Subchapter J.

(i) Payment of fees.

(1) Payment of specialty license plate fees. The fees for issuance of vendor specialty license plates will be paid directly to the state through vendor and state systems for the license plate category and period selected by the purchaser. A person who purchases a multi-year vendor specialty license plate
must pay upon purchase the full fee which includes the renewal fees.

(2) Payment of statutory registration fees. To be valid for use on a motor vehicle, the license plate owner is required to pay, in addition to the vendor specialty license plate fees, any statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(j) Refunds. Fees for vendor specialty license plate fees will not be refunded after an application is submitted to the vendor and the department has approved issuance of the license plate.

(k) Replacement.

(1) Application. An owner must apply directly to the county tax assessor-collector for the issuance of replacement vendor specialty license plates and must pay the fee described in paragraphs (2) or (3) of this subsection, whichever applies.

(2) Lost or mutilated vendor specialty license plates. To replace vendor specialty license plates that are lost or mutilated, the owner must pay the statutory replacement fee provided in Transportation Code, §504.007.

(3) Optional replacements. An owner of a vendor specialty license plate may replace vendor specialty license plates by submitting a request to the county tax assessor-collector accompanied by the payment of a $6 fee.
(4) Interim replacement tags. If the vendor specialty license plates are lost or mutilated to such an extent that they are unusable, replacement license plates will need to be remanufactured. The county tax assessor-collector will issue interim replacement tags for use until the replacements are available. The owner's vendor specialty license plate number will be shown on the interim replacement tags.

(5) Stolen vendor specialty license plates. The county tax assessor-collector will not approve the issuance of replacement vendor specialty license plates with the same license plate number if the department's records indicate that the vehicle displaying that license plate number was reported stolen or the license plates themselves were reported stolen.

(1) Transfer of vendor specialty license plates.

(1) Transfer between vehicles. The owner of a vehicle with vendor specialty license plates may transfer the license plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(A) is titled or leased in the owner's name; and

(B) meets the vehicle classification requirements for that particular specialty license plate.

(2) Transfer between owners. Vendor specialty license plates may
not be transferred between persons unless the license plate pattern was initially purchased through auction as provided in subsection (h)(7) of this section. An auctioned alphanumeric pattern may be transferred as a specialty license plate or as a virtual pattern to be manufactured on a new background as provided under the restyle option in subsection (n)(1) of this section. In addition to the fee paid at auction, the new owner of an auctioned alphanumeric pattern or plate will pay the department a fee of $25 to cover the cost of the transfer, and complete the department's prescribed application at the time of transfer.

(m) Gift plates.

(1) A person may purchase plates as a gift for another person if the purchaser submits a statement that provides:

(A) the purchaser's name and address;

(B) the name and address of the person who will receive the plates; and

(C) the vehicle identification number of the vehicle on which the plates will be displayed or a statement that the plates will not be displayed on a vehicle.

(2) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in
the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(n) Restyled vendor specialty license plates. A person who has purchased a multi-year vendor specialty license plate may request a restyled license plate at any time during the term of the plate.

(1) For the purposes of this subsection, "restyled license plate" is a vendor specialty license plate that has a different style from the originally purchased vendor specialty license plate but:

(A) is within the same price category, except if the pattern is an auction pattern; and

(B) has the same alpha-numeric characters and expiration date as the previously issued multi-year license plates.

(2) The fee for each restyled license plate is $50.

§217.54 Registration of Fleet Vehicles.

(a) Scope. A registrant may consolidate the registration of multiple motor vehicles, including trailers and semi-trailers, in a fleet instead of registering each vehicle separately. This section prescribes the policies and procedures for fleet registration.

(b) Eligibility. A fleet must meet the following requirements to
be eligible for fleet registration.

(1) No fewer than twenty-five vehicles will be registered as a fleet;

(2) Vehicles may be registered in annual increments for up to eight years;

(3) All vehicles in a fleet must be owned by or leased to the same business entity;

(4) All vehicles must be vehicles that are not registered under the International Registration Plan; and

(5) Each vehicle must currently be titled in Texas or be issued a registration receipt, or the registrant must submit an application for a title or registration for each vehicle.

(c) Application.

(1) Application for fleet registration must be in a form prescribed by the department. At a minimum the form will require:

(A) the full name and complete address of the registrant;

(B) a description of each vehicle in the fleet, which may include the vehicle's model year, make, model, vehicle identification number, document number, body style, gross weight, empty weight, and for a commercial vehicle, manufacturer's rated carrying capacity in tons;

(C) the existing license plate number, if any, assigned to each
vehicle; and

(D) any other information that the department may require.

(2) The application must be accompanied by the following items:

(A) in the case of a leased vehicle, a certification that the vehicle is currently leased to the person to whom the fleet registration will be issued;

(B) registration fees prescribed by law for the entire registration period selected by the registrant;

(C) local fees or other fees prescribed by law and collected in conjunction with registering a vehicle for the entire registration period selected by the registrant;

(D) evidence of financial responsibility for each vehicle as required by Transportation Code, §502.046, unless otherwise exempted by law;

(E) annual proof of payment of Heavy Vehicle Use Tax;

(F) the state's portion of the vehicle inspection fee for the vehicle inspections conducted in Texas; and

(G) any other documents or fees required by law.

(d) Registration period.

(1) The fleet owner will designate a single registration period for a fleet so the registration period for each vehicle will expire on the same date.

(2) The fleet registration period will begin on the first day of
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a calendar month and end on the last day of a calendar month.

(e) Insignia.

(1) As evidence of registration, the department will issue distinguishing insignia for each vehicle in a fleet.

(2) The insignia shall be included on the license plate and affixed to the vehicle.

(3) The insignia shall be attached to the rear license plate if the vehicle has no windshield.

(4) The registration receipt for each vehicle shall at all times be carried in that vehicle and be available to law enforcement personnel.

(5) Insignia may not be transferred between vehicles, owners, or registrants.

(f) Fleet composition.

(1) A registrant may add a vehicle to a fleet at any time during the registration period. An added vehicle will be given the same registration period as the fleet and will be issued fleet registration insignia.

(2) A registrant may remove a vehicle from a fleet at any time during the registration period. The fleet registrant shall return the fleet registration insignia for that vehicle to the department at the time the vehicle is removed from the fleet.

Credit for any vehicle removed from the fleet for the remaining
full year increments can be applied to any vehicle added to the fleet or at the time of renewal. No refunds will be given if credit is not used or the account is closed.

(3) If the number of vehicles in an account falls below twenty-five during the registration period, fleet registration will remain in effect. If the number of vehicles in an account is below twenty-five at the end of the registration period, fleet registration will be canceled. In the event of cancellation, each vehicle shall be registered separately. The registrant shall immediately return all fleet registration insignia to the department.

(g) Fees.

(1) When a fleet is first established, the department will charge a registration fee for each vehicle for the entire registration period selected. A currently registered vehicle, however, will be given credit for any remaining time on its separate registration.

(2) When a vehicle is added to an existing fleet, the department will charge a registration fee that is prorated based on the number of months of fleet registration remaining. If the vehicle is currently registered, this fee will be adjusted to provide credit for the number of months of separate registration remaining.
(3) When a vehicle is removed from fleet registration, it will be considered to be registered separately. The vehicle's separate registration will expire on the date that the fleet registration would have expired. The registrant must pay the statutory replacement fee to obtain regular registration insignia before the vehicle may be operated on a public highway.

(h) Payment. Payment will be made in the manner prescribed by the department.

(i) Cancellation.

(1) The department will cancel registration for non-payment and lack of proof of annual payment of the Heavy Vehicle Use Tax.

(2) The department may cancel registration on any fleet vehicle that is not in compliance with the inspection requirements under Transportation Code, Chapter 548 and the Texas Department of Public Safety rules regarding inspection requirements on the anniversary date(s) of the registration.

(3) A vehicle with a cancelled registration may not be operated on a public highway.

(4) If the department cancels the registration of a vehicle under this subsection, the registrant can request the department to reinstate the registration by doing the following:

(A) complying with the requirements for which the department cancelled the registration;
(B) providing the department with notice of compliance on a form prescribed by the department; and

(C) for a registration cancelled under paragraph (2) of this subsection, paying an administrative fee in the amount of $10.

(5) A registrant is only eligible for reinstatement of the registration within 90 calendar days of the department's notice of cancellation.

(6) If a registrant fails to timely reinstate the registration of a cancelled vehicle registration under this section, the registrant:

(A) is not entitled to a credit or refund of any registration fees for the vehicle; and

(B) must immediately return the registration insignia to the department.

(j) Inspection fee. The registrant must pay the department by the deadline listed in the invoice for the state's portion of the vehicle inspection fee for a vehicle inspection conducted in Texas.

$217.56 Registration Reciprocity Agreements.

(a) Purpose. To promote and encourage the fullest possible use of the highway system and contribute to the economic development and growth of the State of Texas and its residents, the
department is authorized by Transportation Code, §502.091 to enter into agreements with duly authorized officials of other jurisdictions, including any state of the United States, the District of Columbia, a foreign country, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country, and to provide for the registration of vehicles by Texas residents and nonresidents on an allocation or distance apportionment basis, and to grant exemptions from the payment of registration fees by nonresidents if the grants are reciprocal to Texas residents.

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

(1) Cab card--The apportioned vehicle registration receipt that contains, but is not limited to, the vehicle description and the registered weight at which the vehicle may operate in each jurisdiction.

(2) Department--The Texas Department of Motor Vehicles.

(3) Director--The director of the Motor Carrier Division, Texas Department of Motor Vehicles.

(4) Executive director--The chief executive officer of the department.

(5) Regional Service Center--A department office which provides
specific services to the public, including replacement titles, bonded title rejection letters, and apportioned registration under the International Registration Plan (IRP).

(6) Temporary cab card--A temporary registration permit authorized by the department that allows the operation of a vehicle for 30 days subject to all rights and privileges afforded to a vehicle displaying apportioned registration.

(c) Multilateral agreements.

(1) Authority. The executive director may on behalf of the department enter into a multilateral agreement with the duly authorized officials of two or more other jurisdictions to carry out the purpose of this section.

(2) International Registration Plan.

(A) Applicability. The IRP is a registration reciprocity agreement among states of the United States and other jurisdictions providing for payment of registration fees on the basis of fleet distance operated in various jurisdictions. Its purpose is to promote and encourage the fullest possible use of the highway system by authorizing apportioned registration for commercial motor vehicles and payment of appropriate vehicle registration fees and thus contributing to the economic development and growth of the member jurisdictions.

(B) Adoption. The department adopts by reference the January 1, 09/01/16 Amendments Exhibit C
2015, edition of the IRP. Effective January 1, 2016, the
department adopts by reference the amendments to the IRP with an
effective date of January 1, 2016. Effective July 1, 2016, the
department adopts by reference the amendment to the IRP with an
effective date of July 1, 2016. The department further adopts by
reference the July 1, 2013, edition of the IRP Audit Procedures
Manual. In the event of a conflict between this section and the
IRP or the IRP Audit Procedures Manual, the IRP and the IRP
Audit Procedures Manual control. Copies of the documents are
available for review in the Motor Carrier Division, Texas
Department of Motor Vehicles. Copies are also available on
request. The following words and terms, when used in the IRP or
in paragraph (2) of this subsection, shall have the following
meanings, unless the context clearly indicates otherwise.
(i) Apportionable vehicle--Any vehicle - except recreational
vehicles, vehicles displaying restricted plates, city pickup and
delivery vehicles, and government-owned vehicles - used or
intended for use in two or more member jurisdictions that
allocate or proportionally register vehicles and used either for
the transportation of persons for hire or designed, used, or
maintained primarily for the transportation of property and:
(I) is a power unit having two axles and a gross vehicle weight
or registered gross vehicle weight in excess of 26,000 pounds
(I) is a power unit having three or more axles, regardless of weight; 
(II) is used in combination, when the weight of such combination exceeds 26,000 pounds (11,793.401 kilograms) gross vehicle weight; or 
(IV) at the option of the registrant, a power unit, or the power unit in a combination of vehicles having a gross vehicle weight of 26,000 pounds (11,793.401 kilograms) or less.

(ii) Commercial vehicle--A vehicle or combination of vehicles designed and used for the transportation of persons or property in furtherance of any commercial enterprise, for hire or not for hire.

(iii) Erroneous issuance--Apportioned registration issued based on erroneous information provided to the department.

(iv) Established place of business--A physical structure owned or leased within the state of Texas by the applicant or fleet registrant and maintained in accordance with the provisions of the IRP.

(v) Fleet distance--All distance operated by an apportionable vehicle or vehicles used to calculate registration fees for the various jurisdictions.

(C) Application.

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(i) An applicant must submit an application to the department on a form prescribed by the director, along with additional documentation as required by the director.

(ii) Upon approval of the application, the department will compute the appropriate registration fees and notify the registrant.

(D) Fees. Upon receipt of the applicable fees in the form as provided by §209.23 of this title (relating to Methods of Payment), the department will issue one or two license plates and a cab card for each vehicle registered.

(E) Display.

(i) The department will issue one license plate for a tractor, truck tractor, trailer, and semitrailer semitrailer. The license plate issued to a tractor or a truck tractor shall be installed on the front of the tractor or truck tractor, and the license plate issued for a trailer or semitrailer semi-trailer shall be installed on the rear of the trailer or semitrailer semi-trailer.

(ii) The department will issue two license plates for all other vehicles that are eligible to receive license plates under the IRP. Once the department issues two license plates for a vehicle listed in this clause, one plate shall be installed on the front of the vehicle, and one plate shall be installed on the rear of
(iii) The cab card shall be carried at all times in the vehicle in accordance with the IRP.

(F) Audit. An audit of the registrant's vehicle operational records may be conducted by the department according to the IRP provisions and the IRP Audit Procedures Manual. Upon request, the registrant shall provide the operational records of each vehicle for audit in unit number order, in sequence by date, and including, but not limited to, a summary of distance traveled by each individual vehicle on a monthly, quarterly, and annual basis with distance totaled separately for each jurisdiction in which the vehicle traveled.

(G) Assessment. The department may assess additional registration fees of up to 100% of the apportionable fees paid by the registrant for the registration of its fleet in the registration year to which the records pertain, as authorized by the IRP, if an audit conducted under subparagraph (F) of this paragraph reveals that:

(i) the operational records indicate that the vehicle did not generate interstate distance in two or more member jurisdictions for the distance reporting period supporting the application being audited, plus the six-month period immediately following that distance reporting period;
(ii) the registrant failed to provide complete operational records; or

(iii) the distance must be adjusted, and the adjustment results in a shortage of registration fees due Texas or any other IRP jurisdiction.

(H) Refunds. If an audit conducted under subparagraph (F) of this paragraph reveals an overpayment of fees to Texas or any other IRP jurisdiction, the department will refund the overpayment of registration fees in accordance with Transportation Code, §502.195 and the IRP. Any registration fees refunded to a carrier for another jurisdiction will be deducted from registration fees collected and transmitted to that jurisdiction.

(I) Cancellation. The director or the director's designee may cancel a registrant's apportioned registration and all privileges provided by the IRP if the registrant:

(i) submits payment in the form of a check that is dishonored;

(ii) files or provides erroneous information to the department;

or

(iii) fails to:

(I) remit appropriate fees due each jurisdiction in which the registrant is authorized to operate;

(II) meet the requirements of the IRP concerning established
place of business;

(III) provide operational records in accordance with subparagraph (F) of this paragraph;

(IV) provide an acceptable source document as specified in the IRP; or

(V) pay an assessment pursuant to subparagraph (G) of this paragraph.

(J) Enforcement of cancelled registration.

(i) Notice. If a registrant is assessed additional registration fees, as provided in subparagraph (G) of this paragraph, and the additional fees are not paid by the due date provided in the notice or it is determined that a registrant's apportioned license plates and privileges should be canceled, as provided in subparagraph (I) of this paragraph, the director or the director's designee will mail a notice by certified mail to the last known address of the registrant. The notice will state the facts underlying the assessment or cancellation, the effective date of the assessment or cancellation, and the right of the registrant to request a conference as provided in clause (ii) of this subparagraph.

(ii) Conference. A registrant may request a conference upon receipt of a notice issued as provided by clause (i) of this subparagraph. The request must be made in writing to

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director or the director's designee within 30 days of the date of the notice. If timely requested, the conference will be scheduled and conducted by the director or the director's designee at division headquarters in Austin and will serve to abate the assessment or cancellation unless and until that assessment or cancellation is affirmed or disaffirmed by the director or the director's designee. In the event matters are resolved in the registrant's favor, the director or the director's designee will mail the registrant a notice of withdrawal, notifying the registrant that the assessment or cancellation is withdrawn, and stating the basis for that action. In the event matters are not resolved in the registrant's favor, the director or the director's designee will issue a ruling reaffirming the department's assessment of additional registration fees or cancellation of apportioned license plates and privileges. The registrant has the right to appeal in accordance with clause (iii) of this subparagraph.

(iii) Appeal. If a conference held in accordance with clause (ii) of this subparagraph fails to resolve matters in the registrant's favor, the registrant may request an administrative hearing. The request must be in writing and must be received by the director no later than the 20th day following the date of the ruling issued under clause (ii) of this subparagraph. If
requested within the designated period, the hearing will be
initiated by the department and will be conducted in accordance
with Chapter 206, Subchapter D of this title (relating to
Procedures in Contested Cases). Assessment or cancellation is
abated unless and until affirmed or disaffirmed by order of the
Board of the Texas Department of Motor Vehicles.

(K) Reinstatement.

(i) The director or the director's designee will reinstate
apportioned registration to a previously canceled registrant if
all applicable fees and assessments due on the previously
canceled apportioned account have been paid and the applicant
provides proof of an acceptable recordkeeping system for a
period of no less than 60 days.

(ii) The application for the following registration year will be
processed in accordance with the provisions of the IRP.

(L) Denial of apportioned registration for safety reasons. The
department will comply with the requirements of the Performance
and Registration Information Systems Management program (PRISM)
administered by the Federal Motor Carrier Safety Administration
(FMCSA).

(i) Denial or suspension of apportioned registration. Upon
notification from the FMCSA that a carrier has been placed out
of service for safety violations, the department will:
(I) deny initial issuance of apportioned registration;

(II) deny authorization for a temporary cab card, as provided for in subparagraph (M) of this paragraph;

(III) deny renewal of apportioned registration; or

(IV) suspend current apportioned registration.

(ii) Issuance after denial of registration or reinstatement of suspended registration. The director or the director's designee will reinstate or accept an initial or renewal application for apportioned registration from a registrant who was suspended or denied registration under clause (i) of this subparagraph upon presentation of a Certificate of Compliance from FMCSA, in addition to all other required documentation and payment of fees.

(M) Temporary cab card.

(i) Application. The department may authorize issuance of a temporary cab card to a motor carrier with an established Texas apportioned account for a vehicle upon proper submission of all required documentation, a completed application, and all fees for either:

(I) Texas title as prescribed by Transportation Code, Chapter 501 and Subchapter A of this chapter (relating to Motor Vehicle Titles); or

(II) registration receipt to evidence title for registration
purposes only (Registration Purposes Only) as provided for in
Transportation Code, §501.029 and §217.24 of this title
(relating to Vehicle Last Registered in Another Jurisdiction).
(ii) Title application. A registrant who is applying for a Texas
title as provided for in clause (i)(I) of this subparagraph and
is requesting authorization for a temporary cab card, must
submit to a Regional Service Center by email, fax, overnight
mail, or in person a photocopy of the title application receipt
issued by the county tax assessor-collector's office.
(iii) Registration Purposes Only. A registrant who is applying
for Registration Purposes Only under clause (i)(II) of this
subparagraph and is requesting authorization for a temporary cab
card, must submit an application and all additional original
documents or copies of original documents required by the
director to a Regional Service Center by email, fax, or
overnight mail or in person.
(iv) Department approval. On department approval of the
submitted documents, the department will send notice to the
registrant to finalize the transaction and make payment of
applicable registration fees.
(v) Finalization and payment of fees. To finalize the
transaction and print the temporary cab card, the registrant may
compute the registration fees through the department's
apportioned registration software application, TxIRP system, and:

(I) make payment of the applicable registration fees to the department as provided by §209.23 of this title (related to Methods of Payment); and

(II) afterwards, mail or deliver payment of the title application fee in the form of a check, certified cashier's check, or money order payable to the county tax assessor-collector in the registrant's county of residency and originals of all copied documents previously submitted.

(vi) Deadline. The original documents and payment must be received by the Regional Service Center within 72-hours after the time that the office notified the registrant of the approval to print a temporary cab card as provided in clause (iv) of this subparagraph.

(vii) Failure to meet deadline. If the registrant fails to submit the original documents and required payment within the time prescribed by clause (vi) of this subparagraph, the registrant's privilege to use this expedited process to obtain a temporary cab card will be denied by the department for a period of six months from the date of approval to print the temporary cab card.
§217.82 Definitions.

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

(1) Casual sale--The sale by a salvage vehicle dealer, insurance company, or salvage pool operator of not more than five non-repairable or salvage motor vehicles to the same person during a calendar year. The term does not include a sale to a salvage vehicle dealer or the sale of an export-only motor vehicle to a person who is not a resident of the United States.

(2) Certificate of title--A written instrument that may be issued solely by and under the authority of the department and that reflects the transferor, transferee, vehicle description, license plate and lien information, and rights of survivorship agreement as specified in Subchapter A of this chapter or as required by the department.

(3) Application for Title--A form prescribed by the director of the department's Vehicle Titles and Registration Division that reflects the information required by the department to create a motor vehicle title record.

(4) Damage--Sudden damage to a motor vehicle caused by the motor vehicle being wrecked, burned, flooded, or stripped of...
major component parts. The term does not include gradual damage from any cause, sudden damage caused by hail, or any damage caused only to the exterior paint of the motor vehicle.

(5) Date of sale--The date of the transfer of possession of a specific vehicle from a seller to a purchaser.

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

(7) Export-only sale--The sale of a non-repairable or salvage motor vehicle, by a salvage vehicle dealer, including a salvage pool operator acting as agent for an insurance company, or a governmental entity, to a person who resides outside the United States.

(8) Flood damage--A title remark that is initially indicated on a non-repairable or salvage vehicle title to denote that the damage to the vehicle was caused exclusively by flood and that is carried forward on subsequent title issuance.

(9) Insurance company--A person authorized to write automobile insurance in this state or an out-of-state insurance company that pays a loss claim for a motor vehicle in this state.

(10) Manufacturer's certificate of origin--A form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner, and
when presented with an application for title, showing, on appropriate forms prescribed by the department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer and owner.

(11) Metal recycler--A person who:

(A) is predominately engaged in the business of obtaining ferrous or nonferrous metal that has served its original economic purpose to convert the metal, or sell the metal for conversion, into raw material products consisting of prepared grades and having an existing or potential economic value;

(B) has a facility to convert ferrous or nonferrous metal into raw material products consisting of prepared grades and having an existing or potential economic value, by a method other than the exclusive use of hand tools, including the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metal; and

(C) sells or purchases the ferrous or nonferrous metal solely for use as raw material in the production of new products.

(13) Non-repairable motor vehicle--A motor vehicle, regardless of the year model, that is wrecked, damaged, or burned to the extent that the only residual value of the motor vehicle is as a source of parts or scrap metal, or that comes into this state under a title or other ownership document that indicates that the motor vehicle is non-repairable, junked, or for parts or dismantling only.

(14) Non-repairable vehicle title--A document that evidences ownership of a non-repairable motor vehicle.

(15) Out-of-state buyer--A person licensed in an automotive business by another state or jurisdiction if the department has listed the holders of such a license as permitted purchasers of salvage motor vehicles or non-repairable motor vehicles based on substantially similar licensing requirements and on whether salvage vehicle dealers licensed in Texas are permitted to purchase salvage motor vehicles or non-repairable motor vehicles in the other state or jurisdiction.

(16) Out-of-state ownership document--A negotiable document issued by another jurisdiction that the department considers sufficient to prove ownership of a non-repairable or salvage motor vehicle and to support issuance of a comparable Texas certificate of title for the motor vehicle. The term does not include a title issued by the department, including a:
(A) regular certificate of title;
(B) non-repairable vehicle title;
(C) salvage vehicle title;
(D) salvage certificate;
(E) Certificate of Authority to Demolish a Motor Vehicle; or
(F) any other ownership document issued by the department.

(17) Person--An individual, partnership, corporation, trust, association, or other private legal entity.

(18) Rebuilt salvage certificate of title--A regular certificate of title evidencing ownership of a non-repairable motor vehicle that was issued a non-repairable vehicle title prior to September 1, 2003, or salvage motor vehicle that has been rebuilt.

(19) Salvage motor vehicle--A motor vehicle, regardless of the year model:
(A) that is:
(i) damaged or is missing a major component part to the extent that the cost of repairs exceeds the actual cash value of the motor vehicle immediately before the damage; or
(ii) damaged and comes into this state under an out-of-state ownership document that states on its face "accident damage," "flood damage," "inoperable," "rebuildable," "salvageable," or similar notation, and is not an out-of-state ownership document.
with a "rebuilt," "prior salvage," or similar notation, or a
non-repairable motor vehicle; and

(B) does not include:

(i) a motor vehicle for which an insurance company has paid a
claim for repairing hail damage, or theft, unless the motor
vehicle was damaged during the theft and before recovery to the
extent that the cost of repair exceeds the actual cash value of
the motor vehicle immediately before the damage;

(ii) the cost of materials or labor for repainting the motor
vehicle; or

(iii) sales tax on the total cost of repairs.

(20) Salvage vehicle dealer--A person engaged in this state in
the business of acquiring, selling, dismantling, repairing,
rebuilding, reconstructing, or otherwise dealing in non-
repairable motor vehicles or salvage motor vehicles or used
parts, including a person who is in the business of a salvage
vehicle dealer, regardless of whether the person holds a license
issued by the department to engage in the business. The term
does not include a person who casually repairs, rebuilds, or
reconstructs fewer than three salvage motor vehicles in the same
calendar year.

(21) Salvage vehicle title--A document issued by the department
that evidences ownership of a salvage motor vehicle.
§217.84 Application for Non-repairable or Salvage Vehicle Title.

(a) Place of application. The owner of a non-repairable or salvage motor vehicle who is required to obtain or voluntarily chooses to obtain a non-repairable or salvage vehicle title, as provided by §217.83 of this title (relating to Requirement for Non-repairable or Salvage Vehicle Title), shall apply for a non-repairable or salvage vehicle title by submitting an application, the required accompanying documentation, and the statutory fee to the department.

(b) Information on application. An applicant for a non-repairable or salvage vehicle title shall submit an application on a form prescribed by the department. A completed form, in addition to any other information required by the department, must include:

(1) the name and current address of the owner;

(2) a description of the motor vehicle, including the motor vehicle's model year, make, model, identification number, body style, manufacturer's rated carrying capacity in tons for commercial vehicles, and empty weight;

(3) a statement describing whether the motor vehicle is a non-repairable or salvage motor vehicle; and

(A) was the subject of a total loss claim paid by an insurance
company under Transportation Code, §501.1001 or §501.1002
§501.092 or §501.093;
(B) is a self-insured motor vehicle under Transportation Code,
§501.091 §501.094;
(C) is an export-only motor vehicle under Transportation Code,
§501.099;
(D) was sold, transferred, or released to the owner or former
owner of the motor vehicle; or
(E) was sold, transferred, or released to a buyer at casual sale
by a salvage vehicle dealer, insurance company, or salvage pool
operator;
(4) whether the damage was caused exclusively by flood;
(5) a description of the damage to the motor vehicle;
(6) the odometer reading and brand, or the word "exempt" if the
motor vehicle is exempt from federal and state odometer
disclosure requirements, if the motor vehicle is a salvage motor
vehicle;
(7) the name, address, and city and state of residence of the
previous owner;
(8) the name and mailing address of any lienholder and the date
of lien, as provided by subsection (e) of this section; and
(9) the signature of the applicant or the applicant's authorized
agent and the date the certificate of title application was
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1 signed.

2 (c) Accompanying documentation. A non-repairable or salvage vehicle title application must be supported, at a minimum, by:

3 (1) evidence of ownership, as described by subsection (d)(1) or (3) of this section, if the applicant is an insurance company that is unable to locate one or more of the owners;

4 (2) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if the motor vehicle is less than 10 model years old and the motor vehicle is a salvage motor vehicle; and

5 (3) a release of any liens.

6 (d) Evidence of non-repairable or salvage motor vehicle ownership.

7 (1) Evidence of non-repairable or salvage motor vehicle ownership properly assigned to the applicant must accompany the application for a non-repairable or salvage vehicle title, except as provided by paragraph (2) of this subsection. Evidence must include documentation sufficient to show ownership to the non-repairable or salvage motor vehicle, such as:

8 (A) a Texas Certificate of Title;

9 (B) a certified copy of a Texas Certificate of Title;

10 (C) a manufacturer's certificate of origin;

11 (D) a Texas Salvage Certificate;
(E) a non-repairable vehicle title;

(F) a salvage vehicle title;

(G) a comparable ownership document issued by another jurisdiction, except that if the applicant is an insurance company, evidence must be provided indicating that the insurance company is:

(i) licensed to do business in Texas; or

(ii) not licensed to do business in Texas, but has paid a loss claim for the motor vehicle in this state; or

(H) a photocopy of the inventory receipt or a title and registration verification evidencing surrender to the department of the negotiable evidence of ownership for a motor vehicle as provided by §217.86 of this title (relating to Dismantling, Scrapping, or Destruction of Motor Vehicles), and if the evidence of ownership surrendered was from another jurisdiction, a photocopy of the front and back of the surrendered evidence of ownership.

(2) An insurance company that acquires ownership or possession of a non-repairable or salvage motor vehicle through payment of a claim may apply for a non-repairable or salvage vehicle title to be issued in the insurance company's name without obtaining an ownership document or if it received an ownership document without the proper assignment of the owner if the company is 09/01/16 Amendments Exhibit D
unable to obtain a title from the owner, in accordance with paragraph (1) of this subsection, and the application is not made earlier than the 30th day after the date of payment of the claim. The application must also include:

(A) a statement that the insurance company has provided at least two written notices to the owner and any lienholder attempting to obtain the title or proper assignment of title for the motor vehicle;

(B) a copy of a document:

(i) indicating that payment has been made, including an electronic check, canceled check, or screen print from the insurance company's database that identifies the type of payment method; and

(ii) reflecting the vehicle identification number, vehicle owner names, name of the person to whom payment was made if different from vehicle owners, payment amount, and date payment was issued; and

(C) any unassigned or improperly assigned title in the insurance company's possession.

(3) An insurance company that acquires, through payment of a claim, ownership or possession of a salvage motor vehicle or non-repairable motor vehicle covered by an out-of-state ownership document may obtain a salvage vehicle title or non-
repairable vehicle title in accordance with paragraph (1) or (2) of this subsection if:

(A) the motor vehicle was damaged, stolen, or recovered in this state; or

(B) the motor vehicle owner from whom the company acquired ownership resides in this state.

(4) A salvage pool operator may apply for title in the name of the salvage pool operator by providing to the department:

(A) documentation from the insurance company that:

(i) the salvage pool operator, on request of an insurance company, was asked to take possession of the motor vehicle subject to an insurance claim and the insurance company subsequently denied coverage or did not take ownership of the vehicle; and

(ii) the name and address of the owner of the motor vehicle and the lienholder, if any; and

(B) proof that the salvage pool operator, before the 31st day after receiving the information from the insurance company, sent a notice to the owner and any lienholder informing them that:

(i) the motor vehicle must be removed from the location specified in the notice not later than the 30th day after the date the notice is mailed; and

(ii) if the motor vehicle is not removed within the time...
specified in the notice, the salvage pool operator will sell the
motor vehicle and retain from the proceeds any costs actually
incurred by the operator in obtaining, handling, and disposing
of the motor vehicle, except for charges:
(I) that have been or are subject to being reimbursed by a third
party; and
(II) for storage or impoundment of the motor vehicle.
(5) Proof of notice under this subsection consists of:
(A) the validated receipts for registered or certified mail and
return receipt or an electronic certified mail receipt,
including signature receipt; and
(B) any unopened certified letters returned by the post office
as unclaimed, undeliverable, or with no forwarding address.
(e) Recordation of lien on non-repairable and salvage vehicle
titles. If the motor vehicle is a salvage motor vehicle, a new
lien or a currently recorded lien may be recorded on the salvage
vehicle title. If the motor vehicle is a non-repairable motor
vehicle, only a currently recorded lien may be recorded on the
non-repairable vehicle title.
(f) Issuance. Upon receipt of a completed non-repairable or
salvage vehicle title application, accompanied by the statutory
application fee and the required documentation, the department
will, before the sixth business day after the date of receipt,
issue a non-repairable or salvage vehicle title, as appropriate.

(1) If the condition of salvage is caused exclusively by flood, a "Flood Damage" notation will be reflected on the face of the document and will be carried forward upon subsequent title issuance.

(2) If a lien is recorded on a non-repairable or salvage vehicle title, the vehicle title will be mailed to the lienholder. For proof of ownership purposes, the owner will be mailed a receipt or printout of the newly established motor vehicle record, indicating a lien has been recorded.

(3) A non-repairable vehicle title will state on its face that the motor vehicle may:

(A) not be repaired, rebuilt, or reconstructed;

(B) not be issued a regular certificate of title or registered in this state;

(C) not be operated on a public highway; and

(D) may only be used as a source for used parts or scrap metal.

§217.86 Dismantling, Scrapping, or Destruction of Motor Vehicles.

(a) A person who acquires ownership of a non-repairable or salvage motor vehicle for the purpose of dismantling, scrapping, or destruction shall, not later than the 30th day after the
motor vehicle was acquired:

(1) submit to the department a report, on a form prescribed by the department:

(A) stating that the motor vehicle will be dismantled, scrapped, or destroyed; and

(B) certifying that all unexpired license plates and registration validation stickers have been removed from the motor vehicle, in accordance with Occupations Code, §2302.252; and

(2) surrender to the department the properly assigned ownership document.

(b) The person shall:

(1) maintain records of each motor vehicle that will be dismantled, scrapped, or destroyed, as provided by Chapter 221, Subchapter D §217.191(d) of this title (relating to Records Record of Purchases, Sales, and Inventory); and

(2) store all unexpired license plates and registration validation stickers removed from those vehicles in a secure location.

(c) The department will issue the person a receipt with surrender of the report and ownership documents.

(d) License plates and registration validation stickers removed from vehicles reported under subsection (a)(1) of this section
may be destroyed upon receipt of the acknowledged report from
the department.
(e) The department will place an appropriate notation on motor
vehicle records for which ownership documents have been
surrendered to the department.
(f) Not later than 60 days after the motor vehicle is
dismantled, scrapped, or destroyed, the person shall report to
the department and provide evidence that the motor vehicle has
been dismantled, scrapped, or destroyed.
SUBCHAPTER E. TITLE LIENS AND CLAIMS

§217.103 Restitution Liens.

(a) Purpose. Pursuant to the Code of Criminal Procedure, Article 42.22, the victim or an attorney for the state may file a lien on any interest in a motor vehicle of a person convicted of a criminal offense to secure payment of restitution or fines or costs. This section establishes the procedures to perfect the filing and the removal of the lien on any interest of the defendant in a motor vehicle whether then owned or after-acquired.

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

(1) Department—The Texas Department of Motor Vehicles.

(2) Restitution lien—A lien placed against a defendant's motor vehicle in order to recoup a judgment or fines or costs.

(3) State—The State of Texas and all its political subdivisions.

(4) Victim—A close relative of a deceased victim, guardian of a victim, or victim, as those terms are defined by the Code of Criminal Procedure, Article 56.01.

(c) Persons who may file a restitution lien. The following persons may file a restitution lien:
(1) a victim of a criminal offense to secure the amount of restitution to which the victim is entitled under the order of a court in a criminal case; and

(2) an attorney of the state to secure the amount of fines or costs entered against a defendant in a judgment in a felony criminal case.

(d) Perfection of a restitution lien. A restitution lien against any interest in a motor vehicle must be perfected in accordance with Transportation Code, Chapter 501, and in the name of the court which established the restitution lien, in care of the court clerk. The victim or the attorney representing the state must file an application for certificate of title with a county tax-assessor collector to perfect the restitution lien. The application must be on a form prescribed by the department as described in §217.4 of this title (relating to Initial Application for Title), and shall be supported by, at a minimum, the following documents:

(1) evidence of motor vehicle ownership, as described in §217.5 of this title (relating to Evidence of Motor Vehicle Ownership), which is properly assigned to or issued in the name of the defendant;

(2) an original or certified copy of the court order or judgment establishing the restitution lien and requiring the
defendant to pay restitution, fines, or costs; and

(3) an affidavit to perfect a restitution lien which must include, at a minimum:

(A) the name and birth date of the defendant whose interest in the motor vehicle is subject to the lien;

(B) the residence or principal place of business of the person named in the lien, if known;

(C) the criminal proceeding giving rise to the lien, including the name of the court, the name of the case, and the court's file number for the case;

(D) the name and address of the attorney representing the state and the name and address of the person entitled to restitution;

(E) a statement that the notice is being filed pursuant to Code of Criminal Procedure, Article 42.22;

(F) the amount of restitution, fines, and costs the defendant has been ordered to pay by the court;

(G) a statement that the amount of restitution owed at any one time may be less than the original balance and that the outstanding balance is reflected in the records of the clerk of the court hearing the criminal proceeding giving rise to the lien;

(H) the vehicle description (year, make, and vehicle description).
identification number) of the motor vehicle for which the restitution lien is to be perfected; and

(I) the signature of the attorney representing the state or a magistrate.

(e) Fees. The applicant will be required to pay a $5 $5.00 restitution lien filing fee, in addition to a title application fee in accordance with Transportation Code, §501.138, and any other applicable fees required by Transportation Code, Chapters 501, 502, and 520.

(f) Recording a restitution lien. Upon receiving a completed application for certificate of title, the required supporting documents and any applicable fees, the department or its designated agent will process and issue a certificate of title recording the restitution lien. The original certificate of title shall be mailed to the first lienholder, in accordance with Transportation Code, §501.027.

(g) Release of perfected restitution liens. The clerk of the court recorded as the lienholder will receive payments from the defendant and maintain a record of the outstanding balance of restitution, fines, or costs owed by the defendant. Upon satisfaction of the lien, the clerk of the court shall execute the release of lien as described in §217.106 of this title (relating to Discharge of Liens). The release of lien must be
provided to the owner or owner's designee. A photocopy of the release of lien shall be forwarded to the department for filing.
SUBCHAPTER H DEPUTIES

§217.163 Full Service Deputies.

(a) A county tax assessor-collector, with the approval of the commissioners court of the county, may deputize a person to act as a full service deputy in the same manner and with the same authority as though done in the office of the county tax assessor-collector, subject to the criteria and limitations of this section, including signing the addendum as entering into the agreement specified in subsection (k) (j) of this section.

(b) A full service deputy must offer and provide titling and registration services to the general public, and must accept any application for registration, registration renewal, or title transfer that the county tax assessor-collector would accept and process, unless otherwise limited by the county.

(c) The county tax assessor-collector may impose reasonable obligations or requirements upon a full service deputy in addition to those set forth in this section. The additional obligations or requirements must be reflected in the agreement specified in subsection (j) of this section.

(d) To be eligible to serve as a full service deputy, a person must be trained, as approved by the county tax assessor-collector, to perform motor vehicle titling, registration, and registration renewal services, or otherwise be deemed competent.
by the county tax assessor-collector to perform such services.

(e) To be eligible to serve as a full service deputy, a person must post a bond payable to the county tax assessor-collector consistent with §217.167 of this title (relating to Bonding Requirements) with the bond conditioned on the person's proper accounting and remittance of the fees the person collects.

(f) A person applying to be a full service deputy must complete the application process as specified by the county tax assessor-collector. The application process may include satisfaction of any bonding requirements and completion of any additional required documentation or training of the deputy before the processing of any title, registration, or registration renewal applications may occur.

(g) A full service deputy must provide the physical address at which services will be offered, the mailing address, the phone number, and the hours of service. This information may be published on the department's website and may be published by the county if the county publishes a list of deputy locations.

(h) A full service deputy shall keep a separate accounting of the fees collected and remitted to the county and a record of daily receipts.

(i) A full service deputy may charge or retain fees
consistent with the provisions of §217.168 of this title
(relating to Deputy Fee Amounts).

(j) A full service deputy must maintain records in
compliance with the State of Texas Records Retention Schedule as
promulgated by the Texas State Library and Archives Commission.

(k) Beginning January 1, 2017, a full service deputy must
sign an addendum provided by the department outlining the terms
and conditions of the full service deputy's access to and use of
the department's registration and titling system. Any contract
or agreement, or renewal of the contract or agreement, between
the county and the full service deputy that authorizes the full
service deputy to provide registration and titling services in
the county must specifically incorporate the addendum by
reference, and the contract or agreement may not supersede or
contradict any term within the addendum. An addendum described
by this subsection is required for each location at which the
full service deputy operates. The addendum must be incorporated
into any agreement or contract between the full service deputy
and the county beginning January 1, 2017. The county must
provide the department a current copy of each contract or
agreement, including any amendments, with a full service deputy
within 60 days of execution.
To: Board of the Texas Department of Motor Vehicles (TxDMV)
From: William P. Harbeson, Enforcement Division Director; and Jimmy Archer, Motor Carrier Division Director
Agenda Item: 2.E.3.

RECOMMENDATION

Approval to publish the proposed rules in the Texas Register for public comment.

PURPOSE AND EXECUTIVE SUMMARY

Transportation Code, §643.155 requires the department to appoint a rules advisory committee consisting of representatives of household goods motor carriers, the public, and the department. The advisory committee is required to examine the rules regarding the protection of consumers using the services of a household goods motor carrier, and to make recommendations to the department on modernizing and streamlining the rules. The department appointed the advisory committee, which met three times.

FINANCIAL IMPACT

There are no major fiscal implications related to the proposed amendments. A proposed amendment will require household goods motor carriers that lease vehicles under a short-term lease to display their name and certificate of registration number on their leased vehicles. These motor carriers can comply with this proposed requirement with minimal cost by placing printed magnets on the sides of these leased vehicles.

BACKGROUND AND DISCUSSION

Proposed amendments:

- Update the rules to be consistent with statute.
- Create separate definitions for an advertisement and a print advertisement, since print advertisements are governed by specific rules.
- Amend existing rules to provide for greater consumer protection.
- Modernize the rules to authorize certain documentation to be created and submitted in an electronic format.

If the proposed amendments are approved by the board, staff anticipates publication of the proposed amendments in the Texas Register on or about September 23, 2016. Comments on the proposed amendments will be accepted until 5:00 p.m. on October 24, 2016.
PROPOSED PUBLICATION TO AMEND
43 TAC SECTIONS 218.2, 218.13, 218.31, 218.32, 218.52,
218.53, 218.56, 218.59, 218.60, AND 218.61,
RELATING TO MOTOR CARRIERS

Description

This order proposes publication for comment of amendments to §§218.2, 218.13, 218.31,
218.32, 218.52, 218.53, 218.56, 218.59, 218.60, and 218.61.

Background

Transportation Code, §643.155 requires the department to appoint a rules advisory committee
consisting of representatives of household goods motor carriers, the public, and the
department. The advisory committee is required to examine the rules regarding the protection
of consumers using the services of a household goods motor carrier, and to make
recommendations to the department on modernizing and streamlining the rules. The
department appointed the advisory committee, which met three times.

Proposed amendments:

• Update the rules to be consistent with statute.
• Create separate definitions for an advertisement and a print advertisement, since print
  advertisements are governed by specific rules.
• Amend existing rules to provide for greater consumer protection.
• Modernize the rules to authorize certain documentation to be created and submitted in an
electronic format.

Other Comments

There are no major fiscal implications related to the proposed amendments. A proposed
amendment will require household goods motor carriers that lease vehicles under a short-term
lease to display their name and certificate of registration number on their leased vehicles. These
motor carriers can comply with this proposed requirement with minimal cost by placing printed
magnets on the sides of these leased vehicles.

If the proposed amendments are approved by the board, staff anticipates publication of the
proposed amendments in the Texas Register on or about September 23, 2016. Comments on the
proposed amendments will be accepted until 5:00 p.m. on October 24, 2016.
RESOLUTION APPROVING PUBLICATION OF PROPOSED AMENDMENTS
43 TAC SECTIONS 218.2, 218.13, 218.31, 218.32, 218.52, 218.53, 218.56, 219.59, 219.60, AND 218.61, RELATING TO MOTOR CARRIERS

The Board of the Texas Department of Motor Vehicles (board) finds it necessary to amend Chapter 218, Motor Carriers, Subchapter A: §218.2, Definitions; Subchapter B: §218.13, Application for Motor Carrier Registration; Subchapter C: §218.31, Investigations and Inspections of Motor Carrier Records; §218.32, and Motor Carrier Records; Subchapter E: §218.52, Advertising; §218.53, Household Goods Carrier Cargo Liability; §218.56, Proposals and Estimates for Moving Services; §218.59, Inventories; 218.60, Determination of Weights; and §218.61, Claims.

The proposed amendments are attached to this resolution as Exhibit A, and are incorporated by reference as though set forth verbatim in this resolution, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the Texas Register.

IT IS THEREFORE ORDERED by the board that the attached rules are authorized for publication in the Texas Register for the purpose of receiving public comments.

The department is directed to take the necessary steps to implement the actions authorized in this order pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

_________________________________
Raymond Palacios, Jr., Chairman
Board of the Texas Department of Motor Vehicles

Recommended by:

_________________________________
William P. Harbeson, Director
Enforcement Division

Order Number: _____________________ Date Passed: September 1, 2016
§218.2. Definitions.
The following words and terms, when used in this chapter,
shall have the following meanings, unless the context clearly
indicates otherwise.

(1) Advertisement—An oral, written, graphic, or
pictorial statement or representation made in the course of
soliciting intrastate household goods transportation services,
including, without limitation, a statement or representation
made in a newspaper, magazine, or other publication, or
contained in a notice, sign, poster, display, circular,
pamphlet, or letter, or on radio, the Internet, or via an on-
line service, or on television. The term does not include
direct communication between a household goods carrier or
carrier’s representative and a prospective shipper, and does
not include the following:

(A) promotional items of nominal value such as
ball caps, tee shirts, and pens;

(B) business cards;

(C) listings not paid for by the household
goods carrier or its household goods carrier's agent; and

(D) listings of a household goods carrier's
business name or assumed name as it appears on the motor
carrier certificate of registration, and the household goods
carrier’s address, and contact information in a directory or similar publication.

(2) Approved association--A group of household goods carriers, its agents, or both, that has an approved collective ratemaking agreement on file with the department under §218.64 of this title (relating to Rates).

(3) Binding proposal--A formal written offer stating the exact price for the transportation of specified household goods and any related services.

(4) Board--Board of the Texas Department of Motor Vehicles.

(5) Certificate of insurance--A certificate prescribed by and filed with the department in which an insurance carrier or surety company warrants that a motor carrier for whom the certificate is filed has the minimum coverage as required by §218.16 of this title (relating to Insurance Requirements).

(6) Certificate of registration--A certificate issued by the department to a motor carrier and containing a unique number.

(7) Certified scale--Any scale designed for weighing motor vehicles, including trailers or semitrailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority. A certified scale
may also be a platform-type or warehouse-type scale properly inspected and certified.

(8) Commercial motor vehicle--

(A) Includes:

(i) any motor vehicle or combination of vehicles with a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds, that is designed or used for the transportation of cargo in furtherance of any commercial enterprise;

(ii) any vehicle, including buses, designed or used to transport more than 15 passengers, including the driver; and

(iii) any vehicle used in the transportation of hazardous materials in a quantity requiring placarding under the regulations issued under the federal Hazardous Materials Transportation Act (49 U.S.C. §§5101-5128).

(B) Does not include:

(i) a farm vehicle with a gross weight, registered weight, and gross weight rating of less than 48,000 pounds;

(ii) cotton vehicles registered under Transportation Code, §504.505;

(iii) a vehicle registered with the
Railroad Commission under Natural Resources Code, §113.131 and §116.072;

(iv) a vehicle operated by a governmental entity;

(v) a motor vehicle exempt from registration by the Unified Carrier Registration Act of 2005;

and

(vi) a tow truck, as defined by Occupations Code, §2308.002 and permitted under Occupations Code, Chapter 2308, Subchapter C.

(9)[(8)] Commercial school bus--A motor vehicle owned by a motor carrier that is:

(A) registered under Transportation Code, Chapter 643, Subchapter B;

(B) operated exclusively within the boundaries of a municipality and used to transport preprimary, primary, or secondary school students on a route between the students' residences and a public, private, or parochial school or daycare facility;

(C) operated by a person who holds a driver's license or commercial driver's license of the appropriate class for the operation of a school bus;

(D) complies with Transportation Code, Chapter 548; and
(E) complies with Transportation Code, §521.022.

(10) Conspicuous--Written in a size, color, and contrast so as to be readily noticed and understood.

(11) Conversion--A change in an entity's organization that is implemented with a Certificate of Conversion issued by the Texas Secretary of State under Business and Organizations Code, §10.154.

(12) Department--Texas Department of Motor Vehicles (TxDMV).

(13) Director--The director of the Motor Carrier Division, Texas Department of Motor Vehicles.

(14) Division--The Motor Carrier Division.

(15) Estimate--An informal oral calculation of the approximate price of transporting household goods.

(16) Farmer--A person who operates a farm or is directly involved in cultivating land or in raising crops or livestock that are owned by or are under the direct control of that person.

(17) Farm vehicle--Any vehicle or combination of vehicles controlled or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch.

(18) FMCSA--Federal Motor Carrier Safety
Foreign commercial motor vehicle--A commercial motor vehicle that is owned by a person or entity that is domiciled in or a citizen of a country other than the United States.

Gross weight rating--The maximum loaded weight of any combination of truck, tractor, and trailer equipment as specified by the manufacturer of the equipment. If the manufacturer's rating is unknown, the gross weight rating is the greater of:

(A) the actual weight of the equipment and its lading; or

(B) the maximum lawful weight of the equipment and its lading.

Household goods--Personal property intended ultimately to be used in a dwelling when the transportation of that property is arranged and paid for by the householder or the householder's representative. The term does not include personal property to be used in a dwelling when the property is transported from a manufacturing, retail, or similar company to a dwelling if the transportation is arranged by a manufacturing, retail, or similar company.

Household goods agent--A motor carrier who transports household goods on behalf of another motor carrier.
Household goods carrier--A motor carrier who transports household goods for compensation or hire in furtherance of a commercial enterprise, regardless of the size of the vehicle.

Insurer--A person, including a surety, authorized in this state to write lines of insurance coverage required by Subchapter B of this chapter.

Inventory--A list of the items in a household goods shipment and the condition of the items.

Leasing business--A person that leases vehicles requiring registration under Subchapter B of this chapter to a motor carrier that must be registered.

Mediation--A non-adversarial form of alternative dispute resolution in which an impartial person, the mediator, facilitates communication between two parties to promote reconciliation, settlement, or understanding.

Motor Carrier or carrier--A person who controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a public highway in this state.

Motor transportation broker--A person who
sells, offers for sale, or negotiates for the transportation of cargo by a motor carrier operated by another person or a person who aids and abets another person in selling, offering for sale, or negotiating for the transportation of cargo by a motor carrier operated by another person.

(30) Moving services contract--A contract between a household goods carrier and shipper, such as a bill of lading, receipt, order for service, or work order, that sets out the terms of the services to be provided.

(31) Multiple user--An individual or business who has a contract with a household goods carrier and who used the carrier's services more than 50 times within the preceding 12 months.

(32) Not-to-exceed proposal--A formal written offer stating the maximum price a shipper can be required to pay for the transportation of specified household goods and any related services. The offer may also state the non-binding approximate price. Any offer based on hourly rates must state the maximum number of hours required for the transportation and related services unless there is an acknowledgment from the shipper that the number of hours is not necessary.

(33) Principal place of business--A single location that serves as a motor carrier's headquarters and where it maintains its operational records or can make them available.
(34) Print advertisement--A written, graphic, or pictorial statement or representation made in the course of soliciting intrastate household goods transportation services, including, without limitation, a statement or representation made in or contained in a newspaper, magazine, circular, or other publication. The term does not include direct communication between a household goods carrier or carrier’s representative and a prospective shipper, and does not include the following:

(A) promotional items of nominal value such as ball caps, tee shirts, and pens;

(B) business cards;

(C) listings not paid for by the household goods carrier or its household goods carrier’s agent; and

(D) listings of a household goods carrier’s business name or assumed name as it appears on the motor carrier certificate of registration, and the household goods carrier’s address, and contact information in a directory or similar publication.

(35) Public highway--Any publicly owned and maintained street, road, or highway in this state.

(36) Reasonable dispatch--The performance of transportation, other than transportation provided under guaranteed service dates, during the period of time agreed on
by the carrier and the shipper and shown on the shipment 
documentation. This definition does not affect the availability 
to the carrier of the defense of force majeure.

(37) Replacement vehicle--A vehicle that takes the place of another vehicle that has been removed from service.

(38) Revocation--The withdrawal of registration and privileges by the department or a registration state.

(39) Shipper--The owner of household goods or the owner's representative.

(40) Short-term lease--A lease of 30 days or less.

(41) SOAH--The State Office of Administrative Hearings.

(43) Substitute vehicle--A vehicle that is leased from a leasing business and that is used as a temporary replacement for a vehicle that has been taken out of service for maintenance, repair, or any other reason causing the temporary unavailability of the permanent vehicle.

(44) Suspension--Temporary removal of privileges granted to a registrant by the department or a registration state.

(45) Unified Carrier Registration System or
Chapter 218, Motor Carriers

§218.13. Application for Motor Carrier Registration.

(a) Form of application. An application for motor carrier registration must be filed with the department's Motor Carrier Division and must be in the form prescribed by the director and must contain, at a minimum, the following information.

(1) USDOT number. A valid USDOT number.

(2) Business or trade name. The applicant must designate the business or trade name of the motor carrier.

(3) Owner name. If the motor carrier is a sole proprietorship, the owner must indicate the name and social security number of the owner. A partnership must indicate the partners' names, and a corporation must indicate principal officers and titles.

(4) Principal place of business. A motor carrier must disclose the motor carrier's principal business address.

If the mailing address is different from the principal
business address, the mailing address must also be disclosed.

(5) Legal agent.

(A) A Texas-domiciled motor carrier must provide the name and address of a legal agent for service of process if the agent is different from the motor carrier.

(B) A motor carrier domiciled outside Texas must provide the name and Texas address of the legal agent for service of process.

(C) A legal agent for service of process shall be a Texas resident, a domestic corporation, or a foreign corporation authorized to transact business in Texas with a Texas address for service of process.

(6) Description of vehicles. An application must include a motor carrier equipment report identifying each commercial motor vehicle that requires registration and that the carrier proposes to operate. Each commercial motor vehicle must be identified by its motor vehicle identification number, make, model year, and type of cargo and by the unit number assigned to the commercial motor vehicle by the motor carrier. Any subsequent registration of vehicles must be made under subsection (e) of this section.

(7) Type of motor carrier operations. An applicant must state if the applicant:

(A) proposes to transport passengers, household
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1 goods, or hazardous materials; or

2 (B) is domiciled in a foreign country.

3 (8) Insurance coverage. An applicant must indicate

4 insurance coverage as required by §218.16 of this title

5 (relating to Insurance Requirements).

6 (9) Safety affidavit. Each motor carrier must

7 complete, as part of the application, an affidavit stating

8 that the motor carrier knows and will conduct operations in

9 accordance with all federal and state safety regulations.

10 (10) Drug-testing certification. Each motor carrier

11 must certify, as part of the application, that the motor

12 carrier is in compliance with the drug-testing requirements of

13 49 C.F.R. Part 382. If the motor carrier belongs to a

14 consortium, as defined by 49 C.F.R. Part 382, the applicant

15 must provide the names of the persons operating the

16 consortium.

17 (11) Duration of registration.

18 (A) An applicant must indicate the duration of

19 the desired registration. Registration may be for seven

20 calendar days or for 90 days, one year, or two years. The

21 duration of registration chosen by the applicant will be

22 applied to all vehicles. Household goods carriers may not

23 obtain seven day or 90 day certificates of registration.

24 (B) Interstate motor carriers that operate in
intrastate commerce and meet the requirements under §218.14(c)
of this title (relating to Expiration and Renewal of
Commercial Motor Vehicles Registration) are not required to
renew a certificate of registration issued under this section.

(12) Additional requirements. The following fees and
information must be submitted with all applications.

(A) An application must be accompanied by an
application fee of:

(i) $100 for annual and biennial
registrations;

(ii) $25 for 90 day registrations; or

(iii) $5 for seven day registrations.

(B) An application must be accompanied by a
vehicle registration fee of:

(i) $10 for each vehicle that the motor
carrier proposes to operate under a seven day, 90 day, or
annual registration; or

(ii) $20 for each vehicle that the motor
carrier proposes to operate under a biennial registration.

(C) An application must be accompanied by proof
of insurance or financial responsibility and insurance filing
fee as required by §218.16.

(D) An application for registration by a
household goods carrier must include a tariff that sets out
the maximum charges for transportation of household goods
between two or more municipalities, or a copy of the tariff
governing interstate transportation services on a highway
between two or more municipalities.

(E) An application must be accompanied by any other information required by law.

(b) Conditional acceptance of application. If an application has been conditionally accepted by the director pursuant to Transportation Code, §643.055, the applicant may not operate the following until the department has issued a certificate under Transportation Code, §643.054:

(1) a commercial motor vehicle or any other motor vehicle to transport household goods for compensation, or

(2) a commercial motor vehicle to transport persons or cargo. [The director may conditionally accept an application if it is accompanied by all fees and by proof of insurance or financial responsibility, but is not accompanied by all required information. Conditional acceptance in no way constitutes approval of the application. The director will notify the applicant of any information necessary to complete the application. If the applicant does not supply all necessary information within 45 days from notification by the director, the application will be considered withdrawn and all fees will be retained.]
(c) Approved application. An applicant meeting the requirements of this section and whose registration is approved will be issued the following documents:

1. Certificate of registration. The department will issue a certificate of registration. The certificate of registration will contain the name and address of the motor carrier and a single registration number, regardless of the number of vehicles requiring registration that the carrier operates.

2. Insurance cab card. The department will issue an insurance cab card listing all vehicles to be operated under the carrier's certificate of registration. The insurance cab card shall be continuously maintained at the registrant's principal place of business. The insurance cab card will be valid for the same period as the motor carrier's certificate of registration and will contain information regarding each vehicle registered by the motor carrier.

   (A) A current copy of the page of the insurance cab card on which the vehicle is shown shall be maintained in each vehicle listed, unless the motor carrier chooses to maintain a legible and accurate image of the insurance cab card on a wireless communication device in the vehicle or chooses to display such information on a wireless communication device by accessing the department's online
system from the vehicle. The appropriate information concerning that vehicle shall be highlighted if the motor carrier chooses to maintain a hard copy of the insurance card or chooses to display an image of the insurance card on a wireless communication device in the vehicle. The insurance card or the display of such information on a wireless communications device will serve as proof of insurance as long as the motor carrier has continuous insurance or financial responsibility on file with the department.

(B) On demand by a department investigator or any other authorized government personnel, the driver shall present the highlighted page of the insurance card that is maintained in the vehicle or that is displayed on a wireless communication device in the vehicle. If the motor carrier chooses to display the information on a wireless communication device by accessing the department's online system, the driver must locate the vehicle in the department's online system upon request by the department-certified inspector or other authorized government personnel.

(C) The motor carrier shall notify the department in writing if it discontinues use of a registered commercial motor vehicle before the expiration of its
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insurance cab card.

(D) Any erasure or alteration of an insurance cab card that the department printed out for the motor carrier renders it void.

(E) If an insurance cab card is lost, stolen, destroyed, or mutilated; if it becomes illegible; or if it otherwise needs to be replaced, the department will print out a new insurance cab card at the request of the motor carrier. Motor carriers are authorized to print out a copy of a new insurance cab card using the department's online system.

(F) The department is not responsible for a motor carrier's inability to access the insurance information using the department's online system.

(G) The display of an image of the insurance cab card or the display of insurance information from the department's online system via a wireless communication device by the motor carrier does not constitute effective consent for a law enforcement officer, the department-certified inspector, or any other person to access any other content of the wireless communication device.

(d) Additional and replacement vehicles. A motor carrier required to obtain a certificate of registration under this section shall not operate additional vehicles unless the carrier identifies the vehicles on a form prescribed by the
director and pays applicable fees as described in this subsection.

(1) Additional vehicles. To add a vehicle, a motor carrier must pay a fee of $10 for each additional vehicle that the motor carrier proposes to operate under a seven day, 90 day, or annual registration. To add a vehicle during the first year of a biennial registration, a motor carrier must pay a fee of $20 for each vehicle. To add a vehicle during the second year of a biennial registration, a motor carrier must pay a fee of $10 for each vehicle.

(2) Replacement vehicles. No fee is required for a vehicle that is replacing a vehicle for which the fee was previously paid. Before the replacement vehicle is put into operation, the motor carrier shall notify the department, identify the vehicle being taken out of service, and identify the replacement vehicle on a form prescribed by the department. A motor carrier registered under seven day registration may not replace vehicles.

(e) Supplement to original application. A motor carrier required to register under this section shall submit a supplemental application under the following circumstances.

(1) Change of cargo. A registered motor carrier may not begin transporting household goods or hazardous materials unless the carrier submits a supplemental application to the
department and shows the department evidence of insurance or financial responsibility in the amounts specified by §218.16.

(2) Change of name. A motor carrier that changes its name shall file a supplemental application for registration no later than the effective date of the change. The motor carrier shall include evidence of insurance or financial responsibility in the new name and in the amounts specified by §218.16. A motor carrier that is a corporation must have its name change approved by the Texas Secretary of State before filing a supplemental application. A motor carrier incorporated outside the state of Texas must complete the name change under the law of its state of incorporation before filing a supplemental application.

(3) Change of address or legal agent for service of process. A motor carrier shall file a supplemental application for any change of address or any change of its legal agent for service of process no later than the effective date of the change. The address most recently filed will be presumed conclusively to be the current address.

(4) Change in principal officers and titles. A motor carrier that is a corporation shall file a supplemental application for any change in the principal officers and titles no later than the effective date of the change.

(5) Conversion of corporate structure. A motor
carrier that has successfully completed a corporate conversion
involving a change in the name of the corporation shall file a
supplemental application for registration and evidence of
insurance or financial responsibility reflecting the new
company name. The conversion must be approved by the Office of
the Secretary of State before the supplemental application is
filed.

(6) Change in drug-testing consortium status. A
motor carrier that changes consortium status shall file a
supplemental application that includes the names of the
persons operating the consortium.

(7) Retaining a revoked or suspended certificate of
registration number. A motor carrier may retain a prior
certificate of registration number by:

(A) filing a supplemental application to re-
register instead of filing an original application; and

(B) providing adequate evidence that the
carrier has satisfactorily resolved the facts that gave rise
to the suspension or revocation.

(f) Change of ownership. A motor carrier must file an
original application for registration when there is a
corporate merger or a change in the ownership of a sole
proprietorship or of a partnership.

(g) Alternative vehicle registration for household goods
agents. To avoid multiple registrations of a commercial motor
vehicle, a household goods agent's vehicles may be registered
under the motor carrier's certificate of registration under
this subsection.

(1) The carrier must notify the department on a form
approved by the director of its intent to register its agent's
vehicles under this subsection.

(2) When a carrier registers vehicles under this
subsection, the carrier's certificate will include all
vehicles registered under its agent's certificates of
registration. The carrier must register under its certificate
of registration all vehicles operated on its behalf that do
not appear on its agent's certificate of registration.

(3) The department may send the carrier a copy of
any notification sent to the agent concerning circumstances
that could lead to denial, suspension, or revocation of the
agent's certificate.

(h) Substitute vehicles leased from leasing businesses. A
registered motor carrier is not required to comply with the
provisions of subsection (e) of this section for a substitute
vehicle leased from a business registered under §218.18 of
this title (relating to Short-term Lease and Substitute
Vehicles). A motor carrier is not required to carry proof of
registration as described in subsection (d) of this section if
a copy of the lease agreement for the originally leased
vehicle is carried in the cab of the temporary replacement
vehicle.

SUBCHAPTER C RECORDS AND INSPECTIONS

§218.31. Investigations and Inspections of Motor Carrier
Records.

(a) Certification of department investigators
[inspectors]. In accordance with Transportation Code, Chapter
643, the executive director or designee will designate
department employees as certified [inspectors] for the purpose
of entering the premises of a motor carrier to copy or verify
documents the motor carrier is required to maintain according
to this chapter [by this section to be maintained by the motor
carrier]. The executive director or designee shall provide
credentials to department investigators [certified inspectors]
identifying them as department employees and as certified
inspectors to conduct investigations and inspect records on
behalf of the department.

(b) Investigations and Inspections.

(1) A motor carrier shall grant a department
investigator certified under this section [inspector] access
to the carrier's premises to conduct inspections or
investigations of alleged violations of this chapter and of
Transportation Code, Chapters 643 and 645. The motor carrier
shall provide adequate work space with reasonable working conditions and allow the department investigators [certified inspector] to copy and verify records and documents the motor carrier is required to maintain according to this chapter [be maintained by the carrier under §218.32 of this title (relating to Motor Carrier Records)].

(2) The department investigator [certified inspector] may conduct inspections and investigations during normal business hours unless mutual arrangements have been made otherwise.

(3) The department investigator [certified inspector] will present his or her credentials [and a written statement from the department] to the motor carrier prior to conducting an investigation or inspection [indicating the inspector's authority to inspect and investigate the motor carrier].

(c) Access. A motor carrier shall provide access to requested records and documents at:

(1) the motor carrier's principal place of business;

or

(2) a location agreed to by the department and the motor carrier.

(d) Designation of meeting time. If the motor carrier's normal business hours do not provide the access necessary for
the investigator to conduct the investigation and the parties cannot reach an agreement as to a time to meet to access the records, the department shall designate the time of the meeting and provide written notice via the business address, facsimile number, or e-mail address on file with the department [by certified mail or facsimile].

§218.32. Motor Carrier Records.

(a) General records to be maintained. Every motor carrier shall prepare and maintain in a complete and accurate manner:

(1) operational logs, insurance certificates, documents to verify the carrier's operations, and proof of registration fee payments;

(2) [complete and accurate] records of services performed;

(3) all certificate of title documents, weight tickets, permits for oversize or overweight vehicles and loads, dispatch records, or any other document that would verify the operations of the vehicle to determine the actual weight, insurance coverage, size, and/or capacity of the vehicle; and

(4) the original certificate of registration and registration listing, if applicable.

(b) Additional records for household goods carriers. In
order to verify compliance with Subchapters B and E of this chapter (relating to Motor Carrier Registration and Consumer Protection), every household goods carrier shall retain complete and accurate records maintained in accordance with reasonable accounting procedures of all services performed in intrastate commerce. Household goods carriers shall retain all of the following information and documents:

1. moving services contracts, such as bills of lading or receipts;
2. proposals for moving services;
3. inventories, if applicable;
4. freight bills;
5. time cards, trip sheets, or driver's logs;
6. claim records;
7. ledgers and journals;
8. canceled checks;
9. bank statements and deposit slips;
10. invoices, vouchers, or statements supporting disbursements; and
11. dispatch records.

(b) Proof of motor carrier registration.

1. Except as provided in paragraph (2) of this subsection and in §218.13(c)(2) of this title (relating to Application for Motor Carrier Registration), every motor
carrier shall maintain a copy of its current registration listing in the cab of each registered vehicle at all times. A motor carrier shall make available to a department investigator [certified inspector] or any law enforcement officer a copy of the current registration listing upon request.

(2) A registered motor carrier is not required to carry proof of registration in a vehicle leased from a leasing business that is registered under §218.18 of this title (relating to Short-term Lease and Substitute Vehicles), when leased as a temporary replacement due to maintenance, repair, or other unavailability of the originally leased vehicle. A copy of the lease agreement, or the lease for the originally leased vehicle, in the case of a substitute vehicle, must be carried in the cab of the vehicle.

(3) A motor carrier is not required to carry proof of compliance with UCR or the UCR plan or agreement in its vehicle.

[c][d] Location of files. Except as provided in this subsection, every motor carrier shall maintain at a principal place of business in Texas all records and information required by the department.

(1) Texas motor carriers[firms]. If a motor carrier wishes to maintain records at a specific location other than
its principal place of business in Texas, the motor carrier shall make a written request to the director[manager]. A motor carrier may not begin maintaining records at an alternate location until the request is approved by the director[manager].

(2) Out-of-state motor carriers[firms]. A motor carrier whose principal business address is located outside the state of Texas shall maintain records required under this section at its [principal place of] business location in Texas. Alternatively, a motor carrier may maintain such records at a specific out-of-state facility if the carrier reimburses the department for necessary travel expenses and per diem for any inspections or investigations conducted in accordance with §218.31 of this title (relating to Investigations and Inspections of Motor Carrier Records).

(3) Regional office or driver work-reporting location. All records and documents required by this subchapter which are maintained at a regional office or driver work-reporting location, whether or not maintained in compliance with paragraphs (1) and (2) of this subsection, shall be made available for inspection upon request at the motor carrier's principal place of business or other location specified by the Department within 48 hours after a request is made. Saturdays, Sundays, and federal and state holidays are
excluded from the computation of the 48-hour period of time in accordance with 49 C.F.R. §390.29.

(e) Preservation and destruction of records. All books and records generated by a motor carrier, except driver's time cards and logs, must be maintained for not less than two years at the motor carrier's principal business address. A motor carrier must maintain driver's time cards and logs for not less than six months at the carrier's principal business address.

SUBCHAPTER E CONSUMER PROTECTION

§218.52. Advertising.

(a) A household goods carrier and its household goods agents may not use any false, misleading, or deceptive advertisements. [Print advertising through August 4, 2015.

A household goods carrier shall include the following information on print advertisements primarily addressing a local market within this state:

(1) the name of the household goods carrier as shown on the certificate of registration;

(2) the street address of the household goods carrier's or its agent's place of business in this state; and

(3) the household goods carrier's certificate of registration number in the following form, "DMV No. _______".]

(b) [Print advertising on or after August 5, 2015.] A
The household goods carrier shall include the following information on all print advertisements primarily addressing a local market within this state:

1. The full business name or assumed name of the household goods carrier as shown on the certificate of registration;
2. The street address of the household goods carrier's or its agent's place of business in this state; and
3. The household goods carrier's certificate of registration number in the following form, "TxDMV No.______".

(c) Use of household goods agent's name. A household goods carrier may include the name of its household goods agent as filed with the department in its print advertisements.

(d) A household goods carrier shall provide the following information on the home page or, in the case of a national household goods carrier, the page specific to Texas intrastate household goods operations, on any website operated by or for the household goods carrier:

1. The household goods carrier's name;
2. Department's toll-free consumer help line as listed on the department’s website; and
3. The household goods carrier's certificate of registration number.
registration number in the following form, “TxDMV No.

[(d) Items not considered to be print advertisements through August 4, 2015. For the purposes of this section, print advertisement shall not include:]

[(1) promotional items of nominal value such as ball caps, tee shirts, and pens;]

[(2) business cards;]

[(3) internet websites;]

[(4) listings not paid for by the household goods carrier or its household goods carrier's agent; and]

[(5) nationally placed billboards; and]

[(6) single-line listings of a carrier name, address, and telephone number in a directory or similar publication.]

[(e) Items not considered to be print advertisements on or after August 5, 2015. For the purposes of this section, print advertisement shall not include:]

[(1) promotional items of nominal value such as ball caps, tee shirts, and pens;]

[(2) business cards;]

[(3) Internet websites;]

[(4) listings not paid for by the household goods carrier or its household goods carrier's agent; and]
[(5) single-line listings of a household goods carrier's name, address, and telephone number in a directory or similar publication.]

[(f) Internet websites through August 4, 2015. A household goods carrier shall provide the department's toll-free telephone number (1-888-368-4689) and the household goods carrier's certificate of registration number on any website operated by or for the household goods carrier.]

[(g) Internet websites on or after August 5, 2015. A household goods carrier shall provide the following information on any website operated by or for the household goods carrier:

[(1) department's toll-free consumer helpline as listed on the department's website; and]

[(2) the household goods carrier's certificate of registration number in the following form, "TxDMV No. ______".]

[(e)[(h)] Identifying markings on household goods carrier's vehicles.

(1) A household goods carrier or its agent shall display the following information on both sides of [either] the power unit, including power units operated under a short-term lease[or trailer]:

(A) the business name or assumed name of the
household goods carrier as it appears on the motor carrier certificate of registration; and

(B) the household goods carrier's registration number as it appears on the motor carrier certificate of registration in the following form, "TxDMV No. _____".

(2) The markings required by paragraph (1) of this subsection shall have clearly legible letters and numbers at least two inches in height.

(3) This subsection does not apply to vehicles:

(A) required to comply with Transportation Code, Chapter 642.

(B) operated under a short-term lease.

(i) Prohibited advertisements. For the purposes of this subsection, an advertisement is any communication to the public in connection with an offer or sale of an intrastate transportation service. A household goods carrier and its household goods agents may not use any false, misleading, or deceptive advertisements.

§218.53. Household Goods Carrier Cargo Liability.

(a) Unless the carrier and shipper agree in writing to a higher limit of carrier liability, a household goods carrier’s liability for loss or damage of property shall be $.60 per pound per article. Claims for loss or damage of property may
be settled based on the weight of the article multiplied by 
$.60.

(b) If the carrier and shipper have agreed in writing to
a higher limit of liability, the carrier may charge the
shipper for this higher limit of liability. If the agreement
between the carrier and shipper to a higher limit of liability
provides for a deductible, the carrier’s liability to pay for
loss or damage of property will be reduced by the amount of
the deductible.

[A household goods carrier shall be liable for $.60 per
pound per article, unless the carrier and shipper agree, in
writing, to a higher limit of carrier liability. The household
goods carrier shall not be liable for damages in an amount in
excess of the agreed to higher limit of liability for the
loss, destruction, or damage of the household goods.]

§218.56. Proposals and Estimates for Moving Services.

(a) Written proposals. Prior to loading, a household
goods carrier shall provide a written proposal, such as a bid
or quote, to the shipper. A proposal shall state the maximum
amount the shipper could be required to pay for the listed
transportation and listed related services. This section does
not apply if a pre-existing transportation contract sets out
the maximum amount the shipper could be required to pay for
the transportation services. Pre-existing transportation contracts include, but are not limited to, corporate contracts for the relocation of multiple employees.

(1) A proposal must contain the name and registration number of the household goods carrier as they appear on the motor carrier certificate of registration. If a proposal is prepared by the household goods carrier's agent, it shall include the name of the agent as listed on the carrier's agent filing with the department. A proposal shall also include the street address of the household goods carrier or its agent. [A proposal may not include the name, logo, or motor carrier registration number of any other motor carrier.]

(2) A proposal must clearly and conspicuously state whether it is a binding or not-to-exceed proposal.

(3) A proposal must completely describe the shipment and all services to be provided. A proposal must state, "This proposal is for listed items and services only. Additional items and services may result in additional costs."

(4) A proposal must specifically state when the shipper will be required to pay the transportation charges, such as if payment must be made before unloading at the final destination. A proposal must also state what form of payment is acceptable, such as a cashier's check.

(5) A proposal must conspicuously state that a
household goods carrier's liability for loss or damage to cargo is limited to $.60 per pound per article unless the household goods carrier and shipper agree, in writing, to a higher limit of carrier liability.

(b) Hourly rates. If a proposal is based on an hourly rate, then it is not required to provide the number of hours necessary to perform the transportation and related services. However, if the number of hours is not included in a proposal, then the carrier must secure a written acknowledgment from the shipper indicating the proposal is complete without the number of hours.

(c) Proposal as addendum. If a proposal is accepted by the shipper and the carrier transports the shipment, then the proposal is considered an addendum to the moving services contract.

(d) Additional items and services. If the household goods carrier determines additional items are to be transported and/or additional services are required to load, transport, or deliver the shipment, then before the carrier transports the additional items or performs the additional services the carrier and shipper must agree, in writing, to:

(1) allow the original proposal to remain in effect;

(2) amend the original proposal or moving services contract; or
(3) substitute a new proposal for the original.

(e) Amendments and storage.

(1) An amendment to an original proposal or moving services contract, as allowed in subsection (d) of this section, must:

(A) be signed and dated by the household goods carrier and shipper; and

(B) clearly and specifically state the amended maximum price for the transportation of the household goods.

(2) If the household goods carrier fails to amend or substitute an original proposal as required by this subsection and subsection (d) of this section, only the charges stated on the original proposal for moving services may be assessed on the moving services contract. The carrier shall not attempt to amend or substitute the proposal to add items or services after the items or services have been provided or performed.

(3) If through no fault of the carrier, the shipment cannot be delivered during the agreed delivery period, then the household goods carrier may place the shipment in storage and assess fees relating to storage according to the terms in §218.58 of this title (relating to Moving Services Contract - Options for Carrier Limitation of Liability), without a written agreement with the shipper to amend or substitute the original proposal.
(f) Combination document. A proposal required by subsection (a) of this section may be combined with other shipping documents, such as the moving services contract, into a single document. If a proposal is combined with other shipping documents, the purpose of each signature line on the combination document must be clearly indicated. Each signature is independent and shall not be construed as an agreement to all portions and terms of the combination document.

(g) Telephone estimates. A household goods carrier may provide an estimate for the transportation services by telephone. If the household goods carrier provides the estimate by telephone, then the carrier must also furnish a written proposal for the transportation services to the shipper prior to loading the shipment.

§218.59. Inventories.

(a) Applicability. A household goods carrier has the option of preparing an inventory of the shipment.

(b) Inventories prepared by the carrier. A household goods carrier may prepare a complete or partial inventory for its own use without an agreement between the carrier and shipper. The household goods carrier may not charge a fee for preparing an inventory for its own use.

(c) Inventories prepared by the carrier and shipper. If
the household goods carrier and shipper agree to the
preparation of an inventory, the carrier may assess a fee for
this service.

(1) Information contained in the inventory.

(A) The inventory must contain the shipper's
name [and the household goods carrier's name as it appears on
its motor carrier certificate of registration. The inventory
may not include the name, logo, or motor carrier registration
number of any other motor carrier]. The inventory may include
the name of the household goods carrier's agent as it is
listed on the carrier's agent filing with the department.

[(B) The inventory must describe each item in
the shipment. If any charges are based on the size of the
containers, the inventory must list the quantity and size of
each container. Additionally, if the household goods carrier
assesses handling charges for specific items, such as, pianos,
the inventory must show these items separately, if not already
shown on the moving services contract.]

[(C) The inventory must describe and use the
symbol "CP" for all containers packed or crated by the
carrier. Additionally, the inventory must describe and use the
symbol "PBO" for all containers packed or crated by the
shipper.]

[(B)[(D)] The inventory must include a key for
any abbreviation used to describe the condition of the items.

(2) Inventory at origin. The inventory shall be signed by the household goods carrier and the shipper or shipper's agent at origin. The inventory must include a conspicuous statement that the shipper's signature is affirming the contents and condition of the items in the shipment.

(3) Inventory at destination. The carrier and the shipper or shipper's agent shall sign the inventory at destination. A legible copy of the inventory shall be given to the shipper. Signing the inventory does not waive a claimant's right to file a claim. The inventory must include the following statement adjacent to the shipper's signature line, "Signing the inventory means:

[(A) all items loaded have been received, except as noted,]
[(B) obvious loss or damage has been noted; and]
[(C) signing the inventory does not waive a claimant's right to file a claim.]

(4) Combination document. The inventory may be combined with other shipping documents, such as the moving services contract, into a single document. If the inventory is combined with other shipping documents, the purpose of each
signature line on the combination document must be clearly
indicated. Each signature is independent and shall not be
construed as an agreement to all portions and terms of the
combination document.

(d) Electronic format. An inventory may be prepared in an
electronic format.

§218.60. Determination of Weights.

(a) Shipment weights. A carrier transporting household
goods on a not-to-exceed proposal using shipment weight as a
factor in determining transportation charges shall determine
the weight of each shipment transported prior to the
assessment of any charges. Except as provided in this section,
the weight shall be obtained on a certified scale.

(b) Weighing procedures.

(1) The weight of each shipment shall be obtained by
determining the difference between the:

(A) tare weight of the vehicle on which the
shipment is to be loaded prior to the loading and the gross
weight of the same vehicle after the shipment is loaded; or

(B) gross weight of the vehicle with the
shipment loaded and the tare weight of the same vehicle after
the shipment is unloaded.

(2) At the time of both weighings, all pads,
dollies, handtrucks, ramps, and other equipment required in the transportation of a shipment shall be on the vehicle. Neither the driver nor any other person shall be on the vehicle at the time of the weighings.

(3) The fuel tanks on the vehicle shall be full at the time of each weighing or, in the alternative, no fuel may be added between the two weighings when the tare weighing is the first weighing performed.

(4) The trailer of a tractor-trailer vehicle combination may be detached from the tractor and weighed separately at each weighing providing the length of the scale platform is adequate to only accommodate and support the entire trailer at one time.

(5) Shipments weighing 1,000 pounds or less may be weighed on a certified platform or warehouse scale prior to loading for transportation or subsequent to unloading.

(6) The net weight of shipments transported in containers shall be the difference between the tare weight of the container, including all pads, blocking and bracing used or to be used in the transportation of the shipment, and the gross weight of the container with the shipment loaded.

(7) The shipper or any other person responsible for the payment of the freight charges shall have the right to observe all weighings of the shipment. The household goods
carrier must advise the shipper or any other person entitled
to observe the weighings of the time and specific location
where each weighing will be performed and must give that
person a reasonable opportunity to be present to observe the
weighings. Waiver by a shipper of the right to observe any
weighing or reweighing is permitted and does not affect any
rights of the shipper under this subchapter.

(c) Weight tickets.

(1) The carrier shall obtain a separate weight
ticket for each weighing required under this subsection and
the ticket shall be carried on the vehicle. However, if both
weighings are performed on the same scale, one weight ticket
may be used to record both weighings. Every weight ticket
shall be signed by the person performing the weighing. Weight
tickets or copies of weigh tickets in an electronic format
shall be maintained with the carrier's copy of
moving services contract covering the shipment. Weight tickets
shall contain:

(A) the complete name and location of the
scale;

(B) the date of each weighing;

(C) identification of the weight entries as
being tare, gross, or net weights;

(D) the company or carrier identification of
the vehicle; and

(E) the last name of the shipper as it appears on the moving services contract.

(2) This ticket must be retained by the carrier as part of the records for the shipment. A bill presented to collect any shipment charges dependent on the weight transported must be accompanied by true copies of all weight tickets obtained in the determination of the shipment weight.

(d) Reweighing of shipments. Before unloading a shipment weighed at origin and after the shipper is informed of the billing weight and total charges, the shipper may request a reweigh. The charges shall be based on the reweigh weight.

(e) Stored shipments. If a shipment is weighed and placed in storage in transit or delivered out of storage to destination by another vehicle, then no additional weighing shall be required unless the shipment has been decreased or increased in weight subsequent to the original weighing of the shipment.

(f) Constructive weight. Where no certified scale is available at origin, at a point en route, or at destination, a constructive weight, based on seven pounds per cubic foot of properly loaded space may be used to determine the weight of the household goods shipment.
§218.61. Claims.

(a) Filing of claims. A household goods carrier must act on all claims filed by a shipper on shipments of household goods according to this section.

(1) A claim must be filed in writing or by electronic document transfer with the household goods carrier or the household goods carrier's agent whose name appears on the moving services contract. A claim is considered filed on the date the claim is received by the household goods carrier. A shipper must file a [written] claim either in writing or by electronic format within 90 days:

(A) of delivery of the shipment to the final destination; or

(B) after a reasonable time for delivery has elapsed in the case of failure to make delivery.

(2) The claim must include enough facts to identify the shipment. The claim must also describe the type of claim and request a specific type of remedy.

(3) Shipping documents may be used as evidence to support a claim, but cannot be substituted for a written claim.

(4) A claim submitted by someone other than the owner of the household goods must be accompanied by a written
(b) Acknowledgment and disposition of filed claims.

(1) A household goods carrier shall send an [a- written] acknowledgment of the claim either in writing or by electronic format to the claimant within 20 days (excluding Sundays and nationally recognized holidays) after receipt of the claim by the carrier or his agent.

(A) The claim acknowledgment shall include the statement, "Household goods carriers have 90 days from receipt of a claim to pay, decline to pay, or make a firm settlement offer, in writing, to a claimant. Questions or complaints concerning the household goods carrier's claims handling should be directed to the Texas Department of Motor Vehicles (TxDMV), [department's] Enforcement Division, via the toll-free consumer helpline as listed on the department's website. Additionally, a claimant has the right to request mediation from TxDMV within 30 days (excluding Sundays and nationally recognized holidays) after any portion of the claim is denied by the carrier, the carrier makes a firm settlement offer that is not acceptable to the claimant, or 90 days has elapsed since the carrier received the claim and the claim has not been resolved."

(B) The household goods carrier is not required to issue the acknowledgment letter prescribed in this
subsection if the claim has been resolved or the household
goods carrier has initiated communication regarding the claim
with the claimant within 20 days (excluding Sundays and
nationally recognized holidays) after receipt of the claim.
However, the burden of proof of the claim resolution or
communication with the claimant is the responsibility of the
household goods carrier.

(2) After a thorough investigation of the facts, the
household goods carrier shall pay, decline to pay, or make a
firm settlement offer in writing to the claimant within 90
days after receipt of the claim by the household goods carrier
or its household goods agent. The settlement offer or denial
shall state, "A claimant has the right to seek mediation
through the Texas Department of Motor Vehicles (TxDMV)\[TxDMV\]
within 30 days (excluding Sundays and nationally recognized
holidays) after any portion of the claim is denied by the
carrier, the carrier makes a firm settlement offer that is not
acceptable to the claimant, or 90 days has elapsed since the
carrier received the claim and the claim has not been
resolved."

(3) A household goods carrier must provide a copy of
the shipping documents to the shipper's insurance company upon
request. The carrier may assess a reasonable fee for this
service.
(c) Documenting loss or damage to household goods.

   (1) Inspection. If a loss or damage claim is filed and the household goods carrier wishes to inspect the items, the carrier must complete any inspection as soon as possible, but no later than 30 calendar days, after receipt of the claim.

   (2) Payment of shipping charges. Payment of shipping charges and payment of claims shall be handled separately, and one shall not be used to offset the other unless otherwise agreed upon by both the household goods carrier and claimant.

(d) Claim records. A household goods carrier shall maintain a record of every claim filed. Claim records shall be retained for two years as required by §218.32 of this title (relating to Motor Carrier Records). At a minimum, the following information on each claim shall be maintained in a systematic, orderly and easily retrievable manner:

   (1) claim number (if assigned), date received, and amount of money or the requested remedy;

   (2) number (if assigned) and date of the moving services contract;

   (3) name of the claimant;

   (4) date the carrier issued its claim acknowledgment letter;

   (5) date and total amount paid on the claim or date
and reasons for disallowing the claim; and

(6) dates, time, and results of any mediation coordinated by the department.
Board Policy Documents

Governance Process (10/13/11)

Strategic Planning (10/13/11)

Board Vision (4/7/16)

Agency Boundaries (9/13/12)

KPIs (9/12/14)
Texas Department of Motor Vehicles
TxDMV Board Governance Policy

1. PURPOSE

The directives presented in this policy address board governance of the Texas Department of Motor Vehicles (TxDMV).

2. SCOPE

The directives presented in this policy apply to the TxDMV Board and TxDMV agency personnel who interact with the Board. The TxDMV Board Governance Policy shall be one that is comprehensive and pioneering in its scope.

3. POLICY

3.1. TxDMV Board Governing Style

The Board shall govern according to the following general principles: (a) a vision for the agency, (b) diversity in points of view, (c) strategic leadership, providing day-to-day detail as necessary to achieve the agency vision, (d) clear distinction of Board and Executive Director roles, (e) collective decision making, (f) react proactively rather than reactively and with a strategic approach. Accordingly:

3.1.1. The Board shall provide strategic leadership to TxDMV. In order to do this, the Board shall:

3.1.1.1. Be proactive and visionary in its thinking.

3.1.1.2. Encourage thoughtful deliberation, incorporating a diversity of viewpoints.

3.1.1.3. Work together as colleagues, encouraging mutual support and good humor.

3.1.1.4. Have the courage to lead and make difficult decisions.

3.1.1.5. Listen to the customers and stakeholders needs and objectives.

3.1.1.6. Anticipate the future, keeping informed of issues and trends that may affect the mission and organizational health of the TxDMV.

3.1.1.7. Make decisions based on an understanding that is developed by appropriate and complete stakeholder participation in the process of identifying the needs of the motoring public, motor vehicle industries,
and best practices in accordance with the mission and vision of the agency.

3.1.1.8. Commit to excellence in governance, including periodic monitoring, assessing and improving its own performance.

3.1.2. The Board shall create the linkage between the Board and the operations of the agency, via the Executive Director when policy or a directive is in order.

3.1.3. The Board shall cultivate a sense of group responsibility, accepting responsibility for excellence in governance. The Board shall be the initiator of policy, not merely respond to staff initiatives. The Board shall not use the expertise of individual members to substitute for the judgment of the board, although the expertise of individual members may be used to enhance the understanding of the Board as a body.

3.1.4. The Board shall govern the agency through the careful establishment of policies reflecting the board’s values and perspectives, always focusing on the goals to be achieved and not the day-to-day administrative functions.

3.1.5. Continual Board development shall include orientation of new Board members in the board’s governance process and periodic board discussion of how to improve its governance process.

3.1.6. The Board members shall fulfill group obligations, encouraging member involvement.

3.1.7. The Board shall evaluate its processes and performances periodically and make improvements as necessary to achieve premier governance standards.

3.1.8. Members shall respect confidentiality as is appropriate to issues of a sensitive nature.

3.2. **TxDMV Board Primary Functions/Characteristics**

TxDMV Board Governance can be seen as evolving over time. The system must be flexible and evolutionary. The functions and characteristics of the TxDMV governance system are:

3.2.1. Outreach

3.2.1.1. Monitoring emerging trends, needs, expectations, and problems from the motoring public and the motor vehicle industries.

3.2.1.2. Soliciting input from a broad base of stakeholders.
3.2.2. Stewardship

3.2.2.1. Challenging the framework and vision of the agency.

3.2.2.2. Maintaining a forward looking perspective.

3.2.2.3. Ensuring the evolution, capacity and robustness of the agency so it remains flexible and nimble.

3.2.3. Oversight of Operational Structure and Operations

3.2.3.1. Accountability functions.

3.2.3.2. Fiduciary responsibility.

3.2.3.3. Checks and balances on operations from a policy perspective.

3.2.3.4. Protecting the integrity of the agency.

3.2.4. Ambassadorial and Legitimating

3.2.4.1. Promotion of the organization to the external stakeholders, including the Texas Legislature, based on the vision of the agency.

3.2.4.2. Ensuring the interests of a broad network of stakeholders are represented.

3.2.4.3. Board members lend their positional, professional and personal credibility to the organization through their position on the board.

3.2.5. Self-reflection and Assessment

3.2.5.1. Regular reviews of the functions and effectiveness of the Board itself.

3.2.5.2. Assessing the level of trust within the Board and the effectiveness of the group processes.

3.3. Board Governance Investment

Because poor governance costs more than learning to govern well, the Board shall invest in its governance capacity. Accordingly:

3.3.1. Board skills, methods, and supports shall be sufficient to ensure governing with excellence.
3.3.1.1. Training and retraining shall be used liberally to orient new members, as well as maintain and increase existing member skills and understanding.

3.3.1.2. Outside monitoring assistance shall be arranged so that the board can exercise confident control over agency performance. This includes, but is not limited to, financial audits.

3.3.1.3. Outreach mechanisms shall be used as needed to ensure the Board’s ability to listen to stakeholder viewpoints and values.

3.3.1.4. Other activities as needed to ensure the Board’s ability to fulfill its ethical and legal obligations and to represent and link to the motoring public and the various motor vehicle industries.

3.3.2. The Board shall establish its cost of governance and it will be integrated into strategic planning and the agency’s annual budgeting process.

3.4. **Practice Discipline and Assess Performance**

The Board shall ensure the integrity of the board’s process by practicing discipline in Board behavior and continuously working to improve its performance. Accordingly:

3.4.1. The assigned result is that the Board operates consistently with its own rules and those legitimately imposed on it from outside the organization.

3.4.1.1. Meeting discussion content shall consist solely of issues that clearly belong to the Board to decide or to monitor according to policy, rule and law. Meeting discussion shall be focused on performance targets, performance boundaries, action on items of Board authority such as conduct of administrative hearings, proposal, discussion and approval of administrative rule-making and discussion and approval of all strategic planning and fiscal matters of the agency.

3.4.1.2. Board discussion during meetings shall be limited to topics posted on the agenda.

3.4.1.3. Adequate time shall be given for deliberation which shall be respectful, brief, and to the point.

3.4.2. The Board shall strengthen its governing capacity by periodically assessing its own performance with respect to its governance model. Possible areas of assessment include, but are not limited to, the following:

3.4.2.1. Are we clear and in agreement about mission and purpose?
3.4.2.2. Are values shared?

3.4.2.3. Do we have a strong orientation for our new members?

3.4.2.4. What goals have we set and how well are we accomplishing them?

3.4.2.5. What can we do as a board to improve our performance in these areas?

3.4.2.6. Are we providing clear and relevant direction to the Executive Director, stakeholders and partners of the TxDMV?

3.4.3. The Board Chair shall periodically promote regular evaluation and feedback to the whole Board on the level of its effectiveness.
Texas Department of Motor Vehicles
Strategic Planning Policy

1. PURPOSE

The directives presented in this policy address the annual Strategic Planning process at the Texas Department of Motor Vehicles (TxDMV).

2. SCOPE

The directives presented in this policy apply to the TxDMV Board and TxDMV agency personnel who interact with the Board. TxDMV Strategic Planning Policy attempts to develop, document and expand its policy that is comprehensive in its scope in regards to the strategic planning process of the Board and the Department beyond that of the state strategic planning process.

3. POLICY

3.1. TxDMV Board Strategic Planning

This policy describes the context for strategic planning at TxDMV and the way in which the strategic plan shall be developed and communicated.

3.1.1. The Board is responsible for the strategic direction of the organization, which includes the vision, mission, values, strategic goals, and strategic objectives.

3.1.2. TxDMV shall use a 5-year strategic planning cycle, which shall be reviewed and updated annually, or as needed.

3.1.3. The 5-year strategic plan shall be informed by but not confined by requirements and directions of state and other funding bodies.

3.1.4. In developing strategic directions, the Board shall seek input from stakeholders, the industries served, and the public.

3.1.5. The Board shall:

3.1.5.1. Ensure that it reviews the identification of and communication with its stakeholders at least annually.

3.1.5.2. Discuss with agency staff, representatives of the industries served, and the public before determining or substantially changing strategic directions.
3.1.5.3. Ensure it receives continuous input about strategic directions and agency performance through periodic reporting processes.

3.1.6. The Board is responsible for a 5-year strategic plan that shall identify the key priorities and objectives of the organization, including but not limited to:

3.1.6.1. The creation of meaningful vision, mission, and values statements.

3.1.6.2. The establishment of a Customer Value Proposition that clearly articulates essential customer expectations.

3.1.6.3. A Strengths, Weaknesses, Opportunities and Threats (SWOT) Analysis, to be updated annually.

3.1.6.4. An assessment of external factors or trends (i.e., customer needs, political factors, economic factors, industry trends, technology factors, uncertainties, etc.)

3.1.6.5. Development of the specific goals and objectives the Department must achieve and a timeline for action.

3.1.6.6. Identification of the key performance indicators to measure success and the initiatives that shall drive results.

3.1.6.7. Engage staff at all levels of the organization, through the executive director, in the development of the strategic plan through surveys, interviews, focus groups, and regular communication.

3.1.6.8. Ensure the strategic planning process produces the data necessary for LBB/GOBPP state required compliance while expanding and enhancing the strategic plan to support the needs of the TxDMV. The overall strategic plan shall be used as a tool for strategic management.

3.1.7. The Board delegates to the Executive Director the responsibility for implementing the agency’s strategic direction through the development of agency wide and divisional operational plans.
Texas Department of Motor Vehicles
TxDMV Goals and Objectives

1. PURPOSE

The information presented in this policy addresses the goals and key objectives of the Board of the Texas Department of Motor Vehicles (TxDMV) as they relate to the mission, vision, and values of the TxDMV.

2. SCOPE

The scope of this policy is to define the desired state the TxDMV Board is working to achieve. This policy is designed to be inspirational in outlining the desired state of the agency that supports the TxDMV Board vision and meeting agency goals.

3. TxDMV MISSION

To serve, protect and advance the citizens and industries in the state with quality motor vehicle related services.

4. TxDMV VISION

The Texas Department of Motor Vehicles sets the standard as the premier provider of customer service in the nation.

5. TxDMV VALUES

To earn the trust and faith of all citizens of Texas with transparency, efficiency, excellence, accountability, and putting stakeholders first.

  5.1. Transparency – Being open and inclusive in all we do.
  5.2. Efficiency – Being good stewards of state resources by providing products and services in the most cost-effective manner possible.
  5.3. Excellence – Working diligently to achieve the highest standards.
  5.4. Accountability – Accepting responsibility for all we do, collectively and as individuals.
  5.5. Stakeholders – Putting customers and stakeholders first, always.

6. TxDMV GOALS

6.1. GOAL 1 – Performance Driven

The TxDMV shall be a performance driven agency in its operations whether it is in customer service, licensing, permitting, enforcement or rule-making. At all times the TxDMV shall mirror in its performance the expectations of its customers and stakeholder by effective, efficient, customer-focused, on-time, fair, predictable and thorough service or decisions.
6.1.1. **Key Objective 1**

The TxDMV shall be an agency that is retail-oriented in its approach. To accomplish this orientation TxDMV shall concentrate the focus of the agency on:

6.1.1.1. Delivering its products and services to all of its customers and stakeholders in a manner that recognizes that their needs come first. These needs must be positively and proactively met. TxDMV works for and with its customers and stakeholders, not the other way around.

6.1.1.2. Operating the agency's licensing and registration functions in a manner akin to how a private, for-profit business. As a private, for-profit business, TxDMV would have to listen to its customers and stakeholders and implement best practices to meet their needs or its services would no longer be profitable or necessary. Act and react in a manner that understands how to perform without a government safety net and going out of business.

6.1.1.3. Simplify the production and distribution processes and ease of doing business with the TxDMV. Adapting and maintaining a business value of continuous improvement is central to TxDMV operations and processes.

6.1.1.4. All operations of the TxDMV shall stand on their own merits operationally and financially. If a current process does not make sense then TxDMV shall work within legislative and legal constraints to redesign or discard it. If a current process does not make or save money for the state and/or its customers or stakeholders then TxDMV shall work within legislative and legal constraints to redesign or discard it. TxDMV shall operate as efficiently and effective as possible in terms of financial and personnel needs. Divisions should focus on cost savings without sacrificing performance. Division directors are accountable for meeting these needs and applicable measures. All division directors are collectively responsible for the performance of TxDMV as a whole.

6.1.1.5. Focus on revenue generation for transportation needs as well as the needs of its customers.

6.1.1.6. Decisions regarding the TxDMV divisions should be based on the overriding business need of each division to meet or provide a specific service demand, with the understanding and coordination of overarching agency-wide needs.
6.1.1.7. Developing and regularly updating a long-range Statewide Plan describing total system needs, establishing overarching statewide goals, and ensuring progress toward those goals.

6.1.1.8. The TxDMV shall establish a transparent, well-defined, and understandable system of project management within the TxDMV that integrates project milestones, forecasts, and priorities.

6.1.1.9. The TxDMV shall develop detailed work programs driven by milestones for major projects and other statewide goals for all TxDMV divisions.

6.1.1.10. The TxDMV, with input from stakeholders and policymakers, shall measure and report on progress in meeting goals and milestones for major projects and other statewide goals.

6.2. GOAL 2 – Optimized Services and Innovation

The TxDMV shall be an innovative, forward thinking agency that looks for ways to promote the economic well-being and development of the industries it serves as well as the State of Texas within the legislative boundaries that have been established for the agency.

6.2.1. Key Objective 1

The TxDMV shall achieve operational, cultural, structural and financial independence from other state agencies.

6.2.1.1. Build the TxDMV identity. This means that TxDMV shall make customers aware of what services we offer and how they can take advantage of those services.

6.2.1.2. Build the TxDMV brand. This means that TxDMV shall reach out to the stakeholders, industries we serve and the public, being proactive in addressing and anticipating their needs.

6.2.1.3. Determine immediate, future, and long term facility and capital needs. TxDMV needs its own stand-alone facility and IT system as soon as possible. In connection with these needs, TxDMV shall identify efficient and effective ways to pay for them without unduly burdening either the state, its customers or stakeholders.

6.2.1.4. All regulations, enforcement actions and decision at TxDMV shall be made in a timely, fair and predictable manner.

6.2.2. Key Objective 2
Provide continuous education training on business trends in the industry with a particular emphasis on activities in Texas.

6.2.3. Key Objective 3

Provide continuous outreach services to all customers and stakeholders to access their respective needs and wants. This includes helping frame legislative or regulatory issues for consideration by other bodies including the legislature.

6.2.4. Key Objective 4

Examine all fees to determine their individual worth and reasonableness of amount. No fee shall be charged that cannot be defended financially and operationally.

6.3. GOAL 3 – Customer-centric

The TxDMV shall be a customer-centric agency that delivers today’s services and decisions in a positive, solution-seeking manner while ensuring continuous, consistent and meaningful public and stakeholder involvement in shaping the TxDMV of tomorrow.

6.3.1. Key Objective 1

The TxDMV shall seek to serve its customer base through a creative and retail oriented approach to support the needs of its industries and customers.

6.3.2. Key Objective 2

The TxDMV shall develop and implement a public involvement policy that guides and encourages meaningful public involvement efforts agency-wide.

6.3.3. Key Objective 3

The TxDMV shall develop standard procedures for documenting, tracking, and analyzing customer complaint data. Successful problem resolution metrics should be monitored to support continuous improvement activities that shall permanently improve customer facing processes.

6.3.4. Key Objective 4

The TxDMV shall provide a formal process for staff with similar responsibilities to share best practices information.

6.3.5. Key Objective 5
The TxDMV shall provide central coordination of the Department’s outreach campaigns.

6.3.6. **Key Objective 6**

The TxDMV shall develop and expand user friendly, convenient, and efficient website applications.

6.3.7. **Key Objective 7**

TxDMV shall timely meet all legislative requests and mandates.
Agency Operational Boundaries as Defined by Department Policies of the TxDMV Board (Board)

The Board is responsible for the policy direction of the agency. The Board’s official connection to the day-to-day operation of the Texas Department of Motor Vehicles (TxDMV) and the conduct of its business is through the Executive Director of the TxDMV (ED) who is appointed by the Board and serves at its pleasure. The authority and accountability for the day-to-day operations of the agency and all members of the staff, except those members who report directly to the Board, is the sole responsibility of the ED.

In accordance with its policy-making authority the Board has established the following policy boundaries for the agency. The intent of the boundaries is not to limit the ability of the ED and agency staff to manage the day-to-day operations of the agency. To the contrary, the intent of the boundaries is to more clearly define the roles and responsibilities of the Board and the ED so as to liberate the staff from any uncertainty as to limitations on their authority to act in the best interest of the agency. The ED and staff should have certainty that they can operate on a daily basis as they see fit without having to worry about prior Board consultation or subsequent Board reversal of their acts.

The ED and all agency employees shall act at all times in an exemplary manner consistent with the responsibilities and expectations vested in their positions. The ED and all agency employees shall act in a manner consistent with Board policies as well as with those practices, activities, decisions, and organizational circumstances that are legal, prudent, and ethical. It is the responsibility of the ED to ensure that all agency employees adhere to these boundaries.

Accordingly, the TxDMV boundaries are as follows:

1. The day-to-day operations of the agency should be conducted in a manner consistent with the vision, mission, values, strategic framework, and performance metrics as established by the Board. These elements must not be disregarded or jeopardized in any way.

2. A team-oriented approach must be followed on all enterprise-wide decisions to ensure openness and transparency both internally and externally.

3. The agency must guard against allowing any financial conditions and decision which risk adverse fiscal consequences, compromise Board financial priorities, or fail to
show an acceptable level of foresight as related to the needs and benefits of agency initiatives.

4. The agency must provide timely, accurate, and honest information that will afford the Board, public, stakeholders, executive branch and the legislature the best ability to evaluate all sides of an issue or opportunity before forming an opinion or taking action on it. Any information provided that is intentionally untimely, inaccurate, misleading or one-sided will not be tolerated.

5. The agency must take all reasonable care to avoid or identify in a timely manner all conflicts of interest or even the appearance of impropriety in awarding purchases, negotiating contracts or in hiring employees.

6. The agency must maintain adequate administrative policies and procedures that are understandable and aid in staff recruitment, development and retention.

7. The agency must maintain an organizational structure that develops and promotes the program areas from an enterprise-wide perspective. No organizational silos or sub-agencies will be allowed. We are the TxDMV.

8. The agency must empower its entire staff to deliver a positive customer experience to every TxDMV customer, stakeholder or vendor to reduce their effort and make it easier for them to do business with the TxDMV.

9. The agency must at all times look to flattening its organizational structure to reduce cost as technology advances allow.

10. Agency staff shall anticipate and resolve all issues timely.

11. The agency must maximize the deployment and utilization of all of its assets – people, processes and capital equipment – in order to fully succeed.

12. The agency must not waste the goodwill and respect of our customers, stakeholders, executive branch and legislature. All communication shall be proper, honest, and transparent with timely follow-up when appropriate.

13. The agency should focus its work efforts to create value, make sure that processes, programs, or projects are properly designed, budgeted and vetted as appropriate with outside stakeholders to ensure our assumptions are correct so positive value continues to be created by the actions of the TxDMV.

14. The ED through his or her staff is responsible for the ongoing monitoring of all program and fiscal authorities and providing information to the Board to keep it apprised of all program progress and fiscal activities. This self-assessment must result in a product that adequately describes the accomplishment of all program
goals, objectives and outcomes as well as proposals to correct any identified problems.

15. In advance of all policy decisions that the Board is expected to make, the ED will provide pertinent information and ensure board members understand issues/matters related to the pending policy decision. Additionally, the ED or designee will develop a process for planning activities to be performed leading up to that particular policy decision and the timeframe for conducting these planning activities. It is imperative that the planning process describes not only when Board consideration will be expected but also when prior Board consultation and involvement in each planning activity will occur.

16. In seeking clarification on informational items Board members may directly approach the ED or his or her designee to obtain information to supplement, upgrade or enhance their knowledge and improve the Board’s decision-making. Any Board member requests that require substantive work should come to the Board or Committee Chairs for direction.

17. The agency must seek stakeholder input as appropriate on matters that might affect them prior to public presentation of same to the Board.

18. The agency must measure results, track progress, and report out timely and consistently.

19. The ED and staff shall have the courage to admit a mistake or failure.

20. The ED and staff shall celebrate successes!

The Board expects the ED to work with agency staff to develop their written interpretation of each of the boundaries. The ED will then present this written interpretation to the Board prior to discussion between the Board and ED on the interpretation. The Board reserves the right to accept, reject or modify any interpretation. The intent is that the Board and the ED will come to a mutually agreeable interpretation of agency boundaries that will then form the basis of additional written thought on the part of the ED and staff as to how these boundaries will influence the actions of the agency.
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<td></td>
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<td></td>
<td>Average processing time for GDN renewals</td>
<td>14 days</td>
<td>7 days</td>
<td>MVD</td>
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<td></td>
<td>Average processing time for GDN license amendments</td>
<td>19 days</td>
<td>7 days</td>
<td>MVD</td>
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<td></td>
<td>Average turnaround time for single-trip routed permits</td>
<td>33.88 mins</td>
<td>32 mins</td>
<td>MCD</td>
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<td></td>
<td>Average turnaround time for intrastate authority application processing</td>
<td>1.47 days</td>
<td>1.4 days</td>
<td>MCD</td>
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<td>Average turnaround time for apportioned registration renewal applications processing</td>
<td>2 days</td>
<td>2 days</td>
<td>MCD</td>
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<td></td>
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<td>Average turnaround time to issue salvage or non-repairable vehicle titles</td>
<td>5 days</td>
<td>4 days</td>
<td>VTR</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Average time to complete motor vehicle complaints with no contested case proceeding</td>
<td>131 days</td>
<td>120 days</td>
<td>ENF</td>
<td></td>
</tr>
<tr>
<td></td>
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<td></td>
<td>Average time to complete motor vehicle complaints with contested case proceeding</td>
<td>434 days</td>
<td>400 days</td>
<td>ENF</td>
<td></td>
</tr>
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<td></td>
<td></td>
<td></td>
<td>Average time to complete salvage complaints with no contested case proceeding</td>
<td>131 days</td>
<td>120 days</td>
<td>ENF</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Average time to complete salvage complaints with contested case proceeding</td>
<td>434 days</td>
<td>400 days</td>
<td>ENF</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Average time to complete motor carrier complaints with no contested case proceeding</td>
<td>297 days</td>
<td>145 days</td>
<td>ENF</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Average time to complete motor carrier complaints with contested case proceeding</td>
<td>133 days</td>
<td>120 days</td>
<td>ENF</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Average time to complete household goods complaints with no contested case proceeding</td>
<td>432 days</td>
<td>145 days</td>
<td>ENF</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>Average time to complete household goods complaints with contested case proceeding</td>
<td>371 days</td>
<td>180 days</td>
<td>ENF</td>
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<td>Average time to complete Overseas/Overweight (OS/OW) complaints with no contested case proceeding</td>
<td>40 days</td>
<td>35 days</td>
<td>ENF</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Average time to complete OS/OW complaints with contested case proceeding</td>
<td>265 days</td>
<td>250 days</td>
<td>ENF</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Percent of lemon law cases resolved prior to referral for hearing</td>
<td>76%</td>
<td>60%</td>
<td>ENF</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Average time to complete lemon law cases where no hearing is held</td>
<td>147 days</td>
<td>65 days</td>
<td>ENF</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Average time to complete lemon law cases where hearing is held</td>
<td>222 days</td>
<td>150 days</td>
<td>ENF</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Percent of total renewals and net cost of registration renewal: A. Online B. Mail C. In Person</td>
<td>A. 15% B. 5% C. 80%</td>
<td>A. 16% B. 5% C. 79%</td>
<td>VTR</td>
<td></td>
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<td></td>
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<td></td>
<td>Total dealer title applications: A. Through Webdealer B. Tax Office</td>
<td>Baseline in development</td>
<td>A. 5% B. 95%</td>
<td>VTR</td>
<td></td>
</tr>
<tr>
<td>GOAL</td>
<td>STRATEGY</td>
<td>#</td>
<td>MEASURE</td>
<td>Baseline</td>
<td>Target</td>
<td>Actual</td>
<td>OWNER</td>
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<td></td>
<td>26</td>
<td>Percent of total lien titles issued: A. Electronic Lien Title B. Standard Lien Title</td>
<td>A. 16% B. 84%</td>
<td>A. 20% B. 80%</td>
<td></td>
<td>VTR</td>
</tr>
<tr>
<td></td>
<td></td>
<td>27</td>
<td>Percent of total OS/OW permits: A. Online (self-issued) B. Online (MCD-issued) C. Phone D. Mail E. Fax</td>
<td>A. 57.47% B. 23.03% C. 11.33% D. 1.76% E. 6.4%</td>
<td>A. 58% or greater B. 25% or greater C. 10% or less D. 1.7% or less E. 5.3% or less</td>
<td></td>
<td>MCD</td>
</tr>
<tr>
<td></td>
<td></td>
<td>28</td>
<td>Average time to complete lemon law and warranty performance cases after referral</td>
<td>Baseline in development 25 days</td>
<td></td>
<td>OAH</td>
<td></td>
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<td></td>
<td></td>
<td>29</td>
<td>Average time to issue a decision after closing the record of hearing</td>
<td>Baseline in development 30 days</td>
<td></td>
<td>OAH</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>30</td>
<td>Percent of audit recommendations implemented</td>
<td>Baseline in development 90% annual goal for these recommendations which Internal Audit included in a follow-up audit</td>
<td></td>
<td>IAD</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>31</td>
<td>Percent of projects approved by the agency’s governance team that finish within originally estimated time (annual)</td>
<td>57%</td>
<td>100%</td>
<td></td>
<td>EPMO</td>
</tr>
<tr>
<td></td>
<td></td>
<td>32</td>
<td>Percent of projects approved by the agency’s governance team that finish within originally estimated budget (annual)</td>
<td>71%</td>
<td>100%</td>
<td></td>
<td>EPMO/FAS</td>
</tr>
<tr>
<td></td>
<td></td>
<td>33</td>
<td>Percent of monitoring reports submitted to Texas Quality Assurance Team (TQAT) by or before the due date</td>
<td>79%</td>
<td>100%</td>
<td></td>
<td>EPMO</td>
</tr>
<tr>
<td>Continuous business process improvement and realignment</td>
<td></td>
<td>34</td>
<td>Percent of project manager compliance with EPMO project management standards based upon internal quality assurance reviews</td>
<td>Baseline in development</td>
<td>100%</td>
<td></td>
<td>EPMO</td>
</tr>
<tr>
<td></td>
<td></td>
<td>35</td>
<td>Percent of employees due a performance evaluation during the month that were completed on time by division.</td>
<td>Baseline in development</td>
<td>100%</td>
<td></td>
<td>HR</td>
</tr>
<tr>
<td></td>
<td></td>
<td>36</td>
<td>Percent of goals accomplished as stated in the directors performance evaluation</td>
<td>Baseline in development</td>
<td>Measure annually at the end of the fiscal year</td>
<td></td>
<td>EXEC</td>
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<tr>
<td></td>
<td></td>
<td>37</td>
<td>Employees who rate job satisfaction as above average as scored by the Survey of Employee Engagement (SEE)</td>
<td>3.47 (SEE 2012)</td>
<td>3.65</td>
<td>3.60 (SEE 2013)</td>
<td>HR</td>
</tr>
<tr>
<td></td>
<td></td>
<td>38</td>
<td>Increase in the overall SEE score</td>
<td>337 (SEE 2012)</td>
<td>360</td>
<td>351 (SEE 2013)</td>
<td>HR</td>
</tr>
<tr>
<td>Organizational culture of continuous improvement and creativity</td>
<td></td>
<td>39</td>
<td>Percent of favorable responses from customer satisfaction surveys</td>
<td>Baseline in development</td>
<td>90%</td>
<td></td>
<td>EPMO</td>
</tr>
<tr>
<td></td>
<td></td>
<td>40</td>
<td>Annual agency voluntary turnover rate</td>
<td>6.5% (FY 2013)</td>
<td>5.0%</td>
<td></td>
<td>HR</td>
</tr>
<tr>
<td></td>
<td></td>
<td>41</td>
<td>Number of education programs conducted and number of stakeholders/customers attending education programs</td>
<td>4.48/80.61</td>
<td>4/80</td>
<td></td>
<td>MCD</td>
</tr>
<tr>
<td></td>
<td></td>
<td>42</td>
<td>Number of education programs conducted and number of stakeholders/customers attending education programs</td>
<td>36/335</td>
<td>42/390</td>
<td></td>
<td>VTR</td>
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<tr>
<td></td>
<td></td>
<td>43</td>
<td>Number of eLearning training modules available online through the Learning Management System and number of modules completed by stakeholders/customers</td>
<td>eLearning Modules Available - 28 Completed - 735</td>
<td>Available - 31 Completed - 814</td>
<td></td>
<td>VTR</td>
</tr>
<tr>
<td>GOAL</td>
<td>STRATEGY</td>
<td>#</td>
<td>MEASURE</td>
<td>Baseline</td>
<td>Target</td>
<td>Actual</td>
<td>OWNER</td>
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<td></td>
<td></td>
<td>44</td>
<td>Number of Shows and Exhibits attended to educate stakeholders/customers about TxDMV services and programs</td>
<td>6</td>
<td>7</td>
<td></td>
<td>MVD</td>
</tr>
<tr>
<td></td>
<td></td>
<td>45</td>
<td>Number of education programs conducted and number of stakeholders/customers attending education programs</td>
<td>3/250</td>
<td>3/250</td>
<td></td>
<td>ENF</td>
</tr>
<tr>
<td></td>
<td></td>
<td>46</td>
<td>Number of education programs conducted and number of stakeholders/customers attending education programs</td>
<td>3/150</td>
<td>4/300</td>
<td></td>
<td>ABTPA</td>
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<tr>
<td></td>
<td></td>
<td>47</td>
<td>Percent of customers and stakeholders who express above average satisfaction with communications to and from TxDMV</td>
<td>Baseline in development</td>
<td>80%</td>
<td></td>
<td>All Divisions</td>
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<td></td>
<td></td>
<td>48</td>
<td>Average hold time</td>
<td>9 min</td>
<td>9 min</td>
<td></td>
<td>CRD</td>
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<tr>
<td></td>
<td></td>
<td>49</td>
<td>Abandoned call rate</td>
<td>22%</td>
<td>20%</td>
<td></td>
<td>CRD</td>
</tr>
<tr>
<td></td>
<td></td>
<td>50</td>
<td>Average hold time</td>
<td>Baseline in development</td>
<td>1 min</td>
<td></td>
<td>ITS</td>
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<tr>
<td></td>
<td></td>
<td>51</td>
<td>Abandoned call rate</td>
<td>Baseline in development</td>
<td>5%</td>
<td></td>
<td>ITS</td>
</tr>
<tr>
<td></td>
<td></td>
<td>52</td>
<td>Average hold time</td>
<td>Credentialing - 1.6 minutes Permits - 2.08 minutes CFS - 54.38 seconds</td>
<td>Credentialing - 1.5 minutes Permits - 2 minutes CFS - 50 seconds</td>
<td></td>
<td>MCD</td>
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<tr>
<td></td>
<td></td>
<td>53</td>
<td>Abandoned call rate</td>
<td>Credentialing - 7% Permits - 6.42% CFS - 5.63%</td>
<td>Credentialing - 6% Permits - 5% CFS - 5%</td>
<td></td>
<td>MCD</td>
</tr>
</tbody>
</table>

**Key:**
- Off Target
- On target
- Not yet started

**Vision:** The Texas Department of Motor Vehicles sets the standard as the premier provider of customer service in the nation.

**Mission:** To serve, protect, and advance the citizens and industries in the state with quality motor vehicle related services.

**Philosophy:** The Texas Department of Motor Vehicles is customer-focused and performance driven. We are dedicated to providing services in an efficient, effective and progressive manner as good stewards of state resources. With feedback from our customers, stakeholders and employees, we work to continuously improve our operations, increase customer satisfaction and provide a consumer friendly atmosphere.

**Values:** We at the Texas Department of Motor Vehicles are committed to: TEXAS-Transparency, Efficiency, EXcellence, Accountability, and Stakeholders.